



**Submission to the Council of Europe Ad Hoc Committee on  
Preventing and Combating Violence Against Women and Domestic  
Violence**

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**The need to ensure that the Convention on violence against women  
addresses effectively the obligation of member states to prevent  
and combat violence against lesbian, bisexual and transgender  
women**

**8 September 2009**

**ILGA-Europe**

# Submission to the Council of Europe Ad Hoc Committee on Preventing and Combating Violence Against Women and Domestic Violence

## The need to ensure that the Convention on violence against women addresses effectively the obligation of member states to prevent and combat violence against lesbian, bisexual and transgender women

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## ILGA-Europe

### Submission to the Council of Europe Ad Hoc Committee on Preventing and Combating Violence Against Women and Domestic Violence (“The Committee”)

#### The need to ensure that the Convention on violence against women addresses effectively the obligation of member states to prevent and combat violence against lesbian, bisexual and transgender women

#### 1 Summary

1. Lesbian, bisexual and transgender (“LBT”) women experience gender-based violence both on account of their gender and because of the way their sexual orientation or gender identity challenges patriarchal concepts of gender and gender roles.
2. This double exposure to causes of gender-based violence puts them at particular risk. A recent survey by London’s Metropolitan Police of more than 1100 LBT women found that approximately twice as many had experienced violence or abuse on account of their sexual orientation or gender identity as on all other grounds, despite the fact that nearly half of respondents changed their behaviour or appearance to avoid homophobic or transphobic abuse.<sup>1</sup>
3. This double exposure also means that violence against them can only be addressed effectively by the Convention if the part played by homophobia and transphobia is acknowledged and specific counter-measures identified.
4. However, there is a further reason to acknowledge explicitly violence against LBT women. Regrettably, as the Committee of Ministers has stressed, homophobia and transphobia are widespread in Europe.<sup>2</sup> Without specific references in the Convention it remains all too possible that its measures will not be used to combat violence against LBT women.
5. Inclusion of such references would be an effective response to the invitation of the Committee of Ministers to all intergovernmental committees to make proposals to strengthen, in law and in practice, the equal rights and dignity of LGBT persons and to combat discriminatory attitudes against them.<sup>3</sup>
6. This submission therefore recommends that the Convention identify groups of women who are especially vulnerable to violence, including specifically LBT women, and suggests areas where particular measures are required to address violence against them, such as awareness-raising, education, improving confidence by LBT women in law enforcement agencies, increasing the level of incidents reported to the police, and specific training for agencies involved in victim support.
7. It also recommends that the non-discrimination clause of the Convention makes explicit reference to sexual orientation and gender identity.

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<sup>1</sup> See paragraphs 59 and 62 below for more details

<sup>2</sup> See paragraph 22

<sup>3</sup> See paragraph 22

## **2 Why the Convention should address violence against lesbian, bisexual and transgender women**

### **2.1 Violence against LBT women falls within the scope of the Convention**

8. The Committee of Ministers' terms of reference call for the preparation of one or more legally binding instruments

"to prevent and combat domestic violence including specific forms of violence against women, other forms of violence against women, and to protect and support victims of such violence as well as prosecute the perpetrators".

9. In its Interim Report the Committee sets this in context by emphasising the need for the Convention to take account of the gender dimension and notes that

"violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men. This violence is thus both a cause and a consequence of the inequality between women and men, linked to a certain perception of their roles in the family and in society."<sup>4</sup>

10. The Committee also states that

"All measures to prevent violence against women should therefore be framed in the context of the promotion and practical realisation of equality between women and men through eliminating discrimination against women, changing patriarchal attitudes and fighting back gender stereotypes."<sup>5</sup>

11. LBT women are exposed to the risk of violence at two gender-related levels: first, in common with all women, on the ground of their gender; and secondly, because of the challenge that the expression of their sexual orientation or gender identity poses to patriarchal concepts of gender and gendered roles, and therefore to the traditional power relationships between men and women. Homophobia and transphobia can be seen as heightened expressions of gender discrimination. Indeed, it has been argued that homophobia is "a weapon of sexism", in that its effect is to deter and punish expression and behaviour which do not conform to, and therefore undermine, patriarchal concepts of gender and gendered roles.<sup>6</sup>

12. The common roots of sexism, homophobia and transphobia mean that it can be difficult to determine whether one of these factors alone, or a mix of them, was the motivating factor in any particular act of violence. One survey of lesbian, gay, and bisexual youth concluded:

"it is not always possible for lesbian and bisexual women to separate out their experiences of anti-lesbian and anti-women discrimination. Nor should they be expected to."<sup>7</sup>

13. As regards transphobia, the European Court of Justice has ruled explicitly that "discrimination arising ..... from the gender reassignment of the person" is discrimination on the ground of sex and accordingly that EU instruments implementing the principle of equal treatment between

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<sup>4</sup> Interim Report, Paragraph 10

<sup>5</sup> Interim Report, Paragraph 17

<sup>6</sup> *Homophobia -- A Weapon of Sexism* – Suzanne Pharr - 1997

<sup>7</sup> *Telling It Like It Is - lesbian, gay and bisexual youth speak out on homophobic violence* – GALOP – 1998 – Page 26

men and women should be interpreted to provide protection from discrimination to transgendered persons.<sup>8</sup>

14. This position has been endorsed by the EU Member States in a statement by the Joint Council and Commission which confirms that the *Directive on the Principle of Equal Treatment between Men and Women in the Access to and Supply of Goods and Services* (2004/113/EEC) protects those "intending to undergo, undergoing or who have undergone gender reassignment".<sup>9</sup>
15. It is clear that violence against LBT women falls within the scope of the proposed Convention.

## **2.2 There is a clear need for the Convention to address explicitly violence against LBT women**

16. Following sections of this submission will demonstrate that the vulnerability of LBT women to violence, and the specific nature of this violence, make it essential that the Convention addresses it explicitly. However the need to address this violence in the context of discrimination against women has already been recognised by a number of authorities.

17. In 2002 the Special Rapporteur on violence against women told the UN Commission on Human Rights:

"Gender-based violence is also related to the social construct of what it means to be either male or female. When a person deviates from what is considered "normal" behaviour they are targeted for violence. This is particularly acute when combined with discrimination on the basis of sexual orientation or change of gender identity. Violence against sexual minorities is on the increase and it is important that we take up the challenge of what may be called the last frontier of human rights."<sup>10</sup>

18. The CEDAW Committee has also addressed sexual orientation discrimination on a number of occasions.<sup>11</sup>

19. In a recent Issue Paper, *Human Rights and Gender Identity*, the Council of Europe Human Rights Commissioner drew attention to the need to address human rights violations against transgender persons:

"The human rights situation of transgender persons has long been ignored and neglected, although the problems they face are serious and often specific to this group alone. Transgender people experience a high degree of discrimination, intolerance and outright violence. Their basic human rights are violated, including the right to life, the right to physical integrity and the right to health."<sup>12</sup>

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<sup>8</sup> *P v S and Cornwall County Council*. Subsequent decisions in *K.B. v NHS Pensions Agency* and *Sarah Margaret Richards v Secretary of State for Work and Pensions* have confirmed this position.

<sup>9</sup> Statement in the minutes of the 2606th meeting of the Council of the European Union (Employment, Social policy, Health and Consumer Affairs)

<sup>10</sup> *Oral Statement at the 50 Session of the Commission on Human Rights* - April 10, 2002 – Radhika Coomaraswamy, UN Special Rapporteur on violence against women, its causes and consequences

<sup>11</sup> For example, in relation to laws criminalising, or potentially criminalising, lesbianism, in Kyrgyzstan, Trinidad and Tobago, and Mexico. CEDAW Committee: 20th Session, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Kyrgyzstan*, UN Doc. A/54/38 (1999); 26th Session, *Summary record: Trinidad and Tobago*, UN Doc. CEDAW/C/SR.536 (2002); *Concluding observations of the Committee on the Elimination of Discrimination against Women: Mexico*. UN Doc. A/53/38 (1998).

