

A Guide to Survivors of Domestic Violence

A Domestic Violence Handbook#
Written & Published by

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Foundation

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Women's Rights Foundation is committed to provide information, education and empower women about their legal rights. It does so by:-

- Providing women with free, confidential legal advice by qualified lawyers
- Enabling women to understand and benefit from their legal rights through information sessions and training
- Aims to ensure that women's rights are protected through policy and law reform, raise awareness and offer training to individuals and organisations.

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Disclaimer: the guide provides a basic overview of rights, laws, process and procedures following a report of domestic violence in Malta. This guide is for information purposes only and is not legal advice. The information contained in this guide is correct to June 2018. Women's Rights Foundation cannot accept responsibility for any reliance placed on the legal information presented in this guide.

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Introduction

The handbook provides information and support to those that have experienced domestic violence. It explains the constitutive elements of domestic violence and is a self-help guide that explains your legal rights and how to get help from the legal system. This guide also explains the different stages of the legal process, from the point of deciding to report the incident to the police, through court process until final judgment and civil proceedings.

The *Domestic Violence Handbook* is divided into the following sections:

1. Understanding what are the constitutive elements of domestic violence as well as any action that may be taken if you think that you are a victim of violence.
2. The different role between the Criminal Court and the Family Court. This section also explores the various ways in which protection measures can be taken.
3. Compensation remedies to victims of domestic violence.

Domestic Violence disproportionately affects women more than men, irrespective of their age, gender, race, ethnicity and disability. According to FRA report (2014) 1 in 4 women is a victim of violence and girls up to the age of 15 have reported that they had experienced some form of sexual harassment.

Consequently, in this handbook, we refer to the perpetrator of domestic violence as 'he'; and the person who has experience domestic violence as 'she'. However, the information in this handbook equally relates to male survivors of domestic violence. Every victim of domestic violence has the right to legal relief.

Depending at what stage of the proceedings we use the term 'accused' to describe the perpetrator and the 'complainant', 'victim' or 'survivor' to describe the survivor of domestic violence.

Domestic violence can be perpetrated by someone you are or were in a relationship with. It can be in the form of physical or sexual violence or emotional abuse. It can be perpetrated by a member of your family, be it on children and adults alike.

No one has the right to frighten, threaten, injure, insult or control anyone. It is against the law. The law and the legal system is there to protect you. You have a right to be provided with information about services available, updates on your report in a language that you understand as well as updates of any criminal action taken.

The legal system can be confusing and intimidating and may even discourage you from seeking the help that you need. Going to court may take time, work and patience.

This handbook is intended to help you in providing you with information about the legal system and a general explanation about your legal rights.

UNDERSTANDING DOMESTIC VIOLENCE

1. What is Domestic Violence?

Domestic Violence can take many forms, including physical, psychological, sexual and financial abuse. Moreover, it can be perpetrated through both an action and an omission. The abuse can consist of beatings, burnings, sexual abuse, verbal insults, threats, unfounded accusations of infidelity, social isolation, stalking and financial control, just to mention a few examples. Such abuse can be constant, or it may occur in isolated instances.

The Gender Based Violence and Domestic Violence Act defines domestic violence as:

'all acts or omissions including verbal, physical, sexual, psychological or economic violence causing physical and, or moral harm or suffering, including threats of such acts or omissions, coercion, or arbitrary deprivation of liberty, that occur within the family or domestic unit, whether or not the perpetrator shares or has shared the same residence with the victim, and shall include children who are witnesses of violence within the family or domestic unit'

The following is a check list that may help you decide if you or someone you know is being abused.

Does your partner:

- Constantly criticise you and your abilities?
- Behave in an over-protective manner or become extremely jealous?
- Threaten to hurt you, your children, pets, family members, friends or himself?
- Prevent you from seeing your family or friends or finding a job?
- Gets suddenly angry or loses his temper?
- Deny you access to bank accounts, credit cards, or controls all finances and force you to account for what you spend?

- Use intimidation or manipulation to control you or your children?
- Hit, punch, slap, kick, shove, choke or bite you?
- Prevent you from going where you want, when you want and with whomever you want?
- Make you have sex when you don't want or do things sexually that you don't want to do?
- Humiliate or embarrass you in front of other people?

If the answers are 'yes' to any of these question, you may be a victim of domestic violence. You are not to blame and you are not alone. You deserve help and help is available.

