

Malta **Gay** Rights Movement



SHADOW REPORT

DISCRIMINATION AND VIOLENCE AGAINST LESBIAN AND BISEXUAL WOMEN AND TRANSGENDER PEOPLE IN MALTA

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- **ILGA-Europe**: the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (UN ECOSOC Accredited)
- **COC Netherlands** (UN ECOSOC Accredited)

The *Malta Gay Rights Movement* (MGRM) is a socio-political non-governmental organisation, which has as its central focus the challenges and rights of the Maltese lesbian, gay, bisexual and transgender (LGBT) community. It was set up in 2001 and is a member of ILGA (the International Lesbian, Gay, Bisexual, Trans and Intersex Association).

MGRM's mission is to strive to achieve full equality for LGBT people in Maltese society; a society that enables people to live openly and fully without fear of discrimination based on one's sexual orientation, gender identity and gender expression.

EXECUTIVE SUMMARY

The shadow report describes the situation of lesbian, bisexual and transgender women (LBT) in Malta. The report cites existing research data and documented cases of violence against LBT people, lack of recognition of a person's identity, discrimination in the spheres of education, health services, employment and housing; and the lack of choice and freedom when it comes to marriage and family life. The report provides information about the pertaining issues and suggests recommendations to improve the situation.

The report is structured according to the form of discrimination and lists relevant CEDAW articles.

KEY TERMS

LBT	abbreviation for lesbian, bisexual and transgender people / women.
Lesbians	are women who experience emotional, sexual and physical attraction towards other women.
Bisexual women	are women who experience emotional, sexual and physical attraction to both men and women.
Transgender people	are people who regard the sex that was ascribe to them at birth as not reflecting, or not fully reflecting their gender identity. Transgender women are those individuals who were assigned the male sex at birth but identify and live as women. Transgender men are people who were assigned the female sex at birth but identify and live as men.
Trans	short reference to 'transgender people'.
Sexual orientation	refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different sex or the same sex or both.
Gender identity	refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms. ¹

¹ Definition from Yogyakarta Principles on Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity. http://www.yogyakartaprinciples.org/principles_en.htm

INTRODUCTION

This shadow report is submitted by the Malta Gay Rights Movement (MGRM) in the framework of the CEDAW Articles, as an independent information and commentary. It aims to draw the attention of the CEDAW Committee to human rights concerns affecting lesbian, bisexual and transgender (LBT) women in Malta.

This report is largely based on the recently conducted research *LGBT Discrimination in Malta* (to be published in December 2010²) and *Inclusion of Transgender Individuals into the Labour Market: a Research Study* (2008).

Legal protection for lesbian and bisexual (LB) persons in Malta exists in the areas of employment, through the transposition of the European Union Employment Framework Directive (2000/78/EC). Transitioning transgender persons are covered through the introduction of Chapter 452 Employment and Industrial Relations Act and Chapter 456 Equality for Men and Women Act and through the recast European Union Council Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. Transgender persons who have undergone irreversible gender reassignment surgery may change the indication of sex in official documents, such as identity cards, birth certificates and passports.³

Pride marches have been held in Malta for the past 5 years in a peaceful and orderly manner. Representatives from political parties have on occasion also taken part. There is no possibility for same-sex couples in Malta to register or legalise their relationship, and same-sex marriage or partnerships registered in countries that allow such unions are not recognised by the Maltese State.

Research conducted by the Malta Gay Rights Movement⁴ illustrates that in recent years discrimination experienced by LBT women remains widespread in a number of areas, such as employment, provision of goods and services, healthcare and education.

² A copy of this document will be sent to the OHCHR Civil Society Unit as soon as it is available in December 2010.

³ Chapter 16 of the Civil Code, Article 257A: Action for an annotation in the indication of sex particulars appearing in an act of birth. Added by: XVIII.2004.37. Amended by XXII.2005.81.

⁴ *LGBT Discrimination in Malta*. Malta: Malta Gay Rights Movement. (Final version to be published in December 2010)

THE STATUS OF LESBIAN, BISEXUAL AND TRANSGENDER WOMEN UNDER SPECIFIC CEDAW ARTICLES

ARTICLES 1-4, 6: Violence against women

Everyone, regardless of sexual orientation or gender identity, has the right to security of the person and to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group.

