

**‘IMPROVING JUSTICE FOR TRANSGENDER PERSONS :
MALTA AS A DIVERSE SOCIETY’**

By

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ABSTRACT

The raison d'être behind this dissertation is to understand better the phenomenon of transgenderism in the eye of a modern society who aims to be inclusive. Even though Malta has fully recognised transgender identities, legislation and policy seem to focus on the whole LGBTIQ spectrum with less attention being given to transgender children and transgender elderly. Children asking to live as the opposite gender should feel safe and supported. Since they would be undergoing a complicated social transition, their fundamental freedoms should be guaranteed to ensure full inclusion in society. Their parents, who would be experiencing obstacles, should be given social and governmental help so they are able to provide them with a proper upbringing. Educational institutions should be welcoming to all students, including transgender pupils, who would need extra attention. Transgender elderly may suffer from loneliness and anxiety due to their situation, being without a social community that supports them. Transgender individuals are reluctant to seek and avoid healthcare services including clinics, hospitals and residential homes due to fear of discrimination. This network is ill-equipped to provide competent and specific services to transgender persons and to address their unique needs. National institutions and its law enforcers also lack skills on how to deal with transgender citizens, so training must be given to make these public officials sensitive. The focus should be on education to raise awareness among the population and to reduce inequalities from all levels of society; from the three main organs of the state to the individual. Education can bring the change needed to leave a better society for future generations where legislation and policy reflect a just society in which equality reigns. **KEYWORDS:** *Transgender – Children – Elderly – Discrimination – Inclusion*

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- Constitution of Malta, Chapter 1 of Laws of Malta
- Criminal Code, Chapter 9 of the Laws of Malta
- Civil Code, Chapter 16 of the Laws of Malta
- Press Act, Chapter 248 of Laws of Malta
- Identity Card and Other Identity Documents Act, Chapter 258 of the Laws of Malta
- Social Security Act, Chapter 318 of the Laws of Malta
- Education Act, Chapter 327 of the Laws of Malta
- Commissioner for Children Act, Chapter 462 of the Laws of Malta
- Health Act, Chapter 528 of Laws of Malta

- Civil Unions Act, Chapter 530 of Laws of Malta
- Gender Identity, Gender Expression and Sex Characteristics Act 2015, Chapter 540 of the Laws of Malta
- Commissioner for Older Persons Act, Chapter 553 of the Laws of Malta
- Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act, Chapter 567 of Laws of Malta
- Child Protection (Alternative Care) Act, Chapter 569 of Laws of Malta
- Gender Based Violence and Domestic Violence Act, Chapter 581 of Laws of Malta
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- Resolution 1117, Condition of Transsexuals, Parliamentary Assembly, Council of Europe (1989)
- Resolution 1728, Discrimination on the basis of sexual orientation and gender identity (2010)
- Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity
- Recommendation CM/Rec(2012)2 of the Committee of Ministers to Member States on the participation of children and young people under the age of 18
- Resolution 1948, Tackling discrimination on the grounds of sexual orientation and gender identity, Parliamentary Assembly, Council of Europe (2013)
- Recommendation 2021, Tackling discrimination on the grounds of sexual orientation and gender identity, (2013)
- Recommendation CM/Rec(2014)2 of the Committee of Ministers to Member States on the promotion of human rights of older persons
- Resolution 2048, Discrimination against transgender people in Europe, Parliamentary Assembly, Council of Europe (2015)

- Resolution 2097, Access to school and education for all children, Parliamentary Assembly Council of Europe (2016)

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In addition, I am grateful towards Mr Chris Vella, Ms Sandra Cortis, Mr Matthew Vella, and Dr Daniela Azzopardi Bonanno for their valuable insight and contribution.

*I dedicate this work to all transgender persons who have suffered and continue to suffer
in silence for who they are.*

LIST OF ABBREVIATIONS

Art /Arts	Article/Articles
EU	European Union
ECHR	European Court of Human Rights
ECJ	European Court of Justice
GIGESC	Gender Identity, Gender Expression and Sexual Characteristics
ICESCR	International Covenant on Economic, Social and Cultural Rights
IGLYO	International Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Youth and Student Organisation
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
LGBT	Lesbian, Gay, Bisexual and Transgender
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex and Queer
MS	Member States
MEDE	Ministry for Education and Employment
MGRM	Malta Gay Rights Movement
MSDC	Ministry for Social Dialogue, Consumer Affairs and Civil Liberties
NCPE	National Commission for the Promotion of Equality
NGO	Non-Governmental Organisation
NHS	National Health Service
SCSA	Social Care Standards Authority
SOC	Standards of Care
UN	United Nations
UNCRC	United Nations Convention on the Rights of Child

UDHR Universal Declaration of Human Rights

UoM University of Malta

WPATH World Professional Association for Transgender Health

INTRODUCTION

Transgenderism raises the socio-legal issues of whether this part of the gender spectrum is being represented and whether a transgender person feels the equality society strives to achieve. Being marginalised in society, transgender individuals encounter discrimination and exploitation. The last few years in Malta have brought an intense maturity to the movement. The Gender Identity, Gender Expression and Sex Characteristics Act¹ shows that the present government succeeded in having ample support for human rights regarding minority issues. Children expressing behavioural tendencies outside of the expected cultural norms for their assigned sex at birth must be given the best care possible. While parents of transgender children would already be uncertain about their situations, they become paralysed when they consider legal implications of their parenting choices. On the other hand, transgender seniors face a scary reality as service providers do not take their rights into account due to incorrect assumptions. The aims of this dissertation are:

- I. To tackle the current situation of Transgender Children in Malta in view of the rights currently in place safeguarding their interest offered by Maltese legislation and policy in relation to their needs.
- II. To identify what is available to aid Parents or Legal Guardians in relation to the upbringing of transgender Children and the problems they face.

¹ Gender Identity, Gender Expression and Sex Characteristics Act 2015, Chapter 540 of the Laws of Malta, (GIGESC) 2015

- III. To investigate the current policies and procedures in force in our Educational System dealing with transgender Students.
- IV. To tackle the current situation of Transgender Elderly in Malta in view of the rights currently in place to safeguard their interest offered by Maltese legislation and policy in relation to their necessities.
- V. To determine the current policies and procedures in force in our health institutions from a point of view of adequate and Expert Service Provision.
- VI. To look into the issue of Equality and Discrimination regarding transgender individuals.

The Literature Review involves a review of the relevant academic materials, sources, and information used.

The Methodology section gives an overview for the methodology engaged while considering ethical issues including language and terminology.

The Conclusion and Recommendations section highlights conclusions deducted while providing propositions on how to improve lives of the transgender community.

LITERATURE REVIEW

Introduction

Literature review is an analysis of published sources on a topic, providing an evaluation of an argument, while employing an organisational pattern and giving a modern interpretation to already existing material.

Rights of Transgender Children

Kennedy and Hellen state that legal gender recognition must respect privacy², as it minimises exposure³ while prioritising best interests.⁴ The GIGESC recognises children's gender identity⁵, and Ilia Sofia Korkiamaki declares that such recognition results from equality before law.⁶ Children need to grow up in a family environment with freedom to develop their personality.⁷ Children deserve to enjoy human rights protected by the ECHR, the UNCRC and the UDHR.⁸ Lina Henzel believes that trans children are vulnerable to having their rights breached⁹, so one must identify what

² Kennedy & Hellen, Licence to be Yourself - Trans Children and Youth : more than a theoretical challenge (2010)

³ Open Society Foundation, License to be Yourself: Trans Children and Youth, A Legal Gender Recognition Issue Brief (2015)

⁴ Child Protection (Alternative Care) Act, Chapter 569 of Laws of Malta

⁵ (n1).,

⁶ Ilina Sofia Korkiamaki, Legal Gender Recognition and (Lack of) Equality in the ECHR, The Equal Rights Review, Vol Thirteen (2014)

⁷ United Nations Convention on the Rights of Child (UNCRC) (1989)

⁸ Council of Europe Strategy for the Rights of the Child (2016-2021), Children's human rights, Council of Europe (2016)

⁹ Henzel L., Back me up! The UN Convention on the Rights of the Child and the Rights of Trans Children' Working Paper Nr. 13, (2016)

prevents such enjoyment¹⁰. Judit Takacs states that young trans persons experience neglect, leading to underachievement.¹¹ Children need protection from harm by ensuring availability of support structures and by promoting their involvement.¹² Non-conforming characteristics could be evident from early ages¹³, so transitioning young could be positive.¹⁴ To grow up misunderstood is a trauma, so a caring relationship should be developed, leading the child to open up.¹⁵ Parents and professionals should recognise the difficulties when attempting to understand a trans child'.¹⁶

Parents & Legal Guardians

Parents' reaction to a transgender child could be a negative one as they would not be comprehending their child.¹⁷ Parents must carry out their duties while realising that parenthood is a gift!¹⁸ Parents should avoid rejecting behaviours undermining the child's self-esteem.¹⁹ Family bond is a challenge to trans children, and it could be

¹⁰ Equal opportunities for all children: Non-discrimination of LGBTI children and young people, Council of Europe (2016)

¹¹ Takacs J., ILGA-Europe & IGLYO, *Social exclusion of young LGBT people in Europe*, (2006)

¹² National Children's Policy, Ministry for the Family, Children's Rights and Social Solidarity (2017)

¹³ Paula Ciantar, *Right Mind, Wrong Body: The Lived Experience of Transgender Individuals in Malta*, Faculty of Social Wellbeing, UoM (2013)

¹⁴ Dr Nicholas Briffa in <<https://www.timesofmalta.com/articles/view/20160619/local/can-a-child-know-that-they-are-transgender>> accessed on 12th November 2018

¹⁵ Dr Peter Muscat in <<https://www.timesofmalta.com/articles/view/20170820/local/transgender-ruling-aims-to-give-girl-more-serene-life>> accessed on 13th September 2018

¹⁶ S. Brill & R. Pepper, *The Transgender Child : A Handbook for Families and Professionals*, (Cleis Press Inc., 2008)

¹⁷ 'ktejjeb għall-persuni lgbtiq u l-ġenituri tagħhom', Rainbow Support Service & Drachma, MGRM (2016)

¹⁸ 'Uliedna Rigal' Drachma Parents Group (2016)

¹⁹ (n16),.

greater if parents are separated.²⁰ According to Julie C. Luecke parents have the right to access information.²¹ Parents could join together to share experiences and fight negative attacks towards them and their children²² by the general public or state authorities²³. More supportive programs, training and policies should be created.²⁴

Educational System

Trans children have a right to education²⁵, being given skills by which they can act as members of a wider community²⁶, being provided in a supportive environment in which they learn effectively.²⁷ Bullying accompanies many school children,²⁸ so states have to take preventive measures to address this issue.²⁹ Trans children have a right to have their human dignity preserved in schools.³⁰ Lina Henzel says that trans children should express their identity without any worries of negative consequences.³¹ Teaching and

²⁰ Elizabeth A. Riley, Gomathi Sitharthan, Lindy Clemson & Milton Diamond, *Recognising the needs of gender-variant children and their parents* (2013)

²¹ Julie C. Luecke ' *Working with Transgender Children and Their Classmates in Pre-Adolescence: Just be Supportive* ' (2011)

²² <<http://www.independent.com.mt/articles/2016-06-06/local-news/LGBT-group-deeply-saddened-with-negative-attacks-against-transgender-child-parents-6736158971>> accessed on 10th November 2018

²³ <<https://www.timesofmalta.com/articles/view/20170504/local/transgender-girls-mother-protests-discrimination>> accessed on 3rd January 2019

²⁴ Elizabeth Ann Riley, *The Needs of Gender-Variant Children and Their Parents*, Faculty of Health Sciences, University of Sydney (2012)

²⁵ UNCRC, Art. 28(1)

²⁶ Respect for All Framework, Ministry for Education and Employment (2014)

²⁷ (n21),.

²⁸ Addressing Bullying Behaviour in Schools Policy, Ministry for Education and Employment (2014)

²⁹ (n8),.

³⁰ UNCRC, Art. 28(2)

³¹ (n9),.

administrative must take a proactive approach.³² Educational system should acknowledge forms of gender identities to make pupils aware of diverse gender roles.³³ Inclusive procedures need to apply equally to state schools and private schools.³⁴ Transitioning pupils are an opportunity for the school to show its support to trans issues.³⁵ Dr. Neil Falzon says that the educational system should include parents of trans children to tailor better schools agenda.³⁶ Counselling and PSD classes must accompany these students.³⁷ Certain issues such as bathroom policies affect transgender persons in serious ways.³⁸ Schools have to start offering books with transgender protagonists³⁹ since literature could be a way how trans students convey themselves.⁴⁰

Rights of Transgender Elderly

Under the GIGESC, transgender elderly have a right to have their gender identity acknowledged.⁴¹ Trans individuals face distinctive problems as they grow older.⁴²

³² Trans, Gender Variant and Intersex Students in Schools Policy, Ministry for Education and Employment (2015)

³³ (n12),.

³⁴ (n16),.