2. **Who can be a victim of Domestic Violence?**

Both males and females can be victims of domestic violence, although this crime affects women disproportionately. The term 'victim' is defined widely in the law by means of the term 'family or domestic unit' and includes any person who falls within the following category:

- current or former spouses, civil union partners or cohabitants;
- persons living in the same household as the offender or who had lived with the offender within a period of three years preceding the offence;
- persons whose marriage has been dissolved or declared null;
- an ascendant or descendant;
- other adults sharing the same household;
- persons in an informal relationship, who are or were dating;
- persons who are, or have been, formally or informally engaged with a view to get married or enter into a civil union;
- persons who are related to each other either by blood or through marriage up to the third degree inclusively (eg. Grandparents, uncles, aunts, cousins etc);
- persons having or having had a child in common;

3. **What steps can I take if I am a victim of Domestic Violence?**

As a general rule, think about your **safety first**.

Where the situation is an emergency, that is, the situation poses an immediate threat to your life and property; you should contact the police for immediate assistance by dialling 112. This number can be called both from landlines and mobile phones from anywhere within the EU. Moreover, the mobile phone need not have a SIM card for you to be able to call 112. Once you are through to the person on the other line, you should immediately state the address where assistance is needed; your telephone number so that the police can call you back, if required; and the domestic violence incident.

Where the situation is not an emergency, a number of options are available:

- a. You can report the case to the Police by phoning or visiting, your local police station. You may also send a written report drafted by yourself or with the assistance of a lawyer. This must include your personal data (name, address, and identity card number).
- b. You can call the 24-hour Child and Adult Abuse Support Line 179, free of charge.
- c. You can seek the advice of a legal professional or organisations that provide legal support.
- d. You can seek help from Social Services by phoning Agenzija Appogg on 2295 9000.

This link provides you with all services available to survivors of domestic violence
https://meae.gov.mt/en/ZeroViolence/Documents/ZV_CollectionOfServices.pdf

It would be in your interest to go to the nearest hospital or health centre following domestic violence in order to record your injuries. Take photos of your injuries and keep a record of messages, emails or other communication received from your aggressor.

Make copies of documents, such as certificates, contracts, passport and other documents that you think are important.

4. **Am I being stalked?**

Stalking is a very serious crime. Stalking happens when your aggressor, or anyone, intentionally and repeatedly does things that cause you fear for your safety, the safety of a family member or someone you know or your property.

Examples of stalking may include:

- when your aggressor follows your footsteps either physically or engages someone to do so by showing up at places that you frequent (eg. Home, school, work etc.)
- repeatedly harasses you;
- monitors your phone or emails
- causes you fear
- repeatedly attempts to communicate with you by any means (eg. Unwanted calls, letters, emails, sms, flowers etc.)
- publishes information about you without your consent or publishes communication that was exchanged between you.

You should keep a record of all acts of stalking. Stalking can be extremely dangerous so you should consult a professional about specific steps that you can take to protect yourself.

5. **If I leave the matrimonial home will I lose any rights?**

No, your rights over the matrimonial home, your right to maintenance or any other right arising from your marriage are not prejudiced by the fact that you leave the matrimonial home due to domestic violence. Nevertheless, it is advisable that you inform the police of the reason as to why you have left the matrimonial home upon finding another place wherein to reside.

6. Should I report my aggressor to the police?

You deserve a life free from aggression and violence. The decision to report is a personal one, however if the police become aware that domestic violence took place, they are bound by law to investigate and take action since the crime of domestic violence is '*ex officio*'.

You should not feel guilty for reporting your aggressor. It is he who is in the wrong and not you.

7. What can I expect after I file a report with the police?

Once you are at the police station, the police will write a report of the events as dictated by you. It is recommended that you ask the police officer to read out the report after this has been compiled, to ensure that important details have not been left out. Moreover, you have a right to receive a copy of this report. It is in your interest to ask for such a copy and show it to your lawyer, if you opt to engage one.

Once the report has been filed the police will attempt to communicate with the perpetrator.

In certain cases, when the police consider it necessary to prevent the perpetrator causing you or any other person physical harm, they may choose to arrest him/her. In such cases the accused must be brought to court within 48 hours.

You are entitled to information, in a language that you understand, about the stage of the investigation and the stage of the criminal proceedings.

You also have a right to be offered information whether the police have arrested your aggressor or released him as the case may be, the offences he is being charged with and the court decision.

The police are also duty bound to inform you about measures taken to ensure your protection if the aggressor has escaped police custody or is released.