[Principle 5, Yogyakarta Principles]

The study conducted in 2008 by MGRM surveyed incidents of violence against LGBT people in Malta. 8% of respondents to the study said to have experienced physical violence with half of them experiencing violence more than once because of their sexual orientation and/or gender identity. Only 42% of these reported the incidents to the police, who were supportive in the majority of cases. Those who did not report incidents of violence gave the following reasons for not having reported violence: belief that the police are not effective (75%), that the incident was not serious enough (50%) and fear of homophobic reactions by the police (37.5%).

Transgender women in detention who have not transitioned and are therefore unable to change sex annotations on official documents are incarcerated with male inmates. This leads to an increased likelihood that sexual violence or prostitution will occur within the prison environment.

"I was sexually harassed many times because a lot of men think that because I wear a mini-skirt they can touch me as much they please. Last week I was the last passenger on the bus and the driver and his friends tried to rape me and told me that people like me are only good for that. I started screaming and they threw me off the bus..."

They threw things at me three times. Once it was children on bicycles – it seemed like they were waiting for me – they threw stones at me. Another time at a bar, a man who was drunk wanted to touch me and because I didn't let him he threw the glass at me but it missed me. The barman called the police but they didn't come."

Transgender female, 40 – 51

"I was in Paceville (Malta's prime nightlife area) and two guys cornered me and wanted me to get another lesbian friend so that they could have sex with us. I didn't want to and they started banging me against the wall and swearing at me and one of them punched me in my stomach. Then they left."

Lesbian, 18 – 25

Very few Maltese LGBT persons feel that lesbian, gay and bisexual people are accepted and respected in Malta (5.2%), whereas none of the respondents feel that transgender people are accepted and respected. Perception of public acceptance of homosexuality affects LGBT people's perception of safety in expressing their sexual orientation and/or gender identity in public spaces. The study found that of those in a relationship, 77% felt compelled to avoid kissing or holding hands in public with a same-sex partner to avoid violence or harassment some or all of the time.

“Even though I am open to all my friends, co-workers, family members etc, because of the stalking incidents we experienced, my girlfriend and I try not to hold hands in public any more – and if sometimes we do, we quickly separate our hands again if we sense someone is looking at us closely.

We also do not stay too close when dining together at restaurants or having drinks at bars – even though you would really be dying to just simply hold hands. We also get nervous when we are in public places that are a bit secluded. We constantly fear guys might come on to us as happened in Mdina... a guy kept stalking us, and we got so nervous trying to lose him, we ourselves got lost in the narrow roads, and it got dark, and for a moment, it was extremely unsettling.”

Bisexual woman, 18 – 25

Questions to the Maltese Government:

1. What is the Maltese Government doing to ensure that all women, including sexual minority women are protected from all forms of violence both in the home and in public spaces?
2. What is the Maltese Government doing to ensure that the police force is sensitised and well trained in handling reports by lesbian, bisexual and transgender women who are victims of violence?

Recommendations:

- To take all necessary policing and other measures to prevent and provide protection from all forms of violence and harassment related to sexual orientation and gender identity
- To ensure that the police reach out to the LGBT community and encourage reporting of homophobic and transphobic incidents
- To conduct campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence, in order to combat the prejudices that underlie violence related to sexual orientation and gender identity

ARTICLES 1, 2, 3, 15, 16: RECOGNITION OF A PERSON’S IDENTITY

Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientation and gender identities shall enjoy legal capacity in all aspects of life. Each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation, hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person’s gender identity. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity.

[Principle 3, Yogyakarta Principles]

According to Maltese law, only an unmarried transgendered person who has undergone irreversible gender reassignment surgery has the right to change particulars relating to sex which have been assigned to him or her in the act of birth. This requires a court action being brought against the Director of Public Registry. Following the necessary verification by the courts, the trans person can subsequently request a change in name and sex on official documents that is: birth certificate, driving license, passport and identification card to reflect

the new gender identity. This procedure is unnecessarily lengthy and costly⁵ and involves a court procedure whereby the post-operative trans person must undergo a medical examination by court appointed experts. This is cause for great embarrassment and humiliation to the individual concerned.

Moreover, the change in legal sex is claimed by the state to be purely for reasons of privacy and to prevent embarrassment to the trans individual concerned and is not recognized for purposes such as marriage. This has been borne out by a recent decision by the Civil Court which revoked a previous ruling that had given a transsexual woman the right to marry.⁶ This clearly goes against judgements of the European Court of Human Rights, particularly with respect to the case of Goodwin and I vs. the UK (2002) which clearly found in favour of the right of transsexuals to marry in accordance with Article 12 of the European Convention of Human Rights. The case is currently before the Maltese Constitutional Court.

