

Rights!

we may be children young in dreams,
but rights are rising as it seems,
our young voices can now be heard,
when us children are thinking and concerned,

We have the right to sound our voice,
and make others believe that we have a choice,
we can decide, we can conclude,
that this world can live without a fued,

Without difficulties, without a fight,
Cause we have freedom, we have a right,
We matter and others should care,
as at our dreams reaching reality we stare!

We matter!

Desiree Oliveri

Desiree' Oliveri
Rights 4U Participant

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Message from the Commissioner for Children



Ms Helen D'Amato

Being the first phase of life, childhood is the first stage of a journey of discovery of oneself, the world and the relationship between the two. The partial journey of childhood can be accomplished only if two broad and basic conditions are met. A child requires opportunities that allow him or her to grow, physically, mentally and on other levels, as a result of

being exposed to myriad things in the environment, such as food, education and love, which propel the child forward in his or her journey. At the same time, the child's passage throughout this journey must be checked by safeguards that protect the child from suffering undue harm that is over and above those bitter experiences that are a necessary and inevitable part of the child's maturing process.

Opportunities and safeguards originate both from within and from without the child. For instance, opportunities for the child to become educated result from laws and policies that enable a child to go to school as well as from the child's diligence in applying himself or herself to his or her studies. Likewise, safeguards for the child to not get injured whilst playing stem from regulations that ensure that what the child plays with is safe and from the child's cautiousness in playing safely.

It is important to take stock of the fact that children nowadays live in two different and sometimes poorly interconnected worlds, namely the real world and the virtual world. There is no other age-group of people whose presence in either world is as even as is that of children. Children are the denizens of the virtual world in that a good part of their lives is lived on the internet, which is fast becoming their main stage for playing, socialising, communicating and accessing content and information.

This relatively new reality brings into play a plethora of new opportunities, safeguards and stakeholders that are vital to the well-being of children. This means that there is a lot of work to be done concertedly by a wide range of actors in providing and inducting children in the opportunities and safeguards that are particular to the virtual world. For example, the internet opens up new possibilities for establishing and maintaining close social relationships with people across national borders. At the same time, these new opportunities necessitate new rules and guidelines for ensuring personal safety when interacting with others online.

A very important element of how children can live harmoniously in these two worlds lies in their ability to strike and keep a balance between their dual lives. Sticking with the above example, it is important that children maintain a few close relationships with family and friends in the real world whilst fostering more superficial albeit fruitful relationships with a larger network of people online.

As an entity whose call is to promote the rights and best interests of children, the Office of the Commissioner for Children works within and across these three spheres. We strive to facilitate the creation of the best possible opportunities and safeguards through which all children can grow both in the real world and the virtual world by working with children and with public and private decision-makers.

The Office's Annual Report 2014 bears testimony to this rationale. I would like to express my gratitude to all those individuals and organisations with whom I have worked in the course of the year and thanks to whom much valuable and seminal work as is described in the report has been accomplished.

Helen D'Amato
Commissioner for Children

Background to the Work of the Commissioner for Children in 2014

In 1990, Malta ratified the United Nations Convention on the Rights of the Child (UNCRC), thereby binding itself to the principle that irrespective of its political and economic circumstances, the rights of children must be respected always. This gave rise to the need for an independent body to monitor and promote Malta's abidance by this principle. Thus it was that in 2003 the Office of the Commissioner for Children was set up through an act of law (the Commissioner for Children Act).

To fulfil its function, the Office requires an adequate supply of the following:

- i. legal and/or administrative tools;
- ii. human resources dedicated to shaping the Office's vision and strategy;
- iii. material resources dedicated to carrying out the Office's vision and strategy.

The Office's arsenal of tools consists of public advocacy, consultation with children, education and awareness-raising, investigations, recommendations and research. The Office's vision and strategy are shaped by the Commissioner, whose decisions are free from any external control (Commissioner for Children Act, Article 4). In 2014, the Office of the Commissioner for Children was held by Ms Helen D'Amato. The Commissioner is advised by a Council for Children, made up of public officers from the key relevant Ministries and a number of children who are chosen by their peers and then co-opted on the Council.

The Office's vision and strategy are carried out by a

team of six full-time workers of whom two, do administrative work. The Office is also supported by a part-time worker supplied under the Me2 Coop scheme and a driver. A key post, the Case Officer, who is responsible for following up individual cases, has been vacant for the past year and a half because the green light for a fresh recruitment has not yet been given. The same applies for the Office Secretary who retired in 2012. The Office's expertise on children's rights issues is also augmented by its membership of two important European networks, namely Eurochild, a network of organisations and individuals working in and across Europe to improve the quality of life of children and young people, and the European Network for Ombudspersons for Children, better known by its acronym ENOC. Within ENOC, the Office shares views and information with its European counterparts on a regular basis.

The Office team operates from spacious and independent premises situated in Sta Luċija. The Office is run on the strength of an annual budget of €180,000, the bulk of which is used to finance initiatives and activities that benefit children in a direct way.

Eleven years on from the inception of the Office, there is an urgent need for a clear understanding as to what the best mechanism for monitoring the respect for the rights of children in Malta should be, and to reform the Office accordingly. Such changes should be inspired by the Paris Principles in order to ensure that the mechanism is both powerful and independent.



Annual Report

It is a matter of basic fairness and transparency that a monitoring entity, as is the Office of the Commissioner for Children, should itself be scrutinized. The Office's Annual Report, whose publication and presentation to Parliament is required by the Act, is a good tool to allow all those outside the Office with a professional or personal interest in the rights and well-being of children, to form a factual and critical judgment of the work of this Office. At the same time, the Annual Report is intended to stimulate public debate on issues related to the rights of children in the hope that these can be addressed in a concerted manner by all the stakeholders.

For these reasons, the Office strives to present its Annual Report in a way that is as attractive and accessible as possible by adopting inter alia a vibrant design; publishing the report in both Maltese and English; making a number of copies of the report available to Members of Parliament, while a number of CDs are laid on the Table of the House of Representatives; distributing free copies of the report to various entities and individuals, and ultimately by making the report public on www.tfal.org.mt. The report that follows is another testimony to the Office's efforts in this direction.



Children's Rights – General

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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)

Education and Consultation

Festa Tfal

Children and adults can easily get absorbed in just one of the children's rights at the expense of other rights. So this year, the need for the creation of an offline-online balance was the theme chosen for Festa Tfal, which is an event held on two consecutive days and open to all schools, which celebrated World Children's Day. This theme gave us the opportunity to tackle a number of rights in a co-ordinated manner. School children, representing state, church and independent schools were engaged in a mix of activities including the safe and constructive use of the internet, healthy eating and physical activity. Each activity was coordinated by experts in the respective activity, namely the BeSmartOnline! team who managed the activities related to internet safety, nutritionists from the Health Promotion Unit, who helped the children prepare a balanced snack, while students following the B.Ed course and who are specializing in sports, engaged the students in various physical activities.

The key role of educators in encouraging children to make good use of the internet was promoted through a special programme about the importance of internet safety for the accompanying adults, which ran parallel to the children's event. The educators were addressed by a Psychologist who spoke about the online behaviour of adolescents in transition and by Officials from the Cyber Crime Unit of the Malta Police Force.

The presence of the President of Malta, H.E. Ms Coleiro Preca, and members of the Social Affairs Committee and the Family Affairs Committee at the event helped raise public awareness about the theme of the event and to move it further up the national agenda.

The event was held at the Institute of Physical Education and Sports within the University of Malta. The Office was supported by the Head of Institute, lecturers and staff of the Institute of Physical

Education and Sports and by the Director, lecturers and students of the Institute of Community Services (MCAST) in order to be able to organize such an event.



H.E Ms Marie Louise Coleiro Preca, President of Malta, during her visit to Festa Tfal.

Marking the Convention's 25th Anniversary

The historic importance of the Convention on the Rights of the Child lies in the fact that for the first time the rights of children were articulated in writing and hence set as gold standards for the well-being of children across all temporal and geographical boundaries.

An event organised by the President's Foundation for the Well-being of Society to commemorate the Convention's 25th Anniversary celebrated the graphic or written element of the Convention. This event saw a variety of short messages about the Convention and its meaning being written on a white-board by a number of children and public figures working in the field of children's rights. Her Excellency the President was the first to sign and she was followed by the Commissioner for Children. In her message, the Commissioner stressed the fact that children's rights were an offspring of human rights and that they thus had to be taken seriously. The Commissioner marked the anniversary of the Convention in this way also in the rerun of the event that was held in Gozo.

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Ms Helen D'Amato, Commissioner for Children writing her message at the event organized by the President's Foundation.

Meeting Children

Going out of the Office premises to meet children in their environment is a routine but important part of the Office's work. The Commissioner met with several children in their schools or community centers where they attended. During such meetings, she engaged them in a frank and open discussion on their rights.

Child Participation in the Practice of their Religious Faith

The practice of a religious faith is an important part of a child's moral and spiritual development. Such practice and development are enhanced when children are given the chance and the space to make their voices heard to their religious leaders. Such a chance and space exist in the *Kummissjoni Djoċesana Tfal (KDT)*, a network and forum of children hailing from catholic parishes all over Malta. The KDT requested a meeting with the Commissioner to discuss their work. The children gave the Commissioner a concrete testimony of their activity by playing a CD of songs with a religious theme that were sung by the choir that is part of KDT.



Mrs. Helen D'Amato, together with the members of the Kummissjoni Djoċesana Tfal (KDT), during their visit at the Office.

Friendship across cultures

Encouraging children to meet and befriend children of a different ethnic origin is an excellent way to foster respect for the equal rights of minority groups. To this end, the Office provided financial support for a Summer Camp, organized by the Organisation for Friendship in Diversity, in which African migrant children and children of Maltese and European descent participated. In the course of the summer camp, which offered children a diversity of outdoor settings in which they could have fun, the Commissioner found time to meet with the children and observe the natural ease with which they interacted with one another.

Other Children's Rights

Children are truly and fully empowered when they stand up not only for their rights but those of other children too. The Office seeks to promote this form of empowerment among children by rewarding those school children who in the opinion of their teachers and heads of schools were most active in defending the rights of their peers. It does this through 'The prize for children as promoters of children's rights', which every year sees the participation of a number of schools. As many as twenty schools nominated as many children to receive a book prize.

Resources

World Children's Day

For obvious logistical reasons, only a relatively small number of children can be reached through an educational event like Festa Tfal. The publication and distribution of educational resources in the form of activity books, short stories and tip sheets is an excellent way to reach out to all children within a particular age group. It was for this reason that as part of the celebrations of World Children's Day, all children from Kindergarten 1 till form 4 attending state, church as well as independent schools received one of the Office's many publications on children's rights. For instance, all children in year 5 were given a child friendly version of the UN Convention on the Rights of the Child, whilst the age cohort in year 6 received the booklet published by the Office in 2013 entitled 'My Rights'.

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Advocacy

UN Convention on the Rights of the Child

This year marked the twenty-fifth anniversary of the adoption of the Convention (UN CRC) by the UN General Assembly. The Convention was ratified by Malta less than a year later. The National Institute for Childhood within the President's Foundation for the Well-being of Society chose to celebrate this anniversary through a half-day seminar that sought to shed light on the impact the Convention has had on the well-being of children in Malta. An important part of this impact lies in the work of the Office of the Commissioner for Children as a body that monitors the implementation of the Convention in Malta. Ms D'Amato, together with her two predecessors, was invited to present the achievements and outstanding challenges of her ongoing term as Commissioner. In her address, Ms D'Amato underlined the strengthening of the Office's resources, including the numerous alliances forged with governmental and non-governmental entities. She also stressed the work carried out in educating and listening to children on matters related to their rights. The Commissioner called for the Office to be further strengthened in its powers and autonomy. Underpinning this, she said, was the need to incorporate the Convention in national legislation.



Mrs. Helen D'Amato, together with her two predecessors during the seminar commemorating the 25th Anniversary of the UNCRC.

Human Rights

In a written statement to the press on the occasion of Human Rights Day, the Commissioner opined that children's rights were nothing more than a special vehicle for children to realise their human rights. Commenting on the state of children's rights in Malta,

Ms D'Amato wrote that although at law all children were granted the same rights, in reality not all children were accessing their rights to the same extent. By way of example, the Commissioner mentioned the phenomena of academic underachievement and child obesity.

Mainstreaming Children's Rights at the highest levels of decision-making

We are living in an age when some important decisions that affect the lives of people are often taken at a higher level than that of the nation state. This can present a complex challenge when ensuring that the rights and perspectives of children acquire and retain a prominent place in the political agenda. To address this challenge, the Office called personally on all prospective Maltese MEPs, ahead of the European Parliament elections, to make the rights of children a cornerstone of their electoral agenda. They were encouraged to sign the Child Rights Manifesto, drafted jointly by fourteen child and youth-focused international organizations, and by promoting this document in the public domain. Three of the Maltese candidates who signed the Manifesto were elected to the European Parliament.

