



POSITION PAPER ON THE NEW EDUCATION ACT

September 2021

BACKGROUND

Children's Right to Education

This fundamental right of children is articulated in Articles 28 and 29 of the United Nations Convention on the Rights of the Child (UNCRC).

Article 28 establishes the duty of the State to make education available and accessible to children, and to support children towards the optimal attendance and navigation of the education system so that they can fulfil their right to education. In terms of children's access to education, this article lays down minimum requirements which a State Party to the Convention must never fall short of but should always strive to extend beyond the basic level set by the Convention.

Article 29 defines what education should aim to achieve in terms of the physical, mental, social and moral development of children.

Children's right to education cannot be achieved only through the implementation of the foregoing articles of the Convention but also requires strict observance of the four overarching rights of the Convention, namely the right of children:

- not to be discriminated against in the provision of education to them on the basis of any individual or family characteristic (Article 2);
- to have any decision regarding their education underpinned by a close consideration of their best interest (Article 3);
- to an education that promotes and protects their right to survival and development (Article 6);
- to actively participate in the educational process (Article 12)

The importance of the Education Act to the right to education

Although Malta's ratification of the UNCRC in 1990 is a strong indication of the country's commitment to the implementation of children's education rights, these rights can hardly be said to exist unless they are enshrined in law. The Education Act gives legal force to the right to education of children in Malta.

History of the Education Act

First passed into law in 1988, two years before the ratification of the Convention, the Education Act underwent a number of amendments over the following years. After almost thirty years, the need was felt to update the Act to modern-day needs and realities. To this end, a public consultation started in 2014 and continued until a revised Education Act was first launched for public consultation in 2016 then presented in Parliament in 2018 in the form of three bills, namely the Education Bill, the Education Regulatory Bill and the Professions in Education Bill.

However, following strong opposition by the Malta Union of Teachers (MUT) to a number of provisions and amendments, the bills were withdrawn. Following changes to the bills, these went through the whole legislative process in 2019. The new Education Act is set to come into force in October 2021.

INTRODUCTION

The Office of the Commissioner for Children participated in the consultation process in 2016 by submitting its feedback on the proposed bills. The present Position Paper deals only with those amendments that were made between the 2018 bills and the 2019 Act.

The question at the heart of this paper is whether and to what extent the amendments contained in the 2019 Act advance the implementation of the aforesaid thematic and overarching rights of the Convention further than was done by the amendments that were proposed in the 2018 bills. This paper questions the adequacy of the 2019 Act also in light of recent developments and debates that emerged after the Act's passage into law.

CRITICAL ANALYSIS OF THE 2019 EDUCATION ACT

1. Availability and accessibility of education

Article 4(2)(d) of the 2019 Act obliges the State to guarantee the availability of early childhood education and care centres. This is a very positive provision considering the critical importance of early childhood education in the overall development of the child. However, the sub-article does not oblige the State to ensure that early childhood education and care centres are accessible to *all* children. This is important since issues of insufficient capacity and prohibitive costs could preclude access for some children, including those who stand most to benefit from these centres. Such an obligation would provide a legal basis for the policy change long called for by the office to extend free childcare to cover those most vulnerable and are at risk of poverty irrespective of occupational or educational status

It is positive that due registration and regular attendance of children at school is a new function of the Department of Education under the 2019 Act.

Article 9(h) of the 2019 Act establishes the duty of schools "to ensure the use of positive discipline". This is consonant with the second sub-article of Article 28 of the Convention, which calls for "school discipline to be administered in a manner consistent with the child's human dignity and in conformity with the Convention." It also complements the efforts being made at policy level to promote positive parenting.

With the aim of offering specialisation in particular subjects, the 2019 Act allows for the grouping of Colleges into clusters.

Regarding home education, the 2019 Act does not lay out specific criteria for considering applications for children to be educated at home. This makes it easier for more children who really need and stand to benefit from home education to access it. However, the fact that the conditions for the granting of home education require applicants to provide the same social environment and facilities as those

found at school may be unsustainable and discourages parents from offering their children the education they deem fit for them.

In view of the severe disruption caused to children's education by the pandemic over the past year and a half, the Education Act should require that schools be closed only after a thorough and transparent assessment of the health risks to learners and educators and the impact of school closure on the overall well-being of children is conducted by the relevant authorities. The Act should also guarantee the adequate and timely provision and quality of an alternative programme of remote learning by requiring colleges and schools to have a preparedness plan for emergency learning which they are ready to action immediately in the event of public emergencies such as a pandemic.

2. Aims and objectives of education

The Office welcomes Article 16 sub-article 2, which gives the Department responsible for regulation in education operational independence and autonomy. It is hoped that this will strengthen the monitoring and implementation of national educational legislation and policy in all schools, be they State, Church or independent schools.

- 3.** The quality of education, that is its proven ability to drive the holistic development of children, should be the main parameter in considering whether the compulsory schooling age should be amended, as has been recently discussed following a proposal by the Chamber of Commerce to raise the age to 18 years. While such a move is good in principle as it keeps children in education, in practice it needs to be accompanied if not preceded by ongoing and renewed efforts to enhance the educational experience and outcomes of those children who complete secondary education without having sufficiently acquired the skills they would need to successfully pursue post-secondary education. Extending the time children spend in compulsory schooling is no guarantee of greater educational success. **Non-discrimination**

Article 3 of the 2019 Act goes beyond the extension of the right of access to education to all citizens of Malta who are of a compulsory school age that is found in the corresponding article of the 2018 bill by extending this right to a significantly wider cohort comprising all compulsory school age children who reside in Malta.

4. Best interest of the child

Article 6(g) of the 2019 Act establishes the duty of parents "to adhere to policies issued by the Division, the College and the school". At the same time, Article 8(1) obliges the Board on Educational Matters to ensure that in all its decisions, "due regard is given to the principles established in article 4(1)(a).", namely that the child's education is "based on the values of democracy, inclusion, diversity, active citizenship, critical thinking, responsible behaviour and ethical conduct". These two newly included sub-articles or parts thereof are conducive to a better consideration of the best interest of the child.

It is positive that the 2019 Act provides detail as to how the Board on Educational Matters should be composed in terms of its expertise, namely that it "shall include a parent representative, an educator, a professional from the psycho-social field and an expert in the specific field of inclusive education.". A children's rights perspective should somehow be mainstreamed into the composition of the Board. This can be achieved through requiring the Minister to seek the agreement not only of the Commission for the Rights of Persons with Disability before constituting the Board, but also that of the Commissioner for Children.

5. Survival & Development

Gaps in the education system revealed by the pandemic, should be addressed with the aim of creating a new model corresponding to children's realities, interests and needs.

6. Participation

Article 9(f) of the 2018 bill, which obliges schools "to conduct a student impact assessment before introducing new policies or educational initiatives" is not found in the 2019 Act. This is a serious omission since the importance of child impact assessments is being increasingly recognized in children's rights advocacy.

On a more positive note, the 2019 Act calls for consultation inter alia with children to be conducted "through student centred approaches for the purposes of school development planning".