



Kummissarju għat-Tfal  
Commissioner for Children

# Annual Report **2012**

Office of the Commissioner for Children

The Office of the Commissioner for Children was set up in terms of the Commissioner for Children Act of 2003, to promote the welfare of children and the compliance with the UN Convention on the Rights of the Child, as ratified by Malta, and such other international treaties, conventions or agreements relating to children as are or may be ratified or otherwise acceded to by Malta.

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Design & Printing: Dormax Press Co Ltd - Marsa

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# Message from the Commissioner for Children



Ms Helen D'Amato

The life of a person can be described as a process of continuous development geared towards the progressive realisation of the person's physical, emotional and spiritual well-being. Childhood is without doubt the most important and, at the same time, critical and delicate phase in this process. This phase in a person's life lays

the foundations of the person's present and future development. It is also a stage in life when the person is most vulnerable to and dependent on his external environment for his development.

Nevertheless, even in childhood, the process of development is not an involuntary one that runs its course independently of the person's action and will. On the contrary, children are prime agents of their development and thus also of their well-being. Well-being requires children to be active participants and to engage actively in their own development.

Children should be encouraged to understand that they have a fundamental right to be well. They should be given the opportunities to realise this right, and, importantly, by making them aware that they should make the most of these opportunities in order to realise their right to well-being right through the course of their life.

*The true measure of a nation's standing is how well it attends to its children – their health and safety, their*

*material security, their education and socialization and their sense of being loved, valued and included in the families and societies into which they are born.<sup>1</sup>*

Ensuring children's well-being pays! It has significant potential pay-offs for children themselves as children today and also later on in their lives as adults. Investing in children's well-being should be upheld as an essential priority to achieve the rights of children today and to contribute to more stable communities.

Well designed investment in children's well-being, will contribute to reduce inequalities, foster greater social cohesion and help break intergenerational poverty cycles. When realising children's well-being we have to take a multi-dimensional approach.

Collaboration and synergy amongst the various stakeholders will help us overcome barriers and can play a pivotal role in addressing challenges which help us improve children's lives especially amongst those who are most vulnerable. Adequate investment should be planned through programmes and initiatives that offer a holistic approach with set definite targets which can be evaluated.

Children's well-being was, during this year, a recurrent theme that guided our work through the various initiatives that were taken by this Office. In this report one will thus find an account of the Office's contribution during 2012, who together with other stakeholders, worked to enable more children in Malta to realize their fundamental right to well-being. One will also find in this report the Office's take on what more needs to be done for the wellbeing of children and in their best interest.

<sup>1</sup> Innocenti Report Card 7

# Introduction

## ***History and Status of the Role of the Commissioner for Children in Malta***

The role of the Commissioner for Children has its roots in Malta's ratification of the United Nations Convention on the Rights of the Child (UNCRC). This milestone ratification took place in 1990, some months after the UNCRC was adopted by the General Assembly of the United Nations. The Convention lays down the fundamental and unique rights of children in 42 substantive articles. Malta's accession to the UNCRC gave rise to the need for an independent body to monitor the observance of the Convention's articles, hence the *de facto* respect for the rights of children in Malta.

The legal framework required for this need to be fulfilled was put in place in 2003 through the passage into law of the Commissioner for Children Act. This Act gives the Commissioner the power and the autonomy to act in such a way as to protect and promote the rights and best interests of children who are under the jurisdiction of Malta. This means that the Commissioner for Children is to be invested with the resources and the authority to work to advance the rights of children in Malta while always being free from the control and direction of Government.

Ms Helen D'Amato, the present Commissioner for Children, is the third person to occupy this position since the Office was set up. She has been in office since 2010. The previous Commissioners were Ms Sonia Camilleri and Ms Carmen Zammit.

## ***Functions of the Office of the Commissioner for Children***

Article 10 of the Commissioner for Children Act delineates the thematic remit of the Office, which has enabled the Office to work in a wide range of areas where the rights of children are at stake, namely health, social protection, education and justice, just to name a few. Subarticle 2 establishes the UNCRC as the document of reference for the Office with regard to the rights of children.

Article 11 of the Act outlines the activities which the Office is called to undertake in order to safeguard and promote the rights of children. The twelve sub-

articles in Article 11 can be boiled down to four domains of activity, namely:

- Education, awareness-raising and consultation with children and the general public
- Advocacy
- Research and investigation into the situation of children
- Intervention in cases of alleged breaches of children's rights, and to instigate changes to laws, policies, procedures and practices by making recommendations to decision-makers and service providers, in both the public and private sectors.

In addition to these four domains of activity, the Office has also been actively involved over the years in regional and international children's rights-based fora and networks with the aim of contributing to the international and regional discourse on children's rights and of developing the expertise of its staff and of children and young people in Malta on issues of children's rights.

The Commissioner also participates as a guest in activities organised by various entities connected to children. This serves not only to increase the public's awareness of the Commissioner's role and status but also to endorse the significance of the achievements being celebrated in promoting the respect for the rights of children.

Underlying the Commissioner's various activities is a constant and close attention, by her Office, to the evolving situation of the rights of children in Malta, as evaluated against the blueprint of the UNCRC.

## ***Content and Structure of the Annual Report***

As set forth in Article 19 of the Commissioner for Children Act, this Annual Report provides a detailed account of the Office's activities during 2012 and gives an overview of the prevailing situation of children in Malta while also providing the Office's suggestions on how certain outstanding issues can be resolved. The report is structured thematically according to the particular right of children which has been the focus of the Office's activity and/or of its analysis and concern in the course of 2012.

# A Guarantor of Children's Rights

*'There shall be a Commissioner for Children....'*  
(Article 3)

*'In the exercise of the functions established under this Act, the Commissioner shall act independently and shall not be subject to the direction or control of any other person or authority'*  
(Article 4)

*'The Commissioner shall.....promote and advocate for the rights and interests of children'*  
(Article 9)

## Activity Report

### Structures of the Office of the Commissioner for Children

Every year the Office's efforts are directed also at improving its internal structures and resources with a view to enhancing its effectiveness in promoting and defending the rights and interests of children. The below account provides an overview of the work conducted by the Office in this sense in 2012.

### Human resources

The year 2012 saw the recruitment by the Office of two members of staff, namely a Head of Office, who filled in a new role created by the Office within its organisational structure, and a Case Officer who replaced the former Case Officer who had been working on a part-time basis and was due to retire. The former role has brought the necessary legal expertise to the Office in order to enable the Office to deal with the myriad legal issues that arise in the course of the Commissioner's work. The role's headship status is expected to provide a strong element of continuity in the transition period when the Commissioner leaves office and another Commissioner enters office. The engagement of a full-time Case Officer was vital in view of the ever increasing workload of complaints and requests for assistance that comes to the attention of the Office

The Office Clerk retired during 2012 and so far this post has not been filled. At the same time this Office is receiving the service, for a few hours a week, from a person under the Me2 Coop scheme.

## Structure

## Function

COMMISSIONER	Overall direction and public role
Head of Office	Intervention; Overall management
Task Manager	Education, awareness-raising, consultation, research
Projects Officer	Education, awareness-raising, consultation
Teacher	Education, awareness-raising, consultation
Case Officer	Intervention/Investigations
Policy Officer	Intervention (recommendations)
Principal Officer	Administration
Accounts Officer (PT)	Administration
Driver	Administration

## Premises



Official inauguration of new premises.



# A Guarantor of Children's Rights

Another important step towards increasing the Office's resources has been the move to new premises that was completed in the beginning of the year. The Office's new premises were officially inaugurated on the 1st of October with the participation of the Minister for Justice, Dialogue and the Family, the Hon. Dr Chris Said.

Owing to the fact that the Office's new premises are larger, fully detached and unshared, compared to its previous bases, this physical migration has had a number of important practical and symbolic benefits. The greater dimensions of the Office's new premises have enabled the above-described expansion of the Office's structure. They have also favoured a stronger concentration of the Office's activities in one place, and thus a sharper focus by the Office on its work. This, coupled with the new premises' structural independence and unshared occupancy, can be said to have strengthened the autonomy of the Office, and therefore possibly also the accessibility of the Office to children and the general public.

Over and above the advantages that have accrued from the physical features of the Office's new premises, it has been also the uses to which such premises have been put that has led to a better fulfilment of the Office's functions.

One room within the Office's new premises was converted into a children's room. This room is furnished with the typical décor and amenities which appeal to young children and where children

can feel at ease and within their environment. The purpose of the children's room is to provide the most suitable environment where a young child, that would need to speak to us in connection with any personal issue regarding its rights, can do so openly and without fear. The Office would like to thank Dr Roberta Attard who offered her expertise in the field in order for this room to be set up.

The Office has offered the use of the children's room to Agenzija Appoġġ for supervised access visits whereby supervised contact between the non-custodial parents and their family members is provided by the Agency when access is not possible otherwise. This offer was received with strong interest by the Agency.

Another room within the Office's new premises was designated for use by older children. To this end, it has been made available for follow-up counselling sessions to *kellimni.com*, a project that provides a service of online counselling to children and young people. We are pleased to note that regular sessions are held at this Office by professionals from *kellimni.com*.

The setting up of these specially purposed rooms is also to set a model of practice which other sectors, notably the social sector and the justice sector (see chapter on Right to Child-Friendly Justice), can then follow in trying to provide the most congenial environment for children.

## Council for Children

While the Council for Children is bound by law to meet at least once every three months (*Article 12 (4), Commissioner for Children Act*), 6 meetings were held in the course of 2012. In addition to representatives from key Ministries, as stipulated in the said Act, the Council was composed also of five teenage children, between fourteen and sixteen years of age, who were elected by their peers during the Rights4U courses to represent them on the Council.

The topics discussed by the Council, such as children in out-of-home care, children in advertising and electioneering, anti bullying and child abuse material, the research on leisure, standards for



Children's Room



# A Guarantor of Children's Rights

indoor play areas for children and the Manifesto 2013, reflect the content of the Office's work as described in the chapters that follow. Most topics discussed by the Council during its meetings, are related to work that was initiated by this Office or by the Council itself.

## Accountability to Parliament

As per Article 19 (3) of the Commissioner for Children Act, the work conducted by the Office of the Commissioner for Children in 2011, as described in the Office's Annual Report for that year, was discussed by the Parliamentary Social Affairs Committee in the first half of 2012. During the course of the meeting the Commissioner was invited to give an account of her work and to air her views and concerns with regard to the prevailing situation of children in Malta.

## Considerations and Concerns

The year 2013 will mark a decade since the Office was set up through the passage into law of the Commissioner for Children Act. The time is ripe to conduct a thorough analysis of where we want this Office to go and to make the necessary changes to the Office's legislative and resource setup for the Office to be more effective in the defence and promotion of the rights of children over its next decade.

The need for such an exercise is reflected in the Draft National Children's Policy which proposes that '*to strengthen the role of the Office of the Commissioner for Children, additional resources are required to ensure its better functioning*'. (Chapter 4, pg.38). The analysis may need to look at such aspects of the Office's role and function as well as the duration of the Commissioner's term, which, set as it is at three years (*Article 6, Commissioner for Children Act*), could be extended to allow the Commissioner to make a more lasting impact on the situation of children's rights in Malta.





# Children's Rights – General

*In all actions concerning children, whether undertaken by public or private social welfare institutions, Courts of Law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*  
(UN CRC, Article 3)

## Activity Report

### Education, awareness-raising and consultation

#### Rights 4U

Educating children about their rights means empowering them with a knowledge which they can use in their everyday lives to protect their rights and realize their potential as children. Such education does not simply add more information to children's body of knowledge but aims to change their perspective so that they come to see themselves and others as active agents, rather than passive recipients, in society. To achieve this aim, education about children's rights must be intensive, interactive and holistic.

*Rights 4U*, a course organised every year by the Office of the Commissioner for Children and targeting children aged 13 to 15, is modelled on this concept. The course is held uninterruptedly over three consecutive days during which around 40 children come together under one roof to participate in a variety of activities that allow them to learn about their rights whilst having fun and making new friends. The activities, which are coordinated by a team of qualified and experienced

people, revolve around an overarching theme.

This year's edition of *Rights 4U* had as its theme, the need to bridge the intergenerational divide (in line with the European Year dedicated to Active Ageing). In this regard, activities included a number of events that involved elderly people in residential homes and day centres. These included, amongst others, a BBQ for the elderly and a visit to the beach where specific activities were held which involved the elderly and the children together.



Ms Helen D'Amato together with Ms Watkinson and the Hon. Carmelo Abela during the Rights4U Course





The course, which is organised biannually and has seen a steady increase in participation since it was first held in 2007, has to date benefited dozens of teenage children. The course is open and actively promoted by the Office to all school children in the said age-group. Participation is free from financial barriers thanks to the waiver of the minimal charge in the case of children hailing from socially disadvantaged backgrounds.

So high was the level of interest in the course this year that it was necessary to offer the course an unprecedented three times. One course was held at the Archbishop's Seminary in Rabat, Malta, in which 37 children participated, whilst the other two courses were both held at Manresa House in Rabat, Gozo, in which 45 and 30 children respectively took part. Thus over a hundred children, a number of whom were sponsored, followed and benefited from the course in 2012.

The courses were partly sponsored by the HSBC Foundation and the Ministry for Gozo.

### **Festa Tfal**

It is important to raise awareness about children's rights not only among children themselves but also among adults, since they play a key role in the lives and well-being of children as their carers.

The Office of the Commissioner for Children has, since its inception, been increasing public awareness



**Launch of activities to celebrate World Children's Day, Floriana Primary**



## Children's Rights – General



about the rights of children by celebrating World Children's Day. This day is marked internationally, to commemorate the adoption and opening for signature of the UNCRC on the 20th November, 1989. Since 2010, this celebration has taken the form of a daylong event held on a Sunday in November to which all children are invited along with their families.

