



13/10/2011

RAP/RCha/MA/IV(2011)

REVISED EUROPEAN SOCIAL CHARTER

4th National Report on the implementation of
the Revised European Social Charter

submitted by

THE GOVERNMENT OF MALTA

(Articles 7, 8 and 17
for the period 01/01/2003 – 31/12/2009
Articles 16 and 27
for the period 01/01/2005 – 31/12/2009)

Report registered by the Secretariat on 2 May 2011

CYCLE 2011

**FOURTH REPORT ON THE
EUROPEAN SOCIAL CHARTER (REVISED)**

submitted by

the Government of Malta

(1 January 2005 – 31 December 2009)

2010

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Group 3 – Children, Families and Migrants

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** N.B. No report on Articles 8(3), 19, 27(1) and 31 were provided since these were not ratified by Malta.*

Report made by the Government of Malta in accordance with Article 21 of the European Social Charter, on the measures taken to give effect to the following accepted provisions of the European Social Charter, the instrument of ratification of which was deposited on the 4th October, 1989:-

Articles 7,8,16,17,19,27 and 31 for the period 1 January 2005 to 31 December 2009.

No observations have been received from the organisations of workers and employers regarding the practical application of the provisions of the Charter, of the application of legislation, or other measures for implementing the Charter.

I. INTRODUCTION

This Report by Malta is drafted within the context of the form for submission as adopted by the Committee of Ministers on the 26th March 2008. The following information is to supplement previous information submitted by Malta with respect to the same provision under the European Social Charter and should be taken as additional information. Where a new provision of the Revised Charter has not been reported upon in previous Reports from Malta, full details of the situation of the respective Article in Malta will be provided.

II. PROVISIONS OF THE EUROPEAN SOCIAL CHARTER (revised)

Article 7 – The right of children and young persons to protection

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

1. to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;
2. to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;
3. to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;
4. to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;
5. to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;
6. to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;
7. to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay;
8. to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;
9. to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;
10. to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control.

Appendix to Article 7§2

This provision does not prevent Parties from providing in their legislation that young persons not having reached the minimum age laid down may perform work in so far as it is absolutely necessary for their vocational training where such work is carried out in accordance with conditions prescribed by the competent authority and measures are taken to protect the health and safety of these young persons.

Appendix to Article 7§8

It is understood that a Party may give the undertaking required in this paragraph if it fulfils the spirit of the undertaking by providing by law that the great majority of persons under eighteen years of age shall not be employed in night work.

Article 7§1

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Legal Notice 440 of 2003 establishes that the minimum employment age cannot be lower than the minimum age at which compulsory full-time schooling ends, which at the moment stands at 16 years of age. It also ensures that employers “guarantee that young people have working conditions which suit their age and are protected against economic exploitation and against any work likely to harm their safety, health or physical, mental, moral or social development or to jeopardize their education”. Exceptions are in place within the same regulations whereby an employer can apply to the Director of the Department of Industrial and Employment Relations for the authorisation to employ a child less than 16 years of age, subject to the employer presenting a valid risk assessment and education school exemption. Another scenario is where a child of 14 years of age is working under a combined work/training scheme or an in-plant work-experience scheme, consisting of light work, approved by the Minister responsible for Education. The prospective employer in this case scenario has also got to apply to the Director of the Department of Industrial and Employment Relations for the authorisation to employ a child under 16 years of age, subject to the employer presenting a valid risk assessment and education school exemption.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

The Department of Industrial and Employment Relations is in the process of implementing a new joint application form between itself and the Education Division, to be used by parents and prospective employees who wish to employ minors. This is being done in order to facilitate the process of application for the authorisation to employ a minor. The authorization for employment is not granted without the presentation of a valid risk assessment and the Education’s school exemption. The Department of Industrial and Employment Relations also carries out targeted inspections on particular industries where young persons are habitually employed, especially during summer holidays and when informed of a school exemption which has been issued by the Education Division. The general public is also kept informed through readily available information provided by the customer care service within the same Department.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Year	Authorisations Issued	Authorisations Not Issued
2009	31	1
2010	142	0

Article 7§2

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Article 7§3

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

The purpose of Legal Notice 440 of 2003 is to prohibit work by children and to establish that the minimum employment age is not lower than the minimum age at which compulsory full-time schooling ends. On the other hand the Chapter 327, the Education Act, stipulates that no person may employ a minor of compulsory school age without the written permission of the Minister. The latter may give his permission after having made the necessary investigations and once he is of the opinion that there are sufficient reasons to justify the exemption of the parents of the minor from their duty to ensure the regular attendance of the minor at school and when the Minister is also of the opinion that the employment of the minor would not be of harm to the health or normal development of that minor.

- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Regular inspections are carried out by the Department of Industrial and Employment Relations focusing on the employment of Young persons. Children under the age of 16 can only work if they are authorized by the Education Division and subsequently by the Department of Industrial and Employment Relations.

- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Year	Authorisations Issued	Authorisations Not Issued
2009	31	1
2010	142	0

Article 7§4

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Legal Notice 440 of 2003 stipulates the working hours for children under 16 years of age and adolescents under 18 years of age. In both cases it regulates the hours of work, breaks and rest periods. The following is a table showing the conditions of employment as stipulated by the same Legal Notice:

Description of work	Age (years)	Working time	Breaks	Rest Period
Work performed under a combined work and, or training scheme, or an in-plant work experience scheme	14 – under 16	8 hours a day and 40 hours a week	30 minute break after 4.5 hours of work.	Minimum daily rest of 14 consecutive hours for each 24 hour period; Minimum weekly rest period of two consecutive days in any calendar week, one day of which shall be a Sunday.
Light work performed during school term-time outside the fixed school hours	14 – under 16	2 hours on a school day and 12 hours a week	30 minute break after 4.5 hours of work.	Minimum daily rest of 14 consecutive hours for each 24 hour period; Minimum weekly rest period of two consecutive days in any calendar week, one day of which shall be a Sunday.
Light work performed during school holidays	14 – up to 15 15 – up to 16	7 hours per day and 35 hours a week 8 hours per day and 40 hours a week		Minimum weekly rest period of two consecutive days in any calendar week, one day of which shall be a Sunday.
Work performed after attaining mandatory schooling age	16 – 18	8 hours per day and 40 hours per week	30 minute break after 4.5 hours of work.	Minimum daily rest period of 12 consecutive hours for each 24 hour period; Minimum weekly rest period of two days.

In the case where a young person is employed by more than one employer, working days and working time shall be cumulative and shall not exceed the working days and working times stipulated above.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

The authorisations issued by the Department of Industrial and Employment Relations clearly stipulate the maximum working hours that the young person in question can work and the minimum breaks and rest periods to be applied. Inspections carried out by the Department also keep close vigilance that the current legislation is adhered to.

3) Please supply any relevant statistics or other information on the proportion of workers not covered by these limits and the reasons why they are not covered, and state whether any particular measures have been taken to assist young persons under 18 who do not benefit from any restrictions on their working hours.

Article 7§5

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

The Wage Regulation Orders and the National Standard Order clearly indicate minimum wages payable to children having 16 years of age and under 18 years of age. Within the Subsidiary Legislation 343.22 and 343.25, the minimum rates of pay payable to apprentices are also clearly indicated according to the type of apprenticeship undertaken.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Inspections carried out by the Department of Industrial and Employment Relations verify that the young persons in question are in receipt of the minimum wage or better. Information is readily available through the customer care section and website of the Department of Industrial and Employment Relations.

3) Please supply any relevant statistics or other information on the remuneration of young workers as well as on other appropriate allowances for apprentices, and on the adult reference wage or salary.

Article 7§6

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Legal Notice 440 of 2003 stipulates that any time spent on training by a young person working under a theoretical and, or practical combined work, training scheme or an in-plant work-experience scheme shall be regarded as working time.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Inspections by the Department of Industrial and Employment Relations target this part as well. The information is readily available through the customer care section and website of the Department of Industrial and Employment Relations.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Not available

Article 7§7

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Legal Notice 247 Of 2003 stipulates that every worker, including young workers shall be entitled to paid annual leave of at least the equivalent in hours of four weeks and four working days calculated on the basis of a 40-hour working week, and an 8-hour working day and out of this paid annual leave entitlement, a minimum period equivalent to four weeks may not be replaced by an allowance in lieu, except where the employment relationship is terminated, and any agreement to the contrary shall be null and void;

Provided that in cases where the average weekly working time, calculated on the basis of a reference period of 17 weeks, is below or exceeds 40 hours per week, the annual leave entitlement in hours shall be adjusted accordingly;

Provided further that the average weekly working time shall be calculated on the normal hours of work of the employee and shall not include overtime hours.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Each and every employee scheduled on a 40 hour working week is entitled to 192 hours leave, equivalent to four weeks and four working days annual holidays with pay. The Department of Industrial and Employment Relations enforces these conditions through inspections at the place of work. The information is readily available through the customer care section and website of the Department of

Industrial and Employment Relations.

Article 7§8

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Legal Notice 440 of 2003 stipulates that:

5. (1) No child employed in terms of regulation 3(3) (b) shall perform work between 8 p.m. on any one day and 6 a.m. of the following day.

(2) Subject to the provisions of sub-regulations (3) and (4) of this regulation, no adolescent shall perform work between 10 p.m. on any one day and 6 a.m. of the following day.

(3) The Director may, at his discretion, and if there are exceptional circumstances affecting a particular branch of activity or a particular area of work, grant authorisation for work to be performed by adolescents in specific areas of activity during the period in which night work is prohibited

Provided that in such cases

(i) the adolescent shall be supervised by an adult where a risk assessment performed by the employer, to the satisfaction of the Occupational Health and Safety Authority, has shown that this is necessary on grounds of health and safety and

(ii) in any case, no work shall be carried out between midnight and 4 a.m.

Provided further that an adolescent attending an educational institution approved under the Education Act shall not be assigned any work between midnight and 6 a.m. on any weekday during the period the adolescent is expected to attend such educational institution.

(4) The provisions of sub-regulation (2) of this regulation prohibiting night work shall not apply for work performed in the following sectors, if there are objective grounds for such work to be carried out at night and provided that suitable compensatory rest is allowed and that the principles set out in regulation 1(2) are safeguarded

(a) shipping or fisheries sectors;

(b) hospitals or similar establishments;

(c) cultural, artistic, sports or advertising activities.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

For any employment concerning and under 16 person, the authorization issued by the Department of Industrial and Employment Relations is necessary. This clearly states the hours of work during which the child can work and also the night hours during which the child cannot work. The information is readily available through the customer care section and website of the Department of Industrial and Employment Relations. Any request received by the Department of Industrial and Employment Relations to engage an adolescent during night time is readily considered if there are exceptional circumstances as indicated in regulation 5(3) of Legal Notice 440 of 2003.

Legislation

According to European statistics, the work injury rate for young people aged 18-24 years is 50% higher than for any other age group of workers (European Agency for Safety and Health at work, Fact Sheet #62). To this effect the European Commission issued Directive 94/33/EC on the protection of young people at work, which was transposed into Maltese legislation through the publication of Legal Notice 91 of 2000, entitled 'Protection of Young Persons at Work Places Regulations, 2000'. These regulations were amended by virtue of LN 283 of 2004.

