

COUNTRY REPORT MALTA



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JUST/2014/RRAC/AG/6723 Country Chapter

Chapter 1. Country Profile

Malta is the smallest country within the European Union with a population of around 420,000. It is also the most densely populated with 1,000 persons per 1,314/KM². The vast majority of Malta's population (98.5%) is considered to live in urban areas. Malta gained independence from British Rule in 1964 and became a Republic in 1974. Malta's parliament is elected every five years with 69 members of parliament although this can vary since the number of seats is proportional to the total number of votes obtained. Malta has a high voter turnout with over 95% of the population participating. The two major political parties are the Labour Party, currently in government and the Nationalist Party, currently in opposition. Malta joined the European Union in 2004 and has six MEP's, three from each of the two main political parties.

Despite being a largely Catholic country Malta has made significant strides in LGBTIQ rights since 2013 with the introduction of Civil Unions including parenting rights¹ in 2014, the Gender Identity, Gender Expression and Sex Characteristics Act in 2015 which for the first time included protections for intersex persons² and the Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act³ in 2016 which outlawed conversion practices. These legislative measures together with various policy initiatives in the field of education and correctional services as well as the

adoption of a National LGBTIQ Action Plan have placed Malta at the top of ILGA-Europe's Rainbow Index. The Eurobarometer on Discrimination of 2015 indicates that these legislative and policy initiatives have also positively affected the acceptance of LGBTIQ persons. A recent newspaper poll shows a 61% support for marriage equality⁴.

The most recent national statistics available with regards to experiences of discrimination by the LGBT community in a range of spheres is the FRA LGBT survey conducted in 2012 and published in 2014 and therefore predates much of the legal and possibly social changes that have taken place in the past four years. Findings were consistent with previous surveys conducted by the Malta LGBTIQ Rights Movement in 2001 and 2008.

1 <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12172&l=1>

2 <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12312&l=1>

3 <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12610&l=1>

4 <http://www.independent.com.mt/articles/2016-04-20/local-news/ISurvey-61-ready-to-change-gay-civil-union-into-marriage-6736156628>

Chapter 2. Legal Framework

Malta extended its hate crime and hate speech provisions to also include sexual orientation and gender identity in 2012 through amendments to Malta's Criminal Code and further extended to include gender expression and sex characteristics through the Gender Identity, Gender Expression and Sex Characteristics Act in 2015. However, despite surveys among the LGBTIQ community consistently showing a 12% incidence of threats and violence experienced by respondents, official reports to the police are not forthcoming. To our knowledge no case has been brought forward by the police, who in Malta act as the prosecution, as a hate crime on the grounds of sexual orientation, gender identity, gender expression or sex characteristics since the introduction of the legal provisions.

Article 82 A of the Criminal Code states:

(1) Whosoever uses any threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up violence or racial or religious hatred against another person or group on the grounds of gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief or political or other opinion or whereby such violence or racial or religious hatred is likely, having regard to all the circumstances, to be stirred up shall, on conviction, be liable to imprisonment for a term from six to eighteen months.

(2) For the purposes of the foregoing subarticle "violence or racial or religious hatred" means violence or racial or religious hatred against a person or against a group of persons in Malta defined by reference to gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion.

Amendment to Articles 222A, 251D and 325A of the Criminal Code (Chapter 9 of the Laws of Malta) on the other hand sets out the increase of punishment and severity of the offence for bias motivated crime. Changes were also affected to the Article 6 of the Press Act.

Whosoever, by any means mentioned in article 3, shall threaten, insult, or expose to hatred, persecution or contempt, a person or group of persons because of their gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief or political or other opinion, disability as defined in article 2 of the Equal Opportunities (Persons with Disability) Act, shall be liable on conviction to imprisonment for a term not exceeding three months and to a fine (multa).

2.1 LGBT specific legal gaps

Malta's anti-discrimination provisions on the grounds of sexual orientation were introduced through the transposition of the Employment Framework Directive 2000/78/EC following EU accession and are limited to the field of employment. In Malta, the provisions of Dir 2000/78/EC have been implemented through Ch452 Employment and Industrial Relations Act⁵. However, further legislation was needed in order to ensure effective transposition in both the public as well as the private sector and among self-employed.

The grounds of protection were extended to include gender identity, gender expression and sex characteristics in 2015. The remit of the National Commission for the Promotion of Equality⁶, also cover these four grounds. Anti-discrimination provisions on the grounds of sexual orientation and gender identity were also introduced through

5 <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8918>

6 <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8922&l=1>

amendments to the Constitution of Malta in 2014. However, more encompassing protections on these four grounds as well as better provisions in the case of intersectional discrimination are expected to be introduced through the proposed Equality Act and the Human Rights and Equality Commission Act currently undergoing the parliamentary process.

Access to reproductive health services for LGBTIQ people are also lacking. Malta's Embryo Protection Act⁷ is considered to be discriminatory since it effectively prohibits access to such services as artificial insemination and IVF to LGBTIQ persons through the criminalization of gametes donation. The Act also prohibits surrogacy.

