

Protecting the Vulnerable: An Analysis of Child and Elder Abuse Laws in Malta

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This article by **Emma Minerva Brambilla** was previously submitted as part of CRL1008 and is being published with the author's permission. By examining the existing Acts, this research explores the adequacy of the current Maltese framework in effectively safeguarding victims of child abuse and elder abuse. The analysis delves into potential gaps and shortcomings which hinder effective protection, signalling the need for enhanced measures to address these limitations.

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Introduction

In familial contexts, violence disrupts the sanctity of domestic spaces meant for solace and security. As Durose argues, family violence encompasses various abuses by individuals related to the victim/s, whether biologically or legally.¹ Often suppressed, family violence includes child and elder abuse.² The former comprises physical, sexual, and emotional violence against individuals under 18 years old.³ The latter refers to a deliberate (in)action causing any type of harm, from physical to financial, to an individual aged 60 and above.⁴ In the year 2021 in Malta, 1728 cases of child abuse were reported whilst welfare statistics indicated 134 new and re-contact cases of elder abuse.⁵

Child Abuse: Legal Framework in Malta

As the Civil Court emphasised, the State has a duty to prioritise children's best interests.⁶ Nevertheless, the current Maltese legal structure may hinder adequate protection for child abuse victims. Firstly, the Protection of Minors (Registration) Act introduced a "Register", in which the particular details of child abusers are recorded.⁷ In work settings involving minors, the registration of a person in such register results in the immediate termination of their employment contract.⁸ However, a reliable mechanism for guaranteeing the removal of the perpetrator from their role has yet to be established.⁹ This lack can potentially jeopardise the safety of children, prolonging the occurrence of abuse. Additionally, although this Act provides for the registration of abusers found guilty of sexual offences, sexual abuse and neglect, it lacks provisions for those guilty of physically or emotionally abusing children,¹⁰ creating a discrepancy which hinders consistent protection of children from all forms of abuse.¹¹

¹ Sylvia M Asay et al, *Family Violence from a Global Perspective: A Strengths-Based Approach* (SAGE Publication 2014) ch XVI-XVIII.

² *ibid.*

³ World Health Organization, *Child maltreatment (WHO)*, 19 September 2022) <<https://www.who.int/news-room/fact-sheets/detail/child-maltreatment>> accessed 17 December 2023.

⁴ World Health Organization, *Abuse of older people (WHO)*, 15 June 2022) <https://www.who.int/health-topics/abuse-of-older-people#tab=tab_1> accessed 17 December 2023.

⁵ Andrew Azzopardi et al, 'Protecting our children exploring and preventing child abuse' (Research Project, University of Malta 2023), 39; The Permanent Mission of Malta to the UN Geneva, 'Malta Input - Report by the Independent Expert on the Enjoyment of All Human Rights by Older Persons' (*United Nations*, 3 March 2023) 3 <<https://www.ohchr.org/sites/default/files/documents/cfi/subm-2023-07/subm-violence-abuse-neglect-sta-malta.docx>> accessed 17 December 2023.

⁶ Marylyn Bonett, 'Child Abuse and the Movement Towards a Child-Friendly Justice System, with Particular Focus on the Draft Minor Protection (Alternative Care) Act 2018' (LLB Thesis, University of Malta 2020) 18-19.

⁷ Protection of Minors (Registration) Act, Chapter 518 of the Laws of Malta, Article 3.

⁸ *ibid.* Article 3(4).

⁹ Matthew Xuereb, '84 people, including two women, on sex offenders' register' *Times of Malta* (11 January 2021) <<https://timesofmalta.com/articles/view/84-including-two-women-on-sex-offenders-register.843849>> accessed 17 December 2023.

¹⁰ Andrew Azzopardi et al (n 5) 34.

¹¹ *ibid.*

Secondly, offences under the Criminal Code are time-barred.¹² As Camilleri argues, in instances of child sexual abuse, the presence of a prescriptive period complicates the victims' disclosure of the offence and hinders prosecution as a child may find the courage to come forward and seek justice when such period has already elapsed.¹³ This grants a "fairer advantage" to paedophiles, allowing them to potentially go unpunished, as illustrated by the case of *Mgr Eucharist Sultana*.¹⁴

Thirdly, the Minor Protection (Alternative Care) Act has created the duty for professionals working with minors to report episodes of child abuse they may witness.¹⁵ Yet, such workers, may find it challenging to recognise cases of abuse due to a lack of formal training.¹⁶ Consequently, incidents of abuse may go unseen, exacerbating the suffering of the child.