The irony is that this is not against the law. There's the hormone treatment and now, through a court case I've changed my status and birth certificate, so the state is recognising me as a woman. However that's it... that's where we get to!

Transgender Woman, 41

I went for an appendix operation at St. Luke's [Hospital], I've registered as woman and they put me in a men's ward... when I told them that I'm a woman they just said "heqq!" [so!] and kept going. ...During the night I was scared, there, with a ward full of men... Can't understand why they put me with men... I refused to go to wash myself during my hospital stay.

Transgender Woman, 18

Questions to the Maltese Government:

1. How can the Maltese Government justify denying the right to marry to post-operative transgender women?
2. What is the Maltese Government doing to facilitate the gender identity recognition of transgender women?

Recommendations:

- To take all necessary legislative, administrative and other measures to fully respect and legally recognise each person's self-defined gender identity
- To ensure that such procedures are efficient, fair and non-discriminatory, and respect the dignity of the person concerned
- To ensure that changes to identity documents will be recognised in all contexts where the identification or disaggregation of persons by gender is required by law or policy including marriage
- To undertake targeted programmes to provide social support for all persons experiencing gender transitioning or reassignment

⁵ The law states that "All expenses relating to such litigation including those incurred by the Director of Public Registry shall be borne by plaintiff".

⁶ Director of Public Registry vs. X - 21st May 2008 – Citation No. 202/2007 – First Hall of the Civil Court presided by Hon. Judge Joseph R. Micallef.

ARTICLE 10: RIGHT TO EDUCATION

Everyone has the right to education, without discrimination on the basis of, and taking into account, their sexual orientation and gender identity.

[Principle 16, Yogyakarta Principles]

According to the study carried out by MGRM, in the field of education, 70% of respondents felt the need to conceal their sexual orientation and/or gender identity at school/university some or all of the time from teachers, students and other personnel. 11.3% of those who experienced harassment stated that this occurred at school. In most cases this involved fellow students in the 13 - 17 age group. Of the respondents under the age of 18, 53% suffered harassment by fellow students in the two years prior to the study – in all cases at least three times; 33% of youth below 18 mentioned having experienced harassment at least 10 times over the two year period. 13.3% of these were also victims of physical violence at school.

Such experiences increase the likelihood of lesbian, bisexual and transgender youth dropping out of school or discontinuing with their education. Most secondary schools in Malta are gender segregated. This also tends to compound the harassment and violence experienced by LBT students which is often linked to the perceived transgression of the stereotypical representations of masculinity and femininity such environments tend to propagate.

"I was harassed by fellow students at school more than ten times in the last five months."

Lesbian, under 18

"At school, a fellow student called me names and I was ostracised."

Lesbian, under 18

"Lunch-break was a nightmare; they [the students] used to round us up and spit in our lunches almost every day. This was the saddest time of my life".

Female cross-dresser, 43

"They call me "puffta" and "sissy" all the time... I don't go out during lunch break; I have permission to stay in class... Once they [the boys] came in the class, they dragged me into the corner, surrounding me, teasing me, laughing saying "What do you have between your legs? A cock? A cunt? And they start grabbing between my legs, and they hurt me. .. Or else they keep on shouting "Fiver? Want a fiver?""

Transgender female, 14

Families made up by lesbian, bisexual and transgender women are denied information about family planning, because their unions are not recognised as families. They have no access to family planning, reproductive health and information about medically assisted artificial insemination. This lack of information is also a result of the misconceptions and stereotypes about households headed by women within Maltese society, where despite advances in equality legislation, men are still perceived to be the household heads (or the main breadwinners).

Questions to the Maltese Government:

1. What is the Maltese government doing to ensure the inclusion of lesbian, bisexual and transgender students in education?
2. How is the Maltese government addressing homophobic and transphobic bullying in schools?

3. What alternatives can the Maltese government offer to transgender students attending segregated schools?

Recommendations:

- To specifically refer to sexual orientation and gender identity and expression in all inclusion and anti-bullying policies within the Directorates of Education.
- To allow for transgender students to attend a school appropriate to their gender identity and expression.
- To include and inform about the diversity of family forms in Malta, particularly in information campaigns and policies affecting family life.

ARTICLES 6, 11, 12: RIGHT TO HEALTH

Everyone has the right to the highest attainable standard of physical and mental health, without discrimination on the basis of sexual orientation or gender identity. Sexual and reproductive health is a fundamental aspect of this right.

