

GREVIO SHADOW REPORT – MALTA

November 2019

Acknowledgments

This is the shadow report for Malta compiled by various local NGOs that work directly with women survivors of violence. A number of meetings were held among the organisations to identify key issues and manner in which the report is to be constructed.

Editing

Lara Dimitrijevic, lawyer, Women's Rights Foundation

Contributors

Aleksandar Dimitrijevic, Chairperson, Men Against Violence

Bernardette Briffa, Social Worker, Dar Merhba Bik

Krista Tabone, Director, Victim Support Malta

Lara Dimitrijevic, Director, Women's Rights Foundation

Maria Mangoin, social worker, Fondazzjoni Sebh

Rebecca Muscat, Lawyer, Women's Rights Foundation

Stephanie Caruana, Lawyer, Women's Rights Foundation

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Introduction

The report has been compiled with the input of civil organisations. It was agreed that the report will only comment on articles that require commenting on as enlisted in the Istanbul Convention by-highlighting the issues and followed by recommendations. Case studies have also been identified to highlight the existent difficulties.

Attempts to contact other civil organisation for their comments, however there was no response.

General information

Violence against women has not decreased in the last decade but it is becoming more visible. This can be attested to by the number of reports filed by women in the last couple of years. FRA (2014) reported that 1 in 7 Maltese women have experience physical or sexual violence since the age of 15 and 23% suffered physical, sexual or psychological abuse prior to the age of 15. The Eurobarometer (2016) showed that women in Malta suffer the worst forms of violence.

Malta ratified the Istanbul Convention in 2014, and implemented it in May 2018. The legislative changes introduced strengthened the definition of domestic violence and adopted the definition of rape as found in the convention. Legislative amendments were made to different codes of law and a specific offence of domestic violence is now found in the Criminal Code¹.

In 2018, the Commission for Gender Based Violence and Domestic Violence (CGBDV) also issued its first national strategy². The strategy envisaged multi -disciplinary cooperation and coordination among various entities, including civil society.

However, despite all this being in place, the reality is rather different. As will be explained in further detail under the relative article, there is still a lack of enforcement of legislation, training and multi-agency cooperation. The sentiment of victims is still one that of scepticism towards the judicial system and police. In the last couple of years, two studies have been commissioned, 'Full Cooperation: Zero Violence Barriers to Help-Seeking in Gender-Based Violence Against Women: A Research Study', Naudi, Clarke and Saliba (2017)³ and 'Research Study: Violence in the Lives of Homeless Women', Bezzina and Suarez (2019); and both have highlighted recurring perceptions and complaints of both professionals working in the area and the survivors themselves.

¹ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574>

² https://meae.gov.mt/en/Documents/GBV_DV%20Strategy%20and%20Action%20Plan%20publication.pdf

³ <https://meae.gov.mt/en/ZeroViolence/Documents/Full%20Cooperation%20-%20Zero%20Violence.pdf>

Preventive measures have also been implemented sporadically and not in a consistent and with no long term vision. Most effort is project based, for a temporary period and there appears to be no plan for a sustainable long term effort.

Chapter I – Purposes, definitions, equality and non-discrimination, general obligations

Article 3 – Definitions

A gender neutral approach was taken when implementing the legislation. Despite bringing this to the attention to the Human Rights and Integration Directorate (HRID) that the aim of the Istanbul Convention, was among others, to eliminate violence against women, the legislator still opted for a neutral approach. They argued that it would be discriminatory despite the fact that the Convention itself states to the contrary.

As the law reads, no special attention has been given to the fact that women are more vulnerable and that they are victims of gender based violence. The definitions in Chapter 581, Laws of Malta, Gender Based Violence and Domestic Violence Act⁴, defines domestic violence and gender based violence. Although the wording is similar to that found in the Convention, it fails to define violence against women and gender based violence against women as found in the Convention.

This was an opportunity for the legislator to address key issues that had been highlighted in the FRA report (2014) and Eurobarometer (2016) as well as other national research.

Recommendation

- ☐ Define violence against women
- ☐ Make violence against women an aggravated offence in the Criminal Code

Article 5 – State obligations and due diligence

Training to civil servants, justice and police is still very sporadic and for the majority dependent upon a particular project. This is also indicated in the state report filed by Malta to Grevio.

There is lack of proper and adequate investigation, which in turn is leading to a system of dual reporting whereby victims are equally being charged because the version of the perpetrator has equal value. Charges are issued on a one time incident and do not reflect violent or coercive behaviour in terms of law, and fail to indicate a course of conduct as required by law, often leading to acquittal.

There has been much talk over the years that police stations would have a specialized officers to deal with reports of domestic violence or that hubs will be created to deal

⁴ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12830&l=1>

with such cases; nevertheless none has to date been created and it does not appear that it will be done in the near future.

X case

X, a mother of 3, left her husband due to abusive and violent behaviour. From the onset, her husband was constantly contacting her, stalking her and harassing her; and on occasion, he was physically abusive towards her and members of her family.

X filed over 60 police reports against her husband however, there were times where the police did not issue any charges against him or did not arrest him. Her husband was eventually arraigned in court after four months from filing her first report, and on that same day, X was issued with a protection order. Nevertheless, her husband continued to stalk and harass her and was arrested after four (4) days from the issuance of the protection order. After he was given bail, he started to harass her again, and after filing several police reports, he was re-arrested, but was granted bail. After a few days, he began to contact her and harass her once again, and on one occasion he even waited for her outside their children's school in his car and pointed a gun at her whilst she was in her car. This led to again his re-arrest, but the court granted him bail again and the same pattern of abusive behaviour commenced.

X continued to file reports with the police for every occasion her husband contacted, threatened or harassed her or her family members. She had to also inform the police officers that a protection order was issued in her favour, and that he was out on bail every time she filed a police report. Police officers would ask her to provide them with proof (legal document) of this, since the police do not have a system that would indicate that an accused is on bail or have a protection order in her favour.

Over the period of four (4) years and more than 60 reports filed, no immediate and effective action was taken by the police. X filed a human rights case with the Constitutional Court of Malta, arguing breach of her right to a private life in terms of Article 8 of the European Convention of Human Rights (ECHR); no effective remedy as required under Article 13 of the ECHR; and that failure of state protection and due diligence amounted to inhuman and degrading treatment in terms of Article 3 of the ECHR.

From evidence brought and testimonies of senior police officers given in front of the Constitutional Court, it resulted that the police officers received no more than a one (1) hour session at induction stage and very little training during their career on dealing with domestic and gender based violence. It further resulted that there are some form of guidelines that should be found in each police station, however, as the Assistant Commissioner himself testified, these would be in a file somewhere in the police station. Moreover, when questioned what is the procedure to enforce breach of a protection order, the Assistant Commissioner had said that he is not aware of any procedures.

The Constitutional Court found that there was lack of immediate and effective protection by the police, thus resulting in a breach of Article 3 and 8 ECHR, and ordered the Police Commissioner to pay €5,000 in damages to X⁵.

