

Raising Awareness: **Domestic Violence and Gender-Based Violence**

A Human Rights Policy Paper by ELSA Malta



elsa

The European Law Students' Association

MALTA

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Foreword

ELSA, the European Law Students' Association is first and foremost a human rights organisation. In fact, ELSA's main purpose is *"to contribute to legal education, to foster mutual understanding and to promote social responsibility of law students and young lawyers"*. On top of this, ELSA's vision is *"A just world in which there is respect for human dignity and cultural diversity."*

ELSA Malta focuses on promoting ELSA's vision in everything it does and in order to continue furthering both this vision and purpose, it publishes a number of research and policy papers. This also aids to continuously contribute to the discussion about certain topical legal and human rights issues. As a celebration of last year's Human Rights Day, which is celebrated annually across the globe, ELSA Malta published a research paper entitled *'The Universal Declaration of Human Rights: 70 years later'*. This paper focused primarily on the Universal Declaration of Human Rights and its evolution over the past 70 years.

As a celebration of this year's Human Rights Day, the ELSA Malta Human Rights Organising Committee proudly presents ELSA Malta's research paper, *'Raising Awareness: Domestic Violence and Gender-Based Violence'*. This paper aims to take a holistic approach with regards to the topic of domestic violence and gender-based violence by providing an insight into what gender-based violence and domestic violence are, what implications they have and how these are manifested in today's day and age, as well as what the legal issues surrounding them and aiming to combat them are. Gender-based violence is a societal issue which has been persistent amongst its victims for a long time. However, even though we are in 2019 there are still a number of European countries, that have not ratified the Istanbul Convention which was aimed at legally obliging national authorities in the states

ratifying it to prevent gender-based violence, provide assistance to the victims and also to bring perpetrators to justice. One would naturally question why such countries are dragging their feet when we know that at least one in every three women will experience physical or sexual violence at some point in their lives and that last year, in the EU only, 3,500 women were killed by their partners.

It is for this pressing reason, amongst others, that ELSA Malta believes that it is of utmost importance to raise awareness on this topic and advocate in order to ensure that countries such as the ones which have not ratified the Convention, and even others outside of Europe, start to look beyond their conservative views on what families and gender should actually be, and ultimately and most importantly, that every individual, wherever they live and irrespective of their gender, can live a life free of harm.

This project is the outcome of hours of hard work and dedication of a highly dedicated group of people, to whom I would like to express my utmost gratitude to. Firstly, I would like to express my gratitude to Ms. Cristina Aquilina, Director for IFP and Human Rights of ELSA Malta, also the meritorious leader of this Research Paper, for taking on and skillfully executing such a project. Moreover, I would like to thank Ms. Alexandra Gaglione, Ms. Hannah Crossey, Ms. Hannah Vella, Ms. Julia Aquilina and Ms. Sarah Xuereb for their valuable contribution and unyielding assistance to the work that went into the actual writing of this paper. I would also like to thank Mrs Katya Unah from the Maltese Commission on Domestic Violence for her help and guidance in structuring this paper. Moreover, I would like to extend my gratitude to Dr. Tonio Borg for taking the time to carefully review our paper and for providing us with his feedback and guidance. Finally, I would like to thank Mr. James Caruana for the design of this research paper.

On behalf of ELSA Malta, we hope that you enjoy reading our paper, take the time to think about the subject at hand and to evaluate our suggestions, and lastly to follow us and support us in our aim – to always be proactive!

Yasmine Ellul

President of ELSA Malta

9th December 2019

Table of Contents

Acknowledgements	1
Foreword	2
Table of Contents	5
Introduction	6
I. Different Forms of Gender-Based Violence and the Istanbul Convention	8
What is Gender-Based Violence?	8
The Different Forms of Gender-Based Violence	10
Physical Violence	10
Sexual Violence.....	10
Psychological Violence	11
The Istanbul Convention	12
The Council of Europe and Gender-Based Violence, The Lead Up to The Istanbul Convention	13
The Text of The Convention.....	14
II. Protecting These Rights: Maltese Legislation Over Time	16
III. Committees, Conventions and Initiatives	27
The Committee on the Elimination of Discrimination against Women and the Sustainable Development Goals	27
The Spotlight Initiative	28
The European Union	29
The Convention on the Elimination of All Forms of Discrimination against Women	30
The European Institute for Gender Equality	32
IV. Online violence and Internet Harassment of Women	35
I. Hacking	35
II. Cookie Theft.....	36
III. Doxing	37
IV. Cyberstalking	39
V. Online Impersonation.....	40
VI. Online Sexual Harassment.....	41
V. How to Combat Gender-Based Violence	45
Bibliography	53

Introduction

Gender-Based Violence is a societal issue that has consistently been present amongst its victims for centuries. Stemmed from a patriarchal culture which has unfortunately infiltrated into practically all demographic groups, it is only over the past thirty years that the issue has become more conversational. A number of pressure groups, non-governmental organisations, and eventually, even legislators finally started to tackle the issue as a genuine concern and problem that requires serious consideration and adequate risk assessment.

However, an issue above the legislative complexities that may arise, is the stigma around the issue. Roughly 25% of women experience violence on the basis of their gender in western societies.¹ Above this, according to a study by the DAPHNE EU Programme, every year, 3,500 women are killed by their partners in the 27 EU Member states, a sadly ironic statistic for such the supposed beacon of tolerance that the European Union is meant to represent. The EU Fundamental Rights Agency Survey on violence against women in 2014, showed that only 14% of women in the EU report instances of Intimate Partner Violence to the police. The reasons for such a low percentage are endless: fear, denial and an everlasting stigma surrounding the issue stop many women from talking about the violence they experience.

Generally, the highest prevalence of gender-based violence in Europe is said to be found in Lithuania, Latvia and the Czech Republic, though the availability of data remains scarce as institutes such as the European Institute for Gender Equality (EIGE) only cover some 20 European countries, only 15 of which are EU member states. Moreover, discrepancies also find their way into data collection. For

¹ <https://jech.bmj.com/content/58/7/536#ref-2>.

example, for a case to fall under the category of Femicide, the sex of the victim and relationship with the perpetrator are taken into account, but according to a recent report published by EIGE, police forces in Denmark, Luxembourg, Greece, Lithuania, Malta and Poland don't collect such information from homicide cases. The immediate question posed by all of this is, *to what extent does this affect victims?*

Reported cases of Domestic Violence against women represents a fraction of the issue when compared with prevalence data. This is part of the problem known as the *iceberg* of domestic violence where the cases that have been brought to relevant authorities are merely the ones that have been reported. According to this concept, most of the cases are concealed and unknown by society. In a Eurobarometer by the European Commission on *Europeans and their views on Domestic Violence against women*, when people were asked if they knew of a woman who had experienced a form of domestic violence, with a substantial percentage claiming they did. This brought to light the fact that despite the underreporting of Domestic Violence, it is still clear and known within social circles.

I. Different Forms of Gender-Based Violence and the Istanbul Convention

What is Gender-Based Violence?

Gender-based violence is the term used to describe violence that occurs due to the expectations that society associates with each gender, along with the differing power relationships between men and women². According to the European Institute for Gender Equality, gender-based violence is “violence directed against a person because of their gender.”³

Very often, the terms ‘gender-based violence’ and ‘violence against women’ are used interchangeably in order to reflect the fact that the majority of gender-based violence is disproportionately directed towards women, by men. However, it is important to note that gender-based violence can be experienced by both women and men.

The Council of Europe Convention on preventing and combating violence against women and domestic violence, more commonly referred to as the Istanbul Convention, clearly defines both terms in Article 3.⁴ The convention defines

² Shelah S Bloom, *Violence Against Women and Girls: A Compendium of Monitoring and Evaluation Indicators* (1st edn, MEASURE Evaluation, Carolina Population Center 2008) 14.

³ 'What Is Gender-Based Violence?' (European Institute for Gender Equality) <<https://eige.europa.eu/gender-based-violence/what-is-gender-based-violence>> accessed 18 November 2019.

⁴ Council of Europe Convention on preventing and combating violence against women and domestic violence [2011]

“gender-based violence against women” as “violence that is directed against a woman because she is a woman or that affects women disproportionately.”

On the other hand, the term “violence against women” is defined as “a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”

Those developing the term ‘violence against women’ also refer to it as ‘male violence against women’, with the aim of emphasising that this form of violence relates not only to the gender of the victim but also that of the assailant. However, many definitions still tend to focus exclusively on the fact that women tend to be the victims of gender-based violence and not the gender of the perpetrator.

In spite of this fact, there has emerged a development towards broadening the definition to include other forms of violence.⁵ These include violence related to:

- a. Social expectations related to gender, and;
- b. Non-conformity to gender norms accepted within society.