[Principle 16, Yogyakarta Principles]

Documentation on the treatment of gender dysphoria through gender reassignment is available. Findings show that gender reassignment provide a successful outcome in terms of quality of life. The most comprehensive review of gender reassignment spanning over 30 years, 13 countries and over 2000 patients concluded that gender reassignment treatment was generally effective in relieving gender dysphoria, and that its positive results greatly outweighed any negative consequences gender reassignment yielded for patients with gender dysphoria. (Pflaffin and Junge, 1998; ref. in Whittle et al.)

Pflaffin and Junge identified four areas which benefit from gender reassignment: subjective satisfaction, mental stability, socio-economic functioning, and partnership and sexual experience. Subjective satisfaction was the most important and demonstrated outcome of the studies.

Other studies have shown how early diagnosis and intervention reduce symptoms and improve quality of life. However, despite these studies, healthcare systems are still failing to provide an accessible, fair and well-informed service.

Access to hormone therapy and gender reassignment surgery is not available through the National Health Service. John Dalli, the previous Minister for Health, now EU Commissioner for Health and Consumer Policy, compared gender reassignment surgery to a nose-job.

Besides the general lack of professional expertise in the area of trans health, research with trans persons in Malta indicates that all of the respondents experienced and still experience difficulty in accessing treatment for financial reasons since hormone therapy and gender reassignment are not covered by the National Health Service. The study carried out by MGRM also indicated that trans people avoid doing routine health checks as they fear an adverse reaction from healthcare professionals⁷ (Baldacchino & Grech 2008:37-38). A prolonged transition period, often combined with difficulties in accessing employment often has a deleterious effect on the quality of life and mental health of trans women. Some see prostitution as the only resort.

⁷ Baldacchino, R. & Grech, C. (2008) *Inclusion of Transgender Individuals into the Labour Market: A Research Study*. MGRM, Malta.

The study conducted by MGRM indicated a high incidence of harassment experienced by LBT women. More than 1 in 3 of all respondents (34.0% – 34.7% of males and 32.5% of females) were subjected to some form of psychological harassment in the last two years, and for the majority of these (28.7% of all respondents), it was not an isolated incident. In fact, 43 respondents reported more than one case of psychological harassment in the last two years, while 51 respondents of the total of 150 were harassed at least once. This was reported as having an affect on the mental health and well being of 27% of the victims with another 6% experiencing deterioration to their physical health.

..they [parents] brought a psychiatrist at home, and he told them that this is a phase, it will pass. And he started giving me anti-depressants. ...once he also suggested...but I didn't accept... steroids: so that I become "more manly".

Transgender female, 41

"I am a sensitive person. I could not live a 'normal' life in the sense that I was always down and crying. I had to go to see a doctor who then referred me to a psychologist. Because of all the harassment I experienced, I was not comfortable to be outside as I feared people would just interfere in my private life."

Lesbian, 18 – 25

"A person called on my cell phone and was calling me names and swearing at me because I'm lesbian... You don't know if the person will threaten you again, and if he does you don't know what to expect. What if the person started with a call and next time he comes to find you? You get scared of the people around you."

Lesbian, 18 – 25

"I became extremely stressed out. I did not pass from one of my diploma exams and my girlfriend and I argue most of the time."

Lesbian, 18 – 25

Questions to the Maltese Government:

1. What is the Maltese Government doing to ensure access to treatment to transgender women wishing to transition?
2. What is the Maltese Government doing to ensure that policies within health services are inclusive and respectful of transgender women?
3. What is the Maltese Government doing to actively address homophobia and transphobia in all sectors of society?

Recommendations:

- To provide access to hormone therapy, gender reassignment and other treatments related to the transitioning of trans persons through the National Health Service.
- To ensure that health care services are inclusive of LGBT persons.

ARTICLES 11, 13, 16: DISCRIMINATION IN EMPLOYMENT AND HOUSING

Everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation or gender identity. Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination whether or not the enjoyment of another human right is also affected. The law shall prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination.

According to the study carried out by MGRM, 73% of respondents feel the need to conceal their sexual orientation and/or gender identity or avoid discussing it at the workplace, some or all the time. 13% of respondents experienced discrimination in employment which ranged from higher expectations in comparison to other employees/candidates, refusal of promotion, refusal of employment, and dismissal. Harassment in the workplace was also high with 45% of respondents who experienced harassment stating that this occurred in the workplace.