In essence these OHS regulations require that an employer shall:

1. Before engaging or offering work to any young person, carry out a risk assessment to determine the risks involved in the operations that will be being offered to that young person;
2. Refer that young person for a medical examination, in those cases where the aforementioned assessment reveals a risk to a young person's health or safety. Such young person shall not be liable for any expenses incurred. The employer shall further ensure that the young person is medically re-examined at least once every twelve months;
3. Inform the young person to whom work is to be assigned of the results of the assessments and of all the measures taken, or that are to be taken concerning the protection of health and safety at work;
4. Ensure that any young person assigned work, is adequately protected against occupational hazards identified in the risk assessment mentioned above. LN 91 of 2000 further requires that employers shall ensure that the work offered:
 - (a) Is not beyond such young person's physical or psychological capacity;
 - (b) Does not involve any exposure to any of the chemical, physical or biological agents or to any of the processes listed in the Schedule to these regulations, or to any other physical, chemical or biological

agent which is toxic, carcinogenic, causes heritable genetic damage, causes harm to an unborn child or which in any other way chronically affects human health;

- (c) Does not involve a risk of accidents which it may be assumed cannot be recognized or avoided by young persons owing to their insufficient attention to safety or lack of experience or training and,
 - (d) Does not involve a risk to health from extremes of cold or heat, or from noise or vibration.
5. Ensure that such young persons are at all times properly trained for the work assigned and adequately supervised by a competent person who has been trained in the work activity assigned to a young person

Enforcement

Any breach of any provision of these regulations is be deemed to be an offence, and any person who commits an offence against these regulations shall, on conviction, be liable to imprisonment for a period of not more than two years or to a fine (multa) of not less than €466 but not exceeding €11,647, or to both such fine and imprisonment; and moreover the court may, at the request of the prosecution, cancel all or any licences, warrants or permits issued to or in the name of the person found guilty in connection with the work place where the offence was committed.

Legislative review

Moreover, a recent legislative review exercise carried out by the OHSA has identified the need to amend a number of regulations which impose unnecessary and additional bureaucratic burdens on local employers, including those found in the Young Persons (Employment) Regulations, 2003 (LN 440 / 2003) published under the Employment and Industrial Relations Act (Act XXII of 2002). Through this exercise it was identified that certain legal provisions, particularly the duty of an employer under LN 440 of 2003 to carry out a risk assessment “to the satisfaction of the Occupational Health and Safety Authority” conflict with the spirit of the OHS legislation in place.

Education & Awareness

A number of publications about the various duties have been prepared by the European Agency for Safety and Health at Work, including relevant translation into Maltese, and are freely available online at http://osha.europa.eu/en/priority_groups/young_people. The OHSA distributes hard copies of publications during workplace visits and publicity initiatives.

During 2007, the OHSA participated in the European Agency’s awareness-raising campaign entitled ‘Safe Start’, which focused on promoting improved prevention at the workplace aimed at young persons at work, at the same time involving all the relevant stakeholders. More information about this campaign may be accessed from: <http://osha.europa.eu/en/campaigns/ew2006/>.

On an ongoing basis the OHSA conducts an educational campaign with primary school children, during which, students are guided through a short film featuring the official mascot of the campaign (NAPO), as created by a European consortium and a poster exhibition targeting mainly health and safety signs. This is then followed by an interactive talk. The mascot NAPO always makes an appearance at the end of the talk to distribute an informative and educational activity booklet produced by the OHSA which the students are encouraged to work through, either at home or as a class event. A good number of schools take up the opportunity to organize a health and safety day or week, with pupils working on projects targeting specific OHS subjects. The Authority also cooperates actively with the Health and Safety Unit of the Ministry of Education, Youth and Employment, with the scope of organizing joint activities targeting school children. During 2009, 20 schools were visited, targeting around 1,228 pupils

Article 8 – Right of employed women to protection of maternity

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

1. to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;
2. to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;
3. to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;
4. to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;
5. to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining, and all other work which is unsuitable by reason of its dangerous, unhealthy, or arduous nature and to take appropriate measures to protect the employment rights of these women.

Appendix to 8§2

This provision shall not be interpreted as laying down an absolute prohibition. Exceptions could be made, for instance, in the following cases:

- a. if an employed woman has been guilty of misconduct which justifies breaking off the employment relationship;
- b. if the undertaking concerned ceases to operate;
- c. if the period prescribed in the employment contract has expired.

Information to be submitted

Article 8§1

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

By virtue of the Protection of Maternity (Employment) Regulations (L.N. 439 of 2003, as amended by L.N. 3 of 2004 and L.N. 427 and L.N. 431 of 2007) pregnant employees are entitled to an uninterrupted period of fully paid maternity leave of 14 weeks. Such maternity leave is to be availed of as follows:

- a) 6 weeks of the maternity leave entitlement is to be taken compulsorily immediately after the date of birth of the child;

b) 4 weeks of maternity leave to be availed of immediately before the expected date of birth unless otherwise agreed between the employer and the employee,
c) the remaining balance of entitlement to be availed of in whole or in part either immediately before or immediately after the above mentioned periods, as the employee may request.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

The Department of Industrial and Employment Relations, through its Inspectorate Section provides information to the public on conditions of employment, including the right of protection during maternity leave through its customer care service. This section also provides assistance for employees who allege that their rights are violated.

In fact, during the period from June to December 2009, out of 9,591 queries received at the customer Care Section, 4.56% were related to maternity leave. Between January 2010 and October 2010, out of 15,7689 queries, 4.96% were related to Maternity Leave.

The Department has also published an information leaflet on Maternity Leave for distribution to the public. Such leaflets are available from the Customer Care section of the Department, the Employment and Training Corporation, the Office of the Prime Minister, MCAST and the University.

3) Please provide pertinent figures, statistics or any other relevant information to demonstrate that the level of maternity benefit is adequate.

As regards whether the level of maternity benefit is adequate, it should be noted that the in Malta, all the 14 weeks of maternity leave are fully paid up.

Article 8§2

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

By virtue of the Protection of Maternity (Employment) Regulations (L.N. 439 of 2003, as amended by L.N. 3 of 2004 and L.N. 427 and L.N. 431 of 2007), it is unlawful for the employer to dismiss a pregnant employee, an employee who has recently given birth or a breastfeeding employee, from the date in which such employee formally notifies the employer of her pregnancy to the end of her maternity leave, because of her condition or because she avails herself or seeks to avail herself of such maternity leave.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

The Department of Industrial and Employment Relations, through its Inspectorate Section provides information to the public on conditions of employment, including the right of protection during maternity leave through its customer care service. This section also provides assistance for employees who allege that their rights are violated.

In fact, during the period from June to December 2009, out of 9,591 queries received at the customer Care Section, 4.56% were related to maternity leave. Between January 2010 and October 2010, out of 15,7689 queries, 4.96% were related to Maternity Leave.

The Department has also published an information leaflet on Maternity Leave for distribution to the public. Such leaflets are available from the Customer Care section of the Department, the Employment and Training Corporation, the Office of the Prime Minister, MCAST and the University.

Article 8§3

Not Applicable

Article 8§4

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

By virtue of the Protection of Maternity (Employment) Regulations (L.N. 439 of 2003, as amended by L.N. 3 of 2004 and L.N. 427 and L.N. 431 of 2007), if an employer receives a notification by means of a medical certificate that an employee should not perform night work during her pregnancy and /or during breastfeeding for reasons relating to health and safety, that employer is obliged to transfer that employee to day time work and all the employee's employment rights, including her wages, arising from the her contract of employment are safeguarded. If the employer shows, to the satisfaction of the Occupational Health and Safety Authority, that he is unable to comply with the requirement to transfer the employee to daytime work, due to the fact that this is not technically or objectively feasible, that employer is obliged to give the employee special; maternity leave for the whole period necessary to protect her safety and health. During such special maternity leave, for the first 8 weeks the employee is paid a special allowance equivalent to the rate of sickness benefit payable in terms of the Social Security Act. After 8 weeks, such special maternity leave is unpaid. On termination of the special maternity leave, the employee remains entitled to all benefits which may have accrued to other employees of the same class or category of employment at that place of work.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

The Department of Industrial and Employment Relations, through its Inspectorate Section provides information to the public on conditions of employment, including the right of protection during maternity leave through its customer care service. This section also provides assistance for employees who allege that their rights are violated.

In fact, during the period from June to December 2009, out of 9,591 queries received at the customer Care Section, 4.56% were related to maternity leave. Between January 2010 and October 2010, out of 15,7689 queries, 4.96% were related to Maternity Leave.

The Department has also published an information leaflet on Maternity Leave for distribution to the public. Such leaflets are available from the Customer Care section of the Department, the Employment and Training Corporation, the Office of the Prime Minister, MCAST and the University.

Article 8§5

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

By virtue of the Protection of Maternity (Employment) Regulations (L.N. 439 of 2003, as amended by L.N. 3 of 2004 and L.N. 427 and L.N. 431 of 2007), if a risk assessment reveals a risk to the safety or health on the pregnancy or breastfeeding of the employee, the employer is bound to take measures to protect the health and safety of that employee. Such measures include:

- a) the temporary adjustment of the working environment and/or the hours of the employee concerned;
- b) the assignment of the employee to suitable alternative work which is appropriate for her to do in the circumstances
- c) if the employer shows to the satisfaction of the Occupational Health and Safety Authority that he is unable to take the measures a) and b) above, the employee concerned shall be given special maternity leave by the employer.

The employer is also bound to take measures to protect the health and safety of pregnant or breastfeeding employee to prevent the risk of exposure which could jeopardize the health or safety of such employee to agents, processes or working conditions to which exposure is prohibited in terms of specific provisions made under the Occupational Health and Safety Authority Act.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

The Department of Industrial and Employment Relations, through its Inspectorate Section provides information to the public on conditions of employment, including the right of protection during maternity leave through its customer care service. This section also provides assistance for employees who allege that their rights are violated.

In fact, during the period from June to December 2009, out of 9,591 queries received at the customer Care Section, 4.56% were related to maternity leave. Between January 2010 and October 2010, out of 15,7689 queries, 4.96% were related to Maternity Leave.

The Department has also published an information leaflet on Maternity Leave for distribution to the public. Such leaflets are available from the Customer Care section of the Department, the Employment and Training Corporation, the Office of the Prime Minister, MCAST and the University.

Scope of the provisions as interpreted by the ECSR

Paragraph 1: guarantees the right of employed women to maternity leave of at least 14 weeks for all categories of employees. In all cases there must be a compulsory period of postnatal leave of no less than six weeks which may not be waived by the woman concerned. Maternity leave must be accompanied by the continued payment of the individual's wage or salary or by the payment of social security benefits or benefits from public funds. A benefit must be adequate and must be equal to the salary or close to its value.

Paragraph 2: provides that it must be unlawful to ordinarily dismiss female employees from the time they notify the employer of their pregnancy to the end of their maternity leave. In cases of dismissal contravening this provision of the Charter, national legislation must provide for adequate and effective remedies, employees who consider that their rights in this respect have been violated must be able to take their case before the courts.

Paragraph 3: all employed mothers who breastfeed their babies must be granted time off for this purpose. Time off for nursing should in principle be granted during working hours should be treated as normal working time and remunerated as such. Time off for nursing must be granted at least in principle until the child reaches the age of nine months.

Paragraph 4: does not require States party to prohibit night work for pregnant women, women who have recently given birth and women nursing their infants, but to regulate it in order to limit the adverse effects on the health of the woman.

Paragraph 5: prohibits the employment of the women concerned in underground work in mines. This applies to extraction work proper. Certain other activities, such as those involving exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents, must be prohibited or strictly regulated for the group of women concerned depending on the risks posed by the work.

Article 16 – The right of the family to social, legal and economic protection

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

Information to be submitted

1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

The Housing Authority (Authority) is a Public Entity with a mission statement “*Decent housing strengthens communities and provides a better setting in which to raise our children*”. The Authority has a social dimension with the intent to reach out and support people in need and provide a better surrounding to enable them bring up their children.

Previously there were three departments offering housing services, however, these were amalgamated into one housing organisation (Housing Authority) with the aim to avoid fragmentation, allow a horizontal approach and to utilise the existing resources in the best way possible with the scope of providing a more efficient and holistic service under one roof.

The functions of the Authority are based on the Housing Authority Act Chapter 261 dated 1976, the Amendment Act dated 14 December 2007 and the Home Ownership (Encouragement) Act Chapter 328 dated 1988. It promotes and offers home ownership to help first time buyers, to buy their residence from the Private Sector; offers grants for adaptation and repair works in private & public buildings for owners and tenants and provides schemes related with rent subsidy and government housing. The Authority has also initiatives to help voluntary organizations that provide housing services to persons in housing need.

For any reports and statistics regarding the initiatives and services offered by the Housing Authority, one can refer to our website: www.housingauthority.com.mt .