Recommendations

It is important that the Commissioner for Children has regular and personal contact with those persons responsible for policies that affect the rights and well-being of children. To this end, the Commissioner held meetings with various Ministers, Permanent Secretaries and Heads of various entities. The Commissioner presented many of the Office's unimplemented recommendations and pressed for their timely implementation. Amongst these recommendations were the need for the process leading up to the finalisation and implementation of a National Children's Policy to be expedited, and the need for a clear, holistic and long-term vision in the field of out-of-home care.

Case Work

The Office followed up many individual cases of alleged breach of children's rights. Although the cases followed spanned across a wide range of children's rights, the most common issues were family or school-related. In all cases, the Office

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applied its policy of directing complainants to the official avenues of redress and of intervening only when such avenues had been exhausted.

Participation in Children's Rights-Related Networks and Fora

Eurochild

Eurochild, requires constant contact and communication between its myriad members in order to function in an optimal way. It was with this aim that the Commissioner and the Office's Task Manager participated in the network's General Assembly which brought together all Eurochild member organisations to discuss the network's achievements and projects during the past ten years that it has been set up and to extend the network to other organisations. The Commissioner was asked to deliver a short message on Malta's experience as a member of Eurochild to celebrate the 10th Anniversary of the setting up of this network.



A Europe-wide strategic approach to children's rights

The Council of Europe is an assembly of European nations which has consistently taken a proactive stance in the defence of children's rights. It has done this not simply by issuing statements of principle but by adopting and seeking to implement a strategy with a clear focus and timeframe of four years. The Council's ongoing strategy, which started in 2012 and is set to terminate in 2015, is about the implementation of existing children's rights standards.

A meeting was held in early 2014 to conduct a mid-term review of what had been achieved so far in terms

of the strategy. The Office's Task Manager, Ms Suzanne Gili, was part of this meeting which brought together experts and officials from a host of European countries to share and discuss their knowledge and experiences of what each country was doing to advance the rights of children.

The Commissioner on Human Rights of the Council of Europe, Mr Nils Muižnieks, met with the Commissioner for Children when he was on a visit in Malta. Mr Muižnieks expressed his wholehearted appreciation and support for the work carried out by the Office in favour of the most vulnerable groups of children.



Ms Helen D'Amato, Commissioner for Children with Mr Nils Muižnieks, Commissioner on Human Rights of the Council of Europe.

Raising Awareness about Global Development Issues

Many children in Malta risk taking their rights for granted by failing to appreciate that they are able to enjoy their rights only because they happen to live in a democratic country, and that children living in undeveloped or underdeveloped countries do not enjoy the same rights as they do. This point was conveyed by the Office in its comments on its role in raising awareness about global development issues to SKOP, the National Platform of Maltese Non-Governmental Development Organisations. The Office highlighted the challenges faced by migrant children before and after landing in Malta, notably through the documentary, featuring an interview with an unaccompanied minor residing in Malta, which was produced in 2013 by ENOC (European Network of Ombudspersons for Children) in collaboration with the Office.

Children's Rights – General

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Promoting Children's Participation

When children who are engaged in some form of active participation are given the opportunity to discuss and share their experiences with one another, they are given not only another chance to participate but are empowered to improve and possibly expand their participation in a process of horizontal (child-to-child) learning.

This was the case with a conference that was organised as part of the initiative known as CATS (Children as Actors in Transforming Society), which brought together children from all over the world. These included two children from Malta who are active members of the Council for Children, namely Rebekah Scerri and Luke Camilleri, both 16 years old, who were accompanied by the Office Task Manager, also secretary to the Council, Ms Suzanne Gili.



Ms Suzanne Gili, Task Manager together with Ms Rebekah Scerri and Mr Luke Camilleri at the CATS Conference.

Investing in Children

The effectiveness of any financial investment which is intended to better the lives of children is not measured

in any monetary currency but in the currency of the actual outcomes which such investment produces. This means that effective financial investment should always yield a social return, in the short or long term, in terms of improved levels of well-being for children. This requires knowledge and application of evidence-based children policies.

The European Platform for Investing in Children is a virtual platform where EU countries can share their policy-making efforts towards the improvement of child well-being. The Office contributed to updating Malta's country profile for 2014 by reporting its own initiatives and commenting on other initiatives which it was abreast of as part of its monitoring function.

The need for 'Better Public Spending for Children' was the theme and title of the 11th Annual Conference of Eurochild, a network of organisations, including the Office, and individuals working in and across Europe to improve the quality of life of children and young people. The conference, which saw the participation of the Office in the person of its Projects Officer, aimed to explore methodologies through which Governments can evaluate whether and to what extent their spending impacts the well-being of children in a positive manner.

Even when serious efforts are made to maximise the effectiveness of public spending for children, there is an almost inevitable shortfall between what Governments can spend and what children need. The conference thus delved into how Governments can tap alternative sources of funding by forging partnerships with the private sector. Such partnerships are not necessarily driven by the profit motive but by the willingness of private firms to contribute to the social development of the communities in which they operate.

Social corporate responsibility presupposes that private firms are economically healthy and buoyant, which they may not be in periods of economic downturn. Investment in children is likely to be inadequate in such periods with dire consequences on the level of well-being of children. This was the theme of the Annual Conference of ENOC which aimed to explore how austerity was impacting the well-being of children across Europe and what could be done to assuage or reverse this impact. The Office was represented in this conference by the Commissioner and the Task Manager.

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Public spending for children requires a holistic and well-articulated plan. In this respect, the Office was able to share its views with Government on the two draft Operational Programmes which set out what Government was planning to spend Malta's EU funds on. In its feedback, the Office called inter alia for a sharper focus on single-parent families and on children in out-of-home care.

Irregular Migrant Children

These are a vulnerable group of children which elicits the attention and intervention of a wide range of actors, including non-governmental organisations, human rights bodies and governmental entities. Fostering dialogue amongst these various stakeholders is crucial for delivering a seamless and effective service to these children and their families.

The Office sought to foster such dialogue by inviting an international group of play workers who had met in Malta under the aegis of the Organisation for Friendship in Diversity, representatives from the Office the Human Rights Commissioner for Refugees and the Agency for the Welfare of Asylum Seekers to gather around a table to discuss a broad range of issues related to the plight of irregular migrant children living in Malta. The informal assembly agreed amongst other things on the importance of mainstreaming migrant children in the educational process and system as the best foundation for their integration in Maltese society.

Safeguarding Human Rights

Individual human rights are the bedrock of our society. This calls for a structure that is charged with defending these rights and which is endowed with the legal and operational means to fulfil its mandate.

The Human Rights and Equality Commission (HREC), which Government is proposing to set up in lieu of the National Commission for the Promotion of Equality (NCPE), is meant to be such a structure. The Office submitted its views on the White Paper that was published on the subject, expressing its readiness to work closely with the new Commission in order to achieve consolidation and avoid duplication of work carried out in defence or in promotion of the rights of children.

Considerations and Concerns

Defining and Refining Children's Rights

The United Nations Convention on the Rights of the Child is accepted and adopted almost universally as the blueprint for the rights and well-being of children. It is a fact that the Convention has been signed and ratified by more nations than any other international convention has ever been. Despite this, it would be wrong to attribute a timeless and quasi scriptural status to the Convention and to believe that there is no scope for improving and updating it.

Twenty-five years on from the coming into being of this highly authoritative guide on the rights of children, the time is ripe for conducting a thorough review of the Convention in order to identify and address its lacunae and weaknesses.

Among the areas that such a review should look into is the right of children to adequate housing, which this Office feels to be not clearly reflected in the text of the Convention. The latter should also complement its emphasis on the right of children to be exposed to appropriate content through the media with the corresponding right of children to be portrayed in the media in a fair and dignified manner. It is also felt that specific attention should be paid in the Convention to the internet as a medium of mass communication that is unlike any other in terms of its power and influence on children.

A review of the Convention should be conducted by or in concert with all State Parties. Such a collegial approach would ensure that the Convention, while being strengthened in its content, is not weakened in the extent of its positive influence on the legal and political systems of the world's nations.

A Stronger Framework for the Protection of the Rights of Children

Whereas in the ideal world, the rights of children derive their strength from their intrinsic moral value, in the real world these rights are very weak unless they are supported by a strong legal and policy framework.

Irrespective of how clearly the Convention is reflected in the laws of Malta, it can have little clout

of its own if it is not given legal status but remains merely a political commitment. The Office thus calls again on Parliament to legislate for the transposition of the Convention into national law. This would allow children or adults acting on their behalf to seek redress for a breach of their rights.

Another tool that can enable children to right the wrongs they suffer is the 3rd Optional Protocol to the Convention on a Communications Procedure. The Office calls on Government to not only ratify the Protocol without delay but also to set up the necessary structures for its implementation. It is felt that the Office of the Commissioner for Children, by virtue of its legal remit and its experience in following up individual cases and complaints related to children's rights, is best suited to act as the interface between the complainant and the Committee on the Rights of the Child which receives and responds to complaints.

A Stronger National Effort to Advance the Rights of Children in Malta

Although judicial and semi-judicial means of redress are essential components of a system that truly protects the rights of children, they can be effective only if they are backed by a strong and genuine effort on a

national level to advance these rights.

Children in Malta have benefited from a long string of laws and policies that have enhanced their well-being. Yet these efforts might not always have been part of a holistic vision and plan that centred around the needs of children. This vision and plan started to be addressed in 2011 with the drawing up of a Draft National Children's Policy. More than three years down the line, children and all those who have their interests at heart are still waiting to see the final product. The Office thus calls for the National Children's Policy to be finalised and for its implementation to start without further delay.

The Office is equally desirous of seeing a holistic approach adopted in relation to the laws that impact the lives of children. Producing a Children's Act is indeed a mammoth task. A bill proposing to replace the Children and Young Persons' (Care Orders) Act was a positive way forward towards the production of an all-encompassing Children's Act. Unfortunately so far, this bill has not gone beyond its first reading in Parliament during the first quarter of this year. The Office thus calls on Government to commit and focus its resources on producing the necessary legislation and on setting up the necessary structures for full implementation.



Children's Rights – General



Children's Right to Safe and Beneficial Media

2

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)

Education and Consultation

Safe Use of New Communication Technologies

This was the theme chosen for this year's Rights 4U, which was again held three times (once in Gozo and twice in Malta) in order to cater for the demand from 120 youngsters aged between thirteen and fifteen years. There is no doubt that the intensive and interactive format of this live-in course lent itself very well to dealing with this highly complex and important subject for this young age-group. Moreover, the courses were enriched through activities generated by the BeSmartOnline! project.

Like for Festa Tfal, it was ensured, through the distinguished presence of the Hon. Minister for the Family and Social Solidarity, Dr Michael Farrugia, Hon. Dr. Joe Cassar (Family Affairs Committee) and Mr Josef Camilleri, Director of the HSBC Malta Foundation, which partly sponsored the event, that such a worthy bottom-up initiative would not go unnoticed by the country's decision-makers. The

Commissioner was present throughout the course in order to understand what youngsters were thinking, feeling and experiencing in relation to the new communication technologies.

Resources

The Office developed a number of new resources on internet safety as learning tools for children and other stakeholders as part of the BeSmartOnline! initiative. Mindful of the fast pace of the internet, a tip-sheet which urges children to 'think' (as the tip-sheet is called) before doing anything online and which presents them with the possible consequences of their unreflecting online behaviour was produced. A more specific resource that was developed was a tip-sheet about 'snap chat' and its possible pitfalls. For the younger age-groups of children, a more ludic resource on internet safety was produced in the form of a board game.

Like parents, educators are a prime agent in shaping and influencing the thinking and behaviour of



Hon. Minister for the Family and Social Solidarity, Dr Michael Farrugia, Hon. Dr. Joe Cassar (Family Affairs Committee), Mr Josef Camilleri, Director of the HSBC Malta Foundation and the Commissioner together with the Rights 4U Participants.

children. Hence, they have a primary role in directing children towards good online practices. At the same time, however, they can be at the receiving end of negative online behaviour from their students, such as cyber-bullying. In order to raise awareness amongst educators of their dual stake in relation to internet use by children, the Office teamed up with the Malta Union of Teachers (MUT) to produce and disseminate an Information Note for Educators on Cyber-Bullying. This note enables educators to identify and deal with cases of cyber-bullying suffered by their students or themselves and to resort, when necessary, to the helpline and hotline set up within Aġenzija Appoġġ, as part of the BeSmartOnline! project, or to MUT.



These two considerations are behind the reorientation of the BeSmartOnline! project, now in its fifth year, from an ethos of internet safety to one for a better internet. Such reorientation is taking place across all Safer Internet Centres in Europe and is reflected in the initiative taken by the European Commission and Insafe to create a Youth Manifesto for a Better Internet.