8. **Can I withdraw the report made to the police?**

No, once the police get to know that an offence of domestic violence might have been committed, they are obliged to proceed *ex officio*. This means that the executive police have the authority to investigate the incident without requiring the permission or authorisation of the victim. Thus, once you have brought such incident to the knowledge of the executive police, you cannot be pressured to withdraw such report or asked to waive your complaint either by signing a waiver or providing a verbal waiver.

9. **Following my report, can the police provide me with protective measures?**

Once your report has been filed, the police together with a professional, are obliged to immediately conduct an assessment of the risk that you are in.

If the assessment results that you are at serious risk, the police have to immediately request the duty Magistrate to issue a temporary protection order. This temporary protection will be issued once the Magistrate is satisfied that there are sufficient grounds.

A temporary protection order is valid until your aggressor is taken to court and may be extended if the case so requires. This request may be done by the police or yourself.

CRIMINAL COURT AND CIVIL COURT

There are two types of courts that are available to provide protection – criminal and civil. The Family court is a civil court that is there to protect you and your family.

1. **Can I be issued with a protection order?**

If you are married, in a civil union, cohabiting or have a child in common with your aggressor you can apply to the Family Court for a protection order. This is done by means of a court application to the court through your lawyer. The case would be appointed for a hearing within 4 working days.

You can also request the criminal court for a protection order by means of a court application, once your aggressor has been charged or accused (ie. either arrested and brought within 48 hours to the court or charges have been issued but no arrest has been made).

Once an application is made, the court will appoint it for hearing within 7 days.

In both the Family Court or in the Criminal Court, the judge or magistrate as the case may be will take into account:-

- Your protection from injury or molestation;
- The welfare of your children or any dependants that may be affected;
- Your accommodation as well as that of your children and other dependants;
- Hardship that will be caused to the accused
- The accused willingness to submit to treatment that the court may deem appropriate.

The court will always issue a protection order if you and your dependants, as the case may be, are at serious risk.

2. **What does the protection order contain and how long is it valid for?**

A protection order may restrict or impede your aggressor from approaching or communicating with you, following your movements, coming to your home, place of work, school or other places that you may frequent even if your aggressor claims to have a right to those premises.

The court may order that the protection order remains in force for up to 5 years. However this period may be extended if the case so requires. It is advised that you consult your social worker, legal representative and/or an organisation providing such services if you continue to remain molested.

3. **What happens if my aggressor breaches the protection order?**

Once a protection order has been issued, this would be communicated to the Commissioner of Police. The Commissioner is then duty bound to the monitoring of the conditions imposed by the court in the protection order.

Nevertheless it is still advisable that you carry the protection order with you at all times, in case your aggressor attempts to communicate with you in any way.

The law is silent on what procedures are to be taken by the police once a protection order has been breached, however the police are duty bound to take all the measures to ensure your safety.

GOING TO THE CRIMINAL COURT

Under Criminal law, your aggressor may be punished by the criminal court for injuring you, threatening, harassing, stalking, causing you fear by threatening to harm you or others around you or your property, sexual assault and other relevant offences. The court may order that he be put in jail, fined or both. Apart from issuing a protection order, the court may also issue a treatment order, if it deems that this would be beneficial for your own safety and to avoid a repetition of violence.

As a person filing the complaint, your main role in criminal cases is to come to court to testify and tell the court how the abuser harmed you. Your job is to tell the truth about what happened.

It is important that you appear in court on the scheduled date, because if not the case may be dismissed due to lack of evidence. If you cannot attend court for a reasonable cause, it is best to inform your legal representative or the court directly.

You can help to build a strong case by giving all evidence of the assault or harm that you suffered by your aggressor, exhibit photos of the injuries, medical certificates and produce other witnesses that may be relevant.

The court proceedings may be lengthy, so expect that you may have to appear more than once or wait for a while as the case may be, however the law protects you from being re-victimised.

1. **What are my rights during court proceedings?**

Domestic violence is nowadays a crime prosecuted ex officio and therefore, no longer requires the complaint of the injured party. Although you are not a party to the proceedings, the law grants you certain rights as a *parte civile*:

- The right to legal aid. In the case you are a minor, you are entitled to a child advocate.

- The right to engage an advocate or legal procurator to assist you, produce evidence and examine or cross-examine witnesses on your behalf

- The right to receive information in a simple language that you are able to understand.

- The right to receive information about your rights including how to access support, the procedures for making complaints and how to obtain protection

- The right to be present in the proceedings

- The right to argue in court if and whether your aggressor should be given bail.

-The rights to be provided with the support you require, including psychological support.