*Festa Tfal*, is an event that consists of various educational and leisurely outdoor activities, all centred upon a particular theme, that are organised by different public and voluntary organisations and in which children can participate. The staging of the event on the grounds of one of the private residences of the Prime Minister, the interior of which is open on the day for the visiting public to explore its historical and aesthetic beauty, provides a fitting backdrop to the festive nature of the event.

This year's *Festa Tfal* was conceived upon the theme of child well-being, with each activity highlighting a



particular aspect of the well-being of children, notably food preparation activities in relation to healthy eating, physical exercises and internet safety. Leading up to *Festa Tfal* were various sessions that were held in the different classrooms of Floriana Primary school in order to promote the theme of the event.

The event was held on the 18th of November at the Girgenti Palace, in Siggiewi, where thousands of children gathered with their families in the course of the day. The event was supported by the Office of the Prime Minister, the Ministry for Resources and Rural Affairs, Malta Dairy Products Ltd. and Farsons Group of Companies.

### Book prize

When raising awareness about children's rights, an important part of the message conveyed by the



Commissioner for Children presenting Nikolai Scicluna with the book prize, Zabbar Primary B

# Children's Rights – General

Office is that for all children to enjoy their rights, each child must exercise his/her responsibility to respect the rights of other children. Children should thus be empowered to defend not only their own rights but also the rights of other children. Given the importance of this message, the Office has initiated a special award for the child who, in the opinion of school staff, shows the strongest commitment to the rights of his/her peers. For the scholastic year 2011-2012, there were 15 schools that voluntarily participated in this initiative. The child, chosen as the worthy recipient of this award, received a book prize signed by the Commissioner.

## **Meetings with children**

The Commissioner has regular meetings with children in a bid to instil in them a keener awareness of their rights. In the course of 2012, the Commissioner met with children in a number of schools in Malta and Gozo as well as Summer Schools organised by the State, NGOs and the Church and a number of issues were discussed.

## **Educating the educators**

Educators are amongst the strongest influences on the developing minds of children. For this reason, the Office continuously seeks to imbue educators with a knowledge and appreciation of the rights of children in the hope that these will permeate the manner and style of their pedagogy. This is best accomplished by educating those who are still forming themselves as educators of children, and particularly those who are in the process of becoming educators of young children. In this respect, the Commissioner gave two talks about children's rights to undergraduates pursuing a course in Early Years within the Faculty of Education of the University of Malta.

## **Educational resources**

While the content of the Office's messages to children is by and large fixed, the form in which these messages are presented must be adapted to the children's ages and likes for the messages to be internalised and assimilated.

Young children, who learn best through play, are also best reached through games. To this end, a game of

flashcards based on the theme of children's rights, first published in 2006, was again reprinted and distributed amongst children in all Kindergarten I classes in Malta and Gozo.

For older age-groups of children, work initiated in 2011 on an illustrated booklet about the rights of children was continued with further consultations held with children to explore with them how the booklet should be pitched in terms of language and format to capture their interest and imagination.

Other publications produced by this Office, which cover specific rights or themes, are mentioned in the chapters that follow.

## **Advocacy**

The Commissioner spoke in public through the mass media or in public fora and gatherings on numerous occasions, during which she noted that while much had been done over the years to ensure a fuller respect for the rights of children in Malta, there were issues that needed addressing if further progress was to be made. On one such occasion, the Commissioner expressed her appreciation of the efforts that had been made towards the publication of the Draft National Children's Policy but also called for the process leading to the implementation of the policy's measures and objectives to be completed as soon as possible and that there should be an inter-ministerial approach.

## **Intervention**

### **Individual cases**

The number of complaints or requests for assistance received and dealt with this year was 218. The majority of cases was almost evenly split between family-related issues and school-related issues. There were also various other issues that were brought to the attention of the Office (see pie-chart).

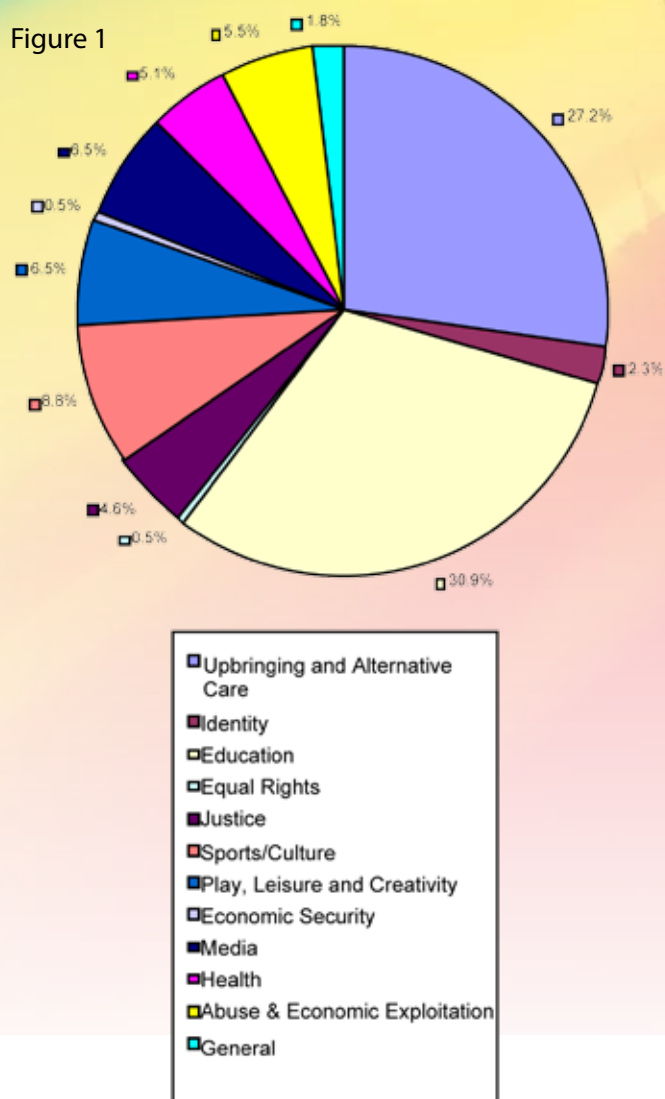
## **Recommendations**

### **The UNCRC in the laws of Malta**

Rights have their strongest and ultimate basis in laws. This principle raises two related but distinct issues vis-



# Children's Rights – General



à-vis the relationship between the UNCRC and the laws of Malta.

The first issue is about the extent to which the articles of the UNCRC are reflected in the laws of Malta. The Office continued the exercise it initiated last year through the legal expertise of the Office of the Attorney General to work out precisely what this extent is. It is clear from the preliminary results of this exercise that there are but few areas where the laws of Malta fall short of the rights established by the UNCRC. This ongoing exercise is thus providing a basis for the Office's advocacy and recommendations for changes to the laws of Malta.

The second issue concerns what real and direct impact the UNCRC has in Malta's system of laws and justice. The impact is limited since the Convention is not part and parcel of the laws of Malta, which means that Maltese judges are not bound to quote the Convention in their rulings (even though there have been instances where

they have done so) and that it is not possible for a citizen to file a suit on the basis of an alleged violation of the Convention. For this reason, the Office has long lobbied for the Convention to be transposed into Malta's legislation. This lobbying activity was carried on in 2012 with a number of meetings with the Minister responsible for justice being held on the subject in the course of the year. This activity started bearing fruit in November when the said Minister, during his address at a National Conference on children in out-of-home care organised by this Office (see 47), publicly stated his intention to present a bill in Parliament for the transposition of the Convention into Maltese legislation.

## National children's policy

While laws provide the foundation for the respect of children's rights, national policies geared towards such respect are an essential part of the architecture of these rights.

Malta's first ever National Children's Policy was launched in draft form in 2011, following a long and complex gestation. Plenty of consultation went into its formulation, which is understandable especially in the light of its horizontal and inter-sectoral scope.

The Office of the Commissioner for Children was closely involved in the development of this policy as a result of its representation, through its Task Manager, on the Working Group that was tasked with the policy's formulation.

The involvement of the Office in this important piece of policy-making continued in 2012 with the Office's participation in the process of consultation on the draft policy. In a meeting with the Minister of Justice, Dialogue and the Family, the Commissioner articulated her Office's views on the draft policy, praising the breadth of its vision but also pointing out gaps in the content of the policy and in the method of its eventual implementation.

## Manifesto for Children

In 2008, the Office of the Commissioner for Children launched a collection of policy recommendations, appropriately named *Manifesto for Children*, during the electoral campaign of that year in an attempt

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to turn the attention of the general public and the political parties to issues concerning children's rights at such a crucial time in the country's political cycle.

Given that the current legislature was nearing its end, the Office started working on updating its Manifesto for Children with a view to publishing it by the start of the electoral campaign.

## **Pre-Budget Document**

Another crucial time in the country's political cycle is that which leads to the presentation of the National Budget by the Government of the day. In these last few years this period is characterized by a process of consultation whereby all stakeholders are invited to propose and discuss needs and priorities which should be addressed for each sector through the Budget.

The Office participated actively in this year's pre-budget process by voicing its proposals for certain measures supporting vulnerable children to be included in the National Budget for 2013.

## **Participation in Children's Rights Networks and Fora**

### **Implementation of the UNCRC**

In ratifying the UNCRC, a country, which thus becomes a state party to the Convention, is binding itself to implement the provisions of the Convention and ensuring that the legal and institutional setups for the respect of the rights of children are robust. The ratification of the Convention thus carries with it the obligation on the State Party to submit periodic reports detailing the country's effective implementation of the UNCRC. Malta submitted its second periodic report in 2010, which report is scheduled to be considered by the Committee for the Rights of the Child in 2013 in an open meeting of the Committee where one or more representatives of the Government of Malta will be asked questions relating to the content of the report submitted.

However, to obtain a more independent and politically neutral view of the situation of children's

rights, it is standard practice for the Committee to request feedback from human rights institutions and non-governmental organisations working on the ground in the State Party about issues of concern regarding children's rights in the State Party.

In preparation for its consideration of Malta's second periodic report, the Committee asked the Office of the Commissioner for Children to give its take on the situation of the rights of the child in Malta. In response to this request, the Office submitted written feedback in which it highlighted the gaps it believes are found in Malta's legal and institutional setup with respect to the rights of children. Among the issues raised by the Office, as needing to be remedied, were the low age-threshold for criminal responsibility set in Malta's laws; the lack of adequate after care services for children who leave out-of-home care; and the failure to date to incorporate the UNCRC in Malta's body of laws.

In order to promote compliance with and implementation of its human rights treaties, the United Nations (UN), through one of its several bodies, also issues resolutions calling State Parties to a stricter adherence to the treaties. In 2012, the UN's Human Rights Council published an omnibus resolution on the Rights of the Child exhorting State Parties to the UNCRC to ensure that the rights of children within their jurisdiction are respected fully and unconditionally. The Maltese Government, which co-sponsored the resolution, sought and received feedback from the Office of the Commissioner for Children on the text of the resolution.

The European Union is another supranational organisation which is taking an increasingly strong interest in the advancement of children's rights not only within its regional borders but also beyond them. The EU Guidelines for the Protection and Promotion of Children's Rights, issued in 2007, are an example of the bloc's close attention to this field. More recently, the EU decided to take stock of the effectiveness of these guidelines in facilitating developments conducive to a greater respect for the rights of the child across the world by setting up a platform for stakeholders to engage in a constructive debate about the guidelines. The

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Office, represented by the Commissioner and the Task Manager, participated in the first meeting of this platform in 2012.

### **Independent monitoring mechanisms**

No matter how thoroughly children's rights are realized de jure and de facto by the Government of a country, there must always be effective independent mechanisms in place that children and their carers can have recourse to whenever a breach of children's rights is supposed to have been committed.

As detailed in the introduction, the Office of the Commissioner for Children is one such mechanism. Many countries have instituted national mechanisms similar to the Commissioner for Children, which are often denoted by alternative nomenclatures such as Ombudsman for Children. Other countries are in the process of setting up, or planning to set up, this sort of independent mechanism.

One such country is Tunisia, where recent political upheavals that have set the country on the path to democracy have also given rise to the proposal to build a national independent mechanism to monitor the implementation of the UNCRC, to which Tunisia is a state party. In order to push this proposal further up on the national agenda, UNICEF Tunisia organised an international conference in September 2012 to discuss this scenario with all relevant Tunisian stakeholders and with representatives of independent mechanisms already functional in a number of European countries. The Office was invited to participate in this conference and to share its experience as an independent children's rights mechanism in the Maltese context. The Office was represented by its Policy Officer who gave an overview of the strengths and weaknesses of Malta's independent monitoring mechanism.

Supplementing the strength of national independent mechanisms in guaranteeing respect for the rights of children are international independent mechanisms which are set up to monitor and ensure compliance with international human rights treaties. It is important for a national independent mechanism, like the Office of the Commissioner for Children, to be familiar and

networked with all international independent mechanisms so that it can utilize these mechanisms to address children's rights issues which it cannot adequately address on its own.

To this end, the Office's Task Manager attended a one-and-a-half-day workshop organised by ENOC in which a detailed overview of three international independent mechanisms and their corresponding treaty was given, namely the European Court of Human Rights, vis-à-vis the European Convention of Human Rights; the European Committee of Social Rights, vis-à-vis the European Social Charter; and the Committee for the Rights of the Child (CRC), vis-à-vis the UNCRC.

The workshop described the different degrees of coverage of children's rights in the treaties and thus by their corresponding monitoring body. Obviously, the UNCRC and the CRC offer the greatest scope in this sense. Also explained were the different mechanisms available to each monitoring body to enforce its respective rights treaty. The European Convention of Human Rights is the only treaty to have a judicial mechanism, in the European Court of Human Rights. The workshop featured also a presentation of the new mechanism, namely the communications procedure, which allows individuals, including children, to report an alleged violation of the rights of children to the Committee of the Rights of the Child. During this workshop, an appeal was made for all independent monitoring mechanisms to urge their national Governments to sign and ratify the constitutive optional protocol of this communications procedure. Malta was the 21st country to sign this protocol in April 2012, which was issued for signing in February of the same year.