Recommendations

- ☐ All police officers, lawyers, adjudicators, court officials and employees, social workers, health professionals and other entities and professionals to be given ongoing compulsory training on domestic violence and gender-based violence.
- ☐ Training to include all forms of violence, gender discrimination, understanding of victims and their vulnerability, dealing with perpetrators, gender equality and sensitization among other components. It is imperative to have an inter-disciplinary and cross cutting approach.
- ☐ To create Standard Operating Procedures (SOPs) for police to guide them in dealing with cases of domestic violence and gender-based violence; as well as what ought to be done when there is breach of a court mandated protection order or temporary protection order.
- ☐ Police to have specialized unit, or police unit, to deal with cases of domestic violence and gender based violence.
- ☐ To create specialized courts to deal with domestic violence and gender based violence. Such courts to have the power to also determine preliminary matters related to care and custody, child support and access.

⁵ At time of submitting report, case is pending appeal.

Chapter II – Integrated policies and data collection

Article 7 – Comprehensive and co-ordinated policies

Despite the fact that the national strategy indicates that civil society are to be involved in implementing strategy, to date they have not been invited, nor consulted at any stage.

There is lack of vision to achieve a holistic approach to tackle violence against women. There are inter-ministerial meetings that are being held regularly, however NGOs are not included in the discussion. NGOs were only invited once to the meeting, however never approached again. Side lining NGOs, is leading to duplication of work and creating further gaps among entities that are ultimately all working towards ensuring the best support and protection for victims.

Furthermore, the national entity, Agencija Appogg, providing direct support to victims of domestic violence, in 2018 direct orders to its workers not to co-operate with local NGOs, particularly Women’s Rights Foundation (WRF). WRF provides a specialised service whereby it provides free legal support, information and representation for victims of domestic violence, irrespective whether the women have means or not, a service that ought to be provided by state parties according to the Istanbul Convention.

Collaboration can no longer remain dependent on the individual professional, but it must be structured as to ensure that victims and their children access their rights in the easiest manner. In addition, it is also important to note that, no matter the differences in principles and philosophies, organisations need to work together in order to ensure the victims with a smooth access to their rights for stability and protection. Lastly, victims have the right to choose any service from those available, and thus organisations must work together, irrespective of their differences, so as to ensure a more coordinated approach that is based on the right of choice for the victims concerned.

Recommendations

- ☐ Include NGOs in strategy and other decision making processes.
- ☐ The rights of the victims should be placed at the centre of all decision making procedures.
- ☐ The National Action Plan needs to take into account women experiencing violence, as well as to include children witnessing violence.

Article 8 – Financial resources

Government has entered into public social agreement with NGOs providing shelter to victims of domestic violence and victims of rape. However, this is a selective process and at the discretion of the Minister of the day.

No funds are allocated to NGOs specifically providing services to women and to other organizations advocating for women's rights.

NGOs may also apply for public funding or projects, however such calls are open to all NGOs, including football and local band clubs. There are no specific calls for gender-based violence/domestic violence.

In 2018, the budget allocated to Commission for Gender Based Violence and Domestic Violence was increased to €150,000 from €72,000 in 2017. Given the remit of the Commission as enacted at law and its role in implementing the strategy, the amount is not enough to ensure that proper preventive measures, campaigns and training is given in terms of the national strategy.

Recommendations

- ☐ Increase budget measures to show serious commitment to prevent and end violence against women
- ☐ Allocate direct funds to NGOs providing services for victims of gender based violence and domestic violence.

Article 9 – Non-governmental organizations and civil society

As explained above, there is very little cooperation between the government and NGOs. Not all ngos receive the same state financial support. Unless a partnership agreement is entered into between a government entity and an ngo, ngos are struggling to make ends end, cope with the demand and offer quality support for their service users.

The government issues an annual call for projects to be implemented within one (1) year. However this call is open to all to all registered NGOs and often NGOs working in the area of gender based violence, would have to compete with other organizations thus making the chance of project being awarded less and harder to achieve. Furthermore, the amount allocated per project cannot exceed more than €20,000, an amount that is by far too little.

According to Article 19(9) of Chapter 581 Laws of Malta, has made Agenzija Appogg the designated authority to *'where necessary and in the best interest of all parties involved, liaise with any other agency, institution, non-governmental organization or any other body which is competent to deal with matters of this Act.'* It is therefore unacceptable that a designated authority at law issues direct orders not to collaborate with NGOs.

Recommendations

- ☐ Provide direct financial support to NGOs working in the area of gender based violence and domestic violence
- ☐ Allocate a specific call for projects for gender based violence and domestic violence
- ☐ Increase the fund allocated for projects
- ☐ Ensure that there is effective collaboration between government entities and NGOs.

Article 10 – Co ordinating Body

This is tasked to the Commission on Gender Based Violence and Domestic Violence. Despite laws stating that the CGBVDV ought to be made up of members knowledgeable on issues related to gender based violence and domestic violence, this may not always be the case since its members are appointed by the Minister under whose portfolio the commission falls under.

According to the National Action Plan, the Commission is vested with the authority to ensure that adequate legal measures are implemented, however ngos feel that not enough effort is being done to engage with ngos or consulted for their opinion, comments and recommendations.

Recommendations

- ☐ Appoint knowledgeable persons in the field of domestic violence and gender-based violence as members of the Commission.
- ☐ Ensure that Commission for Gender Based Violence and Domestic Violence adheres to its obligations in terms of law and National Actions Plan, including engagement and collaboration with ngos.

Article 11 – Data Collection and Research

Collection of data remains desegregate and sporadically collected. The national action plan indicates who are the entities responsible to establish a systematic collection of statistical data, yet to date this is still not established.

The EIGE report for Malta on Recommendations to improve data collection on intimate partner violence by the police and justice sectors (2018)⁶, also noted the difficulties and made recommendations on how to better up the data collection system.

Recommendation

- ☐ Data collection needs to be accurate, coordinated and comprehensive.

⁶<https://eige.europa.eu/publications/recommendations-improve-data-collection-intimate-partner-violence-police-and-justice-sectors-malta>

Chapter III - Prevention

Article 12 – General Obligations

Special Eurobarometer Report on Gender based violence (2016) reported that 47% of Maltese people believe that women make up or exaggerate claims. Very little has been done on a national level to address this issue. Misogynistic and sexist comment have become normalized in social media and common parlance. It is worrying to see hate speech becoming normalised and tolerated in our society and whenever reported, no police action has taken place, despite hate speech becoming an offence.

It is further worrying to note that legislative measures that have been introduced, are of themselves re-victimising survivors, particularly in the area of access to justice, and lack a victim centred approach. By way of example, legislation dealing with temporary protective measures has now codified that victims are to be given the option of shelter during police investigations. This is worrying because a measure that was originally intended to be introduced to put the onus on the perpetrator has now put the burden directly on the victim.

Campaigns have been sporadic and for the majority based upon projects, or limited to a specific period, such as 16 days of activism. This can also be confirmed in the State Report presented by Malta to Grevio (September 2019). There is no impact measures that is used to determine the impact of the campaigns.