<sup>12</sup> *Human Rights and Gender Identity* -- Issue Paper -- Commissioner for Human Rights -- July 2009 - Page 3

20. He pointed specifically to the importance of linking the human rights of transgender persons to topics such as violence against women and domestic violence.<sup>13</sup>
21. The fact that transgender persons constitute a relatively small minority does not in any way reduce the obligation of States to protect them from violence. To exclude from international protections a minority which is so clearly the object of targeted and specific human rights violations risks giving the impression that States condone violations of their rights.

### **2.3 Responding to the Committee of Ministers' invitation to address sexual orientation and gender identity discrimination**

22. In a recent message<sup>14</sup> the Committee of Ministers noted that

"instances of discrimination on grounds of sexual orientation or gender identity as well as homophobia and intolerance towards transgender persons are regrettably still widespread in Europe"

and went on to invite

"all steering committees and other committees involved in intergovernmental co-operation at the Council of Europe to give, within their respective terms of reference, due attention in their current and future activities to the need for member states to avoid and remedy any discrimination on grounds of sexual orientation or gender identity and to make proposals for specific intergovernmental and other activities designed to strengthen, in law and in practice, the equal rights and dignity of lesbian, gay, bisexual and transgender persons and to combat discriminatory attitudes against them in society."

23. The inclusion of specific provisions addressing violence against LBT women in the Convention would be an effective response to the Committee of Ministers' invitation.

## **3 Gender identity**

24. This section provides some explanation of the concept of gender identity, and proposes that the Convention's provisions should provide protection to all transgender women, and not just those intending to undergo, or who have undergone, gender reassignment.

### **3.1 The concept of gender identity**

25. The following explanations are taken from the Introduction to the Human Rights Commissioner's recent paper.

"In order to understand the concept of gender identity, it is important to distinguish between the notions of "sex" and "gender". While "sex" primarily refers to the biological difference between women and men, "gender" also includes the social aspect of the difference between genders in addition to the biological element.

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<sup>13</sup> Ibid. page 42

<sup>14</sup> Message from the Committee of Ministers to steering committees and other committees involved in intergovernmental co-operation at the Council of Europe on equal rights and dignity of lesbian, gay, bisexual and transgender persons (Adopted by the Committee of Ministers on 2 July 2008 at the 1031st meeting of the Ministers' Deputies)

The notion of "gender identity" offers the opportunity to understand that the sex assigned to an infant at birth might not correspond with the innate gender identity the child develops when he or she grows up. It 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, and includes the personal sense of the body and other expressions of gender (i.e. "gender expression") such as dress, speech and mannerisms.

Most people legally defined as man or woman will correspondingly have a male or female gender identity. Transgender persons, however, do not develop that corresponding gender identity and may wish to change their legal, social and physical status -- or parts thereof -- to correspond with their gender identity. Modification of bodily appearance or function by dress, medical, surgical other means is often part of the personal experience of gender by transgender people."

26. The Commissioner notes that gender identity and sexual orientation are two different concepts, explaining that:

"Sexual orientation should be understood as each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender (heterosexuality, homosexuality and bisexuality)."

### **3.2 Protection for all transgender women who experience gender-identity based violence**

27. As noted in paragraph 14, the EU Member States have already recognized gender identity discrimination against those "intending to undergo, undergoing or who have undergone gender reassignment" as discrimination on the ground of sex.

28. However, the Commissioner points out that the transgender community is diverse, including

"pre-operative and post-operative transsexual persons, but also persons who do not choose to undergo or do not have access to operations"<sup>15</sup>

and expresses concern that many legal frameworks

"only seem to refer to transsexual persons, leaving out a decisive part of the community."<sup>16</sup>

29. In its report on homophobia, the EU Fundamental Rights Agency expresses a similar concern.<sup>17</sup>

30. In an earlier statement the Commissioner had drawn attention to the unreasonableness of requiring surgery as a prerequisite to enjoyment of legal recognition of one's gender identity:

"To require surgery ... ignores the fact that such operations are not always desired, medically possible, available, and affordable".<sup>18</sup>

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<sup>15</sup> *Human Rights and Gender Identity* -- Issue Paper -- Commissioner for Human Rights -- July 2009 -- Page 3

<sup>16</sup> *Ibid.* Page 4

<sup>17</sup> *Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States: Part 1 -- Legal Analysis* -- 2009 -- European Union Agency for Fundamental Rights -- page 167



31. It is therefore proposed that the Committee define the scope of the Convention to protect all those women who experience violence based on their gender identity or gender expression, including those who have not undergone gender reassignment.

#### **4 Overview of violence experienced by lesbian, bisexual and transgender women**

32. For the purposes of this submission, violence experienced by LBT women is divided into two broad categories:
1. Violence experienced on account of their sexual orientation or gender identity, comprising
    - domestic violence (including forced marriage, deprivation of liberty, sexual violence and harassment), but excluding that by same-sex intimate partners
    - violence occurring in the general community (including physical violence, sexual violence, verbal abuse and harassment, threats, intimidation etc).
  2. Same-sex intimate partner violence (consistent with the Committee's decision in the Interim Report that "the convention should also allow for the application of its provisions to all victims of domestic violence").<sup>19</sup>
33. Sections 5 -- 8 of this submission illustrate both the seriousness of this violence, and its specific nature. Section 9 makes suggestions for ways in which the Convention can be drafted to ensure that it makes an effective contribution to combating this violence.
34. Inclusion of examples from a particular country does not necessarily mean that that country's record is worse than another's. Nor does absence of examples from a particular country mean that that country's record is better than another's. The availability of information varies very much from one country to another. Moreover the purpose of the submission is to highlight issues rather than countries or individual cases.

#### **5 Violence experienced on account of sexual orientation or gender identity**

35. Violence experienced on account of sexual orientation or gender identity, whether in the domestic sphere, or in the general community, is violence targeting a person's identity. Such violence can have particularly serious effects on victims, who cannot change the characteristics that made them a victim. It also affects other members of the targeted group, who feel at risk of attack themselves, and may experience the attack as if they were themselves a victim.
36. Social acceptance of discrimination against a particular group is an important factor in "legitimising" such violence,<sup>20</sup> pointing to the need for widespread public education campaigns.
37. The following cases from Armenia and Serbia illustrate many aspects of the violence experienced by LBT women. They highlight the way in which a particular individual may experience this

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<sup>18</sup> *Discrimination against transgender persons must no longer be tolerated* -- Viewpoint of the Council of Europe Commissioner for Human Rights -- 5 January 2009. A number of Council of Europe member states, including, for example, the UK and Spain, do not require surgery as a prerequisite for legal recognition.

<sup>19</sup> Interim Report, Paragraph 6

<sup>20</sup> *Hate Crime Laws -- A Practical Guide* -- OSCE/ODIHR -- 2009 -- Page 20

violence more or less concurrently in the family, in the community, and at the hands of state officials or services, greatly increasing their vulnerability.