Children's Right to Safe and Beneficial Media

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Given this new emphasis on the active and positive aspect of internet use, children from all over Europe were invited to shape the Manifesto by sharing their views on how the internet can be made not just safer but better all round and by proposing ways how they can work with the internet industry to make this happen. To facilitate the participation of children, the consultation encouraged teachers to engage their pupils in an open and searching debate about the web's positive potential. A website was set up as a vehicle for this consultation (www.youthmanifesto.eu). The Commissioner for Children and the Task Manager visited various schools, in Malta and Gozo, and held specific consultation sessions and introduced the site to the children. These information session with children resulted in a very lively participation by children from Malta.



Ms Helen D'Amato during a consultation session at St. Monica School in Birkirkara.

To further stimulate responses from children, a Europe-wide competition for positive internet content was set up. The Office Task Manager and coordinator on behalf of the Office for the BeSmartOnline! project, Ms Suzanne Gili, was appointed a member of the jury for this competition. The consultation, will culminate on Safer Internet Day (10th February 2015) when the results of the consultation will be presented in Brussels.

To facilitate the local uptake of this new thrust towards good internet use, a two-day national conference on this theme was organised jointly by the BeSmartOnline! team, which includes the Office, and the Elearning Department in collaboration with MUT. The conference targeted the three principal stakeholders on the ground, namely children, parents and educators. The keynote speech of the

conference was delivered by Mr Karl Hopwood, an international expert on esafety issues. The work done and other initiatives in the pipe line as part of the BeSmartOnline! project was presented by the Office Task Manager.

The local debate about internet use was further enriched by the participation of youths in the Youth Panel, which met twice, and in as many as thirteen consultation sessions, all of which were chaired and coordinated by the Office. Parents and carers added their perspective through a meeting of the Parent-Carer Forum, which consultative structure had been set up in 2013.

It is important that those who care for children are aware and familiar with the potential fruits and dangers of the internet for the children under their care. Such a balanced cognizance of the internet was cultivated through two informative meetings which the Office held with a number of parents.

Internet use is a relatively new but crucial dimension of social inclusion or exclusion. This calls for efforts to bring the children who are at greater risk than others of being socially excluded closer to the internet and to that knowledge that enables them to use it in a smart manner. Such efforts were made by the Office, always within the framework of the BeSmartOnline! project, through awareness sessions that were held with all children in care aged 4 to 16 as well as with their carers.

Advocacy

Cyber-bullying

Speaking during the public launch of an Information Note for Educators on Cyber-Bullying, the Commissioner said that educators were ideally placed to help in the national efforts to combat cyber-bullying. The intervention of educators in cases of cyber-bullying had the potential to protect not only the victims of cyber-bullying, who could be children or the educators themselves, but also the perpetrators whom educators could help with the collaboration, where necessary, of social services within or outside the school facility.

Children's Right to Safe and Beneficial Media

Positive Internet Use

The Commissioner closed the National Conference on the Positive Use of the Internet by stating her conviction that a focus on the positive use of the internet by children offered the dual advantage of promoting the development of children, which could in turn make them stronger and smarter against the dangers of the web. This did not mean, warned the Commissioner, that children who were able to make good use of the internet did not need to be made aware of the things that could harm them online. Hence, a sharp though not exclusive focus on internet safety should remain, the Commissioner maintained in her address.

Participation in Children's Rights-Related Networks and Fora

Towards a Better Internet

The involvement of children in the writing of a Youth Manifesto for a Better Internet did not start after the initiative was launched by the European Commission but was active already at the birth of the Manifesto. Such early involvement included the participation of Ms Raisa Vella, who is a member of



Ms Raisa Vella, Youth Panel Member with Ms Neelie Kroes, European Commissioner for the Digital Agenda.

the BeSmartOnline! youth panel, in a workshop in which Raisa met with other European youths and with the European Commissioner for the Digital Agenda, Ms Neelie Kroes, to discuss how technology can enhance other aspects of child well-being and to set in motion the consultation process for the Youth Manifesto. Raisa's experience took place in Brussels where she was accompanied by the Office Task Manager.

Members of youth panels across all Safer Internet Centres in Europe met to discuss the Youth Manifesto and other related themes, notably the issue of how children can become mature users of the internet and the issue of what constitutes positive online content. The children then presented their deliberations and conclusions at the Safer Internet Forum, which brings together a plethora of stakeholders in the domain of internet safety.



Mr Quentin Bugeja, Maltese Youth Panel member during the Youth-led workshop at the Safer Internet Forum.

As a recognition of the Office's standing in this very domain, the responsibility for chairing this meeting of the Pan-EU Youth Panel and for coordinating the panel's participation in the Safer Internet Forum was entrusted to Ms Suzanne Gili, the Office Task Manager.

Understanding internet safety

Staying abreast of an ever-changing internet is an essential pre-requisite to educate children on how they can stay safe online. To this end, the Office, as a partner in BeSmartOnline!, participates in a network, called Insafe, wherein knowledge and information is exchanged amongst the 30 European Safer Internet Centres.

Children's Right to Safe and Beneficial Media

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The Office took part in two meetings of this network. One meeting focused on online privacy and the vulnerability of children to insidious forms of advertising on the web. The other meeting dealt with a variety of issues such as eating disorders and self-harm among child users of the internet.

Safe and beneficial broadcasting media for children

The new and emerging challenges posed by the internet should not make us oblivious to the need for safe and beneficial media in respect of more traditional vehicles of mass communication. In recent years, there has been a lot of attention from the relevant authorities to how the broadcasting media, notably television and radio, does and should impact children, be it in their capacity as consumers or elements of broadcasting content.

In its latest effort to address such issues, the Public Broadcasting Authority published a draft 'Code for the Protection, Welfare and Development of Minors on the Broadcasting Media', with the aim of extending the scope of existing legislation beyond the parameters of advertising vis-à-vis children. The Office responded to the public call for feedback on the draft code by suggesting a number of ways in which the draft law could be fine-tuned and expressing its disagreement with some of the proposals contained in the draft, notably the lowering of the age-threshold of minority as far as broadcasting is concerned to under 16 years of age.

Portrayal of vulnerable children in the media

The media has the power to shape and influence public perception and opinion about the things and people it portrays. Hence when it portrays children, especially children who are doubly vulnerable, such as children in care, it must act with great discretion and sensitivity, in line with specific standards and regulations.

The Office was asked by UNICEF Montenegro to give an account of the regulatory framework in place in Malta to ensure that children in care are portrayed in the media in a way that does not harm them by compromising their image. The Office gave an overview of this framework and reported that there were no protective provisions specific to children

in care or to any group of children in vulnerable situations.

Considerations and Concerns

Good Internet Use and Safety

The use of the internet amongst children has grown much faster than has any awareness within this vulnerable age-group about the best way to use this powerful medium of information and communication.

The importance of the BeSmartOnline! project lies in the fact that it has started to redress this serious imbalance. However, the road ahead is a very long and challenging one not only because the gap between use and awareness is still very wide but also because of the searing pace at which the internet is developing in terms of its forms, content and applications.

This points to a gross incongruence between the nature and the extent of the challenge that BeSmartOnline! is trying to address and its status as a project, which, like all projects, is circumscribed within a fixed framework of time and resources.

The EU has had a vital role, through its Commission, in supporting countries in Europe to create the basic infrastructure needed to take on the challenge of good internet use and safety amongst children. Malta has made very good use of the financial support provided by the EU. This has been confirmed by the Commission's positive appraisal of BeSmartOnline!, whose rating was raised from average to excellent.

The percentage of EU funds dedicated to the BeSmartOnline! project has started being phased out. This means that Malta must prepare itself from now for this new reality not only by finding the financial means to compensate for the ever diminishing share of EU funds for the project but also by mainstreaming those aspects of the project that are tried and tested into its national laws, policies and infrastructure. A clear sign that this process has started is the inclusion of modules on digital literacy and internet safety in the new National Curriculum Framework that was launched just over two years ago. Following the BeSmartOnline! campaign, the need was felt to include safety issues in the PSKD syllabus.

Children's Right to Safe and Beneficial Media

Whilst this process should continue, there is also a strong case for keeping the project alive as a Safer Internet Centre that is dedicated to steering the mainstreaming process and to experimenting with new approaches to good internet use and safety amongst children and young people. This requires setting up BeSmartOnline! as a permanent inter-sectoral entity sanctioned by law and endowed with the necessary infrastructure and resources to fulfil its functions in the best way possible.

Safe and beneficial print media for children

With so much going on to make the internet and broadcasting safer and better for children, the print media stands out for its seeming scant attention to the needs and vulnerabilities of children. The law that regulates the operation of the press in Malta, the

Press Act, is devoid of specific provisions protecting minors who are the subjects or objects of the print media's interest. This is particularly serious in the light of the fact that such media are at the forefront of news and events involving children, and in the reporting of which many an ethical issue is at stake.

Given the basic and constitutional need to preserve the freedom of the press, a strong effort is needed from the print media to regulate itself in a transparent manner. In this respect, the Office welcomes the plans announced by the Institute of Maltese Journalists to set up a new code of ethics for journalists and to adopt a five-year plan of action to raise professional and educational standards in the sector. The Office hopes that the needs and vulnerabilities of children as objects of media reporting will not be neglected in this important exercise.



Children's Right to Play, Leisure and Creativity

3

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)

Education and Consultation

Structured leisure

Leisure activities are no different from educational activities in requiring much structure and preparation. From this stems the role of summer schools, which offer children a varied programme of leisure activities led by trained adults.

The Commissioner visited a number of such schools where she met with the children and conversed with them about the importance of leisure and recreation to their well-being and development.

Encouraging and valuing children's artistic expression

Visual art has the ability to unite children from all four corners of the world since it naturally transcends their linguistic and cultural differences. This is the rationale of the Annual World Children's Picture Contest organised by the IE-NO-HIKARI Association in Japan, for which the Office acts as an interface enabling children from Malta to participate in the contest.

One such child, Sarah Bulteel, aged 13, received an Honourable Mention for her picture entitled 'My Village Festa', as part of the 2013 edition of the

contest. The Office, which presented Ms Bulteel with her certificate, also moved to publicly inform and encourage all children in Malta to express themselves pictorially on the related themes of Agriculture, Farming, Nature, Local People or even people within the Family Environment and to submit the products of their creativity for the following edition of the contest. Five children responded to this call with as many pictures.

President's Award for Creativity

For the fourth year in a row, the Office contributed to the President's Award for Creativity initiative which aims 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 to sit on the Evaluation Board for projects submitted under the Community category which aims at promoting inclusion amongst children and young people.

Recommendations

Combat Sports

This type of sport, especially when practised by children, is associated with some very specific and serious concerns related to its safety. This is because the aim of any combat sport is to strike, floor or even knock out one's opponent. Hence, while in other types of sport a blow to the body is an accidental occurrence, albeit happening with regular frequency in many sports, in a combat sport such blow is an intentional act which is often aimed at critical parts of the body, notably the head. This implies that there is a significantly higher chance of a child sustaining serious even fatal injuries when practising a combat sport than when practising any other kind of sport. Another exacerbating factor is that combat sports can easily attract individuals with violent streaks in their personality, be it as practitioners or spectators to the sport.



Ms Helen D'Amato, Commissioner for Children, presenting Ms Sarah Bulteel with her Honourable Mention Certificate.

Children's Right to Play, Leisure and Creativity

Notwithstanding the critical safety profile of combat sports, the position taken by the Office in 2013, when its interest in the subject started, has not been that combat sports should not be practised by minors in any form or fashion, but that the practice of this kind of sport by minors should be subject to a very strict ad hoc safety regulations.

Unfortunately, while the practice of combat sports in its myriad forms by minors is rife in Malta, this practice is entirely unregulated. Upon taking stock of this situation, the Office formally requested the Malta Competition and Consumer Affairs Authority (MCCAA) to set up a technical committee to draft a national standard on safety requirements for the practice of combat sports by minors.

This Technical Committee, composed inter alia of the Commissioner for Children and the Office's Policy Officer, held its first couple of meetings in 2014. Its first task was to define the exact scope of the standard. The Committee decided to restrict this to combat sports practised in a boxing ring whether competitively or in a training context. The standard will focus on combat sports such as boxing, kick-boxing and martial arts whilst combat sports falling outside the scope of the standards are foreseen to be the subject of other standards in the future.

Indoor Play Areas

Early in the year, SM3600 "Indoor Play Facilities – Safety Requirements for Indoor Play Facilities and their Management" was published as a National Standard. This marked the end of a long and complex gestation at the hands of the Technical Committee which drafted the standard and the beginning of a process that should see an improvement in the level of safety of indoor play areas for children. Such a process is bound to be somewhat slow and weak if adherence to the standard is subject only to the goodwill of indoor play area operators, notwithstanding the proverbial carrot that can be put in through quality marks and tax benefits to elicit such goodwill. For safety standards to be raised to the optimum level in the shortest time possible across all play facilities, the proverbial stick in the form of a legal enforcement of the standard is required.

