

**MALTA: THE STATUS OF LESBIAN, GAY, BISEXUAL
AND TRANSGENDER RIGHTS**

**Submission to the Human Rights Council for Universal Periodic Review
(5th Session)**

INTRODUCTION

This information is submitted by the Malta Gay Rights Movement (MGRM)ⁱ and ILGA-Europeⁱⁱ and in the framework of the Universal Periodic Review, to draw the attention of the Human Rights Council to human rights concerns affecting lesbian, gay, bisexual and transgender (LGBT) people in Malta.

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

OVERVIEW

Legal protection for lesbian, gay and bisexual (LGB) persons in Malta exists in the areas of employment, through the transposition of the European Union Employment Framework Directive (2000/78/EC). Transitioning transgender people 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.^{iv}

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. 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 Movement^v illustrates that in the past two years discrimination experienced by LGBT people remains widespread in a number of areas, such as employment, provision of goods and services, healthcare and education.

RIGHTS TO SECURITY OF THE PERSON

(Article 20 of ICCPR)

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%).

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.

Recommendations:

We urge the Maltese Government to:

- a) 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
- b) Ensure that the police reach out to the LGBT community and encourage reporting of homophobic and transphobic incidents
- c) Undertake 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

RIGHT TO EQUALITY AND NON-DISCRIMINATION

(Article 26 of ICCPR and Article 2 of ICESCR)

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.

[Principle 2, Yogyakarta Principles]

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.

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. 53% of respondents under the age of 18 suffered harassment by fellow students in the past two years – 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.

Recommendations:

We urge the Maltese Government to:

- a) Adopt legislation to prohibit all forms of discrimination – including discrimination based on sexual orientation and gender identity – in all areas of life, including in the provision of goods and services, in access to health care and education
- b) Take all appropriate action, including programmes of education and training, with a view to achieving the elimination of prejudicial or discriminatory attitudes or behaviours which are related to the idea of the inferiority or the superiority of any sexual orientation or gender identity or gender expression

RIGHT TO RECOGNITION BEFORE THE LAW & RIGHT TO SOCIAL SECURITY AND TO OTHER SOCIAL PROTECTION MEASURES

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 costly^{vi} 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.^{vii} 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.

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 professionals^{viii} (Baldacchino & Grech 2008:37-38).

Recommendations:

We urge the Maltese Government to:

- a) Take all necessary legislative, administrative and other measures to fully respect and legally recognise each person's self-defined gender identity
- b) Ensure that such procedures are efficient, fair and non-discriminatory, and respect the dignity of the person concerned
- c) 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
- d) Undertake targeted programmes to provide social support for all persons experiencing gender transitioning or reassignment

RIGHTS DERIVING FROM THE LEGAL RECOGNITION OF SAME-SEX RELATIONS

Everyone has the right to found a family, regardless of sexual orientation or gender identity. Families exist in diverse forms. No family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members.

[Principle 24, Yogyakarta Principles]

Several rights are accessed by couples through the institution of marriage in Malta. These include the right to inheritance, joint property rights, immigration rights and others. There is currently no possibility for same-sex couples to be legally recognised. This lack of legal recognition of same sex partnerships leads to discrimination in access to housing, inheritance rights, the possibility of joint tax returns, visitation rights, emergency and family leave among other rights. Neither is second parent adoption possible.

Recommendations:

We urge the Maltese Government to:

- a) Adopt legislation to recognize the relationship between two partners, irrespective of their sex, ending the current discriminatory situation and ensuring equal access to rights and to take all necessary legislative, administrative and other measures to ensure that no family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members, including with regard to family-related social welfare and other public benefits, employment, and immigration
- b) Take all necessary legislative, administrative and other measures to ensure that any obligation, entitlement, privilege or benefit available to different-sex unmarried partners is equally available to same-sex unmarried partners

END NOTES

i The Malta Gay Rights Movement 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-Europe. (www.maltagayrights.net)

ii ILGA-Europe, the European Region of the International Lesbian and Gay Association, enjoys consultative status at Economic and Social Council of the United Nations (ECOSOC) and participative status at the Council of Europe. ILGA-Europe is a European NGO with more than 240 national and local lesbian, gay, bisexual and transgender (LGBT) member organisations in 47 European countries. www.ilga-europe.org

iii A copy of this document will be sent to the OHCHR Civil Society Unit as soon as it is available in December 2008.

iv 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.

v LGBT Discrimination in Malta (Final version to be published in December 2008)

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

vii 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.

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