⁷ <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=23499&l=1>

Chapter 3. LGBT Specific Public Policies (if applicable and not specific to hate crimes only)

In October of 2014 the Ministry for Education and Employment adopted its Addressing Bullying Behaviour In Schools Policy⁸ which for the first time made specific reference to homophobic and transphobic bullying. In June of 2015 the Ministry of Education and Employment adopted an education policy focusing on the needs of trans, gender-variant and intersex children⁹. The policy, along with an accompanying procedure and strategy outline how the policy's provisions should be implemented uniformly in schools. Among the specific needs addressed by the policy were confidentiality, support, adequate facilities, the possibility to amend documentation and access to information. This policy has been accompanied by a systematic provision of training to Student Support Service professionals within the state sector such as counsellors and social workers on the provisions and implications of the policy.

In July of the same year the Prime Minister launched an LGBTIQ Action Plan for 2015-2017¹⁰ which included a range of measures to be addressed by a number of Ministries. The Action Plan also included specific provisions relating to addressing hate crimes on the grounds of sexual orientation and gender identity. It includes commitments to reviewing the existing protocols to deal with hate crime, ensuring police are adequately trained and setting up appropriate referral services for victims.

A trans, gender variant and intersex

inmates policy was introduced in August of 2016 covering the Corradino Correctional Facilities. The policy aims to ensure that all inmates are treated fairly, for example by housing prisoners according to their lived gender, use of preferred pronouns by staff, ensuring searches are carried out in accordance with the prisoner's gender and providing information and training for staff and inmates. Legal provisions introduced in December 2016 also ensure that non-Maltese citizens in detention who have no access to gender recognition procedures in their own country are also covered by the policy.

The Maltese government requested that the TAHCLE (Training against Hate Crimes for Law Enforcement) programme be implemented in the country. The ODIHR department responsible for implementing the capacity building programme carried out a preparatory visit in December and the training for trainers targeting twelve police officers of various ranks is expected to be delivered in the summer of 2017.

The Government also restructured the Police Academy which is now responsible for the training and professional development of all security forces including the police, correctional officers and the armed forces.

8 <http://education.gov.mt/en/Documents/Addressing%20Bullying%20Behaviour%20in%20Schools.pdf>

9 <http://education.gov.mt/en/resources/Documents/Policy%20Documents/Trans,%20Gender%20Variant%20and%20Intersex%20Students%20in%20Schools%20Policy.pdf>

10 <https://socialdialogue.gov.mt/en/Documents/LGB-TIQ%20Action%20Plan/LGBTI%20Action%20Plan%20lo%20res.pdf>

Chapter 4. National Authorities (institutions responsible for dealing with hate crimes)

The Malta Police Force is responsible for the investigation of hate crime incidents reported by victims or witnesses. Depending on the severity or sensitivity or political implications of the case it could be referred to the Vice Squad, the police unit also responsible for dealing with cases of domestic violence, child abuse, human trafficking, sexual offences and missing persons among others. They also investigate reports of online hate speech in collaboration with the Cyber Crime unit. The Malta Police Force also acts as the Prosecutor in bringing cases forward in front of the Courts, generally the Court of Magistrates, when they deem there are sufficient grounds to proceed. As a court of criminal inquiry it collects the evidence brought by the police against a person charged with an offence falling within the competence of the Criminal Court. At the end of this inquiry the court – now styled Court of Magistrates as a Court of Criminal Inquiry – has to decide whether or not there is sufficient evidence for a Bill of Indictment to be filed by the Attorney General before the Criminal Court.

Chapter 5. Benchmarking results (websites/platforms/apps on hate crime and on-line hate speech)

There appear to be no official statistics available with regards to the incidence of hate crime or hate speech including online hate speech in Malta. It is likely that the Malta Police Force could provide data on the number of investigations carried out and eventually prosecuted. The Cyber Crime Unit does keep a record on the number of reports received and investigated and partners with international entities such as Europol and their counterparts in other countries as well as I.T. companies in such investigations and to ensure removal of illegal content.

A number of NGO's are involved in collecting data on hate crime and hate speech and have developed reporting tools which are available online or through mobile Apps. These include the People for Change Foundation which is a partner in a number of projects including C.O.N.T.A.C.T (Creating an Online Network, monitoring Team and phone App to Counter hate crime Tactics). This is a European Union supported project that focuses on hate speech and hate crime of a racist, xenophobic, homophobic or transphobic nature. The project includes partners from Cyprus, Denmark, Greece, Italy, Lithuania, Malta, Poland, Romania, Spain and UK. It includes an online reporting tool which can be found on the project website¹¹.

SOS Malta is participating as co-partner in the 24 months project eMORE – MONitoring and REporting online hate speech in Europe financed by the European Commission. The project is led by the RiSSC – Research Centre on Security and Crime and SOS Malta joined 11 co-beneficiaries from 9 European Members States and 1 associate partner to test and transfer a knowledge model on

online hate speech) and offline hate crime based on a circular and advanced joint monitoring-reporting system.

The aim of this transnational project is to gain a sound understanding of the hate speech phenomena online but also offline and to develop a common model combating against hate speech at European Union and national levels.