In essence, this refers to gender-based violence as a form of violence which can be committed by both genders, and towards both genders with the aim of “maintaining social power for (heterosexual) men.”⁶

⁵ Dennis Van der Veur and others, *Gender Matters: A Manual on Addressing Gender-Based Violence Affecting Young People* (1st edn, Council of Europe Publishing 2008) 43.

⁶ *Ibid* 43

The Different Forms of Gender-Based Violence

Gender based violence is regarded as having four different divisions as seen in the Istanbul Convention. These divisions are physical violence, sexual violence, psychological violence and economic violence.

Physical Violence

Physical violence is any act causing physical harm to a person resulting from the unlawful use of physical force. This may include, amongst others, assault, deprivation of liberty and manslaughter.

For the purposes of the Istanbul Convention, parties who have signed and ratified said convention must take the necessary legislative measures in order to ensure that the intentional commission of acts of physical violence against another person is criminalised.

Sexual Violence

This is any sexual act performed on an individual without receiving prior consent. This may include any form of rape or sexual assault.

The convention sets out a number of obligations to be adhered to by the applicable states. Parties must take any measures necessary, legislative or otherwise, in order to set up easily accessible rape crisis or sexual violence referral centres. These centres shall provide victims of sexual violence with medical and forensic examination, as well as trauma support and counselling.

Any intentional acts falling under the situations mentioned in the convention should be criminalised at law in all of the states involved. These situations are:

- a. Non-consensual vaginal, anal or oral penetration of the body of another person, carried out in a sexual nature, be it with a body part, or an object.
- b. Any other non-consensual sexual acts with another person
- c. Provoking another person to engage in any non-consensual sexual acts with a third person.

With regards to consent, this must be given freely by the person and is assessed according to the context of the particular situation. States must also ensure that these provisions are also applicable to acts committed against spouses and partners, both current and former.

Finally, parties involved must also ensure that any unwanted verbal, non-verbal or physical sexual conduct performed with the scope of violating a person's dignity, especially when creating a hostile, degrading, humiliating or offensive environment, must be subject to sanction, either criminal or otherwise.

Psychological Violence

Psychological Violence includes any act causing psychological harm to a person. This may include, amongst others, coercion, defamation, verbal assault or threats.

Aside from states being obligated to provide psychological counselling to victims of all forms of violence, they must also ensure that the intentional impairment of a person's psychological integrity is criminalised. Furthermore, Article 46h of the convention provides that any offence resulting in severe psychological harm to the victim shall amount to an aggravation at law.

Economic Violence

This encompasses any act or behaviour causing economic harm to an individual. They can take the form of property damage, restricting access to financial resources and not adhering to economic responsibilities.

According to a 2014 survey, *Violence against women: An EU wide survey*⁷, 1 in 3 women have experienced physical and/or sexual violence, with 13 million women reporting to have experienced physical violence and 3.7 million women experiencing sexual violence within the 12 months before the survey interviews. Moreover, 1 in 2 women have experienced harassment. Other statistics show that 1 in 20 women have been raped, whilst 1 in 5 women have experienced stalking.

Furthermore, Eurostat, in their report on *Trafficking in Human Beings*⁸, bring to light a clear disproportionality in terms of gender. According to the report, 95% of all victims trafficked for sexual exploitation within the EU are in fact women. With regards to other forms of exploitation such as forced begging and selling of children, 52% of cases involve female victims.

The Istanbul Convention

The Convention on preventing and combatting violence against women and domestic violence, more commonly known as the Istanbul Convention is a Council of Europe initiative which was adopted by the Council of Europe Committee of

⁷ European Union Agency for Fundamental Rights, 'Violence Against Women: An EU-Wide Survey: Results at A Glance' (Publications Office of the European Union 2014) <https://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-at-a-glance-oct14_en.pdf> accessed 18 November 2019.

⁸ Eurostat, 'Trafficking in Human Beings' (Publications Office of the European Union 2015) <https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eurostat_report_on_trafficking_in_human_beings_-_2015_edition.pdf> accessed 18 November 2019.

Ministers on April 7th, 2011. It was then open for signatures on May 11th of the same year.⁹ The treaty entered into force on August 1st, 2014.

The convention is based on the knowledge that violence against women is a form of violence committed against women for the simple fact that they are women. The state is bound to address the issue fully and take any necessary measures to prevent the problem, protect all victims and prosecute any offenders.¹⁰

The treaty was signed by Malta on May 21st, 2012, it was then ratified on July 29th, 2014 and entered into force just over three months later on November 1st, 2014.

The Council of Europe and Gender-Based Violence, The Lead Up to The Istanbul Convention

Since the 1990s, the Council of Europe has initiated a number of measures promoting the protection of women against violence. Over the years, these initiatives have resulted in the 2002 Council of Europe Recommendation Rec of the Committee of Ministers on the protection of women against violence to the member states. Another initiative was a campaign combatting violence against women which took place from 2006 until 2008.

Moreover, the Parliamentary Assembly of the Council of Europe has taken a rigid political stance against any and all instances of violence against women. This has taken the form of multiple resolutions and recommendations laying out standards on preventing, protecting against and prosecuting gender-based violence.

⁹ 'Historical Background' (Istanbul Convention Action against violence against women and domestic violence) <<https://www.coe.int/en/web/istanbul-convention/historical-background>> accessed 19 November 2019.

¹⁰ 'Istanbul Convention Action Against Violence Against Women and Domestic Violence' (Council of Europe) <<https://www.coe.int/en/web/istanbul-convention/>> accessed 19 November 2019.

However, in spite of these initiatives, the Europe-wide problem was not showing any signs of slowing down. For this to occur, there required a harmonisation of legislation with regards to violence against women and domestic violence. There was a need for all victims of gender-based violence to be afforded the same protection all over Europe, and for this protection to be increased, especially in the case of domestic violence.

In order to tackle this lack of harmonisation the Committee of Ministers set up an expert group in December 2008, tasked with preparing a draft convention to deal with the problem. This group, called the *Ad Hoc Committee for Preventing and Combatting Violence Against Women and Domestic Violence (CAHVIO)*, drafted this convention in just 2 years, finalising this draft in December 2010.

The Text of The Convention

As laid out in Article 1, the Istanbul Convention speaks of 5 purposes of the convention. These are:

1. The protection of women against all form of violence. This encompasses the prevention, prosecution and elimination of violence against women, including domestic violence.
2. To contribute to the eradication of all forms of discrimination directed against women as well as to promote gender equality.
3. To design an all-inclusive framework and policies aimed at protecting and assisting all victims of gender-based violence.
4. The promotion of international cooperation in eliminating gender-based violence.

5. To provide support and assistance to any organisations and agencies, those belonging to the state or otherwise, in order to adopt a homogenised approach to eradicating gender-based violence.

Furthermore, Article 2 provides a scope to the convention. This scope is divided into three sub-articles, the first being that the convention shall apply to all forms of gender-based violence, so long as it affects women disproportionately. The next scope of the Istanbul Convention is for relevant parties to apply the provisions laid out in the convention to all victims of domestic violence, paying particular attention to female victims. The final scope to this convention is that the articles of the convention shall be applicable in times of peace as well as in situations of conflict.

II. Protecting These Rights: Maltese Legislation Over Time

The Gender Based Violence and Domestic Violence Act (Chapter 581 of the Laws of Malta)¹¹ 'defines domestic violence as means all acts or omissions including verbal, physical, sexual, psychological or economic violence causing physical and, or moral harm or suffering, within the family or domestic unit...'

In 2017¹², statistics from Victim Support Malta showed that 1,257 reports of domestic violence were made to the police, 1,064 of which came from women, and 333 from men. With time, Maltese Legislation is starting to expand in this respect, covering the vast spectrum of family violence. Subsequently, through campaigns executively spearheaded awareness campaigns such as the Ministry of European Affairs & Equality's *Full Co-operation: Zero Violence*. Prior to this, Domestic Violence was legally tackled by the Domestic Violence Act, Chapter 481 of the Laws of Malta. The repeal of Chapter 481 came about after the European Union signed the Istanbul Convention against violence against women and domestic violence. Subsequently, Chapter 581, the replacement for Chapter 481, transposed the recommendations and proposals brought about by the convention.

¹¹ ([Justiceservices.gov.mt](http://www.justiceservices.gov.mt), 2018)

<<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12830&l=1>> accessed 21 November 2018.

¹² 'Victim Support Malta - 1,257 Reports Of Domestic Abuse In 2017 - The Malta Independent' ([Independent.com.mt](http://www.independent.com.mt), 2018) <<http://www.independent.com.mt/articles/2018-01-23/local-news/Victim-Support-Malta-1-257-reports-of-domestic-abuse-in-2017-6736183948>> accessed 21 November 2018.

