

# Elder Abuse: An Evaluation of Criminal Act XXX1 (2014)

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*Abstract.* The term 'elder abuse' was first documented in 1975 (World Health Organization, 2014). Studies reveal that older persons are less inclined to report abuse to the police and more likely to report abusive behaviour to less formal institutions for example members of the clergy. In this regard, another development deserving recognition is the creation of an office where older persons residing in care homes and long-term care facilities, and even their relatives, could report any form of elder abuse. In light of the fact that at present, older persons suffering from abusive behaviour in their own home may only report such abuse to the executive police, one may argue that such initiative would be more fruitful if it is extended to cater for all cases of elder abuse and not restricted to abuse suffered at care homes and long-term facilities for older persons. For more effective protection, the Maltese Act XXXI of 2014 could have introduced an 'elder abuse' offenders register which would list all offenders convicted of any form of elder abuse. Whilst acting as a form of deterrence, a public register creates a sense of security for the general public. Employers could use this register, especially those whose service involves frequent interaction with older persons, to search the names of potential employees and determine whether prospective employees were, at some point in time, convicted of any abuse against older persons or otherwise.

*Keywords:* elder abuse, elder law, active ageing, ageism, age discrimination.

## Introduction

The importance of elder abuse legislation is becoming an increasingly urgent concern as the older population continues to increase throughout all continents. This chapter examines the legal provisions enacted by the Maltese Act XXXI of 2014 (Ministry for Justice, Culture and Local Government, 2014) whilst contrasting them to the former provisions of the Criminal Code regulating elder abuse. Act XXXI of 2014 was enacted on 12 August 2014 in order to amend the Criminal Code and develop a new sub-title to the Maltese Criminal Code entitled

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‘Of abuse on elderly or dependent persons’. As defined by the newly enacted article 257F of the Criminal Code, for the purposes of this sub-title, an older person is defined as any person who has attained the age of 60 years. As pointed out by various members of the legislature in the parliamentary debates leading to this enactment, prior to 2014 in Malta there was no law dealing specifically with elder abuse. This enactment targets all forms of abuse, irrespective of where such abuse takes place, and by whom it is perpetrated. Since demographic projections anticipate a continuing ageing population, there is no doubt as to the timeliness and necessity of this legal enactment.

The term ‘elder abuse’ was first documented in 1975 (World Health Organization, 2014). Even though research has shown that abuse of older persons existed prior to such date, such crime was considered as being a family affair, and consequently, discussions on this matter were limited. Various statistics compiled by international organizations including the World Health Organization (2008) revealed that around 3 to 5% of the older population is subject to abuse. However, one must bear in mind that such statistics are based on reported cases and thus one may presume that the percentage is much higher when taking into account the unreported cases of elder abuse. The global focus on elder abuse has sought to harmonise the relationship between human rights and active ageing. Despite the fact that there is no universally accepted definition of elder abuse, an oft-cited definition is that “elder abuse is a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person” (World Health Organization, 2006 : 1). Several experts in the field agree that there are five prominent forms of elder abuse including physical abuse, psychological abuse, sexual abuse, financial victimisation and neglect. Moreover, Lachs and Pillemer’s (2015) study showed that elder abuse is more of a recurrent nature rather than of a remote occurrence, with more than 50% of the perpetrators are adult children, and around 25%, are spouses of the victims. Hence, making the divorced, widowed, unmarried and childless older persons less likely to be abused (Summers & Hoffman, 2006). Pillemer and Finkelhor also found that abuse may be intentional or involuntary due to the perpetrator’s incompetence in providing essential care to older persons. Act XXXI of 2014 was precisely introduced in order to safeguard the vulnerability of older persons by incorporating new crimes and imposing harsher punishments for existing crimes. In fact, such enactment attempts to extinguish exploitative behavior, provide older persons with the necessary legal protection, whilst also empowering the judiciary to afford adequate measures of deterrence and protection including the restitution of expenses suffered by victims.