³⁵ Trans, Gender Variant and Intersex Students in Schools Procedure, Ministry for Education and Employment (2015)

³⁶ Dr. Falzon N., Sensitivity, Safety and Strength: An Inter-agency Review of Malta's Policy on Trans, Gender Variant and Intersex Students, MGRM, MEDE, MSDC, ILGA & aditus (2016)

³⁷ Emily Baldacchino, Breaking the Silence : LGBT Policies and Attitudes in Maltese Secondary and Post-Secondary schools, Department of Social Policy and Social Work, UoM (2009)

³⁸ <<http://time.com/3974186/transgender-bathroom-debate>> accessed on 1st February 2019

³⁹ Trostle Brand S. & Maasch S., Updating Classroom Libraries and Cross-Curricular Activities: Celebrating Gender Identity and Diversity Through LGBTQ Books, (2017)

⁴⁰ <<https://www.tvn.com.mt/en/news/truly-willa-the-first-book-in-malta-about-a-transgender-girls-experiences>> accessed on 28th October 2018

⁴¹ GIGESC, Art. 3

⁴² Ward R., Rivers I. & Sutherland M., LGBT Aging : Biographic Approaches for Inclusive Care and Support, (Jessica Kingsley Publishers, 2012)

Culture should be sensitive so transgender elderly can live their final years with dignity and respect.⁴³ Policy caters for all adult LGBTIQ individuals, but does not tackle transgender elderly, being an understudied sub-group.⁴⁴ Gabi Calleja believes that older generations could create more awareness by sharing their experiences.⁴⁵

Expert Service Provision

Each patient has the right to receive healthcare according to the Health Act.⁴⁶ A sustainable National Healthcare strategy should have efficient public services, even more towards transgender patients.⁴⁷ Healthcare services must cover all health issues.⁴⁸ Tarynn M. Witten states in-service facilities have to be provided equally.⁴⁹ The Transgender Healthcare Policy⁵⁰ ensures accessibility and professional services to trans

⁴³ Shira Maguen, Jillian C. Shipherd, & Holly N. Harris, 'Providing Culturally Sensitive Care for Transgender Patients', VA Boston Healthcare System, National Center for PTSD, Women's Health Sciences Division and Boston University School of Medicine (2005)

⁴⁴ Choi S.K. & Meyer I.H., 'LGBT Aging: A Review of Research Findings, Needs and Policy Implications'(2016)

⁴⁵ Calleja G., 'Grey Pride: A look at the lives of the older LGBTIQ Community in Malta', MGRM (2015)

⁴⁶ Health Act, Chapter 528 of Laws of Malta, 2013

⁴⁷ National Health Systems Strategy for Malta, Parliamentary Secretariat for Health, Ministry for Energy and Health (2014)

⁴⁸ Bockting W., Knudson G., & Goldberg J. M., 'Counselling and Mental Health Care of Transgender Adults and Loved Ones', Vancouver Cosatl Health & Canadian Rainbow Health (2006)

⁴⁹ Tarynn M. Witten, 'Inequalities and Disparities in Health Care and Health : Concerns of Patients, Providers and Insurers', Research in Sociology of Health Care, Vol 25, Elsevier Ltd (2008)

⁵⁰ Transgender Healthcare, Office of the Deputy Prime Minister, Ministry for Health (2019)

persons by building upon the two existing Action Plans⁵¹⁵². Trans residents of care homes have separate issues from other residents.⁵³ Kirk Brincaus says that across institutions, the focus must remain patient-centred.⁵⁴

Equality & Discrimination

Gender identity is a prohibited ground of discrimination⁵⁵, but trans persons still remain its victims⁵⁶ due to obstacles in legal recognition.⁵⁷ Human rights are universal, and dignity needs to be guaranteed⁵⁸, and institutions and organisations should be involved in the drafting of such laws and policies.⁵⁹ Discrimination and stigmatisation affect psychological well-being⁶⁰, not permitting citizens to live on equal prospects.⁶¹ There should be effective safeguards against discrimination on the basis of gender identity in

⁵¹ LGBTIQ Action Plan 2015-2017, Ministry for Social Dialogue, Consumer Affairs and Civil Liberties (2015)

⁵² LGBTIQ Equality Strategy & Action Plan 2018-2022, Dr Helena Dalli, Ministry for European Affairs and Equality

⁵³ National Minimum Standards for Care Homes for Older People, Parliamentary Secretariat for Rights of Person with Disability and Active Ageing (2015)

⁵⁴ Kirk Brincaus, Gender Recognition and Healthcare: A Human Rights Perspective, Faculty of Laws, UoM (2016)

⁵⁵ Constitution of Malta, Chapter 1 of Laws of Malta, Arts. 32 and 45

⁵⁶ Resolution 1117, Condition of Transsexuals, Parliamentary Assembly, Council of Europe (1989)

⁵⁷ Resolution 1728, Discrimination on the basis of sexual orientation and gender identity (2010)

⁵⁸ Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity

⁵⁹ Resolution 1948, Tackling discrimination on the grounds of sexual orientation and gender identity, Parliamentary Assembly, Council of Europe (2013)

⁶⁰ Dr Deborah Schembri, Discrimination against transgender people in Europe Committee on Equality and Non-Discrimination, Council of Europe (2015)

⁶¹ Handbook on European non-discrimination law, European Union Agency for Fundamental Rights, Council of Europe (2011)

public and private sectors.⁶² Notwithstanding improvements in human rights of trans persons, hostility still remains a problem,⁶³ and even if legal responses and political statements are necessary, educational and cultural awareness should be the measures to eradicate intolerance.⁶⁴ While judicial authorities must not discriminate against transgender parties in proceedings⁶⁵, correctional services should respect diversity and human rights of trans individuals and trans prisoners.⁶⁶

⁶² Resolution 2048, Discrimination against transgender people in Europe, Parliamentary Assembly, Council of Europe (2015)

⁶³ Recommendation 2021, Tackling discrimination on the grounds of sexual orientation and gender identity, (2013)

⁶⁴ Combating Discrimination on Grounds of Sexual Orientation or Gender Identity, Council of Europe Standards, Committee of Ministers, Council of Europe (2011)

⁶⁵ Gabi Calleja, Country Report Malta UNI-FORM, MGRM

⁶⁶ Trans, Gender Variant & Intersex Inmates Policy, Correctional Services (2016)

METHODOLOGY

Introduction

Legal research identifies information on human conduct and analyses it from a legal perspective. Law is for society, and society being a dynamic concept, influences law to become dynamic itself.

Interdisciplinary Approach

Traditional legal researchers conduct ‘pure doctrinal research’, which is narrow in its scope and limited to the subject matter of law.⁶⁷ However, modern legal scholars infuse doctrinal work with several disciplines deciphering the impact law, legal institutions and legal personnel have on people.⁶⁸ The best way to tackle a socio-legal research regarding transgenderism is by utilising an interdisciplinary approach, since apart from law, such research demands incorporation of insights from non-legal disciplines.

Research Tools

Qualitative research methods are best suited in a study regarding transgender persons, as they inquire about behaviours based on lived experiences.⁶⁹

⁶⁷ S.N. Jain, “*Legal Research and Methodology - Doctrinal And Non-Doctrinal Legal Research*” (1972)

⁶⁸ Theunis Robert Roux, “*The Incorporation Problem in Interdisciplinary Legal Research - Some Conceptual Issues and a Practical Illustration*” (December 2015) University of New South Wales, Australia

⁶⁹ National Institute of Health, ‘The Health of LGBT People: Building a Foundation for Better Understanding.’ (2001)

Four semi-structured interviews were carried out with four different professionals; Mr Chris Vella⁷⁰, Ms Sandra Cortis⁷¹, Mr Matthew Vella⁷² and Dr Daniela Azzopardi Bonanno⁷³, all being asked the same four generic questions. The author initiated the questions but let a free flowing conversation so they could answer without restraints. Participants were invited to take part in the interview by e-mail, being sent a recruitment and information letter, the dissertation proposal and the consent form. The interviews were then scheduled, and the interviewees were asked if they concur to be mentioned by name in the research, which all agreed to.

Ethical Issues

Ethical principles give guidance to proper conduct, safeguarding humans from exploitation. Due to their marginalisation, trans populations are especially susceptible to these harms.⁷⁴ When coming up with the questions, the author considered proper language free of gender biases or pathologizing terminology which could be misinterpreted or create discomfort.

⁷⁰ History Lecturer, Drachma Coordinator, Treasurer of Board of European Network of LGBT Parents, Coacher of Global Network of Rainbow Networks, Member in the MUT Council, Member of the National LGBTIQ Consultative Council, and one of the minds behind GIGESC. Refer to Appendix III

⁷¹ Director at the National School Support Services. Refer to Appendix IV

⁷² CEO of Social Standards Care Authority. Refer to Appendix V

⁷³ Lawyer in private practice with a deep interest in Family and Child law, and co-founder of the NGO *Gender Liberation* which advocates for and supports transgender individuals, gender variant and intersex people. Refer to Appendix VI

⁷⁴ William Meezan & James I. Martin, *Research Methods with Gay, Lesbian Bisexual and Transgender Population* (Routledge, Vol. 15, No. 1/2 2003)

Conclusion

While law aims to solve societal problems, little evidence based on people's realities decreases the effectiveness of the legal system.⁷⁵ Unfortunately, researchers remain blind to the additional need for knowledge regarding the transgender community.⁷⁶

⁷⁵ Wendy Schrama, 'How to carry out interdisciplinary research', Vol 7, Issue 1 (2001)

⁷⁶ Thomas Bettinger, 'Ethical and Methodological Complexities in Research Involving Sexual Minorities', Vol 24, No.1 (2010)

SECTION I - RIGHTS OF TRANSGENDER

CHILDREN

Introduction

Transgender children have not been the focus of legislation and policy, and their views are frequently absent, making them prone to invisibility. Their rights should not be regarded as ‘special rights’⁷⁷, but as equal to all children.

Who are Transgender Children?

Transgender children are individuals below the majority age whose gender identity or gender expression deviates from the sex assigned to them at birth.⁷⁸ Trans children assert their gender identity by correcting people who refer to them in inappropriate pronouns, by changing their name, and by having emotional responses if forced to conform with their birth assigned sex. They engage in dress-up and play patterns associated with their preferred opposing gender.⁷⁹ If the transgender identity emerges during puberty it could be tougher for the child since at this age they undergo hormonal and physical changes.⁸⁰

⁷⁷ (n10),.

⁷⁸ (n3),.

⁷⁹ (n13),.

⁸⁰ (n16),.

Role of State & State Agencies

Even if all children have equal rights under the Convention on the Rights of the Child⁸¹, trans children, being a vulnerable group, tend to have their rights violated. As a ratifying state, Malta is obliged to undertake measures to implement these rights at national level⁸² to limit or eliminate conditions causing discrimination⁸³. In all institutions the best interests of children has to be the main concern, being core fundament of the Convention.⁸⁴ State parties are obliged to assure trans children the right to express their opinions in all relevancies impacting them.⁸⁵

Preservation of Identity

Transgender children have a right to be accepted, and this is achieved by the recognition of their status.⁸⁶ Malta is obliged to preserve a child's identity without unlawful interference.⁸⁷ The argument that children are too young to be conscious of their gender identity⁸⁸ ignores their best interest⁸⁹ and their right to be heard⁹⁰.

⁸¹ (n7),.

⁸² UNCRC, Art. 4

⁸³ UNCRC, Art. 2(1)

⁸⁴ UNCRC, Art. 3

⁸⁵ UNCRC, Art. 12(1)

⁸⁶ (n20),.

⁸⁷ UNCRC, Art. 8(1)

⁸⁸ <<https://www.timesofmalta.com/articles/view/20160619/local/can-a-child-know-that-they-are-transgender.615910>> accessed on 9th October 2018

⁸⁹ UNCRC, Art. 3

⁹⁰ (n85),.

Right to Healthcare Services

Right to health is the basis for the other rights. The children's right to health extends to prevention, health promotion and rehabilitative services, together with the right to live in conditions enabling them to achieve highest health standards.⁹¹ Malta must implement measures ensuring that children aren't susceptible to violence, bullying and harassment by creating regulations to prevent health problems.⁹² Transgender children have a right to a healthy wellbeing and to access quality healthcare treatment, ensuring that their respect and dignity are guaranteed.⁹³

Right to Self-Determination

Legal Gender Recognition comes about when one seeks to change his/her name or gender marker.⁹⁴ Trans children face problems if their identification documents don't reflect their name and gender identity⁹⁵, problems which accumulate in secondary documents such as certificates, diplomas and driving licenses. Identity is continuously required and with conflicting documentations school enrolments, job searching, bank accounts and travelling become troublesome.⁹⁶ Institutions could reject a trans children's identity and therefore they might have to continuously justify themselves.

Legal recognition, while being crucial for living life with dignity and respect, improves self-esteem and confidence while mitigates exclusion. Even if legal recognition is

⁹¹ UNCRC, Art. 24

⁹² (n16),.

⁹³ (n12),.

⁹⁴ (n6),.

⁹⁵ (n16),.

⁹⁶ (n6),.

available to children, most rely on the willingness of parents or legal guardian, and barriers appear when they don't support them. While Malta is one of six European states who doesn't have any age restrictions regarding recognition, its progressive legislation⁹⁷ focuses on the best interests of the child.

Right to Privacy, Safety & Protection

Trans children have the right to respect for their private life⁹⁸, without being subjected to arbitrary interference with their privacy⁹⁹, nor to unlawful attacks on their honour and reputation.¹⁰⁰ Legal gender recognition protects the privacy of transitioning children¹⁰¹ since the alteration of the gender marker ensures that their personal history is not revealed.¹⁰² Commissioner Nils Muižnieks emphasis on privacy for transgender children.¹⁰³ Access to secure and affirming spaces is vital¹⁰⁴, and the Rainbow Support Service Youth Group provide a safe space where trans youth can seek support and create friendships¹⁰⁵. These children need their well-being prioritised¹⁰⁶, including prevention from detrimental practices.¹⁰⁷ Institutions, services and facilities responsible for children

⁹⁷ (n1),

⁹⁸ European Convention on Human Rights, (ECHR) (1953) Art. 8(1)

⁹⁹ United Nations Declaration on Human Rights, United Nations (1948) (UDHR), Art. 12

¹⁰⁰ UNCRC, Art. 16

¹⁰¹ (n3),

¹⁰² (n6),

¹⁰³ <www.coe.int/en/web/commissioner/-/lgbti-children-have-the-right-to-safety-and-equality> accessed on 9th October 2018

¹⁰⁴ (n10),

¹⁰⁵ <<http://maltagayrights.org/the-rainbow-support-service-youth-group/>> accessed on 12th October 2018

¹⁰⁶ (n24),

¹⁰⁷ (n12),

shall conform with established standards regarding safety.¹⁰⁸ Malta needs to take measures to safeguard children from maltreatments while in care of parents, legal guardian or other persons.¹⁰⁹ The Convention obliges governments to recognise their vulnerabilities and adopt procedures to ensure their protection.¹¹⁰ Privacy, safety and protection are also important in educational institutions. Parents fear that lack of support from the school community affects their children's self-confidence.¹¹¹

Right to Family Life

Trans children have the right to adequate standard of living¹¹², together with the right to respect for private and family life.¹¹³ Children should grow up in a family, and therefore child-centred policies must not overlook the home environment. Home is where the child's first necessities should be met, being a secure location to live and develop.

