
BORN FREE AND EQUAL

Sexual Orientation, Gender Identity
and Sex Characteristics
in International Human Rights Law

Second Edition



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

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New York and Geneva, 2019

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FOREWORD

“All human beings are born free and equal in dignity and rights.” This affirmation in the Universal Declaration of Human Rights is the cornerstone of international human rights law, and at the heart of the mission of the United Nations.

Simply put, human rights are for everyone, without exception: lesbian, gay, bisexual, trans and intersex (LGBTI) people are just as entitled to protection, respect and fulfilment of their human rights as everyone else, including protection from discrimination, violence and torture.

Despite these universal standards, for more than twenty-five years the United Nations, and regional and national human rights bodies, have documented widespread violations and abuses targeting LGBTI people in all regions of the world. Such instances include brutal beatings, sexual violence and killings, incitement to hatred, criminalization, arbitrary detention and imprisonment, abuses in detention and medical settings, widespread stigma, harassment, bullying and discrimination at work and at home, as well as in education, health, housing, and accessing public services.

These horrific human rights violations must end. All United Nations Member States have committed to upholding universal human rights standards, including through ratifying legally binding treaties. The United Nations Human Rights Council has expressed concern over violence and discrimination based on sexual orientation and gender identity multiple times and in 2016 appointed an Independent Expert to investigate and report on the issue. A sizeable majority of Member States have also made specific commitments to combat violence and discrimination against LGBTI people as part of the Universal Periodic Review.

Recent years have seen uneven progress – advances for lesbian, gay and bisexual persons in a growing number of countries, more limited progress on the rights of trans people, increased awareness but few concrete measures to protect the rights of intersex people. In some countries there have been worrying setbacks, including increases in hate speech, expanded discriminatory legislation, and an expansion of arbitrary arrests, violence and discrimination.

The first edition of this publication was issued in 2012, at a time of growing awareness across the United Nations and among its Member States of human rights violations against LGBT persons. This revised and updated edition takes into account developments since 2012, including decisions by the United Nations, and regional and national human rights bodies. It sets out the source and scope of the legal obligations of Member States in respect of the rights of LGBTI people, with reference to international human rights standards and guidance issued by authoritative bodies. It also integrates, for the first time, recommendations in respect of the rights of intersex persons.

I am confident that this revised edition will assist States, as well as national human rights institutions, civil society organizations and other stakeholders in joining forces to end violence and discrimination based on sexual orientation, gender identity and sex characteristics.

A handwritten signature in blue ink, reading "Michelle Bachelet". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michelle Bachelet

United Nations High Commissioner
for Human Rights

INTRODUCTION

“So long as people face criminalization, bias and violence based on their sexual orientation, gender identity or sex characteristics, we must redouble our efforts to end these violations.”

*United Nations Secretary-General António Guterres,
25 September 2018*

The struggle to bring greater international scrutiny to the human rights plight of lesbian, gay, bisexual and transgender (LGBT¹) people reached a landmark moment in 2016 with the decision of the United Nations Human Rights Council to create a dedicated special procedures mandate – an Independent Expert on protection from violence and discrimination based on sexual orientation and gender identity. The Independent Expert has many tasks, including investigating and reporting on human rights violations against LGBT people, assessing compliance with applicable international human rights instruments in this context, and making recommendations to States and other stakeholders as appropriate.² The mandate builds on the work of existing United Nations human rights mechanisms, including special procedures and treaty bodies, the majority of which have addressed these issues to some extent in the context of their own, respective mandates.

The establishment of this mandate follows several years of increasing interest across the United Nations human rights system on the issue of human rights, sexual orientation and gender identity. In 2011 and 2014, the Human Rights Council passed resolutions in which it expressed concern regarding violence and discrimination against LGBT persons and requested reports from the High Commissioner for Human Rights. The High Commissioner’s two reports, published in 2012 and 2015 respectively,³ pointed to a pattern of systematic

¹ The terms lesbian, gay, bisexual and transgender, often abbreviated to ‘LGBT’, are used throughout the publication. These terms have global resonance, though, across cultures and languages, other terms (including queer, hijra, meti, lala, skesana, motsosalle, mithli, kuchu, kawein, travesti, muxé, fa’afafine, fakaleiti, hamjengara, and Two-Spirit) are also used to describe non-heterosexual behaviour, expressions, identities or relationships, and gender identities and expressions that differ from the sex assigned at birth, as well as non-binary gender expressions and identities.

² See Human Rights Council resolution 32/2 on protection against violence and discrimination based on sexual orientation and gender identity, 2016, para. 3 and www.ohchr.org/en/issues/sexualorientationgender/pages/index.aspx.