### **Analysis of the Relevant Provisions of Act XXXI of 2014**

Apart from implementing harsher punishments, Act XXXI of 2014, hereinafter referred to as the Act, adopted other procedural safeguards in order to create a more efficient legal framework capable of offering effective remedies to victims of crime. The Act caters for voluntary and involuntary crimes, direct and indirect actions, as well as for crimes of commission and omission in relation to elder abuse. Article 257A of the Criminal Code deals with perpetrators causing or permitting an older person to suffer under circumstances likely to produce bodily harm or death. For an accused to be found guilty under this article, the

prosecution must prove two main elements beyond reasonable doubt - namely, (i) the accused knew or ought to have known that the victim was an elder at the commission of the crime; and (ii), the accused willfully caused or permitted an elder suffered under circumstances which were likely to produce grievous bodily harm or death. With respect to the first element, Article 257A(2) of the Criminal Code stipulates that for the purpose of this article, "the person whose course of conduct is in question ought to know that a person is an elder if a reasonable person in possession of the same information would think that the said person is an elder". Thus, as soon as it is ascertained that a reasonable person ought to have known that the victim was an elder, the first element is proven successfully and subsequently the *onus probandi* shifts from the Prosecution to the Defence. The second element mentioned above, makes reference to "circumstances which were likely to produce grievous bodily harm or death". However, apart from Article 257A introduced by this Act, the crime of causing grievous bodily harm was also regulated by means of Article 216 and 218 of the Criminal Code, but whereas Article 257A is applicable only to older persons and dependent adults, Articles 216 and 218 are generic in nature. Another cardinal difference between these provisions is that whilst for a person accused under Article 216 or 218 of the Criminal Code the prosecution must prove beyond reasonable doubt that the accused's actions have eventually led to grievous bodily harm, in a case wherein a person is accused under article 257A the accused may still be found guilty if grievous bodily harm is not produced as long as it is successfully proven that the older persons suffered under circumstances which were likely to produce grievous bodily harm but that for some reason or another such harm was not produced.

On one hand, if all of the aforementioned elements are successfully proven, the accused shall be liable to the punishment of imprisonment for a term from two to five years. On the other hand, if it is proven that eventually the elder victim of crime suffered grievous bodily harm, the aforesaid punishment shall be increased. In fact, where the victim of crime is an older persons aged under seventy years of age, the punishment shall increase by one to two degrees and thus to a maximum of nine years of imprisonment and where the victim is over seventy years of age, the punishment shall increase to a maximum of twelve years of imprisonment. As an example, in the separate cases of **Il-Pulizija vs Niko Zammit** (decided on the 2 March 2016 by the Court of Magistrates per Magistrate Dr. Micallef Trigona) and **Il-Pulizija vs Christopher Mifsud** (decided on 19 October 2016 by the Court of Magistrates per Magistrate Dr. Micallef Trigona) the Court - after hearing the accused admitting to the charges, including those under article 257A - handed down a judgement of 4 years and 1 month imprisonment and 3 years of imprisonment respectively on the basis of article 257A. Through article 257B of the Criminal Code, the legislator has the power to regulate situations where an elder victim dies due to the grievous injuries suffered. This article may be contrasted with article 220 of the Criminal Code which regulates a similar scenario. However, whereas Article 257B is restricted to elders and dependent adults, article 220 caters for victims of crime of all ages. In terms of article 220, if death occurs within 40 days from the day on which the victim suffered grievous bodily harm, the perpetrator shall be liable to imprisonment for a term between 6 to 20 years, whereas if death ensues after 40 days but within a year, the offender shall be liable to imprisonment for a term from 4 to 12 years. In conjunction to these punishments reference is made to article 222A which provides