Chapter 481, the now repealed Domestic Violence Act, was promulgated in 2006, 'to make special provisions for domestic violence and to make consequential and other amendments to the Criminal & Civil Codes'¹³. Prior to 2006, Malta had no specified laws or acts that tackled the issue of Domestic Violence, more specifically Gender Based Violence. Prior to 2006, when tackling the issue from a legal perspective, courts could only refer to provisions within The Criminal and Civil Codes of the Laws of Malta. The issue with this was that even though both codes contained provisions pertaining to the issue, it merely looked at it from a criminal, prohibitory aspect. The only outcome from such provisions were consequences as a result of such criminal responsibility. Neither Code vested any rights in victims against their perpetrators, and neither Code offered any sense of protection whatsoever. With regards to the Civil Code, Family Violence is covered in the Civil Code through Article 40¹⁴ which provides 'either of the spouses the right to demand separation on the grounds of excess, cruelty, threats or grievous injury' towards the plaintiff or the spouses' children. Though not necessarily, intricate in its presentation, it very broadly grants the right to terminate a marriage on the grounds of the most prevalent forms of domestic violence. However, its function ends there. References to domestic violence are purely restricted to either Intimate Partner Abuse and/or child abuse, and fails to address other forms of family violence, such as; Parent Abuse, Sibling Abuse or Elder Abuse, creating an inconvenient and dangerous lacuna in Maltese Civil Law.

Once the Domestic Violence Act (Chapter 481) was passed, further basis on the issue was given, where relevant stakeholders had some form of extraneous

¹³(*Legislationline.org*, 2006)

<https://www.legislationline.org/download/id/6821/file/Malta_Domestic_Violence_Act_am2015_en.pdf> accessed 24 November 2019.

¹⁴'Article 40- Excesses, Cruelty, Etc' (*Justiceservices.gov.mt*, 2018)

<<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8580>> accessed 29 November 2018.

information from that within the Criminal and Civil Codes to grasp for context. The Act is divided into three parts. The first part deals with definitions, the most important being that of Domestic Violence. The approach the Law takes in this case, is by indicating which forms of violence would fall under the ambit of Domestic Violence and which persons the Act sets out to protect. This definition caused a disagreement within the House of Representatives when a number of Members of Parliament during the Consideration of Bills Committee Stage, disagreed over whether the definition should be accompanied by an exhaustive list of offences that would constitute as Domestic Violence as those in favour of the list believed that this would result in a clear definition. Ultimately, the opposite reigned as the definition was never accompanied by such a list due to the fear of the legislators omitting particular instances and also, out of the fear that the judiciary would have no space for any interpretation. Part Two sets out to establish a Commission on Domestic Violence and Part Three establishes the setting up of a *Designated Agency*¹⁵ namely *Aġenzija Appoġġ* which holds the responsibility of informing and advising the Minister on anything pertaining to the issue. More importantly, it sets out to raise awareness about the subject and how stakeholders and professionals within the sector should be trained, and how research should be carried out.

The weight of the Domestic Violence Act is within Part II. Through Article 3 of the Act, this established commission would mainly 'advise the Minister of Social Policy on anything related to Domestic Violence'¹⁶. Previously, *Appoġġ* held a two-fold purpose of a provider and regulator which upon the establishment of the

¹⁵ (*Legislationline.org*, 2006)

<https://www.legislationline.org/download/id/6821/file/Malta_Domestic_Violence_Act_am2015_en.pdf> accessed 24 November 2019.

¹⁶ (*Um.edu.mt*, 2013)

<<https://www.um.edu.mt/library/oar/bitstream/123456789/2034/1/14LLD013.pdf>> accessed 24 November 2019.

Commission, saw its purpose to regulate, transferred to the Commission. Its functions mainly revolved around advising the Minister on how to raise awareness and educate the public on the issue of Domestic Violence, implementing standards for care facilities and service providers, proposing research areas and training for relevant professionals. Through this, every March the Commission would draw up a Report on all of its activities and present it to the Minister who would then, in turn, table it in Parliament for debate.

The promulgation of The Domestic Violence act led to a number of important amendments to both the Criminal & Civil Code. It is important to keep in mind, that in Malta there exists no specific offence of Domestic Violence. What the law provides for is the aggravation of traditional offences when commissioned on any of the persons included in the definition of the Domestic Violence Act. The main changes were within Article 202 which had a proviso added to it which covered aggravating circumstances for illegal arrest, detention and confinement and rape/carnal knowledge and abduction, slight and bodily grievous harm when committed by persons mentioned in sub-articles (i) to (vii). Article 202 also imposes harsher sentences when the crimes are committed 'in the presence of, or within hearing of a minor'¹⁷. Here, not only does the law foresee the abuse on a child, but even within the proximity of one.

An integral addition to Maltese Law through the Act was that Police now had the authority to proceed *ex officio* in such cases. This procedural measure sought to see a rise in prosecutions of perpetrators. Once the proceedings begin, the victim has every right to halt her complaint and ask the court to withdraw proceedings,

¹⁷ ([Justiceservices.gov.mt](http://www.justiceservices.gov.mt))
<<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574>>
accessed 24 November 2019.

however the court also has discretion in this regard and takes special consideration to children involved. Above this, crimes against the property of the victim could also be prosecuted *ex officio* whenever such a crime was hand in hand with any forms of threat to kill or to inflict bodily harm.

Most importantly, the Domestic Violence Act introduces protective measures for victims, of a precautionary nature, attempting to get to the core of the issue before it may develop further. These allow Criminal Courts, upon the request of the victim or any interested persons, to disallow the perpetrator to do certain things, namely returning back to the matrimonial home. Also, through Article 37 of the Civil Code, the Criminal Court has the authority to issue Protection and Treatment Orders provided by Articles 412C and 412D respectively.

These Sections of the criminal code both go into great depth regarding protection and treatment orders against perpetrators of physical violence. Section 412C specifically tackles Protection Orders. Section 412C¹⁸ (1) states that on 'reasonable grounds, the accused... before the Court of Magistrates', for the intention of ensuring the safety of victims, moreover, to prevent further violence and to keep the public peace may have have a protection order issued against them.

The subsequent sub-sections, namely (3a, 3b & 3c) clarify the function of such an order, such as formally forbidding the accused from being in the mere presence of the victim or having any contact whatsoever with the victim. 412C (4) takes into consideration the needs of the victims affected by the order once again, ensuring

¹⁸ 'Article 412C- Protection Orders.' (*Justiceservices.gov.mt*, 2018)
<<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574>>
accessed 29 November 2018.

further protection from frequented abuse, any effected children's needs, accommodation & any hardship that may stem out from the order.

The fact that throughout the entirety of the article, it is not only the direct victim of the abuse whose safety is taken into consideration as throughout, following the mention of the 'victim, or of other individuals' succeeds. Many a time, such *individuals* would refer to the children residing in the violent environment, thus showing that Maltese Law addresses the notion that forms of family violence does not only affect the victim itself, but also those around them which in itself poses a threat to others' safety.

412D¹⁹ (1) immediately affirms that the 'Treatment Orders' granted by this section may be imposed 'together with or separately from a protection order under article 412C'. The section provides that should the court, be satisfied with the arrangements made/may be made for treatment 'may make an order... requiring a person to submit to treatment subject to the conditions which the court may deem appropriate to lay down in the order'. Paragraph 1 also differentiates between the orders made to the 'convicted' and to the 'accused'. The convicted does not always need to consent to a treatment order made against him, whereas an accused must consent. The aforementioned sections, at no point exclusively refer to one form of family abuse, leading one to understand that such sections may cover all forms of violence, moreover, all forms of family violence. Adversely, the protection order is only issued for the protection of an 'injured' person, thus, disregarding the much vaster array of family abuse that may occur. The lack of attention given to the serious repercussions psychological abuse may have, for example. The real issue

¹⁹ 'Article 412D- Treatment Orders.' (*Justiceservices.gov.mt*, 2018)
<<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574>>
accessed 29 November 2018.

is, if the law itself cannot fully protect victims from the widest spectrum of abuse then how worth it is it for victims to report and risk further, if not, graver violence.

However, the issue up until the promulgation of Chapter 581 was that even though the Act does not lay down the legal consequence and explanation of the criminal essence behind an abusive act, it makes provisions for the substantive articles of the Council of Europe Convention. In general, it strives to prevent and combat violence against women and domestic violence to escape the dangers of a violent environment, enforceable as a Maltese Law and repeal the previous Domestic Violence Act (Chapter 481) whilst making amendments to other laws. Despite the fact that The Gender Based Violence Act does not hold the 'consequential strength' the prohibitory provisions within the Criminal Code do, unlike the past, the issue is given a much broader perspective. The Courts now have a developed quasi-doctrine as law they can now refer to, meaning that the rights and protection offered to victims, from a legal perspective is much more solidified than it was under previous circumstances.