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

Home Ownership Schemes

The Housing Authority offers grants for the construction/rehabilitation and finishing of houses to first time buyers. First time buyers can benefit also from subsidy on interest rates on home loans and grants on loan repayments. The aim of these initiatives is to assist first time buyers to purchase their dwelling from the private sector.

The Authority is also responsible for the development of land in residential units in various localities. These properties are then issued for sale at a subsidised price to help encourage persons and families become home owners.

Rent Subsidy Scheme

This scheme provides rent subsidies to tenants renting privately owned properties to be used as their ordinary residence.

Adaptation & Repair works & Disability Grants

The Housing Authority has revised its repair schemes during year 2009 with the aim to improve their procedure to make them more efficient. The old schemes were closed in and the new schemes were launched in August and October 2009. Disabled people can apply to render their property adequate for their disability.

The adaptation and repair schemes are aimed to help individuals and families, who could be owners or tenants, to live in decent housing by improving their housing conditions. Through these schemes the Authority assists by giving these people grants to upgrade the property of eliminate danger.

The disability scheme provides assistance to persons with a disability or families with a member having a disability to render their residence adequate for the needs. Grants for adaptation works, installation of stair lifts and installation of lifts in government buildings where a person with a disability resides, are offered under these Schemes so that these persons live an independent or semi independent manner close to their family.

Social Housing

The Housing Authority provides alternative accommodation to those who lack suitable housing and have very low income and/or social problems through the allocation of Government owned residential units by rent.

Evictions from government owned properties are only carried out when premises are occupied illegally or without a title. Evicted persons / families are offered to apply for an alternative accommodation or to apply for rent subsidy should they opt to rent from the private sector. The vacated properties are then re allocated to persons on the waiting list for alternative accommodation.

Through its building programme, the Housing Authority builds units to be rented to vulnerable persons and families with a low income bracket and social needs.

The Authority is also responsible from the renovation of government properties that had been vacated by previous occupiers prior to re-allocate them to applicants for alternative accommodation. Moreover, applicants who are provided with a newly built government property for lease are given a grant to help them install a bathroom.

Supported Housing

The Housing Authority aids non-governmental organisation that offer services related to housing to persons in need. Amongst various assistances, the Authority helps these organisations to offer shelter to homeless persons, helps organisations that work with victims suffering from domestic violence, persons leaving the correctional facilities and organisations that help youths and single mothers that get pregnant and due to circumstances they leave their home. The Authority assists also organisations that help encourage persons with a disability to live independently. The Housing Authority also leases new built units to organisation which offer housing to people who need to be reintegrated in society.

Urban Renewal Projects

The Housing Authority is also in charge of regeneration of areas in Malta with a very substandard housing that are not decent for habitation. The urban renewal properties require substantial planning which involve re-accommodation of persons and families before commencement of demolition of old buildings.

Sheltered Housing

The aim of the Housing Authority is to encourage independent living amongst the elderly and those with special needs by providing them with adequate accommodation. This is a way of encouraging the elderly to continue living independently in the community for the longest times possible whilst preserving their identity and their privacy.

During the last years the Authority has carried on with plans for new building blocks in localities appropriate to the special needs of the elderly. The localities chosen for these projects are those which offer accessibility to the everyday facilities which the elderly need. The apartments are of a manageable size for the practicality of an elderly person or couple to live alone. These include the basic needs such as a bedroom, kitchen, sitting, shower and a balcony or terrace when possible. Every apartment is made accessible by means of a lift.

3) Please provide pertinent figures, statistics or any other relevant information to show that Article 16 is applied in practice, including information on domestic violence, information on child care arrangements and housing for families, the level of family benefits, the number of recipients as a proportion of the total population, as well as information on tax benefits and other forms of financial assistance for families.

[To see report](#)

Article 17 – The right of children and young persons to appropriate social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1. a. to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
- b. to protect children and young persons against negligence, violence or exploitation;
- c. to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;
2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Information submitted

Article 17§1 From Foundation for Social Welfare Standards

1. Institutional Framework for Policy Development

The Institutional Framework

Within the Maltese system, and in view of the country's size, the development of policy takes place at the national level. However, there is no single department, or public administration institution, which is responsible for the development of child policy. In fact, this is one of the 'concerns' which has repeatedly been raised by the Commissioner for Children. Rather, various departments and directorates within different Ministries are responsible for addressing matters which, while affecting children, fall within their remit in terms of subject matter or policy area.

Children's rights and welfare fall broadly within the remit of the Ministry of Education, Employment and the Family, which is responsible for 'Child Policy', generally construed. Moreover, given the broad nature of the portfolio currently allocated to this Ministry, it is at present also responsible for a number of specific sectors such as education, social policy, childcare, child welfare, adoption and fostering. Matters relating to health are then the responsibility of the Ministry for Health.

On the other hand, matters relating to criminal legislation and enforcement, as well as Civil Justice, fall within the competence of the Ministry for Justice and Home Affairs, which is responsible, *inter alia*, for the Courts and Judicial Services, the Correctional Facilities and Services, the Malta Police Force and the Attorney General's Office, as well as criminal and civil legislation. A number of issues relating to the protection of children's rights and welfare are therefore also tackled by this Ministry, such as the legislation concerning trafficking, prostitution, pornography and sexual exploitation of children, missing children and child abduction, the Juvenile Court and the Young Offenders Unit Rehabilitation Services (YOURS – the Juvenile Section of the Correctional Facilities), the Probation Services, the Family Court and the Children's Advocate.

Within the Ministry for Justice and Home Affairs, the Policy Development Directorate is responsible for developing policy, with the involvement of the relevant departments within the Ministry itself, as well in consultation with the Ministry of Education, Employment and Family and its departments.

The Ministry of Education, Employment and the Family has a Directorate for Policy Development and EU Affairs, as well as a number of departments and entities which have been allocated specific responsibilities in relation to children's rights and welfare. These entities include the Foundation for Social Welfare Services, Aġenzija Appoġġ which itself forms part of the Foundation for Social Welfare Services, the Department for Social Welfare Standards, and the National Commission for the Family. In addition, various Boards have been set up also under the Ministry of Education, Employment and the Family, some of which are directly related to children's rights and welfare, such as the Fostering Board, the Adoption Board and their respective Appeals Boards, and the Children and Young Persons Advisory Board¹.

The Foundation for Social Welfare Services

The Foundation for Social Welfare Services is responsible for Aġenzija Appoġġ as well as two other agencies, namely Aġenzija Sapport and Aġenzija Sedqa. In this regard, the Foundation's Board establishes the general policy to be adopted by the agencies, ensures they have the appropriate organisation for the effective performance of their functions, approves their business and financial plans, and reviews their performance against objectives and performance targets established in those plans.

Aġenzija Appoġġ

Aġenzija Appoġġ is a central organisation in the provision of welfare services and has four main branches, namely, the Children Services, the Adult and Family Services, the Intake and Socio-Legal branch and the Community and Generic Services. The Children Services branch provides specialised services to children facing a crisis or trauma and aims to provide integrated services so as to promote their well being, protect their rights and enhance their potential, with workers in the field developing care plans with the involvement of the children themselves².

Aġenzija Sapport on the other hand provides specific support to persons with a disability, including children, while Aġenzija Sedqa is responsible for persons with drug problems. Close liaison among the three agencies takes place whenever children require support from more than one agency, for instance, cases of abuse where the children also receive services from Sedqa in relation to drug problems.

¹ For the organisational chart of the Ministry of Education, Employment and the Family see: http://www.msp.gov.mt/documents/msp/mang_struct_msp.pdf, last visited 7 April 2010.

² See Section 2 below for further detail on the functions of Aġenzija Appoġġ in the provision of services

The Department for Social Welfare Standards

The Department for Social Welfare Standards regulates social welfare services by establishing standards in consultation with service providers and users, as well as Codes of Practice regulating social welfare services. Various sectors have undergone regulation, with standards determined and licensing requirements introduced, such as the National Standards for Out-of-home Child Care (2009) and the Standards for Child Day Care Facilities (2006).

The Office of the Commissioner for Children and the Council for Children

The Office of the Commissioner for Children was established by the Commissioner for Children Act³ in 2003. Pursuant to Article 4 of that Act, the Commissioner is to act independently in the performance of his or her functions, and is not to be subject to the direction or control of any person or authority. Therefore, although the Commissioner acts under the auspices of the Ministry of Education, Employment and Family, and despite the fact that the Office is financed from the Ministry's budget, the role is nevertheless exercised independently of the Ministry and the Government. In fact the Commissioner must submit an annual report to the Minister, who must then table that report before the House of Representatives, for discussion by the Social Affairs Committee thereof. This annual report includes both an account of the Office's activity during the year under review, as well as recommendations to the authorities on matters which the Office of the Commissioner for Children considers to require action.

The Commissioner's functions are listed in Article 9 of the Commissioner for Children Act, namely:

- a. to promote and advocate for the rights and interests of children;
- b. to ensure that children are being given the opportunity to express their opinions and that these are in fact considered;
- c. to promote the protection of family unity;
- d. to advocate for adequate support to parents for the upbringing of their children;
- e. to foster the development of alternative care to children who need such care with special reference to fostering and adoption;
- f. to seek to ensure that the rights and interests of children are properly taken into account by government departments, local authorities, other public bodies and voluntary and public organizations when decisions on policies affecting children are taken;
- g. to promote the protection of children from physical or mental harm and neglect, including sexual abuse or exploitation;
- h. to promote the highest standards of health and social services for women during pregnancy and to promote special care and protection, including adequate legal protection, for children both before and after birth;
- i. to promote the highest standards of health, and education and social services for children;
- j. to promote the highest standards of leisure, play and recreational facilities for children;

³ Chapter 462, Laws of Malta

- k. to ensure that all possible measures are taken by the relevant authorities to prevent and remedy poverty and social exclusion among children;
- l. to promote compliance with the United Nations Convention on the Rights of the Child (CRC) as ratified by Malta and with such other international treaties, conventions or agreements relating to children as are or may be ratified or otherwise acceded to by Malta

In addition, a list of measures is laid down, to be taken by the Commissioner, with a view to promoting child welfare and monitoring the conditions under which children develop. These include, *inter alia*⁴:

- providing education and information to promote understanding of children's rights
- investigating alleged breaches of children's rights
- setting standards and monitoring their application by ministries, departments or agencies to help ensure that their internal review processes are responsive to complaints about decisions concerning the provision of designated services to children
- ensuring that services relating to children are accessible, community-based, co-ordinated and integrated, inclusive of gender, culture and language, and responsive to individual needs;
- monitoring and assessing the policies and practices of social welfare services affecting children;
- ensuring that legislation relating to the protection of children's interests is observed;
- acting as a spokesperson for the rights, needs and interests of children
- advising the Government and proposing such measures as may be required in order for the rights and interests of children to be provided for

The function of data compilation and analysis is also imposed upon the Commissioner for Children, who carries the duty to: "*collect data about, conduct or encourage research into, matters relevant to services for children*", thus feeding into effective policy making.

According to Article 10, the Commissioner for Children shall be guided by the following principles:

- The best interests of children and the family are paramount (reaffirming Article 3 CRC);
- All children are to be treated with dignity, respect and fairness (reaffirming Article 2 CRC)
- Disabled children and children with disadvantaged family or social circumstances should enjoy the same quality of life like all others (reaffirming Article 2 CRC);
- Children and their families are to be provided with opportunities to participate in decisions that affect them and in defining, planning and evaluating services to children (Reaffirming Article 12 CRC).
- Government, families and communities share the responsibility for the promotion of the development and well-being of children

The Commissioner for Children may carry out, or commission, a child impact assessment for any proposal or decision concerning a policy which may affect children⁵. Moreover, the Commissioner is also authorised to carry out an

⁴ Article 11, Chapter 462, Laws of Malta

⁵ Article 18, Chapter 462, Laws of Malta

investigation for a purpose relating to the Commissioner's functions, upon a written complaint or on the Commissioner's own initiative, except where the matter relates to individual conflicts between a child and his parents, where the question concerns parental authority, or when the matter falls within the competence of a Court or tribunal⁶. Upon concluding such investigations the Commissioner is required to publish a report of the findings and to make any recommendations deemed necessary. The Commissioner also has powers to require the production of documents and the provision of information, including the right to summon witnesses, administer an oath and require information to be provided on oath, with the exclusion of information which the person in question could not be compelled to give in civil or criminal proceedings before the Court⁷. Where the Commissioner has made recommendations, these are forwarded to the entity to which they are addressed. It is to be noted that any person who knowingly obstructs an investigation renders him liable to criminal sanction

The Commissioner for Children may also make recommendations deemed expedient to any person or body⁸. Where a person or body, in the Commissioner's view is failing to comply with the provisions of the UN Convention on the Rights of the Child⁹, the Commissioner may also make recommendations in the form of a compliance notice which would also stipulate the time within which the addressee must reply, indicating the action taken, or intended to be taken, to comply with the relevant provisions. However, the entity receiving such compliance notice may also notify that it intends *not* to comply with the recommendations therein, the only obligation being to give reasons for the refusal, which reasons may be published by the Commissioner.