that in cases where the victim is an older person, the punishment could be increased by 1 or 2 degrees amounting to a maximum of thirty years of imprisonment. Article 257B, as enacted by this Act XXXIII of 2014, stipulates that in cases of death ensuing from grievous injuries suffered by an older person, the punishment is set between 9 to 20 years of imprisonment if death ensues within 40 days from the infliction of grievous body harm or to 6 to 15 years of imprisonment if death shall ensue within a year from the attack. In addition, article 257B(4) states that where the victim is an older person under 70 years of age the punishment shall increase by 1 or 2 degrees, and in cases where the victim has attained the age of 70 years the prescribed punishment could be increased by 3 degrees amounting to a maximum of life imprisonment. The newly enacted Article 257C of the Criminal Code encapsulates all other offences which are not likely to produce effects described in the preceding articles. In fact, this provision criminalises all actions inflicting unjustifiable pain and mental suffering on elders which are not likely to produce grievous bodily harm, thus incorporating various actions including, but not limited to sexual offences, emotional abuse and neglect.

#### *Sexual abuse*

Sexual abuse is the least identified and least reported form of elder abuse. The National Centre on Elder Abuse (2017) defined sexual abuse as “non consensual sexual contact of any kind with an elderly person”. Whilst this definition is limited to undesirable touching, the NCEA argues that sexual abuse is not limited to physical contact but exposure to sexual material may also be classified as sexual abuse. Data from the National Crime Victimization Survey of 2000 reveals that in over 1% of all rapes and sexual assaults the victims were older persons. Moreover, Rennison (2002) argues that due to serious underreporting, only 30% of sexual abuse cases reported. Article 257C, introduced by the Act, holds that the punishment for this offence shall range from 1 to 3 years of imprisonment without prejudice to any other punishment the offender may be liable to under any provision of the Criminal Code. Over the years, the Maltese Courts had to decide on various cases wherein the accused was charged with sexual abuse of older persons. In the case of **Il-Pulizija vs Carl Galea** (decided on the 6 July 2012 by the Court of Magistrates per Magistrate Dr. E. Grima) the accused worked as a carer at St. Vincent De Paul Long-Term Care Facility, and was charged with committing violent indecent assault on an 87-year-old patient. The court, after considering the mental state of the perpetrator as well as that of the victim, sentenced the accused to 7 months of imprisonment suspended to 3 years. This judgement was subsequently confirmed upon appeal.

#### *Psychological abuse*

Article 257C is also applicable to cases where an older person alleges any unjustifiable mental suffering. Psychological or emotional abuse refers to the treatment of elderly persons in ways that give rise to emotional pain and suffering. The term ‘psychological abuse’ includes humiliation, threats, as well as other acts causing psychological isolation and neglect. Mental suffering could also be brought about by unlawful confinement and

detention. Since psychological abuse may be verbal or non-verbal, lack of sensitivity and understanding towards elders may also amount to psychological abuse.

### *Neglect*

The notion of neglect can be classified into physical and psychological neglect. Abuse by neglect may be punished both under article 257A catering for actions which are likely to produce bodily harm or death, as well as under article 257C dealing with actions which are not likely to produce same effects, depending on the case at hand. On one hand, physical neglect refers to the failure to supply sufficient and adequate food, accommodation, clothing and support. On the other hand, psychological neglect occurs when an elder is isolated for long periods of time and no significant social contact is provided for the entire duration. Similar to all other forms of elder abuse, perpetrators of such crime may be family members, unrelated offenders as well as employees in a nursing home who have constant contact with the older persons. When referring to neglect, reference is to be made to the so called concept of 'granny-dumping' (Hey & Carlson, 1991). This concept originated in the United States in the 1990s when carers started to abandon their elder relatives in hospital emergency rooms so that the state would subsequently assume the elders' responsibility. Even though such term originated in the 1990s, back in 1978, the Indian Code of Criminal Procedure already criminalised physical neglect by means of article 125 which stipulates that all persons with adequate means are criminally responsible to maintain their parents (ibid.). In the case of **II-Pulizija vs Antonio Borg** decided on the 22 of July 2017 by the Court of Magistrates per Magistrate Dr. J. Mifsud), the Magistrate commented on the suffering experienced by older persons in cases of neglect:

F'ċerti każijiet l-anzjanità t'fisser tbatija u uġieġħ, speċjalment meta l-anzjani jibdeu jiffaċċjaw l-iżolament u jekk ma jhossuhomx ukoll imwarrba. Hemm ukoll min jabbanduna lill-qraba tiegħu f'xi waħda mid-djar tal-anzjani f'pajjiżna u rari jersaq 'l hemm għal diversi raġunijiet<sup>1</sup>.