Each partner will collect data about its own country in order to create a common database and multi-level report tool. The aim is to identify – thanks to research – the main terms and websites used in national and European hate speech in order to produce a preliminary map of the most important online hate speech websites and a glossary of the most used hate-related terminologies. SOS Malta launched its Country Report in April of 2017¹². The project also aims to develop a crawler that can assist in identifying sources of hate speech online.

11 <http://reportinghate.eu>

12 <file:///C:/Users/callg042/Downloads/eMore%20national%20report.pdf>

Chapter 6. Results from the Interviews

SECURITY FORCES

Two interviews were conducted with police officers leading two of the largest police districts in Malta. They are both based in police stations recording some of the highest incidences of crime. Both districts include leisure and entertainment hot spots which young people and adults tend to frequent and which are also popular among tourists.

General awareness on hate crimes and (or) hate speech on grounds of sexual orientation and (or) gender identity.

The officers interviewed had a good understanding of the legal definition of hate crime and hate speech, including online and where able to refer to the appropriate legislation. However, despite many years of service within the police force, they could not identify any direct experience of reports of LGBT hate crime that they could recall and claimed that this was not something they considered to be a major issue within their districts. One of the interviewees stated that it might be more of an issue in less urban areas where homophobia or transphobia might be more prevalent and where communities might be less tolerant. The interviewees claimed that the legal and societal changes that had taken place in Malta meant the attitudes towards the LGBT community had become more accepting and that LGBT individuals were able to be safe in public spaces. One interviewee mentioned that he could not discount that LGBT people might have presented themselves at police stations to file a complaint but might not have been taken seriously enough. Possibly, the police, after having listened to an account of the incident might have suggested that the

individual attempt to work out the conflict with the perpetrator. In other cases, when the individual was informed that the case might lead to prosecution which would require the individual to appear in court, they might chose not to proceed with filing the report or be satisfied with the police having a chat with the perpetrator. He also acknowledged that online hate crime, particularly on social media, was an increasing reality and this included the grounds of sexual orientation and gender identity.

Hate crime on the grounds of race, ethnicity or religion was considered to be more of a concern despite the fact that actual reports and prosecutions were few and far between. Even in this case, one of the officers noted that often reported incidents did not involve Maltese nationals and occurred between foreigners of different nationalities or with potentially different ethnicities or political allegiances in their country of origin. They also expressed some skepticism when reports were received stating that at times, race, ethnicity or sexual orientation might be used as an excuse when in fact it might be that, for example, the person was barred from entering an establishment because they were drunk rather than because they were a member of a minority.

Generally complaints are filed at the police station within the district where the incident took place. The Telephone Orderly on duty, generally a Constable or Sergeant would be responsible for receiving the complaint with the possibility of a report being filed. They are also the ones who must follow up on the investigation. If the crime being reported was of a serious nature than a higher level official might be involved. If the crime related to an area covered by one of the specialized branches within the police force, then the investigation would involve a partnership between the district police and the specialized branch. These

mainly covered cases relating to homicide, child abuse, paedophilia, domestic violence, prostitution, human trafficking and drugs. If the incident related to an online offense then the Cyber Crime Unit would be involved. It was also possible for individuals to file complaints directly with specialized branches particularly in cases where a relationship already existed between the individual and the police officers concerned due to repeat victimization. A decision on whether to proceed with the prosecution of the case in court is dependent on enough proof being compiled.

The Police Notification System is a computerized one and allows for the logging of police reports and the identification of types of crimes based on a drop-down menu. These included abortion, abuse of public authority, bodily harm, crimes of religious sentiment, crimes against public safety, crimes against public peace, against administration of justice, domestic violence, drugs related crime, forgery, fraud, homicide, abandonment of child, perjury for swearing, pornography, prostitution, safety and sexual offense. Hate crime and hate speech are not on this list and therefore would need to be determined and outlined in the descriptive section of the report for them to be recorded as such. This should emerge during the investigative stage given that seeking to identify the motive is always a key concern for the police. The statistics office within the Malta Police Force also plays a part in monitoring the police reports and the classifications assigned to different types of crime.

Implementation of the Victim Rights Directive.

In some of the larger districts where assigned police officers numbered over a hundred, the interviewees remarked that the experience of the victim might vary,

depending on who was on duty at the time. While following procedures was deemed to be essential, the character of the police officer concerned and their treatment of the individuals who presented themselves at the police station was also considered to be of importance in terms of how the victim experienced the reporting and investigative process. Changing attitudes was perceived to be more difficult than imparting new knowledge and information, something that could be achieved through training and appropriate communication such as circulars or team meetings. Those putting forward a complaint were informed of the procedure, where the investigation was at, and what they could expect to happen. This also included the right to compensation. In some cases the police mediated for reparation for damages to be initiated even before the case went to court. The investigating officer also established whether an interpreter or medical assistance was required. The police were also obliged to keep the victim informed of the progress made at regular intervals, within reason and to keep the file updated. Given the vast number of reports received each year, which in 2016 numbered over 17,000 keeping in touch with all those who file a complaint can be challenging.