One cannot go into the merits of the Gender Based Violence and Domestic Violence Act without understanding the main aims of the Istanbul Convention. The core value²⁰ of the Convention is that the prevention the commission of Domestic Violence should be a priority for all governments. The Council of Europe have worked tirelessly the past 30 years by taking a number of integral issues on the matter. However, current legislation is often *insufficiently enforced*²¹ and different countries having different legislations and legislative attitudes, creates an ideological lacuna in the matter. The main issue is that the services offered to

²⁰ (*Rm.coe.int*) <<https://rm.coe.int/istanbul-convention-questions-and-answers/16808f0b80>> accessed 24 November 2019.

²¹ (*Rm.coe.int*) <<https://rm.coe.int/istanbul-convention-questions-and-answers/16808f0b80>> accessed 24 November 2019.

victims, are too few or have low funding to be as efficient and effective as they must be. The convention asks governments who have ratified the Convention to take effective steps towards dealing with all forms of violence being covered. Each, individual article must work on preventing Domestic Violence from taking place, to aid victims and to that the consequences for perpetrators are ensured. It also calls for legislators to criminalise different forms of violence, and not just physical. Lastly, it calls for the development of *legally binding standards for greater protection and support*²².

Under this new Act, the main changes are within the establishment of the Commission on Gender Based Violence and Domestic Violence, replacing the Commission on Domestic Violence established by the Domestic Violence Act. Secondly, this act will include an Action Plan for relevant entities and service providers within the sector, the enforcement of the Istanbul Convention locally and a number of amendments within laws to increase the protection of victims²³. A number of new definitions are also now being taken into consideration under this act, such as *Gender Based Violence*, with others seeing improvements and complete overhauls. The most notable, would naturally be the definition of Domestic Violence itself, which now reads, 'all acts or omissions including verbal, physical, sexual, psychological or economic violence causing physical and, or moral harm or suffering, including threats of such acts or omissions, coercion, or arbitrary deprivation of liberty, that occur within the family or domestic unit, whether or not

²² *Rm.coe.int*) <<https://rm.coe.int/istanbul-convention-questions-and-answers/16808f0b80>> accessed 24 November 2019.

²³ (*Meae.gov.mt*) <https://meae.gov.mt/en/ZeroViolence/Documents/GBVDV_LegalPerspective.pdf> accessed 24 November 2019.

the perpetrator shares or has shared the same residence with the victim, and shall include children who are witnesses of violence within the family or domestic unit²⁴.

The aforementioned Action Plan imposes upon the state an obligation to adopt such a plan that encompasses effective and coordinated policies to prevent and combat violence. The first Action Plan was adopted in 2017, and must be renewed every 3 years, includes:

- The measures which need to be taken
- The action needed for these measures
- The responsible bodies for these measures and actions

Further amendments to the Criminal Code were made as a result to this Act. There is now an increase in penalty of a number of offences, to mirror the gravity of the commission of the act. Solitary Confinement has also been removed, as it was believed that this would halt the rehabilitation of the perpetrator. There were a number of definitions of certain crimes that were further developed which was done with the intention of offering further protection to victims from a legal perspective and to ensure that perpetrators are prosecuted fully. Amendments have also been made to laws relating to sexual offences, continuing on the amendments and developments kickstarted by the Domestic Violence Act.

Most notably, as a result of the Gender Based Violence Act, Temporary Protection Orders were added into the Criminal Code via Article 540. The idea behind this Article is to offer **immediate** protection to Domestic Violence Victims. Upon filing a

²⁴ (*Justiceservices.gov.mt*, 2018)

<<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12830&l=1>> accessed 21 November 2018

complaint to the Police, the latter will seek professional help from *Appoġġ* and will immediately carry out a risk assessment. If this assessment shows that the person is at serious risk, the Police shall:

- Immediately apply to a Magistrate requesting the issue of a temporary protection order
- State the grounds for such request and give all such information that might be of aid to the Magistrate.

This order must be issued within 6 hours after the request was made. Once issued, the Police are bound to enforce it.

Changes were also made to the Civil Code, as a result of Chapter 581 with regards to the Protection of Children in Articles 37, 47, 56A, 57, 90 & 154. In cases where there is clear proof of Domestic Violence, the Court has the option to:

- Deny that a request for access or custody when such could potentially harm the children or victim parent.
- Deny the parent the right to involve oneself with regards to educational and maintenance matters
- Restrict or deny the parents from exercising authority over their children.

Following such, the Family Court now has the authority to issue a protection or treatment order with regards to maintenance, access, care and custody even when the parents are not married. Above this, the Court may also deny the right of access when the parent who has been granted that right does not exercise it adequately without justification.

Maltese Legislators have started to develop a further understanding in the complexity of Domestic Violence itself, and also of its legal implications on the individual and society as a whole. Domestic Violence cannot be treated as a mere committed crime, as the after-effects it carries on the victims, and even perpetrators are too great and complicated to compress it with a mere court sentence. With time, legislators have acknowledged the importance of having competent laws, commissions and courts to adequately deal with family violence cases in a manner that does not amplify and worsen situations. Parallel to that, Maltese society has, in itself, become more aware and inspired to learn more about the cause, loudening the voices of victims throughout the vast spectrum of family violence.

III. Committees, Conventions and Initiatives

A convention is a binding agreement between states covering particular matters, this matter being gender-based violence and domestic violence. There has always been an alarming distinction regarding equality between men and women, in various aspects such as work, social equality, etc. Throughout history, men have been gloriously placed on a pedestal, while women suffered from the armed prejudicial forces of society at the time. Gradually, things started to change, and a big step was reached for women at the time, which was Universal Suffrage, the right for women to vote. First achieved in New Zealand in 1893, setting the trend for other countries such as Germany and the United Kingdom. Universal Suffrage came later in Malta, in 1947 along with that, the first ever Maltese woman sat in Parliament, Agatha Barbara.²⁵ Although, women have been going out to work more and is seen more as a normal human being rather than a sex object, we are still far away from achieving full equality.

The Committee on the Elimination of Discrimination against Women and the Sustainable Development Goals

The Committee on the Elimination of Discrimination against Women (CEDAW) is an international body, which ensures that 189 states follow the principle, of “ensuring that no one is left behind.”²⁶ The organisation has kept women’s human rights the main mandate behind their work, an example being, by participating in international

²⁵ Sarah Carabott, '70 years since women first voted' (Times of Malta, 27th October 2017) <<https://timesofmalta.com/articles/view/70-years-since-women-first-voted.661472>> accessed 12 November 2019

²⁶ Cedaw, 'Committee on the Elimination of Discrimination against Women' (Sustainable Development, 3 September 1981) <<https://sustainabledevelopment.un.org/index.php?page=view&type=30022&nr=108&menu=3170>> accessed 13 November 2019

debates to place women's rights in an important spectrum in the 2030 Agenda for Sustainable Development.²⁷ This Agenda is put forward by the United Nations, consisting of 17 Sustainable Development Goals and 169 targets mostly related to the planet and humanity. Their vision is a world free of hunger, poverty, disease, and respect for the rule of law, race, ethnicity and cultural diversity.²⁸ Goal 5 of the agenda focuses only on gender equality. Under the Millennium Development Goals the world has achieved some progress, but women and girls still suffer from discrimination and violence. Gender equality is a fundamental human right, and unfortunately many women do not enjoy this right since it has been taken away from them. According to studies from the UN, 1 in 5 women and girls, from as young as the age of 15 to 49 have reported their experience of physical or sexual assault. Some targets of Goal 5 are; end all forms of discrimination against all women and girls everywhere, eliminate all types of harmful practices such as female gender mutilation (see EIGE's study on page 5), end forms of violence in public and private spheres such as sex trafficking and also ensure women have full and effective participation for various economic, and political opportunities.

The Spotlight Initiative

The United Nations partnered with the European Commission and formed the Spotlight Initiative to eliminate violence against women and girls in September 2017. Its aim is to check on whether or not political leaders are doing their utmost at achieving the Sustainable Development Goals, more specifically Goal 5 of the

²⁷ Cedaw, 'Transforming our world: the 2030 Agenda for Sustainable Development' (United Nations, 25 September 2015) <<https://sustainabledevelopment.un.org/post2015/transformingourworld>> accessed 13 November 2019

²⁸ United nations, 'Goal 5: Achieve gender equality and empower all women and girls' (Sustainable Development Goals, 27 September 2015) <<https://www.un.org/sustainabledevelopment/gender-equality/>> accessed 13 November 2019

(SDG's). Through this, the initiative gains support from partners and stakeholders in order to finance the multi-million operation. Large-scale investments, to help women and young girls took place in less developed countries such as; Africa, Asia, Latin America, the Pacific and lastly, the Caribbean. The Spotlight Initiative conducted a study across 11 Pacific countries, partnering with FHSS, Family Health and Safety Studies and also UNFPA Statistics showed that domestic violence, both sexual and physical, happened frequently in these specific countries. Therefore, the goal of the initiative is to intervene whenever gender-based violence and domestic violence takes place and justice is given to the victims. The project mainly focuses around Africa since it is notoriously known for certain un-ethical practices such as female genital mutilation and child marriage. FGM (female genital mutilation) is defined as removing the genitalia of young girls and young women for non-medical reasons and it has been documented in 30 countries, mostly African ones.