- The right to an interpreter and be provided with translations of information if you do not understand the language in which criminal proceedings are conducted;

Although you have no right to appeal from a Court of Magistrates judgment, you have the right as an injured party, to demand that the record of the proceedings together with the copy of the judgment be transmitted to the AG and request him to file an appeal

- When an appeal has been filed, you have a right to be notified about the date of first hearing or be admitted in the proceedings. At this stage, you can also engage a lawyer to assist you, to make submissions and to examine or cross-examine witnesses on your behalf. You can also ask the court

to allow you to make submissions on the appropriate sentence to be passed on the accused.

- If your case will be heard before the criminal court, you have the right to make submissions on the appropriate sentence to be passed to the accused.

2. **What can I do to help prove my case in court?**

It is important to obtain and preserve any proof of domestic violence, in order to try to avoid the old scenario of 'he said, she said'. The following are various types of evidence which would help prove your case in court:

- Threatening text messages;
- Threatening or Harassing Facebook posts or messages;
- Any writings or messages from the abuser;
- Threatening or Harassing call recordings from the abuser;
- Photos of bruises or property damage;
- Medical Certificates issued following incidents;
- Psychological or Psychiatric reports where the abuse is non-physical;
- Police reports; and
- Witness Statements if a witness was present when domestic violence occurred.

3. **Do I have to testify against him?**

Your testimony is generally essential in domestic violence cases, since normally it is only you that really knows what happened.

If you are summoned to testify, you may ask to testify via video conference (i.e not testify in the same room as your aggressor), however this decision is in the hands of the court. You may further ask the court for the case to be heard behind closed doors and not permit publication of the names.

4. **Will my children have to testify?**

There may be situations where the children would be asked to testify, for example in instances where they were present during the assault or are direct victims themselves.

However, according to the law, the needs of child witnesses must be taken into account and the court will ensure that their best interests are safeguarded.

If the child, even though he/she may be adult, does not want to testify, they cannot be forced to do so since the law gives them the option not testify against the aggressor who is their relative.

GOING TO THE FAMILY COURT

If you are married, in a civil union, cohabiting or have a child in common with your aggressor, you may opt to take action in the Family court to legally end the relationship with your aggressor and/or regulate matters pertaining to the child/children that you have with your aggressor.

1. **Do I have to go through mediation proceedings if I am a survivor of domestic violence?**

Any party wishing to initiate a suit in the family court would have to file for mediation. Mediation proceedings can be very intimidating even if you are being assisted and legally represented. However, this may also be an option that you would opt to go through.

If the mediator becomes aware or has reason to suspect that there is domestic violence, they are duty bound to inform the court immediately. You may also present evidence yourself when applying for mediation proceedings. The judge may then order that mediation proceedings are closed and authorise you to proceed to a litigious court case.

2. **Can I ask the court to order my aggressor to vacate the home that we share together?**

Yes. This can be requested at any stage of the proceedings. The court will evaluate the case presented to it, and upon evidence can order that your aggressor is removed from the home even though the property may be his.

3. **Can the court award me with full care and custody of my children?**

The court will always consider what is in the best interest of your children, even more so, when there is evidence of domestic violence.

The court may for grave reasons, exclude custody from the abusive parent. The law always deems domestic violence to be a grave reason.

4. Can I ask for maintenance both for myself and the children?

Yes. You can file a request at any stage of the proceedings, even if you are still at mediation stage.

5. Will the abusive parent of my children have access to them?

Where there is evidence of domestic violence, the court may limit or deny access to the children. This is even more so, in cases where access is putting you and the children at risk.

If access is being used to further control you or your children, such as by not exercising access, the court may withdraw the right of access.

The court may also order that access to the children is held under supervision of a competent authority such as Agenzija Appogg or a court appointed supervisor.

COMPENSATION FOR PEOPLE WHO HAVE BEEN SUBJECTED TO DOMESTIC VIOLENCE

Compensation may be awarded by the criminal court or the civil court. When passing judgment, the Criminal court may order your aggressor to pay compensation for any physical, moral damage and/or psychological harm.

You may also opt to sue your aggressor within the civil court for moral damages and/or psychological harm. This is done by filing an application to the Civil court (not Family Court).

Where domestic violence consists of cases of rape, grievous bodily harm, trafficking of persons or stalking, a person can apply for the criminal compensation scheme within one year from the act of the offence. This applies to citizens of Malta or of the EU and habitual residents of Malta. If the application is accepted, the state can pay compensation up to €23,300, which the state will claim back from any compensation you receive from the perpetrator.



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