One of the interviewees recalled attending some training with regards to the Victims Rights Directive although he was not aware of who else might have been included in the training. The other interviewees were not aware of such training although they did claim that throughout the years they had received training on victimization and the rights of victims. Knowledge of available literature relating to the rights of victims that could be handed out to those presenting at police stations varied. One interviewee stated that from time to time they put up posters or had leaflets available, often from service providers or NGO's. Knowledge of victim support services specifically aimed

at LGBT individuals was scarce. Knowledge was restricted to internal structures, the NGO Victim Support Malta and public social work services such as Appogg. When some form of referral to psychological support was deemed necessary, the police conducted an online search for potential service providers.

Negative phenomenon of underreporting.

The interviewer pointed out discrepancies that exist between the incidence of discrimination and violence as reported in surveys and reporting of such incidents to the police.

Some reasons given for under-reporting where stigma associated with an LGBT identity; a lack of trust in the police; the small size of the country which increased the likelihood of the victim being known or of their being some sort of connection between a member of the police force and the victim or perpetrator or any of their family members; an unwillingness by the victim to go to court; the fact that anonymous reporting, while possible was not really encouraged. Other reasons included a lack of awareness of what constitutes a hate crime by potential victims and therefore their inability to classify it as such.

Things to improve.

The infrastructure of police stations, often housed in old buildings that were initially intended as private residencies, was deemed to be lacking in adequately meeting the needs of victims. They often lacked private spaces where complaints could be filed without interruption and unnecessary staff or other members of the public being present. The need for ongoing training of police officers was also considered necessary in order to address not just knowledge and skills but also attitudes and responses to

victims. Awareness raising and outreach to potentially vulnerable groups could also help improve the image the police held among certain sections of the population and might encourage reporting. The Victim Support Unit was deemed to be understaffed and in need of strengthening given their role in acting as liaisons between the victims and the district officers. Measures in this regard are due to be launched in the first half of 2017. One interviewee suggested that having all officers do all types of jobs might not be the best use of human resources and that police officers could be assigned tasks that are best suited to their personality and skill set. Another challenge is the way cases are assigned and the delay that can occur between the report being filed and the investigation being conducted given the duty roster system adopted. Staff movements can also result in follow-up on certain cases being compromised unless an appropriate handover is given. A further challenge faced by the police is public perception and the expectation that given Malta's small size, all cases can be solved. While social media has been used as a tool by the police to communicate with the public, in certain cases such media can also put unnecessary pressure on the police and lead to further mistrust. The need was also raised to address homophobia within the police Corp itself to ensure that LGBT members of the force felt safe, welcome and included.

Opinion on LGBT* specific mobile application and website.

The possibility of submitting reports online was considered a positive development. Generally, online reports were received by the Community and Media Relations Unit (CMRU) of the Malta Police Force who then forwarded the reports to the relevant district police stations for any follow up action required. Any action on such reports

depended on the nature and severity of the incident being reported. The possibility of having an NGO conduct the initial vetting of such reports was viewed as helpful given the human resource challenges faced by the police force. The possibility of such a reporting app also ensured more accountability on the part of the police in following such reports once submitted. The possibility to report to an NGO was also deemed beneficial given the level of trust that existed between such organizations and the LGBT community. Some concerns related to the fact that not all potential victims have access to online reporting systems and that should the app prove successful in addressing under-reporting and give rise to an increase in documented hate crimes against the LGBT community, this might somehow portray the police in a bad light and further damage the relationship between the police and the LGBT community.

JUSTICE PROFESSIONALS

One interview was held with a member of the judiciary. Though several requests were repeatedly made to the Chief Justice and the Attorney General, no other interviewees were identified.

General awareness on hate crimes and (or) hate speech on grounds of sexual orientation and (or) gender identity.

The interviewee identified hate crime as any type of conduct sanctioned by law as being illegal, directed towards a group of persons by reason either of gender, creed, membership of a particular group, etc. and was also able to refer to specific Articles in Malta's criminal code. Although the interviewee had experience with a small number of hate crime cases none where on the grounds of sexual orientation or gender identity. As for any other crime, there is no

specific court where hate crimes are heard and therefore any member of the judiciary could be engaged in such cases.

The interviewee considered Malta's legislation to be compliant with both UN and Council of Europe standards and in some aspects may exceed the minimum provisions required. The respondent identified the police as a source of data collection. All hate crime cases that were prosecuted in the courts as such would make specific reference to the relevant article in the Criminal Code and could therefore be identified. Cases that were dropped before prosecution or that were not identified as hate crimes at the investigative stage so that they could be prosecuted as such would not be accounted for.

Implementation of the Victims Rights Directive.

The interviewee was familiar with the Victims Rights Directives, its provisions and its transposition into Maltese law and was confident that this was true of all the members of the judiciary. The judiciary held training seminars on a regular basis and also participated in international fora. More importantly they held frequent meetings to discuss new legislative developments and their interpretation, also in view of European laws, judgments and directives.

The interviewee claimed that this could also be attested from the judgments being pronounced and the increased awareness they placed on the rights of victims. One example provided was of limiting to the minimum required the number of times the victims was questioned in order to reduce the possibilities of further victimization. This was a complex matter in practice given the need to balance the rights of the victims and those of the accused as well as the paramount importance of arriving at the truth.