The European Union

The European Union has done various work in international cooperation to eliminate the illegal practice of FGM/C. Around millions of women that are still alive today, have been married against their will, when they were children. Millions of other young girls will soon enter in a forced marriage by as young as the age of 18. The European Union working along the lines of achieving gender equality, sees domestic violence as a critical cross-cutting issue deep within the European Consensus. Along with working with the UN on the 2030 Agenda, the European Union has built the European Consensus on Development and the new EU Gender Action Plan II. Some actions that the EU supports are; a program in Uruguay, aiming at establishing warning systems for gender violence, in Argentina, focused on establishing tools to prevent gender-based offences, in Latin America, programs on women's empowerment, ending violence against women and young girls, along with many other projects that the European Union finances and supports. The

United Nations Trust Fund gave financial aid to 136 countries, to help in financing 426 initiatives. Every 25th day of the month, the UN's campaign UNiTE, created Orange Day in order to raise awareness on violence towards women and girls.²⁹

The Convention on the Elimination of All Forms of Discrimination against Women

On the 18th of December 1979, the United Nations entered into force the Convention on the Elimination of All Forms of Discrimination against Women, signed in New York City.³⁰ The convention was the final body by the United States Commission in order to promote women's rights and protect them. Along with the Convention on the Elimination of All forms of Discrimination against Women, there are other sub-treaties and articles, but the convention is more central and proved most affective. The Commission's main aim is to eliminate inequality between men and women in areas which women are deprived of their human rights. Moreover, the convention mainly revolves around women and their plight in their fight against domestic violence and gender-based violence, it does so by protecting women's fundamental human rights, their dignity, and their human worth. The convention is a binding compilation of international laws for the rights of women and an agenda for action in which governments of countries have to abide to. The agenda of the convention divides into 16 sub-subsequent articles all relating to the same topic of equality.

²⁹ Spotlight initiative, 'Questions and Answers: EU-UN Spotlight Initiative to eliminate violence against women and girls' (European Commission, 20 September 2017) <https://ec.europa.eu/commission/presscorner/detail/en/MEMO_18_5904> accessed 14 November 2019

³⁰ United nations, 'Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979' (United Nations Human Rights, 18 December 1979) <<https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>> accessed 16 November 2019

Moreover, the convention deals with 3 areas with regards to women's rights which are civil rights and the legal status of women, the convention talks about as well with human reproduction as well as cultural ideologies which impact gender relations. The legal status of women attracts most of the attention with regards to political participation, seen in 1952, Convention of the Political Rights of Women. This is seen in Article 7, whereby women have the right to vote, hold their own public office, and to take part in public functions. The Convention talks about a main concern in women's fundamental human rights. This being their reproductive rights.

The concept of discrimination being linked with the reproductive role of women is a worrying matter of concern in the Convention. The Convention forms part of the Universal Declaration of Human Rights on the basis of discrimination were all men and women are born free and equal in the dignity of rights, that everyone is entitled to.³¹ Around 100 nations have agreed to abide by the convention and all its obligations and fundamental, forms and manifestos on the elimination of discrimination.³² They have agreed to the following 14 articles: Article 1 defines the term of "discrimination against women", which means exclusion or confined rights made on the basis of various aspects such as sex, meaning that women cannot enjoy fundamental political, civil, social and cultural rights. Article 2, which relates to the different states which have signed and agreed to pursue the elimination of discrimination of women in ways such as adopting appropriate legislation, take appropriate measures to eliminate discrimination to women, establish legal

³¹ United nations, 'The Universal Declaration of Human Rights' (United Nations Human Rights, 10 December 1948) <<https://www.un.org/en/universal-declaration-human-rights/>> accessed 16 November 2019

³² United nations, 'Convention on the Elimination of All Forms of Discrimination against Women' (Human Rights, 8 December 1979) <<https://www.ohchr.org/documents/professionalinterest/cedaw.pdf>> accessed 17 November 2019

protection to the rights of women etc. Article 6 confides importance to the state to perform appropriate measures to take hold on suppressing forms of human trafficking and prostitution of women. Article 9 should grant the possibility to an equal nationality to both women and men to both change or retain it. States should also grant nationality equally to men and women with children. Article 11 talks about the measures states should take to end domestic violence to women and young girls such as; creating rights for same employment opportunities, rights to choosing their own choice of profession, the right to welfare state benefits such as social security, rights to a safe and healthy living and working environment, and also providing protection to those women during their pregnancy. Finally, Article 16 deals with states taking appropriate measures to end discrimination such as; equal right to marriage, equal rights and responsibilities for parents, equal rights to decide freely, equal rights regarding guardianship, and also equal rights for both relationship partners in terms of ownership and administration.

The European Institute for Gender Equality

The EIGE, short for European Institute for Gender Equality, is an organisation working within the European Union's platform, in order to end gender inequality and protecting women's human rights.³³ EIGE conducts various important studies by collecting, analysing and gathering statistical information and data and making them easier for the readers to understand them and process them. Moreover, the organisation tries to deliver its ideologies across member states with the help of the European Commission, Parliament and Council. EIGE defines gender-based violence as a result of gender inequality. Therefore, the organisation tries to provide ends and resources to conduct ground-breaking research on gender-based

³³ Eige, 'Our Work' (European Institute for Gender Equality, 20 December 2006) <<https://eige.europa.eu/about/our-work>> accessed 17 November 2019

violence in Europe.³⁴ Gender-based violence falls under different categories of different types of violence. Most of the time, the victims of violence have been attacked due to their race, age, social class, sexuality, (dis)ability and/or religion. Some women might experience one form of violence while sadly others suffer multiple forms of violence. In fact, as mentioned earlier on, the Istanbul Convention defines violence falling under 4 categories.

The European Institute for Gender Equality has been conducting several studies and collecting data in order to inform policymakers and legislators on the gender equality issue and completely eradicate it. The European Union has been releasing various initiatives for over 50 years in order to eradicate gender violence in the EU. It has released various directives such as the Victim's Rights Directive (Directive 12/29/EU) and the European Protection Order (Directive 2011/99/EU) and Directive (2010/41/EU), working with the Istanbul Convention and the Beijing Platform for Action. EIGE is driven by the idea of helping member states in fulfilling their responsibilities.³⁵ The organization's most famous and important study is that of Female Genital Mutilation, which aids member states in order to prevent the harmful act to young women and girls. Its 2015 study was conducted in 6 member countries one of them being Malta, the others were; Belgium, Greece, France, Italy and Cyprus. The research gave governments insight on the situation and risks while also providing recommendations for improving policies and services to protect young girls and women. From the study emerged that Malta had an alarmingly big rate of

³⁴ EIGE, 'Forms of Violence' (*European Institute for Gender Equality*, 20 December 2006) <<https://eige.europa.eu/gender-based-violence/forms-of-violence>> accessed 17 November 2019

³⁵ EIGE, 'Female Genital Mutilation' (*European Institute for Gender Equality*, 2017) <<https://eige.europa.eu/gender-based-violence/female-genital-mutilation>> accessed 17 November 2019

39-57% risk of female genital mutilation. ³⁶The internet has become such a big part of our daily lives, and it has become an essential, which led to a great violence against women and girls (VAWG). Researches show that one out three women will experience a form of violence in her lifetime, moreover, one out of ten women have experienced a type of cyber violence. Due to the fact that the internet has become a necessity, it is important that it is a safe-working environment for everyone to empower everyone.

³⁶ EIGE, 'Cyber Violence Against Women and Girls' (European Institute for Gender Equality , 23 June 2017) <<https://eige.europa.eu/publications/cyber-violence-against-women-and-girls>> accessed 17 November 2019

IV. Online violence and Internet Harassment of Women

Online abuse³⁷, also known as '*cyber harassment*' and '*cyber abuse*' consists of a number of strategies and malicious behaviors such as hacking, doxing, impersonation, hateful speech and violent threats, cyber-stalking and electronic surveillance to the nonconsensual use of photography. Online settings include social media platforms (such as Twitter, Facebook and Instagram), instant messaging applications (such as Facebook Messenger, WhatsApp and Viber), blogging platforms and comments sections (such as those found on news platforms, YouTube pages, book reviews and personal blogs). The online harassment of women, known as 'Cybersexism' and 'Cybermisogony' is abuse based on gender gendered centered at girls and female online. Such forms of abuse such as: sexism, racism, religious prejudice, homophobia and transphobia.