Children have the right for decent accommodation¹¹⁴, to the extent that the mission statement of the Malta's Housing Authority declares that '*Decent housing strengthens communities and provides a better setting in which to raise our children.*'¹¹⁵

Transgender children should have families which accept and acknowledge them, guaranteeing the best interests and encourage them to exercise their rights and to

¹⁰⁸ UNCRC, Art. 3(3)

¹⁰⁹ UNCRC, Art. 19

¹¹⁰ UNCRC, Art. 2

¹¹¹ (n20).,

¹¹² UDHR, Art. 25(1)

¹¹³ ECHR, Art. 8(1)

¹¹⁴ (n12).,

¹¹⁵ <<https://housingauthority.gov.mt/en/Pages/About%20Us/Mission-Statement.aspx>> accessed on 21st December 2018

express their beliefs. Even though Recommendation CM/Rec(2010)5¹¹⁶ recognises vulnerabilities of transgender children regarding homelessness, this has still been not implemented into practice.

Right to Education

Maltese trans children have the right to receive education irrelevant of their sex.¹¹⁷ No one shall be refused such right.¹¹⁸ Education must be free and compulsory in the elementary stages, professional education should be available, and higher education is equally obtainable on the basis of merit.¹¹⁹ Parents, especially if married¹²⁰, have an obligation to educate their children considering their abilities, natural inclinations and aspirations. Education must be free from discrimination.¹²¹ States should make vocational education available to all children, offer financial assistance and make educational information obtainable.¹²² The Parliamentary Assembly of the Council of Europe adopted a resolution¹²³ requiring MS to ensure access to education for all children. The Maltese Government in 2015 issued the “Trans, Gender Variant and

¹¹⁶ (n58).,

¹¹⁷ Education Act, Chapter 327 of the Laws of Malta, Art. 3

¹¹⁸ Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 2

¹¹⁹ UDHR, Art. 26

¹²⁰ Civil Code, Chapter 16 of the Laws of Malta, Art. 3B(1)

¹²¹ UNCRC, Art. 28

¹²² UNCRC, Art. 28

¹²³ Resolution 2097, Access to school and education for all children, Parliamentary Assembly Council of Europe (2016)

Intersex Students” Policy¹²⁴ and Procedure¹²⁵, being comprehensive educational guidelines making part of the Respect for All Framework¹²⁶ highlighting the need for suitable facilities and management plans.¹²⁷

Right for Participation & Leisure

Transgender children should partake in the same activities as other children. Leisure time and essential space should be allocated, which contributes towards a happy childhood and encourages new talents and capabilities.¹²⁸ The right to be heard includes the right to participate in community life.¹²⁹ Sports organisations play a role in encouraging children to get involved.¹³⁰ However, they must recognise and acknowledge the gender identity of trans children and let them participate in activities pertaining to their preferred gender.¹³¹

¹²⁴ (n32).,

¹²⁵ (n35).,

¹²⁶ (n26).,

¹²⁷ (n10).,

¹²⁸ (n12).,

¹²⁹ UDHR, Art. 27

¹³⁰ (n9).,

¹³¹ <<https://www.timesofmalta.com/articles/view/20170504/local/transgender-girls-mother-protests-discrimination.647002>> accessed on 6th December 2018

Conclusion

Children are principal actors in the promotion of their fundamental freedoms.¹³² The Commissioner of Children¹³³ needs to ensure that trans children are consulted in issues directly concerning them.¹³⁴ Education begins at home, and trans children need the presence, love and attention of their families to determine their status.¹³⁵

¹³² (n12).,

¹³³ Commissioner for Children Act, Chapter 462 of the Laws of Malta

¹³⁴ UNCRC, Art. 12

¹³⁵ (n12).,

SECTION II - PARENTS & LEGAL GUARDIANS

Introduction

Parents or Legal Guardians of transgender children face a tough situation. The realisation of having a child not conforming with their biological gender triggers various emotions such as shock, confusion, sadness, guilt, and embarrassment.

Behavioural Cues

Parents must understand behavioural cues from their children. Whilst most children are clear by vocally insisting how they feel, others could be uncertain on how to pronounce their emotions due to young age. Parents have to pay attention to their children's gender variant behaviour over time to not misinterpret them.¹³⁶ Dr. Norman Spack explains that bathroom behaviours, underpants aversion and desire to play with toys of the opposite sex reveal the transgender identity of a child.¹³⁷ Parents should not quick label their child as transgender, but should observe their children by letting them decide and not push for answers.¹³⁸

Fears & Concerns

Initial responses involve struggles to understand what is going on with the child. Most parents fail to understand that transgenderism is not a choice and therefore try to reason

¹³⁶ (n13).,

¹³⁷ (n16).,

¹³⁸ <<https://www.tvm.com.mt/mt/news/ta-3-snin-lucinda-bdiet-thoss-li-twieldet-fgisem-hazin/>> accessed on 25th October 2018

out their child's behaviour, such as whether it is their fault.¹³⁹ Parents may blame each other, destabilising the family unit. They must comprehend that this is not an experimenting phase¹⁴⁰ or a rebellion, and that their child is not sick. Parents fear that their child will therefore be bullied, frowned upon and discriminated.¹⁴¹

Fears about the public perception of the child's new identity need to be overcome.

Parents worry whether their transgender children will have solid relationships and whether they would be capable of having and taking care of a family.¹⁴² Parents may also feel remorse or guilt if they realise that they were in denial and ignoring signs which were present all along.¹⁴³

Parenting Practices

Parents are involved in the learning process of their children on how to conform with their gender by teaching gender-appropriate behaviour. However, when a child emerges to be gender-variant, the problem would not lie with the child or the parents, but with the social system determining social gender roles and expectations of gender expression. Parents should not engage in damaging parenting practices such as rejecting and punitive behaviours, which could amount to domestic violence¹⁴⁴. In Malta, child

¹³⁹ (n24).,

¹⁴⁰ <<http://www.hrc.org/resources/transgender-children-and-youth-understanding-the-basics>> accessed on 22nd October 2018

¹⁴¹ (n17).,

¹⁴² *ibid.*,

¹⁴³ (n16).,

¹⁴⁴ Gender Based Violence and Domestic Violence Act, Chapter 581 of Laws of Malta, Art. 2.,

protection services¹⁴⁵ are on the alert to act against parents who obstruct the development of their child's gender identity.¹⁴⁶ Parents should not pressure their children to conform or encourage their child to attend to conversion therapy, being banned and criminalised in Malta.¹⁴⁷ Dr Azzopardi Bonanno states that, "It must be the choice of the individual, not of the family."¹⁴⁸

Parents are more influential over their children than any other factor. According to Mr Chris Vella, "Parents or legal guardians must take account that the child is not an object and their interests should be second to the child's interest. Parents must be cautious to what children feel and not write it off as immaturity. Parents and children need to reflect together so both understand what the child really needs. Some decisions need to be taken, but helping children feel that they have a role in the decision making of their own lives is important."¹⁴⁹

Positive parenting helps children create a foundation for their identity¹⁵⁰. A supportive home environment where every member is valued for who they are gives children a buffer from the hardships they face outside. With transitioning, parents have to consent to changes in pronouns, names and personal representation. Parents have to show support by learning terminology, using affirmative language and start to understanding concepts of gender variance.

¹⁴⁵ <<https://fsws.gov.mt/en/appogg/Pages/Intake-and-Protection-Services/Child-Protection-Services.aspx>> accessed on 15th January 2019

¹⁴⁶ (n19).,

¹⁴⁷ Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act, Chapter 567 of Laws of Malta, Art. 3.,

¹⁴⁸ (n73).,

¹⁴⁹ (n70).,

¹⁵⁰ APPOGG, Trobbija Pozittiva: Modi ta' trobbija pozittiva minghajr abbuz

Parents should keep in mind their obligations under law¹⁵¹, together with unconditional love towards their child, independent of their gender identity. Parents need to listen their child with an open heart by keeping compassion and empathy as their guide. Even if alienated from their child, parents must keep close to their child and not lose hope.

During transitioning parents may feel loss for the child that they have taken care of.

Parents have expectations for their children's future, but they ought to accept that these might have to change. When they let go of dreams for their child parents realise that their truest hopes for their child remain the same, as they want the child to be happy, to love and to be loved.

Parents need to understand that for transgender children to open their hearts is the most difficult step. The Coming Out process is a private matter and parents should be appreciative that their children are talking to them about something so intimate. If there are siblings, parents must keep balance through the family, who could feel neglected due to the attention on their trans sibling, or on the other hand, the transgender child would feel as second best due to lack of bonding.

Need for Information

Parents coming to terms with their child's gender variance begin by looking for information. Education is a transformation which deepens one's respect for diversity.

Parents are entitled for latest research concerning parental strategies, which should not

¹⁵¹ Civil Code, Art. 7.

be only available online, but also in books¹⁵², and on the media. Lack of correct information increases uncertainties and inabilities regarding care.¹⁵³

Need for Educational Support

Parents need an educational system which is accepting and supportive of their children.

Public ignorance increases parents' difficulties as they feel judged for supporting their trans children. Education leads to more awareness which in turn aids parents.¹⁵⁴

Counselling is a helpful way of providing guidance to parents in their decision-making.¹⁵⁵ Parents also need support from knowledgeable medical professionals as a reassurance regarding medical situations.¹⁵⁶

Need for Peer Support

Coming to terms with a child's gender variance is a difficult path, but it does not need to be travelled alone. Connecting with others in similar circumstances allows parents to relate. In Malta groups as Drachma Parents¹⁵⁷ and Rainbow Families¹⁵⁸ offer a safe space where families of LGBTIQ persons can meet in a non-judgemental environment to share their experiences and fend off negative attacks on the transgender

¹⁵² (n40).,

¹⁵³ (n20).,

¹⁵⁴ *ibid.*,

¹⁵⁵ *ibid.*,

¹⁵⁶ *ibid.*,

¹⁵⁷ <<http://drachmalgbt.blogspot.com/>> accessed on 2nd November 2018

¹⁵⁸ <<http://www.independent.com.mt/articles/2018-08-27/human/Safe-space-for-LGBTIQ-families-created-6736195457>> accessed on 2nd November 2018

community.¹⁵⁹ Parents need to join together and not be afraid to advocate in favour of their children.¹⁶⁰

Need for Emotional Support

Emotional support is as critical for parents as is for children. Parents need emotional support from their families and friends, religious groups, local community and society in general. An accepting environment with compassion permits parents to control better their children's necessities. A tolerant society which does not impose stereotypes is vital in supporting the parents.¹⁶¹

Need for Governmental Support

Politicians need to be aware of these parental issues and identify them as important. After a hard-fought battle by Joanne Cassar¹⁶² and two consecutive legislative changes¹⁶³¹⁶⁴, Maltese same-sex couples can equally marry as opposite-sex couples. Apart from this, transgender persons can also fully joint-adopt¹⁶⁵, ensuring parents that they will be part of a better future for their children. The Maltese government is supposed to conduct a public awareness campaign for parents to increase acceptance of

¹⁵⁹ <<http://www.independent.com.mt/articles/2016-06-06/local-news/LGBT-group-deeply-saddened-with-negative-attacks-against-transgender-child-parents-6736158971>> accessed on 23rd September 2018

¹⁶⁰ <<https://www.timesofmalta.com/articles/view/20170504/local/transgender-girls-mother-protests-discrimination.647002>> accessed on 5th December 2018

¹⁶¹ (n20).

¹⁶² Cassar Joanne vs Direttur Tar-Registru Pubbliku Et, Civil First Hall (Constitutional Jurisdiction), 30/11/2010

¹⁶³ Civil Unions Act, Chapter 530 of Laws of Malta

¹⁶⁴ Marriage Act and other Laws (Amendment) Act, 2017

¹⁶⁵ Civil Unions Act, Art. 4(2)(ii)

LGBTIQ children.¹⁶⁶ The government also intends to include LGBTIQ related themes in parents' seminars.¹⁶⁷

Conclusion

It is up to the parents to secure the legal rights of their transgender children. Coming to terms of having a transgender child is a long process, since emotional responses vary and for some, acceptance can take years. Parents must realise that doing anything but accepting their child defeats the concept of a family.

¹⁶⁶ (n51), 4.9(b)

¹⁶⁷ (n52).,

SECTION III - EDUCATIONAL SYSTEM

Introduction

Children spend significant time in schools, and such an environment influences the child.¹⁶⁸ Together with the stress of getting a child ready for school, families with transgender children have supplementary issues.¹⁶⁹ The majority of transgender individuals realise their gender identity before they leave primary school¹⁷⁰, and therefore, the educational system must cater for its transgender pupils.