### **International co-operation**

In its preamble, the UNCRC recognizes '*the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries*'. Although as a national independent body, the Office's remit is confined to children in the jurisdiction of Malta, the Office grasps any opportunity that comes its way to enable children living in developing countries to benefit directly or indirectly from its work.



It was in the spirit of the Convention that the Office joined an inter-ministerial Government delegation on a visit to Tunisia where a bilateral agreement was signed between the two countries. The agreement covered a number of issues and sectors that were directly or indirectly conducive to the well-being of children in Tunisia, such as education, health and the environment. For its part, the Office pledged inter alia to support the participation of a group of Tunisian teenage children in a future edition of the Rights4U course. In so doing, the Office also wants to give Maltese young people an opportunity to meet and mix with young people hailing from a different cultural background. The Office also expressed its willingness to extend the same support to young people from Algeria, as part of a similar general bilateral initiative between Malta and Algeria.

## ***Considerations and Concerns***

### ***Tools for seeking redress***

Although Government's drive to transpose the UNCRC into domestic legislation, as evinced by the aforementioned public statement by the Minister for Justice, Dialogue and Family, has been overtaken by the turn of events (with the decision to dissolve Parliament soon after the festive season), one remains optimistic that this much-awaited and much-needed transposition will materialize in the not too distant future since the Opposition has also made its stance in favour of such transposition clear on a number of occasions. Thus one takes stock of the fact that there is broad political consensus on the need for and feasibility of the transposition of the UNCRC in our legislation.

As explained above, the incorporation of the UNCRC in our laws will provide children and their carers a tool to seek redress for an alleged violation of children's rights. Another such tool which it is hoped will soon be available is the communications procedure, which is described above. The Office welcomes Government's signing in 2012 of the optional protocol to the UNCRC to provide a communications procedure and augurs that Government will proceed to ratify the protocol in due course.

### ***Tools for advancing the rights of children***

It would be a mistake to think that the transposition of the Convention into domestic legislation and/or the adoption of a communications procedure to the Convention represent the final stages in the country's quest to offer the best possible protection and promotion of children's rights. On the contrary, efforts must be sustained to ensure that Malta does not simply provide a safety net for those children after their rights are violated but is also able to instigate, through its national laws and policies, the setting up and smooth operation of the necessary structures and processes for the rights of children in Malta to be advanced as far and as rapidly as possible.

In this respect, the drafting of a National Children's Policy can be seen as being a giant step forward, as explained above. However, unfortunately, so far the process has not been finalised and the policy is still in its draft form. Consequently there is not as yet a clear way forward towards the policy's implementation. The Office thus calls for this process to be expedited and completed as soon as possible.

### ***Holistic, coordinated action***

As explained above, one of the major merits of the Draft National Children's Policy is that it adopts a horizontal and cross-sectoral approach to the protection and promotion of the rights and interests of children. Such an approach should be reflected not only in policy-making but also in service provision in relation to children.

All too often one finds that service provision is structured along rigid organisational and professional divides and not, as should be the case, around the needs, rights and interests of children. This invariably results in services that are not as effective as is necessary to meet the complex needs of children. The Office thus calls for efforts to be stepped up to render service provision more holistic and coordinated both within and between organisations. The further development of multi-disciplinary teamwork in the field of service provision to children is one direction which should be pursued.

# Children's Right to Safe and Beneficial Media

*States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.*  
(UN CRC, Article 17)

## Activity Report

### Education, awareness-raising and consultation

#### Internet safety for children

The internet is a vast global network of people, information and ideas that can be accessed at the click of a button. Its open-endedness makes it a double-edged sword, allowing individuals to develop and express themselves but also exposing them and their families to myriad risks. The two edges of this sword are somewhat sharper for children whose immature psychology and strong mental and cultural affinity to this tool makes them particularly inclined and able to share in its benefits (related to their education, leisure and social life) and risks (such as cyber-bullying, grooming and exposure to inappropriate content). This is compounded by the clear generational gap that separates children from their adult carers in terms of familiarity with this relatively new medium, as a result of which children may not receive adequate guidance with respect to the safe and beneficial use of the internet.

In spite of this, a lot can be done to promote and protect the rights of children vis-à-vis their use of the internet, especially if the forces of the different stakeholders are pooled together and coordinated. The EU acknowledges this and has, among other things, helped to set up Safer Internet Centres in 30 European countries. The latter include Malta which in 2010 launched its centre to include a helpline and a hotline through the project, *BeSmartOnline!*.

This project tries to counteract the risks of the internet to children by working to make the internet safer for children and by educating children to become more discerning of the dangers lurking in their midst when they are online.

The *BeSmartOnline!* project makes the internet safer for children in Malta through its hotline,

whereby online abuse can be reported by users to a central base from which action is then taken to neutralize or reduce the risks. On a broader level, inter-organisational dialogue and collaboration is fostered through an Advisory Board, whereby various stakeholders in the field of internet use meet regularly to discuss how internet safety for children can be enhanced. The viewpoints and experiences of children about issues related to online safety are fed into the project through the Youth Panel.

*BeSmartOnline!* teaches children how to be smart online through its helpline which offers free advice and follow-up help to those children and carers who have specific or generic concerns about internet safety for children. Education on the safe use of the internet, targeting mostly parents, teachers and children, is provided through national awareness-raising campaigns and outreach sessions.

Malta's Safer Internet Centre is operated by a consortium of organisations led by the Malta Communications Authority, the Foundation for Social Welfare Services – *Agenzija Appoġġ* and the Office of the Commissioner for Children whose role has to date been to coordinate the Youth Panel as well as to promote online positive content.

In 2012, this Office organised a number of Youth Panel meetings in which as many as 30 youths discussed issues such as cyber-bullying, grooming and strategies for being safe online. The Office also coordinated 4 meetings of the Advisory Board wherein 25 organisations debated topics like the role of Internet Service Providers in combating online child abuse, cyber-security and online social responsibility.

The first cycle of the project came to a close in the middle of 2012. The proposal for a second cycle of the project was accepted in June 2012 and the grant agreement was signed in December 2012. The project will cover 28 months from June 2012 till

# Children's Right to Safe and Beneficial Media



Meeting with the members of the Advisory Board

September 2014. The new cycle will see a greater emphasis being made on the promotion of positive content online.

## Advocacy

### Internet safety for children

The internet is a global phenomenon that transcends national boundaries. For this reason, strategies to ensure internet safety for children must be pitched at a supranational level through broad networks that foster joint action and mutual cooperation amongst safer internet centres operating in different countries.

Such collaboration exists at a European level through the INSAFE network. In order to highlight the fundamental importance of internet safety in today's world, this network, amongst other initiatives, organises Safer Internet Day every year in February. Given Malta's participation in this network through *BeSmartOnline!*, this day is celebrated also locally.

On the occasion of Safer Internet Day in 2012, the Commissioner for Children spoke in public through the media on issues of internet safety for children. The gist of her message was that the internet

should be seen in view of its benefits and potential risks for children, and that action should focus on maximising the former and minimising the latter. The young persons on the Youth Panel helped to disseminate information with their peers during this event.

### Children in electioneering

Despite the fact that children are rightly considered not mature enough to exercise the fundamental right to vote, it is customary for them to be used as props in the choreography of modern political propaganda. This raises a number of ethical concerns about the politicisation of what is an inherently vulnerable and apolitical cohort of citizens.

In the absence of specific regulations<sup>2</sup> or guidelines on the use of children in electioneering, the jury is out as to what can and should be done to protect the rights of children in such situations. The Commissioner for Children added her perspective to this debate when in comments to a local weekly newspaper she opined that children should not be shut out from the country's political dialectic but should be informed about political proposals that affect their rights while being protected from any portrayal of their image that can compromise their dignity and political neutrality.



# Children's Right to Safe and Beneficial Media

## Intervention

### Individual cases

As described in chapter 2, individual cases that were related to the media accounted for 6% of all the cases dealt with by the Office. One of these cases concerned a video posted on YouTube in which could be heard a rendition in Maltese of the dialogue of the popular cartoon Popeye the Sailor Man that was laced with blasphemous language. The Office formally asked the management of YouTube to remove the video on account of the harm it could do to scores of children who listened to it. The outcome of this complaint, lodged by the Office, was the insertion of an age gate with a message warning users of adult content before signing in to view the video.

Other cases that were dealt with, particularly through the support of the Cyber Crime Unit, included pictures of Maltese children and other posts on Facebook and the use of children during TV programmes. The Broadcasting Authority took heed of our interventions and acted in support of the best interest of children.

## Recommendations

### Protection of children from age-inappropriate content on television

While it might be somewhat difficult to control content on the internet, which might pose multiple insidious risks to the well-being of children on account of its strong interactivity as a medium of communication without frontiers, the risks to children stemming from their use of television are more contained and controllable given that television is essentially a non-interactive medium where generally the communication flows in one direction only. For this reason, these risks are mostly limited to the exposure of children to television content that is inappropriate to their age and level of maturity. Nonetheless, the seriousness of this risk cannot be underestimated since it can wreak damage to large numbers of children, all of whom would be watching a particular content broadcast

on television at a given time, before the risk can be identified and addressed.

The risk of exposure to inappropriate content can be curtailed by various means, notably through regulations that limit the diffusion of such content to a time during the day when children would not normally be expected to be watching television, and by requiring that a warning symbol or message be clearly displayed or communicated before and/or during a broadcast featuring inappropriate content for children.

Maltese legislation has regulations to this effect. However, certain shortcomings in this regulatory framework came to light when the Office was asked by the Broadcasting Authority to give its take on whether a broadcast featuring a discussion about the erotic bestselling novel *50 Shades of Gray* during the protected time window should raise any concerns or not. The Office recommended to the Authority that the time windows outside which unsuitable content could be aired on television should be defined in the legislation, with such definition taking due account of the changing availability of children to watch television according to school recess periods. It was also strongly recommended that the requirement for a warning about unsuitable content to be shown should be enforced more strictly.

## Research and Investigations

### Children in advertising and electioneering

Nowadays, children live more than ever before in a world dominated by marketing, commercial or political as it may be. For this reason, the question as to how children's experiences of this phenomenon, be it as recipients or participants, affects them assumes increasingly more importance.

Given the importance of this question also within the local context, the Office of the Commissioner for Children commissioned a study about children in advertising and electioneering. The study was conducted by Dr Andrew Azzopardi, a lecturer in Youth Studies at the University of Malta who explored different perspectives on this question through interviews with a wide cross-section of

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stakeholders.

Two basic perspectives can be said to have emerged from this study. The first perspective underscores the need for children to be protected from the devious and exploitative practices employed in marketing. While the second perspective suggests that children should be empowered to understand the dynamics of marketing, so that they can guard themselves against it when necessary and to embrace its opportunities when possible. In the study, these two perspectives combine to produce a balanced view of the effects of advertising and electioneering on children. This balance is reflected in the recommendations that are made in the study.

This study was forwarded to the three main political parties in Malta and can be accessed on the Office's website [www.tfal.org.mt](http://www.tfal.org.mt). Dr Azzopardi and the Commissioner were asked to discuss the recommendations during TV programmes.

## ***Participation in Children's Rights Networks and Fora***

### ***Internet safety for children***

The Office's international activity in the domain of the right of children to safe and beneficial media revolved completely around internet safety for children. Given that, there is a strong focus at a European level on internet safety for children, the said activity by the Office has been entirely EU-related.

Collaboration coordinated by the EU amongst countries operating Safer Internet Centres continued in 2012. The Office of the Commissioner for Children participated in such collaboration in line with its role as a partner in *BeSmartOnline!*. In this respect, the Commissioner and the Task Manager attended a training seminar organised by INSAFE. The aim of the seminar was to sensitize participants to the realities and the implications of the identity children create for themselves by posting personal information on the internet, notably through social networking sites. The seminar analysed the different kinds of risk posed by children's online behaviour in this regard. Daniel Galea, a member of the Youth Panel and a

member of the Council for Children attended the Pan EU Youth Panel organised by INSAFE. This brings together young people from all over Europe to meet and discuss issues relating to online safety. Daniel was accompanied by the Task Manager within the Office who attended parallel sessions in order to discuss what young people expect and require from grown ups. The discussions from the youth panel as well as the adult panel were then presented at the Safer Internet Forum. This Forum brings together representatives from the Industry, Law Enforcement Authorities, Child-Welfare Organisations and Policy makers in order to discuss internet safety. This year's theme was "Creating together a better internet for children and young people".

EU recommendations for policy in the sphere of internet safety are fine-tuned through discussions with the Governments of member states. In preparation for its reaction to such policy recommendations, Government consults inter alia with the Office. In 2012, the Office was consulted on three EU documents or initiatives concerning internet safety for children, namely a Communication from the European Commission entitled 'European Strategy for a Better Internet for Children'; 'Internet: A better and safer place for children as a result of a successful interplay between government and industry'; and a Communication from the European Commission on the interim evaluation of the Safer Internet Programme.

## ***Considerations and Concerns***

While Malta has made great strides forward in a relatively short time in terms of the diffusion of the internet among its citizens, issues of safety with regard to the use of the internet, especially by the most vulnerable members of society, have only just started receiving the attention they deserve from policy-makers and public opinion.

The *BeSmartOnline!* project is arguably the clearest manifestation of this increased attention. In spite of its undoubted merits and success, the country's response to the serious myriad risks of this very powerful communication medium to the well-being of children should go beyond the limited parameters of this project. To start with, there should be a clear

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commitment to sustain the project independently of the continued availability of EU funds to cover the costs of the project. More importantly, internet safety for children should be mainstreamed in the country's policy-making using *BeSmartOnline!* as a blueprint for a wider and deeper pursuit of internet safety for children.