The Office Annual Report for 2013 reported wide agreement as to the necessity of a mandatory

approach to the implementation of the standard. In 2014, the Office sought to capitalise on this agreement by liaising with some key stakeholders, including the Department of Trade, MCCAA and the Minister responsible for MCCAA, Hon. Helena Dalli, to identify the best mechanism to enable the mandatory approach. The main difficulty encountered was that the issue of the safety of play areas did not fall squarely in the remit of any single authority in Malta. Hence, the standard could be enforced only through a structured interplay amongst multiple regulatory entities.

Children affiliated with Sports Clubs

Children typically require much time and experimentation to find the leisure activity they like best. This means that they should not be constrained into committing to a particular leisure activity, such as by registering with a sports club, too early in their childhood, since this can make it difficult for them to release themselves from that activity to experience a different form of leisure.

The Annual Report for 2013 (pg. 26) documents the positive outcome of the Office's effort to bring about an upward revision of the minimum age for the registration of players with football club nurseries, which now stands at 12 years of age.

In 2014, the Office cast its attention on a similar issue subsisting in respect of athletics clubs and the ability of underage members to disengage from the clubs they are registered with. To this end, the Office held meetings with operators in the field to explore the issue in more depth.

Participation in Children's Rights-Related Networks and Fora

Safe accommodation for child tourists

When children spend time away from home, typically for leisure, it is important that their accommodation has all the safety features which the travelling children's parents or guardians presumably take great pains to install in their homes to protect their children from injury.

This was the position taken by the Office in respect of a Green Paper on Safety of Tourism Accommodation Services, issued by the European Commission, which

Children's Right to Play, Leisure and Creativity

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it was asked to share its thoughts on. Among the safety features that were mentioned in the Office's feedback by way of example were the avoidance of horizontal bars in the design of railings and clear and enforced policies of non-admission of children to casinos and gaming parlours.

The Office recommended that once all aspects of safe accommodation for children were defined, these should be set as Europe-regulations that all accommodation centres in Europe would have to follow.

Right of Children with a Disability to Play

The fact of having a physical disability is not absolute but is relative to the environment in which a person with disability lives in. This does not mean that an exclusive environment should be created but that the very same environment in which we live should be modified to meet the individual needs of people living in their community. When this is properly done, the physically and socially disabling effects of the person's condition can be neutralised to a significant extent, resulting in improved inner well-being and social inclusion for the persons concerned.

This concept must be applied to all facets of the person's environment, including, in the case of physically disabled children, to their need and right to play with other children. The Office responded to the call for feedback by the focal point charged with writing Malta's State Report for the United Nations Convention for the Rights of Persons with Disabilities by pointing out that both National Standards that lay down specifications for the safety of outdoor play areas and indoor play areas respectively contained requirements for play areas to contain play equipment that is designed for use even by children with impaired or limited mobility.

Considerations and Concerns

Age-appropriate entertainment for youngsters

Four years have passed since the working group set up at the behest of the Office and chaired by the Commissioner finalised a draft piece of legislation proposing stricter regulations for the practice of teen parties and presented it to the responsible Ministers of the time (see Annual Report for 2011, pgs. 21-22). In such a long time, there has been little if any movement towards the implementation of this new legislation or towards any other attempt to close the loopholes in the current legislation (Subsidiary Legislation 10/40), despite the Office's repeated attempts to sensitise the country's political and civil authorities to the need for legislative change in this sector.

One acknowledges that during this period the Police have been more cautious with the issuing of permits for such events. However, it would be naïve to think that teenagers who are under the minimum age for drinking alcohol have not been trying, often successfully, to access adult places of entertainment where not even those inadequate safeguards which the current legislation provides for apply.

The present situation is certainly not protecting underage party-goers, whose desire for evening entertainment is finding few safe outlets. As a country, we are still far from providing children with an alternative age-appropriate entertainment scene decentralised



Children's Right to Play, Leisure and Creativity

from the Paceville melee. Youth cafes have been an excellent initiative launched in recent years but their number falls far short of the need and potential demand. At the same time, it is not reasonable to expect entertainment for teens to be entirely state-sponsored. The private industry needs to be encouraged to develop entertainment options that are both commercially viable and appropriate for this age-group.

This Office thus calls for a clear vision and strategy for pre-adult entertainment that is premised on the notion that safe and positive during the evening entertainment is an important stage in the growth path of teenage children.

Towards a regulated practice of sports by minors

The regulatory vacuum which a mere glance taken by the Office at the practice of combat sports by minors has exposed is but the tip of an iceberg which includes many other sport disciplines which are not subject to any form of regulation in respect of minors. The sector is in dire need of enforceable quality standards that can ensure that children benefit and are not harmed in any way whilst practising the sport of their choice. The infrastructure for quality control is already there in the shape of the Malta Sports Council which needs to take on a more regulatory function whilst continuing to support sport organisations as providers of sports activities.

Helping Talented Children

The National Sport School that was inaugurated a few years ago and which is in the process of being upgraded through the building of new and bigger premises has provided children who have an innate sport ability with the opportunity to train at the level that is required for them to reach excellence in a particular sport discipline while also receiving an academic education of an equally high standard.

The Office believes that such initiatives should be extended to other vocational spheres particularly in the field of creativity, notably the arts, where the need is felt for similar structures dedicated to forming artists, actors and musicians of outstanding ability.



Children's Right to Child-Friendly Justice

4

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, 1)

....the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

(UN CRC, Article 12)

A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

(UN CRC, Article 40, 4)

Recommendations

Children serving a prison sentence

Incarceration is ultimately a disability from participating in society which the law inflicts on those who are deemed to be dangerous to that same society. It is thus a very high albeit fair price which individuals pay for their mistakes. This is especially the case when incarcerated individuals are minors, hence are less able to cope with the angst of their lost freedom and more needful of participating in society for their personal development. It is no wonder that the above-quoted sub-article of the Convention harps so strongly on the need for children who commit a criminal offence to be dealt with differently by the justice system.

This difference is reflected quite clearly in the Maltese correctional system where incarcerated child offenders are few and far between and serve sentences that are typically not longer than a few months. More so, they are housed in facilities that are administratively and physically separate from those where adult offenders serve their prison sentences and which are known as the Young Offenders Unit Rehabilitation Services (YOURS).

In the course of the year, the Commissioner had

the opportunity to visit the YOURS facilities. The Commissioner expressed her satisfaction to the prison authorities with the fact that the facilities had been recently relocated away from the precincts of the Corradino Correctional Facilities. At the same time, she communicated her disappointment that the facilities were still unable to cater for girl child offenders and that adult first-time offenders, who were often young in age but were not necessarily minors, were still being housed in YOURS. The Commissioner stressed the need for the physical relocation of YOURS to be followed by a thorough overhaul of its function so that all child inmates would benefit from a therapeutic programme that was tailored to their needs and continuous with any other support programme followed by children before and/or after their stay in YOURS.

To this end the Commissioner suggested that a working group is set up which consists of representatives from YOURS, Agenzija Apogg, the Department for Educational Services and the Office of the Commissioner for Children. The aim of this group is to explore methods and procedures in place and to create protocols which will provide continuous care, services and attention to those minors who are in prison. The work of this group will continue throughout 2015.

Children's Right to Child-Friendly Justice

The Presence of Children in Court

It is a well-known fact that not all environments are suitable for children and that the mere atmosphere of certain places makes children, especially younger children, feel ill at ease. A court of justice and even its precincts is a prime example of an environment that is inimical to children owing to its air of gravitas and the often adversarial nature of the issues that are dealt with and resolved in a judicial court. This means that children should not be anywhere near a court of justice unless their presence is necessary for the proper administration of justice.

This principle is very clearly reflected in Article 26 of the Code of Organisation and Civil Procedure which sets the age-threshold for admission of persons not involved in a court case into the precincts of a court of justice at 13 years. The Office was asked by the Minister responsible for Justice, Hon. Owen Bonnici, whether this regulation was in the best interests of children in the light of a case of a woman called to testify in court who was not allowed to take her baby with her inside the court.

In its reply to the Minister, the Office wrote that the aforesaid article did indeed serve the child's best interests since it shields children from an environment that is inherently not child-friendly. However, the Office reiterated its call for the design of a child-friendly space within the building of the Courts of Justice where children involved in court proceedings could be heard. The Office further suggested that such a space, if properly manned, could also cater for children whose presence in court was constrained by logistical not judicial factors.

Participation in Children's Rights-Related Networks and Fora

Sensitive interviewing of child victims of violence by police officers

The interviewing by police officers of children who have suffered violence presents two disparate needs: on the one hand, there is the need of the child to avoid experiencing retraumatisation or revictimisation from what they are required to say during the interview, and on the other, there is the need of the police officer representing the justice system to gather the necessary evidence for the prosecution

of the perpetrator of the violence against the child. Negotiating and reconciling these two needs requires well-trained police officers operating in a context of tailor-made, rights and evidence-based procedures for interviewing children.

This was the gist of the Office's feedback on the draft text of the 'Best practice guidelines for police officers dealing with minors who are victims of violence', which was being discussed within the Law Enforcement Working Party, a preparatory body within the EU Council. The Office also commented that maladroitness of such doubly vulnerable children can lead not only to their retraumatisation or revictimisation but also to their involuntarily providing incorrect and unreliable information.

Considerations and Concerns

Dealing with child offenders

The upward revision of the criminal age of responsibility from nine to fourteen years of age that was legislated this year has been an important though long overdue step forward towards a more child-friendly justice system. While there is no doubt that child offenders below the age of fourteen are benefiting just from being spared going through court proceedings, albeit within a Juvenile Court, it is also clear that they need a special kind of support that can be provided not so much through mainstream social services as through ad hoc therapeutic services and structures, which currently are missing or weak. The Office thus renews its call for such care services and structures to be strengthened or set up.

A higher age of criminal responsibility should not divert our attention away from the needs of child offenders who are above the age threshold. These children should receive the same kind of specialised support as child offenders who are not criminally responsible. This means that YOURS has to metamorphose from a prison structure with a care component to a care structure with a prison component. While maintaining its links with the justice system, YOURS needs to become an integral part of the social care system in order to benefit from synergies with other components of this system. The Office thus calls for an adequate investment of resources to effect this paradigm shift.

Children's Right to Health

5

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)

Education and Consultation

Children in hospital

A period of hospitalisation, albeit necessary and possibly short, tends to deprive children of the simple pleasures of everyday life. Those who love and care for children need to ensure that they still have the opportunity to experience these pleasures as much as possible during this trying time.

Mindful of this, the Commissioner visited the children in hospital at Christmas and at Easter time. She had the opportunity to speak to the children, their parents and other relatives. Each child was given a present to mark the event.

Being in a hospital can also be a daunting experience from a child's perspective since the child is thrust in a strange and alien environment. In order to make the environment of a hospital more hospitable and familiar to a child visiting it as a patient possibly for the first time, the Paediatric Practice Development Team found the support of the Office of the Commissioner for Children to spearhead a project to produce two colouring books featuring cartoon-like images of the various people and objects that children come across in hospital. One book is being designed for children who visit hospital for the purpose of a medical consultation, investigation or treatment, whilst the other colouring book will address the orientation needs of children who are about to undergo a surgical intervention. These two resources, will be published, launched and made available early in 2015.

Health of Unborn and Newborn Children.

The prenatal and neonatal periods are amongst the most critical stages in the development of a child. More so, the child at this stage is so intimately linked to its mother that promoting and protecting the child's health is the same thing as promoting and protecting the health and the health consciousness of the mother.

Malta has in place a system of laws that reflects this symbiosis vis-à-vis those environments which pregnant women and mothers of newborns frequent daily but over which they do not have full control, namely their places of work. Notwithstanding this, the actions and concessions required by these laws are not always implemented spontaneously by employers whenever the need arises. This requires women in employment to be aware of their rights so that they can seek and obtain the necessary protection and promotion of their health and that of their unborn and newborn children from their employers at their places of work.

The Office sought to address this need by teaming up with three entities, namely the Occupational Health and Safety Authority, the Department of Industrial and Employment Relations and Parent Craft Services within Mater Dei Hospital, to produce and disseminate a leaflet with information about the rights of pregnant women at the place of work. The leaflet was published in both English and Maltese in order to reach out to all women.



Advocacy

Children's autonomy over their health

Childhood is not a state of immaturity but a process of maturation. This means that children acquire the ability to make sound judgments and decisions even

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on important matters related to their well-being as they progress through rather than from childhood. A practical corollary of this is that this ability should be assessed not generically on the basis of the child's age but individually according to how mature the child actually is.

This rule or procedure finds very fitting application in the sphere of health since the body is the most individual thing a person possesses. Hence, the right to decide autonomously whether to receive or undergo medical counselling, investigations or treatment should be exercised without restraint as long as it is sustained by the necessary nous in the individual.

The Office has been advocating for the law to reflect the possibility for the child to exercise discretion over matters related to his/her health if s/he is found, according to a scientific assessment, to be mentally prepared to do so. Its latest call to this effect was reiterated in a special edition of the Mediterranean Journal of Human Rights, published by the Faculty of Laws and the Foundation for International Studies of the University of Malta, which edition featured a number of papers and interventions delivered at the seminars and conferences organised by the Bioethics Committee.