Education

A school's main function is to provide education¹⁷¹, constituting the development of character, talent and capabilities.¹⁷² The Directorate of Educational Services in Malta is bound by law¹⁷³ to offer standard education to every pupil.¹⁷⁴ Schools are an opportunity for children to learn about their gender identity and that expressed by others.¹⁷⁵ Gender education reinforces the schools commitment towards an inclusive environment, replacing misconceptions with practical and evidence-based information.¹⁷⁶

¹⁶⁸ (n16).,

¹⁶⁹ *ibid.*,

¹⁷⁰ (n2).,

¹⁷¹ (n28).,

¹⁷² UNCRC, Art 29(1a)

¹⁷³ Education Act, Chapter 327 of the Laws of Malta (1988)

¹⁷⁴ (n32).,

¹⁷⁵ (n16).,

¹⁷⁶ *ibid.*,

Teachers, Staff & Administration

Teachers need working knowledge of gender identity before they can educate students about it.¹⁷⁷ Due to the lack of general understanding of this subject, and since it is not standard practice¹⁷⁸, it is necessary to train staff members.¹⁷⁹ While the adoption of school-wide policies is a start, schools have to provide tools to make this commitment real. According to Ms Sandra Cortis, “Professionals must be formed and informed on the issues to convey their message clearly.”¹⁸⁰ Mr Matthew Vella is of the opinion that “SMTs, educators, teachers and LSEs need to be taught about this subject. The fact that they work in a job which they are not trained for creates barriers rather than closing the gap.”¹⁸¹ Initial and ongoing training programs have to be provided, emphasising on practical solutions in creating inclusive classrooms and aiding in responses to questions from students and families.¹⁸² Training material must incorporate curricular concerns and correct language terminology which teachers can use.¹⁸³

Teachers need to be an ally to trans pupils by initiating discussions relating to gender identity and creating an atmosphere where they feel validated for who they are.¹⁸⁴ Mr Chris Vella says that, “Due to several in-service sessions, teachers are aware of realities

¹⁷⁷ Susan Trostle Brand & Susan L. Maasch (2017) *Updating Classroom Libraries and Cross-Curricular Activities: Celebrating Gender Identity and Diversity Through LGBTQ Books*, Childhood Education

¹⁷⁸ (n16).,

¹⁷⁹ *ibid.*,

¹⁸⁰ (n71).,

¹⁸¹ (n72).,

¹⁸² *ibid.*,

¹⁸³ (n32).,

¹⁸⁴ (n16).,

and diversities. Teachers must realise their position and responsibility in the way they express themselves, since certain statements hurt and create guilt feelings.”¹⁸⁵ Educators need to encourage students to ask questions and share their thoughts, doubts and fears.¹⁸⁶ Teachers need to lead by example and stand up for gender diversity¹⁸⁷ by stepping in and speaking up in cases of stereotypical behaviour. Mr Matthew Vella states that “Professionals in education must themselves not have judgemental attitudes and be up to speed with all relevant policies.”¹⁸⁸ Ms Sandra Cortis states that, “I was the first one who had to stop and see what was my position. Even someone who is in a position of leadership must analyse himself and his opinions on the matter.”¹⁸⁹

School Environment

Schools should provide a safe learning space free from aggression.¹⁹⁰ A welcoming environment supported with good communication maximises academic learning processes, being in accordance with the objective of full inclusion.¹⁹¹ This offers children security and stability in which they mature, cope with challenges, and feel accomplished.¹⁹² Malta ought to¹⁹³ address equality in education by putting the best interest of the child as a priority.

¹⁸⁵ (n70).,

¹⁸⁶ (n12).,

¹⁸⁷ (n16).,

¹⁸⁸ (n72).,

¹⁸⁹ (n71).,

¹⁹⁰ (n28).,

¹⁹¹ (n12).,

¹⁹² (n28).,

¹⁹³ (n58).,

Transgender students or students undergoing transition require extra efforts by educational institutions regarding security. Schools need to cater better for their necessities¹⁹⁴ by providing an accepting environment where these individuals can freely express their gender identity. Commissioner Nils Muižnieks draws attention to the significance of protection for LGBTIQ children in schools.¹⁹⁵ This is done by taking proper measures directed at educational staff ensuring that the right to education is enjoyed in a liberal environment.¹⁹⁶

Affirming environments are an effective strategy in enhancing the school's respectful attitude¹⁹⁷ towards gender diversity, which empowers students in their acknowledgement of trans individuals. Pupils need to be physically protected, but they also need to be emotionally safe.¹⁹⁸ It is the duty of the administration to mitigate stigmas which hinder academic interest and focus. Schools should provide guidance and counselling units where transgender students can express their worries.¹⁹⁹ Educational persistence from transgender students depends on their sense of belonging in the school, and if they feel ignored and avoided, it could lead to earlier dropouts.

¹⁹⁴ (n35).,

¹⁹⁵ <www.coe.int/en/web/commissioner/-/lgbti-children-have-the-right-to-safety-and-equality> accessed on 22nd October 2018

¹⁹⁶ (n32).,

¹⁹⁷ (n16).,

¹⁹⁸ (n21).,

¹⁹⁹ (n37).,

Bullying & Harassment

Being able to be one's self during school is crucial.²⁰⁰ However, transgender students struggle due to bullying and harassment. Gender-based bullying affects children breaking gender norms, being judged, shamed and even threatened by classmates, and possibly educators.²⁰¹ Bullying focuses on stereotypical traits or hurtful intent of aggression and violence.²⁰² Bullying harbours long-term consequences in the context of self-confidence and capability to develop a social life. Mr Matthew Vella states that, "We need to also consider cyber-bullying which is more dangerous, as the traditional one started and stopped at school, but today it keeps on going online, becoming close to persecution."²⁰³

Violence towards LGBTIQ children in schools is a challenge to educational institutions. States do not invest enough in policy and support, and therefore teachers may not be properly equipped to deal with bullying.²⁰⁴ Schools have to stay on the alert for bullying occurring on campus, and complaints should not be dealt with lightly.²⁰⁵ Dr Azzopardi Bonanno states that "Educators must be aware on how to deal with these cases. The way they react will either make or break the child. That first reaction is the one which will have the most impact on the child."²⁰⁶

²⁰⁰ (n32).,

²⁰¹ (n9).,

²⁰² (n36).,

²⁰³ (n72).,

²⁰⁴ (n10).,

²⁰⁵ (n35).,

²⁰⁶ (n73).,

Transgender children have a right to the preservation of their human dignity in schools²⁰⁷, and also a right to be protected from violence²⁰⁸. Malta is taking preventative actions, as it should²⁰⁹, safeguarding students from violence by other students²¹⁰ and guaranteeing human rights²¹¹ through the Directorate for Educational Services, which deals with issues of bullying²¹², and the Students Services Department and its Psycho-Social Services. Bullying in Malta is tackled through the implementation of the ‘Addressing Bullying Behaviour in School’²¹³ policy overseeing every state school. Regarding trans students, ‘The Trans, Gender Variant and Intersex Students in Schools Policy’²¹⁴ lays out guidelines promoting an environment free from harassment. These policies support the implementation the GIGESC.²¹⁵ The Criminal Code also categorises forms of bullying behaviours as a criminal offence.²¹⁶ While they cannot be considered a crime, harassing behaviours or communications of violence, hate crime and messages on the basis of gender identity can amount to a criminal offence.²¹⁷

²⁰⁷ UNCRC Art. 28(2)

²⁰⁸ UNCRC Art. 19

²⁰⁹ (n7).,

²¹⁰ (n9).,

²¹¹ (n58).,

²¹² Education Act, Art. 11(2)(n)

²¹³ (n28).,

²¹⁴ (n32).,

²¹⁵ (n1).,

²¹⁶ Criminal Code, Chapter 9 of the Laws of Malta, Art. 82A

²¹⁷ Criminal Code, Art. 251

Gender Recognition

Schools have the duty to treat transgender students with respect.²¹⁸ A way of showing respect is by honouring their preferred names and pronouns. Transgender pupils do not use their legal names but choose one in line with their chosen gender identity by which they prefer to be known, and its acknowledgement is central towards validation. These names and pronouns need to be used consistently to safeguard the child's privacy.

However, Ms Sandra Cortis states that, "A major fear could be that if an educator gives a direction on how to deal with a child claiming to be a transgender, but when he grows older, it turns out that he was not and holds them responsible for miseducation. There is no issue about accepting these people, but there needs to be reports as evidence."²¹⁹

Restroom Privacy

Trans children must have their basic physical needs met, including the right to access safe and private bathrooms. Being a place which symbolises differences, demanding trans pupils to use binary-gender restrooms increases hurdles regarding acceptance.

They would be anxious that they would be exposed and fear harm. Trans pupils should not be forced to use sex-specific restrooms incompatible with their gender identity, or be required to do so because they are transgender²²⁰, as this could lead to public identification and social damage. Transgender students have the right to access restrooms aligning with their gender identity. Single-occupant, gender-neutral or unisex bathrooms could be made available to pupils, irrespective of gender, and be left up to

²¹⁸ (n16).,

²¹⁹ (n71).,

²²⁰ (n35).,

the choice of the student.²²¹ Schools must ensure protection by supervising such spaces properly.²²² Transgender children themselves can also be instrumental for change of policies regarding restrooms.²²³

Dress Code

Students must be allowed to dress in a way corresponding with their gender identity or gender expression, as long as their attire complies with the school's dress code.²²⁴ For transitioning children the opportunity to dress in clothes of their preferred gender is a statement by which they can confirm their new identity. This daunting process makes them clearly different, practically 'outing' themselves as transgender. By providing an option of permitted clothing of uniform, or by allowing transgender pupils the possibility to wear in what they feel comfortable in, schools would be empowering them to show how they feel on the inside. Schools must not enforce strict dress codes regarding transgender students compared to other students²²⁵, but be more flexible²²⁶. In Malta there are ongoing discussions towards school uniforms being changed.²²⁷

²²¹ (n16).,

²²² *ibid.*,

²²³ <<http://www.independent.com.mt/articles/2017-02-28/growing-up/Malta-s-Willa-Naylor-story-inspires-Other-nations-shaking-heads-at-US-transgender-toilet-battle-6736171010>> accessed on 22nd October 2018

²²⁴ (n16).,

²²⁵ (n35).,

²²⁶ (n16).,

²²⁷ <<https://www.timesofmalta.com/articles/view/20190131/local/should-tracksuits-replace-traditional-school-uniforms-consultation.700785>> accessed on 31st January 2019

Participation, Inclusion & Equal Opportunities

Effective education refers to active participation of all pupils. Children must be involved and encouraged to discover and ask questions. Schools have to cultivate in pupils a life-long interest in learning.²²⁸ The educational system should offer equal opportunities towards student's participation. Transgender students must be guaranteed inclusion in school communities regardless of their gender identity or gender expression.²²⁹ This empowers them to develop a sense of identity while creating a sense of civic responsibility. Trans pupils should partake in all extra-curricular activities and not be forced to do so outside of the allotted class time in gender-segregated activities.²³⁰ The Council of Europe through its Recommendations²³¹ continues to strengthen children's opportunities for participation by giving due respect to their abilities and including them in the development and implementation of child-related policies.

Literature & Libraries

The use of literature involving LGBTIQ identities could be a way by which trans issues are tackled in schools. Library resources about these issues help transgender pupils to relate to these identities and educate other pupils on LGBTIQ realities.²³² This form of bibliotherapy helps trans pupils in seeing positive portrayals of these protagonists and

²²⁸ (n12).,

²²⁹ (n32).,

²³⁰ (n16).,

²³¹ Recommendation CM/Rec(2012)2 of the Committee of Ministers to member States on the participation of children and young people under the age of 18

²³² (n37).,

establishes a place where transgender students can feel at ease. Through literature children can realise that they are not alone and acquire respect for diversity.²³³ This could also be a measure by which states decrease school drop-outs rates.²³⁴ Even though the introduction of such books in Maltese schools was included in both the Action Plans²³⁵²³⁶, this was met by a lot of backlash²³⁷ which has raised concern by various LGBTIQ organisations²³⁸.

Conclusion

Schools should be learning environments where pupils obtain skills of behaviour²³⁹ while being taught about respect. A tolerant culture which rejects stereotypes in an educative context must be based on a comprehensive approach towards regularly enforced values.²⁴⁰

²³³ (n39).

²³⁴ UNCRC, Art. 28(1E)

²³⁵ (n51), 4.3(d)

²³⁶ (n52), 2.4

²³⁷ <<https://www.timesofmalta.com/articles/view/20151016/local/gay-books-will-not-be-distributed-in-schools.588391>> accessed on 13th September 2018

²³⁸

<[lgbtqfriendly_books_help_children_feel_included_teach_tolerance_and_respect#.XF3Tt89KgWp](#)> accessed on 13th September 2018

²³⁹ (n28).

²⁴⁰ (n16).

SECTION IV - RIGHTS OF TRANSGENDER ELDERLY

Introduction

Transgender elderly born before civil rights experienced a country which did not recognise them.²⁴¹ One has to analyse current rights available and understand whether they are sufficient to attend to their necessities.

Who are Transgender Elderly?

According to Maltese legislation²⁴², a Maltese national is considered to be elderly upon reaching 60 years old, and therefore it is presumed that a trans person over 60 is regarded a transgender elderly. Transgender elderly could have been transgender for their whole life by transitioning at their childhood or young adulthood, or by transitioning later in life.²⁴³ The decision to transition at a later stage, possibly after retirement, could be based on fear of stigma during younger days.²⁴⁴ Another reason could be the death of a spouse, partner or relative.²⁴⁵ The transgender elderly community is assumed to grow due to medical progress which increases life expectancy.

²⁴¹ (n45).,

²⁴² Identity Card and Other Identity Documents Act, Chapter 258 of the Laws of Malta

²⁴³ (n42).,

²⁴⁴ *ibid.*,

²⁴⁵ *ibid.*,

Right to Family Life

Family rights of transgender elderly need to be protected on equal basis as every other citizen. There shall be respect²⁴⁶ and no arbitrary interference²⁴⁷ with their private and family life²⁴⁸. For trans persons family issues are an evaded subject, with some being rejected by their families who are not understanding and never accept their children's identity. Transgender persons who themselves had a family, children or even grandchildren, and then transitioned, are shunned by them or denied access to grandchildren.²⁴⁹ Therefore they find comfort in 'families of choice', being persons replacing neglectful biological families. Transgender elderly who experience little support from their families or end up without companionships live their last years alone, indicating that end-of-life care is not only important for health services but also for social interaction.

Right to Healthcare Services

Transgender elderly need guarantees regarding their right to healthcare facilities in comparison to other ageing adults. Equal access to healthcare services is a challenge due to barriers of discrimination due to their identity. Trans elderly must be provided with proper mental healthcare due to their susceptibility to psychological distresses which could lead to addictive behaviours having heavy consequences on physical health.