Within such a framework, one must include the need for Malta to ratify all existing international treaties that impinge on internet safety. One such treaty that the Maltese Government should ratify without further delay is the Council of Europe Convention on Cybercrime.

### **Children and advertising**

The study described earlier on, which was commissioned by the Office, has charted the territory of the complex relationship between children and advertising. This relationship now needs to be defined and nurtured in such a way that it is as harmless and fruitful as possible to children. This can be done by formulating guidelines that encourage ethical and child-friendly practices in advertising and electioneering, and by promoting observance of such guidelines as a certificate of social sensitivity and responsibility towards a much cherished and vulnerable group of society. The recommendations made in the study provide a valid starting point for action to be taken to address these issues.







# Children's Right to Play, Leisure and Creativity

*States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.*

*(UN CRC, Article 31)*

## Activity Report

### Education, awareness-raising and consultation

#### Art Contests

Children have vivid and fertile imaginations which they externalise inter alia through their often colourful drawings and paintings. This means that art by children is an expression not so much of an artistic talent, which some children might possess, as of an inner world of fantasy which all children, irrespective of their cultural and ethnic background, tend to inhabit. As a corollary to this, art contests for children should be seen as a celebration not of art *per se* but of childhood.

This explains why an office like that of the Commissioner for Children has over the years lent its moral and practical support to a number of children to participate in art contests for children,

notably to the Annual World Children's Picture Contest, an international pictorial art competition for children organised every year by the IE-NO-HIKARI Association in Japan. In 2012, two Maltese participants in the previous year's edition of the competition received prizes for their works, namely Kathleen Bulteel, a 14 year old Maltese girl who was awarded a Bronze Prize for her picture entitled 'Micc at Work', and Martina Portelli, a 7 year old girl who received an Honourable Mention for her picture entitled 'The Farmer'.



**Kathleen Bulteel with her Bronze Prize certificate**



**Martina Portelli with her Honourable Mention certificate**

During the same year, the Office also promoted and coordinated the participation of Maltese children in the 20th edition of the contest in which a total of 19 children from Malta submitted their paintings, based on the theme chosen for this latest edition of this international art contest for children, namely Agriculture, Farming, Nature, Local People or even people within the Family Environment.

Another art competition for children which the Office has associated itself with is the Children's Fine and Applied Art Competition organized by the Gallery of Children's Art within the Zánka New Generation Centre in Hungary. Entitled Rainbow 2012, this year's edition saw Julianne Marie Vella, aged 8, winning a Bronze diploma.

# Children's Right to Play, Leisure and Creativity



**Julianne Marie Vella with her Bronze diploma**

## **President's Award for Creativity**

For the second year running, the Office contributed to the President's Award for Creativity initiative. The aim of this award is to help develop new talents and to promote arts-driven projects in order to engage children and young people within the community. This initiative is divided into three different strands: Children, Young People and the Community. The Task Manager within the Office was asked, for the second time, to sit on the Evaluation Board for projects submitted under the Community category which aims at promoting inclusion amongst children and young people.

## **Advocacy**

### **Video games**

In addition to creativity, play is another activity through which children give vent to their imagination. While play is often free and extemporaneous, it can also take the shape of games, where the form and the purpose of children's

play are set and defined. Children's games, which are various and numerous, are also very often the product of a particular cultural identity. The advent of video games brought about by the application of modern digital technology to the world of children's play has, by and large, displaced traditional games whilst also raising serious concerns, because of their nature, about their effect on children.

It was these concerns that the Commissioner for Children had the opportunity to comment upon in public, particularly during her appearance on a TV programme that was dedicated to the subject of video games and their possible effects on children. The Commissioner said that while it was not fair to demonise video games as a category in that not all video games were the same, this kind of game presented a new risk profile compared to non-electronic games in view of the well-being of children.

This profile includes the risk of children becoming addicted to these games and spending very long stretches playing them, at the expense of other activities, such as educational ones; the risk of children's social development being effected by children's solitary engagement with video games; the risk of children's imagination not being adequately stimulated by the overly realistic imagery of some video games; and the risk of children being impressed and negatively affected by the violent content of certain video games. The Commissioner appealed to all parents and carers to keep a watchful eye on their children's use of video games in order to avert any of these risks. She also advocated for a rediscovery of non-electronic games through which children could have fun while socializing with other children and adults.

### **Entertainment among teenage children**

When children enter upon their teenage years, leisure becomes for them also a means of asserting their growing independence from their families. Outings with parents and siblings are progressively replaced with social meetings and events featuring peers and friends. While this slow and gradual disengagement from the family is normal and healthy for children's development, reduced



# Children's Right to Play, Leisure and Creativity

parental supervision and strong peer pressure can also combine to lead children astray during this delicate phase in their growth. This calls for special attention on the part of the responsible carers and authorities to the leisure needs and vulnerabilities of teenage children.

This theme was an important part of the Office's advocacy in the course of the year. On a number of occasions, the Commissioner had the opportunity to explain her Office's views and work on this theme through the media. Chief among her messages were her Office's concerns and efforts in proposing a stronger legal framework to regulate the practice of holding so-called 'teen parties' in places of entertainment so that the rights and interests of children would be better protected.

## Football nurseries

Play, leisure and creativity are not always geared solely towards the amusement of children but can be so structured as to serve as a vehicle for the education of children. Football nurseries, of which there are a substantial number in Malta, are one such vehicle that provide instruction to children of both sexes and as young as five not simply in the playing of football but also, more widely and importantly, in physical education, character formation and in how to be an effective and integral part of a group.

Whilst fully appreciating the important role played by football nurseries in this regard, the Office has, for a number of years, been advocating for the rules regulating the release of children from the nurseries to be reviewed. In 2012, the Office had the chance to reiterate its stand in favour of such relaxation in comments it made about the subject. The Office also once again called for clearer and more comprehensive information to be provided to parents before they enrol their children in a nursery.

## Intervention

### Individual cases

Complaints and requests for assistance relating to children's right to play, leisure and creativity made up a substantial 10% of all the individual cases followed

by the Office in the course of 2012. A portion of this percentage was made up of complaints regarding the release of children enrolled in football nurseries, which is a long-standing concern shared with the Office by the general public. Another concern that came to the Office's attention related to particular gaming parlours that were purportedly in breach of the Locations for Gaming Parlours Directive which requires that such parlours be located at a safe distance from places that host children, such as schools. On following up these complaints with the responsible authorities, the Office found that no requests were being made for the issuing of a licence on the indicated premises. The Office appealed to the Authority that they are vigilant and that it is ensured that no licence is given in breach of the Directive.

## Recommendations

### Indoor play areas

Play areas for children should be designed to offer the best possible balance between allowing children to have fun in their own boisterous way and ensuring that they are safe from the risk of serious injury. In recent years, there has been an increased attention to the safety of places where children play, notably public playgrounds which have been endowed with a range of safety features, such as soft flooring. This process crystallized in the publication of the 'Requirements for Public Playgrounds Safety and their Management' by the then Malta Standards Authority, according to which requirements many public playgrounds in Malta have undergone rigorous safety inspections.

In 2011, the Office of the Commissioner for Children felt there was the need to extend this attention to the safety of indoor play areas for children, in the light of the steady expansion of this industry in Malta. To this end, it applied to the Malta Competition and Consumer Affairs Authority (MCCAA) to set up a technical committee that would draft safety standards for this type of play area. The committee, which is made up of representatives of a number of key stakeholders in the field, met regularly in the course of 2012 to discuss and formulate such standards, which are expected to be finalised in 2013.

# Children's Right to Play, Leisure and Creativity

## **Teen parties**

In 2011, the Office recommended the setting up of an inter-ministerial working group to address concerns with regards to teen parties particularly through changes to the relevant legislation. This process was completed in early 2012 with the finalisation and presentation to the then Minister of Justice and Home Affairs and the then Parliamentary Secretary for Tourism, Environment and Culture, of the draft subsidiary legislation dedicated to teen parties. A working group, chaired by the Commissioner for Children, proposed to replace the existing provisions in Subsidiary Legislation 10.40 (Maintenance of Good Order at Places of Entertainment), which were deemed to provide insufficient protection of the rights and interest of children attending these parties. The said Minister and Parliamentary Secretary were also provided with a synoptic account of the working group's thinking behind the draft legislation.

## **Age-ratings for theatre and cinema productions**

Developed countries have systems of age-ratings in place whereby admission to theatres and cinemas is regulated according to the age of the viewer and the content of the play or movie being shown. Therefore, age-ratings effectively protect children from exposure to content which would be disturbing to them if they viewed it.

Malta's system of age-ratings for plays was recently the subject of a reform whereby the onus for setting the age-rating for a theatrical production was transferred from a specially appointed board tasked with vetting the scripts of all plays that are due to be staged, to the director or producer of the play who is nevertheless bound to follow external guidelines issued by a board. Minor changes to the system of age-ratings for movies were also proposed and enacted.

The Office's contribution to the consultation process preceding the coming into force of these reforms was twofold. On the one hand, the Office articulated its concerns to Government regarding the reforms, arguing that the psychological vulnerability of children should be included as a

criterion for setting age-ratings to movies, and that the envisaged system of self-regulation of the theatre scene with respect to age-ratings was not sufficiently preventive of any harm that children may suffer from exposure to underrated theatrical productions. On the other hand, the Office also recommended a number of professionals who in its view had the right background to sit on the boards that would be responsible to ensure that age-rating criteria were being respected.

## **Football nurseries**

In a bid to address the issues described above, with regard to football nurseries and the conditions of children's release from nurseries, the Office collaborated with the Malta Football Association (MFA) in the course of the year. Due to this collaboration the MFA agreed to present a motion to the MFA Council, which is due to meet in 2013, calling for the age of compensation to be raised from 10 to 12 years of age.

The Office was also pleased to learn from the MFA that, the recommendation by the Office that the procedure for informing parents about the conditions of their children's enrolment in a football nursery before they actually signed up their children to a nursery, had been strengthened through clearer and more comprehensive information being printed on the form and a requirement for this information to be read out to the parents before any signing could take place.

As was also suggested by the Office, the Malta Youth Football Association updated their enrolment forms regarding children from the ages of 6 to 10 years old, to include a version in Maltese along with the already existing English version.

## **Research and Investigations**

### **Research on leisure**

In the context of what is discussed above, regarding the significance of leisure in the lives of teenage children, the need to acquire informed insights into how teenage children are actually spending their free time gains added importance.

# Children's Right to Play, Leisure and Creativity

In 2011, the Office, initiated a research project in partnership with the Youth Agency, which aims at gaining a better understanding of what teenage children perceive leisure to be and what forms of leisure they indulge in. In 2012, the fieldwork for this project, consisting of telephone interviews with a sample of teenage children, was completed and a draft report was also presented to the two entities. The report describing the findings of the research and recommending actions to address concerns brought to light by the research will be published in 2013.

## ***Participation in Children's Rights Networks and Fora***

### ***Safety of toys***

Toys are the paraphernalia *par excellence* of young children's play. Toys have become increasingly complex, varied and plentiful in their shape and design. This has necessitated the strengthening of the mechanisms that ensure that toys are designed and produced in such a way as not to pose any risks to the health and safety of children. Knowledge of what makes toys safe is itself a continuously expanding body, frequently updated in the light of the outcomes of the latest scientific experiments. New discoveries in the science of toys safety obviously bring about changes to existing regulations for toy safety.

This was the case, for example, with respect to the tolerable amount of cadmium present in toys as established at a regional level by the Toy Safety Directive which was amended to reflect the results of recent toxicological experiments. In the process of transposing the amended directive into national legislation, namely the 'Safety of Toys Regulations', the Office was asked for and gave feedback to Government on this proposed amendment to the country's legal framework vis-à-vis toy safety.

## ***Considerations and Concerns***

### ***Play areas***

The safety of play areas for children in Malta is an evolving reality characterized on the one hand by

dynamism in the realm of standard setting but also on the other hand by stasis as far as the enforcement of standards is concerned.

Public playgrounds for children are a good illustration of this reality. While, as described above, standards are in place to regulate the safety of these playgrounds, there is not as yet a clear and effective mechanism for compliance with these standards to be verified by means of regular and independent inspections of all playgrounds. One needs to point out here that the Department for Local Government has taken it upon itself to adopt such regulations with regards to playgrounds under the jurisdiction of Local Councils. However, this does not cover all playgrounds in Malta.

This Office thus calls for such a mechanism to be created, be it through the introduction of mandatory legal or administrative provisions.

The situation of indoor play areas with respect to their safety for children is quite similar to that just described for public playgrounds but is at an earlier stage of development. Thus, while safety standards for these areas are in the process of being drafted, it is not clear how these standards will be enforced once they are completed. It is hoped that when the drafting process is finalised the relevant authorities will show the necessary resolve to set up a mechanism to ensure the enforcement of these standards.

A third dimension of the reality of play areas in Malta concerns temporary play structures that are set up in public spaces as a backdrop to public events such as fairs, festivals, on the beaches in summer and during political events. In 2012, the Office got wind of an accident that occurred in one such structure. From the Office's preliminary investigation into the incident it emerged that there are no safety standards attached to these structures beyond their general product safety certificates and that the conditions for the lease of the public land on which the structures are set up are in no way linked to the safe use of the equipment during its operation.

This means that the regulation of the safety of temporary play structures should be the next



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frontier in the drive to enhance the safety of play areas in Malta.

## **Toy guns**

The risks to the well-being of children that are created when the forms of children's play mimic reality too closely, especially when such reality is a violent one, have already been discussed above. Toys in the shape of guns or firearms are another example of the dividing lines between play and reality becoming blurred.