Children in hospital

There are not many places where the needs of children are met as conscientiously and attentively by the responsible professionals as they are in hospital. This seemingly perfect scenario hides one important shortcoming. The needs of children in hospital are more often than not defined by the people and the system that take care of them, and rarely by the children themselves. Hence, a child receiving treatment in hospital is very often little more than that, a passive recipient of medical treatment whose personal experience of hospital is barely noticed let alone taken into account.

The Commissioner spoke in these terms when opening a seminar which was not about the voice of children in hospital but was the very voice of hospitalised children inasmuch as the panel of speakers was made up entirely of past and present child inpatients with the caring professionals sitting among the audience. While thanking and praising

the Paediatric Practice Development Team within Mater Dei Hospital for its initiative in organising the seminar, the Commissioner stressed the need for the voice of children in hospital to be encouraged and heard not merely through one-off events but through serious efforts to make listening to children in hospital a normal and integral part of the system of paediatric hospital care.

Tattoos

It has already been said that the body is the most individual thing a person possesses. Hence, by deduction one can conclude that any pictorial or calligraphic representation that an individual chooses to have imprinted on a part of his body, that is a tattoo, is not simply an ornament but an expression of what the individual believes himself to be, that is his self-identity. Considering that tattoos are permanent and mostly indelible it is very important that one knows exactly what he/she is doing as you might have to carry this throughout your life.

This was the argument brought forth by the Commissioner for Children in an interview on the subject when defending the legal prohibition according to the Control of Tattooing Act (chapter 270) against the tattooing of minors. Ms D'Amato argued that childhood and adolescence are phases of life during which the individual is discovering his unique identity and personality. Therefore, the individual is really prepared to choose whether or not to have a tattoo and to choose what kind of tattoo to have only when this process of self-discovery is in its mature phase, which is generally the case by the time the individual turns eighteen. The Commissioner said that the age-based restriction from tattooing should be presented to minors not as a prohibition but as an opportunity for them to learn who they really are and want to be.

Recommendations

Road safety

Making roads safe, especially for children, is a constant and complex challenge. The authority responsible for road safety, Transport Malta, decided to address this challenge through the first Road Safety Strategy, which was issued for public consultation.

The Office analysed the draft strategy to ensure that the particular needs of children vis-à-vis road safety were adequately catered for. In its feedback to Transport Malta, the Office showed its appreciation for the fact that a section of the strategy was dedicated entirely to the road safety needs of children, but recommended a more horizontal approach whereby each and every aspect of road safety is analysed and addressed from the perspective of children and their particular needs in terms of road safety. Such an approach favours a more holistic and effective protection of children as road users inasmuch as it ensures that there are specific measures for children across the board. The Office in fact lamented the lack of specific measures related to enforcement of road safety laws and regulations, and suggested a number of measures in this regard.

In its comments, the Office applauded the emphasis laid in the strategy on empowering children through education to use roads smartly, especially as pedestrians whereby it is essential for them to know from a young age how and when to cross a road safely. The Office described its efforts in this

direction, notably its publication and dissemination of the educational resource on road safety entitled, *Fit-Triq ma' Kinu* and offered to collaborate with the authorities to go much further down the road of education.

Therapeutic Structures for Children with Mental Health Difficulties

The diagnosis and treatment of children with mental health difficulties must be practised not only as a distinct health discipline but also within distinct health structures. Hence, there must be a distinct and organised system of mental health care that runs in parallel to and is not enmeshed with the system of mental health care for adults.

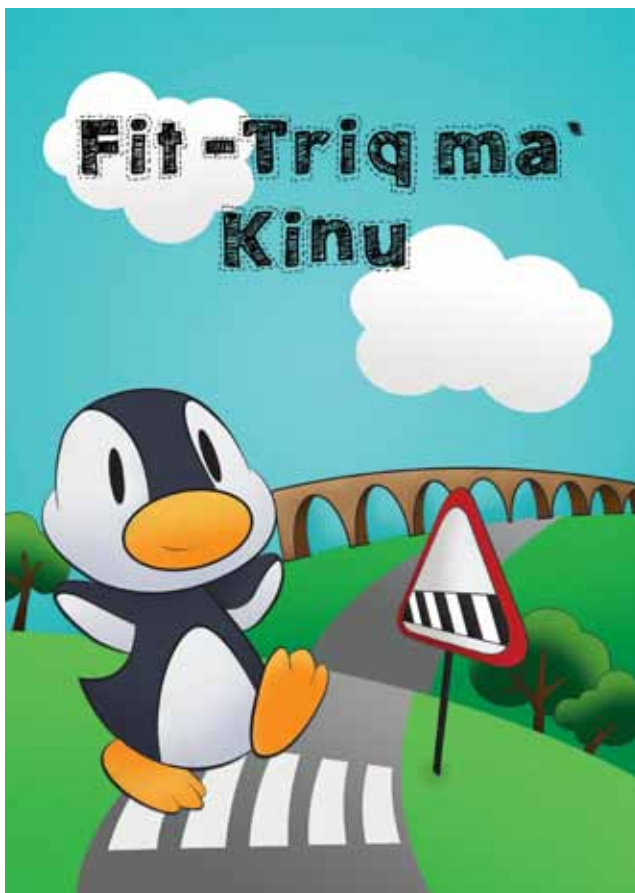
This was the starting point of a presentation which the Commissioner for Children delivered to the Parliamentary Committee for Health, which met to take stock of the situation and the needs in this domain with the help of a number of experts in the field. From this point, the Commissioner went on to discuss the strengths, weaknesses and needs of the system according to six other criteria, such as the ability of the system to be community-oriented, coordinated within itself and with other systems, and accessible to all children who may need it.

Among the recommendations made by the Commissioner were the need for child mental health outpatient services to be decentralised from their current concentration in the Child Guidance Clinic into the various community health centres; the need to provide an outreach service for children with acute mental health difficulties by extending the remit and competency of the Crisis Intervention Team; and the need to dedicate the Young People's Unit to offer an in patient service to children going through an acute phase of mental health and that this should be for the shortest time possible.

The Commissioner concluded her presentation by calling for a serious and holistic programme of investment in the system of mental health care for children and adolescents.

Children in hospital

Embracing the perspective of children can be seen as a three-stage process, which starts with encouraging



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children to speak their minds, listening to what they say, and, finally and crucially, taking their thoughts and feelings into account in revising the service. The latter stage may require changes at a policy level which the people operating the service to children may not be able to bring about.

It was for this reason that the Commissioner followed up her participation in the aforementioned seminar by children in hospital with a letter addressed to the Parliamentary Secretary for Health, Hon. Chris Fearne, in which she outlined the main concerns voiced by the children who spoke during the seminar. These concerns, which the Commissioner offered as food for thought for an improvement of the hospital paediatric service, can be summarised in the following needs felt by children:

- a key worker to accompany them throughout their care process;
- greater involvement in the formulation of their care plan;
- emotional support for their parents when they, the children, have to undergo a major surgical operation;
- wards with adolescent-friendly décor;
- a wider selection of food;
- a child and adolescent-friendly environment within the Intensive Treatment Unit;
- scheduling of hospital appointments outside school hours.

Healthy Eating

The adoption of healthy eating habits is an important part of the optimal development of children. This means that such good habits need to be promoted through plenty of education but must also be protected from aggressive marketing of unhealthy food products which is often targeted specifically at children.

The Office persisted in its bid to address the problem of school children across Malta being deliberately exposed to such marketing from ambulant vendors of junk foods who position themselves strategically close to school exits in the path of children leaving school to go back home. Following the preparatory work carried out in 2013 in tandem with the Department for Health Promotion and Disease Prevention and the Directorate for Educational

Services, a close collaboration on this issue was also forged with the Directorate for Commerce and Transport Malta.

The collaborating entities agreed on a holistic perspective on the issue, which is seen as encompassing the key question of whether the kind of nutrition that is offered and promoted within schools, notably in school canteens and tuck shops, is in keeping with the vocation of schools to teach healthy eating to children. If and when this becomes a reality in all schools, one should then turn one's attention to addressing sources of unhealthy food outside the perimeter of school premises.

Breastfeeding

Breastfeeding is as rich in health benefits for the baby as it is fraught with challenges for the mother. One of these challenges lies in the lack of breastfeeding-friendly environments in public spaces where mothers who are out and about with their infants can breastfeed and feel comfortable doing so.

In a bid to address this challenge, the Commissioner for Children in a letter urged all local councils to set up designated areas within their localities which offered women the necessary privacy and comfort to breastfeed their babies. At the same time, she also encouraged the Local Councils that this space can be used by parents to see to the needs of their children when for example they are out shopping.

A number of local councils showed their interest in this proposal and the Department for Health Promotion and Disease Prevention offered its technical support for this to happen according to specific standards.

Participation in Children's Rights-Related Networks and Fora

Female Genital Mutilation

One benefit of the child's rights perspective is that it erases at least in principle cultural discriminations between male and female children. This is the case also with extreme and violent forms of culture-based discriminations between the two juvenile sexes, notably Female Genital Mutilation.

In recent years, the Office has been engaged with the

subject of FGM quite intensely, especially since the phenomenon of irregular migration from Africa has brought with it the spectre of this abhorrent practice.

In 2014, the Office liaised with the relevant authorities to ascertain if there had been any cases of girls who had undergone or were at risk of undergoing FGM. This research was undertaken also in the context of the Office's participation in a study commissioned by the European Institute for Gender Equality apropos FGM in the EU. The Office learnt that up until February 2012, the cut-off date established for the periodic study, no cases of actual or potential FGM had manifested themselves to the authorities in Malta.

The Office also reported on the legal developments that had been registered the year before in connection with the fight against FGM, namely the provisions specific to FGM that were added to the Criminal Code in order to close all possible loopholes to this practice in Malta.

Unborn Child

The right to life of the unborn child is guaranteed through various laws including the Commissioner for Children Act, Article 9h of which mandates the Commissioner "to promote special care and protection, including adequate legal protection, for children both before and after birth".

Based on this mandate, the Office expressed its reservations with regards to a proposal made by the US Government to include

a reference to 'sexual and reproductive services' to a UN resolution on the Rights of the Child, which reference, argued the Office, could be interpreted as sanctioning abortion.

Considerations and Concerns

Health Behaviours of Children

While the fundamental importance of health to the overall well-being of children is easily understood, it bears repeating that the right to health is not exercised passively or occasionally when children require a health care service or technology of some sort. Children shape their health through their choices and behaviours all the time and in their most routine activities. The quality and the quantity of food



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children eat, and the quality and the quantity of sleep children get are good examples of simple things children do daily which impact very significantly on their health.

The key to promoting and the protecting optimal health in children is to impress on them what they should do and what they should not do to be as healthy as possible, and to make sure that they all have the right opportunities for engaging in healthful behaviours.

These principles become all the more important when they are seen in the light of what is happening out there in the world and lives of children where a significant number of them, especially in their teenage and preteen years, are making a habit of unhealthy behaviours like smoking, drinking and eating junk food, and are showing early possible signs of ill-health, such as by being overweight or obese.

Fortunately, the relevant authorities have not been oblivious to this situation but have been proactively trying to counter these negative trends and the negative cultures that feed them through a variety of strategies. These efforts seem to be bearing fruit judging by the results of the latest Health Behaviour in School Children (HBSC) survey published in 2010, which show very encouraging decreases in the rates of smoking and drinking and in the rate of growth of overweight and obesity trends among children aged 11, 13 and 15 years.

These improvements should galvanize all stakeholders to intensify their efforts to promote healthful behaviours in children and to address those factors, such as the cost and availability of healthy foods and beverages, which may be hindering children hailing from economically disadvantaged backgrounds from engaging in such behaviours even if and when they want to.

Children's Right to Education

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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...