The Commissioner for Children Act also establishes the Council for Children, which is chaired by the Commissioner and involves representatives appointed by the Ministers of Health, Education, Justice and Home Affairs. In addition, the Council may co-opt up to seven other members who should "as far as possible" be children, or other persons involved in the promotion of children's rights. In fact, while some of the co-opted members on the Council are in fact experts in child policy and child welfare, and another Council member is the Chairperson of the Social Affairs Committee of the House of Representatives, four children also represent their peers on this Council as a matter of practice. The role of the Council for Children is to monitor compliance with the UN Convention on the Rights of the Child and to advise and assist the Commissioner in the performance of her functions and in the promotion of the welfare of children. Thus, while the Commissioner's function is that of "promoting" as well as monitoring compliance with international conventions, the Council has the duty to "monitor" such compliance. With representatives from different Ministries dealing with matters affecting children's rights and welfare, this Council may also be seen as constituting a forum for the exchange of information and coordination.

The Commissioner for Children is regularly consulted in the process of policy development, and it is considered that this practice has been greatly enhanced over the years since the establishment of the Office. In relation to EU-related measures the Commissioner is consulted on each instrument, this having become a standard procedure. On other policies, consultation of the Commissioner for Children takes

⁶ Article 14, Chapter 462, Laws of Malta

⁷ Article 15, Chapter 462, Laws of Malta

⁸ Article 16, Chapter 462, Laws of Malta

⁹ Article 17, Chapter 462, Laws of Malta

place on a more ad hoc basis and at different stages of the policy development process depending on the matter in question, however this too is considered by the Commissioner as having developed positively and the Commissioner's involvement is considered adequate, although there will always remain room for further progress.

The Commissioner for Children does consider that greater resources would enable the office to take on a greater role, particularly in view of the limited time within which the Commissioner's input into policy development is often required. Whilst it is difficult to establish the extent to which the Office has in actual fact had an influence on policy, the Commissioner considers that its involvement has indeed affected policy outcomes, albeit in conjunction with other factors. For instance, the establishment of a Sexual Offenders Register was first called for by the Commissioner for Children. It was subsequently included in the electoral manifesto of the political party currently in Government and work on the establishment of such a register is now underway.

The National Commission for the Family

The National Commission for the Family was established in 2001 with its main functions being to advise Government and to propose and promote policies and legislation in favour of the family, as well as assessing the impact of policy and legislation on the family.

Within the Ministry for Education, Employment and the Family, a Parliamentary Secretariat for Youth and Sport has also been established, and has undertaken the process of reviewing and updating the National Youth Policy for the period 2010-2013. For the purposes of the youth policy, persons between 13 and 30 years of age are considered to be youths, and the policy covers various key areas which are directly linked to the wellbeing of young people, such as family, education, employment, health, culture, community, sport, leisure, volunteering, youth justice, environment, information society, transitions and vulnerability, youth information, social inclusion and mobility. This process involved collaboration across Government Ministries and Departments as well as youths and youth organisations, experts in the field and persons and organisations who work with young people.

The Legislative Framework

Children's rights and welfare are protected by means of various legislative instruments dealing with different aspects.

With regard to international law instruments relating to children's rights and the protection of children, Malta signed the United Nations Convention on the Rights of the Child on 26 January 1990 and ratified it on 30 September 1990. In 2001 it also withdrew the reservation it had made to Article 26, stating that the Government of Malta would be bound by the obligations relating to the right of children to benefit from social security, including social insurance, only to the extent of the then existing social security legislation. The Convention on the Rights of the Child has not been incorporated into domestic legislation, however, the rights protected by the Convention largely find their counterparts in the provisions of the Maltese Constitution, domestic legislation and subsidiary legislation, as well as other international treaties adhered to by Malta and incorporated into national legislation¹⁰, such as the European Convention on Human Rights, which has been incorporated by

¹⁰ Malta's Report to the Committee on the Rights of the Child, 1998

means of the European Convention Act¹¹, although the Commissioner for Children considers that some concerns nevertheless remain.

In 2004, Malta also acceded to the Hague Convention on the Protection of Children and cooperation in respect of the Intercountry Adoption. In 1999, it ratified the European Convention on Recognition and Enforcement of Decisions concerning Custody and on Restoration of Custody of Children, and signed the European Convention on the Exercise of Children's Rights. Malta also signed the Council of Europe Convention on Cybercrime in 2002 and the Council of Europe Convention on Contact concerning Children in 2003.

There is no Act within the Laws of Malta which collects all the legislation pertaining to children or which establishes a framework for legislation relating to children, although it may be noted that during the review of Malta's initial report on the implementation of the UN Convention on the Rights of the Child, in 2000, it was stated that a Children Act was being prepared¹². The Commissioner for Children, in the *Manifesto for Children*¹³, also referred to a Children Act being drawn up and called for its enactment to be given high priority. This call has again been reiterated by the Commissioner for Children in the Annual Report for 2009¹⁴, where it is stated that *Professionals and service users at present find it difficult to access relevant legislation, and the piecemeal introduction of child legislation causes variations in interpretation and application of the law which is not in the best interest of the child.*¹⁵ Nevertheless, the Commissioner for Children takes the view that despite the absence of a Children's Act gathering all relevant legislation in a single document, children's rights are in fact protected in other legislation, as identified above.

In fact, a number of Acts and Legal Notices within the Laws of Malta deal with particular matters specific to children, while others are broader and merely contain provisions relating to minors. The former include the Foster Care Act¹⁶, the Adoption Administration Act¹⁷, the Children and Young Persons (Care Orders) Act¹⁸, the Juvenile Court Act¹⁹, the Child Abduction and Custody Act²⁰, the Commissioner for Children Act²¹, the Domestic Violence Act²², and the Widows' and Orphans' Pensions Act²³, while the latter include primarily the Criminal Code²⁴ and the Civil Code, (which defines a minor as a person who has not attained the age of eighteen years²⁵), as well as the Education Act²⁶ and the Social Security Act²⁷. The Processing of Personal Data (Protection of Minors) Regulations²⁸ were also adopted under the Data protection Act²⁹.

¹¹ Chapter 319, Laws of Malta.

¹² Summary record of the 63rd meeting of the Committee on the Rights of the Child, CRC/C/SR.633, 2nd June 2000

¹³ Office of the Commissioner for Children, 2007-2008.

¹⁴ Office of the Commissioner for Children, *Annual Report 2009, Celebrating 20 years of the UN Convention on the Rights of the Child*, April 2010

¹⁵ *Ibid* p44.

¹⁶ Chapter 491, Laws of Malta.

¹⁷ Chapter 495, Laws of Malta.

¹⁸ Chapter 285, Laws of Malta.

¹⁹ Chapter 287, Laws of Malta.

²⁰ Chapter 410, Laws of Malta.

²¹ Chapter 462, Laws of Malta.

²² Chapter 481, Laws of Malta.

²³ Chapter 58, Laws of Malta.

²⁴ Chapter 9, Laws of Malta.

²⁵ Article 157, Chapter 16, Laws of Malta.

²⁶ Chapter 327, Laws of Malta.

²⁷ Chapter 318, Laws of Malta.

²⁸ Legal Notice 125 of 2004

²⁹ Chapter 440, Laws of Malta

The Maltese legislation entrusts the parents with the upbringing of their children. This appears clearly from Article 131 of the Civil Code which lays down that: *A child shall be subject to the authority of his parents for all effects as by law established.* Furthermore, Article 132 provides that: *A child shall obey his parents in all that is permitted by law.* This general authority however, is made subject to a fundamental condition, namely, that parents are bound to look after, maintain, instruct and educate their children³⁰, taking into account their abilities, natural inclinations and aspirations³¹. In fact, the parents' parental authority may be terminated by the Court in the best interests of the child. In the event of a dispute between the parents the Courts' decision is always to guide by the best interests of the child.

In the context of Family Court proceedings, a child may be heard directly by the judge or the mediator. However, a child advocate can also be appointed to represent the child and act as the link between the child and the court experts. The right to the appointment of a child advocate is in line with the child's right to be given a voice, and with Article 12 of the CRC and the EU Convention for the Exercise of Children's Rights which also asserts the right of the child to be represented by a lawyer. However, it may be noted that the child does not have the right to directly request the appointment of a child advocate, since the appointment of such advocate may be made by the Court on its own initiative, upon a request by the parents, or upon the recommendation of the mediator.

In Malta the child advocate was introduced with the setup up of the Family Court and the services of the child advocate are free of charge for the child and the family since it is the State which bears the expense.

The Commissioner for Children, in the *Manifesto for Children* published in 2008, recommended the appointment of a child advocate in each case, with the caveat that it would be the child's parents who must pay the fees, as they do their own lawyers, unless such parents qualify for free legal aid.

However, the Family Courts appointed the child advocate only in cases where the Court considered this necessary and in the best interests of the minor child. The child advocates appointed proceed according to what is best for the child they are representing. Along the years, practices as to how to proceed have been established by the child advocates themselves since the legislation does not itself lay down guidelines.

It may be noted that the organisation and functioning of the Family Court has recently received a lot of attention and has been the subject of much discussion. The number of child advocates, as well as the fact that such advocates are only appointed by the Court when the latter deems it necessary, are factors which have attracted criticism from the Commissioner for Children, academics as well as NGOs. The number of child advocates has recently been addressed with calls issues for the engagement of additional advocates. In May 2010, the Social Affairs Committee within the House of Representatives published a Report which contains various proposals for amending the Family Court's procedures, with the ultimate objective of making procedures more efficient and reducing as far as possible the trauma

³⁰ Article 7, Chapter 16, Laws of Malta

³¹ Article 3B, Chapter 16, Laws of Malta

children experience in such context. It deals, *inter alia*, with safeguarding the interests of children, a more important role for the children's lawyer, appointment of a *Guardian ad Litem* to protect the children's interests, safeguarding the interests and rights of unborn children, and the need of strong legislation relating to children. This Report is to constitute the basis for public consultation on the subject.

Within the context of criminal proceedings, a child below the age of 9 cannot be held criminally responsible, whereas between the age of 9 and 14, mischievous discretion must be proved by the prosecution. The Juvenile Court is deemed to be a Court of Magistrates and acts both as a court of inquiry and a court of criminal judicature with regard to charges and proceedings relating to children below the age of 16. However, the Juvenile Court is not competent to hear charges or other proceedings relating to a child below 16 years of age who is accused jointly with a person who is above this age threshold. It is also pertinent to note that cases concerning sexual abuse of minors are in practice allocated to the same Magistrate. Appogg officials consider this to be a positive measure in that it has served to reduce the length of proceedings, while it has also enabled the presiding Magistrate to develop expertise, including in the process of questioning.

Where a minor under the age of sixteen is required to testify as a witness in criminal proceedings, an audio and video-recording of the testimony of the minor is produced and the minor himself does not appear in Court, unless the Court orders a *viva voce* examination for a reason which arises after the date of the minor's recorded testimony and the Court considers it to be *in the interest of the administration of justice and the discovery of the truth*.³² Video-conferencing is also sometimes used within the context of proceedings before the Family Court. This is also considered by Appogg officials as an important measure.