In this light, the Office is disappointed that the proposed legislative amendment to the Arms Act, that contained provisions for the outlawing of the sale of toys in the shape of firearms, has not yet entered into force notwithstanding that it was approved by Parliament in 2010. The Office thus calls for this amendment to be put into force at the earliest possible opportunity.

## **Child modelling and photography**

Modelling, as manifested in catwalks and in the use of photography (as in photo shoots) are a modern creative industry that children are participating in. This can be of benefit to children as long as they are not forced into doing it against their will. However, it is definitely of no benefit to children, particularly, if they are made to mimic adults in the way they are dressed and in the way that they are made to pose and to make movements that may be too far ahead of their age.

In Malta, the only safeguard against this sort of risk is the 'model release form' that sets the terms and conditions of a child's participation in modelling photo shoots and which the child's responsible carers are asked to sign to give their consent to the shoot. This safeguard, while important, is considered to be insufficient in that parents may not always be cognisant of the above-described risks while there might also be irresponsible photographers who will try to do away with the form. The Office thus calls for specific legislation to regulate this sector in order to protect the dignity of children who take part in this form of creative expression.



# Children's Right to Child-Friendly Justice

*States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.*  
(UN CRC, Article 40)

## Activity Report

### Education, awareness-raising and consultation

#### Lecture to police cadets

Few systems are naturally equipped to cater for the particular needs of children. The justice system is geared towards ensuring that justice is served in conformity with existing laws, which naturally orients it to being impartial. Hence the notion of child-friendly approaches takes on greater importance in relation to the justice system.

An important aspect of a child-friendly approach in any system is that the professionals working in the system should be trained to deal with children in a sensitive manner that takes into account the particular vulnerability of children. It is equally important, especially in the context of the justice system, that such training is provided very early on in the workers' professional development so that it can counterbalance the legalistic thrust of their formation.

The Police Force is acknowledging this need and for the second year in a row the Office of the Commissioner for Children was invited by the Police Academy to deliver a lecture to police cadets, on the subject of child-friendly justice and the role of the police workforce in dealing with minors who interact with the justice system, be it as victims, witnesses, defendants or as persons serving a sentence, in a child-friendly manner. In order to do justice to the breadth and complexity of the subject, considerably more time was allotted for this year's lecture than for the one that took place last year.

## Advocacy

### Children's right to be heard in Court

At present, in legal custody cases, it is at the discretion of the presiding judge whether the child, who has not attained the age of 14, is heard or not. The mediator or either of the parents may request the Court to appoint a child's advocate, but it is ultimately the Court who has to accede to such a request. The child does not have the right to access legal representation independently, thereby asking to be heard of his own accord.

Over the past years, the Office of the Commissioner for Children advocated for the setting up of a legal mechanism for children to be automatically heard in separation and divorce disputes. In this regard, the draft National Children's Policy also calls for the right of the child to be heard in all cases that concern him or her. This amendment would bring our legislation more in line with Article 12 of the UNCRC on the right of the child to 'be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child'.

In its comments, the Office stresses that such an amendment should be accompanied by the provision of adequate practical and psychological support, commensurate with children's level of maturity, in order to enable them to decide in their best interest.

## Intervention

### Individual cases

As is featured in chapter 2, individual cases processed in 2012 that were related to issues of child-friendly justice, made up 4% of the Office's caseload for this year. A recurring element across many of these

# Children's Right to Child-Friendly Justice

cases was the Office's recommendation to the complainant that the services of a child advocate should be sought in order to listen to the perspective of the child involved in the case.

## Recommendations

### Child-friendly Courts

The child-friendly expression of justice depends also on courts being physically structured in such a way as to be able to accommodate the needs of children who enter the justice system.

As reported in the Office's Annual Report for 2011, the Office made three recommendations for infrastructural changes to the Family Court building that would make the building more child-friendly (see pg. 29, Annual Report 2011, Office of the Commissioner for Children).

The Office had the opportunity to reinforce its active promotion of some of these recommendations when, during a meeting of the Task Force regarding Minors with the newly appointed Minister responsible for Justice, the Commissioner harped on the need for an *ad hoc* child-friendly space in court where children could be heard.

In 2012, the Office followed up these recommendations with the relevant authorities by participating in a consultation process which sought to identify the needs that the new building, to which Government was planning to relocate the Family Court, should meet and how it should meet them. The planned relocation of the Family Court provided a stronger framework for the Office's recommendations allowing the Office to propose a more thorough implementation of some of the infrastructural changes it had recommended.

In addition to the three recommendations it had made in 2011, the Office also proposed that the waiting area/s within the new Family Court should be designed to cater for the needs and vulnerabilities of children, and that the office of the Child Advocates should be designed in such a way as to be adequate for older children to be interviewed within it.

### Incarceration of minors

The deprivation of a person of his freedom for a period of time, during which the person undergoes a programme of rehabilitation, is the severest form of retribution meted out by most justice systems to persons found guilty of criminal offences. Although minors who are found guilty of and responsible for criminal offences are also susceptible to this form of punishment, their ability to cope with the experience of incarceration is weaker on account of the vulnerability related to their age and level of maturity. This means that, while incarceration should as much as possible be avoided and used as a very last resort, minors have a need for, and a right to, a friendly juvenile justice system of incarceration.

In the light of changes planned by the justice system to reform the Young Offenders Unit Rehabilitation Services (YOURS) the Task Force regarding Minors, chaired by the Commissioner, followed up on the proposal it had made in 2011 with regard to the reform of YOURS by recommending, among other things, that the design and operation of the therapeutic programme of the reformed YOURS be driven by a strong and structured collaboration with the social welfare sector. Such recommendation was conveyed to the said Minister through a meeting which the Task Force had with the same Minister and through a letter to the Minister in which the Task Force also suggested names of professionals in this sector with whom such collaboration could be fostered.

The Task Force could also take stock of the reciprocal willingness of the home affairs and social welfare sectors to pool resources for the design and operation of the therapeutic programme of YOURS when, during a meeting which was held between the Task Force and the Minister responsible for Social Policy, the latter endorsed the need for such collaboration.

### Minors co-accused with others over 16 years of age

So strong and real is the need that minors are to be treated differently, even within the justice system, that in cases in which children are being accused, these same children stand before a specially instituted Court, that is, the Juvenile Court. However,



# Children's Right to Child-Friendly Justice

as the law stands today, the Juvenile Court only sees minors until they reach the age of 16. Furthermore, minors who stand as co-accused with adults or other minors over the age of 16 in relation to the same crime are also not heard by the Juvenile Court but by the normal court which deals with both defendants simultaneously in one trial. The Office has long been calling for the cases to be separated in circumstances of co-accusation of children with adults. This Office is also advocating to raise the age to 18 so that all minors are heard within the Juvenile Court setting.

In the course of 2012, the Office once again had the opportunity to reiterate its recommendation to this effect during the aforementioned meeting of the Task Force regarding Minors with the Minister responsible for Justice. The Commissioner expressed her conviction that such separation of the cases did not require changes to the law but called for a review of the routine procedure adopted by the Police to issue joint charges when minors and adults were involved as suspects in the same crime.

## ***Participation in Children's Rights Networks and Fora***

The Office had the opportunity to share its experience with and learn from the expertise of its other European counterparts by participating, through the Commissioner and Task Manager, in the Annual Conference of ENOC which was devoted to the theme of child-friendly justice. In this respect, the Office *inter alia* answered a questionnaire about child-friendly practices and structures in Malta's justice system. A number of presentations during the Conference dealt on the needs of children who come in contact with a justice system and how such systems are and should be responding to children's needs.

## ***Considerations and Concerns***

### ***Age of criminal responsibility***

In judging a person who stands accused of committing a crime, justice systems do not take into consideration only the question of whether such a person did in fact commit the crime but



**ENOC**  
European Network of  
Ombudspersons for Children



**2012 16th Annual Conference & General Assembly**  
Juvenile Delinquency - Child Friendly Justice  
Structures and Processes for Prevention and Intervention

**Participants of ENOC Annual Conference & General Assembly**

# Children's Right to Child-Friendly Justice

also attach the same degree of importance to the issue of whether the person can be held to be criminally responsible for his/her actions. Age is one of the prime indicators for gauging the dimension of criminal responsibility. This leads to an age-threshold being set below which a person accused of a crime is not held criminally responsible and thus is not tried in court.

Malta's Criminal Code holds minors below the age of nine years not to be criminally responsible for any criminal offence they may have perpetrated. At the same time, according to the same code, children under fourteen years of age can be held criminally responsible for their actions if it is proved that these are done with mischievous intent.

This Office has long argued that Malta's minimum age of responsibility is too low, on the grounds that children under fourteen are too inherently immature and they themselves may be the victims of psychological trauma or the environment that they live in. Thus the Office has been, for a long time, calling for Malta's age-threshold of criminal responsibility to be revised upwards. The draft National Children's Policy also calls for this upward revision (see pg. 48, Draft National Children's Policy)

As reported in the Office's Annual Report for 2011 (pg. 30) the road for a breakthrough on this problematic issue seemed to have been paved with the publication in 2011 of Justice Bill 97, which proposed raising the lower age limit of criminal responsibility to 14 years, and that of so-called mischievous intent to 16 years. The Office notes with displeasure that no progress was registered in 2012 towards the enactment of this Bill. The Office calls on Government to immediately refocus its attention on this important amendment to the country's legislation.

## ***Diversionsary system for juvenile offenders***

The principle of child-friendly justice warrants that children who come in conflict with the law can in certain cases be exempted from going through the judicial process and instead they are diverted to non-judicial forms of reparation for their actions.

The Office takes note with satisfaction that work

has been initiated towards the application of this principle, notably through the proposal formulated by the National Commission against Alcohol, Drugs and other Dependencies (NCADAD) to create an alternative non-judicial route that would divert first-time drug use offenders to psycho-social services that can address the personal issues underlying the offence. The Office's interest in this proposal was nurtured when the chairperson of the NCADAD was invited to present the proposal to the Task Force regarding Minors.

The Office recommends that the principle of diversionary justice is applied to a broader range of juvenile offences rather than simply to those related to drug use. The application of this principle brings along with it the need to set up child-friendly, tailor made, services and structures in the community, to address the various needs of children who find themselves in such challenging circumstances.

## ***Administrative detention of asylum-seeking minors***

Juvenile asylum seekers are a perfect example of double vulnerability in children, that is the inherent vulnerability stemming from their age and level of maturity and the contingent vulnerability resulting from the severe life trials these children would have experienced at such a tender age.

While Government's policy has always been to exempt minors from compulsory administrative detention, it is not rare for minors to spend considerable spans of time in detention until their claim to being minors is verified, which goes against the Government's own policy to protect minors from the hardships of detention.

The Office thus calls on Government to take measures to resolve this anomaly. In cases where there is doubt about the person's age and an age verification process has to be carried out, the benefit of the doubt must be given to such persons and thus they should not be detained. There should be a designated place (separate from adults) that accommodates such persons until the age is verified. All efforts should be made to ensure that the process of age verification should not take longer than a few days.



## Children's Right to Health

*States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.  
(UN CRC, Article 24)*

### Activity Report

*Education, awareness-raising and consultation*

#### Healthy eating and exercise

Educating and raising awareness among children about their health is the best way of helping them realise their right to health. This is because the key to the enjoyment of health is linked to the personal lifestyle choices in the way of nutrition and physical exercise that an individual makes very early on in life, that is, in childhood.

It is for this reason that the Office of the Commissioner for Children strove to sound its voice in the course of the year on how children should eat and move in order to be as healthy as possible both now as children and later as adults. The Office's efforts in this direction consisted of two colourful

B' saħħitna ma' Ġuġinu!



Fabian Meli

Jade u l-Ġenju



Fabian Meli

publications which the Office produced by once again following its principle of 'education about children, by children, for children'.

One publication was a comic book in Maltese entitled 'Jade u l-Ġenju' (Jade and the Genie) which recounts the story of a girl who is mentored by a genie on the benefits of healthy eating. The other publication was an activity book called 'B'saħħitna ma' Ġuġinu' (We're healthy with Ġuġinu) which allows children to learn about healthy eating through a variety of games featuring a friendly lion who is particularly fond of children and is the Office's official mascot.

The two publications were the fruit of the creative efforts of young students at MCAST whose work was the most favourably judged by the Office from amongst all the drafts submitted by students enrolled at the Institute for Art and Design (MCAST) as part of their course of studies. The content of



# Children's Right to Health

the students' productions was monitored by the Department of Health Promotion and Disease Prevention.

Both publications targeted the younger cohorts of children (ages 5 to 8), and were thus distributed by the Office to all children in these cohorts through their schools and in most cases also with the support of the Projects and Initiatives Section within the Department for Student Services, as part of the celebrations for World Children's Day.

As described in chapter 2 of this report, activities held to celebrate World Children's Day were all focused around the central theme with regards to children's well-being.

## ***Children's right to seek medical treatment and counselling***

A fundamental and recurring question about children's rights is how far children should be left free to decide for themselves, especially when their personal well-being depends on whether the best decision is taken.

In the domain of health, this question is particularly important and topical because health is a crucial aspect of children's well-being. It is also as important because medical professionals are faced with ethical dilemmas as to whether it is right to provide or to refuse an unaccompanied minor the necessary medical treatment or counselling without the consent of the child's parents. Such dilemmas arise particularly in the context of sexual health issues in relation to teenage children.

Given the practical relevance of this issue to the medical profession, the Bioethics Committee organised an evening seminar on the subject. Since the crux of the dilemmas faced by doctors is about what is right and in the interest of children, the Commissioner for Children was invited to address the seminar to give her take on the subject.

The Commissioner said that children should be allowed to exercise as much discretion as their level of maturity enables them to do in their best interest. Although maturity is commensurate with

age, the Commissioner said that children should be judged on their own merits as to whether they are mature enough to take an independent decision concerning their health.