4.3% of respondents experienced discrimination in relation to housing, when renting or purchasing a house while 16.7% were treated differently or less favourably when accessing general services (bars, clubs, public transport, shops, etc). No legal protection as yet exists outside the field of employment to address discrimination on the grounds of sexual orientation or gender identity in the provision of goods and services.

"A couple of co-workers harassed me verbally, gossiped about me and sent messages on my mobile phone more than ten times in less than three months."

Lesbian, 41 – 50

"When I used to work in a hotel, my contract was not renewed because 'it was better like this to avoid any more trouble' – this is what HR had told me. Later on, another four employees were given the same reason for their contract not being renewed. They all happen to be gay or lesbian."

Lesbian, 18 – 25

...Since many of us don't find a job, many end up in prostitution. It's a bad image but you don't blame them because if you don't find a job and you need money... you can never know what could happen to me!

Trans woman, 18

Once I went for an interview at a bank. There were 12 of us being interviewed and they chose two: I and another person and both of us were supposed to get the job. I hadn't told them about my situation. I thought first I get the job then I tell them when I take the documents and whatever... When I told them, they said "you haven't got the job yet"... so I feel that that was discrimination. The person who was at the interview even told me "do you think that you'll integrate well with the other employees?" ...I told him "Why not? You believed in me and chose me out of the 12...and now you're telling me that I won't integrate?" I went back to performing in drag shows which I didn't want to do because I wasn't a drag queen, but I needed income...

Transgender female, 41

Within the framework of providing family-friendly employment conditions and reconciliation of family and professional life, Maltese employers do not consider same-sex unions with children as families. This means, for example, that a lesbian or bisexual woman is not entitled to get sickness leave in case that her partner or partner's child requires medical attention or hospitalisation.

Despite the legal protection under the EU Employment Framework Directive (2000/78/EC), lesbian and bisexual women still experience discrimination at the workplace, with most women feeling the need to conceal their sexual orientation and/or gender identity for fear of negative consequences, including dismissal.

Recommendations:

- To address harassment and discrimination of women, including lesbian, bisexual and transgender women at the workplace through information campaigns and law reinforcement.
- To include legal protection outside the field of employment to address discrimination on the grounds of sexual orientation or gender identity in the provision of goods and services.

ARTICLE 16: MARRIAGE AND FAMILY LIFE

An important aspect of discrimination of lesbian women in Malta is unequal treatment of lesbian couples compared to heterosexual (married or unmarried) couples. Same-sex relationships are not recognised in Malta, and the Government's proposal of a "Cohabitation Law" clearly shows that same-sex partners will not be treated and protected equally by the law. We believe that the Maltese Government should act to remove this highly unjust and unequal situation, which is leading to the treatment of LBT women as second-class citizens and denying them the choice and freedom to enter into marriage.

Recommendation:

- To take legal and other necessary action to recognise same-sex couples and provide equal treatment and protection to their families.

LIST OF RECOMMENDATIONS

Violence against Women

- To take all necessary policing and other measures to prevent and provide protection from all forms of violence and harassment related to sexual orientation and gender identity
- To ensure that the police reach out to the LGBT community and encourage reporting of homophobic and transphobic incidents
- To conduct campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence, in order to combat the prejudices that underlie violence related to sexual orientation and gender identity

Recognition of a Person's Identity

- To take all necessary legislative, administrative and other measures to fully respect and legally recognise each person's self-defined gender identity
- To ensure that such procedures are efficient, fair and non-discriminatory, and respect the dignity of the person concerned
- To ensure that changes to identity documents will be recognised in all contexts where the identification or disaggregation of persons by gender is required by law or policy including marriage
- To undertake targeted programmes to provide social support for all persons experiencing gender transitioning or reassignment

Education

- To specifically refer to sexual orientation and gender identity and expression in all inclusion and anti-bullying policies within the Directorates of Education.
- To allow for transgender students to attend a school appropriate to their gender identity and expression.
- To include and inform about the diversity of family forms in Malta, particularly in information campaigns and policies affecting family life.

Health

- To provide access to hormone therapy, gender reassignment and other treatments related to the transitioning of trans persons through the National Health Service.
- To ensure that health care services are inclusive of LGBT persons.

Employment and Housing

- To address harassment and discrimination of women, including lesbian, bisexual and transgender women at the workplace through information campaigns and law reinforcement.
- To include legal protection outside the field of employment to address discrimination on the grounds of sexual orientation or gender identity in the provision of goods and services.

Marriage and Family Life

- To take legal and other necessary action to recognise same-sex couples and provide equal treatment and protection to their families.