"Freedom of Speech doesn't justify online bullying.
Words have power, be careful how you use them."

Germany Kent

Foreword

The need for action against hate speech is ever growing. Despicable acts carried online and through the written word have reach new levels and are causing real impacts in people's lives. This goes beyond the world of harassment and bullying but veritable death threats and threats of violence are cropping up which deal immeasurable damage to civil society, our communities and most importantly the mental health of those under the focus on the internet *'trolls'*.

This report is part of the project #STOPHATE with the aim of starting to tackling this issue to an extent that allows people more freedom to discuss online. From this report it became clear that the work on this topic has a long way to go, especially when it comes to a legal perspective, it is often seen lacking in the responsiveness or readiness to take action. The reasons for this might come from the lack of a clear definition, and the wide scope of this phenomenon.

It is clear that there is a problem all across the European Union and there are a number of challenges that need to be tackled together with other nations. However, in Malta there is a difficulty with Xenophobic, Homophobic and Political hate that is growing ever more. With an online hate mob that perpetuates hate at an unprecedented speed.

This document tries to set the tone for the discussion and the debate that is needed to take into account by understanding the underlying literature and building on what has been done till now. Then it provides certain recommendations on how to best move forward in this subject.

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Chapter 1
Introduction

1.1 Defining Hate Speech

Even if the notion of hate speech is incorporated and brought up in many regulations across diverse jurisdictions, as at this day there is no universal definition admitted for this notion. Hate speech can be described as

> "the expression of hatred towards an individual or group of individuals on the basis of protected characteristics, where the term '*protected characteristics*' denotes membership to some specific social group that could, on its own, trigger discrimination".

As in most legislative instances, the content of these protected characteristics remains under the interpretation of each EU member state and their respective judicial systems.

However, according to Fabienne H. Baider (2017), to define hate speech, one must base himself on the approach of the International Covenant on Civil *and Political Rights*, which is not based on the notion of protected characteristics but takes it in a broader sense, as an "advocacy of discriminatory hatred which constitutes incitement to hostility, discrimination or violence". Even if the content of the words hatred, violence, discrimination or violence remains subject to interpretation, this definition manages to express more concretely the way that the hatred may take.

The word *"incitement"* in itself defines that it is the intention to commit that kind of action against the member of protected groups that is the precondition for considering an act as constituting hate speech and therefore a hate crime, the former presumed linked to the latter.

As in most sovereign states' judicial systems, although written law may specify what is not permissible and the penalties pertaining to such crimes and contraventions, the actual pigeon-holing and definition of what constitutes the incitement and the motive behind such a crime is very much left to the discretion of those sovereign states' courts.

In Malta, the Constitution expressly lists race, place of origin, political opinions, colour, creed, sex, sexual orientation and gender identity as the fundamental rights that are to be protected[1], with the latter two of these rights being only added to this list in recent years. This lays the groundwork for addressing crimes or violations against these same rights, which is broadly covered by the laws of Malta. Hate speech falls foul of the very concept of protecting these rights, and may therefore be deemed a crime when satisfying certain prerequisites.

The Maltese Criminal Code in fact concerns itself with crimes aggravated by matters related to race, xenophobia and/or homophobia in two instances, namely in sections 83B and 222A respectively.

The former stipulates clearly that crimes which incorporate what the courts shall establish as an

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[1] Constitution of Malta, Section 32

offence aggravated or motivated by hatred towards groups, shall increase in the nature of their degree and as a result, the penalty shall be greater. Section 83B in fact reads:

> "The punishment established for any offence shall be increased by one to two degrees when the offence is aggravated or motivated, wholly or in part by hatred against a person or a group, on the grounds of gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion…"[2]

Section 222A of the Criminal Code is what seeks to define how the "hatred" is denoted in terms of law, and provides a clearer path of understanding in setting the right parameters. This section states that an offence shall be deemed to be rooted in and motivated by hatred - therefore taking into consideration hate speech - when the alleged offender

> "demonstrates towards the victim of the offence hostility, aversion or contempt based on the victim's membership (or presumed membership) of a group, denoting a particular gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion[3]".

This holistic approach seems to define very concisely how and in what manner hate speech is categorized, and should serve as a steadfast basis for tackling this issue.

However, the problematic scenario which has resulted in this same issue growing sporadically over the past months and years is the fact that certain groups of people, including politicians, lobbyists, hate groups and even on occasion news portals themselves, try to redefine hate speech into "freedom of speech" or liberty to express opinions which may prove to populist in nature.

The notion of hate speech has become disseminated on a daily basis through incitement of violence, derogatory terms and language, harassment and more directly - threats. It has become an unfortunate reality with politicians and groups resorting to such tactics to dismiss, ridicule or persecute people based on their religion, ethnicity, orientation or otherwise - often based on populist jargon which can become rampant very easily in today's day and age.

The internet has thrown up a harsh reality of non-conformity with rules and regulations, allowing people to hide behind aliases, anonymity and cause the same effect through their actions - only above the law. In the words of Burgess Forensics,

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2 Chapter 9 Laws of Malta, Criminal Code, Section 83B, http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574

3 Chapter 9 Laws of Malta, Criminal Code, Section 222A (1) (a)

> "When anonymous there is little chance of social norms checking such behaviour through public ostracism or social shame – both mechanisms that commonly keep otherwise objectionable behaviour in check[4]."

1.2 Online Hate Speech in the European Union

The central objective of this report is to show that legislation against hate speech in the EU may be an effective first step towards combating the phenomenon, but it might not be adequate on its own to contain the present situation. This is because hate speech has multiple ways of being expressed and delivered. In this report, authors have identified several strategies of Othering[5] that can be used to express such an unfavourable position towards members of a minority:

> "Categorisation and stereotyping, hate concealed as patriotism, metaphorical language, sarcasm, allusions and constructed dialogue can all be 'subtle' ways in which discrimination emerges in public discourse."

This report wants to show that linguists have an important role to play in this picture. Since it is intention that lies at the very core of most legal definitions of hate speech, contextualising and qualitatively analysing such speech seems central to not only tackling this complex phenomenon but also to safeguarding freedom of expression on the many platforms that the internet offers.