Yerevan – 2007 – “In her short time out as a lesbian [ML] had experienced verbal, physical and sexual harassment, family violence and police harassment, and was refused health care, housing, a job and commercial services. She had been forced to leave the family home after her mother, on trying to force her to marry, found out she was a lesbian. She said that she would prefer her daughter to be a prostitute than a lesbian. Word went around her local community and one night ML was assaulted by "several guys" -- they beat her up and then stabbed her with a blade." (M.L., 22)<sup>21</sup>

Belgrade, 6 August 2009: N.A., on her way home by bus with her partner, was attacked by a group of approximately 10 football club supporters. When she responded to insults such as "dyke whores", "kill a fag" and similar, the group attacked her, kicking her in the stomach, head and back. No one on the bus helped her, and the attacks ended only when two police boarded. However, instead of arresting her attackers, they arrested and held her for 12 hours on a charge of disorderly conduct. On release, doctors found her to be suffering from concussion, and injuries to the head, legs, stomach and thighs. (N.A., 30)<sup>22</sup>

## 5.1 Levels of violence against lesbian, bisexual and transgender women

38. There are a number of problems associated with trying to identify levels of violence against LBT women.

- Few, if any, states conduct any monitoring of such violence.<sup>23</sup>
- Because of the difficulties of identifying LGBT people, who often conceal their sexual identity, surveys based on random samples are well-nigh impossible. Such research as exists is generally conducted by community organisations, using small non-random samples.
- Many of those surveyed take action to avoid violence by concealing their sexual orientation or gender identity from potential perpetrators, with the result that survey results invariably understate the scale of the problem.
- Many of the reports and surveys which have been conducted either do not provide separate statistics with regard to women, or provide such information only to a limited extent. In the sections which follow it has therefore sometimes been necessary to generalise from data covering both men and women.
- Many of the reports do not distinguish between domestic violence and violence occurring in the community.

39. Whatever the difficulties of establishing an accurate picture, the information and personal testimonies which follow leave no doubt that the actual experience of such violence, or the fear of it, weigh disproportionately on the well-being of LBT women all across Europe.

## 5.2 Domestic violence (excluding same-sex intimate partner violence)

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<sup>21</sup> “We for Civil Equality” NGO, Armenia - 2007 report - quoted in *Forced Out – LGBT People in Armenia* - ILGA Europe – Page 32

<sup>22</sup> Message from the Gay Straight Alliance, Belgrade, "Incidents in Belgrade and unprofessional police reaction" -- 19 August 2009

<sup>23</sup> According to a report by Human Rights First, *2008 Hate Crime Survey -- the Response of Governments to Violence on the basis of Sexual Orientation and Gender Identity*, it appears that Sweden, United Kingdom, the Netherlands and Norway conduct some monitoring of homophobic or transphobic hate crimes.

40. With social attitudes throughout much of Europe remaining hostile to LGBT people, many fear extreme reactions if they disclose their sexual orientation or gender identity to family members. Reports from two countries where there has, as yet, been relatively little work to promote the acceptance of LGBT people, illustrate these concerns:

Albania: LGBT persons fear that admitting their sexual orientation to their families may lead to "extreme measures ... such as psychological and physical violence, a severe control on their lives.... there have been cases of LGBT persons forced by their family to get married without their consent or even cases of persons kicked out of the house and disinherited." 91% of survey respondents were found to conceal their sexual orientation from family members.<sup>24</sup>

Azerbaijan: "Very few LGBT people tell their families about their sexual orientation or gender identity. Many migrate to the capital city to escape family pressure and control. In those cases in which their sexual orientation or gender identity was disclosed by the police or in the course of an accidental situation, there were cases of violence, expulsion from home, or forced marriage."<sup>25</sup>

41. While these reports speak of the situation of LGBT people in general, a recent report on Turkey by Human Rights Watch, *"We Need a Law for Liberation" -- Gender, Sexuality and Human Rights in a Changing Turkey* ("The Human Rights Watch Turkey Report") highlights the problems faced by lesbian and bisexual women and girls:

"Human Rights Watch interviewed 24 lesbian or bisexual women and girls in 2003 and 2007. The most overwhelming factor that they cited to Human Rights Watch is the subjection of women and their sexuality to the family and its values -- including "honour" or "custom." As women and girls whose sexualities move beyond the norms and expectations of heterosexuality, lesbians and bisexual women and girls feel these pressures in especially acute ways, and feel and fear the steady possibility of family violence."<sup>26</sup>

42. The report quotes many personal testimonies, including:

"I'm not planning to say anything ever. This is something that can result in killings in my family. My dad says, "I can forgive if my children are prostitutes, thieves, but I cannot forgive one thing, being homosexual." (Ayse, 26)"<sup>27</sup>

"Last year I was 16, and I said, I am a lesbian and I will come out. So I told my friends at school. Then the whole school heard it. .... I was expelled from the school... My family hit me. ... Then they sent me to a psychologist to cure me. I didn't go to school for a year. (Esme 17)"<sup>28</sup>

"They made me marry because they caught me with my girlfriend having sex. When they found out I was kept in the garage and was beaten over several days. Then I married. Life

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<sup>24</sup> *Survey Research with the LGBT Community in Albania -- 2006* -- Grupi per Intergrim Shoqeror -- Page 4

<sup>25</sup> *Report on Azerbaijan -- 4th Round of the Universal Periodic Review* -- February 2009 - by The Center "Women and Modern World" (Baku, Azerbaijan), LGBT Organization Labrys (Kyrgyzstan), and the Sexual Rights Initiative -- Paragraph 33

<sup>26</sup> *"We Need a Law for Liberation" -- Gender, Sexuality and Human Rights in a Changing Turkey* -- Human Rights Watch -- May 2008 -- Page 44

<sup>27</sup> *Ibid.* Page 49

<sup>28</sup> *Ibid.* Page 56

with him was really bad. It was so horrible." (T., forced to marry a 52-year-old when aged 16).<sup>29</sup>

43. A report on Azerbaijan documents a particularly serious example of domestic violence against a transgender woman:

"He [her father] got very angry and tied me with chains in the cellar and I spent 8 months like this. I was beaten up every day, sometimes with a rubber pipe. I did not have contact with anyone. When I had to go to the toilet he put a rope around my neck and then controlled me from a distance. He did the same when I took a shower. .... after eight months he forced me to marry someone, not legally, but more as a religious ceremony. ... my patience ran out and I attempted to commit suicide."<sup>30</sup>

44. A survey<sup>31</sup> into domestic violence faced by LGB people in the UK shows that this is an issue which is problematic even in countries which have taken considerable steps towards combating homophobia and transphobia. It also shows that this issue disproportionately affects lesbian and bisexual women: 43% of female respondents had experienced domestic violence,<sup>32</sup> compared to 20% for male respondents. The report authors considered that one factor influencing this gender difference was the importance of the ex-opposite sex partner as a perpetrator of domestic violence against female respondents. They contrasted their findings with those of the 1996 British Crime Survey, which found that, in the general population, 26% of women and 17% of men had experienced domestic violence.

45. Another UK report, *Identifying the difficulties experienced by Muslim lesbian, bisexual and transgender woman in accessing social and legal services -- initial findings* ("The Safra Report") highlighted the difficulties experienced by Muslim LBT women:

"Not conforming to the sexual and gender norms of the community can result in domestic violence..... Public knowledge of a person's homosexuality can bring enormous dishonour and shame to the family. LBT women do not fulfil the identity and sexual roles that are required of them and they threaten the patriarchal status quo. Therefore, some families or family members will resort to domestic violence to control and hide transgressions of sexual or gender norms. Because of their prescribed gender roles, women are expected (and forced) to reconcile themselves to these abusive situations."<sup>33</sup>

46. The report emphasised the dangers for LBT women of coming out:

"Often coming out, or "being outed" by someone else, results in negative reactions from family and friends. These reactions can include (complete) rejection, sometimes leading to isolation; intensified pressure to get married, sometimes leading to forced marriage;

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<sup>29</sup> Ibid. Page 50

<sup>30</sup> *Forced Out: LGBT People in Azerbaijan -- Report on the ILGA-Europe/COC. fact-finding mission* – 2008 - Page 23

<sup>31</sup> *Count me in! -- a Report on the Bexley and Greenwich Homophobic Crime Survey*, by Professor Leslie Moran, Susan Paterson and Tor Doherty - March 2004 - commissioned by Bexley and Greenwich councils, Police, Probation, Health and Voluntary Organisations; Page 9

<sup>32</sup> It should be noted that domestic violence was defined in the survey as "violence by a family member, partner or ex-partner", and therefore includes intimate partner violence

<sup>33</sup> *Identifying the difficulties experienced by Muslim lesbian, bisexual and transgender woman in accessing social and legal services -- initial findings -- January 2003* – The Safra Project – Paragraph 5.1

physical or emotional domestic violence; and/or the loss of custody or contact with children."<sup>34</sup>

47. It also noted the extent to which Muslim women are dependent on their families, and the weak position this leaves them in;<sup>35</sup> and pointed to the role of male peer pressure in Muslim communities in encouraging domestic violence.<sup>36</sup>

48. Regarding forced marriage, the *Safra Report* pointed out that the distinction often made between forced and arranged marriages can be deceptive, particularly in the context of LBT women, where the pressures to conform are so intense as to negate apparent consent.<sup>37</sup>

### 5.21 Difficulty in obtaining help

49. Both the *Human Rights Watch Turkey* and the *Safra* reports emphasise the difficulties faced by LBT women who are victims of domestic violence in obtaining help.