Such judgement should be based on a rigorous and systematic assessment obtained from the use of a scientifically validated tool, such as the Gillick Competence and Fraser Guidelines, which the Commissioner urged medical professionals to use. Such a tool could compensate for the lack of parental involvement when children were clearly uncomfortable with the prospect of such involvement. The Commissioner said that this approach should be embodied in a legal framework so that it could become standard practice for the medical profession.

At the same time, the Commissioner called for parents to foster a more confidential relationship with their children on sexual health issues so that children could rely on their understanding and support when seeking medical treatment and counselling.

## ***Post-natal depression***

During the first few months after the birth of a child, there is a natural symbiosis between mother and child. This is expressed in the constant care and attention that a mother gives to her child and which the child receives from his/her mother. This means that the well-being of the child is more dependent on the well-being of the mother at this time than at any other period in the child's life.

It is on account of this symbiosis and its implications that the Commissioner was invited to address a seminar organised by the Department of Midwifery which dealt with the problem of post-natal depression. The Commissioner said that in the popular portrayal of motherhood the life-changing and stressful dimension of motherhood was often overshadowed by its brighter side of joy and happiness. This was a mistake in that the stresses of being a mother could hold a key to understand better post-natal depression. The Commissioner underlined the importance of providing practical and psychological support to new mothers in order

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to prevent, identify and counteract the onset of this illness.

## **Children in psychiatric care**

Children should always be treated in a manner that respects and takes into account their childhood. This should especially be the case when there are other vulnerabilities overlying the intrinsic vulnerability of childhood. Children suffering from mental ill-health, who are admitted to hospital, should be cared for in way that is not only professionally good but which is also tailored to their childhood.

This was the message conveyed by the Office on various occasions when it was asked to comment on the practice of placing children in adult wards for want of a more suitable arrangement. While not accepting such a practice for its anti-therapeutic effect on children, the Office also underlined the work it was pursuing to address the lack of facilities and the setting up of child friendly units in the community both in the short term and in the medium to long term (see Recommendations below).

## **'Mosquito' device**

The protection of the health of children is a primary consideration in the Office's assessment of any phenomenon which children are exposed to. This was true of the news that a device that emits a high-frequency sound, which only young people are sensitive to, had been installed in the public gardens of a particular locality in Malta. The boisterous behaviour of these young people was annoying the neighbours and so such a device was set up to discourage them from meeting at this public garden.

In its public reaction to this news, the Office expressed its serious concerns about the effect of this device, dubbed the 'mosquito device', on the hearing organs of young people. Even though conclusive scientific evidence of any damage is lacking, the Office nevertheless called for the use of such a device to be discontinued since scientific proof to the contrary was also unavailable. The Office also criticised the fact that the device was

designed to target specifically young people as a form of discrimination against young people on the basis of their age. More so, the Office also spoke out against the dehumanising effect of this device on young people, who were being demeaned to the status of pests that needed to be controlled.

## **Christmas at Mater Dei 2012**

For the second year running, students from the Convent of the Sacred Heart School Foundation accompanied the Commissioner to Mater Dei paediatric wards in order to entertain the children



**Students of the Convent of the Sacred Heart School with the Commissioner for Children at Mater Dei Hospital**





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there. Presents were given to all children and the students sang carols and played with the young patients. Special thanks go to the Office of the Voluntary Service (Volserv) at Mater Dei who helped us co-ordinate this activity.

## **Intervention**

### **Individual Cases**

As shown in Figure 1 (pg. 15), individual cases related to children's right to health made up just over 5% of all the cases processed by the Office. These cases reflected the concerns which the Office intervened upon in its recommendations, notably the issue of children placed in adult wards at the psychiatric hospital.

## **Recommendations**

The Office was very active in seeking to address the concern described earlier on in relation to children placed in adult psychiatric wards. To this end, it worked in liaison with the Commissioner for Mental Health and the Clinical Directory for Psychiatry in a bid to increase the existing resources in order to have children, who need to be admitted to the psychiatric hospital, cared for in an environment that is tailored and exclusive to children. These joint efforts gave us the opportunity to increase the number of beds at YPU (Young People's Unit).

The fruit of the Office's collaboration with the aforementioned entities consisted also in the setting up of an arrangement for a psychiatrist to visit the residential homes for children of Fejda and St Jeanne Antide on a weekly basis or as required in order to, examine the mental health needs of the girls needing such support. The primary benefit of this arrangement is that it helps to prevent or reduce admissions to the psychiatric hospital.

Another avenue for the efforts of the partnership that included the Office was that relating to psychiatric emergency service for children. Particular attention was focused on the need for the emergency response team, which provides emergency psychiatric care to adult mental health sufferers, to extend its role to children. It was suggested that staff manning this

service should be supported with the necessary training for the service to be tailored to meet the needs of children.

### **Children and diabetes**

Diabetes is a chronic health condition, highly prevalent in Malta, whose treatment is not confined to the clinical setting and the medical care that is provided to the patient therein but extends to the quotidian life where patients are called to engage constantly in self-care while going about their daily activities. Children too suffer from diabetes. This means that they may not be able to carry out self-care procedures without external help, and that, such procedures often need to be carried out in the school setting, where children spend much of their time.

After listening to the concerns expressed by the Diabetes Association vis-à-vis the difficulties faced by children with diabetes, in finding the necessary support at school for the self-care related to the management of their condition, the Office liaised with the education authorities in an attempt to further sensitize the authorities to the needs of diabetic students and to find practical and lasting means how these needs could be better met in all school settings.

### **Children with Attention Deficit and Hyper-activity Disorder (ADHD)**

ADHD is another condition among children in Malta, which however gives rise to an entirely different profile of needs for those children who have this condition.

The Office had the opportunity to listen to the perspective of the ADHD Family Support Group on these needs and how they are being met in Malta. After taking note of the groups' recommendations, the Office liaised with the National Youth Agency to try to organise a camp for children with ADHD, which is believed to have a beneficial effect on children with this condition.



# Children's Right to Health

## **The unborn child**

It is a well-known and accepted fact that the health of a child starts being built not as soon as the child is born but from the moment it is conceived in the mother's womb.

It is precisely in view of the critical nature of the pre-birth phase that the Commissioner for Children Act calls on the Commissioner 'to promote the highest standards of health and social services for women during pregnancy and to promote special care and protection, including adequate legal protection, for children both before and after birth'. (Commissioner for Children Act, Article 9 (h)).

The well-being of children before they are born was part of the Office's activity in the course of the year. The Office held meetings with the Malta Unborn Child Movement (MUCM), a movement dedicated solely to the protection of unborn children, in order to identify what might be the major outstanding concerns in this area. The Office later met with the relevant entities in order to determine how some of these concerns could be addressed. One such concern that emerged as needing to be addressed was that relating to toxic occupational exposures by pregnant women workers. The possibility was in fact discussed by the Office with the Occupational Health and Safety Authority for a targeted information campaign that would sensitize pregnant women about their rights at their place of work with regards to this issue.

## **Safety issues**

One particular niche within the broad area of child safety about which the Office made concrete structural recommendations to the authorities was the growing use of horizontal railings in balcony and banister structures. The Office's concern was that such railings lent themselves as makeshift ladders for children to climb up dangerously close to the upper edge of the structure. The Office thus made its concern known to the relevant authorities and recommended that the use of such railing should not be allowed.

## **Participation in Children's Rights Networks and Fora**

The external environment presents countless and diverse opportunities and threats in relation to the health of children. As a sphere of public policy, environmental health seeks to improve the health potential of the external environment in which people, including children, dwell. This is best done through a holistic strategic approach that addresses all the relevant issues at a national level.

In Malta, such an approach is manifested in the formulation and implementation of a five-year National Environmental Health Action Plan by the Department of Environmental Health. In the course of the year, the department conducted its consultation with all the relevant stakeholders prior to finalising the plan for the period 2012-2017. The Office was among the stakeholders that were consulted and which offered feedback on this important plan.

## **Considerations and Concerns**

### **Children in psychiatric care**

Although a step forward has been accomplished in providing children who are admitted into the psychiatric hospital with a therapeutic environment which is tailored to their age-related needs, the broader picture suggests that the very admission of a child to a psychiatric hospital is in itself not a child-friendly way of meeting the child's acute mental health needs.

What is needed is a medium to long-term strategy that aims towards the development of a therapeutic environment tailored to the needs of children, that is located in the community, and that can meet their needs in their 'natural' and personal environments. The announcement in the 2013 Budget of a measure to this effect is a very positive sign, and one looks forward to seeing this measure implemented in the best way and shortest time possible.

# Children's Right to Health

## ***Risks of drug addiction among children***

Use of and addiction to psycho-tropic drugs is a potential blight on the present and future well-being of children. The most recent data on trends of drug use among minors are worrying. There is no doubt that more needs to be done to educate children on the perils of drug use and to empower children to resist the insidious cultural pressures that are enticing them to experiment with an ever increasing range of drugs. At the same time and as described in chapter 4, this phenomenon must be addressed also by fostering the development of an alternative entertainment scene for teenage children which does not expose them to the adult entertainment industry.

An equally strong effort must be made at all levels to help children who fall prey to drug use to overcome their addiction. In this respect, one notes a glaring lacuna in the drug rehabilitation system which lacks specific programmes and structures for children with problems of drug use. The recently developed draft quality standards for residential drug rehabilitation structures also reflect the general failure to focus on this doubly vulnerable cohort among drug users.



# Children's Right to Education

*States Parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity...  
(UN CRC, Article 28)*

## **Activity Report**

### **Education, awareness-raising and consultation**

#### **Bullying**

Schools are the setting where children not only learn and receive their education but also interact with their peers thereby developing their social skills. Through such interaction, interpersonal dynamics are established which can be positive, like the formation of friendships, but also negative, like the phenomenon of bullying.

In as much as bullying is done by a child to another child, it is a double problem that includes the bullying and the bullied children all of whom need psychological help once the bullying is identified and stopped. This is because bullying very often is the result of other underlying issues that are expressed by a child and inflicted upon another.

Educating and raising awareness about bullying and its inner dynamics is fundamental to its prevention and early identification. This is why the Office turned its attention to this problem by developing video clips and animated cartoons dealing with bullying. These resources were promoted, particularly, in schools as educational tools for teachers and students in the context of Personal and Social Development (PSD) classes. This material was the work of a group of students of the Institute for Art and Design at MCAST.

#### **Celebrating achievement**

Education is a crucial right of children not only for its intrinsic value of intellectual development but also because it holds the key to children's enjoyment of other rights, notably the right to economic security and the right to participate constructively as a citizen in a democratic society, both now and, especially, in the future. This must be seen in the light of the fact that educational success is an expression not only of innate ability but also of diligent application by children in their studies.

A celebration of academic and social achievement by children is thus of great significance. In view of this, the Commissioner accepted several invitations to take part in various prize-giving ceremonies organised by various schools and colleges.

Through such celebrations, for the second year running, the Office took the opportunity to introduce an award to students who in the course of the year would have upheld children's rights. This could be achieved by supporting other students and by setting up or participating in such initiatives that protect or promote children's rights.

#### **Listening to children**

The active role of children in their education and their environment is crucial to make change happen in order to meet the needs of children. Children should be able to judge what happens around them. They should be encouraged to make their aspirations heard and are able to voice their concerns and complaints when their expectations are not met.

The Office of the Commissioner for Children is ideally placed to listen to and act upon children's concerns about their education and the environment where they live. The Office did precisely this when the Commissioner joined an activity organised by Access Centre in Cospicua, who together with other stakeholders involved in organising various activities for young people in the Cottonera area, met with a group of students attending the St Margaret College. The Commissioner took note of the students' concerns and encouraged students to continue to voice their concerns and to take the lead in making change happen.

#### **Sensitivity to children's needs**

An effective educator is not only one who possesses a thorough knowledge of her subject/s and of the best teaching methods for teaching such subjects but is one who has also gained a deep insight into



# Children's Right to Education

her pupils' individual needs.

The development of such knowledge should not be seen as an add-on or an afterthought in the professional formation of teachers but should permeate the whole process of this formation. Moreover, children should benefit from their teachers' sensitive response to their individual needs right from the earliest stages of their educational pathway, since this can positively influence their long-term educational outcomes.

In line with this, the Office devoted a substantial part of its two talks to undergraduates pursuing a course in Early Years within the Faculty of Education of the University of Malta (see chapter 2, pg. ) to sensitise the said undergraduates to children with particular needs or with learning difficulties. The Office invited the Foster Care Unit within *Aġenzija Appoġġ* and the ADHD Family Support Group Malta to join her during the lectures to share experiences that could help future teachers respond to the particular needs of fostered children and children with ADHD respectively.

## **Intervention**

### **Individual cases**

Given the importance and pervasiveness of education in the lives of children, it is not surprising that the relative majority of individual cases dealt with by the Office presented issues related to education and schools. These cases were as various in number as they were in type, presenting issues as different as access to learning support assistants for children with learning difficulties, bullying and problems of school absenteeism.

## **Recommendations**

### **Integration of trans-gender children in schools**

There used to be a time when children were seen as passive participants in education. Nowadays, this model of education has been all but replaced by a philosophy that lays great stress on the ability of students to filter information and other educational stimuli and respond to them in a way that reflects

their individualities. Hence, diversity is an ingrained aspect of today's educational paradigm.

Despite this, schools may sometimes find it difficult to respond to new and emerging diversities, such as those of trans-gender children. This was the message conveyed by the Malta Gay Rights Movement and Aditus Foundation in the course of a meeting in which the Office listened to the organisations' concerns with regard to the practical difficulties encountered by trans-gender children in integrating in state schools, particularly on account of the fact that secondary state schools are sex-separated. In response to these concerns, the Office organised and facilitated a meeting between the two organisations and the Education Division, represented by its two Director Generals, in order to further sensitise the education sector to the specific and complex needs of trans-gender children.