The report also seeks to highlight that this is an endeavour that can only be accomplished by encouraging collaboration and constructive dialogue between policy makers, legal practitioners, linguists and computer scientists specialising in the automatic detection of hate speech, as well as involving higher education institutions more directly in the implementation of the relevant EU agency directives.

As already outlined and evidenced in Maltese law, European legislation seeks to leave its sovereign member states define and penalise hate speech, albeit with certain pointers.
The EU has published its framework decision on combating forms and expressions of racism and xenophobia through the prerequisites of criminal legislation. The purpose of this decision is to make sure that "manifestations of racism and xenophobia are punishable by effective,

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[4] "The Internet, Hate Speech and Politics" - Steven Rosenabum, Forbes.com, https://www.forbes.com/sites/stevenrosenbaum/2016/11/14/the-internet-hate-speech-and-politics/#5163f3c5295c

[5] "Mechanism of contrast in which one tends to group together all those people with alike characteristics that one considers to be incompatible with one's own worldview".

proportionate and dissuasive criminal penalties throughout the European Union[6]"

This framework decision delves into what constitutes hate speech. It states that inciting violence and / or hatred against a person or a group of persons on the basis of race, colour, origin, religious beliefs and nationality constitutes such, and is also a criminal action when any individual aids or abets this incitement.

Hate speech is also extended to cover the condoning, trivialising and ridiculing of any mass crimes, genocides and wars, which is a broader topic than being addressed in this report.

Most importantly, this framework decision stipulates that any proceedings or investigations by the member states' competent authorities do not necessarily require the victim's report, and may be initiated by that same authority's own accord.

Throughout 2018, the EU has embarked on an onboarding process of the IT and social media giants such as *Google*, *Facebook*, *Twitter*, *Instagram*, *YouTube*, *Snapchat*, *Dailymotion* and *Microsoft* in its code of conduct[7]. This code is tasked with battling hate speech by offering a tools to people to report, taken down and counter hate speech posts, videos, stories, and more.

It is worth noting that last year, statistics provided by *Facebook* for the year ended 31st December 2016 indicated that Malta had the highest request for information by the police per capita[8]. These requests were filed by the Malta cyber crime unit which investigated cases over social media, whether these were in relation to the commission of a crime itself or secondary in nature to another crime outside the cyber crime remit.

Social media giants such as *Facebook* and *Instagram*, owned by the same holding company, pride themselves on data protection and preservation, despite recent flaws. This however is required to be dropped in cases were satisfactory legal and judicial reasons to do so are provided.

This high number of requests seems to indicate that the terms of hate speech, online violence and other cyber crimes in Malta is incredibly high, for reasons varying from ignorance of the law to complete obliviousness of what is deemed legally and even ethically incorrect.

Through this code of conduct process, the European Commission outlines the fact that in the process of not hindering free speech or in

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6 Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l33178

7 Countering illegal hate speech online, European Commission Fact Sheet, https://ec.europa.eu/information_society/newsroom/image/document/2016-50/factsheet-code-conduct-8_40573.pdf

8 Malta requested more Facebook data per citizen than any other country, Yannick Pace, MaltaToday.com.mt, 21 November 2017 - https://www.maltatoday.com.mt/business/technology/82333/malta_requested_more_facebook_data_per_citizen_than_any_other_country#.W7RLwtczbGg

any way censoring people and their right to expression, it is working to obliterate hate speech. Essentially, what was legal before remains legal now and vice versa - it is only the additional challenge of taking this speech on to the internet that has required a different approach. Courts of law still remain responsible in deeming guilt or otherwise, in accordance with local legislation, but the parameters and case law throughout the member states and in fact the European Union as an authority itself help create precedent and standards in this regard.

1.3 Emergence of Hatred Problem in Europe

The question of refugee crisis and their integration in Europe, coupled with the discourse of the media who had been a whole alarmist through the use of the words such as *"waves of migrants flooding the EU", "huge migration crisis"* has instilled in the spirit of European citizens a sentiment of invasion and the migrants are considered as a danger for the local culture. The report of the European Commission against Racism and Intolerance has shown that there in an increasing of racist insults and xenophobic hate speech at alarming and unprecedented levels.

A wave of populist politics and elections have come to the forefront in recent months and years, and the political discourse has dangerously legitimised xenophobia. The political landscape in Italy, Hungary, the Czech Republic and to a certain extent in France and other central European nations has set the tone, preceded by similar political outlooks in the United States, Australia and Canada.

Europe has a migration issue which is always at the forefront of the popular agenda, but is ultimately not in that same hierarchy when top European leaders and Ministers meet at the Council of Europe. With such a lack of appetite or willingness to resolve this issue as a bloc, in turn member states politicians have fallen back on the tone of xenophobia to absolve their political parties' responsibility in resolving this matter.

This is a dangerous precedent which has resulted in the normalisation of such language, as well as led to the fine line between migration concerns and xenophobia to become eradicated.

1.4 Hate Speech in Online Settings

The technological revolution and the expansion on the Internet have given rise to the development of the transmission of the information. Anyone can express his opinion online with a capacity of communication and of expressing view without limits and, even if not not always, without control.

Even if there is the mechanism of traceability of the online messages, most of the users

perceives the platforms a way to express themselves freely and anonymously. This expansion has given rise to the phenomenon of cyberhate, understood as "any use of electronic communications technology to spread anti-Semitic, racist, bigoted, extremist or terrorist messages or information".

The use of the internet as for the dissemination and expression of intolerant ideas can therefore facilitate the spread of discrimination that can potentially lead to hate crime. Hate speech can constitute not only a danger for the victim because it affects an individual negatively, but also threaten those who defend tolerance, freedom and non-discrimination.