"Turkish organisations working with women victims of violence -- including lesbian and bisexual women -- said that they thought lesbian and bisexual women would be afraid to seek recourse when facing family violence out of fear that they might be forced to reveal their sexuality and in turn face even more discrimination or violence.... The General Coordinator for the Istanbul Research Centre on Women told Human Rights Watch, "I can't think of a lesbian woman that could easily go to the authorities or seek other type of protection admitting her sexuality."<sup>38</sup>

50. The *Safra Report* notes that "Fear of domestic violence prevents many Muslim LBT women from ..... revealing the underlying reason for the breakdown of a marriage or from explaining their refusal to get married."<sup>39</sup> It adds that: "Disclosing domestic violence would often result in coming out, as the causes for the domestic violence would become public," with all the adverse consequences that this would entail.<sup>40</sup>

51. Those Muslim LBT women who did seek help found numerous problems. Police, lawyers, social workers and other officials were often unaware that gender identity or sexual orientation factors could contribute directly to situations of forced marriage, domestic violence, denial of access to children and abduction.<sup>41</sup>

52. Some service providers or officials even became complicit in violating Muslim LBT women's rights, as a result of their personal belief that it was "wrong" to be lesbian, bisexual or transgender:

"I know of at least two cases in which a young person felt that the social worker agreed with his or her family's homophobic views and colluded with them. This resulted directly in a

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<sup>34</sup> Ibid. Paragraph 2.2

<sup>35</sup> Ibid. Paragraph 5.5

<sup>36</sup> Ibid. Paragraph 2.3

<sup>37</sup> Ibid. Paragraph 4.3

<sup>38</sup> "We Need a Law for Liberation" -- *Gender, Sexuality and Human Rights in a Changing Turkey* -- Human Rights Watch -- May 2008 -- Page 46

<sup>39</sup> *Identifying the difficulties experienced by Muslim lesbian, bisexual and transgender woman in accessing social and legal services -- initial findings* -- January 2003 -- The Safra Project -- Paragraph 5.2

<sup>40</sup> Ibid. Paragraph 5.4

<sup>41</sup> Ibid. Paragraph 4.7

worsening of the situation for that young person. There is definitely a need for training around LGBT issues for social workers, particularly on the interaction between LGBT issues and cultural contexts, because this significantly increases a person's vulnerability."<sup>42</sup>

53. In refuges, Muslim LBT victims of domestic violence wanted to preserve confidentiality, but they also felt that it was important to be able to be "out" to their caseworker. However, the report found that some Muslim LBT women who were caseworkers in refuges were asked by their employer not to be open about their sexual orientation, or faced an environment where they did not feel comfortable being "out".<sup>43</sup>

54. The Report concluded that the visibility of "out" lesbian caseworkers and of imagery and information (for example through posters) was crucial in making LBT women in refuges feel confident and welcome:

"When I came into the refuge, the first thing I noticed was a poster on the wall for the gay and lesbian helpline and I thought: here I can finally be myself and be accepted. It really meant a lot to me and I'll never forget that moment of relief."<sup>44</sup>

### 5.3 Violence in the general community

55. This type of violence against LBT women is most widely reported under the rubric of "hate crimes and hate incidents". In its 2006 report on hate crimes, the OSCE summarised the position as follows:

"Numerous hate-motivated incidents and hate crimes against lesbians, gays, bisexuals, and transgender people (LGBT) occurred in the OSCE region in 2006. Homophobic and transphobic incidents and crimes targeting LGBT people are believed to be among the most underreported and under-documented, and the perpetrators of such crimes often go unpunished. Homophobic hate crimes and incidents often show a high degree of cruelty and brutality. .... Transgender people seem to be even more vulnerable within this category."<sup>45</sup>

56. Perhaps the most authoritative research in Europe into violence against LBT women is a survey commissioned by London's Metropolitan Police, *Women's Experience of Homophobia and Transphobia - Survey Report ("The London Police Report")*.<sup>46</sup> Published in 2008, 1112 persons participated. The following sections draw heavily on this report.

57. It should be noted that there is a relatively long history of support by London's authorities for the LGBT community, and that the Metropolitan Police is amongst the most active in Europe in seeking to combat violence against LGBT people. While London is thus far from typical, information quoted from research in other countries supports the general picture revealed in the survey.

58. As noted previously, levels of violence against LGBT people can be mitigated to a considerable degree by individuals concealing their sexual orientation or gender identity. This can even give

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<sup>42</sup> Ibid. Paragraph 4.8

<sup>43</sup> Ibid. Paragraphs 5.8/9

<sup>44</sup> Ibid. Paragraph 5.10

<sup>45</sup> *Hate Crimes in the OSCE Region: Incidents and Responses; Annual Report 2006*; Warsaw: OSCE/ODIHR – Pages 51 -54

<sup>46</sup> *Women's Experience of Homophobia and Transphobia - Survey Report - A survey commissioned by the Metropolitan Police Service, Diversity and Citizen Focus Directorate -- September 2008*; the survey included violence or abuse by family members.

the impression that more tolerant societies, where individuals are more open, have higher levels of homophobic and transphobic violence - one of a number of factors that complicate any comparison of survey results from different countries.

59. *The London Police Report* surveyed both homophobic and transphobic incidents, and also experiences of violent or abusive incidents that were not homophobic or transphobic in nature. Approximately twice as many respondents had experienced homophobic or transphobic incidents as those on all other grounds. Gender was considered by respondents to have accounted for 83% of the latter.<sup>47</sup>

### 5.31 Incidence of violence

60. 65% of respondents in *The London Police Report* survey had experienced one or more homophobic or transphobic incidents in their lifetime, while 37% had experienced one or more such incident in the previous 12 months. Of those who had experienced homophobic or transphobic incidents during their lifetime, 94% had experienced verbal abuse/harassment, 30% physical violence/assault, 13% blackmail, 10% rape and 12% other sexual violence.<sup>48</sup>

61. Survey results from other countries also reveal a serious picture:

- Armenia: in a 2007 survey of 70 lesbian and bisexual women, 24% had been punched, kicked, hit or beaten, 31% threatened with violence, 12% experienced sexual assault, and 20% sexual harassment. 61% had experienced verbal harassment.<sup>49</sup>
- France: in a survey of 1793 lesbian and bisexual women conducted in 2003/2004, 63% had experienced one or more "lesbophobic" acts. 45% had experienced such acts in public places, 18% in their neighbourhood, and 44% in their family.<sup>50</sup>
- Ireland: in a survey of 217 lesbian and bisexual women, 42% reported being a victim of some kind of hate crime or incident.<sup>51</sup>
- Poland: in a 2006 survey of 418 women, 46% experience psychological violence (ranging from verbal harassment and aggression to insults, threats, and blackmail to property damage), while 14% experienced violence of one sort or other, ranging from hitting or kicking to sexual violence.<sup>52</sup>

62. As noted, surveys such as those listed above often do not reflect the actual danger of violence, since the ever present threat means that many LGBT persons seek to conceal their sexual orientation. *The London Police Report* pointed out that respondents who classified themselves as "fully out" were significantly more likely to experience homophobic or transphobic abuse or violence. Just under half of respondents in the survey changed their behaviour or appearance to avoid homophobia or transphobia.<sup>53</sup>

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<sup>47</sup> Ibid. Pages 17, 27, 39, 40.