Similar to Article 257C of the Maltese Criminal Code criminalising neglect and isolation, section 215 of the Canadian Criminal Code holds that if a caregiver fails to provide the basic essentials of life to a person under his charge, and the person under his care is unable to withdraw himself from that charge, the carer is guilty of neglect. A judgement referring to the said provision under the Canadian Criminal Code is the case of Mary Nanfo who had pleaded guilty to a charge brought under 215 of the Canadian Criminal Code (The Canadian Legal Information Institute, 2016). After the death of her father, Ms. Nanfo's mother had become fully dependent upon her. It resulted that the accused had failed to provide the basic adequate living conditions. The court pointed out that the accused was often away from home and used to leave her mother with no care whatsoever. In light of the fact that the mother suffered from dementia, incontinence and blindness, due to the lack of care, the mother eventually died and the police found her corpse covered in excrement after 24 hours

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<sup>1</sup> *Editor's translation:* In certain cases, senior citizenship implies suffering and pain, especially when senior citizens face isolation and, moreover, feel neglected. There are those who abandon their relatives in one of the retirement homes in our country and rarely visit for various reasons.

of her death. The Court, after considering the absence of the intentional element, sentenced Nanfo to imprisonment for one year to be served as a conditional sentence in the community.

*Offences relating to crimes against the property and public safety*

Through the recently introduced Article 257D of the Criminal Code, the legislation does not incorporate new crimes, but harshens the punishments corresponding to previously existed crimes when it is successfully proven that such crimes were perpetrated on the property of an elderly person. Article 257D embodies all offences found under Title IX of Part II of Book First of the Maltese Criminal Code incorporating offences such as theft, misappropriation, usury, fraud, crimes dealing with explosive substances, arson and offences related to unlawful entries. Financial or material abuse against elders refers to the financial benefit procured by the offender by misusing the elder's property. Fraud statistics report that around 30% of fraud victims are older persons. Hillier and Barrow (2015) claimed that this deceitful gain could materialise through various means such as through dating and marriage services, fraud through television sales or through investment fraud. Predominantly but not exclusively, material abuse is perpetrated by relatives or caregivers who have more opportunity to swindle the elders in question. Unfortunately, when committed by a relative, only the most radical cases reach the public eye. In the case of **Il-Pulizija vs Joseph Brignoli** (decided on the 3 November 2015 by the Court of Magistrates per Magistrate Dr. J. Mifsud), the Magistrate commented on the brutality of theft on older persons,

Il-Qorti tikkundanna bil-qawwa kollha l-attakki fuq l-anzjani, li ħafna drabi jkunu vulnerabbli li jspiċċaw vittmi ta' nies bla qalb li jagħzlu lil min hu dgħajjed biex jehdulu dak li b'tant saġrifċċji jkun kiseb tul is-snin. Dawn in-nies bla qalb, qabel iwettqu l-attakki tagħhom, żgur li ma jirriflettux biżżejjed u ma jarawx li daww il-persuni li ser jattakaw setgħu kienu l-ġenituri tagħhom stess, li żgur ma jkunux iridu lil xi ħadd jattakahom go darhom u jisriqilhom dak li jkunu ġemmghu tul is-snin biex wara jhalluhom lil uliedhom u lil ulied uliedhom<sup>2</sup>.