1.5 Solutions for Hate Crime

As a response, the EU has encouraged initiatives to contain and suppress hate crime and hate speech. It has pushed forward a number of steps that could contain hate crime and hate speech within their remits. For that aim, different legal provisions have been made by the EU, as well as the European Agency of Fundamental Rights. The latter has defined the below priorities in its Framework Decision on Racism and Xenophobia:

- the identification of hate crime
- the increase of the use of the Internet as a tool of hate and propaganda
- the under-reporting of hate crime

- the rise of extremist groups and political parties in the UE

1.5.1 The Implicit Dimension of Discriminatory Discourse

From a legal point of view, to be prosecuted on a base of hate speech one must have committed an offence that falls within the remit of law. Therefore, one must prove the intent to trigger violence and hate toward a specific minority group protected by the law.

The C.O.N.T.A.C.T. research has revealed that currently, speakers avoid expressly and explicitly stating their intolerance towards minorities, especially migrants and/or LGBTIQ, as part of the C.O.N.T.A.C.T.'s research, without setting it in other discourse. This means that direct intolerance is hidden behind supposed political or social agendas, therefore veiling the intent in the first place.

The majority of those who expressed hate against minorities did so implicitly, by using a number of indirect strategies, that at first might not be seen as too discriminatory. They may sometimes not be prosecutable hate speech but in nature, may be strongly discriminatory, to the extent that they may be prejudiciable to the self-worth of a protected targeted group.

Therefore, to judge if a discourse is discriminatory, one must take into account not only the explicit way in which it has been expressed but also the context in which it has been produced. One current way of implicit way of expression is irony.

An example of irony can be given in this following :

> "We need to thank the geniuses who agreed with us signing the Dublin 2 convention. They want us to fingerprint immigrants to make it easier for them to identify and deport them back to Malta".

At first, it can be found as kind in its tone as it starts by the words like "*thank*" or *"genius"*, but after looking in its particular context, it is revealed to be lead against Maltese politicians who have signed the Dublin 2 Convention, which establishes as responsible for the treatment of the asylum application the first country in which the asylum seeker has entered in the EU.

In the above sentence, the user makes a distinction between us (Maltese people) and them (other EU countries), to express that the immigrants are unwanted in Malta and that the EU is using Malta as the dumping ground for undesirable people. Through these means, the writer has expressed that the signature of the convention was unwise and has had bad effects on Malta. The combination of all the sentence shows that the point of view of the user towards migrants is unfavourable.

1.5.2 Young People's Perception of Hate Speech

Following the Brexit referendum of 2016, the rate of hate speech and hate crime figured has increased by 58% in the UK, and especially the Islamophobic phenomenon which has increased by fivefold, following the London Bridge terrorist attack of 2017. But even before the referendum has occured, many NGO's have been tackling hate speech, as it existed long before the referendum happened.

After the EU referendum about the Brexit, resistance against hate speech has been politicised. Hate speech has taken more radical definition.

> "This new perception of hate speech embraces EU and UN definitions of hate speech, yet expands upon them. Racist hate speech is no longer regarded as comprising racial slurs alone, but also as including post-colonial nuances".

It all depends on who is discriminated. The C.O.N.T.A.C.T. research showed that xenophobia is more present than homophobia in Malta.

Chapter 2
EMore Report

This report was commissioned to gain an understanding of the situation about hate speech and hate crime in Malta and the extent to which hate speech is used in Malta. Firstly, there will be a look into what research pertaining to hate speech has already been conducted in Malta. Then, what projects have been and are being organised with the aim of raising awareness of or countering hate speech. Finally, how hate speech, hate crimes, and discrimination, as well as minorities are represented in the media in Malta.

In order to do successfully this report, a desk review was conducted in order to ascertain the work that has already been done in Malta. Desk research was also used to determine the definitions of hate speech used on the island and the judicial interpretation to date of the hate speech and hate crime laws.

A short survey was carried out to assess the current experiences and perceptions of hate speech and hate crime both on and offline by the public in Malta. Finally, a media monitoring exercise was done to gain insight into the representation of hate speech and hate crimes, as well as minorities, in the media of Malta.

This report has had to expand the focus of hate speech to include discrimination, since an analysis of hate speech alone in the Maltese context did not bear fruitful material for discussion. There are many reasons for this. Firstly, despite the strong legislation against hate crimes, hate speech is critically underreported in Malta, and hence, seldom prosecuted, thus providing limited data for analysis in this regard.

This was backed up by the results of the survey which showed the majority of those experiencing or witnessing hate speech do not report it. Moreover, since the presence of hate speech in Malta is undisputed, as evidenced by the survey results, the lack of prosecutions is indicative of the lack of understanding and awareness of hate speech and hate crimes on the island by both the public as well as public officials such as law enforcement and politicians. Consequently, discussion in the report has had to focus on discrimination in the absence of sufficient data with regards to hate speech and hate crime.

Beyond the lack of data about hate speech, the analyses conducted for this research exposed a number of positive shifts that have been made in Malta with regard to the protection of minorities against hate and discrimination, as evidenced in the media.

However, there is still much that needs to be done to eradicate hate speech, and hence, offer protection to the minorities that face discrimination and hate on an almost daily basis.

2.1 Hate crime

Hate crimes not only attack the individual targeted but also the principles of democracy and the fundamental rights of equality and non discrimination (article 1 + 10 + 21 of the EU Charter of fundamental rights).

Maltese case law is scarce in terms of hate speech, with probably the most covered case having been the case Pulizija vs Normal Lowell (2012)[9] wherein the language used by Mr Lowell in running his political party Imperium Europa amounted to inciting violence on the basis of colour and race. In this instance, the police took action almost ironically, as it was only when Mr Lowell's popularity - and by consequence his reach - surged during the political turmoil of that ongoing legislature.

The court took into consideration section 82A and 83B respectively in outlining the charges of incitement and hate speech. The broad reach of Mr Lowell even led to many of his supporters backing him up, and the situation culminated in one where as a result and unfortunate consequence, the words which Mr Lowell was being charged with spread exponentially in the public sphere. This was all the more so when, as described earlier, Mr Lowell and his party attempted to justify the rampant xenophobia by linking it directly with the wave of migrants arriving on Maltese shores at the time and preceding the police action taken. This is

ultimately a situation which has become almost the norm in political spheres to this day.