As mentioned above, training is also sporadic and limited to project basis. Very little to date has been done on work on primary prevention educational programmes with children in schools and society in general. On the state level, National Commission for Promotion of Equality run a two-year long project 2016-2017 called Equality Beyond Genders, targeting boys post-secondary school students. It engaged over 900 boys in commenting and participating in the campaign. Similarly, the Commission on Gender based and Domestic Violence, another state established institution is currently running an EU funded project that has the name 'Breaking the Cycle of Violence' where it involves providing gender equality and violence prevention training to a large number of boys, members of the local Boy Scouts organisation.

Although these are good examples of what can be done, there is no effort to integrate similar programmes that ought to be compulsory in the educational curricula.

Recommendations

- ☐ Ongoing campaigns and awareness raising campaigns targeting all forms of violence against women. These are to include vulnerable victims such as migrant women, women with disabilities and LGBTIQ.

- ☐ Continuous funding for awareness campaigns, including campaigns targeting specific forms of violence, such as sexualized violence.
- ☐ Prevention measures addressing sexism and victim blaming.
- ☐ Compulsory education focusing on gender equality programmes in schools as well as professionals working in the field.

Article 15 – Training of Professionals

Training for professionals continues to be sporadic and is not compulsory. For members of the police force, whenever there is specialized training, this is attended by very few officers and for the majority are higher ranking officers and not the ones that would generally meet with violence against women in their day to day work.

There have been some projects that have targeted gender based violence and domestic violence in the last couple of years. These do not only include the once organized by the Commission for Gender Based Violence, but also run by NGOs, such as MED-RES, Eu funded project run by Women’s Rights Foundation and PROTECT by IOM Malta.

The Istanbul Convention, however requires more than that. In the State Report, Malta reported that training for teaching professionals and others working in this area have received training on Anti-Bullying⁷, however this training most certainly does not focus on violence against women.

Recommendations

- ☐ Trainings to become compulsory and provided continuously to all professionals, especially the police, lawyers, health professionals, public prosecutors and members of the judiciary.
- ☐ Training to be rolled out to other professionals, including teachers and educational officers, so as to be able to incorporate lessons dealing with prevention and awareness in their subjects.
- ☐ Training for journalists and media professionals in understanding the dynamics of violence, among others, and ways to report such cases.
- ☐ Specific funds to be allocated to the development and deliverance of the training.
- ☐ Monitoring of standards of the quality of training.
- ☐ Training to focus on all forms of violence and to be inclusive.

⁷ https://education.gov.mt/en/education/student-services/Pages/Psycho-Social_Services/Anti-Bullying-Service.aspx

Article 17 – Participation of the Private Sector and the Media

Media

In 2018, the Commission for Domestic Violence issued guidelines on reporting Domestic Violence⁸, however reports still lack sensitivity and are often presented in a sensationalised manner. At times the very headlines themselves are victim blaming or presented as being a domestic dispute and not for the severity of what the case is.

Recommendation

- ☐ Guidelines to form part of legislation in both Broadcasting Act (Chapter 350, Laws of Malta and Media and Defamation Act, Chapter 579, Laws of Malta.
- ☐ Creation of manuals to be made available to all those working in journalism and have continual training on violence against women.

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https://meae.gov.mt/en/Public_Consultations/MEAE/PublishingImages/Pages/Consultations/ReportingDomesticViolence-GuidelinesforJournalistsandMediaContentProducers/Reporting%20Domestic%20Violence%20-%20consultation%20document.pdf

Chapter IV – Protection and support

Article 18 – General Obligations

Protection of victims is still lacking. There have been memorandum of understanding (MOU) between Agenzija Appogg, designated agency referred to above, and the Malta police force, however content of this MOU is not clear nor has it been made public. All that is known is that its purpose is to enhance better cooperation between professionals working within the designated agency and the police⁹.

An MOU was also entered into between Agenzija Appogg and Primary Health Care, however this has been revoked following only a couple of weeks that it was signed. The reason has not been made clear.

When it comes to civil society, there still seems to be a lack of adequate and quality cooperation between the national entities and NGOs.

Both MOU were a result of an EU funded project (Zero Tolerance). Part of the same project envisaged the creation of a multi risk assessment team (MARAC) by the beginning of this year as defined in the National Action Plan. However to date, there seems to be little will and want to implement this team. To the contrary, as highlighted above, directives have been issued not to collaborate with particular NGOs providing direct services with women victims of violence.

Empowerment measures – such measures are generally dependant upon projects. These programmes are usually provided in shelters (both emergency and secondary stage shelters) and by other NGOs. However, there is no empowerment programme available for human trafficking victims.

Protection and support services to be located on the same premises – in some localities there is a centre called LEAP which provide various support services; however there are localities which do not have access to these services and have to travel to other part of the same locality or to other localities to access them. Nonetheless, social workers, police officers and health professionals are not available in the same premises, and sometimes women have to travel from one place to another (even on foot) to access these services.

The state adopted measures under the Criminal Code, Chapter 9, Laws of Malta and Victims of Crime Act, to ensure that services do not depend on the victim's willingness to press charges or testify against the perpetrator.

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<https://meae.gov.mt/en/ZeroViolence/Documents/FINAL%20REPORT%20OF%20THE%20PROJECT%20-%20Printed.pdf>

Recommendations

- ☐ All national entities to have clear protocols and guidelines
- ☐ Create MARAC and MARAM without any further delay
- ☐ Ensure that all services avoid re-victimisation and unnecessary burden on victims, especially health professionals, law enforcement agencies and the judiciary.
- ☐ Compulsory collaboration between government agencies and NGOs to support and protect victims.
- ☐ Empowerment programmes and assistance should be made available to women victims of violence.
- ☐ Creation of a one-stop shop for victims and survivors of domestic violence and gender-based violence.

Article 19 -Information

According to Article 4 of the Victims of Crime Act¹⁰, all victims reporting a crime are to the following:-

- (a) the type of support which can be obtained and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;*
- (b) the procedures for making complaints with regard to a criminal offence and the victim's role in connection with such procedures;*
- (c) how and under what conditions the victim can obtain protection, including protection measures;*
- (d) how and under what conditions the victim can access legal advice, legal aid and any other sort of advice;*
- (e) how and under what conditions the victim can access compensation;*
- (f) how and under what conditions the victim is entitled to interpretation and translation;*
- (g) if the victim is resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect his interests in Malta;*
- (h) the available procedures for making complaints where the victim's rights are not respected by the competent authority operating within the context of criminal proceedings;*
- (i) the contact details for communications about the victim's case;*
- (j) the available restorative justice services;*
- (k) how and under what conditions expenses incurred as a result of the victim's participation in the criminal proceedings can be reimbursed.*

¹⁰ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12306&l=1>

Victims are also entitled to receive this information in a language that they understand or by means of an interpreter.

However, since 2014, the year when the Victims of Crime Act was introduced, no such measures have been introduced or are in place. In cases of violence, there have been cases where the police would have personally escorted victims to shelters when needed, however there are no measures taken to provide victims with the rights entitled to them according to the quoted above article.

Women's Rights Foundation, provides legal information and has also published handbooks on reporting domestic violence. This handbook is available in Maltese, English, Arabic, Somali, Tigrinya, French, and Bengali. Translation of the handbooks has only been made possible thanks to funding by UNHCR, although WRF tried to apply for national funds to have it translated into various languages so as to ensure that quality and professional support is available to migrants.