The Code of Organisation and Civil Procedure also contains important provisions protecting the child's patrimonial rights. Legal guardianship of children is automatically vested upon the parents of the children³³. Where the minor children inherit any patrimonial rights or where they otherwise acquire patrimonial rights the parents are automatically vested with the authority to manage the property in the child's name. Where the parents have abandoned the child or for any other reason are incapable of administering the patrimonial rights of the minor child a tutor can be appointed. The tutor is to always act in the best interests of the minor children and is to present a copy of his administration to the court for its approval³⁴. The tutor is further obliged to guarantee his administration by providing an unlimited general hypothec in favour of the minor child.

The Code of Organisation and Civil Procedure also gives children additional protection in judicial proceedings. Indeed children who are parties in judicial proceedings have the right to be represented and stand in the proceedings as plaintiff or respondent as the case may be. Such person is known as the *curator ad litem*.³⁵ This curator is to be appointed at all times when a minor child is involved in judicial proceedings and is to act in the best interests of the child and is also to abide with any rules imposed by the Court.

Another useful role of the curator *ad litem* occurs in cases of personal separation between the two parents. In separation proceedings where it is evident to the

³² Chapter 9, Laws of Malta, Article 646

³³ Chapter 12, Laws of Malta.

³⁴ Chapter 12, Laws of Malta.

³⁵ Article 781, Chapter 12, Laws of Malta.

presiding court that the best interests of the minor child are not being protected then the Court may appoint such a *curator ad litem* to represent the child and also to make recommendations in the best interest of the child. What is interesting is that the curator can raise issues during proceedings, for example the increase of maintenance to be paid or any other issue which needs to be made, but can also make submissions before final judgement highlighting to the court the wishes of the minor child and the needs of the said child. In that manner the children and their needs would be better protected in the case of a personal separation case between the parents.

It is apt to point out that in most instances the *curator ad litem* appointed is a practising lawyer. This is advantageous since the minor child will be also legally represented in any court proceedings.

It is also apt to mention the fact that in certain limited circumstances Maltese law affords protection also to the unborn child. In fact the law provides for the *curator ad ventrem*³⁶. Where a man dies without child or where a woman declares that she is pregnant with the child of such person, upon the request of any interested party, the court can appoint a curator to administer the property or interest any unborn child may have in the estate of the deceased man until such child is born and paternity established.

A range of subsidiary legislation has also been adopted dealing with specific sectors in greater detail, such as the Children and Young Persons (Care Orders) Regulations, the Adoption Regulations and the Overseas Adoption (Definition) Order, the Placing of Minors Regulations, the Broadcasting Code for the Protection of Minors, the Widows' and Orphans' (Cross Border Payments) Regulations, and the Young Persons (Employment) Regulations.

Priorities and Budget

No specific priority areas of child policy have been established by the Government, however a number of measures were identified in the Nationalist Party's electoral programme for 2008-2013, which may be considered the Government's plan for the current 5-year legislature. Education is among the priority areas, although other specific measures are also planned. These include:

- improving opportunities for socially disadvantaged children
- strengthening the service of the Children's Advocate
- establishing a residential centre for boys with very difficult behaviour, similar to that which exists for girls
- improving the Probation Services
- removing the last remaining elements of discrimination against children born out of wedlock, in the context of the laws of succession
- establishing a sexual offenders' register, especially for those offences committed against children
- continuing the reform of the education sector, including the strengthening of the new state college system, the continuation of the programme for the construction, maintenance and improvement of schools, the establishment of a network of child care centres across Malta and Gozo built on the educare model, in partnership with the private sector and voluntary organisations and with the assistance of EU funding
- strengthening the quality of Kindergarten centres

³⁶ Article 170, Chapter 16, Laws of Malta

- strengthening the programme for early screening of children's physical and intellectual health. The educational system should have personnel trained in the various special sectors of learning difficulties.
- extending the system of learning support assistants (facilitators), including for children in private schools
- providing the resources required to enable students with special to further their studies and training after the completion of compulsory education
- establishing a new basis for student services, their parents and teachers

The 2010 budget also gives some indication of matters constituting a priority for the Government. With regard to children, emphasis has been placed on childcare services, although the ultimate objective of increasing and improving these services is to incentivise women to enter or remain in employment. In fact, tax legislation grants reductions to parents making use of childcare services, while it is envisaged that employers would be given an incentive when incurring costs to provide child care services for their employees' children.

The 2010 budget speech also announced the intention to open additional specialized childcare services on the model of Smart Kids, an educational child care centre which was established with a view to enhancing and supporting families in Cottonera in the upbringing of their children, by providing quality child care services to support and strengthen the family unit. It also provides training programs for parents in order to enable them to become more empowered individuals, and to strengthen their parenting skills.

The establishment of a national Child Care Unit was also announced, as well as training to be provided to those who offer childcare services in their homes, in conformity with the standards issued by the Government in 2006, while a scheme is also to be introduced for one-off financial and technical assistance to ensure the right level of service is given. Various measures also cover social assistance matters. For instance, the 2010 budget announced an increase in the Child in Care benefit, which has in fact been doubled and is granted in addition to Children's Allowance benefits. Moreover, the age for this assistance was also increased to 21 years for those youths who are still studying or pursuing a training programme. Another initiative announced as part of the 2010 budget is the establishment of a Youth Agency and the restructuring of the Youth Empowerment Programme.

The 2006-2008 National Action Plan on Social Inclusion placed children and young people at the centre of policy formulation and implementation efforts, based on the rationale that children and young people encountering situations that impinge on their life chances are at greater risk of poverty and social exclusion. Specific categories included children living in institutions or in care, children and young persons with a disability, children and young people with literacy difficulties, those with emotional, mental ill health or dependency difficulties, those living in jobless and single parent households, those witnessing or being victim to domestic violence or abusive behaviour, teenage parents, unaccompanied minors and young people who are unemployed or inactive. This first policy focus in Malta's 2006-2008 Social Inclusion Plan aimed to maximise the potential and prospects of children and young people through a three-fold approach, namely enhancing personal development, improving well-being prospects, and safeguarding their rights. The National Report on Strategies for Social Protection and Social Inclusion 2008-2010 identifies several initiatives undertaken with a view to achieving these objectives, including

- continuation of the construction and modernisation of schools and colleges,
- increased investment in ICT training and education,
- skills profiling exercises,

- personalised action plans for unemployed youth,
- entrepreneurship courses, and
- initiation of a national youth employment strategy,
- extending specialised services for minors with emotional and/or challenging behaviour,
- increasing the availability of adequate and affordable housing,
- enhancing quality of service provision and standardisation, and increasing accessible and affordable child care facilities,
- promotion campaigns aimed at nurturing and raising awareness on children and young people's rights,
- primary prevention programmes promoting healthy lifestyles, and
- measures aimed at curtailing youth crime, delinquency and victimisation.

The abovementioned 2008-2010 Report retains as its first Priority Policy Objective, the Enhancing of social inclusion prospects of children and young persons, and this objective is to continue to be addressed through measures that advance children and young persons' personal development, well-being, rights, interests and responsibilities. With regard to personal development, priority measures identified are the continuation of the reform in the educational system, construction and modernisation of schools and colleges, promoting further and higher education and life-long learning, promoting inclusive education, investment in ICT training and education, consolidation of measures that enhance informal learning, active citizenship, and engagement in sports and creativity and a range of measures relating to youths. In the context of well-being, prioritized measures include increasing the availability of adequate and affordable housing, such as supporting youths leaving residential care and other measures which increase their employability and support their transition to life outside care, improving the physical and mental well-being of vulnerable children and the quality of child services and creating better conditions for families. Finally, in relation to Rights, Interests and Responsibilities, measures envisaged include community mobilisation and awareness on children's rights, a review of the Juvenile Justice System, a review of Malta's National Youth Policy and consolidating services in the area of addictive behaviour.

It may also be noted that the Commissioner for Children raises the Office's principal concerns each year in its Annual Report. As already mentioned above, the Annual Report for 2009 includes the establishment of a Department for Children and the enactment of a Children Act among its primary concerns requiring action. Other priorities identified as requiring include:

- the incorporation of the UN Convention on the Rights of the Child into domestic law;
- the adoption of a *National Policy and National Strategy for Children*;
- the publication of a directory of services for children outlining the role and responsibilities of each entity involved;
- measures relating to the Family Court mainly the establishment of a fast-track system for Court cases involving children, and mechanisms to enable more participation and access in court proceedings;
- various measures relating to the juvenile justice field, such as the provision of more services for children and young people who are in conflict with the law and raising the age of criminal responsibility;
- various measures relating to sport, including child protection in sport and the monitoring of facilities;
- addressing absenteeism;

- measures relating to children in care, including the drawing up of a *National Policy and National Strategy on Looked After Children*, increasing the use of foster care instead of residential/institutional care, catering for a larger number of children in need of residential placements, residential care facilities in Gozo;
- the setting up of a hotline to fight child abuse over the internet;
- the establishment of a sex offenders register;
- regular monitoring of services and the establishment of internal and external evaluation systems;
- the introduction and implementation of a *National Sexual Health Policy*;

Moreover, the Office of the Commissioner for Children also identifies particular rights in the Convention on the Rights of the Child, which are to be focused on particularly during a given year, with a view to further developing activities on such rights in a gradual manner in keeping with the Office's resources. During 2010, research on looked after children is continuing, while special emphasis is being placed on social exclusion and poverty. Other priorities identified by the Commissioner to be focused upon in future include children's participation especially in judicial proceedings, internet use and mental health care services.

However, it should be recalled that the Office of the Commissioner for Children exercises its functions independently of the Government, and the concerns identified by the Commissioner as requiring priority attention, do not necessarily coincide with the Government's policy priorities. Nevertheless, the Annual Report for 2009 itself outlines developments made and progress achieved by the relevant Government departments in relation to some of the priorities identified³⁷.

2. Mechanisms of Policy Delivery and Monitoring

Within each Ministry, the Programme Implementation Directorate is charged with coordinating and overseeing the implementation of policies and programmes falling within its remit. With regard to children's rights and welfare however, various entities are involved in the implementation of specific policies, programmes and legislation, due to the specialisation required. It may be noted however, that most of the departments and entities responsible for implementation, are also involved in the development of policy, through the recommendation of policies or programmes, and the consultation processes in the formulation of policies.

As stated above, within the Ministry for Education, Employment and the Family, Aġenzija Appoġġ is the main entity responsible for the delivery and administration of services in accordance with the policies developed, relating to children with social difficulties. Within the Children's Services branch, the Child Protection Service ensures child victims of abuse receive efficient and effective services. The Fostering Service provides an alternative family setting for children under a care order living in residences, and also supports foster carers with a view to ensuring the best possible service to children in their care, while the Adoption Service assesses the suitability of persons wishing to adopt, offers guidance and support throughout the process so as to ensure adequate preparation of the prospective parent(s), and also provides the necessary support following the adoption, to ensure the child's well-being.

³⁷ See Section 4 below.

The Looked After Children Service seeks to follow children in care with adequate and regular care plans, with the ultimate objective of returning such children to their families wherever possible. Where looked after children visit their natural family, the Monitoring Service is available, where necessary, to offer security and ensure the children's safety, monitor the children's behaviour while at home and help in building positive relationships with parents. The High Support Service in turn provides individualised care to children under a care order who due to their emotional and psychological needs require high support within a residential service. Aġenzija Appoġġ also administers the 179 support line, which is a 24-hour free phone service available to anyone requiring assistance, and which receives calls *inter alia* requesting assistance, as well as reporting child abuse situations. This is one means for identifying children whose rights are being, or might be violated, and of providing them with the necessary assistance and care. Moreover a hotline for reporting internet pornography has also been set up by Aġenzija Appoġġ. This initiative began as a project co-funded by the EU but its operation has continued despite the cessation of such funding.

The Socio-Legal branch within the Agency is responsible for carrying out Court assessments, supervising visits, and representing children under a care order in proceedings before the juvenile court. It may also represent the Agency or the Ministry in appeals from care orders which have been imposed by the Court.