The transposition of the Victims Rights Directive was not seen as introducing any significant changes but as a review and consolidation of already existing provisions. The judiciary found no difficulty in abiding by the provisions of the Victims of Crime Act, such as in conceding to any request for legal aid, for example. The interviewee did recognize that lack of awareness of rights by victims might at times act as a barrier to accessing these rights.

Negative phenomenon of underreporting.

The interviewee identified irregular migrants, racial minorities and Muslims as being more at risk of experiencing hate crimes and referred to three possibilities for reporting a crime. Victims could file a report, provide information or make a complaint. While a report or the provision of information can be made by third parties, a complaint can only be filed by a victim. Any report, information or complaint is generally filed at a police station or with one of the specialized police units. However, victims also had the possibility to challenge the police through the courts, should the Commissioner of Police decide there were not sufficient grounds to prosecute or if the victim felt that they were procrastinating for no justifiable reason. In such cases, after examining the evidence, the courts can order the Commissioner of Police to take the necessary action.

The interviewee was somewhat skeptical of the phenomenon of under-reporting claiming that there were a variety of reasons why victims might chose not to file a complaint about which the police could do very little.

Things to improve.

The opinion of the interviewee was that

reporting mechanisms and court processes were adequate although victims might not necessarily agree with the decision of the court and might feel that the interpretation of the law was one which did not lead to justice in their regard. The limited number of reports was attributed to a strong legislative framework and harsh penalties which acted as a deterrent with respect to the perpetration of such crimes.

Opinion on LGBT* specific mobile application and website.

Any facilitation of reporting procedures, so long as the incidents were authenticated and verified by the police, was encouraged and the introduction of the mobile application was therefore welcome. The courts could only take action if incidents were reported, investigated and prosecuted and this required that victims come forward.

VICTIM SUPPORT SERVICES

Four entities providing victim support services to diverse client groups including any victim of crime, LGBTIQ persons, sexual assault and domestic violence victims and migrants where interviewed. These are the Police Victim Support Unit, aditus Foundation, MGRM's Rainbow Support Service and Victim Support Malta. The services provided varied but included counseling and psycho social support in person and/or online, safety planning, legal advice, information on rights and reporting procedures, referrals to specialized services and accompanying victims when filing reports or appearing in court. Most of the NGO's are also involved in awareness raising and advocacy initiatives and projects.

General awareness on hate crimes and (or) hate speech on grounds of sexual orientation and (or) gender identity.

All interviewees were able to provide a definition of hate crime making reference to the existing legislation and bias motivation as an aggravating factor. Understanding of the specific provisions in the legislation varied being more comprehensive among the law enforcement and legal professionals and less so among the psycho-social professionals.

All recalled reports of hate crime although very few instances of incidents that were motivated on the grounds of sexual orientation or gender identity. The most common references were to hate crimes motivated by race or gender. The intersectionality of a number of identity characteristics could also make it more difficult to determine the bias such as whether a crime was motivated by sexual orientation or race for example. One such case related to a relatively light skinned Middle Eastern man who was assaulted by a group of men on exiting a popular club hosting a gay party. The existing relationship between the perpetrator and victim could also give rise to uncertainty on whether an incident should be classified as domestic violence or sexual harassment rather than hate crime such as with intimate partner violence, stalking or verbal and physical abuse by parents or siblings.

There have been few prosecutions of hate speech, primarily on the grounds of race although the police cyber crime unit receives several reports of online hate speech on a range of grounds including sexual orientation and gender identity. It was explained that Malta's hate speech provisions can generally be applied quite broadly to a range of print, online and other media. This was viewed as a positive. However, other factors such

as that it needs to be located in Malta or against a Maltese citizen and that it should aim to instigate violence can be restricting and difficult to prove. Speech that is often homophobic, transphobic or offensive may still not classify as hate speech.

Knowledge of the hate crime statistics kept and by who differed. The community and media relations unit (CMRU) was identified as a source of information for all types of crime. This included prosecutions or charges brought forward on any sections of the law including hate crime and hate speech but not necessarily the number of reports filed by victims. These were more likely to initially be classified as threats, defamation or libel rather than hate crimes and only in the course of the investigation would the motive become clear. Other entities such as the National Commission for the Promotion of Equality might keep statistics of reports that were lodged with them. NGO's might also gather information on recorded cases for research or advocacy purposes or to forward to the European Commission, the Fundamental Rights Agency or other entities.

Reports are generally filed at the local police stations with the officers on duty although if the incident is classified as a hate crime then the vice-squad or other specialist units might be called in and these would collaborate with the district police in the investigation. Some of the victim support services assist victims in filing their reports by accompanying them to the police stations and explaining the police procedures and in following up with the police to make sure that the hate crime element is registered. However, it is only when charges are filed that it becomes clear whether the police are dealing with it as a hate crime. Generally access to Victim Support Services is not dependent on making a report to the police given that this process is viewed as

traumatic for the victim and it is understood that many will chose not to take this route.