Recommendations

- ☐ Ensure that all support services have information available in a language that the victims accessing their services understand.
- ☐ Ensure that information is also available to those visually impaired and deaf and mute.
- ☐ Information to be made available at every stage and without putting the burden on the victim to have to follow up police reports or a course of action.
- ☐ Public financial support also to NGOs providing services for victims

Article 20 - General Support services

The government entered into partnership agreements (PSP) with shelter providers and Victim Support Malta that are at present providing psycho social and legal support to survivors of rape. The agreements are subject to review and renewed every 3 years. We emphasize the need for these PSPs to continue to respect and promote the autonomy of civil society and to ensure adequate funding to civil society organisations in order to enable them to continue delivering a professional and sustainable service to its beneficiaries. This element is being emphasised in the convention itself.

In addition, any amendments to these agreements before the three year period expires are to take place following:

- Detailed proposals from either the service provider or the service contracting and

- Decision making as regards to any changes shall only take place following a thorough discussion between the parties involved.

By doing so one ensures that the PSP's are adjourned in accordance to the emerging needs of that specific service and client group. This ensures that the PSP's are in practice meeting the needs of the vulnerable.

Services available to victims are inconsistent and dispersed. Most of the services are provided by NGOs on pro bono and voluntary basis, or dependent on project basis. With regards to sexual violence, there have existed social partnership agreements as will be explained in the below section.

Legal counselling

To date, victims of domestic violence and intimate partner violence are still not provided with free legal support. They can apply for legal aid support however this is still dependent upon a means test that would take into account not only whether the victim has a regular income but also if she owns property or other possessions that would amount to more than € 6,988.12. The one and only NGO that provides free legal counsel and legal representation are not only not supported by government; but in 2017, the national designated state agency, Agenzija Appogg, providing social support to victims of domestic violence have been issued by a directive by the CEO not to collaborate specifically with Women's Rights Foundation. The reason behind this is not clear, however it comes shortly after this ngo organized a march against femicide in September of 2018. This directive was confirmed by staff working within the agency and was made public in a local newspaper article published on Torca, September 23, 2018.

Women that are leaving or have left abusive situations would at times need to take legal action so as to regulate the care and custody of their children, maintenance and access visitations and at times request for the removal of the perpetrator from the matrimonial property. It is a given fact that women that leave abusive situations, often with children in tow, end up in a situation where they would not be able to attend work until protection measures are put in place or have to provide for themselves and their children from their income. Having to add legal fees and dues is causing an added burden on their already difficult financial situation they are faced with (see also Art. 57 Legal aid). Moreover, legal aid lawyers refuse to go to shelters to assist victims and insist with them to go to the legal aid premises in Valletta or their private firm, which at times is not possible due to safety reasons.

Psychological counselling

As for psychological counselling, some is provided by the national authorities by Agenzija Appogg for free, however the waiting list is rather long. Victim Support Unit within the police force also have counselling services to victims of violence. Counselling is also provided to children in schools. NGOs, particularly those residing

in shelter and Victim Support Malta, also provide victims of domestic violence and gender based violence with counselling and psychological services.

Financial support

Persons that have no income are entitled to social benefits. Victims of violence are also entitled to financial support as would be applicable to any other person and there are no special financial support provided to them because they are victims of violence. Women that are in shelter, often apply for social benefits, however the procedure is rather lengthy and takes over six (6) weeks. This period is putting women in a situation of poverty and dependent on charity that causes further distress to them.

In order for the client to access community-based initiatives, the distribution of the governmental funding is required to be adequate and available for all. The victim's accession to specific rights cannot be based on the altruism of society. Thus the immediate access to support services which enable the victims to meet basic needs is required to be in place and distributed amongst all entities involved including the NGO's.

Nonetheless, apart from this matter, it would be beneficial for the victims and the children concerned if the hand-over of the financial maintenance of the children from the perpetrator to the victims is facilitated by the Department of Social Security. This is because the victims report struggling to receive financial maintenance. Legal action in this regard may consist of a lengthy process which requires further expenses, which victims do not afford. In addition, the current system allows for the perpetrator to exert further financial control on the victim. In view of this, a system whereby the perpetrator hands the financial maintenance to the DSS through a system of monthly instalments and the social security issues the payments to the victims has been recommended by many victims. In doing so, the responsibility is removed from the victim and the perpetrator is accountable to pay the DSS and not the victim. This is much needed since the victim has to juggle and settle many matters and alleviating the burden of one or two matters supports the victim's journey from abuse to a safe and stable life. In view of the aspect of accountability to the DSS, the process may run smoother.

Housing

Emergency shelters are available and on average for women seeking shelter support. Over the years, social housing is becoming more and more difficult to access for victims of violence.

First and foremost, it is important to note that the stay in all residential homes and shelters is time-bound thus the aspect of housing is one of the most concerning impact of domestic violence which requires priority. Additionally, the current emerging trends are demonstrating that almost all women who approach these services do not

have a matrimonial home or adequate incomes. Whilst we acknowledge that the schemes from the Housing Authority increased certain loop holes persist and these include:

- ❖ Women who are still in process of their legal separation (as this takes a long time in courts) cannot apply for social housing and this creates further fear and frustrations especially since the stay at the shelter is time-bound.
- ❖ Women who lack education skills or have other limitation such as mental health or past addictions issues might not be able to hold a stable job. This impacts their income thus limiting their possibilities to commit to many of the available schemes at that point in time. This is because these persons require longer time to achieve an adequate level of stability which enables them to commit to such schemes. Yet this is not always possible since the stay at the shelter is time-bound and they may not be eligible for any other service.
- ❖ Furthermore, those who are not eligible for the Social Housing and the available Schemes sometimes due to legal related matters, face the challenge of the renting costs, which are very high thus finding it difficult to meet the financial demands. In addition, rent subsidy has increased however if the woman is not yet in a stable employment, she will still face challenges.
- ❖ Those who are unable to find an alternative accommodation may end up in a homeless shelter despite the fact that they worked on domestic violence specialist issues and they may still require support from the domestic violence specialists' services.
- ❖ Where the bank loan scheme is concerned apart from the fact that the person applying is required to be in full time employment, at times, one may be required to leave the shelter by the time that one becomes eligible for the loan and the accommodation is habitable.

Despite the fact that the Domestic Violence Unit of Agencija Appogg, when possible and when required, supports the victims to access housing, it is important to note that the actual access to Social Housing is experienced as challenging by many victims. The challenges are mainly related to availability and waiting time. Those who reside in a shelter may benefit from the collaboration between the shelters and the Housing Authority yet those who do not have this support available struggle to access these resources and to navigate the system.

Last but not least, specific cohorts e.g. elderly, who may not qualify for many of the schemes may end up moving back with the alleged perpetrator given the limited options.

In view of this, the understanding that victims of domestic violence do not compose a homogenous group is required to be incorporated in the local social policy, including housing.