Other more recent cases, xenophobia has been pushed in the limelight on social media in attacks on politicians addressing the migration issue. Nationalist Member of European Parliament Roberta Metsola was targeted as such, with real Facebook profiles, pages and anonymous or fake profiles calling for her to be poisoned, shot and other less than tasteful remarks, after she spoke about the necessity of integration for migrants coming to our shores

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[9] Il-Pulizija v Normal Lowell (2012), Qorti Prim'Awla, 6/2012 - http://justiceservices.gov.mt/courtservices/Judgements/script_get_judgement_document.aspx?CaseJudgementID=76529

2.2 Countering Illegal Hate Speech Online

Commission initiative shows continued improvement:

This is a third evaluation of the application of the Code of conduct on countering online hate speech (May 2016). It shows that IT companies have made efforts in removing 70% of illegal hate speech that were notified to them by the NGO's and the public bodies participating to the evaluation. They have met the target of reviewing the majority of notifications within 24 hours.

However, there are obvious glitches in the system as NGOs and interested bodies commit themselves to curtailing hate speech and reporting it where necessary, those perceived injured parties are countering this trend by using those same tools. In Malta alone, we have seen cases where mass reporting of an innocuous news story or NGO post leads to that same story or post being removed by social media platforms or websites. It is unclear why IT companies and servers comply with such requests, however it is often pushed to this by a spike in reports being made in a coordinated and systematic attack on freedom of speech for no other reason apart from public disdain of the author, or retaliation.

It goes without saying that if the media is restricted in its reporting and social duties, then censorship has won and the fight against hate speech has backfired with dramatic effects. A clear distinction between spamming valid news stories and countering illegal content must be made and kept, as otherwise the repercussions of blurring these lines would make the situation worse off.

However, further improvements still need to be done:

- the problem that remains is the lack of systematic feedback to users. There is a need of transparency and feedback to users
- there is a need of effective prosecution of authors of illegal speech offences (whether online or offline). They need to be promptly prosecuted by the police. As defined in the *Framework Decision on Combating Racism and Xenophobia*, hate speech is a criminal offence whether is occurs online or offline.

It is for all of these authors, i.e. the EU, its member states, social media companies and other platforms, to ensure that internet does not become a free haven for violence and hatred.

2.3 Xenophobic and Homophobic Attitudes National Report for Malta

The present report summarises research carried out at the Institute of Linguistics and Language Technology of the University of Malta under the auspices of the EU co-funded C.O.N.T.A.C.T. project. The study focused on hate speech as a manifestation of hate crime in Malta. More specifically, through quantitative and qualitative analyses, the study sought to identify the extent to which comments posted online in reaction to articles in local news portals can be found to encompass discriminatory attitudes towards two target minorities: migrants and members of the LGBTIQ community. The obtained results indicate that while both xenophobia and homophobia can be detected in some of the comments made by online users in local news portals, the former is much more prevalent than the latter.

To further probe into the reasons for the emergence of such discriminatory discourse online, an online questionnaire was shared and focus group interviews were conducted, which provided to the research some insights as to why discriminatory attitudes appear to have recently been on the rise in relation to migrants, and seem to have been correspondingly contained in the case of the LGBTIQ minority group. However, the biggest responsibility for combating hate speech lies with those who have a direct effect on public perception. On the one hand, it seems particularly crucial to understand the underlying reasons for the emergence of such speech and develop policies that will alleviate sources of apprehension in the public. On the other, it is also essential that the public develops awareness on matters of discrimination, be it through wider-reaching awareness-raising events, perhaps with the collaboration of the media, or the establishment of an agenda that promotes inclusion and tolerance at all levels of education and later in the workplace.

The problem with hate speech is that it's largely underreported, especially in Malta, mainly for the reasons that people are not aware of how that fact could be reported, and secondly, they have no confidence in the ability of the authorities to tackle such a fact which is considered as of common occurrence. Therefore, C.O.N.T.A.C.T. recommends more sensibilisation of citizens of matters relating to discrimination.

In his broadest sense, discrimination can be defined as a "prejudice based on any minority identity, be it in religion, nationality, race, ethnic origin, sexual orientation, gender identity, etc". The prohibition of all kind of discrimination is enshrined in both the Maltese Constitution and Criminal code.

However, although Maltese law tackles crimes aggravated by matters related to race, xenophobia and/or homophobia in two instances, being sections 83B and 222A, it does not set parameters for hate speech, and neither is there any authority, whether trained or

otherwise, to define these said parameters and ensure that they are kept and adhered to.

This creates an obvious issue. Many times, it has become evident that local police authorities are unsure themselves of whether an aggrieved person may resort to the law to defend him or herself. If the local authorities cannot do so, the natural question that arises is how is the general public to know the limits of what is permitted and what constitutes hate speech and is therefore a crime.

Education, endeavour and eagerness to sort this problem out is necessary, as without these it renders written law redundant and undeployable.

Moreover prosecution of hate speech itself could be difficult because of the difficulty to report a hate speech fact that may occur in the home or at work for an individual. Furthermore, no specific procedures exist for the prosecution of hate speech and hate crime in Malta. People have quite complex perceptions about the definition of what constitutes hate speech and discrimination, especially towards the LGBTIQ community.

However the field of irregular migrations appears to be the most form of concern and seems to engender the most hatred and discrimination within the Maltese population. Different publications have shown that irregular migrants are usually considered "others", regardless their appartenance to any religion, language, nationality or their ethnic background.

In order to combat that, a 2 years project of the C.O.N.T.A.C.T. was lead in order to investigate and to develop tools to combat hate crime in different countries of Europe, including in Malta. It consisted in an online tool and a smartphone application where people could report hate incidents but also different media events. From the 112 reports recorded, even if they can't be considered as representative of all the country but nevertheless, they give tendency, the largest part was about verbal abuse.

2.4 Exploring Xenophobic and Homophobic Attitudes in Malta: Linking the Perception of Social Practice with Textual Analysis

This report investigates the roots of xenophobic and homophobic attitudes in Malta and the extent to which these can be pinpointed in the lexical choices made in discriminatory comments posted online in reaction to local news stories pertaining to migrants and members of the LGBTIQ community.

