

January 2010

## **ILGA-Europe's contribution to the consultation on the EU strategy for combating violence against women 2011-2015: *Concrete proposals towards the Action Programme*<sup>1,2</sup>**

In its submission to the *Consultation on the EU strategy for combating violence against women 2011-2015*, ILGA-Europe provided a detailed account of the gender-based violence suffered by lesbians, bisexual women, and trans people in both the domestic and social spheres, and provided five recommendations towards the forthcoming EU strategy. In this follow-up paper, we look at those five recommendations and provide concrete proposals that can be incorporated in the EU action programme combating gender-based violence. Moreover, we have also taken this opportunity to give additional attention to intersex people who fall victims of institutionalised gender-based violence due to their incongruence with the gender binary framework that society imposes. This violence includes 'gender normalisation' surgeries on babies and infants and other unnecessary medical procedures that have lasting effects on the physical, emotional and mental wellbeing of intersex people.

### **Recommendation 1:**

Adoption of effective legal measures to counter gender-based violence and crimes that impact on other vulnerable groups, building upon the foundation set by the *Framework Decision on Combating Racism and Xenophobia as a Crime*

#### *Concrete Proposal:*

### **Extension of current legislative instruments**

The Council of Europe's Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO) is currently finalising the drafting of the *European Convention on Preventing and Combating Violence against Women and Domestic Violence*. Once adopted by the Council of Ministers this Convention will be legally binding on all Member States.

On its part, the EU should complement CAHVIO and the existing *Framework Decision on Combating Racism and Xenophobia* by introducing legislation to combat gender-based violence and other forms of bias violence. This was already proposed in 2008 by the Fundamental Rights Agency in its report on *Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States*.

<sup>1</sup> This paper is a follow-up to *ILGA-Europe's contribution to the consultation on the EU strategy for combating violence against women 2011-2015*, available online at: [http://www.ilga-europe.org/home/publications/policy\\_papers/ilga\\_europe\\_s\\_contribution\\_to\\_the\\_consultation\\_on\\_the\\_eu\\_strategy\\_for\\_combating\\_violence\\_against\\_women\\_2011\\_2015](http://www.ilga-europe.org/home/publications/policy_papers/ilga_europe_s_contribution_to_the_consultation_on_the_eu_strategy_for_combating_violence_against_women_2011_2015)

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This approximation of national criminal legislation provisions is consistent with the commitments made by all Member States at OSCE and Council of Europe level. In fact, the OSCE Ministerial Decision 9/09 of December 2009<sup>3</sup> calls on States to “enact, where appropriate, specific, tailored legislation” to combat offences committed with a bias motive. According to Recommendation CM/Rec(2010)5<sup>4</sup> of the Committee of Ministers, the members of the Council of Europe should “ensure that [...] a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance”.

### **Definition of all forms of gender-based violence as violations of fundamental rights**

Building on the existing international instruments, the EU should define all forms of gender-based violence, including violence against women and other vulnerable groups, as violations of universally recognised fundamental rights, providing Member States with a common soft law platform on which to move forward.<sup>5</sup>

#### **Recommendation 2:**

Place male violence against women as a core focus of the strategy, while also addressing all gender-based violence by tackling violence motivated by an intersection of various grounds, including sexual orientation, gender identity and gender expression

#### *Concrete Proposals:*

ILGA-Europe is greatly supportive of the work of the European Women’s Lobby (EWL) and concurs with the position taken by EWL in their contribution stressing *male violence against women* as a core focus of this strategy. However, in addition to this, gender-based violence is also related to the social construct of what it means to be either male or female. LGBTI people are often victims of violence because they are perceived to have transgressed the strict social parameters of sex and gender.

As noted by the recently published *Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on violence against women, violence against children and sexual orientation violence* (hereinafter, *Feasibility Study*), “discussing violence against LGBT people in the context of WAV has merits, since the concept of gender [...] has been used to refer to long-standing social inequalities, discrimination and power relations, within which patterns of violence are located. As with WAV [...], SOV (sexual orientation violence) is a continuum, ranging from everyday harassment in the neighbourhoods where people live and public spaces, through to threats and actual violence, with the most extreme form being murder.”

In view of the above, ILGA-Europe calls of the European Commission to adopt inclusive actions that tackle violence on the grounds of sex, gender, sexual orientation, gender

<sup>3</sup> OSCE Ministerial Decision No. 9/09 on combating hate crime, available online at: [http://www.osce.org/documents/cio/2009/12/41853\\_en.pdf](http://www.osce.org/documents/cio/2009/12/41853_en.pdf)

<sup>4</sup> Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity: <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1606669>

<sup>5</sup> This proposal is based on Recommendation 14 of the *Feasibility Study* carried out for the European Commission’s Directorate General for Justice, available at: <http://ec.europa.eu/social/BlobServlet?docId=6336&langId=en>

identity and gender expression both as strands in themselves and as grounds on which violence may be compounded.

The language of the Action Programme should also be inclusive and name lesbians, bisexual women, trans and intersex people directly. Moreover, The Action Programme should also cover sex and gender minorities directly and address their specific characteristics which may make them increasingly vulnerable to violence.