Transgender individuals must also have access to hormone therapy and surgical

²⁴⁶ ECHR, Art. 8

²⁴⁷ UDHR, Art. 12

²⁴⁸ Constitution of Malta, Art 32(c)

²⁴⁹ (n43).,

procedures. The ECHR obliges states to provide gender-reassignment surgeries, including hormone treatment.²⁵⁰ Malta still falls short of its duties under the ICESCR due to the lack of gender affirming treatment, which could amount to a barrier towards the right to highest standards of health to transgender persons.²⁵¹ The Gender Wellbeing Clinic, which is now up and running²⁵², provides for well-being services to transgender individuals²⁵³. The government plans to introduce policies and procedures regarding privacy of transgender person in access to healthcare.²⁵⁴ This was partly achieved by the introduction of the Transgender Healthcare Policy.²⁵⁵ Awareness campaigns are a must to raise concern regarding these issues.²⁵⁶

Financial Instability & Social Security

Trans seniors could be prone to financial insecurity due to discrimination in employment and low salaries affecting their pensions and social security payments. Even though transgender individuals who are in a relationship or married would be less exposed to these risks, financial instability raises concerns due to lack of access to social benefits. These accumulated variables have ramifications in their retirement assets.²⁵⁷ Nevertheless, increased awareness has made transgender adults more

²⁵⁰ Human Rights and Gender Identity, Issues Paper, Commissioner for Human Rights (2009)

²⁵¹ (n54).,

²⁵² <<https://www.timesofmalta.com/articles/view/20181106/local/new-clinic-for-transgender-individuals-to-open-on-monday.693612>> accessed on 3rd February 2018

²⁵³ (n52), 3.2

²⁵⁴ (n52), 3.4

²⁵⁵ (n51).,

²⁵⁶ (n52), 3.5

²⁵⁷ (n43).,

conscious to prepare for their future. While this is regarded as a right²⁵⁸, in Malta progress is being made through the implementation of a new law²⁵⁹ laying down Gender Identity and Sex Characteristics Related Conditions as a new classification for free medical aid²⁶⁰.

Housing

Transgender elderly should have equal housing and accommodation as every other citizen. Trans elderly face homelessness due to discrimination from landlords, to the extent of being evicted,²⁶¹ and due to non-accepting family members. Housing is vital for elderly due to health issues and proximities to essential facilities. Housing discrimination is also present in their search for retirement homes, experiencing unfair treatment regarding applications, admittance or pricing.²⁶² This discrimination should be acknowledged²⁶³ to ensure that adequate housing is available to everyone irrelevant of gender identity.²⁶⁴

Concealment of Gender Identity

Transgender elderly may hide their gender identity as a coping mechanism.

Concealment of one's own identity has negative consequences due to increased stress,

²⁵⁸ UDHR, Art .25(1)

²⁵⁹ Legal Notice 44 of 2018 – Social Security Act (Amendment of Fifth Schedule) Regulations, 2018

²⁶⁰ Part II of the Fifth Schedule according to Article 23(3) of the Social Security Act (2012)

²⁶¹'The facts on LGBT ageing', SAGE

²⁶² *ibid.*,

²⁶³ (n43).,

²⁶⁴ (n44).,

tension and preoccupation since one would be on alert on what to say and how to behave to not be exposed or raise suspicions. Concealment restricts honest and free expression of emotions, while limiting connectedness with the transgender community or healthcare services to keep such secrecy, leading to social isolation and lack of meaningful relationships with others.²⁶⁵ Transgender persons must find comfort in their skins and accept their bodies to not increase disappointment and discomfort.²⁶⁶

Participation & Inclusion

Transgender elderly suffer from lack of inclusion and participation. Even though this goes contrary to human rights²⁶⁷, they find it difficult to engage in public spaces due to anxiety and seclusion. While socialisation is their right²⁶⁸, access to support networks²⁶⁹ is important for transgender seniors as these are associated with longevity. Peer contact²⁷⁰ has positive effects²⁷¹, being an opportunity to catch up with missed gendered experiences. In effort regarding inclusion the Maltese government at first only included older gays and lesbians²⁷² and transgender elderly were not mentioned, while in the later it was kept under the LGBTIQ spectrum²⁷³.

²⁶⁵ *ibid.*,

²⁶⁶ (n43).

²⁶⁷ UDHR, Art. 27

²⁶⁸ Constitution of Malta, Art 42(1)

²⁶⁹ (n43).

²⁷⁰ (n44).

²⁷¹ (n48).

²⁷² (n51), 4.8

²⁷³ (n52), 1.15.1

Conclusion

Trans elderly should be provided with adequate resources²⁷⁴ to live an autonomous life.²⁷⁵ The Commissioner for Older Persons²⁷⁶ must ensure that their right to social inclusion is guaranteed, which remains the main force of support.²⁷⁷

²⁷⁴ National Strategic Policy for Active Ageing, Malta 2014-2020, Parliamentary Secretariat for Rights of Persons with Disability and Active Ageing

²⁷⁵ Recommendation CM/Rec(2014)2 of the Committee of Ministers to member States on the promotion of human rights of older persons

²⁷⁶ Commissioner for Older Persons Act, Chapter 553 of the Laws of Malta

²⁷⁷ (n45).,

SECTION V - EXPERT SERVICE PROVISION

Introduction

Even if transgenderism is not a medical condition, trans people still depend on healthcare facilities, having a right²⁷⁸ to receive professional healthcare services equal in standards to those provided to other citizens.

Healthcare Expectations, Concerns, & Ethical Issues

Healthcare institutions are not immune from participation violence and abuse on transgender persons. Transgender persons tend to be afraid or distrustful towards caregiving services, being rendered invisible due to reduced access, to the extent of avoidance. Most medical professionals have no idea how to care for transgender individuals, having no training or experience. They could be unaware²⁷⁹ of the LGBTIQ spectrum or regard transgenderism as morally wrong to the extent that do not consider transgender persons as part of the patient population. Institutions do not provide general practitioners with information, being unsure about appropriate treatments, misinforming trans patients or sending them to unnecessary therapy.²⁸⁰ According to Dr Azzopardi Bonanno, “A transgender individual who had complications due to surgery was admitted to hospital. After being discharged, the reaction was ‘I felt like a guinea pig’. The moment practitioners were told the complication stems from the surgery, they were taken aback.”²⁸¹

²⁷⁸ Health Act, Art. 27(1)(a)

²⁷⁹ (n50).,

²⁸⁰ (n42).,

²⁸¹ (n73).,

Trans persons expect insensitive and apprehensive practitioners²⁸² by anticipating health inequalities, overt transphobia, intentional sub-quality care and misdiagnosis.²⁸³ Low levels of understanding increase dilemmas of where trans persons should turn for help.²⁸⁴ When they realise this hostility, they become more hesitant to approach social services.²⁸⁵ Inappropriate or explicit questions render transgender individuals wary since for them confidentiality and disclosure are big concerns.²⁸⁶ Dr Azzopardi Bonanno states that “At the Gender Clinic they are asked several questions, and a common feeling is that this interview is invasive. There shouldn’t be a checklist and it must be an informal two-way talk.”²⁸⁷

Despite overall increased health issues, including high prevalence of STDs²⁸⁸, transgender persons are put aside due to high demands and low capacities.²⁸⁹ These barriers, while contributing to the marginalisation of this group²⁹⁰, violate rights in the

²⁸² (n44).,

²⁸³ (n42).,

²⁸⁴ *ibid.*,

²⁸⁵ *ibid.*,

²⁸⁶ (n42).,

²⁸⁷ (n73).,

²⁸⁸ (n44).,

²⁸⁹ *ibid.*,

²⁹⁰ (n50).,

Maltese Constitution²⁹¹, ECHR²⁹² and UDHR²⁹³. Therefore transgender individuals opt for private healthcare services, which entails significant costs.²⁹⁴

Standards of Care & Healthcare Treatment

Healthcare facilities must meet the needs of transgender persons equally as for other persons, and therefore proper SOC need to be established. Institutions, administrators and professionals need to have a holistic approach by acknowledging and respecting the patients and their bodies, their needs and realities.²⁹⁵ Providers should be welcoming, communicative, empathetic, responsive and sensitive²⁹⁶, not neglectful or ostracising trans patients by making rushed judgments.²⁹⁷ Trans patients need to have their self-identification respected, being addressed with their preferred name.²⁹⁸ Confidentiality and prudence should be at the forefront, and Dr. Azzopardi Bonanno states that “Ethical awareness must be present on personal and professional levels.”²⁹⁹ Professionals must pay attention to patient demands.³⁰⁰ Healthcare routines and decision-making should be discussed with patients by referring them to other supportive colleagues.³⁰¹ Dr. Azzopardi Bonanno states that “More work needs to be done towards treatment de-

²⁹¹ Constitution of Malta, Art 36(1)

²⁹² ECHR, Art. 3

²⁹³ UDHR, Art. 5

²⁹⁴ (n42).,

²⁹⁵ *ibid.*,

²⁹⁶ (n41).,

²⁹⁷ (n44).,

²⁹⁸ (n42).,

²⁹⁹ (n73).,

³⁰⁰ (n49).,

³⁰¹ (n44).,

pathologisation.”³⁰² In fact, law³⁰³ itself tackles the notion of de-pathologisation of gender identity.

Education and training provided to practitioners must be focused on team-based care delivery and implementation of strategic plans supporting long-term services.

Professionals should be encouraged to further their expertise by gaining experiences overseas.³⁰⁴ Dr. Azzopardi Bonanno declares that “Due to the new legislation doctors took an interest and studied further.”³⁰⁵ Mr Matthew Vella stated that “The SCSA does scheduled visits to monitor the services ensuring that discussions are not only with service providers, but also with service users, because we need to understand whether who gives the service is doing so with dignity and respect.”³⁰⁶

Patients should be informed³⁰⁷ on available services. Mr Matthew Vella adds that “The regulator must make aware the service users on what to expect to reduce dependence on the service provider.”³⁰⁸ The Ministry of Health established a multidisciplinary team composed of nominated persons from several health sectors attending to the needs of trans individuals, being supported by training opportunities to ensure additional service development by obtaining the required skills according to international standards.³⁰⁹

³⁰² (n73).,

³⁰³ GIGESC, Art.15(2)

³⁰⁴ *ibid.*,

³⁰⁵ (n73).,

³⁰⁶ (n72).,

³⁰⁷ Health Act, Arts. 27(1b) & (1c)

³⁰⁸ (n72).,

³⁰⁹ (n50).,

Senior Residential Care Homes

Transgender elderly who are single or living alone, having no one to care for them³¹⁰, end up in residential care facilities. Staff members are untrained to identify and aid them, and other residents would not be prepared for trans acquaintances or roommates, leading to possible failure to receive services. Trans residents experience discrimination by staff not talking to them directly, staff deciding socialisation patterns, and despicable residents.³¹¹ Residential homes should adopt a person-centred approach by focusing on the necessities of each resident. Management needs to be ethically responsible and competent to deliver comprehensive services. Personnel should be trained to provide optimal services ensuring that the needs of the residents are continuously met and that services are accessed in timely manner.

Trans persons should be accepted in their environments, so facilities must be LGBTIQ-friendly.³¹² Mr Chris Vella states that, “The fact that they are trans raises the issue of in which ward they stay. Is this taken into consideration, or are they put into a ward according to their specific gender just because on their identification document they have a specified gender?”.³¹³ Restrooms and bathing facilities should be private and confidential to not entail risks of being ‘outed’.³¹⁴ Active ageing has to be a mission³¹⁵ of residential homes, which should go beyond traditional care and promote a holistic

³¹⁰ (n44).,

³¹¹ (n42).,

³¹² *ibid.*,

³¹³ (n70).,

³¹⁴ (n49).,

³¹⁵ (n53).,

approach to welfare, ensuring that residents maintain the highest level of independence possible.

Mental Health, Psychologists & Psychiatrists

Mental disorders are more common among transgender persons than the general population³¹⁶ due to suppressed feelings or side-effects to hormone therapy. Trans persons may resort to intentional damage to private parts as a desperate attempt to reflect their true personality. Self-harm could be accompanied by suicidal tendencies which could be dangerous if become ritualised.

Psychologists and psychiatrists should target reduction of distress and anxiety by alleviating personal gender issues. Social care during the first steps of transition is seen as part and parcel to gender reassignment service.³¹⁷ Mr Chris Vella states that “Psychological help should clarify the understanding of self, being given hand in hand with the individual.”³¹⁸ Mental health providers need to have expertise in trans-affirmative mental healthcare³¹⁹ being positive, respectful and friendly professionals to decrease fears of initial appointments.³²⁰ Mr Matthew Vella states that, “Psychological support services must not be directed towards a specific minority, but professionals must give services irrelevant of who the person is.”³²¹

³¹⁶ (n50).,

³¹⁷ *ibid.*,

³¹⁸ (n70).,

³¹⁹ (n48).,

³²⁰ (n44).,

³²¹ (n72).,

Gender Re-Assignment Surgeries & Hormone Therapy

Transgender individuals wishing that their bodies align with their gender identity opt for hormonal or surgical procedures to help their transitioning.³²² Access to hormone therapy and surgeries is crucial.³²³ The ICESCR obliges states to protect and fulfil the right to health, and to facilitate and provide accessible healthcare. Even though the aim was to provide free services³²⁴ by a system for cost coverage under the NHS³²⁵, Malta falls short of this obligation as it does not provide gender affirming services or for their coverage.³²⁶ This could be regarded as a barrier to care which could lead to dangerous consequences, as some end up resorting to prostitution³²⁷ to be able to pay.

The Ministry of Health believes that best service is given through a multidisciplinary team at the Gender Wellbeing Clinic where persons referred³²⁸ to this team undergo an assessment for a care plan to be formulated.³²⁹ The GIGESC³³⁰ declares that who seeks such services has to be given catered help by professionals. The Ministry proposes the use of “Standards of Care for the Health of Transsexual, Transgender, and Gender

³²² (n42).,

³²³ (n50).,

³²⁴ <https://www.maltatoday.com.mt/news/national/84551/health_service_seeking_collaboration_with_foreign_hospitals_for_gender_reassignment_surgery#.XGNK3M9KgWo> accessed on 3rd February 2019

³²⁵ (n52), 3.1

³²⁶ (n54).,

³²⁷ <https://www.maltatoday.com.mt/news/national/80367/some_transgender_people_resorting_to_prostitution_to_fund_hormone_treatment#.XF9SUM9KgWo> accessed on 3rd February 2019

³²⁸ <https://deputyprimeminister.gov.mt/en/forms/Documents/Gender_Wellbeing_Clinic_Referral_Form.pdf> accessed on 5th February 2019

³²⁹ (n50).,

³³⁰ GIGESC, Art. 15(1)

Nonconforming People”³³¹ issued by WPATH, being international protocols laying down recommended treatment assessment.