We start off by presenting the values that underlie local discriminatory attitudes as social practice, as these were identified by the participants of four focus group interviews that were conducted at the University of Malta.

In this respect, while xenophobia seems to be a far more pressing issue in Malta, homophobia, which is still also present, is taken to be predominantly triggered by deep-rooted religious beliefs and allegiance to heteronormative values. Then, when it comes to xenophobia, the main relevant trigger seems to be the perceived threat that the different

collective background of a particular subset of migrants in Malta poses to the local culture.

In this way, we provide evidence for the fundamental claim that the textual analysis of a relevant dataset can indeed reveal the negative stance that the general population may have in relation to particular minorities, showcasing the relevance of discourse analytic methods for the broader understanding of discrimination and hate speech.

Xenophobia remains the biggest problem in Malta. Indeed, Maltese people consider that the background of the different foreigners constitute a danger to the local culture. Concerning homophobia, the problem seems to still draw his roots from the religious beliefs and the belief to the heteronormative values.

A C.O.N.T.A.C.T. survey leaded during 2017 showed that xenophobia is a much greater in Malta than homophobia. The reasons that had been pinned are, among others, that while homosexuals are considered like being part of Maltese society by having the Maltese nationality regardless their own minority characteristics, the others are considered as threatening the local culture and are considered to have nothing in common with the Maltese group.

The Malta Independent ran a story last year based on surveys carried out by the *Institute of Linguistics and Language Technology*[10], which revealed that hate speech and hate crime are

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[10] "Xenophobia is Malta's most prominent form of hate speech", Rebecca Iversen, The Malta Independent, http://www.independent.com.mt/articles/2017-10-21/local-news/Xenophobia-is-Malta-s-most-prominent-form-of-hate-speech-6736180481

under reported in Malta due to the fact that they are not seen as serious offences.

According to the reported of C.O.N.T.A.C.T., homophobic speech is revealed to be less present, subsequent to recents legalisation of civil union and the Gender Identity Bill. In opposition to that, due to the recent irregular migrations, xenophobic speech occurs to a more prominent and a harsher degree. There is an increasing sentiment of increasing racism, islamophobia and anti-migrant discourse, which also have connections to nationalism, patriotism, fear and anything that incites strong emotional responses.

2.5 Combating Hate Speech

The Human Rights Committee of the United Nations has Article 19 reading as follows:

"2. Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society. The two freedoms are closely related, with freedom of expression providing the vehicle for the exchange and development of opinions."

This is the cornerstone of the UN's covenant on civil and political rights, however it can be easily understood why this is so. Since we would need a society that has individuals that are evolved and grown into fully functioning citizens, that are able to build their society into a democratic one.

"8.   States parties are required to ensure that the rights contained in article 19 of the Covenant are given effect to in the domestic law of the State, in a manner consistent with the guidance provided by the Committee in its general comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant. It is recalled that States parties should provide the Committee, in accordance with reports submitted pursuant to article 40, with the relevant domestic legal rules, administrative practices and judicial decisions, as well as relevant policy level and other sectoral practices relating to the rights protected by article 19, taking into account the issues discussed in the present general comment. They should also include information on remedies available if those rights are violated."

"15.   States parties should take account of the extent to which developments in information and communication technologies, such as internet and mobile based electronic information dissemination systems, have substantially changed communication practices around the world. There is now a global network for exchanging ideas and opinions that does not necessarily rely on the traditional mass media intermediaries. States parties should take all necessary steps to foster the independence of these new media and to ensure access of individuals there to. States parties should ensure that public broadcasting services operate in an independent manner. In this regard, States parties should guarantee their independence and editorial freedom. They

should provide funding in a manner that does not undermine their independence."

With internet service providers and tech giants such as *Instagram*, *Facebook*, *Twitter*, *Snapchat*, *Microsoft* and *YouTube* having already updated their user experience and policies to mitigate to the best of their expertise the dissemination and publicity of hate speech, much is left to be desired in the willingness of member states themselves in combating this phenomenon as well as seeking to set an example for citizens.

> "Too often, the lines of freedom of speech are very deliberately being tested, and taboos are carelessly being breached and used as a political instrument."[11]

These are the words of German Chancellor Angela Merkel, speaking at a commemoration service on the anniversary of a xenophobic attack on Turkish citizens. These words can be adopted and utilised across Europe and other nations.

Returning to the local scene, judgments condemning hate speech are few and far in between, however much has been made of the reaction of politicians and people in power to this. The reality of the situation seems to be that hate speech is amendable and open to interpretation, which leads to the justification and normalisation of this in the public domain. Worse yet, reactions by persons seeking to play down hate speech, possibly in fear of legal action, tend to be dismissive, which more often than not has resulted in hate speech going unreported.

Reporting hate speech in Malta is not unchallenging. The onus of proof lies squarely at what an alleged victim can present to the cyber crime unit, with the issue of anonymity proving to be a hurdle that the local authorities are yet to resolve amicably and professionally. This in turn, once more, often leads to crimes of this nature falling by the wayside, never making it to a court of law, or being dismissed by the authorities.