The Department for Social Welfare Standards, which as explained in Section 1 above is charged with establishing standards for various sectors, is also responsible for their implementation, in that it seeks to inform, coach and support providers in their adoption of standards, while it also monitors compliance, assesses performance and receives complaints. However, the Department is not established by law and therefore does not have enforcement powers. Compliance is thus sought through collaboration.

Policies and programmes relating to education are implemented and monitored by the relevant units in the education department of the Ministry for Education, Employment and the Family, depending on the nature of the programme in question. For instance, a number of special schools have been established, catering for children with severe learning difficulties, children with disabilities, children with social, emotional and behavioural difficulties affecting their schooling and so forth. These fall under the responsibility of the Student Services Department within the said Ministry. This Department is also responsible for the management and coordination of education psycho-social services such as the Safe Schools Programmes (Child safety services, anti-substance abuse, and anti-bullying section), school psychological services, the school social work section (which provides services such as student guidance, therapy where difficulties relate to family or social background and so forth). Likewise, several initiatives have been implemented which fall within the responsibility of this Department, such as the EU School Milk Subsidy Scheme and the EU School Fruits Scheme, and the Healthy Eating Lifestyle Planning (HELP), all of which seek to promote health eating habits in schools. On the other hand, the School Resources Management Department is responsible for ensuring health and safety in schools and colleges, and for providing schools with the necessary resources, particularly in view of the priority which the Government has attached to the education sector and the emphasis which has been placed on increasing the availability and use of technology in schools. With regard to ensuring adequate standards are maintained, the Directorate for Quality and Standards in Education reviews matters such as the legislation on National Minimum Conditions for Schools, the national minimum curriculum, the teachers' code of ethics and so forth.

Policies and legislation falling within the responsibility of the Ministry for Justice and Home Affairs likewise fall to be implemented and monitored by different departments within the Ministry, according to the issue in question, as well as by the Programme Implementation Directorate. Ensuring investigation and prosecution of offences involving children for instance is the responsibility of the Malta Police Force and the Attorney General's Office, although a link with Aġenzija Appoġġ has also been established for the referral of children needing assistance. In fact the Child Protection branch within Aġenzija Appoġġ has established a Protocol with the Police Force, providing for referrals from between both entities, and this may be highlighted as another mechanism for identifying children whose rights have been or are being violated, and of ensuring that they are referred to the Agency in order to receive any assistance needed. The Juvenile Court is the responsibility of the Justice Unit and the Court Services, while the management of YOURS, the juvenile section of the correctional facilities, and the implementation of policies and programmes relating thereto, fall within the responsibility of the broader Correctional Services. The objective of strengthening the Probation Services and the establishment of a Sexual Offenders Register, both of which were listed in the Government's electoral manifesto, are the responsibility of the Ministry for Justice and Home Affairs. Likewise, the elimination of the remaining forms of discrimination against children born out of wedlock in the context of the laws on succession is also to be carried out by this Ministry, through amendments to the Civil Code.

With regard to the monitoring of policy implementation and delivery, perhaps the most evident role is that played by the Office of the Commissioner for Children. This office is not involved in the implementation of policies itself, but has an important role in monitoring such implementation, as well as the implementation of and respect for, relevant legislation. In this regard, although the Office of the Commissioner for Children does not specifically monitor the implementation of each and every policy or legislation within a set structure, this role is considered by the Commissioner to have been greatly enhanced with time. As described in Section 1, the Commissioner for Children may carry out investigations and make recommendations as considered appropriate, in accordance with the law setting up the Office. The annual report published by the Commissioner for Children serves to report on the activities of the Office, but also provides the context in which to report on the results of its monitoring functions, to highlight achievements and shortcomings in the implementation of specific policies, programmes and legislation by the responsible departments. The annual report also includes data gathered by the Commissioner for Children in the course of its functions, as well as recommendations with regard to possible improvements, new initiatives, or other measures which the Office considers appropriate, thus also serving to promote the development of certain policies, besides monitoring the implementation of that which has been developed.

Promoting children's rights by raising their awareness thereof among children themselves is also a central function of the Commissioner for Children. In this regard, various initiatives have been undertaken by the Office, including in particular visits to schools and the dissemination of information in child-friendly formats, with a view to educating children about their rights and about the work of the Commissioner for Children. The Commissioner for Children's website has also been launched where information is made accessible in a child-friendly manner, and which should facilitate accessibility to, and communication with, the Commissioner. Celebrating the 20th anniversary of the UN Convention on the Rights of the Child, in 2009 the Commissioner for Children also organised a project entitled Guginu's Tour, which saw a large mobile trailer travel to different primary schools and local councils to present interactive educational programmes to primary schools, with a view to familiarising them with their rights. The Office of the Commissioner for Children also

organises an annual short course for children entitled Rights 4U, during which the selected applicants learn about their rights and are given the tools to stand up for those rights.

Educating the families and the general public as to children's rights is also a role taken by the Commissioner for Children, which is delivered through media appearances, participation in seminars and conferences, lectures at the University of Malta and the Malta College for Arts, Science and Technology, participation in fairs and so forth.

Insofar as the accessibility and advertising of services to children are concerned, these are generally secured by the service-providers, that is, the government department or agency responsible for launching and implementing the service in question. For instance, Aġenzija Appoġġ undertakes regular campaigns to disseminate information about its services, particularly the 179 Supportline, which provides an immediate means of access to assistance and to information about services available. Likewise, the Department for Social Welfare Services also drew up a children's version of the National Standards for Out-of-Home Child Care, to better explain to children what they should expect from those responsible for providing such care. The National Children's Day organised each year also brings together different entities to raise awareness on children's rights. Schools also play an important part insofar as referral to Aġenzija Appoġġ of children needing assistance is concerned, and in this regard it is pertinent to note that the national Policy on child protection in schools is currently being reviewed. In addition, Community workers identify cases and refer them to the relevant agency as appropriate. Aġenzija Appoġġ itself has community teams engaged in outreach activities in various localities identified as particularly vulnerable.

3. Projects

A Platform for Children was launched by the Commissioner for Children on 12 October 2009, incorporating all civil society entities working for or with children in various sectors. This provides a forum for networking among the organisations involved, the exchange of information and best practice, as well as the coordination of efforts. In this way duplication of efforts and resources can be avoided while gaps can be identified and addressed. Among the aims of the Platform for Children, as stipulated in its terms of reference, is that of advocating children's rights to the authorities on behalf of children. In this regard, the civil society organisations involved, through the Platform for Children, aim to lobby and promote children's rights in every aspect of society, by seeking to ensure a holistic and child-centred approach to policy, legislation and practice. The Office of the Commissioner for Children assists by providing the necessary administrative and logistical support to the Platform for Children. In turn, the Platform for Children itself serves to support the Commissioner for Children in her work, by providing advice and assistance. The Commissioner for Children would however like to see greater participation by NGOs in the form of broader perspectives, since many such NGOs tend to focus on their own specific area of expertise, rather than taking a general approach to children's rights.

Organisations working with children and other experts, including University lecturers and researchers, are involved in policy development to varying degrees. For instance, standards and codes issued by the Department for Social Welfare Standards are drawn up on the basis of work undertaken by a committee set up for

the purpose, and made up of participants who are considered to be relevant in the field under discussion, while broad consultation with stakeholders, including service users, is also held.

Aġenzija Appoġġ, albeit not classified as civil society, is regularly consulted in relation to the development and review of policy and legislation, and itself makes proposals of its own initiative based on its experience in the field. Such involvement is considered by Appoġġ officials to be adequate, although further consultation in relation to the justice sector would be beneficial.

Children's participation seems to be dependent to a large extent on the matter in question and the context of its discussion. As stated earlier, four children are members of the Council for Children, which has a role in assisting the Commissioner for Children, and can therefore feed into the formation of priorities for the Commissioner to act upon, as well as in monitoring compliance with the UN Convention on the Right of the Child. The Commissioner for Children also involves children in the formulation of initiatives and positions taken by the Office, consulting them on matters subsequently raised with the pertinent authorities. In fact, the abovementioned Rights 4U course organised by the Commissioner for Children seeks to empower them to participate and the Commissioner's website may facilitate this process. The consultation process held by the Department for Social Welfare Services for the purposes of drawing up standards and codes of practice relating to services for children, has also involved children insofar as these are the service users and this particular initiative is considered by the Commissioner for Children to be a clear example of good practice due in particular to the wide consultation held. Likewise, the National Youth Policy 2010-2013 was drawn up in consultation with youths and youth organisations. The Commissioner for Children considers that important progress has been made in this respect, although there remains room for further involvement of children in the development of policy, keeping in mind the need for a distinction between different age groups.

With regard to policy delivery, reference may be made to the Diocesan Commission "Ejġew Għandi" (Children's Homes)³⁸. The Central Office for Children's Homes manages the placement of children in Church homes, which house the larger number of children in residential care. Church homes are run with the support of State Agencies, such as the Foundation for Social Welfare Services, as well as funding from various benefactors, including charities and funds/foundations set up by the private sector. Ejġew Għandi is also involved in the development of policy, and participates in the abovementioned Platform for Children. It is apt to note that other children's homes are run by foundations/trusts which have been privately set up, but which nevertheless receive Government funding. In addition, each child in residential care is followed by a Social Worker from Aġenzija Appoġġ. Currently, there are 180 foster carers hosting 187 children and 223 children in residential care.

Other Organisations represented on the Platform for Children but the activities of which do not relate exclusively to children are the People for Change Foundation³⁹, Inspire (Eden Foundation and Ir-Razzett tal-Ħbiberija)⁴⁰, KOPIN

³⁸ <http://maltadiocese.org/lang/en/secretariat-commissions/diocesan-commission-ejġew-għandi-childrens-homes/childrens-homes-origins-services-and-current-challenges/>

³⁹ The People for Change Foundation aims to promote social cohesion, respect for Human Rights and empowerment. See www.pfcmalta.org

⁴⁰ This is the joint endeavour of the Eden Foundation and Ir-Razzett tal-Ħbiberija, two Maltese NGO's in the field of disability. It aims to provide a range of services to children and adults with disability, and to champion their inclusion and equal opportunities in society. See www.inspire.org.mt

(Koooperazzjoni Internazzjonali)⁴¹. Equal Partners Foundation⁴², the Daniel Delicata Memorial Association⁴³ and Caritas Malta⁴⁴. Gift of Life and the Malta Unborn Child Movement are also members of the Platform for Children and seek to protect and promote the rights of the unborn child.

It is pertinent to note that various volunteers raise funds which are fed into a Children's Fund set up and managed by Aġenzija Appoġġ, to support disadvantaged children followed by Appoġġ social workers. Such social workers make an assessment and may submit a request for such funds, which are then screened and approved or otherwise by a Committee.

4. Action Plans

The Education Reform and the Special Schools Reform launched in 2009 were welcomed by the Commissioner for Children as highly positive developments. The former includes measures to ease the transition for students from primary to secondary education, as well as a plan to phase out streaming. The consultation process involved not only officials within the Ministry responsible for education, but also practitioners in the education system and the Commissioner for Children, who organised a seminar specifically on education. With regard to the Special Schools Reform, a consultation document was presented envisaging the transformation of the various special schools, which currently each cater for various educational levels for students with a particular kind of special requirement, into a college system with different schools providing for different levels of education, from primary through post-secondary, and thus creating the transition experience in mainstream education.

