

3. ARTICLES

3.1 Memorandum to Political Parties Contesting the General Election being held on 9th March 2013

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Preamble

The Centre for Labour Studies (CLS) is the first and prototype centre set up at the University of Malta in 1981. A clearinghouse for independent and critical thinking and evidence based scholarship, the CLS has a broad mandate to act as a springboard for education, training, research and community outreach in a range of issues that concern workers and the Maltese Labour Market. Given the centrality of work to our lives, and its pivotal role in social and economic development, the CLS has also been unfailingly submitting work-related policy recommendations to all political parties contesting general elections in Malta since 1981. Such recommendations typically gravitate around the areas of expertise that have coalesced at the CLS and that find obvious expression in its course offerings, ongoing reports and monitoring, and the publications of its core academic staff.

At this time, the CLS has identified the following issues, topical in recent years, which would benefit from policy development: decent work, female participation in the labour market, corporate governance and gender equality, financial participation of employees, occupational health and safety, irregular immigration, trade union recognition, trade union rights for members of the police force, employee information and consultation rights, greening jobs and work, and lifelong career guidance.

The CLS is sensitive to the fact that policy makers involved in employment and industrial relations have to reconcile the promotion of economic competitiveness with the maintenance of social cohesion. Nevertheless, the CLS wishes to urge Alternattiva Demokratika (AD), Partit Laburista (PL)

and Partit Nazzjonalista (PN) – the political parties contesting the general election due on 9th March 2013 – to seriously consider policy development in these key issues and to boldly address them in their respective electoral programmes.

a. Decent Work

According to the International Labour Organisation (ILO), decent work “involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organise and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men”. A report about ‘Decent Work’ (1999) by the ILO Director General states that the emphasis should be on the creation of jobs of acceptable quality: “The need today is to devise social and economic systems which ensure basic security and employment while remaining capable of adaption to rapidly changing circumstances in a highly competitive global market”.

What this implies is that job creation should not be promoted at the expense of job quality. Economic growth should not be achieved at the expense of human rights protection and social justice for workers. The redistributive role of the state dictates that it should strive to ensure decent conditions of employment irrespective of the type of work contract.

The rationale of labour law is to address market failures by tackling the problems of governance of the contract of employment and establish fair employment relationships. This should not be in conflict with the creation of a well coordinated and flexible division of labour. Intervention by government through its legislative power and its regulatory role of employment relations should be instrumental towards the promotion of best practices between employers and employees in their dealings and to encourage investment in innovation and skills. The promotion of work quality can be seen as an attempt to further social justice and ensure a fair distribution of benefits among workers. Economic pressures must not serve to drive down the quality of jobs.

Economic outcomes can also be achieved by ‘smart’ regulation and positive reinforcement, rewarding positive behaviour and ‘best practice’ in this field.

Another initiative in favour of decent work is the charter announced by the Malta Employers Association (MEA) in May 2012 to encourage more standardised and decent employment practices in the local cleaning, security and care working sectors which are often accused of precarious work practices and which often involve female employees. An independent board would be set up to administer the charter and handle accusations of breaches. Companies in breach of the charter will risk being blacklisted in both the public and private sectors.

While recognising recent positive legislative measures in this field, the current economic crisis is likely to expose more workers to difficult economic conditions. Nominal acceptance at law and the setting up of suitable service charters need to be followed up by strict policy implementation in the spirit of the law.

In this regard, the CLS makes the following recommendations:

- That private companies be offered incentives (such as tax credits) to promote decent work by investing in suitable education and training (including training in occupational health and safety), skills development or retooling, and other opportunities for career development.
- That more initiatives are taken to ensure and promote actual decent working conditions in Malta, in the spirit of the current legislation in force.

b. Female Participation in the Labour Market

Whilst noting a significant increase in the female employment rate since Malta joined the EU, the current female employment rate at 43% is still lower than the EU 27 average of 59% (Eurostat, 2012). Concurrent with the low employment rates, Malta also has one of the lowest fertility rates in Europe (Eurostat, 2011). This combination of low female employment rates and low fertility rates is likely to have a negative impact on the sustainability of the welfare state in the future. This negative trend suggests an amount of incompatibility between paid work and motherhood. Moreover, it is quite plausible that, in a few years' time, the sole male breadwinner model would be replaced by a dual earner model, suggesting that the workplace needs to reconcile itself with this evolving reality.