Dr Azzopardi Bonanno says that, “While the law³³² states that a notary cannot ask for a psychological review, the Gender Clinic is only accessible upon referral by social workers, psychologists or general practitioners. The clinic meets once a month and individuals feel that it is not sufficient due to its demand³³³ and backlog of work.”³³⁴ This goes against what was promised³³⁵. She continues, “There is no mention of who is on this multidisciplinary team. This information should be public knowledge because it is a public role and people should be held accountable.”³³⁶

Regarding hormone therapy, the multidisciplinary team needs to determine dosages while considering other medical conditions and side-effects. According to Dr Azzopardi Bonanno, “On paper there are three dozes of testosterone available, but in reality only one is given.”³³⁷ Regarding surgical procedures, the multidisciplinary team carries out an assessment after evaluating referrals. Dr Azzopardi Bonanno states that, “Surgeries are not available yet. Trans men still have to do the upper body surgery privately, not

³³¹ <https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English.pdf> accessed on 5th February 2019

³³² GIGESC, Art. 5(2)

³³³ <<https://www.timesofmalta.com/articles/view/20190107/local/30-people-receiving-services-at-the-new-gender-clinic.698631>> accessed on 7th February 2019

³³⁴ (n73).,

³³⁵ <http://uploads.maltatoday.com.mt/news/national/85866/malta_to_be_one_of_halfdozen_countries_to_provide_holistic_transgender_services#.XDO9pc9KgWo> accessed on 3rd February 2019

³³⁶ (n73).,

³³⁷ *ibid.*,

being the proper surgery but a double mastectomy. The fact that treatment is still not available goes against the spirit of the law. We are not saying that it must be done at the national hospital³³⁸, but at least subsidise it for the people to go abroad.”³³⁹

Conclusion

Due to the expanding transgender community healthcare services are under more pressure to meet demands.³⁴⁰ Therefore, healthcare disparities for this group should be addressed to improve patient experience.

³³⁸ <<https://www.timesofmalta.com/articles/view/20170815/local/plan-for-free-gender-reassignment-for-transgender-people-is-needed.655622>> accessed on 5th February 2019

³³⁹ (n73).,

³⁴⁰ (n42).,

SECTION VI - EQUALITY & DISCRIMINATION

Introduction

Notwithstanding legal advancements, trans individuals are still stigmatised. It is important to decipher the reason behind societal disapproval and analyse what ensures their inclusion in the community.

Anti-Discrimination Law

Trans people experience discrimination and harassment, avoiding going out due to fears of safety. The stigma of being transgender pervades every day life, and its cumulative effect leads to decreased well-being, so their right to an adequate standard of living should be safeguarded.³⁴¹ While discrimination is prohibited under the ECHR³⁴², Malta was the first European state to have gender identity in its Constitution³⁴³. The main legislation against discrimination is in the Constitution of Malta³⁴⁴³⁴⁵, giving fundamental freedoms, protection of the law³⁴⁶, freedom of conscience³⁴⁷ and freedom of expression³⁴⁸. Through a legislative amendment³⁴⁹, such articles also included sex and gender identity as a ground of discrimination. Harassment or ‘instructions to

³⁴¹ Universal Declaration, Art. 25(1)

³⁴² ECHR, Art. 14

³⁴³ <https://www.maltatoday.com.mt/news/national/38027-transgender_europe_applauds_malta_for_naming_gender_identity#.XDfPw89KgWo> accessed on 21st January 2019

³⁴⁴ Constitution of Malta, Art. 32

³⁴⁵ Constitution of Malta, Art. 45

³⁴⁶ Constitution of Malta, Art. 32(a)

³⁴⁷ Constitution of Malta, Art. 32(b)

³⁴⁸ Constitution of Malta, Art. 41(1)

³⁴⁹ Act No. X of 2014 - Constitution Amendment Act

discriminate’ are also found in our national law³⁵⁰, being prohibited³⁵¹. Harassment, being undesired conduct which causes one to feel irritated³⁵², amounts to an offence under the Criminal Code.³⁵³ There is no legal definition of ‘instructions to discriminate’ but the Civil Code³⁵⁴ and Criminal Code³⁵⁵ have provisions against who instructs others to discriminate. The GIGESC³⁵⁶ also prohibits discrimination, stating that the Public Service must encourage equal opportunities and ensure that harassment and discrimination on the basis of gender identity are terminated. The NCPE is an independent body which opposes discrimination and harassment based on sex or gender identity. Apart from this, several Resolutions³⁵⁷³⁵⁸³⁵⁹ and Recommendations³⁶⁰³⁶¹ by the Council of Europe have been adopted regarding discrimination against transgender persons based on sex or gender identity, one being written³⁶² by Dr Deborah Schembri.

³⁵⁰ Equal Treatment in Employment Regulations, S.L.452.95, Reg. 2(1)

³⁵¹ Equal Treatment in Employment Regulations, S.L.452.95, Regs. 3(3) & 3(4)

³⁵² Equal Treatment of Persons Order of 2007, S.L.460.15, Art. 2(1)

³⁵³ Criminal Code, Art. 251A

³⁵⁴ Civil Code, Art. 1044

³⁵⁵ Criminal Code, Art. 44

³⁵⁶ GIGESC, Art. 13

³⁵⁷ (n56).,

³⁵⁸ (n57).,

³⁵⁹ (n59).,

³⁶⁰ (n58).,

³⁶¹ (n63).,

³⁶² (n62).,

Hate Crime

Hate crime and hate speech against transgender persons leads to psychological distress for the victim while induces fear on the minority group and restricts inclusivity in society. Through legislative amendments³⁶³ Malta has included gender identity in hate crime provisions³⁶⁴. Apart from other legal changes³⁶⁵, amendments increased the severity of punishments regarding offences³⁶⁶ for bias motivated crime. The Police Force together with the Cyber Crime Unit³⁶⁷ investigates hate crime incidents. States should ensure that victims or witnesses of such crimes are encouraged to report them.³⁶⁸ According to Mr Chris Vella, “Open social media abuse is directed towards others without any respect, and unfortunately trans issues are targets. There needs to be more awareness, education, and legal protection towards social media hatred.”³⁶⁹ Mr Matthew Vella states that, “We need to remember past judgements as in the Nuremberg Trials to not forget that human beings deserve dignity.”³⁷⁰

³⁶³ Act No. VIII of 2012 - Criminal Code Amendment Act

³⁶⁴ (n216).,

³⁶⁵ Press Act, Chapter 248 of Laws of Malta, Art. 6

³⁶⁶ Criminal Code, Arts. 222A, 251D & 325A

³⁶⁷ (n65).,

³⁶⁸ (n58).,

³⁶⁹ (n70).,

³⁷⁰ (n72).,

Judicial Discrimination

Maltese Courts have to ensure that transgender parties are guaranteed a fair trial³⁷¹³⁷²³⁷³, be presumed innocent until proven guilty³⁷⁴³⁷⁵, and have the right to an effective remedy³⁷⁶³⁷⁷. Judges must remain impartial and keep in mind concepts of Equality of Arms, including *Audi Alteram Partem* and *Nemo Iudex in Causa Sua*. The judiciary must be aware of hate speech and hate crime on the basis of gender identity.

Training³⁷⁸³⁷⁹³⁸⁰ should be held to sensitise them and to discuss legislative developments in view of judgements dealing with LGBTIQ issues and their interpretation, while increasing their knowledge and skills to assist victims or witnesses.³⁸¹ Legislation states that no one must be required proof to use the right to gender identity³⁸². Dr Azzopardi Bonanno says that, “An aim of the law was that one does not need to be assessed to start transitioning. Court does not need to have a psychological report. It is one thing to refer to a psychologist who is already following the case, but it is another thing to require an

³⁷¹ ECHR, Art. 6(1)

³⁷² UDHR, Art. 10

³⁷³ Constitution of Malta, Art. 39

³⁷⁴ ECHR, Art. 6(2)

³⁷⁵ UDHR, Art. 11(1)

³⁷⁶ ECHR, Art. 13

³⁷⁷ UDHR, Art. 8

³⁷⁸ (n59)., 9.2.4

³⁷⁹ (n63)., 5.5

³⁸⁰ (n62)., 6.1.4

³⁸¹ (n58).,

³⁸² GIGESC, Art. 3(4)

assessment to move forwards with proceedings. For notaries, it is in the law that this is not required³⁸³, so why doesn't this provision cover all judicial system?"³⁸⁴

Transgender & the Media

The portrayal of transgender persons in the media leads to how they are perceived by society. Dr Azzopardi Bonanno states that "There must be awareness among journalists, which use transgenderism to create sensationalism."³⁸⁵ Journalists should consider ethical issues and be respectful of privacy when they report such matters. Training³⁸⁶ should be given to mitigate the negative light on such community. Mr Chris Vella also believes that "Professionals must also consider the language they use when referring to trans persons in the media."³⁸⁷

Police & Corrective Institutions

Transgender persons lack trust in law enforcers due to negative experiences, being fearful or not forthcoming to report. Mr Chris Vella states that, "The first persons who encounter these problems are the police, and therefore they should be sensible. Victims need to be understood and helped, not ridiculed or taken for granted."³⁸⁸ A Police Policy³⁸⁹ was introduced covering the Corradino Correctional Facilities ensuring that inmates are treated according to their lived identity.³⁹⁰ Trans prisoners should not be

³⁸³ (n330).,

³⁸⁴ (n73).,

³⁸⁵ *ibid.*,

³⁸⁶ (n57)., 16.12

³⁸⁷ (n70).,

³⁸⁸ (n70).,

³⁸⁹ n(66).,

³⁹⁰ (n65).,

held in sections not according to their gender identity.³⁹¹ Mr Chris Vella adds that, “There is willingness on the part of the police to be provided with training³⁹²³⁹³³⁹⁴³⁹⁵ to improve attitudes and responses regarding respect towards minorities. Courses offered from MGRM and the EU create awareness and help police officers in how to not treat victims as if they were the perpetrators.”³⁹⁶

Conclusion

Transgender persons face inequalities throughout areas of public and private life. The state, institutions, organisations and citizens must ensure that society strives for equality.

³⁹¹ Spiteri Racquela et vs Id-Direttur tal-Facilita Korrettiva ta’ Kordin et, First Hall Civil Court, 29/05/2018

³⁹² (n57), 16.12

³⁹³ (n59)., 9.2.4

³⁹⁴ (n63)., 5.5

³⁹⁵ (n62)., 6.1.4

³⁹⁶ (n70).,

CONCLUSION & RECOMMENDATIONS

In 2013 the Maltese society changed from a legislative and policy aspect. The argument is not restricted on the law itself, but about the spirit, the intention, and the train of thought behind it. Malta moved from discussion to legislation, being the highest form of acceptance a country can do.

It is important to regularly analyse how these laws, policies and procedures are translated into tangible results and enforceable rights, and how their cumulative effect improves justice for transgender persons, in the attainment of an egalitarian state. There is the question of whether the mentality does actually reflect the legislation, since if law is not accepted and lived by people, it remains a minimal change. Legislation and policies are something which are alive, and even if they are well written on paper, without implementation documents would be irrelevant, remaining idealistic without nothing in practice.

Transgender persons must not be regarded as a minority any more, but be considered as part of the whole community, since the idea of respecting minorities sends negative messages of pity. Malta is a role model in LGBTIQ inclusion³⁹⁷, having transgender rights of the highest standards³⁹⁸ and obtaining highest scores³⁹⁹, being the only Council

³⁹⁷ <<https://www.timesofmalta.com/articles/view/20180721/life-features/malta-remains-role-model-in-eu-for-lgbt-inclusivity.684921>> accessed on 15th January 2019

³⁹⁸ <<https://www.timesofmalta.com/articles/view/20170927/local/malta-is-the-gold-standard-of-lgbt-reform-un-equality-boss.659017>> accessed on 15th January 2019

³⁹⁹ <<http://www.independent.com.mt/articles/2018-01-24/human/Malta-obtains-the-highest-scores-on-LGBTIQ-inclusive-education-indicators-6736183981>> accessed on 15th January 2019

of Europe MS with a policy framework supported by legislation⁴⁰⁰, but this depends on how much the government is willing to invest. The Maltese government has made great strides in bettering human rights and quality life for transgender persons through adoption of legislation which is viewed as the best system for other states to follow.⁴⁰¹ There is a lot left to be done, but the fact that there is a strategy shows that during the past 6 years Malta has pursued the right track.

The Maltese government is committed to continue support transgender persons' wellbeing and access to healthcare services.⁴⁰² The service has to be normalised and not be stigmatised with negative connotations, being equal to all other health departments. The GIGESC must be commended for founding legal recognition on the right to self-determination, but this right can never be fully respected till gender affirming treatment is provided in Malta.

There should be greater financial investments in education to address trans issues in innovative ways. Discussions on curricula need to be targeted on the process of education and less to the product. Education about transgender identities could create a start towards a cultural and mentality change deviating from the binary gender-system. Education should not only be given to students, but to their parents, families and society in general. Even the transgender community itself needs to be educated to be normalised and not be treated as something exotic. Education changes people, leading to the

⁴⁰⁰ (n10).

⁴⁰¹ <<https://www.timesofmalta.com/articles/view/20170223/local/best-practice-follow-malta-for-gender-identity-laws.640462>> accessed on 15th January 2019

⁴⁰² *Ministry for Finance*, Valletta - Budget Speech 2019 / Edward Scicluna. Ministry for Finance, 2018

legislator and policy makers to become aware of trans issues and thus legislate and draft policies on them.

The shame of being transgender in a contemporary society is still significant. Society must realise that people are not pre-set into specific pigeon-holes, and that diversity is something to value and celebrate. People should live together without looking at each other differently, considering each other as equals, leading to a constructive society with a holistic view of the individual. Society should not be afraid to talk about love and empathy to allow everyone to be themselves to the fullest extent of their potential. At the end of the day, it is one element - a human being.

APPENDIX I - RECRUITMENT LETTER

Recruitment Letter for Participants

I am Samuel Sciberras, a 4th Year Law student at the University of Malta. I am carrying out a dissertation regarding the current situation regarding transgender children and elderly in Malta, titled, '*Improving Justice for Transgender Persons : Malta as a Diverse Society*'.