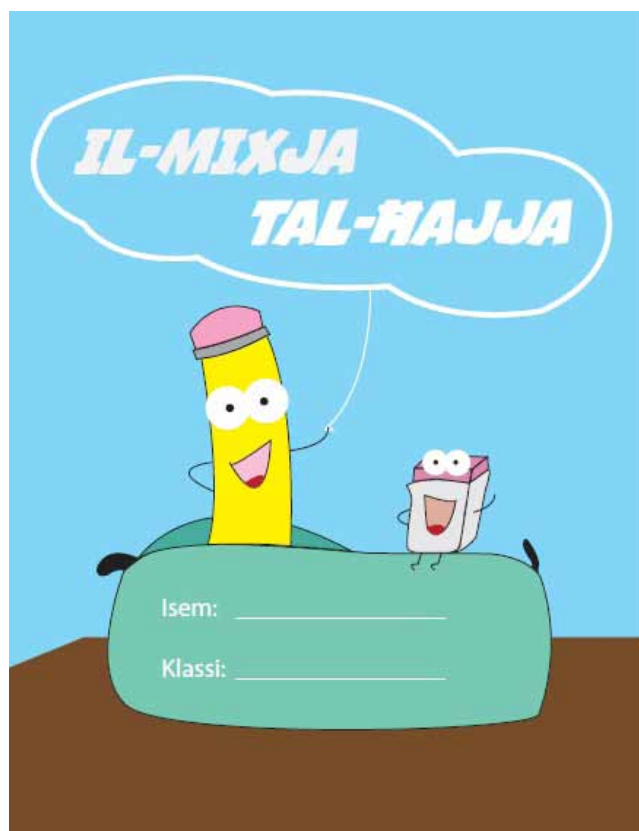
(UN CRC, Article 28)

Education and Consultation

From Childhood to Adolescence

Childhood is not a state but a process. The stresses and challenges of being a child are related not so much to the different experiences that children go through as to the rapid, continuous and drastic changes, such as the changes of puberty, which generate these experiences and which can leave children feeling vulnerable and insecure. This implies the need to prepare children for these changes by giving them the mental tools to be aware of and understand them in order to pre-empt the possibly traumatic effects of their sudden appearance.

The Office supported the publication of two printed resources which trace the metamorphosis of childhood through its various developmental stages and milestones. The first resource, called *Il-Mixja tal-Hajja* (The Walk of Life), is targeted at primary school children in Year 4. The second resource, entitled



Il-Vjaġġ mit-Tfulija saż-Żgħożija (The Journey from Childhood to Adolescence), is aimed at the slightly older age-group of children in their final year of Primary School, that is in Year 6. Both resources were designed to be used as didactic tools for Personal, Social and Career Development (PSCD) education with the aforesaid age-groups.

Behind the production of these resources was the work of the Education Officers for PSCD, Mr Dunstan Hamilton and Mr Stephen Camilleri, both of whom penned the text in consultation with Dr Roderick Bugeja, an expert on sexual health. The resources were richly and colourfully illustrated by Mr Daniel Caruana Lupi and Ms Marisa Cassar, two adolescents studying at the Institute of Art and Design within the Malta College of Arts, Science and Technology, and experiencing or having recently experienced the very same changes that are narrated in these books. The latter will be launched in early 2015 for use in all primary schools.

Children's Right to Education

Learning in groups

The fact that children are taught not individually but in classes is not a logistical necessity but an educational need since children learn better with others than alone. This is especially true of very young children, who are able to focus their attention best in a collective learning space under a teacher's constant and unmediated guidance.

Desirous of developing a needed educational resource that was tailored to the learning needs of very young children, the Office undertook to commission a Big Book in Maltese for use in and by kindergarten classes. To this end, the Office collaborated with the Education Officer for Early Years, Ms Tania Mangion, and with the Institute for Art and Design within MCAST, towards the design of the verbal and visual content of a Big Book. This resource is expected to be finalised, published and disseminated in 2015.

Educational achievement

The educational value of education lies not only in what children achieve, that is mastery of a number of educational disciplines, but also in how they achieve this, that is through sheer application and commitment.

The Commissioner spoke to children in these terms on many occasions when presenting them with prizes they were awarded by their schools for the high level of competence they had acquired in select areas of the educational curriculum.

Advocacy

Compulsory school age

A legally compulsory age of schooling is the most basic condition for the child to enjoy his or her right to education because it enables children to choose whether to stop or further their education only when they are mature enough to make such a pivotal decision, and because it enables those children who decide to discontinue their education to attain a level of education that allows them to function in society. These two points were at the heart of the agreement expressed by the Office in a local daily with the idea floated by the Minister for Education and

Employment to raise the ceiling of the compulsory school age from 16 to 18 years of age. The Office argued that the decision about continuing with or stopping one's education was so critical to the life prospects of a child that it should be taken when the child is of mature age. Moreover, the prospects for employment and further training of children who stop their schooling when they are sixteen are not particularly bright since a secondary level of education falls short of the demands of today's post-industrial knowledge-based society.

In its comments, the Office warned that raising the compulsory school age, though necessary, was not sufficient to guarantee children their right to education in that it would keep children longer but not necessarily make them more successful in schooling. The Office thus called for a renewed effort to address the structural deficits within and between the educational and social systems in order to enable more children to make smooth progress in their educational pathway. Hence, raising the compulsory school age, concluded the Office, would yield benefits only if it is part of a broader and coordinated strategy.

School Transport

Issues relating to the mechanics and dynamics of education, are so complex that they often overshadow other issues that have to do with the logistics of education, that is with the availability and accessibility of well-resourced schools.

One of the thorniest logistical issues in education concerns how to get children to and from school safely and in time. With many parents increasingly unable to accompany their children to and from school, a system of school transport is in place to meet this logistical need. Necessary though the system is, having thousands of children shuttled to and from schools on large vehicles almost every day at roughly the same times in Malta's already busy road network does not favour safe and timely school transport.

Mindful of these constraints, the Commissioner for Children, in an interview on the subject, underlined the need to make school transport safer and timelier. The Commissioner said that any measures adopted should not only be conducive to safe and

timely school transport but should avoid impinging negatively on other aspects of children's well-being. In this respect, she cited the case of children who were forced to wake up very early in the morning to catch their school bus or van, saying that this was to the detriment of their health and their educational performance at school. The best interest of children should always be paramount in designing the system of school transport, stressed the Commissioner.

Ethics in Education

There is a tendency to regard ethics as something extrinsic to education and as a redline which teachers and students should not trespass. This is a negative view of the role of ethics in education in that it implies that ethics is an issue in relation to education only when the ethical rules implicitly or explicitly governing an educational setting are broken.

In her address to the participants in a national conference organised by the Malta Union of Teachers with the theme 'Legal Issues and Ethical Implications for Educators Working with Minors', the Commissioner for Children sought to address this tendency by exploring how ethics and education were intrinsically related through the nexus of children's rights. The Commissioner argued that the rapport between educators and students was pivotal to the educational process and that mutual trust and discipline were vital for this rapport to prosper. In her speech, Mrs D'Amato also invited her audience to consider the extraordinary potential of the internet to enhance or undermine the ethical and educational value of the teacher-student relationship according to how this instrument was used.

Recommendations

Educating through school rules

A school is not simply a place where teaching and learning happen but is a complex of written and unwritten rules of conduct and discipline which are not only educational in themselves but also favour the school's pedagogical activity.

This thought was at the heart of a letter which the Commissioner for Children wrote to the Minister for Education and Employment, the Hon. Evarist Bartolo, to air the disagreement of her office with

the decision taken by the educational authorities running the Alternative Learning Programme (ALP) to allow students to smoke in a designated outdoor area within the school premises during school hours.

In her letter, the Commissioner stressed that this practice was illegal, in view of the Tobacco Act which prohibits smoking "in any classroom, corridor, yard or appurtenance of a school"; immoral in condoning the offence committed by those who would have illegally sold cigarettes or any other tobacco products to the children; and counter-productive because it undermined the joint efforts of the Education and Health Authorities to promote healthy lifestyles among school children. The Commissioner also showed her concern as to how credible can the counter-measure adopted by the school authorities to provide anti-smoking education to the very same children whom they were allowing to smoke at school be. She argued that when exposed to such mixed and conflicting messages children who smoked would listen exclusively to the message that resonated with their habit.

While describing the ALP as a very praiseworthy and much needed attempt to prevent early school leaving, the Commissioner maintained that the measure undermined the educational objectives of the programme. Mrs D'Amato called on the Minister to abolish this concession that is being given to children.



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In a written response to the Commissioner's letter, the Minister thanked the Commissioner for her concerns about the adolescents following the ALP, and reassured her that their best interests were being promoted through the programme.

Safeguarding the privacy of school children

School is a place where children, for the best part of the day, grow and develop physically and mentally. This role that schools have requires them to be privy to facts about their student's health, education, social condition and a host of other things that make up the individual

identity of each student. Schools do this by storing information about each child in databases. While such storage gives schools the means to keep track of the situation and progress of each child under their responsibility, it also makes the privacy of the personal facts so stored much more vulnerable to violation by third parties. This gives rise to the need for adequate legal and technical safeguards against the unwarranted disclosure of the personal data of students that is held by schools.

The principle of the privacy of anything that pertains to a child's person, which is guaranteed by Article 16 of the Convention¹, was upheld by the Office through the concerns it expressed to the Information and Data Protection Commissioner, Mr Saviour Cachia, about the legal notice, 'Data Concerning Persons in Educational Establishments Regulations', published by the Ministry for Education and Employment.

The Office was critical of the legal notice which it felt to be too open and devoid of safeguards against the arbitrary and abusive transfer of student data.

In its written comments to the Information and Data Protection Commissioner, the Office argued that power to request the transfer of student data should be vested not in the Minister, as prescribed in the legal notice, but in an organisational entity whose use of such power would be subject to clear guidelines and regulations. The Office endorsed the attempt made through the legislation to maximise the preparation of school children for further training and employment but argued that this aim should not be pursued at the expense of safeguards that protected the privacy of the personal data of students, since there could never be any trade-off between fundamental rights of children.



¹"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. The child has the right to the protection of the law against such interference or attacks."

The Offices' concerns were presented by the Commissioner for Children in a meeting she had with the Information and Data Protection Commissioner, who had set up a working group to vet the legal notice against concerns related to data privacy and protection. This vetting process culminated in the reformulation of the legislative text. The Office, after analysing the revised law, concluded and communicated with the Office of the Information and Data Protection Commissioner that its concerns on the original legal notice were addressed in the reformulated text. The Office suggested that the age of consent for the processing of personal data, which in the draft law was set at 16 years, be lowered to 14 years, on the grounds that this was the age threshold for legally shouldering some very weighty responsibilities, notably the responsibility for a crime.

Considerations and Concerns

A plurality of educational pathways

It is the aim of all states that aspire to social and economic development to enable every one of its citizens to realise his/her potential. This mindset has allowed Malta to enact legislation requiring all children to receive up to a secondary level of education and mandating the provision of free quality-controlled education on a universal basis.

Positive though the ideal of universal education is, it tends to favour the formation of a monolithic idea of education whereby all children should go down the same educational pathway and receive the same education. This idea is inherently flawed since it ignores the fact that all children are born with different inclinations and abilities. This means that the key to a child's education lies in identifying the child's unique potential and charting the child's educational pathway according to the child's inner tendencies.

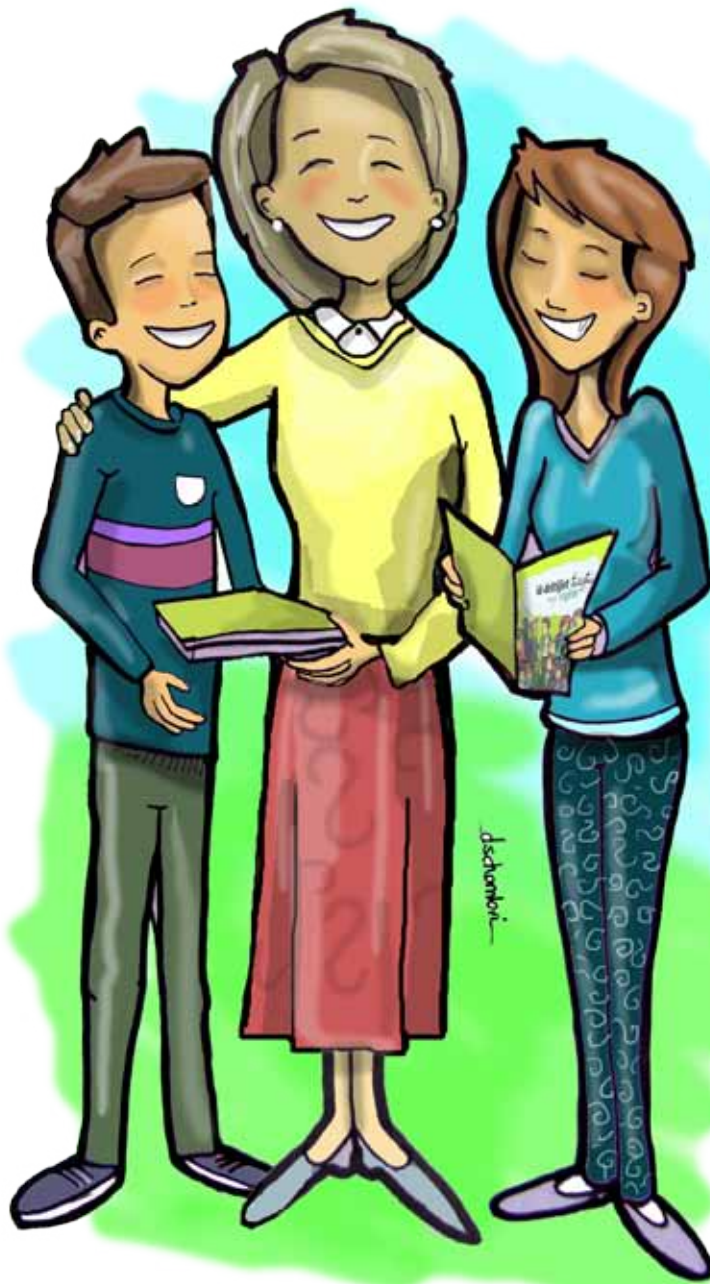
While it is beyond dispute that the basic skills of literacy and numeracy should be mastered by all children irrespective of their individual educational

pathway, one feels that Malta's educational system is still deeply rooted in the monolithic idea of education and that the educational experience that is offered to children is still not sufficiently diversified to meet the individual needs and inclinations of all students. The time children are made to spend in generic schooling is somewhat long and the range of options available might be limited. These factors may be leading children to lose interest in and abandon their education prematurely.