Recommendations

- ☐ All support services, from shelter to psycho-legal support, to receive adequate national funds to be able to provide quality support.
- ☐ More resources available for psychological support to all victims at every stage, including those ongoing criminal and civil proceedings.
- ☐ Support organisations providing services to migrant victims, LGBTI and women with disability.
- ☐ Barriers to accessing legal aid to be removed and not dependant on means testing for victims of domestic violence and gender based violence
- ☐ Child support should be paid to the victim through a system of monthly instalments by the DSS so as to ensure that perpetrators do not continue to control the victim financially.
- ☐ Social Housing and other forms alternative accommodation to be more accessible to victims of domestic violence and gender based violence.

Article 21 – Assistance in individual/collective complaints

Information in this regard is also lacking, if non-existent. Unless provided with legal support, victims would not have any other means by which they are made aware of remedies available to them. From housing to social benefits to court action, it would be very difficult for victims to access these complaints mechanisms.

In 2012, Malta introduced the Criminal injuries compensations Scheme¹¹. With further amendments introduced in May 2018, following implementation of the Istanbul Convention, so as to include offences related to rape and greivous bodily harm.

There should be an independent system to address complaints, particularly when beneficiaries are not satisfied with the complaints handling process. We need to empower women and children to speak up and ensure that an impartial and independent body address their issues in a timely manner.

Recommendations

- Publish information related to complaint mechanisms in as many languages as possible.

¹¹ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8983&l=1>

- Ensure that all services users and community are aware of possible complaint mechanisms.

Article 23 – Shelters

Shelters are only available for victims of domestic violence and there is no specialised shelter available to victims of rape, human trafficking and other forms of violence.

Services focusing on children who witness domestic violence, need to be strengthened. Whereas these children may access mainstream services, these are not always available immediately. Delays impact the wellbeing of the service users, in this case children which more than anyone require the service in a timely manner. Such services should continue to be provided within shelter settings with the support of the state, such that the necessary support services are endorsed immediately and children are safeguarded in a holistic manner.

Recommendations

- ☐ More specialised shelters especially for victims of rape and human trafficking.
- ☐ Strengthening the services provided for children who witness domestic violence.

Article 24 – Telephone Helplines

In Malta there is only one national generic helpline to provide 'information about local social welfare services and other agencies, and a referral service to callers who requires support. It is also a national service to people who are in times of difficulty or crisis'¹². The service is run by volunteers.

There are other helplines provided by ngos. A recent project has created 'Violet' that now provides 24 hours online support to users on gender based violence¹³. Victim Support Malta and Women's Rights Foundation also provide telephone and online support however they receive no financial state support to provide such services and is dependent on volunteers availability and are not free of charge.

Recommendation

- ☐ Create a national helpline that is available 24/7 dealing with violence against women

¹² <https://fsws.gov.mt/en/appogg/Pages/support-line-179.aspx>

¹³ https://www.vso.org.mt/?fbclid=IwAR0tWuF1Lc-zrXuugdh_BTbHLNfroAynU_h-ez_Xvn8Flckv3_jrQ20-b4g

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| <p>☐ Provide state funding to ngos providing services to victims of gender based violence. These funds need to cater also for multi lingual counselling, information etc.</p> |
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Article 25 - Support for victims of sexual violence

In August 2010, a task force appointed by the government, charged with conducting research and providing recommendations to the government concerning service provision for victims of sexual assault, submitted a report to the state. The members of the task force included members of the commission for domestic violence as well as representatives from the government, local hospital, state social services and local NGOs.

The final report recommended establishing a Sexual Assault Response Team (SART), encompassing a victim-centered service which would cater to any victim of sexual violence. The recommended team would be composed of law enforcement, a crime lab, forensic-medical specialists, social workers, psychologists, and lawyers to provide *parte-civile* representation for victims of sexual violence.

In March 2014, the NGO Victim Support Malta entered into a contract with the (then) Ministry for Family and Social Solidarity, to provide the following to victims of sexual violence –

- i. Ongoing emotional and practical support;
- ii. Support and information during prosecutions and court proceedings;
- iii. Provision of legal services to appear *parte civile*;
- iv. Witness support;
- v. Mediation if appropriate and if requested.

The following services were also to be provided by the NGO Victim Support Malta:

- i. Liaising with the police to ensure that the victim is informed of the procedures taken;
- ii. Liaising with other relevant professionals and services where deemed necessary, and the provision of a psychologist where required;
- iii. Liaising with the authorities concerned in case the victim is eligible to compensation for crime victims.

Victim Support Malta were also allocated a team of social workers from national social welfare services in order to allow for 24/7 crisis intervention and support to any individual presenting as a rape victim at the local hospital or police. Agreements had also been made at ministry level so as to ensure the cooperation of the local hospital, and the local police (namely the Vice Squad).

Victim Support Malta is currently in its 6th year of service provision for victims of sexual assault and rape, and has provided services for 197 survivors to date.

The SART service was originally piloted between March 2014 and August 2014, with an interim evaluation report submitted in July 2014 highlighting the progress of the service. It was immediately noted that there were significant issues interfering with the successful implementation of the SART model.

There was a lack of commitment from the local hospital to work according to the procedures which were developed as part of the service, resulting in different professionals providing different levels of care for sexual assault survivors accessing the service. No nurses or doctors were specifically allocated to work on the service, resulting in some doctors refusing to see victims of sexual assault who presented at the hospital, and who would have to wait until a doctor willing to see them would become available. Other gynaecological emergencies would also take precedence over sexual assault victims, so waiting times were lengthy.

There were challenges in coordinating with the police. The Vice Squad unit were inundated with work and understaffed, and began to prioritize their involvement in rape cases (as defined by Maltese law at the time) over their involvement in sexual assault cases (at the time following the local legal definition of 'violent indecent assault'). This resulted in some cases being handled by district police, who in some instances weren't informed of the new service and failed to call in social work services or inform victims of their right to free legal representation under the service. Unfortunately, these issues have persisted to date, and issues are still encountered with district police stations who are unused to working with victims of sexual violence.

It was immediately recommended that Memorandums of Understanding (MOUs) are established with all relevant services in order to ensure the ability to work as a multidisciplinary team and the smooth running of referrals. Several meetings, reports and communications have occurred from 2014 to date, however the original problems which the service faced are still encountered to date, and no MOUs have been signed with relevant stake holders.

In 2015, Victim Support Malta requested a change in name from "SART – Sexual Assault Response Team" to "CVSA – Care for Victims of Sexual Assault". The request was made as the NGO felt that the service was not reflective original name. The Ministry for Family and Social Solidarity agreed to the change in name as an interim measure until relevant resources could be soundly allocated to the service.

Other issues which are currently encountered in the provision of services for victims of sexual assault and rape are as follows:

- There is currently no infrastructure or legal framework to allow for the elevation and storage of forensic evidence in instances where victims are uncertain about taking legal action. This means that victims of sexual violence can choose to report the crime soon after it occurs or risk losing any forensic evidence;
- Victims of sexual violence are currently seen by 2 separate experts for forensic purposes and medical purposes, as well as a 3rd person for genitourinary examination in the days following the assault;
- Currently there is no emergency contraception available at the local hospital, which means that victims need to purchase emergency contraception independently following their discharge from hospital;
- There are instances in which referrals from the hospital or police aren't made or are made very late, leaving victims of sexual violence without access to services which they may require, including legal representation in court and psychological support;
- Currently victims are required to present at around 5 separate offices or clinics in order to access services.