I. Hacking

The modern scourge of hacking is the unwarranted invasion into a device or a network. The motive is executed with the sole intention to infiltrate digital devices such as smartphones, tablets, computers and entire networks. Hacking is characterized as an unlawful activity by cybercriminals who are motivated by financial gain, spying (collection of sensitive information) and even protesting. In fact, the Bank Of Valletta in Malta, was hacked when hackers broke into the systems and transferred €13 million into foreign accounts in banks of several countries such as Czech Republic, Hong Kong, United Kingdom and Untied States. However, the funds were not compromised as local and international police

³⁷ 'Defining "Online Harassment": A Glossary Of Terms - Online Harassment Field Manual' (*Online Harassment Field Manual*, 2019) <<https://onlineharassmentfieldmanual.pen.org/defining-online-harassment-a-glossary-of-terms/>> accessed 15 November 2019.

authorities worked together. The issue was solved by the corresponding banks stopped and reversed payments that were made.

This may be carried out through several techniques. This may include phishing, an illegal practice of sending emails from highly regarded companies to persuade individuals to reveal personal sensitive information such as passwords and credit card numbers. This once took place in the UEFA World Cup of 2018 which took place in Russia. Scammers fooled fans by phishing emails including fake, free trips to Moscow. The World Cup issued an official statement stating that they were scammers and were solely duping fans for their personal information.

II. Cookie Theft

Another example is cookie theft. Cookies also known as HTTP cookie is a collection of data that a computer receives and stores upon visiting a website. This in turn is stored in a file inside the web browser. Hackers aim to gain access to cookies thus allowing them to authenticate themselves as the owner of the device on a browser. There was once a case where hackers input a virus in Java script code³⁸ and disguised themselves as a wordpress core domain. Once, a security analyst named Cesar Anjos who specializes in a word press security and who works at a company called “Sucuri”, discovered malware during an investigation that he was carrying out. The hackers were URL hijacking inserted malware into a legitimate WordPress JavaScript file that was initially designed to transfer sensitive details collected through the cookies to the hackers to be used against the victims. This gave the

³⁸ Brook C, 'Session Hijacking, Cookie-Stealing Wordpress Malware Spotted' (*Threatpost.com*, 2019) <<https://threatpost.com/session-hijacking-cookie-stealing-wordpress-malware-spotted/125586/>> accessed 15 November 2019

hackers the ability to pretend to be that user and carry out any actions the user gave her permission to perform.

Means can be carried out to prevent hacking from taking place such as creating complex passwords, avoiding using correct answers for security questions, reading privacy policies carefully together with other actions. With regards to large institutions and companies there are a set of guidelines issued to avoid getting hacked. For example, with regards to banks in Malta, the MFSA CEO, Joseph Cuschieri said that "The MFSA follows ECB guidelines with respect to cyber-security threats and attendant risk mitigating factors which need to be followed by licensed institutions.' Thus, it is the sole companies' job to have proper cyber security. The European Banking Authority also issued a set of guidelines in 2018 that bank regulators must take into consideration to reduce the risk of IT-based threats.³⁹

III. Doxing

The term '**doxing**'⁴⁰ is short for '*dropping documents*'. This takes place when an individual comes into the possession of another individual's sensitive personal information and makes them public, illegally as it is done without the victim's permission. Such information includes home and email addresses, financial details, employment information, spouse and children names, and other personal information. Doxing is a relatively old technique, originally being a form of revenge since the 1990s. However, it is a major threat to all internet users. The perpetrators

³⁹ Bertrand Borg, Vanessa Macdonald and Claire Caruana, 'BOV Goes Dark After Hackers Go After €13M' (Times of Malta, 2019) <<https://timesofmalta.com/articles/view/bank-of-valletta-goes-dark-after-detecting-cyber-attack.701896>> accessed 15 November 2019.

⁴⁰ Stephen Cooper, 'What Is Doxing (And How Do You Avoid It)' (*Comparitech*, 2019) <<https://www.comparitech.com/blog/vpn-privacy/what-is-doxing-how-to-avoid/>> accessed 15 November 2019.

aim is to panic and draw criticism towards the victim, making them tense and fearful.

A clear depiction of this form of online harassment in Malta is when a prospective local council candidate, Angele Camilleri was charged with harassment and incitement back in 2019. Camilleri linked the private Facebook profile of a Ms Tina Urso, an activist and leader of a political protest group on three different Facebook groups. This was done as a form of retaliation towards Urso, who had previously protested against her favoured political party. Her post read "Tina Urso was the mastermind behind the protest...". Through this post, she revealed her identity which led to the spreading of her and her parents' home address, her ID card number, and an outpour of abuse on her social media accounts, with flooding of derogatory comments⁴¹.

Another example is that of two reporters who were harassed and forced to leave their home after reporting on a police officer involved in the shooting of Michael Brown. On August 9th 2014, Michael Brown, an 18 year old African American man, was fatally shot for no reason, by a 28-year-old white Ferguson police officer, Darren Wilson. The reporters fled as their personal information was compromised and made public in retaliation for their coverage⁴².

Individuals should carry out a number of measures on preventing themselves from being the victim of a targeted attack. Best measures to prevent such an attack is by: using a VPN, limiting the amount of personal information that you make

⁴¹ Emil Weber, 'Malta: Anti-Corruption Activist Defies Online Hate Campaign' (*European Centre for Press and Media Freedom*, 2019) <<https://ecpmf.eu/news/threats/malta-anti-corruption-activist-defies-online-hate-campaign>> accessed 15 November 2019.

⁴² Jon Swaine, 'Ferguson Police Arrest Reporters Amid Rage Over Michael Brown Shooting' (*the Guardian*, 2019) <<https://www.theguardian.com/world/2014/aug/14/ferguson-police-arrest-reporters-as-unrest-continues-over-michael-brown-shooting>> accessed 15 November 2019.

accessible online, change passwords regularly, auditing social media posts and lastly never providing information to unreliable sources⁴³.

IV. Cyberstalking

With the amount of online presence that we have in this day and age, individuals' everyday life is accessible with just the click of a button. However, this has led to the rise of a daunting concept known as "Cyberstalking"⁴⁴. Stalking in the real world is defined as undesirable compulsive attention to a particular person that the stalker ends up having power over the victim. This would mean a person is secretly being watched, constantly called out and texted for manipulation together with creating different circumstances to engage with the victim unanticipatedly. With regards to the digital world, stalkers or better referred to as 'cyberstalkers' are compelled with the same intent. The sole difference is that they carry this out through the use of online technology. The victim ends up suffering from anxiety, humiliation, fear, and in many cases, extreme emotional distress. While Maltese law now recognizes stalking as a specific offence, it does not protect victims unless criminal proceedings are instituted.

A large amount of the victims of cyberstalking are generally females. In fact, according to a Pew survey carried out in 2015 one in four young women report having been stalked online. Roni Jacobson spoke about her experience of cyberstalking which took place over a stretch of 15 years. Her experience of stalking was carried through various platforms such as email phone, text and other tactics which came about with technological advances. Her stalker would send

⁴³ Susan Alexandra, 'How To Avoid Getting Doxxed' (*Globalsign.com*, 2019)

<<https://www.globalsign.com/en/blog/how-to-avoid-getting-doxxed/>> accessed 15 November 2019.

⁴⁴ Tripwire, 'What Cyberstalking Is And How To Prevent It' (*The State of Security*, 2019)

<<https://www.tripwire.com/state-of-security/security-awareness/what-cyberstalking-prevent/>> accessed 15 November 2019.

slandorous emails to her family, colleagues, friends, friends' employers, and governmental institutions including the State Attorney General of New York. He would also flood her messages and when she tried to block his number and all his social media accounts, yet it persisted, as he would constantly create new accounts. Besides this, he would use a technique of phishing to hack into her email and communicated with others pretending to be her. The journalist was fielding numerous inquiries about him weekly from family, acquaintances and employers. Roni took action by filing a police report gathering all physical copies of emails, letters and messages that her stalker had sent out.⁴⁵

Article 251AA(4) of the Maltese Criminal Code states that “monitoring the use by a person of the internet, email or any other form of electronic communication”... is “liable to punishment of imprisonment for a term from six to twelve months or to a fine (multa) not exceeding ten thousand euro (10,000), or to both such fine and imprisonment.”

V. Online Impersonation

Online impersonation is a strategy whereby there is the harasser creates an online presence in someone else's name, using other individual's information in order to publish abusive and provocative statement in the victim's name. The harasser's intention is to vilify and invalidate his victim by swaying people to think that the fictitious quotes associated with the victim are true, thus enticing other individuals to carry out other acts of harassment. Furthermore, it can also be used by a harasser as a scheme to pretend to be someone else to offend or hurt another individual.