<sup>48</sup> Ibid. Pages 16, 17, 22

<sup>49</sup> 2007 Survey by "We for Civil Equality" Survey, quoted in *Forced Out – LGBT People in Armenia* - ILGA Europe – Page 32

<sup>50</sup> *Rapport sur l'enquête sur la Lesbophilie* – SOS Homophilie – 2008 – Pages 7, 8

<sup>51</sup> *2006 LGBT Hate Crimes Report* - Stop Hate Crimes in Ireland Campaign – Johnny Action Based Group for Gay and Bisexual Men, Pages 14, 17

<sup>52</sup> *Situation of bisexual and homosexual persons in Poland -- 2005 and 2006 report* -- Campaign against Homophobia and Lambda Warsaw Association -- Warsaw 2007 – Pages 13 - 17

<sup>53</sup> *Women's Experience of Homophobia and Transphobia - Survey Report* - A survey commissioned by the Metropolitan Police Service, Diversity and Citizen Focus Directorate -- September 2008 - Page 8

### 5.32 Characteristics

63. *The London Police Report* findings make it possible to identify certain characteristics of the violence and abuse experienced by respondents:

- Two thirds of the incidents were perpetrated by two or more people
- In two thirds of incidents, the perpetrator(s) were unknown to the victim;
- 25% of incidents were carried out by neighbours -- a high figure when it is considered that two thirds of respondents concealed their sexual orientation from neighbours
- 34% of incidents were carried out by unknown "young persons"
- A sizeable proportion featured the use of abusive or derogatory language
- One in five of victims experienced repeated incidents, perpetrated by the same person/people

64. A UK Home Office paper also draws attention to the fact that the perpetrators of homophobic violence tend to be male.<sup>54</sup>

### 5.33 Gender non-conformity as a target for violence

65. Another recent survey from the UK illustrates how much violence against lesbian and bisexual women is directed against gender non-conformity: a third of lesbians who experienced a hate incident said that their identity as a lesbian was identifiable to the perpetrator from their appearance. A testimony by one of the survey respondents illustrates the point:

"One thing which often seems to be overlooked is the vulnerability of lesbians (particularly those who look butch) to violence. My partner has been beaten up on several occasions in the last decade, needing prolonged hospital treatment on one occasion. Men seem to want to target her because of how she looks rather than me -- I look stereotypically feminine." Carol, 27.<sup>55</sup>

66. A comment in a Polish survey makes a similar point:

"When I walk home after school, people provoke me, push, kick or ridicule me because of the way I dress. They say that although I am a girl, I dress in boy's clothes, and that I pay attention to women".<sup>56</sup>

### 5.34 Sexual assault

67. Sexual assault forms a significant component of the violence faced by LBT women. One UK report commented that "in many instances the sexual violence seems to have been perpetrated as a means of controlling, punishing and "converting" young lesbian and bisexual women."<sup>57</sup>

68. Personal testimonies from a report on Poland highlight this concern:

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<sup>54</sup> *Tackling Hate Crime: Homophobic Hate Crime* -- UK Home Office -- December 2006

<sup>55</sup> *Homophobic Hate Crime -- The Gay British Crime Survey 2008* -- Stonewall -- Page 19

<sup>56</sup> *Situation of bisexual and homosexual persons in Poland -- 2005 and 2006 report* -- Campaign against Homophobia and Lambda Warsaw Association -- Warsaw 2007 -- Page 16

<sup>57</sup> *Telling It Like It Is - lesbian, gay and bisexual youth speak out on homophobic violence* -- GALOP -- 1998 -- Page 22



"A group of young people from my town have harassed me many times to "persuade" me that there is no place for lesbians here. They've assaulted me verbally and physically. Once, I was beaten, too. They threatened that they would rape me to show how good it is to be with a man, because I need a man."<sup>58</sup>

"The man with whom I used to have a relationship, later my friend. When I told him that I am a lesbian, he tried to persuade me that I was wrong. Certainly, I tried to explain everything and protested against what he was telling me. A moment later he decided to convince me physically that I was wrong. He practically raped me."<sup>59</sup>

### 5.35 Effects on victims

69. Just under one third of respondents to *The London Police Report* felt that the incident(s) had a long-term impact upon them and stated that this resulted in an increase in them feeling unsafe, isolated, trapped and in hiding their sexual orientation. Almost half of respondents did not feel safe when using public transport.<sup>60</sup>

### 5.36 Violence against transgender women

70. As noted earlier, in its 2006 report on hate crimes, the OSCE commented:

"Homophobic hate crimes and incidents often show a high degree of cruelty and brutality. ....  
"and added: "Transgender people seem to be even more vulnerable within this category."<sup>61</sup>

71. A newly published report, *Transphobic Hate Crime in the European Union ("the EU Transgender Hate Crime Report")*,<sup>62</sup> provides the most comprehensive evidence to date of the extent and seriousness of violence faced by transgender persons. Completed by 2669 respondents in 14 languages, 79% of respondents had experienced some form of harassment in public. The most common forms of harassment were transphobic comments (44%), verbal abuse (27%), threatening behaviour (15%) and physical abuse (7%). The pattern of harassment in the different countries was very similar.

72. The survey report did not give results by gender. However, a survey in the UK of 873 transgender persons in 2006 found that transgender women were rather more likely to be victims of transphobic incidents than transgender men.<sup>63</sup>

73. The following personal testimonies from this UK report, and others on the situation in Scotland and Ireland, illustrate the harassment and violence faced by transgender women:

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<sup>58</sup> *Situation of bisexual and homosexual persons in Poland -- 2005 and 2006 report* -- Campaign against Homophobia and Lambda Warsaw Association -- Warsaw 2007 -- Page 16

<sup>59</sup> *Ibid.* - Page 16

<sup>60</sup> *Women's Experience of Homophobia and Transphobia - Survey Report* - A survey commissioned by the Metropolitan Police Service, Diversity and Citizen Focus Directorate -- September 2008 - Pages 8, 9

<sup>61</sup> *Hate Crimes in the OSCE Region: Incidents and Responses; Annual Report 2006*; Warsaw: OSCE/ODIHR Page 53.

<sup>62</sup> *Transphobic Hate Crime in the European Union* -- Press for Change -- May 2009 -- Page 1

<sup>63</sup> *Engendered Penalties: Transgender and Transsexual People's Experiences of Inequality and Discrimination*, Whittle, S, Turner, L, Al-Alami M (2007) Page 54. 64% of transgender women experienced harassment, compare to 57% of transgender man.