As opposed to strangers, relatives hold a position of trust. Financial exploitation may result in circumstances where the offender steals or retains elderly victims' property or money for personal advantage. The misuse of powers of attorney may also constitute financial exploitation and thus falling within the ambit of Act XXXI of 2014. In fact, sub-article (1) of article 257D holds that when such abuse is committed against an elder and the amount of damage exceeds €3000, the perpetrator shall be liable to imprisonment from 2 to 9 years, whereas when the amount of damage lies between €250 and €3000 the punishment shall be

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<sup>2</sup> *Editor's translation:* The Court very strongly condemns attacks on senior citizens, who more often than not are vulnerable to becoming victims of unscrupulous individuals who choose the weak to take what they have earned through so much sacrifice over the years. For sure, before launching their attacks, these unscrupulous individuals do not think things over enough and do not take into consideration that those people they are going to attack could as well as have been their own parents, whom they certainly would not want someone to attack in their own home and steal what they had saved over the years so as to pass it onto their children and grandchildren.

imprisonment from 9 months to 3 years. When this amount does not exceed €250, imprisonment shall not exceed 6 months. Article 257D was put into practice in the case of **II-Pulizija vs Josef Seychell** (Decided on 4 July 2017 as per Magistrate Dr. D. Frendo Dimech), where the Court commented on Act XXXI of 2014 and held that:

Il-Qorti qiset li l-vittmi ta' dan it-tip ta' reati huma persuni li jixriqilhom aktar protezzjoni minn membri oħra tas-soċjetà. Kien għalhekk li l-leġislatur bl-Att XXXI tal-2014 introduċa qafas leġislattiv li l-għan tiegħu kien li kondotta simili, li jisthoqqilha biss stmerrija u għajb, tiġi sanzjonata permezz ta' pieni horox. Il-vulnerabbiltà sabet it-tarka tal-liġi sabiex daww il-membri tas-soċjetà li huma l-aktar vulnerabbli, partikolarment l-anzjani, li haqqhom u jixriqilhom biss rispettu u għajnuna u mhux sfruttament, jgħix mingħajr tħassib jew biża' dwar l-inkoluminità fiżika tal-persuna tagħhom jew tal-proprjetà li jkunulha hajjithom hadmu, stinkaw għaliha u li għandhom kull dritt li jgawduha<sup>3</sup>.

Eventually, the Court found the accused guilty of participating in 3 snatch and grabs on elderly persons and sentenced him to 40 months of imprisonment. Moreover, by means of Article 257D(2), after establishing the accused's guilt, the Court may order the perpetrator to return to the victim any stolen property or property obtained fraudulently or order the accused to compensate the victim for his loss. Since such order shall amount to an executive title as defined by the Code of Organisation and Civil Procedure (COCP) the victim may subsequently enforce his title by the issuance of any of the executive warrants stipulated under article 273 of the COCP. This procedure is a completely innovative procedure allowing a victim or *parte civile* in criminal proceedings to avail himself of the remedies under the COCP for the safeguarding of his credit or compensation. In all other cases, the court of criminal judicature would simply accord compensation or reimbursement, and this independently of any civil procedures.

#### *Unlawful arrest, detention or confinement of an older person*

The main aim of Article 257E is to regulate the behaviour of caregivers during the late stages of an elder's life. As propounded in the parliamentary debates leading to this enactment, it is not uncommon for relatives that, as soon as they are favoured by the elder's testamentary disposition, they preclude the elder from having any contact with other relatives in order to safeguard their personal interests and avoid any amendments to the previously made will. According to article 257E, this is to be interpreted as unlawful confinement of the elder and punishable by imprisonment. Article 257E promotes the concept of the least restrictive alternative. This notion attempts to strike a balance between the ethical duty of the caregivers to take care of such elders and the right of freedom of the elderly. According to