Implementation of the Victims Rights Directive.

Three of the organizations interviewed were well versed with the Victims Rights Directive and its transposition into Maltese law. They provided training for their staff and volunteers. Most of their capacity building with regards to the Victims Rights Directive was obtained through participation in trainings organized by the European Commission or through CEPOL and contacts with other law enforcement agencies. Very little dissemination of the Victims Rights Directive or The Victims of Crime Act (Chapter 539) of the Laws of Malta adopted in 2015 seems to have taken place both with entities that might come into contact with victims such as social welfare agencies as with vulnerable groups who might be at risk of being victims of crime. Police procedures with regards to informing victims of their rights had been circulated within law enforcement as early as 2008 although this does not mean that all police officers dealt with victims accordingly.

The Victims of Crime Act was seen as a positive initiative although a number of shortcomings were identified in the transposition of the Directive. A Victim Support Unit was set up within the Justice Department to coordinate implementation measures. Victim Support Malta produced a leaflet in both English and Maltese which is also distributed in police stations and which explains the basic rights set out in the Directive and the legislation. Information in other languages is not readily available. Access to information is also limited for victims who may have a disability whether it is a hearing, sight or intellectual impairment, those who may be illiterate or for minors. Shortfalls included a lack of appropriate

mechanisms to inform and assist victims such as in providing information about their rights, access to legal aid, referral to victim support services or compensation. It was also not clear which entity was responsible for what and the different roles that the police, public entities as well as NGO's providing support to victims all played.

It was noted that the police dealt with around 100,000 reports annually of which around 17,000 involved victims of crime. These included children, the elderly, Maltese citizens as well as foreigners, and tourists. The police have a number of protocols or agreements in place with respect to the referral of victims of certain crimes to support services such as in the case of domestic violence, child abuse or sexual assault. However, the Victims of Crime Act encompasses all victims. The information received by the victim depended to a large extent on the initiative of the individual officer receiving the report. It was noted that if all victims were to be referred, services might not have the capacity to meet the demand. Five separate Ministries were identified as being involved in implementing the measures set out in the Victims of Crime Act. These were the Ministry for Home Affairs, the Ministry for Justice, the Ministry for Health, the Ministry for the Family and Social Solidarity and the Ministry for Equality. This requires inter-ministerial coordination and collaboration to ensure quality and standards in service provision and potentially a central hub, that could serve as the competent authority mentioned in the legislation, through which referrals to different service providers would be standardised.

Negative phenomenon of underreporting.

Knowledge on LGBTIQ issues by Victim Support Services varied depending on their client groups and whether they catered

primarily or specifically for this group or catered for a much broader cohort. Variations also existed between staff and volunteers and the experience each possessed in working with a Victim Support organization. Although it was acknowledged that the primary role of the police is the apprehension and prosecution of offenders and perpetrators, it was important that this be carried out using a victim centered approach.

Under reporting of hate crime and online hate speech was held to be a common occurrence although a slight shift has been experienced by at least one of the Victim Support Services following the introduction of a range of legislative measures effecting the LGBTIQ community such as the Civil Union Act in 2014 and the Gender Identity, Gender Expression and Sex Characteristics Act in 2015. Some of the reasons given were a lack of understanding of the reporting procedures, a lack of confidence in approaching the police, apprehension of what would happen once a report was filed, vulnerability at being exposed in court and potentially being reported in the media and possibly being outed, a fear of re-victimisation and being viewed as somehow to blame for what happened to them and in some cases a fear of or lack of trust in the police.

Police stations were viewed as not being victim friendly primarily given the lack of privacy they afford and often because of the lack of training and sensitivity on the part of the police officer receiving the report. Having posters or stickers that are strategically placed in police stations and other spaces frequented by the LGBTIQ community that explain what hate crime is and what can be done to report it, or where victims could find support could be useful.

Steps taken to encourage and support

victims to report include assisting them in overcoming their fears and in providing them with the necessary information about their rights and the police and court procedures. Also, working with the police to make sure that they are alerted to any issues, such as a bias motivation behind a crime, and to guarantee the rights of the victim are respected. It was noted that few people have a clear understanding of what hate crime entails, how to protect themselves and what to do should they experience it. Often instances of harassment or abuse that are experienced because of the person's sexual orientation, gender identity, gender expression or sex characteristics are taken for granted or not considered serious enough to report. Alternatively, when reported they are considered minor crimes and little is done unless they escalate. Very little in terms of prevention and awareness-raising on hate crime was available in the public sphere. Most of the public awareness campaigns tended to focus on domestic violence, school bullying or sexual harassment.

Things to improve.

A number of areas that needed addressing were identified. These included ensuring that the first points of contact for victims are well informed and trained and sensitive to any issues that LGBTIQ hate crime victims may encounter. This could include the police, lawyers, social welfare professionals, medical personnel and victim support services among others. Given the thousands of victims the police deal with annually it was important not to create a bottleneck but to set up a system which allowed for the effective referral to the appropriate services when required. It was encouraging to note that new recruits are being provided with some training on the impact of crime on vulnerable groups, Hate Crime provisions, and the Victims of Crime Act as well as being exposed to a number of victim

support services. Reporting mechanisms needed to ensure that hate crimes could be adequately captured. Access to funding was required for both the police and other public entities (hospitals, social welfare agencies, courts) and NGO's to ensure that the appropriate measures could be implemented to inform and support victims of hate crime. Addressing the shortfalls in the transposition of the Victims of Crimes Directive was also mentioned.