## **Considerations and Concerns**

### **Absenteeism**

In a country where education is compulsory by law up to the secondary level and where education is provided by the state for free both at the primary and secondary levels, it is some what paradoxical that not all children are enjoying full access to this basic right. Unfortunately, this is happening due to some children being repeatedly and chronically absent from school for no valid reason and hence failing to gain the necessary momentum and continuity in their studies for educational advancement and success.

Absenteeism from school is a complex phenomenon that has multiple causes, ranging from illness to unfavourable parental attitudes to education. Though there has been and there still is a strong drive to curb this phenomenon, more still needs to be done so that children are not denied their right to education. This Office thus calls for sustained efforts at a structural and individual case level to address the root causes of absenteeism.

# Children's Right to Education

## **Children with learning difficulties**

The social aspect of schools is of primary importance in the hierarchy of values that makes up these educational institutions. Such importance lies in the fact that schools provide a very good setting for children to interact with other children and to learn how to express their individuality in relation to the individualities of other children. With modern teaching methodologies, learning has increasingly become a social experience whereby children learn not only through their teachers but also through their classmates as part of a group learning process.

The fact that the intellectual and social aspects of education are interwoven together implies that children with learning difficulties should be helped to overcome their learning difficulties not outside the normal social setting of schools (i.e. the class or the wider social circle within schools) but within it.

For many years now, Malta has been following this inclusive philosophy in respect of children with learning difficulties by providing children with a learning support assistant (LSAs) whose role is to filter the teacher's explanations in such a way that the child can assimilate them. In view of the increasing number of children diagnosed with a learning difficulty, there has been a considerable investment over the years in training more professionals to take on the role of LSA.

While this investment has resulted in the large majority of children with learning difficulties being assigned an LSA, gaps still remain especially concerning the provision of supply LSAs who are called to replace LSAs when the latter are indisposed due to illness. The Office thus highlights the need for an enhanced investment and organisation of resources so that children with learning difficulties are always supported to learn in class with their peers.







# Children's Right to an Upbringing and Alternative Care

*States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.*  
(UN CRC, Article 18)

*A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.*  
(UN CRC, Article 20)

*States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.*  
(UN CRC, Article 27)

## Activity Report

### Education, awareness-raising and consultation

#### Positive parenting

There can be no other legitimate aim for a child's upbringing than the harmonious social and emotional development of the child. This means that the legal rights and authority of a caregiver over a child should be entirely governed by the best interest of the child first and foremost. This calls for a style of parenting that is strongly oriented towards understanding children and allowing them to express themselves; judging their actions and not the person; encouraging them to do better whenever they err; and praising and rewarding their positive behaviour and achievements rather than criticising and punishing their misbehaviour and failures.

This is the philosophy that informs the various efforts, notably through the Foundation for Social Welfare Services, to educate parents and caregivers in Malta about the best style of parenting for their children, be it through the Foundation's casework or parenting classes. More recently, the Foundation has been trying to disseminate the philosophy and practice of positive parenting as widely as possible to the general public through an awareness-raising campaign which goes by the name of the 'Blue Ribbon Campaign'.

Consistent with its belief, in the key role of positive

parenting in the fundamental right of the child to an upbringing, the Office decided to channel its own efforts for the promotion of positive parenting through the Blue Ribbon Campaign by initiating work to produce video-clips promoting positive parenting which, once completed, will be used by the Foundation as part of its campaign. The video-clips are being produced by students following the Art and Design course at MCAST and should be ready to be used in the said campaign in 2013. This resource will also be available to other entities working with families.

## Advocacy

#### Child fostering

In finding adequate alternative care for a child who cannot be cared for by his/her own biological family, it is very important that this is done, as much as possible, within a family environment. This form of alternative care, known as foster care, is fast developing into the main form of alternative care for children.

Foster care cannot be developed further without paying close and equal attention to the needs and perspectives of foster carers and foster children. In view of this, the Office teamed up with the National Foster Carers' Association of Malta to organise the Association's Annual Conference entitled *Dear Child, We Are Here For You*. In her address, the Commissioner welcomed the fact that a considerable investment

# Children's Right to an Upbringing and Alternative Care



had been made in the recent past to help foster carers meet the complex needs of foster children, and called for the development of foster care to be sustained. She thanked the Association and the foster carers for their commitment towards the best interest of children who would otherwise not be able to live in a family environment.

## **Parenting**

The Commissioner and the Task Manager participated in a number of programmes on television and radio with regards to various topics in relation to parenting. These included, amongst others, topics in relation to care orders, teenage pregnancies, children in out-of-home care, fostering, parental responsibility in cases of separation, child abuse and child safety. The underlying theme in such interventions is always the best interest of the child and how their rights should be guaranteed irrespective of the circumstances or situations that they are living in. While it is acknowledged that parents have rights, they should concentrate on their responsibility towards their children rather than the authority over their children.

## **Intervention**

### **Individual cases**

As shown in Figure 1, issues related to upbringing and alternative care of children were behind a very substantial share (i.e. 27.2%) of the individual cases received and tackled by the Office. Amongst the

most frequently occurring issues were disputes between separated parents about the rights of access to their children by the non-custodial parent.

## **Recommendations**

### **Residential care**

One cannot but acknowledge the good work that, has over the years, been done by a number of institutions in giving alternative care to children who could not live with their natural families. However, during these last few years, we have seen an important shift, whereby children were being offered family based care through fostering. In fact, today there are more children in foster care than living in residential care.

It is also acknowledged that institutional care cannot fully meet and respond to the emotional needs of children, however it is not always possible or in their best interest that children, separated from their families of origin, to be nurtured in a framework like foster care. While this should be an exception, it is thus very important that alternative care, offered in a residential care setting, is of good quality and sensitive to the personal needs of children and according to established standards.

In line with this, the Office, together with the Task Force regarding Minors, presented to the new Minister in charge of the family, the Hon. Chris Said, the proposal to provide a more sensitive care environment for girls with challenging behaviour



# Children's Right to an Upbringing and Alternative Care

by setting up small-scale residential structures in the community *in lieu* of the existing institutions of Fejda and St Jeanne Antide. While doing so, the Commissioner and the Task Force chaired by her, were also briefed about the status of Government's plans in the direction delineated by the proposal.

The Commissioner also held meetings with the management and care staff of the residential homes for children, *Aġenzija Appoġġ* and the Department for Social Welfare Standards in a bid to steer forward the process of further raising the level of quality of the care provided within these homes. These meetings were informed also by the results of the research commissioned by the Office about the experience of children in care.

## Research and Investigations

### Research on out-of-home care

While our knowledge of what rights children have is based on a core philosophical belief about the inherent dignity, vulnerability and potential of

children, our knowledge of how these rights are best realised in practice is built from the results of empirical research.

Departing from the principle that the child has a right to an upbringing, one is led to ask two related questions, namely, what are the key elements that contribute to the child's harmonious development, and, which model of alternative care best guarantees this.

While much has been said in recent years in the alternative care sector in Malta, a thorough scientific research for an answer to these two questions was lacking. For this reason, in 2007 the Office decided to commission research that would fill this void and thus better inform the efforts that were being made to improve the alternative care system.

The research project was articulated in three phases, i.e. an initial phase in which a broad look was taken at the relevant international literature with regards to the effects of institutional placement for children under five years of age; a second phase in which the



Launch of the research study on Children in Out-of-Home Care



# Children's Right to an Upbringing and Alternative Care

mental health needs of children in care were studied and analysed; and a third phase that explored the long-term outcomes of alternative care in terms of the psychological well-being of adults who had been in care as children.

In 2011, the Office shared the results of each phase of the research project with a select group of stakeholders. Following this, in 2012 the Office disseminated the findings of this research at a national level in order to influence the efforts being made at such a level to reform Malta's system of alternative care for children. This was done through a national conference in which the final results of the research were presented by the researchers and discussed with a wide cross-section of stakeholders in the sector. Addressing the conference were, among others, the Minister responsible for the family, the Hon. Dr Chris Said, the Hon. Justyne Caruana and Prof. Jane Aldgate, Professor Emerita at the Open University UK, who gave the keynote speech of the conference.

## *Participation in Children's Rights Networks and Fora*

### **Deinstitutionalisation**

Against the backdrop of research like that commissioned by the Office which clearly shows that institutional care leads to poorer outcomes in terms of the psychological well-being of children, there is a strong current across Europe pushing for the closure of all residential child care institutions. This current is especially strong in Eastern European countries where the history of these institutions presents some of the worst instances of violation of children's rights.

One of the best examples of this continental process is Bulgaria, a country which is animated by a collective drive to dismantle its old institutional care system and build in its place a hybrid system of foster care, kinship care and adoption that is more respectful of the rights of children, especially those who cannot be cared for by their families due to persistently high levels of poverty across the country.

This Eastern European country thus provided the perfect backdrop for Eurochild<sup>3</sup>, to hold its



**Participants at the ENYA conference**

<sup>3</sup> A network of organisations and individuals working in and across Europe to improve the quality of life of children and young people

# Children's Right to an Upbringing and Alternative Care

9th Annual Conference in Bulgaria, which was dedicated to the theme of deinstitutionalisation. As a member of Eurochild, the Office was represented by its Policy Officer who had the opportunity to learn from representatives of foreign organisations what was happening in their countries in terms of deinstitutionalisation and to explain to them the Office's role and position in the context of Malta's ongoing reform of out-of-home care.

## **Perspectives of children in care**

Any effort that is made to improve the situation of children cannot be fruitful unless it encompasses the views and perspectives of children on their situation. This is all the more true of children in care on account of their double vulnerability and the particular complexity of their needs and situations. This means that they need to be encouraged and given the space and opportunity to express themselves on their experience.

The Office did this by facilitating the participation of two Maltese children in care in a meeting of the European Network of Young Advisors (ENYA) that was dedicated to the subject of alternative care and which took place in Warsaw, Poland. The two children thus had the opportunity to meet and share their experiences with other children hailing from other European countries. The combined perspectives of the children who participated in this meeting were then communicated to the European Network of Ombudspersons for Children (ENOC), which incorporated these perspectives in its work.

## **Child poverty**

In the context of a family structure, economic security is another basic requirement for the child to develop holistically and harmoniously, as the above-reproduced Article 27 of the UNCRC bears out. Therefore, children who live or who are at risk of living in poverty may be unable to experience the kind of self-development to which they have a right. More so, they are victims of poverty also because their economic security is a direct result of the economic situation of their families, hence children can do little to lift themselves out of poverty they find themselves in.

The phenomenon of child poverty thus is a symptom of a wider socioeconomic malaise. Given the globalisation of modern economies, it is not surprising that increasing attention is being paid to the problem of child poverty.

At a regional level, the EU has made child poverty a focus of its work. The issue was one of the priority areas of the Cypriot Presidency of the bloc in the second half of 2012. As part of its work in this area, the Presidency organised a conference entitled '*Investing in Children: Preventing and tackling child poverty and social exclusion, promoting children's well-being*' which sought to map out the scope of this highly complex phenomenon. The Office was represented in this conference by its Case Officer.

Another facet of the EU's efforts to tackle child poverty within its borders is the work undertaken by the European Commission to develop a Recommendation on child poverty. As part of the process of consultation leading to the formulation of this Recommendation, the Office was consulted on various aspects of child poverty that will be dealt with in the Recommendation.

## **Considerations and Concerns**

### **Quality standards in alternative care**

While the sturdy efforts that have been made in recent years to shift the balance of alternative care from residential care to foster care represent a significant upgrade in the quality of alternative care, much more needs to be done to ensure that all alternative care that is provided to children in Malta, be it of the foster or residential kind, is of the best quality. While the necessary groundwork for such quality control in this sector was agreed upon through the publication of the National Standards for Out-of-Home Care, the legal and administrative mechanisms for these standards to be enforced across the board are not yet in place. This Office thus calls for the Department of Social Welfare Standards to be given legal personality in order to be able to license alternative care providers subject to their adherence to the quality standards that were set for this sector.



# Children's Right to an Upbringing and Alternative Care

## **Child day care centres**

The failure to date to provide the Department of Social Welfare Standards with the necessary legal personality to enforce standards of child care has also rendered its regulatory control over the ever-expanding sector of child day care rather weak. It is appreciated that tax rebates that are offered to parents who enrol their children in registered centres have encouraged many centres to seek registration with the Department and consequently to come in line with the standards that are in place for this sector. The Office also welcomes the consultation process that took place in 2012 in order to set up occupational standards for workers providing day care to children in these centres. These standards are now in place under the auspices of the Malta Qualifications Council. Notwithstanding this, the Office reiterates its call for the Department of Social Welfare Standards to be endowed with the legal authority to enforce these standards across the board.

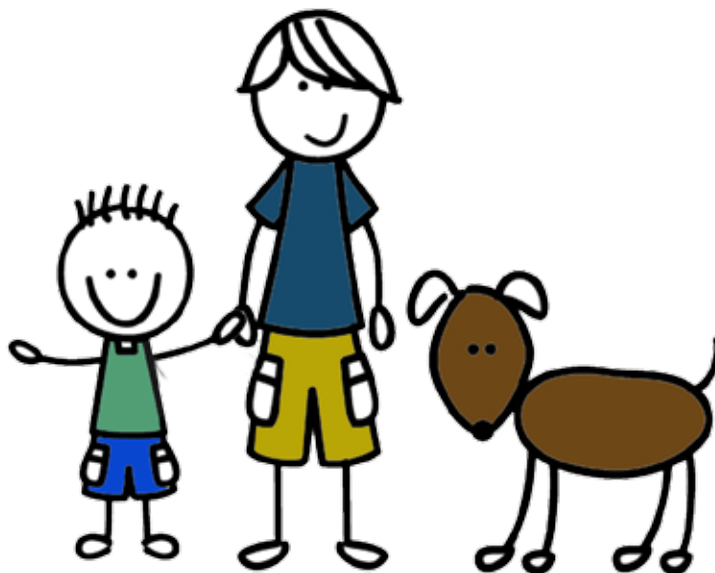
## **Work-family balance**

The Office welcomes the extension of maternity leave to 18 weeks as well as the extension of adoption leave entitlement for public officers from 5 weeks to 16 weeks as child-friendly measures

that are conducive to the well-being of children during a delicate phase of their development. These measures should however be seen as the latest and not the last stage in a continuous process aimed at achieving the best possible balance between the demands of work and family. In this respect, more should be done to encourage the public sector and even more so the private sector, to adopt more family and child-friendly measures.