- "I had to move out of the town I was staying in due to violent, intolerant people in the area, including my immediate neighbours... I feared for my own personal safety so much I was restricted to my flat on many occasions for weeks or even months on end."<sup>64</sup>
- "Beaten up frequently and dog shit rubbed on my face."<sup>65</sup>
- "Obviously he put his hand for my boobs because there's nothing there and this is the last memory I have and I woke up in hospital again. And my cheekbone had been fractured in four places. I'd been left for dead basically ..... I woke up and I was lying on a hospital bed ..... then I had plastic surgery on my face... I was terrified to tell the story of what happened so I just said I couldn't remember." (Male to female transsexual, heterosexual, 27).<sup>66</sup>

74. A particular concern is the extreme violence sometimes faced by transgender women. Murders of transgender people were reported from Germany, Italy, Portugal, Spain and Turkey in 2008, and from Russia, Serbia, Spain and Turkey in the first half of 2009.<sup>67</sup> Two well-documented cases are as follows:

- Netherlands: Harry/Harriette Wiersinga, a well-known transvestite from The Hague was attacked in the middle of the city in broad daylight by a 26-year old man. She was beaten into a coma and died of her injuries on 18 April 2007.<sup>68</sup>
- Portugal: in 2006 in Porto Gisberta, a transgender woman was tortured, raped and thrown in an abandoned well to die by a group of teenage boys in Porto.<sup>69</sup>

75. In some countries in Europe the levels of discrimination against transgender women, and the consequent difficulties of gaining employment, are such as to leave them with little alternative to engagement in sex work. This exposes them to violence, police intimidation, and serious health risks, and redoubles the prejudice against them. The following personal accounts illustrate the difficulties faced by transgender women in Turkey seeking employment:<sup>70</sup>

Gönül / Singer: " .... I became unemployed again. Because my appearance had changed, I could not find work in a factory. Because of this reason, I had to do sex in exchange for money for the first time. On that day, I had just an egg and a half bread which was in my refrigerator for two days. I cried when doing sex in exchange for money with the first man... The tears which do not fall from my eyes any more fall to my heart quietly. "

Deniz / Journalist: "I was working in a right-wing newspaper and when there was a change of management, I was not given another chance. I searched for a job for one year after I was fired, but I did not get a positive response from the places I applied to. Now I do sex work, or in other words prostitution."

<sup>64</sup> *Transgender Experiences in Scotland -- Research Summary* -- Scottish Transgender Alliance -- March 2008 -- Page 11

<sup>65</sup> *Ibid.* Page 11

<sup>66</sup> *Transphobia in Ireland – Research Report* -- Transgender Equality Network Ireland – 2009 - Page 21

<sup>67</sup> "TGEU Transgender Murder Monitoring Project", published in *Liminalis, Journal for Sex/Gender Emancipation* – 2009 Issue 3; 15 murders of transgender persons were reported over the 18 month period.

<sup>68</sup> 'Travestiet overleden na mishandeling' – AD Den Haag – accessed on 27 January 2009

<http://www.ad.nl/denhaag/stad/article1295771.ece>

<sup>69</sup> OSCE/ODIHR (2007) *Hate Crimes in the OSCE Region: Incidents and Responses; Annual report for 2006*; Warsaw: OSCE/ODIHR, p.54

<sup>70</sup> *Transvestite and transsexual individuals' experiences of the abuses toward their right to work* – Gacilstanbul Magazine, 2005, September – October issue. Gaci is a group of transvestites and transsexuals in Istanbul.

Ceren / Journalist: "I worked in three newspapers for more than five years.... Although I was successful at my work, I was fired because of my gender identity. I worked in a nightclub for two years after I was fired. I do sex work now."

76. There is evidence that transgender women in Turkey, particularly sex workers, are exposed to exceptional levels of violence. A study by the Justice Ministry in 2003 found that among transvestites and transsexuals interviewed, 89% reported physical violence and 52% sexual violence.<sup>71</sup> The incidence of murder of transgender women is particularly disturbing. 5 such murders have been reported in the first half of 2009 alone. Considering the small size of this group, this represents a disturbingly high murder rate.<sup>72</sup>
77. Violence by the police against transgender women is also a serious concern. The *Human Rights Watch Turkey Report* described such violence as "regular and unabated",<sup>73</sup> and documented numerous examples, including coordinated abuse over many years by a plainclothes team working in Ankara.<sup>74</sup>
78. A recent report from Azerbaijan documents how in May 2007 28 transgender sex workers aged 18 to 37 were detained and taken to a police station where they were forcibly tested for STI's and HIV. During the raid they were severely beaten and two gun shots made into the air to scare them.<sup>75</sup>
79. In his recent Issue Paper, *Human Rights and Gender Identity*, the Human Rights Commissioner recommends that Council of Europe member states "Enact hate crime legislation which affords specific protection for transgender persons against transphobic crimes and incidents."<sup>76</sup>

## 6 Same-sex intimate partner violence

80. Intimate partner violence between same-sex partners is a recognized phenomenon, and measures are required to address it, just as they are for such violence between different sex partners.
81. A significant research project was conducted in this area in the UK in 2003.<sup>77</sup> The principal findings can be summarised as follows:
  - In a sample of 1911 lesbian and bisexual women, 22% had suffered physical, sexual, mental abuse or violence from a regular same-sex partner, while 19% had suffered some recurrent abuse.

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<sup>71</sup> "We Need a Law for Liberation" -- *Gender, Sexuality and Human Rights in a Changing Turkey* -- Human Rights Watch -- May 2008 - p. 5

<sup>72</sup> "TGEU Transgender Murder Monitoring Project", published in *Liminalis, Journal for Sex/Gender Emancipation* -- 2009 Issue 3

<sup>73</sup> "We Need a Law for Liberation" -- *Gender, Sexuality and Human Rights in a Changing Turkey* -- Human Rights Watch -- May 2008 - Page 64

<sup>74</sup> Ibid. -- Pages 61 -- 75

<sup>75</sup> *Report on Azerbaijan – 4th Round of the Universal Periodic Review* – February 2009 - by The Center "Women and Modern World" (Baku, Azerbaijan), LGBT Organization Labrys (Kyrgyzstan), and the Sexual Rights Initiative – Paragraph 31

<sup>76</sup> *Human Rights and Gender Identity* -- Issue Paper -- Commissioner for Human Rights -- July 2009 - Page 43

<sup>77</sup> *Prevalence of domestic violence among lesbians and gay men -- Data report to Flame TV* -- Sigma Research -- Laurie Henderson -- March 2003

- In a sample of 1391 gay and bisexual men, 29% had suffered physical, sexual or mental abuse or violence from a regular male sexual partner, while 24% had suffered some recurrent abuse.

82. The differences between women and men for types of abuse were marginal. In both the most common form of abuse was emotional or mental abuse such as "insults, putting downs or belittling". Almost as many reported being physically attacked or hit.

## **7 Lack of confidence in the police and under-reporting of violence**

83. Surveys from across Europe suggest low levels of confidence in the police within LGBT communities. This undermines the safety and security of LGBT people, with violence going unreported and therefore not investigated.

84. *The London Police Report* found that only 17% of those experiencing homophobic or transphobic incidents had reported one or more of these incidents to the police, and commented that, given the reported incidences of serious crime (grievous bodily harm, rape, attempted murder etc), "this level of reporting does seem very low", with the most worrying underreporting in the categories of sexual violence and rape. 12% of respondents had experienced sexual violence and 10% had experienced rape as part of a homophobic attack. However just one in six of sexual violence victims and four out of ten rape victims reported these incidents to the police.<sup>78</sup>

85. The report also noted that just under half of the women respondents chose to report a non-homophobic/transphobic crime, compared to only 17% who reported a homophobic or transphobic crime, and concluded that this indicated that "where crime is homophobic/transphobic this is a significant barrier to reporting it."<sup>79</sup>

86. Of those victims who did report a homophobic/transphobic incident, 41% felt that the police officer to whom the incident was reported did not make the victim feel comfortable about mentioning its homophobic/transphobic nature, while 59% felt that the investigating police officer did not ask the right questions to establish if the incident was homophobic.<sup>80</sup>

87. Two-thirds of victims said they felt they would have felt more comfortable talking to an LGBT police liaison officer, and approximately half would have been more comfortable seeking support from an LGBT organisation.<sup>81</sup>

88. Some examples of underreporting of homophobic/transphobic crime from other countries:

- Ireland: 80% of respondents in a survey of LGBT people who had experienced hate crimes, did not report their attacks. 36% said they had no confidence in the police;<sup>82</sup>
- Poland: 85% of cases of physical violence were not reported to the police. Reasons given were lack of effectiveness, lack of serious response, malicious comments by the police, fear of revenge by the perpetrator;<sup>83</sup>

<sup>78</sup> *Women's Experience of Homophobia and Transphobia - Survey Report* - A survey commissioned by the Metropolitan Police Service, Diversity and Citizen Focus Directorate -- September 2008 - Pages 17, 27, 28

<sup>79</sup> *Ibid.* Page 10

<sup>80</sup> *Ibid.* Page 30

<sup>81</sup> *Ibid.* Page 10

<sup>82</sup> *2006 LGBT Hate Crime Report* -- Stop Hate Crimes in Ireland Campaign – JOHNNY; Page 2

- Turkey – In the 2003 survey conducted by the Justice Ministry's Forensic Sciences Department, only 42% of victims sought help and only 26% turned to the police. Less than one-sixth of the latter said that their cases had been adequately addressed by the criminal justice system;<sup>84</sup>

89. The *EU Transphobic Hate Crime report* found that in most countries at least 40% of respondents were not confident that they would be treated appropriately by the police as their preferred/acquired gender.