On the 4th November 2009, the then Minister for Social Policy launched the National Standards for Out-of-Home Child Care (including a child-friendly version), the Model Policies and Procedures for Out-of-Home Child Care, as well as a 10-year Strategic Plan for out-of-home child care. These initiatives were welcomed by the Commissioner for Children, whose office had embarked, in 2007, on a three-year project concerning children in out-of-home care, with a view to carrying out the necessary research to feed into such a national strategy. Each of the three initiatives was the outcome of the work undertaken by a working group made up of experts in the field and stakeholders, including children who are the service-users. The Strategic Plan was prepared

⁴¹ A Non-Governmental Development Organisation (NGDO), which has among its main objectives the alleviation of poverty and the promotion of social and economic emancipation. See www.kopin.kevinattard.com

⁴² This Foundation also works with persons with disabilities and their families. See www.equalpartners.org.mt

⁴³ The Association's primary goal is to improve the quality of life for sick children who need to spend time in one of the paediatric wards in Malta's state hospitals. The immediate and long term objectives are the purchase and donation and/or implementation of items of entertainment, activity and comfort with a view to achieving that goal. See www.danieldelicata.org

⁴⁴ The organisation's mission is to alleviate poverty and promote human development and social justice. Among its programmes is an awareness raising programme aimed at students with a view to creating awareness and providing information on drugs, providing assertiveness skills and skills to enable adjustment to social change in schools, awareness about the elderly in society and volunteering. Weekend seminars providing lifeskills sessions are also held for students aged around 14-16. See www.caritasmalta.org

following a gap analysis carried out by a core group of experts representing the sector, and aims at directing resources where they are most needed. The plan was prepared in such a way as to remain flexible, with a view to accommodating changes in circumstances, and the possibility of adaptation on the basis of future research, including that underway by the Office of the Commissioner for Children. This policy process is considered a clear example of good practice by the Commissioner for Children as it involved consultation with a wide group of interested persons.

Other measures have been welcomed by the Commissioner for Children as addressing, to varying degrees, the concerns raised by her Office. These include the increase in benefits and assistance to foster carers through the 2010 Budget, which should encourage fostering, the discussions underway to introduce a crisis intervention centre in Gozo to respond to emergency situations (in the context of out-of-home care, professional support and other essential services), the draft legislation providing for a register of sex offenders and serious offenders, and measures taken to address absenteeism namely, the formulation of guidelines for primary and secondary schools on the reporting of absenteeism and the introduction of an electronic database whereby attendance records are regularly inputted allowing necessary follow-up action. The Commissioner also praised the recruitment of psycho-social professionals and social workers, who are to form part of multi-disciplinary team and will work with individual students and their families, giving priority to the early identification of students and thus ensuring timely intervention. The Commissioner for Children also emphasises the importance of retaining flexibility in the development and implementation of policy, as this will enable adjustments in response to subsequent developments, or in order to address initial effects which diverge from those expected.

The increase in the foster care benefit was also welcomed by Aġenzija Appoġġ, which has placed considerable emphasis on fostering. In fact, Appoġġ has implemented a campaign aimed at increasing the pool of foster carers, particularly in view of research indicating negative effects of residential care in the case of children up to three years of age. This campaign was successful, with the number of foster carers increasing during 2009-2010. Appoġġ has also implemented a campaign on positive parenting, with a view to addressing difficulties within the community.

An important initiative pointed to by Appoġġ is the consultancy which has taken place within the context of the Commonwealth, and which covered various issues towards a National Strategy for child protection. This project involved training programmes on working with children in different sectors, as well as workshops attended by stakeholders including members of the Police Force, lawyers, social workers, health officials, officials from the educational sector, members of the judiciary and so forth. A report is to be issued on improving child protection services, which will then be forwarded to the Ministry for Education, Employment and the Family for the purposes of implementation. Following the completion of this process, another aspect will be embarked upon, namely Children and the Courts.

Further initiatives considered as successful by Appoġġ are projects co-funded by the European Social Fund aimed at improving the employability of young people. In particular, *Headstart* which ran for three years, and *Embark for Life* which is currently being implemented, seek to provide for skills training in order to enhance employability. In fact, *Headstart* was also identified as an example of good practice in the *National Report on Strategies for Social Protection and Social Inclusion 2008-2010*.

The Commissioner for Children also considers that projects implemented under EU Funds have been successful and had a positive impact. The Educational Programmes are considered as particularly important, in that they give children opportunities to widen their horizons, including for instance in the use of modern technology, the interaction with children from other Member States and so forth. Another initiative identified as highly successful by the Commissioner for Children is *Homestart*. The implementation itself of this project involved members of the community to which such project addressed. This is considered an example of good practice, since it served to enable better outreach, with the persons involved in implementing the project better understanding the community in question and its needs, as well as the community affording them greater trust.

No apparent disparity has been identified between what was intended as policy was developed and what was delivered as it was implemented. The Commissioner for Children points out that policy implementation does take time, and the results are not always apparent in the immediate term, but that such results are ultimately achieved and that time will evidently be essential in order to make sure that the policy is implemented in such a way as to have the desired results. For instance, taking the implementation of the Sports Policy as an example, preparatory action or ancillary support measures may first be required in order to ensure that the implementation of the main policy elements is indeed successful. In this regard too, the fact that the policy implemented is not identical to that initially developed, should not, according to the Commissioner for Children, be automatically construed negatively, since adjustment may become necessary once the implementation process begins. Flexibility in this sense may secure better results.

Finally, the collection of statistics pertaining to children has on various occasions been identified as a shortcoming to be addressed, in order for policy makers to have the necessary data on the basis of which to formulate policies. During 2009, the National Statistics Office launched a project which aims to take stock of all statistics regarding children which are being gathered, and to identify those which need to be collected. For this purpose, a working group was established involving various Government departments involved in data collection concerning children, as well as the Commissioner for Children and other entities. In the meantime, agencies collect their own statistics and data. Aġenzija Appoġġ for instance produces yearly statistical reports in addition to its biennial reports on services rendered. Moreover, monthly statistics are collected by the Agency for internal use.

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Article 17.1 From Education Department

Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

The Education Act of 1988 as amended in 2006 amplifies the state's commitment towards education. The Act has the following legal provisions:

- The right of every citizen to receive education and instruction without any distinction of age, sex, belief or economic means (Article 3)
- The duty of the State to promote education and instruction; to ensure a system of schools and institutions accessible to all citizens catering for the full development of the whole personality including the ability of every person to work; and to provide for such schools and institutions where these do not exist (Article 4)
- The State's right to establish a National Minimum Curriculum of studies for all schools; to establish the national minimum conditions for all school; and to secure compliance with the national minimum curriculum of studies and the national minimum conditions for all schools (Article 7)
- The constitution and functions of the Directorates of Education (Articles 8-13)
- The setting up of an educational inspectorate (Article 18)
- The Minister's right to inspect every school and the right to supervise the administration of every school (Article 21)
- No person may exercise the profession of a teacher in a school or receive remuneration therefore without a warrant from the Minister (Article 24)
- The State's duty to provide primary, secondary and special schools (Articles 43-45)
- Colleges of State Schools – their setting up, their functions and administration (Articles 49-62)
- Free education in State Schools (Article 126)

2.1 The Directorate for Quality and Standards in Education (DQSE)

The DQSE is responsible for setting and monitoring standards. The Directorate is composed of two Departments; the Department of Curriculum Management and eLearning (CMeLd) and the Department of Quality Assurance (DQA). According to the Education Act (Chapter 327, Act XIII, 2006) the DQSE proposes to the Minister the National Curriculum Framework which promotes lifelong learning and provides clear guidelines in the implementation of the curriculum and all information, data and statistics required to draft policies are compiled, analysed and researched.

2.1.1 The Quality Assurance Department

The Quality Assurance Department within the DQSE provides the required guidelines for the development plan and internal review process of each school. It also carries out an external review (so termed – as opposed to ‘audit’ - to emphasize the idea of viewing again the internal evaluative mechanisms) of every school. The two complimentary cycles of the internal evaluation and the external review ensure that the principles of the curriculum framework is being followed and that good practices are promoted which ultimately leads to school improvement. The Department is committed to promote within schools a culture of consistent excellence and rigour in aiming for the highest possible standards. The way to achieve these standards could be different for each college and even for each individual student and respected as such. This will provide opportunities to celebrate various examples of good practice. However the aims must be such to ensure that every educational experience must reach the best of each learner’s ability making use of the different channels depending on her/his intelligence and modes of learning. At the same time the Quality Assurance Department works on the current practices and indicates ways how to improve these efforts at the fulfilment of the curricular entitlement to the best of each learner’s ability at classroom and school level.

2.2 The Directorate for Educational Services (DES)

The DES ensures the effective and efficient delivery of services to the Colleges and State Schools within an established framework of decentralisation and autonomy. It is responsible for consolidating, coordinating and upgrading the existing services and introducing new ones to assist learners in managing life situations more effectively. The DES is composed of three departments; the Human Resources Development, School Resources Management and Student Services.

2.2.1 The Department of Student Services

Through the Department of Student Services, the DES gives top priority to the psycho-social services which means that students receive enhanced services to eliminate any obstacles to learning and entitlement. The below are the main services which the Department of Student Services provides to vulnerable groups of children to ensure that equal access to education is ensured for all children.

2.2.1.1 Unit Għozza

This Unit seeks to provide a support service and an educational programme to unmarried pregnant minors, leading them to adopt a positive attitude towards motherhood while empowering them to pursue their career paths. For this purpose the Unit works closely with Heads of School, School Counsellors and Guidance Teachers. The Unit make contacts with the School Administration as well as the Matsec Board, to facilitate attendance for examination sittings. When the pregnant girl is still attending school, after informing the Head of School, she may choose to follow one of the three options: to continue attending school regularly and go to the Unit for counselling or to seek information; stop attending school until the birth of the child and attend the full programme at Għozza; or to attend two or three days at school and two or three days at Għozza. After the birth of the child it is done the utmost for the girl to return to school.

2.2.1.2 Home Tuition Service

This service provides the student with a continuous education and minimises the effects of absence from school. The service also helps the student to reintegrate back in school at the appropriate time

2.2.1.4 The setting up of Learning Support Zones

The scope behind the setting up of learning support zones in secondary schools is primarily to assist students overcome social or emotional behaviours that may contribute to learning or behavioural problems in classrooms.

Each learning zone would be managed by a teacher specialising in supporting students with social, emotional and behavioural difficulties who is assisted by learning support assistant and also by a Basic Skills teacher if and when the need arises.

Students are referred to the learning zone where a tailor-made programme is drawn up for each child. The zones are divided into formal areas for the academic work and less formal areas for recreational learning. Learning support zones also offer help to parents and teachers on how best to deal with challenging behaviour and difficulties. The setting-up of learning support zones aim to support students in mainstream education attain self help in order to be able to deal with their difficulties.

2.2.1.5 Learners with Special Needs

Maltese education actively promotes a national policy of inclusive education across all levels of education. 94% of students with individual educational needs are taught in mainstream schools and classes. To support the above policy a number of initiatives were undertaken and amongst which one can mention the following:

- A) the setting up of statementing moderating Panel and Appeals Board which are composed of professionals from different fields.
- B) Together with parents/guardians and or student/parent advocates and other professionals carry out in depth evaluation of issues by written assessments relating to the individual needs of those students who are referred to the panel.
- C) The provision of various support services to facilitate access according to the statement of needs which include:
 - 1. peripatetic teachers of hearing impaired and visually impaired
 - 2. Early Intervention teachers
 - 3. Learning support assistants to support students in mainstream schools
 - 4. Psycho-social services
 - 5. Autistic spectrum team and access to communication and technology unit.
 - 6. sign language interpreters
 - 7. An Individual Educational Plan (IEP) was introduced and implemented for students with special needs.
 - 8. Setting up of various courses at diploma and certificate level specifically for learning support assistants
 - 9. In-service courses and seminars for the School Senior Management Team (SMT), teachers and learning support assistants.
 - 10. The publication of syllabus supplements to guide teachers and learning support assistants so to ensure curricula access to all students.
 - 11. The publication of a number of policy documents and legislative amendments to the Education Act, all aimed at making schools more inclusive.

Besides the professional support given by the Learning Support Assistants (LSA), specialised units within the Directorate for Educational services such as – the Access to Communication and Technology Unit (ACTU) and the Autistic Spectrum Disorder Support Team (ASST) are committed to improve the quality of life of persons with learning disabilities and/or complex communication needs by providing access to communication and learning through the use of technology, assistive technology to ensure that all students are active participants in the learning process.

In June 2009 the Special School Reform was launched with the main aim of changing the role of these special schools into that of Resource Centres. These centres do not only cater for the students who currently attend on a full-time basis, but also offer their services, such as multi-sensory programmes, to students with Individual Educational Need in mainstream schools. One of the

special schools has already been functioning successfully as a Resource Centre for a number of years. Specialised staff working in the four Resource Centres is trained to give support to their colleagues in mainstream schools, thus ensuring that students with Individual Needs have access to a wide and varied curriculum.