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[11] Merkel says political hate speech is 'playing with fire', Reuters.com, https://www.reuters.com/article/us-germany-turkey-commemoration/merkel-says-political-hate-speech-is-playing-with-fire-idUSKCN1IU22C
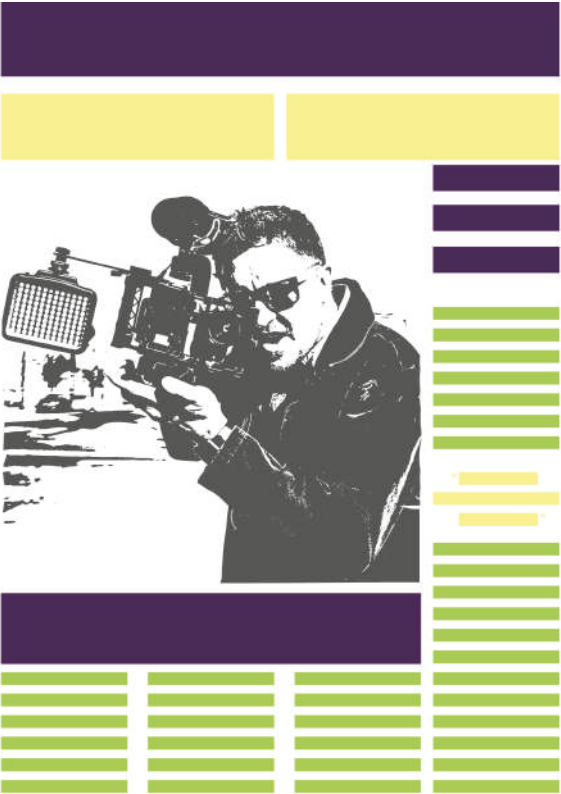
#STOPHATE

Chapter 3
The Ethical Journalism Network 5-Point Test for Hate Speech

Journalism is a difficult place to be able to practice free speech on a number of layers. Primarily this comes from the difficult time frames that the editors have to be able to properly edit content, with appropriate levels of fact checking. Which then bites into the discussion about the ethics of the published material and the impact of the content.

This means that if there is potential offensive or inflammatory contact the editor and journalists have to take decisions on the spot on how to tackle them. The issues that comes from this is that unless properly regulated this might end up into a manner of propaganda from regimes, using "journalism" as a form of pushing forward the vision of the particular leading party or militant groups.

Having the media of a nation manipulated by individuals to suit their needs and desires can end up with a focus on religion, culture, race or even simply patriotism, that are used as a means of control of a parts of a nation. The same goes for the journalists who report, or underreport stories out of context allowing a misunderstanding to fester and grow significantly. Bringing forward the two cardinal rules of journalism, one, to always report the truth and by who is saying it and when they are saying it, the second rule is that one must do the best to minimise harm. This is a catch twenty two situation that the journalist would find themselves in regularly.

Hence the importance of having a system that on the basis allows for hate speech to be identified, even though this is not always the easiest of cases to do so. These guidelines should be able to identify the basic principles that a journalist should follow as indicated by the Ethical Journalism Network.

3.1 The Speaker

There needs to be an understanding of who is talking and what they are saying in relation to what their position in society is as well as to highlight the previous comments or history of comments of certain speakers.

There is a certain level of control that is exerted by community leaders and politicians that manipulate the media through the use of specific rhetoric which can push forward prejudice and bigoted opinions as the media's own words would changed. Understanding this problem, it must be kept in mind by journalists that simply reporting anything that is outrageous as breaking news give it a level of importance and political weight that might influence the consumers of the media in different manners.

This is something that was noted with rabble rousing politicians who keep to increase their air time due to their outrageous and superfluous comments. Hence the increased air time gives them more importance and more importance gives them more coverage by more media rooms. Such examples would be Donald Trump and Nigel Farage who manipulated the media to shut out all of their competition since they turned their actions in almost a theatrical show.

There must be an understanding of what the freedom of speech is, and that it is the journalists job to ensure everyone has their ability to speak. Yet it is also the journalists job to make sure that no one is given the licence to lie and spread fake news while encouraging hate groups or violence against others.

3.2 Context vs Importance

Giving a reach to a short and hotly tempered conversation, can change something from that of relatively little harm to something that carries out drastic hatred to grow. The question that should be asked in these conditions is whether this is a short momentary outburst or else a constant deliberate output of hate.

3.3 Objective of Message

Seasoned editors are usually able to notice what is intended to be an attack towards an unhappy mistake in judgment by the speaker. Yet it is something that needs constant vigilance towards the final aims of the message being distributed. Giving the context as mentioned earlier is very important in keep the public aware about the interests of the speaker.

3.4 Delivery

Understand that if the message of an idea is taken to push people to act in a hateful manner and urging those present listening to the message to carry out hateful crimes. Then the opinion of the speaker turns to a hate message.

3.5 Debate

More often than not, hate speech (whether online or in other fora) is a result of a combination of ignorance of the law, obliviousness to what constitutes hate speech and even a lack of understanding on the potential for hate speech to have far reaching effects and ramifications.

A healthy level of debate addressing the core principles of eradicating hate speech is necessary. This includes explicitly pointing out this phenomenon with an intention of raising awareness and themselves initiating a public debate - something which the media can do with large levels of success.

3.6 Political Climate

When messages are being spread out by political or community leaders, the journalists job is to ensure above all else the factuality of these stories. Then they must compare and contrast these stories along with the social, economical and political climate of the society to be able to shed light on the entire situation and create a climate of understanding.

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Chapter 3
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Malta took the role of President of the Council of the European Union from 1 January 2017 to 30 June 2017. This position allows to the country in question to be able to guide the EU's policies towards some topics considered as relevant for it. Thus, concerning Malta, one of its major objectives for its presidency was the topic of migrations, because Malta is a hub for immigration from Africa to Europe. Following this statement, the Maltese Presidency has also worked in order to promote a better inclusion for migrants in European society especially in Malta. So, under European initiatives, some conferences were organised in order to counter hate speech, both in public space and online, by endeavour the role of the EU and the member states to support civil society actions for fight against these types of discrimination.

The political climate and context was well noted in the concept notes of Malta' EU Presidency, although the ultimate results of bringing this issue to the forefront of attention did not yield too many results. However the issue of the effects of hate speech was pushed forward, with some consequences highlighted helping stir the much needed conversation on this topic alive.

> "According to the 2016 Eurobarometer on media pluralism and democracy, 53% of respondents follow debates on social media for example by reading articles on the Internet or through online social networks or blogs. 75% of those who follow or participate in debates has heard, read, seen or themselves experienced cases where abuse, hate speech or threats are directed at journalists/bloggers/people active on social media. These experiences of hatred online make almost half of respondents hesitant to engage in online debates."[12]

The first step to combat this issue is its acknowledgment, and even that can more often than not prove to be problematic, the above cited statistics make for hard reading and awareness on the matter is not sufficient. Every emerging problem in a normally functioning democracy needs regulation, which in this case must be differentiated from censorship.