In this regard, the CLS makes the following recommendations:

- That school opening hours be increased possibly through non-academic activities (e.g. sports, arts, drama, music etc.). This out-of-school service

should cover all holiday periods and be extended to all schools within a specified period of time.

- That a more rapid investment in childcare is made, possibly by opening up such services in all schools through private/public partnership schemes. Low earner families who want to make use of childcare services, but who do not qualify for related tax credits, should be supported in other ways. Additionally, employers in the private sector should be supported and encouraged to introduce childcare services at company level or through the clustering of such services.
- That employers be encouraged to offer more flexibility in the organisation of work in the private sector. Employees in specific sectors report more work-life conflicts and hence, particular sectors like the manufacturing, wholesale and retail trade, and those operating in the hotel and restaurant industry, should be especially targeted.
- That a non-transferable father's quota for paid parental leave be introduced so that the burden of child rearing is divided more equally between parents.

c. Corporate Governance and Gender Equality

Malta still has very low levels of female participation in corporate governance when compared to the EU. We note that there is a proposed EU Directive mandating minimum levels of representation for men and women on corporate boards and we look forward to its full implementation in Malta. However, the CLS also recognizes that its remit remains limited to very few private organisations.

The CLS remains cognisant that such a measure should be a temporary solution and that its implementation would be naturally phased out as it is (hopefully) overtaken and rendered redundant by more equitable gender representation on corporate boards.

In this regard, the CLS makes the following recommendation:

- That a greater and better gender balance is achieved in Maltese corporate boardrooms and that an extension to more private organisations beyond those stipulated in the EU Directive be considered.

d. Financial Participation of Employees

Financial participation of employees has become an important element of the European social model. It is a form of remuneration additional to pay systems that enables employees to participate in an enterprise as shareholders and not just as members of the labour force. In an economy making higher demands for companies to compete, financial participation of employees may gain more currency as it can be the means for stimulating the collective efforts of employees, thereby increasing productivity and/or enhancing efficiency. By being perceived as a gradual emerging reform promoting the values that give prominence to a society of stakeholders, financial participation can appeal to a wide ideological spectrum. It can also promote a form of employment relations that is more consonant with the principle consistently espoused by the employers of linking workers' income to levels of productivity.

In this regard, the CLS makes the following recommendation:

- That measures be taken to encourage private employers to consider setting up a trust fund that pools collective worker shareholding.

e. Occupational Health and Safety

The provision of a healthy and safe occupational environment is a factor which contributes immensely to an individual's quality of life. Additionally, the social and economic benefits of better health and safety at work are well reported.

It is thus positive that a general downward trend has been noted in both fatal and non-fatal accidents over the last few years. Such trend suggests that the Occupational Health and Safety Authority (OHSA) is utilising its limited resources well. However, of primary concern remains the limited resources entrusted to the OHSA for enforcing the available legislation. Several Maltese entities, both state and private, do not have or obtain the services of individuals who are competent in occupational health and safety. In a similar vein, many entities continue to lack health and safety worker representatives, as required by law. This limits workers' participation in providing feedback about their working conditions whilst also preventing workers from contributing to any health and safety measures that may be implemented. This restricts the effectiveness of any health and safety measures taken by an organisation and has been linked with reduced levels of occupational performance.

Occupational health and safety continues to be viewed in a negative light by some employers, who regard it as a cost that must be implemented to the minimal level as required by law. This is unlikely to change unless employers understand the financial advantages of maintaining a healthy working environment. Improving the profile of occupational health would not only be of benefit for the profession and the workers it aims to assist, but may lead to financial rewards for the country as a whole through the maximisation of worker productivity.

In this regard, the CLS makes the following recommendations:

- That more resources be deployed to enable the Occupational Health and Safety Authority to increase the number of proactive measures it takes, including spot checks.
- That a publicity campaign, possibly carried out through the Authority, be carried out to improve general awareness that occupational measures, when correctly implemented, can actually be profitable.

f. Irregular Immigration

In the past decade, Malta has become the first European port of call for thousands of displaced immigrants from sub-Saharan Africa and the Middle East. The irregular immigrants now in our midst have to rationalise and adapt themselves to a depressing and unfortunate situation. Their predicament is that of victims who are unable to extricate themselves because there is no formal means of escape and mobility to another European country, nor are there any clear means of integration into mainstream Maltese society. While Maltese policy makers continue to lobby for amendments to the Dublin II agreement that would permit such immigrants to move on from Malta, we realistically still need to consider and reflect upon the implications of having a proportion of these immigrants who are going to stay. Therefore, from political, economic and humanitarian points of view, some action needs to be taken.