Important steps forward have been made in the recent past towards making our educational offering more plural and diverse. Some vocational subjects have been introduced in secondary schools and a National Sports School that trains children who are gifted for sports in a particular sport discipline while providing them an academic education has been set up. However, the road towards a fundamentally heterogynous education system that is able to meet the individual educational needs of all students is a long one.

One fundamental step that we need to make is to adjust our mindset to stop thinking of vocational education as a shelter for weak or failed students. In this respect, it is important to take stock of the fact that vocational education is not limited to the teaching of traditional skills and trades, some of which have died or are in the process of dying, but includes a host of disciplines in the arts, sports and applied sciences that are very relevant to the social, cultural and economic needs of modern society. Hence, the provision and accreditation of courses at secondary level in as wide a range as possible of vocational subjects needs to be further promoted. At the same time as the education system should be able to impart a wide range of skills, children need to receive professional help from an early age to discover their inherent abilities and inclinations. Children who resign themselves to the idea that they are not good for anything represent the worst failure of our education system.

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Children's Right to an Upbringing

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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)

Applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner.

(UN CRC, Article 10)

States Parties shall... protect and assist such a child (unaccompanied minors) and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family.

(UN CRC, Article 22)

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)

Research

Fostering

There is widespread agreement that the basic needs of the child for comfort, nutrition, guidance and love are best met within a system of stable, personal, harmonious and exclusive relationships which the child enjoys with at least one adult throughout the course of his or her childhood. In many cases this is provided by at least one biological or adoptive parent. However, there are times, when for various reasons the child's parent/s is/are unable to sustain a suitable family framework for the child's optimal development. In these cases, it might be best if the child is placed within an alternative family setup through fostering, where the child's continued development is guaranteed, until such time as the child's biological family is able to function.



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The advantageousness of foster care in terms of the optimal development of the child over non-family-based forms of alternative care, notably residential care, was borne out by the results of the study commissioned by the Office into the situation of children in out-of-home care in Malta published in 2012. Having obtained a solid scientific basis for its advocacy for foster care as the care mode of choice for children who need it, the Office was keen on ascertaining which factors or variables are conducive to a successful foster care placement that favours the healthy and harmonious development of the child, and, conversely, which factors lead to a breakdown of a foster care placement. To this end, the Office commissioned a scientific study that is designed to provide clear answers to these questions. This qualitative study, which is being conducted by Ms Marian Muscat Azzopardi and Dr Daniela Debono, two respected experts in the field of children's rights and out-of-home care, is expected to be concluded by the end of 2015.

Recommendations

Fostering

By its very nature as described above, child fostering necessitates a solid legal framework which establishes clear parameters for determining by whom and until when children should be fostered. In Malta, such a framework is in place in the shape of the Foster Care Act (Chapter 491 of Laws of Malta).

An internal review of the act was conducted within the Ministry for the Family and Social Solidarity with the aim of expanding the scope of fostering to include the possibility for the child to be permanently fostered and even adopted by his or her permanent foster carers. The Office was asked to submit its feedback on the act under review. Amongst its comments and proposals was a suggestion by the Office to articulate in the act the principle that any decisions concerning the choice of foster care type and placement should be taken in the best interests of the child. The Office also commented that the access of foster carers to information about the fostered child should be broad but subject to safeguards that protect the child's right to privacy.

Participation in Children's Rights-Related Networks and Fora

Child Marriage

It is a simple corollary of the aforesaid fact that children have a fundamental need to receive material and emotional sustenance within a family that they should not try to give this sort of support to others by forming a family of their own. The responsibility of marriage and of heading a family should be shouldered only by those who have reached the threshold of maturity, which our laws set at eighteen years of age.

This was the core position taken by the Office in its contribution to the formulation of a speaking note which the Government of Malta was set to deliver during an informal panel discussion on the subject of Child, Early and Forced Marriage that was to take place within the structures of the United Nations. The Office further strengthened its stand against early marriage by children by arguing that this lessened the opportunities for children to advance their education beyond compulsory schooling to an educational level that would give them the best possible prospects for inclusion in today's knowledge-based society. In view of all of the above factors, the Office hinted that the minimum age for marriage, which the Marriage Act sets at sixteen years of age, should be raised to eighteen years of age.

The Office commented positively on the fact that social pressures in favour of early marriage, especially in cases of unplanned pregnancies, were much weaker in today's society. Today alternative routes to early marriage were being pursued to address cases of pregnant girl children, notably the holistic state-provided support service, known as *Servizz Għożża*, which follows up unmarried pregnant girls even after they would have given birth. In its comments, the Office warned that termination of pregnancy should never be considered in the case of early and unwanted pregnancies since it violated the right to life to the unborn child.

Family Reunification

Another reason why a child may be unable to live with his or her family is family dispersion. This is often caused by the migration of some members of a family

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far away from the family household or even the displacement of all members of a family to different and far flung places. Such situations are addressed by international law (including by the above-quoted articles of the Convention), which confers on the members of dispersed families the right to family reunification.

As a member of the European Union and therefore party to the Dublin Regulation, Malta is bound to do everything in its power to facilitate the reunification of families some of whose members are living in its territory. The effort towards family reunification requires very close and structured coordination amongst a variety of different governmental and semi-, non- and inter-governmental entities. Defining the precise mechanics of such coordination was the purpose of PRUMA (Promoting Family Reunification and transfer of Unaccompanied Minor Asylum Seekers), a project led by the International Organisation for Migration whose main deliverable was the formulation of Standard Operational Procedures to govern such coordination. Although the Office of the Commissioner for Children does not play an operational role in the effort to enable unaccompanied migrant children living in Malta to reunite with their families living abroad, it nevertheless accepted to participate in the debate amongst the various stakeholders. The aim of the Office was to ensure that children's rights were being respected throughout the process and that the principle of the best interest of the child was supreme.

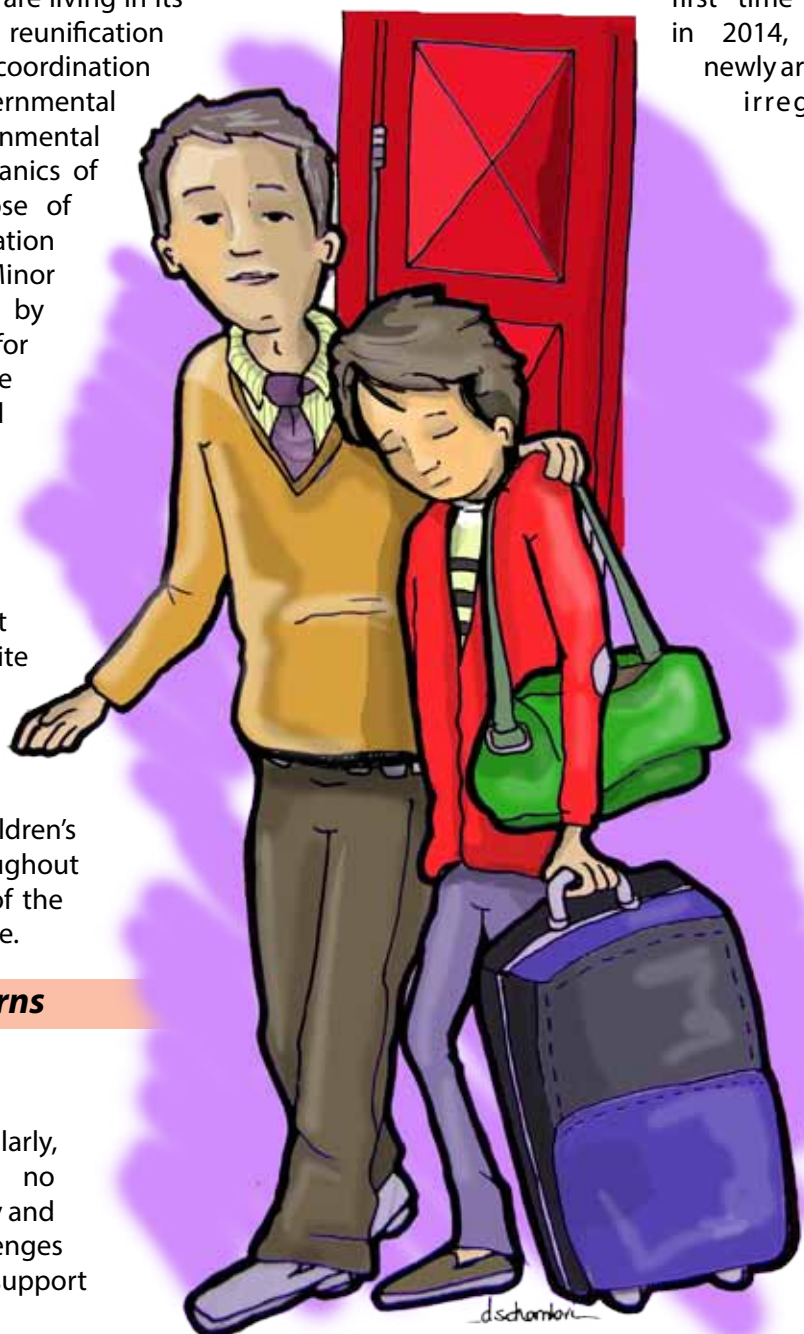
Considerations and Concerns

Unaccompanied Minors

Children who migrate to Malta irregularly, unaccompanied and often with no documentation as to their age, family and country of origin face very stiff challenges in terms of receiving the care and support they need.

The lack of documentation of their personal identity can give rise to a laborious process to ascertain that they are minors. Until this process is completed, which can take up to a few weeks, unaccompanied minors can be deprived of the special assistance that is accorded to child irregular migrants on account of their age, notably the fact that they can bypass the detention system and immediately enter the care system.

The Office welcomes the fact registered, for the first time ever in 2014, that newly arrived irregular



Children's Right to Education

migrants who were not necessarily *prima facie* minors, but claimed to be so were upon their arrival, placed in an open centre for unaccompanied minors. This reversed a long-standing policy that had them all confined to detention until such time as their age claim could be verified. It is very positive that the authorities have finally realised that the psychological harm that is inflicted on a minor even by a short period of detention far outweighs the possible repercussions of an undetained adult migrant falsely claiming to be a minor on national security.

Notwithstanding this important step forward that has been made in the care of unaccompanied minors, the Office is deeply concerned that a significant number of these minors, who in accordance with national law are all placed under a care order, are going missing. One understands that this phenomenon mirrors

the pattern followed by many adult migrants who after landing in Malta move northward to other countries in Europe, and that it is but a continuation of their migratory journey in search of a better life. However, one expects the relevant authorities, as the legal guardians of unaccompanied minors who go missing, to make the necessary efforts to trace their whereabouts, ensure they are receiving the necessary care and protection and transfer guardianship to the authorities of their new host country. At the same time, there needs to be a stronger and more structured effort to enhance the social and economic integration of unaccompanied minors in a way that meets their needs and aspirations, to facilitate their reunification with their families in other European countries, and to prepare and facilitate their safe and orderly transition to other host countries where they may aspire to live.



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

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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)

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.
(UN CRC, Article 35)

Recommendations

Preventing ill-treatment of confined children

Children who require or are required to live and receive care in a secure place which they are not free to leave at will can easily be forgotten even by those who are committed to the cause of children's rights. Hence, special legal and monitoring instruments are needed to constantly and strongly remind Governments and civil societies about the particular needs and vulnerabilities of these children.

It is no wonder then that the United Nations and the majority of its affiliated countries felt the need to supplement the UN CRC with an Optional Protocol against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. This protocol aims to protect children who are deprived of their liberty from suffering ill-treatment of any kind. This legal instrument is equipped with

a monitoring mechanism in the form of a sub-committee whose remit is to prevent children living in secure environments in countries that are party to the protocol from being victims of any form of ill-treatment.

The sub-committee conducts its work inter alia by liaising with national rights bodies to gain an independent insight into the situations prevailing in a given country's secure environments where children may be living. This cooperation came to the fore in a meeting which the sub-committee held with four such bodies in Malta, one of them being this Office. During this meeting, the Commissioner explained the concerns of her Office in relation to a number of groups of children in vulnerable situations, namely incarcerated children, migrant children in administrative detention, children receiving forced care in a mental health institution, as well as children in residential out-of-home care, who though not deprived of their liberty face a risk of becoming institutionalised.