Given how difficult it is to change deeply entrenched racist, homophobic or sexist beliefs respondents also emphasized the need for an inclusive education that thought children to respect diversity in all its forms and that could act to prevent hate crime and hate speech at a later stage. Cross curricular approaches were mentioned as one strategy to address diversity throughout the formal education provision.

The possibility of having an LGBTIQ section within the police force that acted as a support mechanism for LGBTIQ police officers but that also possibly served as a focal point for victims to report bias motivated crimes experienced by members of the LGBTIQ community and that conducted outreach activities to build trust was mentioned. Some challenges to this were potential homophobia and transphobia within the police force itself. Possibly a group of officers could be trained to deal with a range of minority groups rather than having separate focal points for each minority. This could prove more practical and cost effective.

Opinion on LGBT* specific mobile application and website.

There was general agreement on the potential benefit of introducing anonymous reporting, mainly because though it would have limited impact on prosecutions, it could provide a better picture of the extent

and incidence of hate crime and the nature of victims.

There was less agreement on the impact and effectiveness of online reporting tools and apps since it is difficult for victims to be aware of their existence without some contact with an NGO or unless they perceived themselves to be at risk of being victimised. It was also noted that not all persons had access to smartphones or the internet.

The police already had an online reporting system for victims or witnesses of crime and were obliged to investigate any report that was filed whether this was done anonymously or not. Any online report would still need to be followed up by a face-to-face report to the police also to have more clarity on the facts of the accusation being made and to verify the truthfulness of the claims being made. Online reporting could have some impact if it was followed up with a referral to a support service which could engage with the victim and encourage them to report to the police and support them through the process.

VICTIMS

In August of 2016 the MGRM held an online survey to gather some information on experiences of hate crime and online hate speech by members of the LGBTIQ community in Malta. Sixteen experiences of hate crime and online hate speech were gathered. Two respondents identified as gender fluid, five as trans men, two as trans women, three as female and four as male. Six identified as heterosexual, four as lesbian, four as gay, one as bisexual and one as pansexual. Eight experienced or witnessed these incidents both online and offline, six where offline while one did not clarify. Two related to physical violence, two related to psychological violence and twelve related to verbal abuse. Five reported the incidents

to the police while eleven did not. Of those who did not report four feared it would make the situation worse, two feared that the perpetrator would take revenge, two did not think it would lead to anything, one feared a negative reaction from the police, one was not sure it was a crime and one did not wish to give the incident too much importance. Of those who reported, two claimed they found the reporting process easy and three stated they find it difficult. The reasons given for the latter were having to reveal their sexual orientation and not encountering professionals trained on LGBTIQ issues. Two were happy with the outcomes of their report, while three were not. In one case the respondent felt the sentence was too light. In the other two cases the report did not lead to any tangible outcome. The vast majority of the respondents, stated they would make use of a reporting app had they to witness or be victims of a hate crime in the future. One in depth interview was held with a trans woman who had experienced harassment and discrimination due to her gender identity.

General awareness on hate crimes and (or) hate speech on grounds of sexual orientation and (or) gender identity.

The respondent found it difficult to define what constitutes hate crime and online hate speech. She made reference to personal experiences of violence and verbal abuse in a range of settings. It was unclear from the victim's description on whether the violence experienced was due to her gender identity or a random act of violence from a stranger. The element of hate speech seemed to be present in the examples of insults and threats she recounted. The respondent also experienced discrimination from an insurance agent who refused to grant her life insurance coverage because of her gender identity. She was aware that hate

crime carried with it aggravated penalties.

Negative phenomenon of underreporting.

The respondent was not aware of the Victim's Rights Directive or its transposition. Nor were they aware of support services for victims. The respondent had experienced a mugging and was physically attacked while walking in the street. She was treated at a health centre for her injuries and also lodged a report with the police. Her experience of the police was rather negative. She felt that her report was not taken seriously and that the police did not do their utmost to identify her attacker and press charges. She also commented that treatment by the police varied. One police man insisted on calling her by her male name as stated on her identity documents, despite presenting as female while another chastised him and addressed her by her preferred name and pronoun. She felt that having police officers who were trained in LGBTIQ issues would facilitate the reporting process and might encourage more victims to come forward.

Things to improve.

The respondent felt that there was a need for greater awareness with respect to hate crimes and hate speech and how this was experienced by the LGBTIQ community. She referred multiple times to the need to address young people while still in school. She also mentioned the negative effect school bullying had on LGBTIQ people. She also remarked on the need to challenge stereotypes about trans persons. In her case these revolved around assumptions that trans persons were promiscuous and willing to have sex with anyone irrespective of age, status or any other personal characteristic. She also mentioned the need for safe spaces and referred to a popular leisure area as presenting risk to trans persons due to transphobia but also due to a lack of

protection from the police.