Specifically,

- Lesbians and bisexual women may fall victims of violence due to negative attitudes towards their choice of partner/s along with their gender. Additionally, some lesbians' and bisexual women's gender expression in the form of haircut, choice of clothes, and mannerisms may be perceived as unfeminine. The combination of these two elements may expose them to severe forms of homophobia, sexism and gender-based violence.
- Trans people may fall victims of violence particularly when they do not automatically 'pass' in the gender role of their choice. Once more, a combination of characteristics associated with their birth sex that may still be visible while they live in their preferred gender role may be the root of their experience of gender-based violence.
- Intersex people fall victims of institutionalised gender-based violence, mainly in the form of institutionalised genital mutilation. This gender normalisation violence is often disguised as a necessary procedure to supposedly ensure that intersex babies/infants do not develop 'cancer' or other serious diseases in their adolescence/adulthood, even though there is no scientific proof that indicates that unoperated intersex people are more vulnerable to such diseases.

### **Recommendation 3:**

Cover men who may fall victims of violence due to their gender non-conformity and/or gender reassignment; as well as all other persons whose gender expression may not meet the social expectations for the gender assigned to them at birth with regard to dress, behaviour and mannerisms

#### *Explanation of recommendation:*

In this recommendation we refer to the need for the scope of the strategy to cover all those that experience gender based violence, whether they are women, intersex or men. While the coverage of men may at first glance be perceived to water down the strategy, ILGA-Europe believes that to the contrary this actually strengthens the strategy and makes it watertight.

Hate and violence targeting trans men, for example, must surely have a strong gender component as the perpetrator/s in most likelihood will perpetrate such violence not because of the trans men's masculinity, but their female past. Likewise, hate and violence targeting men who do not meet the perpetrator's expectation of the male gender expression, will in most likelihood experience the violence as they are deemed to be 'feminine' and/or 'effeminate'. Clearly, in both of these cases, the violence inflicted would fall in the continuum of violence that women experience as the perpetrator's intention is the same in all of these circumstances – asserting the physical and emotional superiority of masculine men over women and all those who express themselves 'femininely'.

**Recommendation 4:**

Map and build upon existing strategies implemented at local, national, and European levels, in order to promote relevant guidelines and good practices in areas such as awareness raising, education, combating hate incidents, and investigation and judicial proceedings

*Concrete Proposals:***Awareness raising<sup>6</sup>**

Awareness raising activities under the action programme of this strategy should:

- make available to the general public appropriate information concerning gender-based violence including gender and sex minorities (such as lesbians, bisexual women, trans and intersex people) and the consequences for victims;
- make clear the links between patriarchal attitudes and gender stereotypes on the one hand, and gender-based violence on the other;
- include violence against gender and sex minorities and other vulnerable groups of women, in conferences and information campaigns to sensitise 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, and to enabling such women within those communities to seek help.

**Make 2013 the European Year Against Gender-Based Violence**

ILGA-Europe commends the proposal by EWL to establish 2013 as the European Year on Violence Against Women as such a high level European Union commitment would surely lead to great visibility of the issue and speed up the impact of the strategy. It would also help to establish links between Member State authorities and civil society organisations working to counter gender-based violence. We would however suggest that the name of the year specifically refers to 'gender-based violence' for the reasons outlined above.

**Education and lifelong training<sup>7</sup>**

Training and capacity building measures are of utmost necessity within law-enforcement bodies, as well as among prosecution and judicial officers dealing with gender based violence and other forms of bias violence. Relevant EU agencies such as CEPOL, EIGE, and FRA have an important role to play to set and disseminate high standards in that area, and to promote multi-agency responses and remedies to all forms of gender-based violence. Such policies are equally in line with commitments made by Member States at OSCE and CoE levels.<sup>8,9</sup>

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<sup>6</sup> The *Feasibility Study* supports the establishment and development of "awareness-raising and educational approaches with multiple methods to eliminate prejudice and discrimination against LGBT people". See Recommendation 13.

<sup>7</sup> The *Feasibility Study* supports the development of "methods of youth work and education on non-violence and sexual ethics", including guaranteeing "state funding for schools and NGO-based preventive work"

<sup>8</sup> See footnotes 3 and 4

<sup>9</sup> This is consistent with Recommendation 11 of the *Feasibility Study*

## Combating hate incidents, investigation and judicial proceedings

- The EU should work at developing effective official reporting systems to collect and make public reliable data and statistics on gender-based violence and all forms of bias violence, conform to commitments made by all Member States at OSCE and CoE level<sup>10</sup>. In its Annual Report for 2009 on *Hate Crimes in the OSCE Region*<sup>11</sup>, the Office for Democratic Institutions and Human Rights (ODIHR) mentions that 18 participating States, including 11 EU Member States, collect data on bias crime against lesbian, gay, bisexual and/or trans people, using different methodologies and standards. There is a clear room for mutual learning and the EU should facilitate this process, for instance by developing a set of indicators on offer to Member States.<sup>12</sup>
- EU institutions and agencies should emphasize the potential of dialogue and partnership between civil society organisations and the relevant public authorities to provide effective responses and remedies to gender based violence and all forms of bias violence.<sup>13</sup> The EU should promote actions aiming at building a policy relevant knowledge base.<sup>14</sup>

## Work with and support civil society

- Involve NGOs working for the rights of women in vulnerable groups, including LGBTI organisations, lesbian and trans specific organisations and other relevant groups, 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.
- Such NGOs should also be involved 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.
- Civil society at both European and national level needs to be supported in their work to fight violence against women and all other forms of gender-based violence. Funding programmes should make sure to cover all grounds of gender based violence and to cover gender minorities in their scope, specifically including LGBTI organisations and trans and lesbian specific organisations.