Lastly, the Child Protection Directorate is granted a 60-day assessment period. In practice, this assessment period is not respected due to a high caseload and limited personnel working with Child Protection Services. To ensure that the period remains effective, the CPD should be granted the authority to extend this assessment period on a case-by-case basis depending on the exigencies of the particular case.¹⁷

Elder Abuse: Legal Framework in Malta

In 2014, a pivotal development in Maltese legal history addressing elder abuse occurred with the enactment of Act No. XXXI which introduced a new Sub-title XI into the Criminal Code. The Act aims to curb the rising incidence of elder abuse by criminalising a wide spectrum of offences, including physical, sexual, and psychological abuse, crimes against property and public safety, and unlawful detention of older persons.¹⁸

Yet, existing limitations hinder adequate protection for elderly abuse victims. Firstly, the tougher sentences introduced by this Act may be circumvented as seen in *Il-Pulizija v Clinton Bugeja* through articles 21A and 28A of the Criminal Code as a result of the legislator's failure to include provisions for the exclusion of the applicability of these articles, such as that found in Article 60 of the Arms Act, within the elderly framework.¹⁹

Secondly, contrastingly to child abuse, a system of mandatory reporting

¹² Criminal Code, Chapter 9 of the Laws of Malta, Article 688.

¹³ Stephanie Camilleri, 'Understanding the Prescriptive Period of Sexual Offences in Minors' (LLB Thesis, University of Malta 2019) 27.

¹⁴ Matthew Xuereb, 'Family Minister open to removal of time-barring in child sex abuse cases' *Times of Malta* (15 March 2021) <<https://timesofmalta.com/articles/view/minister-open-to-removal-of-time-barring-in-child-sex-abuse-cases.858145>> accessed 17 December 2023.

¹⁵ Minor Protection (Alternative Care) Act, Chapter 602 of the Laws of Malta, Article 9(2).

¹⁶ Ismael Vella, 'How Effective Is Recent Maltese Legislation At Curbing Child Abuse?' (LLB Thesis, University of Malta 2021) 47.

¹⁷ *ibid*.

¹⁸ Criminal Code (n 12) Article 257A, 257C, 257D, 257E.

¹⁹ Rene Darmanin, 'Elder Abuse: An Evaluation of Criminal Act XXXI (2014)' (2019) 4(2) *International Journal on Ageing in Developing Countries* 122, 129 <<https://inia.org.mt/wp-content/uploads/2019/12/4.2.4-Elder-Abuse-An-Evaluation-of-Criminal-Act-XXXI-2014-pgs-122-132-Final.pdf>> accessed 18 December 2023.

for elder abuse is absent.²⁰ In light of the fact that elder abuse is highly underreported due to embarrassment, physical or mental infirmity or family privacy, implementing such a system will undoubtedly diminish this issue.²¹ Reporters may comprise medical practitioners, care assistants and home care-workers.²² Nevertheless, in order to avoid the setbacks discussed in Section 2 regarding child abuse, such reporters must receive extensive training to ensure they can effectively identify and report cases of elder abuse.²³

Furthermore, Act X of 2016 holds legal significance in the area of elder abuse with it officially establishing the position of the Commissioner for Older Persons with the “power to promote and safeguard the interests of older persons”.²⁴ However, the Commissioner is barred from not only investigating individual disputes between older persons and their caregivers but also matters that fall within the jurisdiction of any legally established court or tribunal.²⁵ Consequently, despite being designated as a “focal point for the elderly,” the Commissioner lacks effective authority in cases of individual abuse, potentially hindering adequate protection of victims.

In aim of offering the best protection to vulnerable and elderly individuals, a Protection of Vulnerable Older Persons and Adult Persons with Disability Act has been proposed. Despite being in its early stages under a ‘public consultation’ notice, it signals a move towards a more protective framework for such vulnerable older adults.²⁶

Conclusion

In conclusion, the examination of current laws in Malta highlights inadequacies in the legal framework for adequately protecting victims of child and elder abuse. The identified limitations underscore the necessity of legislative reforms to improve safeguarding mechanisms directed towards protecting vulnerable members of society. Vella emphasises the need to enhance the effectiveness of the legal system in prosecuting child abuse offenders for better protection of children.²⁷ Meanwhile, Darmanin suggests the importance of a coordinated strategy involving legal and social/health care sectors to address elder abuse.²⁸

²⁰ *ibid.* 130.

²¹ *ibid.*

²² *ibid.*

²³ *ibid.*

²⁴ Commissioner for Older Persons Act, Chapter 553 of the Laws of Malta.

²⁵ *ibid.* Article 14.

²⁶ The Permanent Mission of Malta to the UN Geneva (n 5) 1.

²⁷ Vella (n 17) 49.

²⁸ Darmanin (n 22) 131.



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