The task is by no means an easy one, yet placing more effective monitoring measures into place, as well as informing the general public of what legal and civil measures are at one's disposal should he or she be the victim of hate speech in this regard is absolutely crucial.

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[12] Presidency Conference "Counter-narratives: how to support civil society in delivering effective positive narratives against hate speech online", https://www.eu2017.mt/Documents/Online%20Hate%20Speech/Concept%20Note%20for%20the%20Online%20Hate%20Speech%20Conference%20%20final.pdf

4.1 Local Initiatives

Eurobarometer surveys and online experts have strongly indicated that Malta has the highest rate of online hate speech and that Maltese people were the most likely of all citizens of the European Union to come across, experience or initiate hate speech online[13]. This worrying statistic requires immediate attention and explains a lot about hate-related crimes with regard to migrants, crimes against members of the LGBTIQ community and contraventions emanating from a wide tolerance of hate speech.

This phenomenon is by no means surprising. What is surprising, however, it this last point of tolerance. Local initiatives through online campaigns and other events are a welcome change in trajectory, however a more deep-rooted issue exists that is being passed on from generation to generation.

Most respondents of the Eurobarometer mentioned above could not even identify hate speech. As the maxim goes, one must first identify the problem before being in a position to tackle and solve it. In this case, education is key in rooting out this issue.

Not much is done in these terms in local schooling systems, and the little there is only briefly touches upon the rights and wrongs. If we are to eliminate or diminish the growth and

the excessivity that comes from an unhindered approach to online hate, it will become the norm. One may argue that this point has already been surpassed, which in itself emphasises the urgency with which this problem needs to be addressed.

4.2 Combating Racism, Xenophobia and Other Forms of Intolerance

This report, leaded by the Subgroup on methodologies for recording and collecting data on hate crime, aims to give some recommendations to EU countries about how to deal with hate crime.

According to it :

• there should be an appropriate identification and recording of hate speech, because that would give the victims and the witnesses the confidence to report hate crimes to the authorities in charge of enforcing the law,

therefore, it is essential to put in place some measures which to be able to to give to the victims and the witnesses enough confidence to report those crimes, and to the authorities the rules which will allow them to have knowledge and to deal and record hate crimes correctly.

[13] Malta Has Highest Online Speech in EU, Times of Malta, 13 September 2018 - https://www.timesofmalta.com/articles/view/20180913/local/malta-has-highest-online-hate-speech-in-eu-eurobarometer.689073

For this aim, one of those mechanism should be grounded on the reality of the work, and should facilitate investigation for eventual prosecution. For that aim, the Subgroup enunciate to facilitate the work of those authorities : to be effective, the mechanisms cited above shall at least respect the following criteria :

- the police in charge of the enforcement of the law shall be able to "use bias indicators to identify bias motivation" and should be able to "flag incidents as potential hate crimes and record any bias related information that might be useful to support further investigation"

- the standard rules of enforcement agencies shall require the police forces to pay attention and to shall give them tools to allow them to "flag possible bias motivation"

At the other side, the Subgroup provides 5 guiding principles that could help to improve the recording of hate crime :

- cultivating a human rights culture within law enforcement agencies : the authorities in charge must understand why it is important to report hate crimes at first. The high ranked officers on their hand must understand that the increasing of the report of hate crimes is a good indicator for their effectiveness and their efficiency

- developing or adapting hate crime recording mechanisms to correspond to national needs and capacities: every country needs to make in place adapted mechanisms, inserted in the roots of the national experiences, to allow the record hate crimes facts. it's about

cooperation between the member states about hate crimes facts.

- cooperating actively with civil society organisations: the work of the organisations can be important for bringing added value on the enforcement of the law by preparing, planning, delivering and evaluating hate crime. Such organisations can provide support for victims that are more likely victims such as migrants, Roma, Jews, LGBTI persons, etc… and also, their work car bring support for the proper recording and the report of hate crimes. In that way, such organisations play often as a bridge between the hate crime victims and the law enforcement agencies. Active cooperation between civil society organisations and the law enforcement officers should, according to the subgroup, help to ensure that fate crime is recorded properly. In some Member states, different forms of that engagement exist already, such as in Austria, Croatia, Hungary, Belgium, Italy, United Kingdom,… The Subgroup has identified some different ways of cooperation between the organisations and the law enforcement agencies in order to improve the recording of hate crimes facts, but not exhaustives :

  - working together in order to encourage the victims and the witnesses to report hate crimes

  - exchanging the collected data and informations about perpetrators, local patterns and victims of hate speech in order to develop intelligence=based

policy and to improve community policing

- exchanging expertise in order to develop, refine and revise bias indicators

- working together in order to to put in light the dark faces of hate speech

- cooperating in the development of guidance, training, instructions and recording of hate speech.

The Subgroup encourages the Member states to put in place frameworks that would be able to promote sustainable and systematic cooperation between the law enforcement agencies and the organisations, as well as all the public authorities in charge of tackling hate crime.

- using indicators to identify bias motivation when recording crime : every information given by the victims or the witnesses should be taken into consideration by the law enforcement officers in order investigate the offences. Therefore, the officers should be givens all the means to use indicators that would allow them to identify bias, i.e. "the objective facts, circumstances or patterns connected to a criminal act that, alone or in conjunction with others indicators, suggest that the offender's actions were motivated in whole or in part by bias, prejudice or hostility". She Subgroup encourages that the officers be given guidance so that they would be able to identify bias motivation, through the analysis of the statements given by the victims and the

witnesses and the interrogation of the alleged perpetrators.

- flagging potential hate crimes when they are reported : the aim is to improve the recording of hate crime in a way that could not be a burden to the daily work of the police officers. That could be achieved by inserting the possibility for a fact to be targeted as a potential hate crime when reported, so that it would help for its investigation. Also, the insertion of the possibility to flag a fact as a potential hate crime in the general crime reporting form would help the officers involved for the recording of hate crimes.