⁴⁵ Roni Jacobson, 'I've Had A Cyberstalker Since I Was 12 | Backchannel' (*WIRED*, 2019) <<https://www.wired.com/2016/02/ive-had-a-cyberstalker-since-i-was-12/>> accessed 15 November 2019.

In 2015 a man from San Angelo ⁴⁶, Texas utilized the name and photos of another local and created a fake profile on a social media application. He then proceeded into sending messages to other people posing as the victim he stole the identity from. His scope behind it all was to receive nude photographs.

VI. Online Sexual Harassment

Online sexual harassment ⁴⁷, which is most commonly targeted at women, incorporates a vast range of sexual crimes carried out on online platforms. This form of behavior can be categorized into four main types.

The first type is the sharing of non-consensual, intimate images and videos, also known as “revenge porn”. According to the Minister of Justice of the United Kingdom, this is “the sharing of private, sexual materials, either photo so or videos, of another person without their consent and with the purpose of causing embarrassment or distress”⁴⁸. Although people think that this form of harassment is millennial negligence, it is not. It is purely a form of sexual violence. This violence is carried out as a method through which people can overcome their anger by retaliating the pain the victim caused in the harasser’s life. A study⁴⁹ carried out by Afroditi Pina, a lecturer at the University of Kent, identified that those who engaged

⁴⁶ Chelsea Reinhard, 'San Angelo Man Faces 10 Years In Prison For Online Impersonation' (*San Angelo LIVE!*, 2015) <<https://sanangelolive.com/news/crime/2015-06-29/san-angelo-man-faces-10-years-prison-online-impersonation>> accessed 15 November 2019.

⁴⁷ 'Defining Online Sexual Harassment' (*Childnet*, 2019) <<https://www.childnet.com/our-projects/project-deshame/defining-online-sexual-harassment>> accessed 15 November 2019.

⁴⁸ 'Revenge Porn: The Facts' (Assets.publishing.service.gov.uk, 2019) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/405286/revenge-porn-factsheet.pdf> accessed 15 November 2019

⁴⁹ 'Research Finds A Majority Endorsing Revenge Porn' (*Phys.org*, 2019) <<https://phys.org/news/2017-03-majority-endorsing-revenge-porn.html>> accessed 15 November 2019.

in such type of behavior are usually individuals that lack empathy for others and are unaware of the severity of their actions.

An example of such a Maltese case⁵⁰ is 37-year-old John Ebejer who was prosecuted before magistrate Donatella Frendo Dimech on the 14th November 2018. Ebejer was arrested after sharing a video of him and his former partner engaging in sexual activities. Consequently, Ebejer was condemned to pay a fine of €4,500.

Secondly, there is exploitation, coercion and threats also known as “sextortion”. This refers to “when someone threatens to distribute your private and sensitive material if you don’t provide them with images of a sexual nature, sexual favors, or money”⁵¹. Jeff Bezos, the Amazon CEO and Washington Post owner went public in 2019 with his story⁵² of how he was a victim of sextortion carried out by the National Enquirer. The Enquirer had published an article that suggested infidelity on Bezos end. Later on, once Bezo and his wife announced to the public their separation, his harasser began releasing details of an affair that Bezo had had at the time. The enquirer contacted him and threatened him to spread Bezo’s intimate photos on the basis that Bezo was require to make a public statement, despite the fact that he did not agree with it or not.

The third type is sexualized bullying. This takes place when a harassment victim is being excluded from a group due to them having sexual content that embarrasses

⁵⁰ Matthew Agius, 'Man Fined €4,500 For Revenge Porn' (*MaltaToday.com.mt*, 2019) <https://www.maltatoday.com.mt/news/court_and_police/90926/pieta_man_fined_4500_for_revenge_porn#.Xc61rSMrK2w> accessed 15 November 2019.

⁵¹ Smith K, 'What Is Sextortion (With Examples) And How Can You Avoid It?' (*Comparitech*, 2019) <<https://www.comparitech.com/blog/information-security/what-is-sextortion-examples/>> accessed 15 November 2019

⁵² Quinta Juercic, 'Jeff Bezos Accuses The National Enquirer Of Sextortion' (*Lawfare*, 2019) <<https://www.lawfareblog.com/jeff-bezos-accuses-national-enquirer-sextortion>> accessed 15 November 2019.

or discriminates people. This includes a variety of behaviors such as name calling online, impersonating someone and damaging their reputation by sharing sensitive information (doxing), body shaming and being bullied due to sexual orientation.

The last type of online sexual harassment is unwanted sexualisation which takes place when a person receives unwelcome sexual requests, comments and content. This includes a range of behaviors such as: sending someone sexual images without their consent, jokes of a sexual nature, editing images of an individual in order to sexualize them, rating individuals on sexual activity together, as well as several others.

These 4 types of online sexual harassment take place in gendered circumstance and is based on the structured relationships of disproportion found between men and women. Consequently, unbalanced end results and incidents take place for women and girls. As expected, when comparing females to males, females are the main target for online sexual harassment. In fact, a Pew Research Center⁵³ carried out a survey which found that in the age group of 18 to 29 years old, 21% women say they have been a victim of online sexual harassment whilst 9% of men reported such abuse. Therefore, such statistic highlights the gendered nature of sexual harassment and the fact that women are at a larger risk of being harassed not solely on an online setting yet also in an offline one.

An example of this is the story of the author, attorney and feminist blogger Jill Fillopivic. When Fillopivic was a law student at NYU, she discovered several threads on an anonymous board that were filled with graphic rape threats and insults

⁵³ Maeve Duggan, 'Online Harassment 2017' (*Pew Research Center: Internet, Science & Tech*, 2019) <<https://www.pewresearch.org/internet/2017/07/11/online-harassment-2017/>> accessed 15 November 2019.

directed towards her. These threats called for a “brutal raping”. She was also called a “guttertrash whore”. The online harassers further developed into offline threats when they began appearing at work and her safety was compromised due to the online sexual harassment that she had faced.⁵⁴

Online sexual harassment is an extremely distressing situation for an individual to be. Article 251(A) of the Maltese Criminal Code states that “A person who: (a) pursues a course of conduct which amounts to harassment of another person; or (b) pursues a course of conduct which he knows or ought to know amounts to harassment of such other person” is able to take the harasser to court who would be “liable to the punishment of imprisonment for a term from six months to two years or to a fine (multa) of not less than five thousand euro (€5,000) and not more than ten thousand euro (€10,000), or to both such fine and imprisonment”. Therefore, individuals who are harassed should resort to legal intervention.

This modern scourge for cyber abuse and cyber harassment has become something so common due to the various methods through which it can be carried out. To prevent individuals from becoming a victim there are several precautionary measures that should be carried out not only by individuals but also by institutions and large companies. Above all, if one finds themselves to be a victim, in certain cases, they can also turn to legal intervention.

⁵⁴ Jill Filipovic, 'I've Received More Rape Threats Than I Can Count. This Is A Call For Kinder Online Debate | Jill Filipovic' (*the Guardian*, 2019) <<https://www.theguardian.com/commentisfree/2014/jan/09/twitter-call-for-kinder-more-humble-online-debate>> accessed 17 November 2019.

V. How to Combat Gender-Based Violence

In May of 2018, a reformed Gender-Based Violence and Domestic violence Act was enacted.⁵⁵ It defines gender based violence as “all acts or omissions that are directed against a person because of their gender , that result in , or are likely to result in , physical , psychological or economic harm or suffering , inducing threats of such acts , coercion or arbitrary deprivation of liberty , whether occurring in public and private life”.

It is important to note that in Malta any form of domestic or gender violence up until 2006 was not an *ex-officio* offence. The Domestic Violence Act of 2006 (Chapter 481) marked a major improvement with regards to combatting gender violence was by giving it the status of an *ex-officio* offence, meaning that police have the obligation to continue their investigation whenever there is a suspicion of both gender-based or domestic violence, rather than the investigation proceedings being dependent on whether or not the complainant was willing to proceed.⁵⁶

The Maltese Ministry for European Affairs and Equality released a Vision 2020 Gender Based Violence and Domestic Violence Strategy and Action Plan, in response to the bill passed in 2018, it is a corresponding national strategy and action plan. The aim of the strategy is to work in line with the Istanbul Convention which Malta ratified in 2014, working on four pillars; Prevention, Protection, Prosecution and integrated policies which it aims to achieve by 2020. Although

⁵⁵ 'I GPFGT/DCUGF XKQNGPEGCPF FQO GUVK XKQNGPEGCEV) *Lmuke gugt xkegu qxb v. 423: +>j wr <ly y y Qwuklegugt xkegu qxb vIF qy pmcf F qewo gpvQur zAcrr ? nqo (kgo kf ? 34: 52(n? 3@ ceeguuf 38 P qxgo dgt 423; 0

⁵⁶ *O gcg qxb v. 422: + >j wr u<lb gcg qxb vlgp lEqo o kukqp' 42qp' 42F qo guke' 42XkqngpegIF qewo gpwUgo kpctu' 42qp ' 42F qo guke' 42XkqngpegIF qo guke' 42Xkqngpeg' 42Hcew' 42cpf' 42Hki vtgu' 42/ ' 424;' 42P qxgo dgt' 424235 lugo kpctar tqeggf kpi ua2: Gfh@ceeguuf 38 P qxgo dgt 423; 0

based on the Istanbul Convention, this action plan went further in ensuring protection against domestic and gender-based violence. As Minister Dr. Helena Dalli once said, this is a multi-agency approach with the contribution of various ministries and agencies.