Opinion on LGBT* specific mobile application and website.

The respondent believed that having a mobile app that was linked to an NGO could ensure that victims had access to the necessary support and might result in better outcomes against perpetrators. Although she reckoned that such an app also had its limitations as it depended on the willingness of the LGBTIQ community to use it. She felt it was a useful tool and with adequate dissemination could help to address under-reporting and the provision of support services to victims.

Challenges/Restrictions encountered

Based on the interviews and online survey and within the framework of the UNI-Form project the following challenges with the view of effectively addressing and responding to the negative phenomenon of hate crimes and hate speech in Malta were identified:

(a) despite the comprehensive national legislation, the current reporting system fails in correctly identifying and qualifying the bias motivation behind the criminal offence;

(b) the law enforcement agencies indicate that the prevalence of hate crimes and hate speech on the grounds of sexual orientation, gender identity and gender expression in Malta is extremely low according to the official statistic, completely disregarding the negative phenomenon of underreporting and leading to a lack of prioritization in training and sensitization that could lead to improved competences of and greater trust in the police;

(c) there is a lack of understanding of

what constitutes hate speech and hate crime among the members of the local LGBTIQ community and the importance of reporting such incidents thus further contributing to the negative phenomenon of underreporting;

(d) Despite the Victims of Crime Act introduced in 2015, the provisions it sets out remain largely unknown both among potential victims and first points of contact for victims. Moreover, there is no clear procedure set out with respect to who is responsible for informing victims of their rights and how to access the appropriate services available to them.

Chapter 7. Recommendations

- Review the reporting systems and protocols to ensure that hate speech and hate crime offences are captured, investigated and prosecuted as bias motivated crimes;
- Provide the necessary training and sensitization on LGBTIQ issues to first points of contact for victims of hate speech and hate crime;
- Ensure that all victims have access to information about the rights set out in the Victims Rights Directive and the Victims of Crime Act by establishing clear guidelines on the roles and responsibilities of all stakeholders involved and providing comprehensive victim support services in liaison with NGO's working in this field;
- Ensure that the police take a pro-active role in reaching out to the LGBTIQ community in order to build trust and encourage reporting;
- To consider the possibility of introducing LGBTIQ liaison officers within the police force or specialized teams that are trained in dealing with minority groups and that enjoy their trust;
- Regularly conduct awareness raising campaigns among the general population on hate speech and hate crime and educational campaigns among school aged children aimed at reducing the incidence of hate speech and hate crime;

Chapter 8. About MGRM and its experience in hate crime and on-line hate speech

The Malta LGBTIQ Rights Movement (MGRM) was set up in 2001 and has been an active force in advocating for the rights of the LGBTI community and raising awareness of LGBTI issues in Maltese society. It strives to achieve full equality for LGBTIQ people in Maltese society; a society that enables people to live openly and fully without fear of discrimination based on one's sexual orientation, gender identity, gender expression or sex characteristics. In order to achieve its mission MGRM has set out a number of goals outlined in its strategic plan for 2015-2019.

These are:

1. To achieve legal equality of LGBTIQ people;
2. To have policies that refer to, and are inclusive of, sexual orientation, gender identity, gender expression and sexual characteristics;
3. To bring about positive societal attitudes towards and the social inclusion of LGBTIQ people;
4. To empower the LGBTIQ community to engage in social and political issues that are of direct concern;
5. Provide support, assistance and information on LGBTIQ issues to LGBTI persons and their families;
6. To network with other organisations in achieving common goals;
7. To make MGRM a sustainable organisation.

MGRM has contributed to putting LGBTIQ equality high on the political agenda leading to significant legal advances. These include the correct transposition of the EU's Employment Framework Directive ensuring that this important anti-discrimination legislation made specific reference to the

ground of sexual orientation and since 2014 the ground of gender identity; the correct transposition of the Freedom of Movement Directive; the inclusion of the grounds of sexual orientation and gender identity in hate crime legislation in 2012 (and since 2015 also gender expression and sex characteristics); the widening of the NCPE remit, the Civil Union Act, anti-discrimination provisions in the Constitution granting protection on the grounds of sexual orientation and gender identity, the Gender Identity, Gender Expression and Sex Characteristics Act, the Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act and policies relating to trans, gender variant and intersex persons in the fields of Education and Prison.

The MGRM periodically conducts surveys to collect data on the challenges faced by the LGBTIQ community in Malta including difficulties in coming out, bullying, harassment and violence as well as discrimination in a number of spheres such as employment, service provision, education and health. This data serves to inform MGRM's advocacy initiatives. In 2016 the MGRM conducted a training seminar for practitioners aimed at enhancing knowledge of the Victims Rights Directive and its transposition through the Victims of Crime Act. In 2017, the MGRM also participated in the 2nd Monitoring Exercise on the Code of Conduct carried out by the European Commission. The MGRM set up its Gay Helpline in 2005 which developed into the Rainbow Support Service in 2013 providing counseling, social work support, youth initiatives, legal advice, training and consultancy services to a range of LGBTIQ persons and their families.

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