4.2.1 Tackling Illegal Content Online

Communication from the commission to the European parliament, the Council, the European economic and social committee and the Committee of the regions -

Those online platforms which mediate access to content for most internet users carry a significant societal responsibility in terms of protecting users and society at large and preventing criminals and other persons involved in infringing activities online from exploiting their services.

This Communication lays down a set of guidelines and principles for online platforms to step up the fight against illegal content online in cooperation with national authorities, Member States and other relevant stakeholders. It aims to facilitate and intensify the implementation of good practices for preventing, detecting, removing and disabling access to illegal content so as to ensure the effective removal of illegal content, increased transparency and the protection of fundamental rights online.

4.2.2 Maltese anti-hate speech activist listed among Forbes Top 30

Ms Ezabe Malliue, 21, was named in Forbes' list of European 'under 30s' fighting hate speech, inequity and corruption on January 2018. The third annual list features 3,000 entrepreneurs and leaders transforming areas in policy and law, among other sectors. She's a Maltese law student and she co-founded the movement RedefiningUs after facing discrimination for wearing a headscarf.

She pointed out that people need to make a report at their local police station rather than to the cyber-crime unit. She also complained that the regulations were allowing people on social media to get away with writing discriminatory comments. The activist also noted that there was a fine line between monitoring hate and safeguarding freedom of speech.

She was grateful that her work was recognised, but most importantly, this recognition shows that combating racism, xenophobia and Islamophobia continue to be crucial policy and legal areas that need to be addressed, according to her. Moreover, it's now necessary to designing better policy framework to deal with these issues and to implement hate speech laws which regulate better online spaces.

4.3 Responding to 'Hate Speech'

Article 19's report on responding to hate speech[14] gives recommendations about how to ensure better protection of both the rights to freedom and expression and the right to equality and non-discrimination. Hate speech is expressed in the media, online, and in political discourse, including sometimes in statements made by politicians and public officials.

Freedom of expression is a right, but it mustn't be exercised in violation of others rights. One right can' be prioritised over another, so both the right of freedom of expression and the right to equality are protected by the international human rights law. States are required to prohibit particularly severe forms of 'hate speech', which in exceptional circumstances can be done through criminal law.

This report provides a comparative overview of legal and policy responses to 'hate speech' in six EU countries: Austria, Italy, Germany, Hungary, Poland and the United Kingdom. The report finds hate speech to be a significant problem across all countries. The regulatory framework left much to be desired and the monitoring and flagging of matters classified as hate speech seem to have been picked up by NGOs and other non profit organisations, indicating a willingness shortage from local authorities.

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14 Responding to 'hate speech': Comparative overview of six EU countries, https://www.article19.org/wp-content/uploads/2018/03/ECA-hate-speech-compilation-report_March-2018.pdf

Chapter 5
Conclusion

In view of the above, the situation may initially seem bleak. However, the fundamental cornerstone of this project is to set the ball rolling and realise that non-action is no solution at all.

5.1 Review and Update

First and foremost, it is vividly evident that the local as well as foreign jurisdictions need to keep abreast of this ever changing landscape which entails hate speech. The mediums used and the high reaching effect, including any check and balances to such, need to be strongly revisited and updated. What was valid a few months ago maybe already have become obsolete, let alone what was the norm a few years. Time and time again it has become clear that not only are local authorities not well-versed on the basic of hate speech, but are also unsure and unclear as to what action may be taken given every case.

This lack of concrete, step-by-step action plan must be tackled and implemented with vigour. Every functioning democratic state must have clear plans as to what constitutes a breach of law, and all such laws must be based and built in such a manner that the fundamental rights of speech and freedom are not hindered or opposed.

The fact that most citizens do not have the tools and information at hand leads to most perpetrators operating free in the knowledge that their actions have no consequences, leading to boundaries being pushed and new waters being tested. Therefore it is essential that in the same manner that other information campaigns that have been run by local and European authorities, a strong initiative against this growing phenomenon is constructed.

5.2 Setting An Example

Perhaps one of the strongest points that needs to be addressed on an international yet also on a local level, is the example being set by people representing citizens or having the wide audience of followers that normally politicians tend to have.

It is pointless stating that hate speech is to be combatted when this same level and style of speech is a problem that has become institutionalised. Whilst by no means a new problem that is being faced, it is one that is growing in this day and age because of the lack of control or monitoring that there is to combat such a matter. The wave of populist politics has proved to be an igniting mechanism for rampant hate propaganda and actions. It is the very people in power that has allowed such a situation to become such a reality - and it is these same people that have to take a stand in ensuring its control.

5.3 Tackling The Problem

Hate speech has seen its growth thanks largely to social media and online news portals. The local scene has thrown up countless examples of people hiding behind the internet and its measures to attack, vilify, harass and persecute persons and groups. One step to counter this issue is having the media houses experiencing such problems being well informed of their responsibility, their right of recourse and the steps they may take to diminish this matter, if not eradicate it.

With the social media and tech giants mentioned before having taken to a code of conduct to do exactly this, it is a solution worth investigating to have media houses provide training to staff members, editors and reporters in working as a unit to kicking this phenomenon to the curb. It is no solution to hide a problem rather than tackle it, however the sensationalism that comes with hate speech and its offshoots would be dramatically obliterated without coverage.

The Chief of the United Nations has recently launched a global initiative[15] to tackle this very issue, and this initiative must be transposed locally in order to be effective.

This must be effected with urgency locally, and the proper education must encompass the fundamentals of earmarking, avoiding and reporting the many notions of hate speech.

Education, transposition in law and the creation of real, effective and concrete policies is required. The change must come from the top, and one of these branches without the other renders their total ineffective and useless. The proliferation of hate speech must be reined in[16]. The problem has been sourced, well documented and earmarked, and now is the time for concrete measures and steps to be taken.

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[16] Proliferation of Hate Speech, Times of Malta, 10 September 2018 - https://www.timesofmalta.com/articles/view/20180910/editorial/proliferation-of-hate-speech.688776

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