The reason of this study is to understand better the phenomenon of transgenderism in the eye of a modern society who is aiming to be inclusive. Specifically, the aims of this term paper are as follows:

- I) to analyse rights currently in place safeguarding Transgender Children in Malta offered by Maltese Legislation and Policy in relation to their needs,
- II) to identify what is available to aid their Parents or Legal Guardians in relation to their upbringing and the problems they face,
- III) to investigate the current policies and procedures in force in our Educational System dealing with transgender students,
- IV) to analyse the rights currently in place safeguarding Transgender Elderly in Malta offered by Maltese Legislation and Policy in relation to their necessities,
- V) to determine the current policies and procedures in force in our health institutions from a point of view of adequate and Expert Service Provision,
- VI) to look into the issues of Equality and Discrimination these individuals have to face.

I became interested in carrying out a research about this topic due to the current Governmental Strategy and Action Plan which recognises the need of advancement of a modern society in order to become inclusive and offer equality and justice to such individuals who have to face discrimination due to their gender identity. Due to the fact that transgender children and elderly in Malta are a minority in Malta, these vulnerable individuals are even more at risk, and therefore they must also be at the centre of our legislation and policy.

Your participation is voluntary and you can withdraw your participation during any period. As a researcher, during this study, I will be taking all precautions concerning any ethical issues to protect you the participant from any harm which could possibly arise.

If as a participant you would like remain anonymous, I will make sure that you are not be identified nor identifiable. If you would accept, the interview will be recorded, or otherwise hand-written notes will be taken. All information shall be deleted when my term paper is ready.

Sincerely,

Samuel Sciberras

APPENDIX II - CONSENT FORM

Consent Form for Interview Participants

- Title of LL.B. (Hons) Dissertation: *'Improving Justice for Transgender Persons : Malta as a Diverse Society'*.

It must be noted that all data collection and processing will only be conducted for the specific purpose of the study.

- Name of Researcher: Samuel Sciberras
- Address of Researcher: No 3. Spes Nostra,
Windmill Street, Cospicua
BML 1413
- Mobile number: 79039595
- e-mail address: samuelsciberras@gmail.com
- Research supervisor (to whom personal data may be disclosed) : Dr. Sandra Hili Vassallo

Kindly sign after the statement:

1. I confirm that I have read and understood the Recruitment / Information letter _____ .

2. I understand that participation is on a voluntary basis and I can withdraw from the research at any time _____ .

3. I understand that I have the right to access, edit and erase data concerning myself _____ .

Participant Name : _____ Date : _____ Signature : _____

Researcher Name : _____ Date : _____ Signature : _____

Supervisor Name : _____ Date : _____ Signature : _____

APPENDIX III - INTERVIEW WITH MR CHRIS VELLA

- *Do you feel that the rights currently in place safeguarding transgender people offered by Maltese Legislation and Policy do cater for their needs and necessities?*

Definitely the GIGESC is considered one of the world's best law. From a legal point of view a lot of positive work has been done. In fact this is also recognised by other nations who admit that the GIGESC is one of the best systems. There are only few legislative areas where other work needs to be done. In terms of policies, it takes a little bit more time to develop. There is the governmental plan, which was consulted upon with the Consultive Council, involving Trans Health and Trans Education and other Trans Services. At the same time our government has worked hardly with contentions with various entities to develop various policies such a Trans Persons in Education, which came in existence 2 years ago, which gives guidelines to teachers on the best approach on how to deal with a trans individuals, and not only towards this individual but towards his peers to be able to not just live but make the best from all situations. Even the fact that from the Health Ministry an effort has been made for Gender Clinic to be available and the creation of Transgender Healthcare Policy. However more needs to be done such as the fact that the Clinic is in Mtarfa and that the persons who need this service could be in dire financial needs. A lot of trans people face social problems especially MtoF due to the fact that they are put under a lot of discretion. So the fact that the service is made close to unattainable, to someone who already has to dress certain personal issues, it could be a nail in the coffin. I understand that there is the plan

for this service to be incorporated within the NHS and Mater Dei. Even here, there is the question on how is this service given. The most important thing is that this service is normalised. This is also applicable to the GU Clinic. It is important that these clinics are not stigmatised. If people see someone entering such clinics there could be a negative connotation. These services need to be on an equal level with all other health departments. I know that the GU clinic gives major attention to these matters. Another issue is that these people must not be patronised. In the past LGBTIQ issues used to be classified as a mental health disorders. It needs to be de-pathologised. Needs to be seen as a natural variation which needs to be respected. These people do need to be given psychological support. In fact in GIGESC the fact that in order for an individual to change his gender one just needs to go to a Notary without extra complications and not go to additional hassle it helps. To be transgender is not a trivial choice, as even if one undergoes surgical interventions it takes a toll on the individual. It is not an instant choice. Psychological help must be given to clarify his understanding of self, not to be indicative, or be given medicine to see what reaction happens. Services must given hand in hand with the individual, while accompanying people wherever they are. While from a legislative point of view and policy point of view, a lot of progress has been achieved, important that we regularly review the laws to see how things are actually working out, that we really investigate at different levels civil departments and the persons receiving these services to gather some form of feedback and see what is working and what is not, what it counter productive or patronising, what is encouraging and discouraging, in order to better the life of such people with more dignity.

- *Are there, in your opinion, any measure of protection currently being offered in the educational and health institution in Malta in view of the violence, to address the discrimination and exploitation these individuals at times have to face?*

There are availabilities of protection. However there needs to be more sensibility. The first persons who encounter these problems are the police. Therefore it is important that Police officers must be sensitive, and be provided with the required training to be more sensitive and know how to deal with cases of bullying, cases of criminal actions and anything which is showing lack of respect towards minorities. The initial behaviour of the Police is a determining factor. I understand that there is an element of willingness on the part of the police. There has been various courses offered from MGRM and EU to attempt to create awareness and protocols to help police officers to be more sensitive and have more know how and not treat the victim as if he was the perpetrator of the crime. These victims need to be understood and helped by sensitive people and not be ridiculed or taken for granted. It is understood that the police force has a lot of pressure, but it is also important that they are also sensitive to these cases. Psychologists, psychiatrists and counsellors already have certain sensitivity and have caller protocols on how to behave and what to do. This also applies to bullying and cyber-bullying. Today, due to social media, verbal and written abuse is openly being directed towards other persons without any respect. This does a lot of harm to our society, and across the board there is a lot to be done in this situation. And unfortunately, trans issues are common targets. If one does not agree with a certain issue or argument, there are a lot of respectful ways to respond such as a protest letter or an article in a journal, but not by

verbal hate and derogatory comments. This is a form of abuse. There needs to be more awareness, education, and legal protection towards social media hatred. I understand that various judgements have been given punishing such behaviour, but this should be done more in order for the general public to learn that, even if one feels that he is in the right, the way of replying should not be by literal hatred and by verbal abuse. In schools, there is a system of counselling, and the educators are also more aware due to several in-service courses and sessions which make the teachers aware of the realities and diversities, and to make them aware on the terminology used. Teachers must be aware of the position and their responsibility as educators in the way they express themselves, being more sensitive as certain statements hurt and create guilt feelings. Unfortunately, there are still people who have certain mentalities, which irrelevant of any policies, they will still remain in the system. Therefore a good effective reporting system so when these individuals say something which is out of place students report these persons to the school administration. Regarding the Health institutions, again nurses and carers needs to be trained. There are various people in the health sector having good intention, but unfortunately nurses are exposed to extreme circumstances and therefore they end up being blunt. This could be a way of how they cope, due to long and stressful working hours. In trans elderly, the fact that they are trans which raises the issue of in which ward they are going to stay, is this taken into consideration, or is just the fact that since on their identification document they have a specified gender but even tough from the outside they appear to be of the opposite gender, they are still put into a ward according to their identification document. Efforts are being made, but as always, there is much more to do.

- *What do you believe are the ethical issues which parents, legal guardian, educational officers, nurses or careers must consider when they are involved with caring or aiding transgender individuals?*

When one talks of minors, it is important to keep in mind that they are not an object. We have a tendency to think that since these individuals are minors, they are the property of their parents. It is understood that their maturity and their own awareness of self is also expanding and developing and evolving. No hurry should be given. One must walk with the child and be cautious. We need to be sensitive to what these persons could be feeling, and not just write it off as immaturity. Sometimes this is very painful for the parents who are still trying to understand who would, to a certain matter, undergo a journey together with their child. There are individuals who know from a young age exactly who they are, while there could also be persons who would still be discovering themselves. This is a challenge in itself as uncertainty creates anxiety. Therefore these parents need support as much as their transgender children. Parents or legal guardians need to take account that the child is not an object and my interests should be second to the child's interest. It is not I who decide what are the child's interest, but I need to reflect together with the child so we both understand what the child really needs. The argument that since I am an adult, I know it all, does not hold in these circumstances. Some decisions need to be taken, but helping children be empowered to feel that they have a role in the decision making of their own lives, is important. Regarding educational officers, again, accompaniment is crucial here as well. Teachers should not only teach the subject but also teach formation of various skills and principles. Teachers

should not doctrinal students but teach kids on how to discern between good and bad. Regarding nurses, language needs to be respectful and empathic. Carers and nurses must respect the patient's body and their realities. Confidentiality, ethics and prudence should be put at the forefront. These persons must also consider what type of language they use when they are referring to these people to 3rd parties, or when they are talking to the media. We need to respect everyone's dignity. If you don't respect your child's dignity, why did you even bother in bringing another person.

- *What would be some suggestions regarding solutions or practical changes which could be made to the Maltese society that will encourage acceptance and a better understanding of the transgender community?*

There must be a continuous review of legislation, policy and procedure. There should be greater educational awareness in order for trans persons to be accepted even more. And even the trans community itself helps itself so it is normalised and not be treated as some kind of exotic thing. They are persons like everyone else, just a variant of nature and society. Let's just call them transgender people and normalise their reality.

Accompaniment from parents and institutions is a central part of their reality. This is you and we are here to allow you to be yourself to the fullest extent of your potential”.

APPENDIX IV - INTERVIEW WITH MS SANDRA CORTIS

- *Do you feel that the rights currently in place safeguarding transgender people offered by Maltese Legislation and Policy do cater for their needs and necessities?*

Right now we have discussions with the transgender association who had a meeting with Hon. Evarist Bartolo MP⁴⁰³ who met with the individuals personally and children and their parents raised their concerns directly at him. Policy is something which is alive. Discussions are taking place, and in fact last week we had meeting with Gabi as her role as Director of Human Rights within the Ministry of Helena Dalli and we saw what needs to be done in view of training. Regarding training for practitioners, I was the first one who had to stop and see what was my position in view of this reality. Even someone who is in a position of leadership must analyse himself and his opinions on the matter. I already declare publicly that before taking certain decisions I had to research and teach myself about the subject in order to be able to comprehend different situations, and to also have an open mind. This was something very important for me. This is something very important for the practitioners as well. This training was implemented in every college being a multidisciplinary team together with senior management teams. The training included workshops and case studies. Therefore the direction was clearly given. This also helped us solidify our relationship with Rainbow and DRACHMA in order to have a holistic approach. The main reason is to support the pupil. Regarding training, a lot has been done, but of course, this is something ongoing.

⁴⁰³ Minister for Education and Employment

However, these need to be training regarding educators. Some parents could be shy when confronting teachers about certain situations as they do not feel comfortably. Children could also lie in class. Today, in life, there are a lot of diversities. If we highlight specifically this group of people, such as dedicating a day for them, the message could be misinterpreted. This is the challenge; that in a 1 class teacher there all this diversity must be included. There are several ways on how to create a sense of belonging towards all these children. There will be a training where the Directors and College Head Networks. Let's try to understand each other while also understanding the cries of the children as well. On the other hand we need to take account the educational system currently in force. We need to use language which will be understood by children. We need to convey our message as clear as possible. Who is managing, being the College Head Networks and the SMTs in our schools, needs to be clear, informed and formed. They need to be informed and formed on the issues at hand, in order for the message to be clear. The more the SMT is clear, the more the teacher and LSE's would have a sense of belonging. The transgender policy is part of the Respect for All framework. A policy is only created if there is a necessity for it. The fact that there is a policy shows that there was need for a change. However, by policy on its own we have not even yet started. The challenge is how are we going to implement it and how are we going to live it. In the end policy is the king hours spend by children at school. Are we there? Not yet, but we are working on it. Formation and formation to all, not only children, but to all personnel involved. This has to be a collective understanding. As Maltese we tend to use our bodies in a negative way, such as to ridicule others. The people need to be educated. It is no longer an excuse of mentality or culture. On part of the NSS it is taking long step to improve and change the way things are done.

- *Are there, in your opinion, any measure of protection currently being offered in the educational and health institution in Malta in view of the violence, to address the discrimination and exploitation these individuals at times have to face?*

We are working on criminal offences together with Appogg, and the fact that we do referrals and we work together as one team it helps us a lot. Even though the NSS has its own services, a lot of training has been provided regarding gender violence and LGBTIQ issues. This is an inter-ministerial issue. This helps as the individuals involved have different backgrounds and come from different expertise. We have worked a lot on this part but, there is a lot left to do.

- *What do you believe are the ethical issues which parents, legal guardian, educational officers, nurses or careers must consider when they are involved with caring or aiding transgender individuals?*

Rather than ethical issues, it is more of a point of fear from the teachers and educators about how will parents of other children react and the fear on how to tackle it. Ethical issues could deal with pronouns and names. A major fear could be that if an educator, teacher, practitioner or SMT gives a direction on how to deal with a child claiming to be a transgender, but in the long run, when he grows older, it turns out that he was not, but was behaving that way as he was heavily influenced by his parents. This carries a lot of responsibilities for the educator or practitioner, and sometimes even them. I have no issue about accepting these people as I will not object or deny a person's feelings, but there need to be clear psychological and psychiatric reports as evidence. Me as an

educator how could I be certain, and then in a few years time this child comes and holds me responsible for his miseducation. I am very conscious about this topic. I don't want the occurrence that that, for various reasons, such a situation would be coming from the parents and it has a negative affect on the child who at the time would be confirming such feelings, but later on it comes out that, in fact, he was not. Another ethical issue could be on how the classmates would react, as if they see a pupil dressed in clothes of a specific gender at school but then later on in the evening they see him dressed apparel of the opposite sex. This is why there need to be discussions, and each party to the discussions must understand the true reality of the situation.