In 2019, new discussions began between the Ministry for Family, Social Solidarity and Children's Rights, the Ministry for Health, and Victim Support Malta, with the aim of establishing a fully-fledged Sexual Assault Response Team, with the aim of launching a one-stop-shop and operating as a multidisciplinary team for victims of sexual assault and rape. The intention of developing this service was announced by the Minister for Health in June 2019 and discussions are currently ongoing.¹⁴

Recommendations:

- ☐ The establishment of a SART team, with a budget to enable the following:
 - ☐ Appointment of a team medical staff, including doctors and nurses, to work on an on-call basis covering 24 hours per day, 7 days per week;
 - ☐ Training of medical staff in forensic evidence elevation for victims of sexual violence;
 - ☐ All medical and forensic supplies required in the examinations, including emergency contraception and emergency PEP supplies;
 - ☐ Maintenance of current psychologists, psychotherapists and counsellors as well as appointment of new professionals to cater for ever increasing client loads;
 - ☐ Maintenance of current legal services, as well as envisaging future clients requiring the service;
 - ☐ Maintenance of current 24/7 crisis intervention social work services;

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https://www.maltatoday.com.mt/videos/?videoId=4295&fbclid=IwAR1XHcdk_oagSTZA3-MqxkpVAqqtqzyvUQv-O16vVwjwJezXxD-1OZmp5z80

- ☐ Management of all services;
- ☐ Training in victim-centered interventions and multidisciplinary work;
- ☐ Ongoing continuous professional development of all professionals working on the team;
- ☐ Ongoing marketing of the service with the aim of reaching current and historic victims of sexual violence;
- ☐ Covering rent for the premises.
- ☐ The establishment of a Memorandum of Understanding between Victim Support Malta, the Ministry for Family, Social Solidarity and Children's Rights, the Ministry for Health, and the Malta Police Force within the Ministry for Internal Affairs, so as to ensure that police inspectors within the Vice Squad are available to work on all cases of sexual violence.
- ☐ Establishing the legal and practical infrastructure to allow for the elevation of forensic evidence in instances where the victim is unsure of reporting, allowing the victim a timeframe of several months to come to the decision.

Article 27- Reporting

Anyone can report a crime at any police station. Domestic violence, intimate partner violence, sexual violence and other related offences as referred to under the section dealing with substantive law are deemed to be ex-officio offences. This means that once a report is lodged, the police are duty bound to investigate.

We often hear victims complain that when they go to file a report of domestic violence or intimate partner violence, they are told to go to the police station where the commission of the offence took place. Victims also complain that when a report is filed, the police often tell them that they ought to think twice about reporting since the case would have to go to court and/or that the perpetrator can lodge a report against them. At this point they are given the option to waive their complaint and made to sign a document stating that they are waiving their claim. This is indeed not only contrary to law, but is also putting an added burden on the victims and further re-victimizing them.

Recommendations

- Establish standard operating procedures that police officers have to follow when compiling gender based violence report.

Chapter V – Substantive Law

Article 29 - Civil law suits and remedies

Civil remedy to stop a particular conduct is not available to all women victims of violence. This is limited only under the civil code in cases of separation or where they have child in common.

Remedies against the State, although available are not accessible since access to legal aid, is based upon means testing that is too low for the cost of living of the day.

Recommendations

- Create civil remedies, such as civil protection orders to all victims of gender based violence.
- Remove existent barriers to access remedies against the state.

Article 30 - Compensation

Malta has implement the EU Directive on Criminal Compensation, yet there is little awareness about it. Applications are often not processed until the end of the criminal proceedings which can take years in Malta.

Moral damages have been introduced with the amendments of the convention. They can be both claimed in the criminal and civil courts. Following its introduction at law, adjudicators requested that capping be put in place and is now up to the amount of €10000.

Civil access can be costly, unless the applicant qualifies for legal aid. On the other hand, within the criminal court, the law is not clear as to when and how the victim can claim for moral damages. From reading of the law, it appears that this is up to the discretion of the court. The law is also not clear on how this can be requested by the victim or prosecution. Furthermore, there is very little awareness on this matter .

There is a further discrepancy in the amount awarded. Whilst the Criminal Compensation Scheme the amount awarded is up to €25000, the award in Civil and Criminal law has been capped to €10000. The law further states that no criminal compensation can be awarded until the criminal court has decided the case.

While the original amendments applied to all forms of violence, including slight bodily this was amended and is now only applicable to cases of punishment of 3 years imprisonment and over. This same amendment has reduced the punishment of slight bodily harm to 2 years, so in such cases, no claim for compensation may be made.

No compensation or damages can be claimed within family civil proceedings.

Recommendations

- Claim for compensation to be made available with costs.
- Increase the amount awarded for moral damages.
- Moral damages to be introduced within family civil proceedings.
- Moral damages to be awarded in all cases ex officio without being discretionary to the court.

Article 31 – Custody, visitation rights and safety

When implementing the convention, the civil code has introduced articles of law where loss of custody in cases of domestic violence can take place. The law has recognised and codified that children witnessing violence are direct victims of domestic abuse. Same concept applies to cases of access. However this is limited to the discretion of the adjudicator and it is up to the judge to determine whether episodes of violence are 'grave' enough so as to constitute such forfeiture.

Interim decisions are not given immediately and at times the court appoints application for notification to the perpetrator which can take weeks to notify and during which period women and children are forced to stay in shelter, miss out on school and be deprived of their liberty.

In practice, courts are still inclined to give shared custody and insist that access takes place even if need be under supervision,. It is being noted that in cases of violence, courts are more concerned about contact in terms access, rather than the safety of the victims concerned or financial support.

The law as amended has also given the court a pool of professionals to help it determine what would be in the supreme interest of the child. However, to date, such group of professionals have not been identified nor are accessible to the court. This has led to a situation where the court appointed experts have limited knowledge and lack understanding of the legislative amendments and constitutive elements of GBV. That has led to a situation of more victim blaming and exposure of children to further be witness or direct victims of violence.

Apart from the professionals, the court may also appoint child advocates. At present there are 3 child advocates who work on part-time basis. Apart from the fact that they are working on part-time basis, children are met in the presence of the parents in the building of the court. They have no training in psychology, dealing with children and furthermore GBV. The meeting takes no longer than 15 mins and a report is submitted to the court. The court often rubber stamps the recommendation of the child advocate.

In cases where access is granted under supervision, it is noted that there is a lack of personnel who are trained and qualified to carry out such supervision. Supervisors present during such visits are often students or people who do not necessarily work with perpetrator and abusive behavior.

The venue where supervised access takes place is lending to a situation where the perpetrator can continue to exercise abusive behaviour. Perpetrator and custodial parent are made to wait in the same area and there have been cases where children are forced to enter visitation rooms even if they do not wish to. In some cases when this occurs, the custodial parent has been accused of parental alienation.