90. The Council of Europe Human Rights Commissioner summarised the position with regard to transgender persons as follows:

“In practice, transgender people are often afforded little protection by law-enforcement officials in the event of a transphobic hate crime or incident. In many cases transgender people who turn to law enforcement agencies for protection are often ridiculed, harassed or just ignored, despite the positive obligations of states under the European Convention of Human Rights to investigate these crimes and bring the perpetrators to justice.”<sup>85</sup>

91. The *Safra Report* highlights the problems of Muslim LBT women:

“Muslim LBT women are reluctant to approach the police. None had used the Community Safety Units (CSU) in London or lesbian liaison officers outside of London. The police and other organisations "external" to Muslim communities are often perceived as hostile and racist. Involving the police or other "external" organisations in a situation of domestic violence is usually considered a form of "betrayal" of the family and community. Their involvement could therefore, in effect, worsen the situation for a Muslim LBT woman. In addition, the police are still widely perceived as homophobic.”<sup>86</sup>

## **8 The reaction of public prosecutors and courts to violence against lesbians, bisexual and transgender women**

92. Public prosecutors and courts may also react inadequately to violence against lesbians, bisexual and transgender women.

93. The *EU Transphobic Hate Crime Report* cites two examples from the UK where the Crown Prosecution Service proceeded with the prosecution of transgender women who resorted to self-defence in the face of sustained long-term harassment. Both were acquitted in the subsequent trials. In another UK case the defence counsel for a man accused of murdering a transgender woman used disrespectful and inaccurate information about the victim's transgender status in an attempt to strengthen his client's case.<sup>87</sup>

94. The *Human Rights Watch Turkey Report* comments:

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<sup>83</sup> *Situation of bisexual and homosexual persons in Poland - 2005 and 2006 report* Edited by Marta Abramowicz - Warsaw 2007 - Campaign Against Homophobia and Lambda Warsaw Association – Page 15

<sup>84</sup> "We Need a Law for Liberation" -- *Gender, Sexuality and Human Rights in a Changing Turkey* -- Human Rights Watch -- May 2008 Page 5.

<sup>85</sup> *Human Rights and Gender Identity* -- Issue Paper -- Commissioner for Human Rights -- July 2009 – Page 35

<sup>86</sup> *Identifying the difficulties experienced by Muslim lesbian, bisexual and transgender woman in accessing social and legal services -- initial findings* -- January 2003 – The Safra Project – Paragraph 5.6

<sup>87</sup> *Transphobic Hate Crime in the European Union* -- Press for Change -- May 2009 - Pages 26 -- 28

"And just as courts are lenient when it comes to killers of gay men, in part "blaming the victim," so to they continue to be lenient when it comes to violence against women and girls deemed to have tarnished the "honor" of their families through expressions of sexuality deemed unorthodox.... One case points to the legal consequences of this perception. On January 4, 2005, an Istanbul court convicted a man of stabbing to death a woman whom he believed to be his wife's girlfriend. Finding that the alleged lesbian relationship had "provoked" him, the court lowered his prison sentence from 24 years to six years and eight months."<sup>88</sup>

## **9 Addressing violence against lesbian, bisexual and transgender women in the Convention**

95. This submission has so far shown that:

- a. Violence against LBT women, as a form of gender-based violence, falls within the scope of the Convention
- b. LBT women are especially vulnerable to violence
- c. Many aspects of this violence, including widespread social hostility, are specific to this form of violence

96. It follows that, if the Convention is to be effective in reducing violence against LBT women, they must be specifically recognized by the Convention as a "marginalised, vulnerable" group, and the preventive and supportive measures of the Convention must allow for the specific nature of the violence which they face. This section of the submission suggests ways in which this can be achieved.

### **9.1 Concept of vulnerable groups**

97. The Interim Report refers to the need to address the effectiveness of the different preventive activities of the instruments in respect of marginalised, vulnerable populations, and similarly in respect of protection and support mechanisms.

98. This would suggest general references to vulnerable groups at three points in the Convention -- in the Preamble, and in the introduction to the Prevention and Protection and Support sections. It would be important to include specific reference to LBT women in all three cases, together with other vulnerable groups.

### **9.2 Non-discrimination**

99. The non-discrimination article should explicitly include the grounds of sexual orientation and gender identity. There is already a precedent for the inclusion of sexual orientation in the non-discrimination clause of a Council of Europe Convention.<sup>89</sup> The widespread and sometimes extreme violence faced by transgender women makes it essential that there be specific reference to gender identity in this article.

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<sup>88</sup> "We Need a Law for Liberation" -- *Gender, Sexuality and Human Rights in a Changing Turkey* -- Human Rights Watch -- May 2008 - Pages 6, 48

<sup>89</sup> Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

### **9.3 Scope of the Convention -- gender identity-based violence**

100. Section 3.2 of this submission has drawn attention to the fact that not all transgender women are able to, or wish to undergo gender reassignment treatment, and to the need to ensure that these women are also covered by the protections afforded by the Convention.

100. It is therefore proposed that the Committee define the scope of the Convention to protect all women who experience violence based on their gender identity or gender expression, whether or not they have undergone gender reassignment.

### **9.4 Scope of the Convention -- same-sex intimate partner violence**

101. As noted in paragraph 80, same-sex intimate partner violence is a reality, and needs to be addressed by the Convention in the same way as other domestic violence.

### **9.5 Prevention, Protection and support, Integrated policies, Substantive law, Investigation, prosecution and procedural law, Data collection**

102. Earlier sections of this submission documented some specific characteristics of violence against LBT women. These illustrate clearly the need for particular measures by States in many areas, including awareness-raising, education, training of officials, improving confidence by LBT women in law enforcement agencies through high quality investigation and positive engagement with LBT women, increasing the level of incidents reported to the police, specific training for agencies involved in victim support, and hate crimes legislation.

103. The Appendix to this submission suggests more detailed examples of these measures. They are grouped under the headings from the Interim Report, on the assumption that the Convention itself will follow this structure. They use, for the most part, relevant text from the 2002 Committee of Ministers Recommendation on the protection of women against violence<sup>90</sup> adapted for the specificities of violence against LBT women.

104. It would not be appropriate or practical at this stage to second-guess how the detailed drafting of the Convention will proceed in these areas. The examples cited in the Appendix are not therefore intended as drafting proposals, but rather as a means of indicating areas of concern in relation to this violence, as an aid to addressing them in the detailed drafting process, whether through specific references, or more generalised drafting.