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

Gender identity

The essence of an individual's identity does not lie in the formal process whereby the individual's personal details, such as name, sex and nationality, are publicly registered. Important as this procedure is, the core of a person's identity is found in a subtle and subjective cognisance of oneself which though strongly influenced by the identity that others attach to the person from birth is also capable of shaping itself independently from and contrarily to the person's public identity. A very close match between the inner and outer identities is thus vital for a person to feel and be happy and well-adjusted.

The sex that a person identifies with, that is his or her gender, is not only a very integral part of personal identity but also a very critical one at that since it does not always correspond to the person's biological characteristics. A mismatch between sex and gender is widely accepted as not arising from any sort of pathological

condition. This means that a person should not only be able to correct a mismatch between his or her gender and biological sex in favour of his or her gender, through sex reassignment surgery, but should also be in a position to rectify a mismatch between his or her gender and registered gender, through a change in his or her official personal details.

It was within this conceptual framework that the Office analysed and responded jointly with the Maltese Paediatric Association to the Gender Identity Bill that had been presented by Government in Parliament. In their joint comments, the two entities took issue with the fact that the bill gave the power of decision to change the registered gender of a child to the child's parent/s or legal guardian/s. The two entities were also critical of the fact that the Bill attached weak and unclear conditions to the right of the child concerned to express his or her views on the matter, and to the duty of those making the decision for the child to consider the best interest of the child.



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

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The two entities welcomed the aim of the Bill to facilitate changes of registered gender, but argued that while the presentation of a notarial deed as the only requirement for a change of registered gender was a good thing for persons who were mature enough to know that their gender did not match their sex, it was not necessarily in the best interest of children, whose gender identity and awareness thereof may not be fully or sufficiently developed. Another point of contention made by the two entities in their joint comments concerned the possibility opened up by the Bill to delay the registration of the gender of a child with dual sexual characteristics up to when the child is fourteen. The two organisations warned that leaving a child genderless for so long could have a negative impact on the child.

Child Trafficking

Children are persons with particular needs, thoughts and feelings that must be allowed to be met and expressed. When this logic is turned on its head, children are seen as objects that can be useful towards the satisfaction of an interest or desire of a person or group of people. On a mass scale, this thwarted logic leads to the merchandisation of children, their illicit capture and trafficking to places where they are subjected to sexual abuse, forced labour and many other possible evil ends.

Child trafficking festers in situations that make children vulnerable and deprives them of their rights. This implies that child trafficking can be prevented through actions that target children who are in such situations. 'Catch and Sustain' is a pan-European project which seeks to create an exchange platform and methodology that can help prevent child trafficking. In Malta, the project, which is being led by the Maltese voluntary development organisation KOPIN, is targeting unaccompanied minors, a group of children who are particularly exposed to the threat of child trafficking.

The concrete aim of this project is the development of a toolkit, which can guide all stakeholders involved in dealing with unaccompanied minors who are potential or actual victims of child trafficking. As partners with KOPIN on this EU project, the Office contributed regularly during discussions as well as financially towards the realisation of the toolkit that is expected to be launched early in 2015.

The Continuum of Care for Juvenile Offenders

In the last quarter of 2014, the Commissioner for Children visited the new facility for male juvenile offenders (YOURS) which is housed outside the Corradino Correctional Facilities.



While on her visit, the Commissioner voiced her concern about the continuum of care of juveniles in detention. She emphasised the fact that this care has to encompass academic, emotional and behavioural support. She also pointed out that children in detention have the same rights as other children, for example to compulsory education

and hence they must be given the same opportunities to meet the achievement standards as other children. In addition, it is of utmost importance to provide children, who have been in conflict with the law, with education and support to make sure that they are not engulfed in a vicious circle of crime.

Hence with the above in mind, the Commissioner for Children asked for a series of follow up meetings with representatives of the main stakeholders, namely the Department of Student Services (DSS), Appoġġ and YOURS, in order to collaborate further towards the establishment of a protocol with clear standard operating procedures with regards to support from the DSS and Appoġġ, when a child has to be detained at YOURS, even if for a short period. So far, two meetings have been held between the Commissioner and representatives from the above mentioned stakeholders, while more are being projected for 2015.

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

Participation in Children's Rights-Related Networks and Fora

Corporal Punishment

Correcting children's wrong behaviour is an essential part of their maturing process. Correctional measures must ensure not only that children understand what is wrong with their behaviour and why it is wrong, but also that even when faced with possible punitive action they are given the opportunity to rectify their behaviour.

Punishment that inflicts bodily pain on children, known as corporal punishment, fails to meet any of the above criteria. While it can be effective in bringing a child to stop his or her errant behaviour, it is not educational since it does not enable a child to understand and to willingly correct the behaviour for which they are punished. Corporal punishment is wrong also because it is often an expression of anger and frustration by the parent or carer towards the child, which means that it poses a risk of the punishing adult losing control and not only physically harming the child but also instilling in the child a sense of fear and resentment.

For all these reasons, corporal punishment should never be sanctioned by law, policy or popular culture as a legitimate form of disciplinary action against misbehaving children. In this light, it was with satisfaction that the Office reported to the Council of Europe for the purpose of the compilation of the latter's Annual Report that the Maltese Parliament had recently unanimously approved a bill that set any kind of corporal punishment of children outside the bounds of moderation, hence outside the bounds of legality.

Gender and Sexual Identity

The needs of those whose gender and/or sexual identity is different from that which is publicly assigned to them, who are referred to as LGBTI, are often poorly understood if not ignored outright. This requires that the voice of LGBTI people, including LGBTI children, is given the opportunity to make itself heard in as many public fora as possible.

The Office took this stance when endorsing the participation of two non-governmental organisations working in the field of LGBTI rights in a meeting organised by the United Nations to mark the 25th anniversary of the adoption of the Convention on the Rights of the Child.

Considerations and Concerns

Corporal Punishment

This has been a good year as far as the effort to abolish the practice of corporal punishment of children in Malta is concerned. While a Positive Parenting approach has been advocated by various stakeholders for some time, the Government has now published the first policy on positive parenting. This will help us to promote more firmly a positive approach against a negative practice inasmuch as it offers parents and carers of young children a healthy alternative to corporal punishment for the purpose of educating and disciplining children. One hopes that this policy will quickly be followed by a strategy with strong actions and clear timeframes that can yield concrete results in terms of shifting the parenting culture in Malta away from corporal punishment towards positive parenting.

On the legislative front, the aforementioned changes to the criminal code which render corporal punishment of any type and degree illegal has been a crucial step forward in removing legal loopholes which people arraigned with charges of physically abusing children under their care could exploit to their advantage, and in promoting the same culture change which the policy on positive parenting will try to bring about.

While removing the concept of corporal punishment from our Criminal Code is a very positive development, corporal punishment has not yet been entirely blacklisted in our laws since the concept of 'reasonable chastisement' as a legal bound for corporal punishment on children by their parents is still present in the Civil Code. The Office thus calls for legislative action in Parliament to remove Article 154 (a) in the Civil Code so that corporal punishment is abolished in both our Criminal and Civil Code.

Underpinning all actions undertaken by the Office is the fact that it is an entity that is not just about children but is for children, as its very name shows. To be effective and relevant the Office not only acts on behalf of children and in their best interests but also listens to children in order to understand their innermost needs and desires. Many of the actions described in this report were initiated by the Office on the basis of personal complaints, views and preoccupations which children shared in confidence with the Office. It is this very same need to understand what children think and feel that prods the Office to commission scientific research in specific areas of children's rights.

At the same time, the Office is aware that children are able to articulate their concerns only insofar as they are knowledgeable about their rights. The report shows how active the Office has been in educating children about their rights and where they should seek help when their rights are violated. This is all the more significant when one considers that a

substantial part of the personal issues which children shared with the Office arose during educational activities organised by the Office.

The Office can make a concrete difference in children's lives by being their voice in all decision-making arenas. This can happen only if it teaches children the language of their rights and listens to what they have to say. This is what the Office of the Commissioner for Children has striven and will keep striving to do.

It is hoped that the advancement that has been registered along the years since the setting up of the Office in 2003, will continue to gather momentum and we further concentrate on the various initiatives and issues that affect children. While awareness raising is an essential component of our work towards the full and significant achievement of children's rights, this needs to be coupled with co-ordinated and holistic action and according to clear and measurable targets and timeframes in the best interest of children.





Kummissarju għat-Tfal

the united nations convention on the rights of the child

As children under the age of 18 you have the right to be happy, to grow up into a mature adult, be protected from anything that may cause you harm and to express yourselves as you wish without harming yourselves and others. Your rights are listed in the United Nations Convention on the Rights of the Child. Malta agreed to respect this Convention in 1990. Get to know more about your rights by reading the articles below and by talking about them with your family, other adults who care for you, friends and teachers at school.

REMEMBER - These are your rights and you have the responsibility to use them well. Keep in mind that other persons have the same rights as you do, so you should always respect the rights of others.

(These are based on the UNICEF Child Friendly Version of the UN CRC)

Article 1

Everyone under 18 years of age has these rights.

Article 2

All children are equal. There is no reason why children should be treated unfairly.

Article 3

All adults should do what is best for you. When adults take decisions in your name, they should think about how their decisions will affect you.

Article 4

The Government has a responsibility to make sure that your rights are protected. They must help your family to protect your rights and create an environment where you can grow and reach your potential.

Article 5

Your family has the responsibility to help you learn how to exercise your rights, and to ensure that your rights are respected.

Article 6

You have the right to be alive.

Article 7

You have the right to be registered at birth and to have a name and a nationality.

Article 8

You have the right to your unique identity and no one should take this away from you.

Article 9

You have the right to live with your parents, unless it is bad for you. You have the right to live within a family who cares for you.

Article 10

If you live in a different country than your parents do, you have the right to be together with them in the same place.

Article 11

Governments should take measures to protect children from being taken from one country to another without permission.

Article 12

You have the right to give your opinion. Adults are to listen to what you have to say and take it seriously.

Article 13

You have the right to seek information and to share your opinion with others by talking, drawing, writing, or in any other way unless it harms or offends other people.

Article 14

You have the right to choose your religion and beliefs. Your parents should help you decide what is right and wrong, and what is best for you.

Article 15

You have the right to choose your friends and join or set up groups, as long as it isn't harmful to others.

Article 16

You have the right to privacy.

Article 17

You have the right to get information that is important to your well-being from radio, newspapers, books, computers and other sources. Adults should make sure that the information you are getting is not harmful, and help you find and understand the information you need.

Article 18

You have the right to be raised by your parent(s) if possible.

Article 19

You have the right to be protected from being hurt and mistreated, in body or mind.

Article 20

You have the right to special care and help if you cannot live with your parents.

Article 21

You have the right to care and protection if you are adopted or in foster care.

Article 22

You have the right to special protection and help if you are a refugee. You also have all the rights mentioned in this Convention.

Article 23

If you have a disability, you have the right to special education and care in order to reach your full potential. You also have all the rights mentioned in this Convention.

Article 24

You have the right to the best health care possible, safe water to drink, nutritious food, a clean and safe environment and information to help you stay healthy.

Article 25

If you live in residential care or in other situations away from home, you have the right to have these living arrangements looked at regularly to see if they are the most appropriate.

Article 26

You have the right to help from Government if you are poor or in need.

Article 27

You have the right to food, clothing, a safe place to live in and to have your basic needs met. You should be able to do what other children of your age can do.

Article 28

You have the right to quality education. You should be encouraged to go to school to the highest level possible that you can achieve.

Article 29

Your education should help you use and develop your talents and abilities. It should also help you learn to live peacefully, protect the environment and respect other people.

Article 30

You have the right to practice your own culture, language and religion. Minority groups need special protection of this right.

Article 31

You have the right to play and rest.

Article 32

You have the right to protection from work that harms you and is bad for your health and education. If you are of age when you can work, you have the right to be safe and paid fairly.

Article 33

You have the right to protection from drugs and from those who sell drugs.

Article 34

You have the right to be free from all forms of abuse including sexual abuse.

Article 35

No one is allowed to kidnap you or sell you.

Article 36

You have the right to be protected against any kind of exploitation or being taken advantage of because of your age.

Article 37

No one is allowed to punish you in a cruel or harmful way.

Article 38

You have the right to protection from wars. If you are under 15 years of age you cannot be forced to become a soldier or take part in war.

Article 39

You have the right to help if you have been hurt, neglected or badly treated.

Article 40

If you break the law, you have the right to legal help (lawyer) and fair treatment that respects your rights as a minor.

Article 41

If the laws of your country provide better protection of your rights than the articles in this Convention, those laws should apply.

Article 42

You have the right to know your rights! Adults too should know about these rights and help you to learn about them.

Articles 43-45

These articles explain how Governments and international organisations like UNICEF will work to ensure that children are protected with their rights.