### Recommendation 5:

Inclusion of strategic measures to proactively combat gender stereotypes and counter patterns of patriarchy, sexism, homophobia and transphobia, as well as gendernormativity and heteronormativity

<sup>10</sup> See footnotes 3 and 4

<sup>11</sup> Hate Crimes in the OSCE Region – Incidents and Responses, Annual Report for 2009, ODIHR: [http://www.osce.org/publications/odihr/2010/11/47692\\_1563\\_en.pdf](http://www.osce.org/publications/odihr/2010/11/47692_1563_en.pdf)

<sup>12</sup> This is consistent with Recommendation 10 of the *Feasibility Study*

<sup>13</sup> See for instance ILGA-Europe's publication on *Joining forces to combat homophobic and transphobic hate crime, Cooperation between police forces and LGBT organisations in Europe*: [http://www.ilga-europe.org/home/publications/reports\\_and\\_other\\_materials](http://www.ilga-europe.org/home/publications/reports_and_other_materials)

<sup>14</sup> This is consistent with Recommendations 5 and 12 of the *Feasibility Study*

### *Concrete Proposals:*

ILGA-Europe believes that it is paramount that this strategy addresses the roots of the problem as well as its manifestations. In this respect, we believe that it is important for this strategy to be closely linked to the *Strategy for equality between women and men (2010-2015)* and that it tackles deeply entrenched stereotypes about the role of people of different sexes and genders in society.

At the moment, the legislation and initiatives adopted by national and regional administrations vary considerably. While the existing weaknesses are a powerful reason to support the EU strategy, the good practices implemented in some countries should be a source of inspiration. The European Commission should take the lead in promoting the highest standards existing in Europe in terms of combating gender-based violence. Special attention should be paid to initiatives aiming at:

- Raising awareness on the links between male violence against women, other forms of gender-based violence, patriarchal attitudes and gender stereotypes;
- Elaborating codes of conduct for media professionals which would take into account the issue of gender-based violence;
- Fostering a gender perspective in human rights education and sex education, to weaken prejudices and stereotypes;
- Including elements designed to eliminate prejudice and gender stereotypes in basic training programmes for members of police forces and the judiciary, as well as medical and social staff;
- Facilitating confidence in reporting all gender related crimes and incidents;
- Improving investigation and judicial proceedings standards as regards incidents of gender-based violence;
- A reinforced involvement of local, national and European NGOs working for the rights of minority women and LGBTI people in all the component of the strategy. Generally speaking, the development of a culture free from gender stereotypes is a mainstream priority for law enforcement and criminal justice agencies and other public authorities to properly address violence against women from vulnerable groups, including LGBTI people. It is necessary to achieve a higher level of confidence to facilitate the reporting of incidents by victims and witnesses and data collection.

### **Target violent men**

Develop a campaign/programme that targets violent men directly and male violence against minority women and other gender minorities. Include specific priorities related to minority women and other gender minorities, in line with their specific experiences of violence.

### **Mainstreaming of the impact of gender-based violence into other portfolios**

Include gender-based violence in all EU policies: health; employment; fight against poverty; and human rights amongst others.

Specifically,

- *Health:* Address pathologisation and stigmatisation of 'non-conforming' gender identities and gender expressions, which practices pave the way for social marginalisation and various forms of violence. Healthcare provided to transgender and intersex people should be in full respect of their human rights and in line with

Recommendation 4 and 5 of the *The Human Rights and Gender Identity Issue Paper*:

4. Abolish sterilisation and other compulsory medical treatment as a necessary legal requirement to recognise a person's gender identity in laws regulating the process for name and sex change;
  5. Make gender reassignment procedures, such as hormone treatment, surgery and psychological support, accessible for transgender persons, and ensure that they are reimbursed by public health insurance schemes.<sup>15</sup>
- *Employment & Poverty*: The unemployment rate of minority women and gender minorities is significantly higher than that of the rest of society. The *Human Rights and Gender Identity Issue Paper* demonstrates that,  
“Spanish research into unemployment amongst transgender people showed that 54% of the respondents were unemployed. Some jobless transgender persons, particularly transgender women, are unable to find employment, and see no other option but to work in the sex industry.”

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<sup>15</sup> Council of Europe Commissioner for Human Rights, *Human Rights and Gender Identity* (2009)  
[https://wcd.coe.int/wcd/ViewDoc.jsp?id=1476365#P178\\_44680](https://wcd.coe.int/wcd/ViewDoc.jsp?id=1476365#P178_44680)