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<sup>90</sup> *The protection of women against violence* – Recommendation No. R. (2002) 5 of the Committee of Ministers

## Appendix

### Examples of specific measures by States to address violence against LBT women in the fields of Prevention, Protection and support, Integrated policies, Substantive law, Investigation, prosecution and procedural law, and Data collection

#### 1. Prevention

##### Awareness raising

- Awareness raising activities and/or programmes should
  - make available to the general public appropriate information concerning violence against women, including vulnerable groups such as [other relevant groups] and LBT women, and its consequences for victims
  - make clear the links between patriarchal attitudes and gender stereotypes on the one hand, and violence against women, including LBT women, on the other
  - include violence against vulnerable groups, including [other relevant groups] and LBT women, in conferences and information campaigns to mobilise public opinion
  - include specific and tailored information targeting those communities where patriarchal attitudes are most entrenched, with a view both to countering such attitudes, including with regard to vulnerable groups such as [other relevant groups] and LBT women, and to enabling such women within those communities to seek help.
- Encourage the elaboration of codes of conduct for media professionals, which would take into account the issue of violence against women, including against vulnerable groups such as [other relevant groups] and LBT women, and, in the terms of reference of media watch organisations, encourage the inclusion of tasks dealing with issues concerning violence against women and sexism, and homophobia and transphobia.
- The media should be encouraged:
  - to participate in information campaigns to alert the general public to violence against women, including against women in vulnerable groups, such as [other relevant groups] and LBT women

##### Education

- In the context of strengthening a gender perspective in human rights education and sex education programmes, include material that promotes respect for women, including LBT women;
- Ensure that both boys and girls receive a basic education that avoids prejudices and stereotyped roles for the sexes and encourages respect for persons whose gender, gender identity, or sexual orientation differs from their own
- Develop targeted education and training for groups in society to which perpetrators predominantly belong -- for example, young males, in the case of homophobic and transphobic violence in the general community;



## **Training**

- Include in the basic training programmes of members of the police force and judiciary and personnel in the medical and social fields, elements designed to eliminate prejudice and discriminatory attitudes against women from vulnerable groups, including [other relevant groups] and LBT women, to ensure they are treated with respect and dignity and receive a high quality and professional response to incidents against them;
- Include in these basic and vocational training programmes information and training to raise awareness of the specific problems associated with violence against vulnerable groups, including [other relevant groups] and LBT women, so as to give them the means to detect and manage crisis situations and the manner in which victims are received, listened to and counselled;
- Organise training programmes specialising in the needs of women who are particularly vulnerable to violence, including [other relevant groups] and LBT women;
- Train all members of the teaching profession to integrate respect for the gender, gender identity and sexual orientation of others in their teaching, and to counter sexist, homophobic and transphobic attitudes and behaviour;

## **The role of men**

- Develop training targeted at weakening the peer pressure which contributes to much domestic violence in some more patriarchal societies;

## **The role of women's NGOs**

- Involve NGOs working for the rights of women in vulnerable groups, including [other relevant groups] and LBT women, in strategies to prevent violence against these women, including awareness raising within their communities, promoting the need to report acts of violence, assisting with the training of law-enforcement officers and the judiciary, and working with law enforcement officers in policies to combat such violence.
- Involve such NGOs in the protection and support of victims, assisting them to act as a first reference point for victims too afraid to contact the authorities, and in training staff in support services and refuges regarding the specific needs of such women who are victims of violence;

## **Perpetrator Programmes**

- Organise intervention programmes designed to encourage perpetrators of violence to adopt a violence-free pattern of behaviour by helping them to become aware of their acts and recognise their responsibility; such programmes to include material specifically addressed to perpetrators of violence against women in vulnerable communities, such as [other relevant groups] and LBT women;

## 2. Protection and support of victims

### **Support services (telephone help lines, shelters, emergency centres, medical, psychological and legal advice services)**

- ensure that all services and legal remedies available for victims of domestic violence are provided to women from vulnerable communities, including [other relevant groups] and LBT women;
- encourage and support the establishment of a collaborative network of non-governmental organisations, including those working with women from vulnerable groups, such as [other relevant groups] and LBT women;
- encourage the establishment of emergency services such as anonymous, free of charge telephone help-lines for victims of violence and/or persons confronted or threatened by situations of violence; ensure that information about such emergency services is provided to women in vulnerable groups, including [other relevant groups] and LBT women;
- ensure that the police and other law-enforcement bodies receive, treat and counsel victims in an appropriate manner, based on respect for human beings and dignity, and handle complaints confidentially; take particular measures in this respect with regards to victims from vulnerable communities, including [other relevant groups] and LBT women;
- ensure that children are suitably cared for in a comprehensive manner by specialised staff at all the relevant stages, ensuring also that the specific needs of [other relevant groups] and LBT children are met;
- take steps to ensure the necessary psychological and moral support for children who are victims of violence by setting up appropriate facilities and providing trained staff to treat the child from initial contact to recovery. Ensure the staff concerned are trained to respond sensitively to children from [other relevant groups] and LBT children;
- take all necessary measures to ensure that none of the victims suffer secondary (re) victimisation or any gender-, sexual orientation or gender identity-insensitive treatment by the police, health and social personal responsible for assistance, as well as by judiciary personnel
- take all necessary measures to ensure that victims and witnesses of violence against women are encouraged to report such crimes and incidents, including targeted measures with regard to vulnerable groups, such as [other relevant groups] and LBT women.

### **General services (social and health services, long-term social and economic support)**

- Empower women victims of violence by providing training and other means to achieve economic independence, paying particular attention to the needs of vulnerable minorities such as [other relevant groups] and LBT women;

## 3. Integrated policies

- Adopt an integrated approach to addressing violence in the community against women from vulnerable groups, including [other relevant groups] and LBT women, by, *inter alia*:
  - working to increase reporting by victims and witnesses,
  - improving the effectiveness of the response of criminal justice agencies
  - improving public confidence in the criminal justice's system ability to tackle such violence
  - improving data available on such violence
  - tackling repeat victimisation

- ensuring that police and local authority housing departments work together closely in the case of violence by neighbours

#### **4. Substantive law**

##### **Criminal law**

- provide for appropriate measures and sanctions in national legislation, making it possible to take swift and effective action against perpetrators of violence and redress the wrong done to women who are victims of violence. In particular, national law should:
  - Provide that when determining sanctions a hate or prejudice bias motive related to gender, gender identity or sexual orientation, or perceived gender, gender identity or sexual orientation, may be taken into account as an aggravating circumstance

#### **5. Investigation, prosecution and procedural law**

##### **Training of those who play a role in procedures**

[See section on training above]

##### **Investigation**

- put in place procedures to ensure that incidents of violence against women are investigated with appropriate diligence, and with due regard for the specificities of violence against women from vulnerable groups such as [other relevant groups] and LBT women;
- ensure that, when investigating a violent crime against a woman, and where the victim or any other person perceives the incident as being motivated by a hate or prejudice bias motive, it is investigated as such by the police;<sup>91</sup>

##### **Judicial proceedings**

- ensure that rules of procedure prevent unwarranted and/or humiliating questioning for the victims or witnesses of violence, taking into due consideration the trauma they have suffered in order to avoid further trauma; ensure that a person's gender, sexual orientation or gender identity are not used as a basis for humiliating questioning;
- ensure that the gender, sexual orientation or gender identity of the victim may not be advanced to justify excuse or mitigate violence; in particular, ensure that the gender, sexual orientation or gender identity of the victim are not used to justify the application of lesser offences, or of reduced sentences;

#### **6. Data collection**

- Police records and other surveys of criminal or other violence related incidents should be sorted by gender, and identify separately crimes or incidents where gender, gender identity or sexual orientation is considered the motivating factor.

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<sup>91</sup> In the context of tackling hate crime, the UK Home Office uses the following definition of hate crime: “any incident, which constitutes a criminal offence, which is perceived by the victim or any other person as being motivated by prejudice or hate”; <http://www.homeoffice.gov.uk/crime-victims/reducing-crime/hate-crime/> Accessed 3 Sept 2009