Students will be able to experience the different phases of school life as do their peers in mainstream schools. For this purpose, the four special schools will function as:

- 1) a Primary Education Resource Centre;
- 2) a Secondary Education Resource Centre;
- 3) a Secondary/Adult Education Resource centre (For Students with Profound and Multiple Learning Difficulties
- 4) a Young Adult Education Centre

2.3 Migrants – Promoting equity vis-à-vis migrant pupils

All migrants from third countries are integrated into educational institutions (at all levels – from pre-school to higher education) and all minor children of compulsory school age (5-16) of third country nationals are integrated into Primary and Secondary schooling with local students. During the course of their studies, they learn the two official languages of Malta i.e. Maltese and English together with local students.

The Ministry of Education has set up an Advisory Group to address the issue of educational entitlement of unaccompanied minors and children of asylum seekers. This working group has been working with College Principals and a specialised teacher for the tuition service for unaccompanied asylum seekers, with the aim of helping unaccompanied minors register and integrate into schools.

Before introducing such minors into schools, preparatory work was done in the staff of their respective residential homes – including heads of homes, their social worker and psychologist, where applicable, with the aim of building a profile of each student ascertaining their educational attainment level.

The Advisory Group established certain criteria for the smooth entry of these minors into schools. All minors are treated in the same manner as local students and are to follow the full timetable

3.1 Number of Public and Private Schools

Sector	State	Church	Independent
Primary	68	24	13
Secondary	30	22	10

3.2 Average Classes Sizes

Sector	State	Church	Independent
Average Class Size Primary	17.89	25.7	19.7
Average Class Size Secondary	20.08	24.9	19.3

3.2.1 The Ratio Teacher per pupil

Sector	State	Church	Independent
Ratio Classroom Teacher per Pupil in Primary School	1:18	1:30	1:29
Ratio Peripatetic Teachers per Pupil in Primary School	1:38	N/A	N/A
Ratio Classroom Teacher per Pupil in Secondary School	1:8	1:10	1:9

3.3 Figures on Students in Primary and Secondary Education

Sector	State	Church	Independent
Primary	19,148	8,126	3,469
Secondary	14,281	7,780	2,269

Article 17§2

The Education Act of 2006 gives stronger rights to the parents and calls on their responsibility to register the minor in a school for the first scholastic year when the child is of a compulsory school age. Parents have the responsibility to follow their child continuous attendance and progress throughout compulsory education. Parents can choose to send their child to a state school, government-dependent school or to an independent school.

2.1 The Good Shepherd Programme

It ensures that all children aged 5 are registered in a primary school, whether State or non-State school. Throughout the compulsory education system social workers attached to the School Social Work Service Unit which is part of the Directorate for Educational Services, follow any habitual absentee or truant pupil reported by a school and take the appropriate action both at the parental and family level and the legal compliance level. Parents failing to send their children regularly without a fully justified reason are brought to court and sentences vary according to the gravity of their failure.

2.2 The School Social Work Service

The School Social Work Service ensures that all school age children receive the best possible education, in the best possible conditions and to the best of their abilities. This is done through the use of effective social work intervention and, when necessary, by taking uncooperative parents to court.

Students Failing To Complete Compulsory Schooling

Statistics FOr Scholastic Year 2009-2010

Form 5 Absenteeism

No Of Days	Medical Reason Provided	Excused Absence	Unauthorised Absence	Medical & Unauthorised Absence
Percentage of Students	1%	0.5%	2.5%	0.9%

Please note that the table indicates the number of Form 5 students who attended less than 20 school days because of reasons presented between the 28th September 2009, the beginning of the scholastic year and 15th February 2010, up to the final mock exams. The total number of schools days covering this period is 85days. It is also important to note that a total of 3215 Fifth Formers were registered in state schools during scholastic year 2009-2010.

School Exemptions

The following are the number of Permanent Exemptions issued for fifth formers under 16 years prior to 15th February 2010:

No of Exemptions	8
Percentage	0.5%

Measures to Combat Absenteeism

STRATEGIES APPLIED

Different professionals in the schools within the College system are continuously working with students and their parents to educate them with regards to the importance and benefits for students to attend school on a regular basis.

RECRUITMENT

As from September 2009 to date, for the first time 12 trainee counsellors, 10 trainee career advisors, 12 trainee educational psychologists, 3 College Prefects of Discipline, 2 College Counsellors, 2 College Career Advisors, 10 Social

Workers and 1 Principal Social Worker were employed with the Student Services Department. The process of employing other personnel is still ongoing.

The new recruitment has brought on the continuous implementation of the reform with regards to tackling school absenteeism. Through the employment of the social workers cases of habitual absentees are being tackled with the help of the other support services including guidance teachers, College, school and trainee counsellors, psychotherapists, psychologists and trainee psychologists.

Social Work Service

During summer 2010 the social workers conducted school visits with parents of primary school children who were absent from school for more than 40 unauthorised days during scholastic year 2009-2010. After reviewing all students' attendance the Service Manager together with the Principal Social Worker identified this realistic cut off in view of the Director General's directive to reduce long term absenteeism in schools. It was also agreed in 5 colleges the social workers will also follow cases of students in Form 1 who were absent from school for the same number of days. 187 primary school children representing 1.3% of the state primary school population and 23 Form 1 students representing 0.8% of all first formers registered in state schools were identified.

After social work intervention including school visits, office visits and home visits this percentage fell to 0.4% as in September 2010 in primary schools and 0.03% of first formers. The Social Workers are still monitoring these students as well as the rest who are still not attending due to various situations.

By the end of October 2010 the social workers started operating from all 10 Colleges and they are focusing on absenteeism. A social worker was also allocated to work within the Resource Centres. The social workers are visiting all schools within their respective college regularly so as to identify those students who are habitual absentees as early as possible. Priority is being given to primary students however gradually social workers will also intervene in secondary schools. In fact between September 2010 and February 2011 the social workers followed 730 cases representing 2.6% of the population of all students registered in state schools as in February 2011. The students are habitual absentees.

Family (Social) Support Worker

A family support worker was contracted by the College Principal to work at St Margaret's College for 15 hours a week. Applications for the position of 5 Family (Social) Support Worker are in process. These will assist the social workers in their interventions with families to combat absenteeism. Since September 2010 to date the SSW followed 27 cases.

Joint Project with Trainee Career Advisors

Since December 2010 the social workers are currently working on a joint project with the College and trainee Career Advisors with the aim of making contact with 5th formers who are habitual absentees to develop a tailor made programme for each student in relation to their career and future employment.

Tribunal System

The social workers have been attending tribunal sittings since the onset of the service. The Social Worker attends and assists the Commissioner of Justice in reaching decisions regarding school absenteeism cases arraigned in the Tribunal. Their role is to provide information to the Commissioner according to the information obtained by the Heads of Schools regarding school attendance. The Social Workers also point out cases, where, despite, Social Work intervention, parents/guardians/designated persons have remained un/co-operative.

Due to the large amount of cases referred the social workers' role is mainly administrative. However, with the move towards a college based service, social workers are eventually getting to know the students referred and hence are in a better position to assist the family concerned and give constructive feedback to the Commissioner to assist him when passing judgement. It is also the case that some parents do turn up for tribunal hearings hence it is an opportunity for the social worker to engage with the family with the aim of assisting them so that the student returns to school. All these students are at risk of becoming early school leavers.

Tribunal Court Sitings

During 2010 the social workers attended the following number of sittings:

Tribunal Sttings	109
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Absenteeism Reports from Schools during scholastic 2009 - 2010

Percentage of Students whose parents were arraigned in the respective Tribunals because of school absenteeism	4.1%
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Article 19 – The right of migrant workers and their families to protection and assistance

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

1. to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;
2. to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;
3. to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;
4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:
 - a. remuneration and other employment and working conditions;
 - b. membership of trade unions and enjoyment of the benefits of collective bargaining;
 - c. accommodation;
5. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;
6. to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;
7. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;
8. to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;
9. to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;
10. to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply.
11. to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;
12. to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

Appendix to Article 19§6

For the purpose of applying this provision, the term "family of a foreign worker" is understood to mean at least the worker's spouse and unmarried children, as long as the latter are considered to be minors by the receiving State and are dependent on the migrant worker.

Not Applicable

Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake

1. to take appropriate measures:
 - a. to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;
 - b. to take account of their needs in terms of conditions of employment and social security;
 - c. to develop or promote services, public or private, in particular child day care services and other childcare arrangements;
2. to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;
3. to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

Appendix to Article 27

It is understood that this article applies to men and women workers with family responsibilities in relation to their dependent children as well as in relation to other members of their immediate family who clearly need their care or support where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity. The terms “dependent children” and “other members of their immediate family who clearly need their care and support” mean persons defined as such by the national legislation of the Party concerned.

Information to be submitted

Article 27§1

NOT Applicable

Article 27§2

1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

By virtue of the Parental Leave Entitlement Regulations (L.N. 225 of 2003 as amended by L.N. 427 and 430 of 2007 and L.N. 175 of 2010) a male or female employee who have been in employment with the same employer for a continuous period of at least twelve months, and who has a child of eight years or less, is entitled to take unpaid parental leave for a period of three months.

An employee who takes parental leave is entitled to return to the same job that the employee occupied prior to the granting of parental leave or where this is no longer possible for any valid reason, to an equivalent or similar job consistent with the original contract of employment of the employee

An employee who is on parental leave shall, during the period of parental leave, be still entitled to all rights and benefits which may accrue to other employees of the same class or category of employment at that same place of work.

- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

The Department of Industrial and Employment Relations, through its Inspectorate Section provides information to the public on conditions of employment, including the right of parental leave through its customer care service. This section also provides assistance for employees who allege that their rights are violated.

In fact, during the period from June to December 2009, out of 9,591 queries received at the customer Care Section, 1.02% were related to parental leave. Between January 2010 and October 2010, out of 15,7689 queries, 1.14% were related to Parental Leave.

The Department has also published an information leaflet on Parental Leave for distribution to the public. Such leaflets are available from the Customer Care section of the Department, the Employment and Training Corporation, the Office of the Prime Minister, MCAST and the University.

Article 27§3

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

In article 36 (14) of the Employment and Industrial Relations Act, it is stipulated that the employer can dismiss an employee if there is good and sufficient cause. However there is stipulated also that an employer may not set up as a good and sufficient cause the fact that the employee contracts marriage or that an employee is pregnant or is absent from work during maternity leave.

Moreover, by virtue of the Protection of Maternity (Employment) Regulations (L.N. 439 of 2003, as amended by L.N. 3 of 2004 and L.N. 427 and L.N. 431 of 2007), it is unlawful for the employer to dismiss a pregnant employee, an employee who has recently given birth or a breastfeeding employee, from the date in which such employee formally notifies the employer of her pregnancy to the end of her maternity leave, because of her condition or because she avails herself or seeks to avail herself of such maternity leave.

- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

The Department of Industrial and Employment Relations, through its Inspectorate Section provides information to the public on conditions of employment, through its customer care service This section also provides assistance for employees who allege that their rights are violated.

Scope of the provisions as interpreted by the ECSR

Paragraph 1:

- a. Persons with family responsibilities must be provided with equal opportunities in respect of entering, remaining and re-entering employment, in particular in the field of vocational guidance, training and re-training.
- b. The needs of workers with family responsibilities must be taken into account in terms of conditions of employment and social security. Legislation or collective agreements shall regulate the length and organisation of working time, as well as how non-working periods due to family responsibilities are taken into account for pension rights.
- c. Child day care services and other childcare arrangements must be available and accessible to workers with family responsibilities.

Paragraph 2: Legislation, collective agreements or the practice shall regulate the possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child.

Paragraph 3: Family responsibilities must not constitute a valid ground for termination of employment or hampering career development. Courts or other competent bodies should be able to award a level of compensation that is sufficient both to deter the employer and proportionate the damage suffered by the victim.

Article 31 – The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;
3. to make the price of housing accessible to those without adequate resources.

Not Applicable