The possible risk factors on the children as well as the women concerned and ways of countering for these risk factors are required to be clearly outlined by the professionals who conduct the court requested assessments prior to the enforcement of a Court Decree. At times, the risk factors perpetuate because control continues to be exerted. This happens during contact session whereby the perpetrator purposefully and continuously do not turn up on time for the access yet the victim is afraid to report given the awareness of the level of violence which the perpetrator is capable of exerting. An adequate mechanism which considers thoroughly the risk factors, is expected to be in place as to ensure both the mother and the children remain safe.

Recommendation

- ☐ Preliminary decisions to be issued without need of notification so as to ensure safety both for mother and children.
- ☐ All professionals supporting the courts in decision making, to have compulsory training on gender based violence.
- ☐ Adjudicators need to receive more training and sensitization on the harms.
- ☐ Professionals to be engaged and made available on full time basis to the courts
- ☐ Supervisors during access visitation to receive adequate training on dealing with perpetrators
- ☐ Separate entrances and waiting rooms for supervised visits

Art 33-Psychological violence

The law has redefined domestic violence so as to include coercive and emotional abuse. Same has been introduced in the criminal code under the offence of private violence (Article 251(1), Chapter 9, Laws of Malta). From figures presented in the Malta state report to Greivio, it appears that only 2 reports were issued under the term private violence which includes emotional and coercive violence.

It is not possible to determine how many of the reported cases on psychological abuse have taken to court or sentenced, since no data is collated.

From experience many cases of domestic violence end up with exhaustion of procedures since courts still permit that the perpetrator walks free when the victims opts not to testify. In cases of private violence, it is also noted that many professionals, including police are not aware of this article of law nor understand what is coercive control.

The punishment depends on which article of law is cited since punishment varies drastically. In cases of private violence this could lead to a maximum 5 years in prison as opposed to 6 months.

Recommendations

- Police and courts to be up to date with legislative amendments
- Criminal charges to be issued under the relevant article of law
- Punishment awarded to reflect the serious offence of psychological violence

Art 36- Sexual violence including rape

(See Article 25)

Article 45 - Sanctions and Measures

Monitoring and supervision of convicted persons

Tags and other monitoring measures are not available unless convicted person is given parole. This has been in force since 2011 however electronic tagging or any other monitoring measures are not yet in place due to lack of financial means as declared by parole officers during the IMC meeting. The court has also noted this in its various judgements calling for its introduction.

A constitutional case has just been filed by Women's Rights Foundation with reference to this point, however the case is still at its inception.

Recommendation

- Make monitoring measures available to perpetrators on bail.
- Invest in electronic tagging and monitoring measures as part of the state's positive obligation.

Chapter VI – Investigation, prosecution, procedural law and protective measures

Article 49 – General obligations

There still remains a general attitude that cases of violence against women and domestic violence are not taken seriously, particularly with by the police and courts. This is seen from the figures presented in the Malta report to GreVio, when seeing the number of reports filed for domestic abuse between 2017 and 2018, to those taken to court and convicted. The high number of discontinued cases also indicates and sends the message that victims of violence are not taken seriously by the justice system and that there is little accountability for perpetrators.

With regards to other forms of violence, including rape, data is only provided upon request and in fact none has been reported in national report to GreVio. It has been noted that the number of rape cases has decreased over the years (see Annex 1). The attitude of the judicial system is still lacking in gendered sensitivity and there have been cases where the courts were reported to blame victims for their behaviour.

Recommendations

- Standard code of practices for police to investigate and prosecute cases
- gendered training to be mainstreamed and compulsory
- Victim centred approach to investigation and prosecution
- Victims' rights should be strengthened in the law

Article 51- Risk assessment and risk management

Whilst implementing the legislation in May 2018, it was originally intended that the risk assessment is carried out by a qualified social worker in collaboration with a police officer whenever a case of domestic violence is reported, however legislative amendments were made in 2019.

At present, risk assessment is currently done by professionals who according to law are trained by Agenzija Appogg. Once a risk assessment is conducted by the professionals, they would in turn inform the police of the result and if there is high risk, the police is obliged to initiate an investigation. There is no consultation with other professionals as envisaged by the convention and the assessment remains solely and available to police, professionals, courts and perpetrators in case where there is criminal action.

Although it is obligatory that risk assessment is made in every reported case of domestic violence, this does not always happen. Furthermore, victims are often made

to wait for hours in the police station till the professionals conducting the assessment came to the station.

The National Action Plan was meant to set up a multi-agency risk assessment co-ordination, yet this has not yet been set up. Since 2016, 7 women have been murdered by their intimate partner or a member of their family. Although some women had never reported past violence, as in the case below, their death could have been prevented had a proper risk management been conducted.

Case Study - Lourdes Agius

Agius was murdered by the father of 2 of her children on the 14th September 2018. She was a mother of 7.

On the 12th September, Lourdes and her mother reported to the police that her murdered had beat both her and her mother. An ambulance arrived on site since they had sustained physical abuse and police arrived an hour later. They were both taken to hospital for medical attention and were informed that the murderer was under arrest.

Lourdes and her mother were released from prison in the early hours of the 13th September and returned home. During this time, the murdered was released from police custody, however Lourdes was not informed and nor was a risk assessment conducted, despite it being legally obligatory.

On the 14th September the murdered reported at the police station that Lourdes would not wake up. The police accompanied him to her home and she was found strangled in bed, covered in severe bruising.

During the trial, evidence was brought to show that Lourdes had been filing police reports for domestic abuse since 2015. The murderer also had past reports made by other women for harassment. It also resulted that when Lourdes filed the police report on the 12th September 2018, the police did not look into the murderer's past or previous reports made by Lourdes. On going trial, the murderer pleaded insanity, claiming that he had been suffering from psychosis. This plea has been dismissed and he is still ongoing trial.

Recommendation

- ☐ Introduce without delay multi agency risk management team that is to include ngos.
- ☐ Standard operating procedures and protocols for police
- ☐ Protocols and training for all professionals on risk assessment and risk management
- ☐ Compulsory cooperation between all entities

Article 52 – Emergency barring orders

Prior to the legislative amendments in 2018, the Minister responsible at the time had stated and ran a campaign that with the introduction of the emergency barring orders, or as referred in in local legislation Temporary Protection Orders (TPO), the perpetrators would be removed from the home, so that victims and children can remain safely there¹⁵. However, this is not the case. As explained above, not only is a TPO not effectively and easily available, but now also has codified that victims are to be given shelter whilst investigation and possible request for a TPO is made.

It is not clear how many TPOs have been requested and/or issued by the courts, however most magistrates argue that if there is high risk then perpetrators ought to be arraigned and brought to court.

Women’s Rights Foundation filed a judicial protest against the Ministry for Equality that prosed these changes based on the following:-

Women’s Rights Foundation yesterday filed a judicial protest against the Ministry for European Affairs and Equality following a bill tabled in the House of Parliament, Bill 84 of 2019 proposing amendments to the Temporary Protection Order as per Article 540A (1) of the Criminal Code, just a year after its introduction.