## **Children at risk of poverty**

According to NSO statistics, about 20% of children in Malta are at risk of poverty. The rate is highest amongst children hailing from single-parent families. Child poverty leaves a negative impact on the present and future well-being of the most vulnerable members of society. The Office thus calls for specific attention to be turned to this phenomenon by the country's administration by adopting measures that alleviate the risk of poverty among children in the short-term and a long-term strategy that addresses the root causes of this phenomenon.





# Children's Right to the Promotion and Protection of their Dignity

*States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*

*(UN CRC, Article 19)*

*States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.*

*(UNCRC, Article 32)*

*The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*

*(UN CRC, Article 7)*

*No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.*

*(UN CRC, Article 16)*

## Activity Report

### Education, awareness-raising and consultation

#### Child sexual abuse

Adults who commit abuse against children abuse of their power over children, that is, their physical and/or mental superiority over children and, importantly, the blind trust that children are wont to place in them. This makes children particularly vulnerable to being the victims of abuse. However, children are also especially vulnerable to the effects of the abuse they suffer because abuse strikes at their sense of personal dignity, which in them is still very fragile.

Sexual abuse is perhaps the type of abuse that best illustrates the perverted social dynamic that lies at the heart of child abuse. This is in view of the fact that sexual abuse thrives on the innocence of children, that is, not so much on their ignorance of sexuality as on their loving natures which prevent them from seeing through an abusive act which the abuser often disguises as an act of love.

While the innocence of children should be protected, sexual abuse against children can still be prevented

by teaching children what adults can and cannot do to them in terms of physical contact with them. It almost goes without saying that such teaching should be pitched at a level that children can understand and relate to so that the key messages can be internalised by them.

*Kiko and the Hand* is a learning tool developed by the Council of Europe for young children that tries



# Children's Right to the Promotion and Protection of their Dignity



**Ms Helen D'Amato together with Ms Sina Bugeja and Ms Sandra Cortis during the launch of Kiko u l-Id at the Luqa Primary School**

to do precisely this. It describes and illustrates the changing reactions of consent and refusal by a little boy called Kiko to the propositions of a personified hand to touch him on various parts of his body. The publication also contains a guide to help parents discuss the most important issues regarding appropriate and inappropriate physical contact with children.

In 2012, the Office commissioned a Maltese translation of this educational tool. The resulting publication, *Kiko u l-Id*, was distributed amongst all children in year 1 in all primary schools. It has thus become a valid tool with which the Office can help fight child sexual abuse in Malta.

## **Advocacy**

### **Child sexual abuse**

The need to educate children in Malta about sexual abuse in order to prevent it from happening is borne out by the incidence of sexual abuse on the island.

This was the Office's line of argument when it

was asked to comment, by a local newspaper, on reactions by some members of the public to the publication and dissemination of *Kiko u l-Id* that the Office was unnecessarily alarming the public, particularly children, on the threat of child sexual abuse. To substantiate its argument, the Office quoted the latest figures relative to the number of reported cases of this kind of abuse on children. In its comments, the Office also stressed that the involvement of parents, through the guide, in the education of their children about sexual abuse ensured that the right messages would be conveyed to children through this publication.

### **Protection of Minors Act (Offenders' Register)**

Educating children is arguably the best strategy for carrying out primary prevention of child sexual abuse, that is, from not allowing it to happen in the first place. Other strategies can be effective in preventing abuse at the secondary level, that is, in preventing it from happening again.

The latter statement summarily describes the purpose of the Child Offenders' Register that

# Children's Right to the Promotion and Protection of their Dignity

came into force on the first day of 2012 and which constitutes a mechanism whereby individuals who have been convicted of crimes against children are prohibited from working in occupational contexts or through volunteering that would bring them in direct contact with children.

In the course of the year, the Office voiced its concerns and views in public on the implementation of the child offenders' register. While making clear its conviction that the register was potentially an effective tool for combating child sexual abuse, even though it was no panacea, the Office expressed its concern about the fact that the majority of those who had been found guilty of crimes against children, since the law had come into force, were not on the register due to the presiding judges or magistrates having exercised their discretion against including their names on the register. While not casting doubt on the wisdom of these decisions, the Office called for all those responsible for meting out justice to realise the importance of the register as a tool for preventing repeat crimes against children.

## **Misappropriation of children's personal data**

As discussed earlier on, child abuse, especially of the sexual kind, usually takes place in the context of a close personal relationship between the child and the abuser. Child abusers typically nurture such a relationship on the basis of their knowledge of personal facts related to the child. Unless the abuser is a relative of the child or a friend of the child's family, abusers will seek to glean this information from the child or from sources where such information is stored.

This highlights the need to protect the personal data of children from unauthorized access inasmuch as this can expose them to potential abuse. This was the appeal made by the Office in its public comments on the story of a man who had exploited his occupational position to gain access to the personal details of a number of children. The Office stressed the need for stricter controls wherever personal information about children is deposited on access to and use of such information.

## **Appropriateness of names given to children**

Personal identity is a fundamental aspect of a person's dignity since the person's subconscious sense of his own worth (i.e. his dignity) feeds on the person's narrative about who he is (i.e. his personal identity). This implies that the name of a person, which is the most obvious aspect of his personal identity, plays a critical role also in his dignity.

Another implication of the above is that a name that has clear negative meanings or connotations to it can offend the dignity of the person who is known and called by that name. Unfortunately, cases of children in Malta who are given inappropriate names are not unheard of. Children are especially vulnerable to the effects of being given inappropriate names owing to their fragile psychology and the possibility of suffering ridicule at the hands of their peers.

The Office spoke out on a number of occasions against the choice of names by some parents. In its comments, the Office harped on the need to ensure that the name given to a child was respectful of the child's inherent dignity and individuality, and called for adequate legal safeguards to protect children in this regard.

## **Intervention**

### **Individual cases**

As shown in Figure 1 (pg. 15), issues relating to the promotion and protection of children's dignity were at the core of almost 8% of the individual cases that the Office dealt with in 2012. The specific issues most frequently encountered were allegations of abuse against children. The Office always dealt with such issues in close liaison with the competent authorities within the social and educational sector.



# Children's Right to the Promotion and Protection of their Dignity

## Recommendations

### **Protection of Minors Act (Offenders' Register)**

In addition to the concerns about the implementation of the Child Offenders' Register which the Office aired publicly, there were other concerns which the Office received from a number of voluntary organisations working with children about the exact nature and procedure of their obligations in respect of the law. These concerns related to which classes of workers/volunteers need to be screened for past offences against children and to the judicial process through which this must be done.

The Office sought to clarify these points of concern with the relevant entities within the Justice Department. Through these efforts, a number of concerns were addressed, notably that relating to the formal procedure to have employees screened through the register for past offences against children, for which procedure a template letter was developed.

### **Participation in Children's Rights Networks and Fora**

#### **Child trafficking**

As already hinted at in the discussion on the misappropriation of children's personal data, child abuse can be an organised form of criminal activity. More so, the organised phenomenon of child abuse transcends national boundaries as children are trafficked by international criminal networks across these boundaries to be abused and exploited, sexually and economically, in various countries of destination. A poignant description of this activity is that there is a global market of child abuse.

An international criminal phenomenon like child trafficking calls for an international response. This consists inter alia in each country taking stock of its role in the international networks of child trafficking and abuse and striving to extirpate the presence and activity of these networks within its borders.

Although Malta's role in this international network is not known exactly, there are indications that Malta

may act as a country of transit for child trafficking activity. As a result, there is constant monitoring by international organisations of the country's legal, administrative and organisational infrastructure against human trafficking.

One such organisation that keeps track of Malta's efforts in this international fight is the Council of Europe through its *Group of Experts on Action against Trafficking in Human Beings* (GRETA). Representatives of this monitoring body visited Malta in 2012 to consult with local stakeholders about the level of the country's preparedness to counter human trafficking through its borders. The Office of the Commissioner for Children was among the stakeholders consulted. The Office is also an Associate Partner in the EU project 'Catch and Sustain' which aims to prevent and fight against the trafficking of children and young people. The application for the project has been submitted and will commence in 2013.

#### **Online child abuse**

The borderless and transnational nature of child abuse is evident also in its proliferation on the worldwide web. The particularity of online child abuse is not only that it has many forms, such as child pornography and child grooming, but also that it is able to victimize a much larger and wider cross-section of children. In this respect, it presents an especially complex and formidable challenge.

Like child trafficking, this challenge calls for a global response that is concerted amongst all nations that uphold the rights of children. An effort being made in this direction is that undertaken jointly by the EU and the US to create a *Global Alliance against Child Abuse Online* by bringing together countries from across the world to fight this phenomenon together through mutual cooperation. Malta is part of this alliance. As part of Malta's activity as a member in this alliance, the Government consulted with the Office, among other stakeholders, about its work in the domain of internet safety for children. The Commissioner was invited to attend the launch of the Global Alliance against Child Sexual Abuse Online in Brussels in December 2012.

# Children's Right to the Promotion and Protection of their Dignity

## Considerations and Concerns

### Protection of Minors Act ( Offenders' Register)

While the above-reported activity about the register relates to shortcomings in the implementation of the law, the Office is also concerned about a number of shortcomings in the letter and content of the law.

One shortcoming is the law's non-retroactivity. As a result of this the chances that individuals found guilty of offences against children before the register came into force can be stopped from committing another offence against children are remoter than they would have been had the law been endowed with retroactive effect. It thus will take time before the register can be truly effective in preventing repeat offences against children.

Another shortcoming is that the law has no mechanism for transferring names of people listed on foreign child offenders' registers onto Malta's register after the same people would have moved to Malta.

Last but not least, the law does not encompass actual or prospective employers who are thus free to offer services to children even if their criminal record is tainted with offences against children.

While the register is a valid tool for combating child abuse, continual efforts should be made to enhance its effectiveness, *inter alia* by addressing these three shortcomings through appropriate amendments to the legislation.

### Corporal punishment

Although there is wide consensus that physical violence and abuse against children constitutes a breach of the child's fundamental right to protection from bodily and psychological harm, the use of moderate physical force to discipline children is still traditionally condoned and practised by some parents. This cultural acceptance of corporal punishment by parents is reflected in our legislation which allows for the so-called 'reasonable chastisement' of children as a disciplinary measure (Article 154 of Malta's Civil Code).

The very concept of reasonable chastisement flies in the face of the notion of positive parenting that is being promoted by the national Social Welfare Agency. It is felt that this acceptance can lead to practical difficulties in defining the degree and type of chastisement that it is reasonable and acceptable to exercise on children. It can also confuse the juridical definition and identification of physical abuse against children by providing a legal loophole to those who want to escape responsibility for their abusive physical acts on children. The Office thus calls for the notion of 'reasonable chastisement' to be eliminated from our laws.

### Appropriateness of names given to children

The Office welcomes the amendments made to Malta's laws that give the State the authority to refuse to register a child who is given a name that *'is derived from an obscene or offensive word or it consists of a word or words associated with sexual activity; or exposes the child to ridicule or contempt'* (Civil Code, Article 278A). These amendments are certainly a very positive step forward in promoting and protecting the dignity of the child when a name is given. Nevertheless, the Office feels that a drive to educate prospective parents on this important aspect of children's dignity is necessary.

### Registration of children

Since personal identity is the basis of dignity, such identity should be established immediately after the birth of a child, as prescribed in Article 7 of the UNCRC. Although a legal framework for the timely and prompt registration of the identity of a newborn child is in place (Civil Code, Article 272), its enforcement is weak and inconsistent with the result that children are sometimes registered well beyond the fifteen-day deadline laid down by the law or are not registered at all. The Office thus calls for stronger and more structured efforts by the responsible authorities to keep tabs on parents who do not register their children within the legal timeframe and to remind parents of their legal obligations. Such efforts cannot be entirely effective unless legal or administrative penalties for parents who default on their obligations, in spite of repeated reminders, are introduced.





## Conclusion

The activity of the Office of the Commissioner for Children in promoting the well-being of children is a continuous process that cuts across various sectors and keeps evolving over time. As emerges from this report, every year the Office reaps the fruits of work initiated in previous years and sows the seeds of work that would potentially bear fruit in subsequent years. The desired changes often take time to mature despite all the efforts that are made to bring them about.

Therefore, as this report tries to do, the Office's work over a one-year span is best seen in the wider context of the Office's long-term efforts to address particular issues related to children, and the ramifications beyond the Office of such issues.

The Office is now almost ten years old. Over the years it has consolidated its position and has learnt much through its own experiences and through the expertise of others. Our work should not be seen in isolation but in the context of other local and

international initiatives and commitments taken by other entities and which this Office embraces. The co-ordinated effort of various entities has helped to bring about change in the children's best interest. Still much more needs to be done. As we are nearing our tenth anniversary we should join together with other stakeholders and experts to help us analyse lessons learnt and identify our strengths and weaknesses as an Office to be able to be more effective in the best interest of all children particularly those who are most vulnerable.

Considering the complex, multi-faceted and constantly evolving dimensions of children's rights, promoting such rights is an open ended challenge that requires the sustained and co-ordinated input of multiple stakeholders. In this respect, the role of the Office of the Commissioner for Children is to support and encourage synergies with and amongst the various stakeholders so that all efforts can be channelled towards one goal that of securing children's rights for **all** children.