- *What would be some suggestions regarding solutions or practical changes which could be made to the Maltese society that will encourage acceptance and a better understanding of the transgender community?*

One needs to understand the individual who is living in a society with dignity and respect. This is also 2-way. One accepts the other irrelevant if one disagrees with the opinions, arguments or methods of the other. One would not be against the person but against the behaviour of the individual. One must understand the current society, the individual, their thoughts, backgrounds and context. Society needs to be more aware. Diversity in the whole context. Formation and Information. Values must still be given. We must not be afraid to talk and speak about love. Love is about giving to other without expecting back. Love is empathy, and try to truly experience and understand the problems of the individual. We need to understand diversity without expressing shock and surprise but including everyone as equal.

APPENDIX V - INTERVIEW WITH MR MATTHEW VELLA

- *Do you feel that the rights currently in place safeguarding transgender people offered by Maltese Legislation and Policy do cater for their needs and necessities?*

When we look at recent legislative amendment, especially the Equal Rights for all, and also in general, we are looking at a Maltese state who is truthfully accepting diversity as a whole, and we also moved from discussion to legislation, which is the highest form of acceptance a country can do. If in the past our state seemed to be quite conservative, we have moved passed this and we are now looking at the individual from a holistic point of view, in away that we are now understanding that everyone has potential and everyone has good to offer. From a policy perspective, because we can enact a lot of laws, but if we do not put them in practice they would be irrelevant. These policies are really working. Legislation gave the possibility that various policies that are overlooked by various committees together with a National Strategy which monitors these policies. We as Social Standards Care Authority are putting our input towards the 2018-2022 National Strategy, being a sensitive issue. From 2013 the social fabric of society changed, both from legislative and a policy aspect, which are affecting the mentality of the locals, as if these laws and policies which are not accepted by the people it remains a change which affect the minimal. There is a lot left to be done, but the fact that we are seeing a strategy, a monitoring, entities which are working together, this all shows that during these past 5 years we have gone on the right track.

- *Are there, in your opinion, any measure of protection currently being offered in the educational and health institution in Malta in view of the violence, to address the discrimination and exploitation these individuals at times have to face?*

Let's start from the fact that we hear of a lot of tragic stories on the news and media and we realise that they happened or are still happening in Malta. We as an Authority, we are a regulator, and the way by which we are developing policies, the way we are developing our directions and in the way we are analysing services, we are ensuring that they are truly being reflected. Most time one can reflect a law not by referring to it but by understanding the spirit of the law. The argument does not remain on the law, but about the spirit, the intention, and the train of thought behind that law. And we as a Regulatory Authority if we reflect only on the law because that is what we need to do and that is by what we need to abide, but sometime the law does not tackle every case scenario. The legislator is giving a thought and a direction, and then the way how we interpret it is vital, especially in Regulatory Authorities who are fighting stereotypes or biases. We as a Regulatory Authority do not give to service providers just standards, but standards with quality and performance indicators. With these tangible standards, procedures and guidelines we are seeing that the spirit of the law in this sector is understood and protected. Who writes the law must reflect on the changes as in order to change a social fabric takes a long time. However we are still in built with certain old concepts that we are still need to be in the process of thought and analysis. We as an authority are doing several visits to ensure that we do not discuss only with service providers, managers and professionals, but also with service users, because we need to truly understand whether who is giving the service is really doing so with dignity,

respect towards sexuality of these persons as everyone has his own needs. These are not done as a response to a complaint, but as schedule visits to monitor the service. There is the mentality that since certain people are vulnerable they do not think or do not have any sexual tendencies. They need to have space, need to be able show their intention and to no be afraid. The fact that there is legislation is a good start, but it does not stop there, as we must make sure that they are being implemented. All laws without any follow ups would be irrelevant.

- *What do you believe are the ethical issued which parents, legal guardian, educational officers, nurses or careers must consider when they are involved with caring or aiding transgender individuals?*

One of the most important issues is the bullying. When one looks at bullying, together with the traditional bullying, we need to also consider cyber-bullying which is more dangerous than the traditional one, as the traditional one used to start and stop at school, but today it keeps on going online, become close to persecution. Transgender children, as other children, need to be in a safe and understanding environment. It is important that there is awareness. It starts as a law, then as policies, and then as awareness. All of this needs to be passed to the next generations, and see that even books include this awareness. The aspect of awareness needs to be translated as diversity in society. We need to live in a one world. At the end of the day, it is one element - a human being. We need to remember judgements taken from the past towards hate crimes such as in the Nuremberg Trials that we must not forget once again that the human being, whoever he is, is deserve full of dignity. If we teach these values in schools and families, we would

be fighting discrimination, bias and stereotypes in an indirect manner. A lot of financial investments need to be given to education in order to address these issues in an innovative manner as a way to send a message without actually doing so directly. Apart from the fact that trans people need to feel in a safe environment, they want to feel as equal as everyone else, and therefore we must stop looking at them as a minority, but as part of a society. The idea of respecting the minority sends a negative message of pity. Society is composed of a lot of minorities. We all make part of majorities and minorities at the same time. A safe society requires that we learn how to live together without looking at each other's discrepancies but we see each other as equal beings who have equal human rights. The more we respect each other, the more we can live in a constructive society which leads to a better taught process. SMTs, educators, teachers, LSEs need to be truly taught about this subject. While I believe that they are good people at heart and that they do their best to do their job well, the fact that they work in a job that they are not trained for, would create a barrier rather than closing the gap. The regulator must also make aware the service users on what to expect from the service being given to them, as this would create independence and reduce dependence on the service provider. When you develop a professional relationship with an individual, the best response is that one day he thanks you for the service and then leaves. We need to stop the idea about minorities, and start talking about individuals. Transgender people are equal people as everyone. Measures must be there to affect the change either minimal measures or larger ones. The best measure is education. However professionals in education must themselves not have a judgement attitude, they understand the law and its spirit and be up to speed with all policies relevant in this field. A lot of thought also needs to be given to the curriculum. We speak of a curriculum that is full of content

but discussions need to be targeted to the product and the process of the teaching. Is it an experience or are they being spoon-fed? Young children do not care about race, sex, religion, because they look at each other as equals. When policies regarding children are being developed, they need to be consulted with because they tell the true picture in their eyes. The adults filter each other through ideologies, perceptions and misconceptions.

- *What would be some suggestions regarding solutions or practical changes which could be made to the Maltese society that will encourage acceptance and a better understanding of the transgender community?*

When we talk about education and psychological support, it's about time that even services need to be changed. Services must not be directed towards a specific minority, but professionals must be able to give their services irrelevant of who the person is, irrelevant of gender, race or sexual orientation, and in this professional, the services user is really finding someone who understands his position. What type of policy documents are being made public? We know that these people undergo various financial burdens.

We need to fight traditional and mentalities which derive from religion, and this must be done in a strategic manner. Even if we live together, if we still look at each other differently, this would mitigate change. We need to find the change of a negative or pitiful attitude towards these people in order to change the social fabric. In the future even social benefits could be allocated towards these people.

APPENDIX VI - INTERVIEW WITH DR DANIELA AZZOPARDI BONANNO

- *Do you feel that the rights currently in place safeguarding transgender people offered by Maltese Legislation and Policy do cater for their needs and necessities?*

Chapter 540 was a huge, improvement, progress and step forward. However there are certain issues which are well written on paper but still need to improve in practice.

Example is that one of the aims of the law was that one does not need to be psychologically assessed in order to start the transition process. However, one of the first cases where a child wanted to change her gender, her parents had to withdraw the case as they were unsatisfied with the court. They applied and the judge wanted to interview them and the child. This judge started emphasising and making questions and focusing on which the mother was so involved in the process of her child's transition, and the mother felt the judge was raised against her. The judge referred the child to a psychologist and said that she'll continue with the judicial process only when there is a psychological report. The parents were very much against this and they withdrew the case. Subsequently there was another case but the case was in Gozo which ironically passed without any problems, perhaps that child had already transitioned in her social life, but there were no problems, just an application which was very well substantiated with documents, but it went plain sailing, and in fact it was covered by the media as the first child who had gone through the assessment. Another issue which could be improved on is that one of the aims of the law is that a transgender person does not have to seek the approval or the certification of any professional. If one feels that way, that

should be enough for the process to start. However as was reported in the media, the Gender Clinic that has been opened is only accessible to individuals upon referral who can be done by a social worker, psychologist or a General Practitioner. It is a bit wide because if you are comfortable by going to a GP its sufficient. The law states that you can go to notary and the notary cannot even ask for a psychological review but for the gender clinic you have to have a referral. Another thing is that the right dose of testosterone for trans man is still unavailable. The law states that the treatment will be available, but in reality not all treatment is available still, even with the Gender Clinic. The Gender Clinic on paper there is that there are 3 dozes of testosterone available, but only 1 is being given. Surgeries are not available at yet. Not the gender changing surgery, even for trans male to remove the breast. From 2014 and after 5 years, trans man still have to do the upper body surgery privately, and its not the proper surgery done abroad but it is a double mastectomy which leaves huge scars. First of all, this goes against the spirit of the law gives them respect and dignity to these individuals by giving them the best treatment possible. If the treatment is still, after 5 years, not available, in one way or another, we are not saying that it has to be done at the national hospital. If its not feasible, at least subsidise it for the people to go abroad. What is happening is that people who can afford it. The argument brought is that everything is like that, even in case of an aesthetic or cosmetic surgery, but this is not right as this is not done capriciously.

- *Are there, in your opinion, any measure of protection currently being offered in the educational and health institution in Malta in view of the violence, to address the discrimination and exploitation these individuals at times have to face?*

As far as I'm aware in both sectors there is still lack of training being provided. In schools it is up to the school how interested and how much to invest. I know children who have been allowed to transition, and they start using different uniform. There is always the question arising around toilet. In government schools its not such a big deal because of the co-education, but in church and private school it has arisen. While the child is in transition, are we going to let them use the preferred gender bathroom or not? There is still uncertainty at what point they are going to be allowed to use such bathroom. I don't feel that there are trained individuals. The policy of the Ministry of Education is well written, but personally I think that when you really get to the bottom of it, it is very idealistic but there is nothing much in practice. Practically what is being done? Are there seminars? Is training being provided to teachers? In Child Protection, according to the new law, every school has to have at least 1 educator which is specifically trained in child protection to detect abuse and neglect. Private schools work hand in hand with the counsellor, but the counsellor has a different background. And it shouldn't be that one school does a thing while the other school does another, but it must be uniform. Regards to health, back in 2015, a transgender individual who had already transitioned and had done the surgery abroad, around one year after the surgery she had complications. She was admitted to hospital, and when I was speaking to her after being discharged, her exact words were "I felt like a guinea pig." This was because different doctors were coming in with several questions, and instead looking at her

complication, a doctor asked her whether she get her period. Ethical questions and ethical awareness, being sensitive on personal and professional level. Even if she was admitted to Emergency, which is not a specialised service in transgenderism, they still should have a basic knowledge. The moment she told them her complication stems from the surgery, they were taken aback. Hopefully this does not repeat itself. I am not aware that any seminars are being done to doctors. A measure of protection that I would recommend is that when there is a child transitioning, if they need to be administered at school, that are administered by a nurse. If this requires additional costs, this should not be borne by the parents, but on the NHS. Since the law came through there has been awareness and doctors have taken an interest and have studied further. In the Gender Clinic there is a multidisciplinary team. However there is no mention on who is giving this service at the Gender Clinic. This information should be public knowledge because it is a public role and people should be held accountable.

- *What do you believe are the ethical issues which parents, legal guardian, educational officers, nurses or careers must consider when they are involved with caring or aiding transgender individuals?*

Privacy is big issues especially for health professional. Another big ethical issue is that it must be a choice of the individual. I know of children who had started the transition, and either because of bullying but mainly because they weren't accepted by their family members, they stopped the transition. All research shows that the earlier the transition start, the better the results. An ethical issue that this must be a choice of the person and not of the family. Something else could be the way professionals address the

individuals. I've been told that when individuals are referred to the Gender Clinic, they are being asked a lot of questions, and there is a common feeling that this initial interview is being invasive. It is one thing wanting to know about the person to help him the individual in different areas in his life. There shouldn't be a checklist, but it must be an informal 2 way. There are boundaries, especially with children. They are not going simply to tell you the story of their lives, but you have to gain their trust. The fact that the expecting to get all the answers in the first interview, I understand that its for practical reasons and logistics, but you are dealing with individuals. You can't expect them to open up and to expose themselves. In children there is also the question of not being able to express themselves so clearly.

- ***What would be some suggestions regarding solutions or practical changes which could be made to the Maltese society that will encourage acceptance and a better understanding of the transgender community?***

The first thing is that right the Gender Clinic is meeting once a month and the individuals are feeling that this is not enough. One person passed on the referral few weeks ago and the feedback is that he will be contacted in 3 months time. It is too long a time, especially if you are offering a psychological help. It has always been a question of resources, but it depends on how much the government is willing to invest. I don't think that once a month is enough, since its new introduction and there is a demand and backlog of work to be done, and if a person is encounters problems and he needs psychological help there and then, they tell you go private. Is the service just monitoring

or is it actually providing the help needed? Ok, maybe the multidisciplinary team has to meet once a month because it is difficult to get the professional on board more than that, but at least offer a basic service throughout the month. Awareness in schools, to avoid bullying but also for the educators to know how to deal with the cases. The way these people react will either make or break the child, so they have to know beforehand and not freeze. That first reaction is the one which will have the most impact on the child. Proper training must be offered and not only mentioned in the policy. More work needs to be done towards de-pathologisation of the treatment. This is not a medical condition, although there are surgeries and there is medical treatment. Court does not need to have a psychological report. It one thing to refer to a psychologist who is already following the case, but it is another thing to require a psychological assessment to be able to move forwards with the case it goes against the spirit of the law. For notaries it is well written in the law that this is not required, but why isn't this provision expanded to cover all the judicial system? Another thing is awareness among journalists, which use the fact that a person is transgender to create sensationalism.

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