Taking this situation as a given, CLS concurs with the stand taken by the United Nations Refugee Agency in Malta that in 2007 called upon Maltese policy makers to design a national integration strategy which defines what the government wants from integration, what it understands by integration, and how it can facilitate integration in terms of Maltese absorption capacity. Such a mainstreaming strategy can take note of the labour market segments

where such immigrants have already gained a foothold, including waste collection, quarrying and construction work. Irregular immigrants have skills, qualifications and professional backgrounds that remain largely under-utilised.

Steps should be taken to ensure that the integration of migrant workers into the labour market does not come about at the expense of their health and safety. Many of these workers are currently participating in employment sectors known to have high occupational injury frequencies such as construction. An effort should thus be made to ensure that these individuals receive the necessary training, as otherwise they will continue posing a hazard to themselves and others.

In this regard, the CLS makes the following recommendations:

- That the Employment and Training Corporation (ETC) makes more of its services available to all immigrants whose status enables them to access the labour market. Some services for these immigrants should be mainstreamed through ETC. Besides this, a special focus within the ETC should be dedicated to facilitate their integration into the formal Maltese labour market by providing them with appropriate training, including, language tuition, basic job skills, and occupational health and safety. Such a strategy should include individuals who specialise in understanding the needs of irregular immigrants and in the ways they cater for them.
- That a Temporary Work Agency (TWA) be set up specifically aimed at helping irregular immigrants integrate in the Maltese labour market and match employers' demands. We recommend the setting up of such an agency as a cooperative society since this would enhance its legitimacy as a corporate body that upholds high social objectives. The government should discuss these issues with Koperattivi Malta (the main cooperative development agency) and explore with it ways of incentivising and assisting in the setting up of such a TWA. The TWA could also operate as a bridge with ETC and other public and private institutions.
- That the government, through organisations such as the newly set up National Commission for Further and Higher Education, should facilitate access for the assessment of qualifications of African immigrants, for example through outreach exercises.

g. Trade Union Recognition

The Employment and Industrial Relations Act (EIRA), which governs and regulates employment relations in Malta, still lacks a legal provision for trade union recognition at the place of work in those increasingly common episodes where more than one trade union claims majority representation (50%+1) amongst the same group of workers. This lack of statutory procedure through which a union or unions can claim recognition has been the source of trade disputes which have often proved difficult to solve. During its 278th session in Geneva on 17th July 2000, the ILO urged the Maltese government to amend the law with a view to make the issue of trade union recognition less ambiguous. CLS concurs with this recommendation and thus urges the political parties to commit themselves to update the law to include a statutory provision about trade union recognition.

In this regard, the CLS makes the following recommendations:

- That in the case of situations where more than one trade union claims majority representation at a place of work, or amongst a specific group of workers thereat, the EIRA would empower the employer(s) involved to negotiate and develop a joint collective agreement with the two or more unions involved.
- That, should such a jointly crafted collective agreement not be possible or desirable to the employer, formal mechanisms should be developed to grant exclusive recognition to one trade union and such a recognition would remain legal and valid for a minimum period of time (say, 3 years) in support of stability in industrial relations.

h. Trade Union Rights for Members of the Police Force

The Employment and Industrial Relations Act (EIRA 2002) does not extend trade union rights to members of disciplined forces such as the police and persons employed in the army and civil defence. In defining the scope of 'employment' in relation to a trade dispute, this law includes any relationships whereby one person does work or performs services for another, other than a service of a disciplined force. This proviso and deliberate exclusion – which is also inserted in the definition of 'worker' and 'contract of service' at law – effectively cheats members of the police force from the right to join a trade union or to participate in sympathy with the actions of a trade union. During these last three years, there has been a regular campaign by the main trade

unions to give the members of the police force the right to join a trade union. The police officers maintain that their duties entail tasks such as driving, delivering official documents, clerical work and other activities that would qualify them to be defined as workers.

The work of the members of the police force is considered to be essential in guaranteeing the security that a society and the community need for the maintenance of order. However there are various other workers deemed to be providing an 'essential service' under EIRA – initially restricted to health professionals and now extended to include various workers providing port services, energy and transport – who are allowed to join trade unions and undertake legitimate industrial action subject to the provision of a minimum and basic or emergency service, which is meticulously prescribed in the law. The CLS is of the opinion that the same treatment be extended to members of the police force. The CLS is also aware that another category of workers formerly considered as a disciplined force has made a smooth transition to civilian status and now has its own trade union: the Malta Air Traffic Services.