Women’s Rights Foundation makes the following observations: -

1. The nature of a temporary protection order reflects the aim of an emergency barring orders as found in the Istanbul Convention. As explained in the Explanatory Note to the said Convention, the aim is to provide immediate protection so as to ensure the safety of the victims of domestic violence without putting the burden on the victim who often is accompanied by dependent children.
2. That the law as is being proposed delineates from the nature of the emergency barring order as foreseen in the Istanbul Convention in the following ways: -
 - a. Irrespective of the results of a risk assessment carried out to victims of domestic violence, the proposed amendments require that a police inspector is to carry out an investigation.
 - b. This investigation has to be carried out within 12 hours from the moment that the risk assessment is carried out

¹⁵ <https://timesofmalta.com/articles/view/no-place-at-home-for-domestic-violence-attackers.659258>.

- c. It is up to the Police inspector to apply to the court for the issuance of the temporary protection order if according to his/her investigation the victim is at serious risk of harm.
- d. The court can at its discretion issue a temporary protection order within 8 hours when it receives the application as filed by Police Inspector
- e. The victim is to be provided with sheltered accommodation during this period
- f. That if a temporary protection order is issued, this is only valid for up to a period of 30 days, however if the police are of the opinion that criminal proceedings are not to be instituted during this period, then the temporary protection order is no longer valid.

Women's Rights Foundation further argued that the amendments are contrary to the spirit of the Istanbul Convention and if implemented, will, once again, place the burden on the victim, who more often than not are women with children in tow and forcing them to seek shelter to secure their own safety. They added that despite the legal obligations to inform victims about any action taken or otherwise against the perpetrator in terms of the Victims of Crime Act, it is often left up to the victim to chase for information and this could lend victims to be at further risk, if they are not duly informed as to whether the temporary protection order is valid or otherwise. Victims could end up in a situation that they come face to face with their perpetrators given that the temporary protection order would no longer be valid, without their knowledge.

Recommendations

- Emergency barring orders to be available without delay
- Such orders to be issued by the police and are not reliant and at the discretion of the court
- Training for police on risk management and risk assessment
- A victim centered approach to be introduced at all stages of investigation, including risk management

Article 53 – Restraining or protection orders

Protection orders are not always accessible and limited to certain contexts. Civil protection orders are still not available without costs and are only limited to family related issues such as where partners have a child in common or are married.

Request for a protection order within the criminal jurisdiction, is limited to whether charges have been issued or otherwise and unless duly assisted, victims are not informed as to whether charges have been duly filed.

When a protection has been granted, it is still incumbent upon the victim to provide a copy and evidence that such order has been issued and thus duly breached. There is no flagging system or a centralized mechanisms that shows that a perpetrator has been issued with a protection/restraining order both to police and courts.

Due to dual reporting there are still situations where both victim and perpetrator would be issued with a protection order since the victim would have been equally accused albeit with a lesser offence.

Recommendations

- ☐ A request for a civil protection order to apply not only in cases of separation, but also to those victims as defined in Article 3 (a) and (b) of the Istanbul Convention.
- ☐ request for a protection order may be made by any party, or by a social worker or lawyer on behalf of, by filling out a form, without payment that is presented in the family court and is issued provisionally.
- ☐ Such request is to be appointed for hearing and if there is *prima facie* evidence for its need it is to be confirmed, thus making it akin to prohibitory warrants.
- ☐ Once breached, the executive police are to arrest and arraign with immediate effect.
- ☐ Breach of protection order is to carry both criminal punishment (as is currently in Article 402C of Chap 9) and civil punishment.

Article 56 – Measures of protection

Victims are not always informed when the perpetrator is released from custody or granted bail (see Lourdes Agius case study). Despite there being the Victim Support Unit (VSU) within the Malta Police Force, unless VSU support is requested, the victims are not supported nor are informed as is their right.

Malta implemented the Victims of Crime Directive and is legal bound to inform the victim, however this does not happen. Both with regards to information in a language they understand and in all circumstances.

The structures of the court are still not adequate so that victims are not in contact with the perpetrator. There are no separate waiting rooms. Within the police stations there

often happens that aggressor and victim are giving their reports within the presence of the other. Not all stations have a separate room where reports can be taken.

Recommendations

- ☐ Courts to have a separate waiting room for victims and perpetrators
- ☐ Victims to always be given an option to testify via video conference and not necessarily within the court building.
- ☐ All court rooms to have video links available and cameras both within the court room and in waiting areas

Article 57 – Legal Aid

Within the criminal system, victims can request legal aid services. However on roster there is 1 legal aid lawyer available and thus the case would have to be put off for another day, causing unwanted prolongation of the process and undue burden on the victim and the system.

Within the civil system, legal aid is only afforded according to means testing. The threshold in such cases is limited to minimum wage (indicate number) and if the women with children in tow would earn above the minimum wage, then she would not qualify for legal aid despite being a victim of violence.

Recommendations

- ☐ All victims of domestic violence and gender based violence to be provided with legal aid support both in criminal and civil proceedings, including claims for compensation.
- ☐ All lawyers and professionals working with the legal aid system to be given thorough training on understanding the dynamics of violence as well as international and national legislation, including human rights.

ANNEX 1

The below information was provided to Women's Rights Foundation upon request on the 22nd January 2019 by the Malta Police Force.

<i>Female Victims between years 2016-2018</i>				
	FEMALE			FEMALE Total
Class	2016	2017	2018	
BODILY HARM	345	325	343	1013
GBH BY PHYSICAL FORCE	19	25	8	52
GBH WITH ARMS IMPROPER	9	6	8	23
GBH WITH ARMS PROPER	7	1	5	13
SBH BY PHYSICAL FORCE	287	262	297	846
SBH WITH ARMS IMPROPER	21	29	19	69
SBH WITH ARMS PROPER	2	2	6	10
DOMESTIC VIOLENCE	1071	1064	1182	3317
GBH WITH ARMS IMPROPER	1	1	6	8
GBH WITH ARMS PROPER	1	1	1	3
GBH WITH PHYSICAL FORCE	27	27	21	75
PSYCHOLOGICAL HARM	480	512	598	1590
SBH BY ARMS IMPROPER	23	26	18	67
SBH BY ARMS PROPER	6	4	3	13
SBH WITH PHYSICAL FORCE	499	472	515	1486
STALKING	34	21	20	75
SEXUAL OFFENCE	64	54	59	177
RAPE	26	19	18	63
VIOLENT INDECENT ASSAULT	38	35	41	114
THREATS AND PRIVATE VIOLENCE	134	149	129	412
HARASSMENT	131	131	106	368
PRIVATE VIOLENCE	3	18	2	23
STALKING	0	0	21	21
Grand Total	1614	1592	1713	4919

Notes:

1. The data above refers to persons registered as female victims of alleged cases, entered in the National Police System (NPS) throughout all police districts around Malta and Gozo.
2. The presented data does not reflect on the number of reported incidents, one report may involve multiple victims.
3. Incident sub-class refers to the type of report entered whilst the person details refer to the victims contained within the reports. Hence, since multiple victims may be involved in one incident, one cannot assume or directly attribute a particular type of injury or offence against the victim/s contained within that same report.