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<sup>3</sup> *Editor's translation:* The Court considered victims of this type of crime as being individuals who deserve more protection than other members of society. This was the reason why the legislator through Act XXXI 2014 introduced a legal framework with the view that similar conduct, which merits only disgust and shame, is punishable by harsh sentences. Vulnerability is shielded by law so that, those members of society who are most vulnerable, in particular senior citizens, who deserve and merit only respect and assistance and not exploitation, may live in peace and without fear for their physical safety or that of their property for which they have worked and toiled throughout their lives and have every right to enjoy.

this theory, it is the duty of the caregivers to create a compromise by proposing the least intrusive solution. In terms of Article 257E, when an elder is arrested, detained, forcibly confined without legitimate orders or when the elder's freedom of movement is unjustifiably restricted, the responsible carer shall be liable to imprisonment for a term of 18 months to 4 years. Such punishment shall be increased by 2 or 3 degrees, and thus up to 9 years of imprisonment, when such restraint is committed through the use of violence, deception, improper pressure or threats.

### **Shortcomings and recommendations**

#### *Punishment as a deterrent*

As remarked in the parliamentary debates leading to Act XXXI of 2014, the main aim of this enactment was to promote tougher prison sentences which may act as a deterrent to other would-be offenders. However, after analysing various provisions of the Criminal Code, one may conclude that even such penalties may be circumvented. For instance, Article 21 of the Criminal Code empowers the court to award any lesser punishment which it deems adequate as long as there are special and exceptional reasons. By means of this provision, the legislator granted to the judiciary the capacity to impose a punishment less than the minimum imposed by law. In various instances, the Court propounded that Article 21 is only excluded when the legislator explicitly provides for such exclusion. This exclusion is not novel since there are several enactments which exclude the application of article 21, for example Article 60 of the Arms Act<sup>4</sup> or Article 99A(2) of the Criminal Code. In light of the fact that the legislator failed to provide for such an exclusion, Article 21 is still applicable and if special and extraordinary reasons are proven successfully, the judge may still decide to impose a punishment less than the minimum imposed by this enactment. Another manner by which the perpetrator could circumvent the punishment imposed by the discussed enactment is through the application of article 28A of the Criminal Code dealing with suspended sentences or/and through the application of punishments contemplated in terms of the Probation Act<sup>5</sup>. In fact, in the case of **Il-Pulizija vs Clinton Bugeja** (decided on 24 February 2016 by the Court of Magistrates per Magistrate Dr. A. G. Vella) the accused, after admitting to a breach of article 257C, was sentenced to a 3-year suspended sentence. As explained in the case of **Il-Pulizija vs Noel Grech u Omissis** (decided on the 28 October, 2004 by the Court of Criminal Appeal per Mr Justice Galea Debono) a suspended sentence could be granted whenever the guilty party is not sentenced to more than 2 years of imprisonment. Other enactments, including the Dangerous Drugs Ordinance<sup>6</sup>, expressly prohibit the application of article 21 of the Criminal Code, article 28A of the Criminal Code dealing with the imposition of suspended sentences and the application of the Probation Act. It is the author's opinion that the same could have been proposed for the purposes of the offences enacted in virtue of Act XXXI of 2014.

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<sup>4</sup> Chapter 480 of the Laws of Malta.

<sup>5</sup> Chapter 446 of the Laws of Malta.

<sup>6</sup> Chapter 101 of the Laws of Malta.