In this regard, the CLS makes the following recommendations:

- That the Employment and Industrial Relations Act (EIRA) be amended such that its definition of the scope of 'employment' in relation to a trade dispute would no longer exclude those persons in the police force.
- That the Schedule to EIRA be amended to include a specified, minimum number of members of the police force that need to be available for duty at all times and including during episodes of industrial action.

i. Employee Information and Consultation Rights

Various EU directives relating to employee information and consultation rights have been transposed into local legislation over the last years, namely the "Collective Redundancies (Protection of Employment) Regulations" (2002), the "Transfer of Business (Protection of Employment) Regulations" (2002), the "Employee (Information and Consultation) Regulations" (2006), and the "European Works Council Regulations" (2011). However, their implementation in the Maltese workplace remains lacking, particularly in those workplaces where there are no recognised trade unions.

These regulations also refer to the existence of forms of worker representation in workplaces where trade unions do not yet enjoy recognition. The CLS regards these forms of representation to be useful

mechanisms for employee relations and which could eventually encourage greater trade union participation.

In this regard, the CLS makes the following recommendation:

- That information campaigns be developed and carried out by the state (possibly through the Department of Industrial and Employment Relations) in collaboration with social partners to increase the awareness of employers and employees about information and consultation rights.

j. Greening Jobs and Work

A healthy and sustainable environment is considered to be crucial to development and competitiveness, as much as to livability and a decent quality of life. Higher levels of commitment from the political class towards a more sustainable green economy through more creative and effective solutions to environmental issues are especially welcome. The Employment and Training Corporation (ETC) Report "Employment in the environmental goods and services industry in Malta" (2007) was an important initial step to start mapping out developments tied to environment-related employment. The development of green jobs since the publication of this report has unfortunately not been properly monitored.

The National Environmental Policy (2012) pledged that a Green Jobs Strategy would be prepared, together with a Training Strategy for green jobs. The state needs to pursue such objectives in collaboration with the social partners in the coming months and years. While there is an increasing awareness by the state and social partners about the need for environmentally sustainable policies, the notion of green jobs is still not being given sufficient attention in practice.

In this regard, the CLS makes the following recommendation:

- That the state aligns policies in favour of greening the environment with suitable labour market policies aimed at strengthening investment in the green technology industry and incentivising R&D initiatives in this regard. Capacity building and lifelong career guidance practices are required to improve the 'goodness of fit' between labour and environmental policies.

k. Lifelong Career Guidance

The European Union Council Recommendations on Malta's National Reform Programme 2012 include references to the need to increase the

participation of older workers in the labour force, reduce the rate of early school leaving, and pursue policy efforts that would allow the educational system to better match the skills required by the evolving Maltese labour market. In recent years, there have been considerable improvements in these three aspects through the implementation of various measures including legislative changes, active labour market policies, and restructuring exercises in both educational institutions as well as in the Employment and Training Corporation. However, there is still much room for improvement to enhance the quantity and quality of participation of persons in the labour market.

Unfortunately, the provision of career guidance in Malta is fragmented and varies considerably in quality. A comprehensive lifelong career guidance system would be particularly useful to help persons of all ages navigate through a rapidly changing world of work, coupled by the increasing availability of educational and training opportunities. The CLS also acknowledges that the social partners have an important role to play in decreasing the mismatch between labour supply and demand.

In this regard, the CLS makes the following recommendation:

- That the government sets up a National Career Guidance Centre (NCGC) as envisaged in the "Career guidance policy for schools" (2007) report, with the goal of sustaining cohesive and consistent lifelong career guidance services through research, information, training and the setting of quality standards. The NCGC shall cooperate with government entities and social partners in order to connect and professionalise career guidance services.

Conclusion

The points raised and the recommendations made above are meant towards a reconstitution of employment relations. It should also be emphasised that the proposals submitted by the CLS in this document are animated by the doctrine of functional reciprocity of capital and labour which, while acknowledging their divergences, highlights their significant common interests, thereby making their differences amenable to peaceful and 'win-win' synergies and solutions.

We urge AD, PL and PN to consider these suggestions and incorporate them in their electoral platforms.