The action plan was split up into four main headings under which different action proposals were drafted. These are; Legal Measure and Integrated Policies, Data Collection, Research and Training, Awareness Raising and lastly, Protection and support for victims and child witnesses. The following are examples of such measures.

Through the Domestic Violence Act, the CDV (Commission on Domestic Violence) became empowered to not take on board all forms of gender-based violence, in order to satisfy the obligations of the Istanbul Convention. The commission on Domestic Violence was set up throughout the aforementioned Domestic Violence Act (Chapter 481 of the Laws of Malta) with the aim of advising the responsible minister for social policy on all the different kinds of domestic violence. They also raise awareness on the issue through their various campaigns providing a general educational background on the situation and information about helping such issues. These campaigns encourage and make people more comfortable to speak about their personal issues and eliminates the stigma surrounding the topic which society faces daily.⁵⁷

Another important measure was ensuring that the judiciary, DPP (Public authority department of Probation and Parole), and the MPF (Malta Police Force) ensure that

⁵⁷ *Qxgtxkgy*) **O gcgl qx0 v. 423; +*
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current perpetrator programs are strengthened and enforced more, and there is an increase in referrals to such programs echoing the message from Minister Dr. Helena Dalli “As a society we need to provide greater attention to the reform of perpetrators through proper programmes targeting them”⁵⁸. The responsible entities for this are the FWS (MFCS) , DPP , MFP and NGOs.

There were proposals ensuring that victims have easier access to support and information on how to tackle their situations such as an up-to-date information material available across various agencies throughout Malta , they also paid attention to the fact that some of the victims maybe migrants who cannot communicate in neither of the official languages of Malta. There has also been proposed a strengthening of the 179 helplines by ensuring that the staff personnel are all professionally trained in helping out victims in their time of need.

Attention was also paid to the financial status of the victims where financial support and housing was planned to be given, whilst also providing job training and employment prospects thus paving the way towards financial independence. This is done through entities such as Jobsplus and the Housing Authority. This is helpful as one of the main reasons victims don't speak up is due the fact they that would be financially dependent on the perpetrator.

Nonetheless, victims cannot presume the existence of these measures as they are mere proposals set to be achieved by 2020.

⁵⁸ (*Ogc g0 qx0 v 423; +*

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It must be said that with regards Gender Equality law , legislation is mainly local , whilst the European Union provides certain directives , the member state is still to free to decide in which ways implement the measures towards achieving the directive's results, and can even choose to opt out (certain consequences such as sanctions may result) ⁵⁹.

What EU member states have in common is that they all have adopted the Human Rights Convention and all the other main human rights instruments. The EU has also shown increased support towards women through a number of soft laws (communications and recommendations), which are not binding and guiding practices and principles. An example of this is the Daphne Programme.

The Daphne Programme is an initiative that was launched in 1997 by the European Commission, as a one-year funding line to fund NGOs in their projects to support victims of violence, especially violence against women, young people and children. What had triggered this project was the discovery of bodies of a number of missing girls in Belgium during the Summer of 1996 which caused people to politically question if the EU could do anything to protect them against such violence. The response to this initiative was positive and the programme continued each year, with an increase in funding. The Daphne Programme is now part of the 2014-2020 Rights, Equality and Citizenship programme. ⁶⁰ One of the most important things that this programme produced was The Daphne Toolkit which is described as “a

⁷: *Journal of Gender Studies*, 423; +>j wr u<lglk gQwtqr cQwli gpf gt/ dcugf/xkqngpegltgi wrcvt{/cpf/rigi cr/ltco gy qtmigwtgi wrcvqpu@ceeguugf 39 P qxgo dgt 423; 0

⁸² 09-Vj g F cr j pg Vqqmkvð Cp Cevkxg Tguqwtæg Htqo Vj g F cr j pg Rtqi tco o g / F cr j pg Vqqmkv/ Gwtqr gcp Ego o kulkqp)*F cr j pg Vqqmkv. 423; +>j wr u<lglk gQwtqr cQwli wvlegli tcvult guwvulf cr j pg/ vqqmkvlf cr j pg/vqqmkvð/cevkxg/tguqwtæg/f cr j pg/r tqi tco o gagp@ceeguugf 39 P qxgo dgt 423; 0

rich depository, not only of programme descriptions, but also of reports, studies, tools and awareness-raising and training materials...”⁶¹

The International Women’s development Agency (IWDA) came up with both short-term and long-term methods on how communities, NGOs and most importantly governments can help to fight against gender-based violence⁶². It is with satisfaction that one when compares this criterion with the services available in Malta, much of it is satisfied and thus, what has to be studied now is how effective the resources available in Malta are.

The following are the short-term measures. Firstly, there is the important role of safe houses, crises shelters and women’s shelters. For some people experiencing gender-violence domestically, it may be more difficult for them to leave as they wouldn't have their own property which is safe and unknown by the perpetrator. The victim may also be financially dependent of the perpetrator and cannot afford housing on their own. According to the IWDA these safe houses must include but not limited to accommodation, food, counselling, medical treatment, financial and legal aid. In Malta free medical care and financial aid to people suffering from financial distress is a guarantee given by the government. However, unfortunately this is not a worldwide reality. In Malta we have many houses, agencies and NGOs that help out victims in need. The government of Malta also released a collection of services documents in order to help professionals working in the fields of combatting both Gender based violence and domestic violence, this is part of the

⁶² '7 Ways To Fight Gender-Based Violence | IWDA' (IWDA, 2016) <<https://iwda.org.au/7-ways-to-fight-gender-based-violence/>> accessed 19 November 2019.

Full Cooperation Zero Tolerance Project⁶³. In this there are many NGOs listed that can help out these victims such as *Agenzija Apogg* which is government funded and *Ghabex* Emergency Centre. Government entities also offers free access counselling services and lifestyle clinics.

The second vital measure is medical help. This includes both physical and mental trauma that the victim may experience. Many people may stop after seeking physical medical attention and neglect their psychological health. In Malta these services are available to any person who is suffering; however, the knowledge of their existence is limited. Government entities should work more in not only raising awareness on how common GBV but promote the services that these victims have access to.

The last short-term solution is Legal Referrals. Legal Aid Malta (LAM) was just established recently in 2015. Nonetheless, the process is not that simple. In order to get free legal aid, the victims need to swear by oath that they do not possess any property where the Net Value amounts to or exceeds €6,988.12 and that their yearly wage in not above minimum wage. So if the property is co-joined by the victim and the perpetrator, does this eliminate the ability of the victim to have access to legal aid? No. The law says that if the person who asks for legal aid is considered a Victim under the Victims of Crime act (Chapter 539 of the Laws of Malta) is eligible to obtain free legal aid.

The Victims of Crime Act defines 'victim' as “ (a) a natural person who has suffered harm , including physical , mental or emotional harm or economic loss which was

⁶³ *O gc gñ qxñ v. 423; +

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directly caused by a criminal offence; (b) family members of a person whose death was directly caused and who have suffered harm as a result of that person's death . (c) minors who are witnesses to forms of violence.”⁶⁴

As far as long term solution are concerned four were mentioned. The first one is capacity building; this means enabling victims of abuse to become financially dependent. This had been proposed in the 2020 Action plan which said that Jobsplus will not only help them find employment prospects but also giving them job training. The website further added that financial independence will “build their financial literacy, grow their life and work skills, and to get in touch with income generating opportunities empowers them (the victims) to build the financial means to find security and start again.”⁶⁵

The second measure is working with men. In Malta, NGOs such as MAV (Men against violence) promote the engagement of boys and men in preventing violence such a domestic violence, dating violence, harassment and sexual violence.

Thirdly, there is rights training in order to remove the stigma around talking about gender-based violence and reshape society's attitudes through ad campaigns and open debates. Lastly, society needs to act as an advocate for survivors especially through women's rights organisations.

⁶⁴ 'Xlewk u QhEtlo g Cev) *Lwukugt xkugl qx0 v. 4237+
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