### *Underreporting and lack of enforcement units*

Elder abuse is highly underreported either due to coercion or else due to other causes attributed to the victim, and that many social and health care professionals do not possess the necessary skills to recognise signs of elder abuse (Lachs & Pillemer, 2015). These causes may be shame, any physical or mental infirmity or timidity. Other barriers to such revelation are conventional perceptions that family privacy is of utmost importance and such privacy should not be tainted. Research indicates that religious ideologies play a pivotal role when determining whether one should report abuse or otherwise (Beaulaurier et al., 2008). The World Health Organisation (2014) suggests that only 2% of all reported cases are reported, and urges all social and health care institutions to set up adequate regulations, guidelines and pathways to be adhered to in cases of suspected elder abuse. As pointed out during the parliamentary debates leading to such enactment, foreign legal systems, including but not restricted to Californian law, enforces a system of mandatory reporting<sup>7</sup>. For instance, section 15630 of the California Welfare and Institutions Code defines a mandated reporter as any person who has the responsibility for the care of an elder. If a mandated reporter fails to disclose abuse, he is punished by up to 6 months of imprisonment or a fine up to US\$1,000. If the unreported abuse results in death or grievous injury, the mandated reporter shall be punished by up to 1 year of imprisonment and a fine of US\$5,000. Moreover, in cases where an employee or an officer of a financial institution fails to report financial abuse, such officer is liable up to US\$1,000 and if such failure is intentional the fine may be that of US\$5,000. One may therefore argue that ACT XXXI of 2014 failed to take the bull by the horns by lacking a system of mandatory reporting. In Malta, mandated reporters may include medical practitioners working in medical institutions as well as other medical practitioners offering home-services. Choice of medical staff should be made meticulously to ensure that the staff has the required commitment and diligence to deal with signs of elder abuse. According to Harbison (2017), care assistants and home care-workers are to be given extensive training since they have most contact with potential victims. A system of mandatory reporting will undoubtedly diminish the problem of underreporting. It is in fact positive noteworthy that those American states which have introduced such system of reporting are already witnessing much positive results and developments (ibid.).

### **Concluding Remarks**

Apart from Act XXXI of 2014, ACT X of 2016 (Ministry for Justice, Culture and Local Government, 2016) which provides for the position of a Commissioner for Older Persons deserves recognition. The main functions of the Commissioner for Older Persons include the scrutiny of alleged violations of human rights in cases of elder abuse as well as the evaluation of contemporary legislation and how such legislation affects the elderly. By means of this enactment, the Commissioner may also issue 'an older person impact statement' that delineates how legislative enactments are affecting elders' wellbeing. Nevertheless, the commissioner's powers in relation to his investigative duties are very

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<sup>7</sup> These included the Parliamentary Debates of the Twelfth Legislature (2013-) Sitting No. 173 of 08/07/2014, Parliamentary Debates of the Twelfth Legislature (2013-) Sitting No. 173 of 22.07.2014, and the Parliamentary Debates of the Twelfth Legislature (2013-) Sitting no. 34 of the Consideration of Bills Committee on 22.07.2014.

limited. According to Article 14 of the Commissioner for Older Persons Act, the commissioner is not permitted to investigate specific and personal reports arising from a private relationship between an older persons and his/her carer. The Commissioner is also restrained from investigating any issue falling within the jurisdiction of any court or tribunal. Hence even though the Commissioner is depicted as 'a focal point for the elderly', in cases of individual abuse the Commissioner has no effective and operative power.

Studies reveal that older persons are less inclined to report abuse to the police and more likely to report abusive behaviour to less formal institutions for example members of the clergy (Gibson, 2013). In this regard, another development deserving recognition is the creation of an office where older persons residing in care homes and long-term care facilities, and even their relatives, could report any form of elder abuse. In light of the fact that at present, older persons suffering from abusive behaviour in their own home may only report such abuse to the executive police, one may argue that such initiative would be more fruitful if it is extended to cater for all cases of elder abuse and not restricted to abuse suffered at care homes and long-term facilities for older persons. For more effective protection, Act XXXI of 2014 could have introduced an 'elder abuse' offenders register which would list all offenders convicted of any form of elder abuse. Whilst acting as a form of deterrence, a public register creates a sense of security for the general public (Letourneau et al., 2010). Employers could use this register, especially those whose service involves frequent interaction with older persons, to search the names of potential employees and determine whether prospective employees were, at some point in time, convicted of any abuse against older persons or otherwise.

Overall one could also argue that even though Act XXXI of 2014 is a step in the right direction; it leaves much to be desired. Elder abuse is a spreading phenomenon that can be controlled and mitigated. However, this requires a harmonised approach between different legal and social/health care sectors in the Maltese society.

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