³ See reports of the United Nations High Commissioner for Human Rights on “Discriminatory Laws and Practices and Acts of Violence against Individuals Based on their Sexual Orientation and Gender Identity” (A/HRC/19/41), 2011, and “Discrimination and violence against individuals based on their sexual orientation and gender identity” (A/HRC/29/23), 2015.

violence and discrimination directed at LGBTI⁴ people in all regions – from discrimination in employment, health care and education, to criminalization and targeted physical attacks, even killings. The reports contain recommendations addressed to States designed to strengthen protection of the human rights of LGBTI persons.

There has been an increase in awareness and attention paid to the human rights of intersex people over the last few years. A milestone was celebrated in September 2015, with the first United Nations Expert meeting on ending human rights violations against intersex persons, and a joint call by United Nations and regional human rights experts in October 2016 for governments to prohibit human rights violations committed against intersex children.⁵ The United Nations special procedures and treaty bodies are increasingly raising concerns about abuses against intersex people, and recommending that States address these issues.

The legal obligations of States to safeguard the human rights of LGBTI people are well established in international human rights law on the basis of the Universal Declaration of Human Rights, international human rights treaties, and customary international law. All people, irrespective of sexual orientation, gender identity or sex characteristics,⁶ are entitled to enjoy the protections provided by international human rights law, including rights to life, security of person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination, equality before the law, and the right to freedom of expression, association and peaceful assembly.

The purpose of this publication is to set out the core obligations that States have towards LGBTI persons, and to describe how United Nations mechanisms have applied international law in these contexts. For more than two decades, United Nations human rights treaty bodies and special procedures have documented violations of the human rights of LGBT, and more recently, intersex people, and analysed State compliance with international human rights law. The sections that follow summarize their findings and advice to help States take the necessary steps to meet their fundamental human rights obligations.

⁴ This publication uses both the abbreviations LGBT and LGBTI as accurately as possible, depending on the specific references. The abbreviation LGBTI has been avoided where it would not be applicable or accurate to use in reference to intersex people.

⁵ United Nations and regional human rights experts, “End violence and harmful medical practices on intersex children and adults,” 24 October 2016, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E.

⁶ Member States, United Nations entities, regional mechanisms and civil society organizations use different terms to describe the ground of discrimination on the basis of which intersex persons face human rights violations, including “sex characteristics”, “intersex status” and “bodily diversity”. This publication generally uses the term “sex characteristics”.

The publication consists of five core sections based on issues that have appeared most frequently in the work of United Nations human rights experts to date. Each section sets forth a State obligation, the relevant international human rights law, and the views of human rights treaty bodies and special procedures. Excerpts from their reporting give examples of the kinds of abuses experienced and paint a broad picture of widespread conditions of violence and discrimination. Each section concludes with a summary of recommendations to States.

This is a revised edition, updated to take into account developments in the jurisprudence and recommendations of United Nations human rights mechanisms since the publication of the first edition by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in 2012. A sister publication, *Living Free and Equal*, examines State practices in the implementation of the human rights of LGBTI people.⁷

The protection of people on the bases of sexual orientation, gender identity and sex characteristics does not require the establishment of new or special rights for LGBTI people. Rather, it requires enforcement of existing rights, including the universally applicable guarantee of non-discrimination. The prohibition against discrimination on the bases of sexual orientation, gender identity and sex characteristics is not limited to international human rights law. Courts in many countries have frequently held that such discrimination also violates domestic law.

These issues have been taken up by most United Nations agencies⁸ and regional human rights systems, including the Inter-American Commission on Human Rights, the African Commission on Human and Peoples' Rights, and the Council of Europe. This has resulted in increased collaboration between United Nations and regional experts on this topic, emphasizing common normative approaches, and sharing good practices on how to promote and protect the human rights of LGBTI people.⁹ Addressing these concerns is not only a legal obligation – more than one hundred and fifteen States, a significant majority of the membership of the United Nations, have made voluntary commitments to address violence and discrimination based on sexual orientation and gender identity in the context of the Universal Periodic Review.

⁷ OHCHR, *Living Free and Equal: What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people* (New York and Geneva, United Nations, 2016). Available from: www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf.

⁸ Joint United Nations statement on ending violence and discrimination against LGBTI persons, 2015, available from: www.ohchr.org/EN/Issues/Discrimination/Pages/JointLGBTIstatement.aspx.

⁹ See, for example, "Ending violence and other human rights violations based on sexual orientation and gender identity: A joint dialogue of the African Commission on Human and Peoples' Rights, Inter-American Commission on Human Rights, and United Nations", 2016, available at www.ohchr.org/Documents/Issues/Discrimination/Endingviolence_ACHPR_IACHR_UN_SOGI_dialogue_EN.pdf.

The principle of non-discrimination is cross-cutting and the obligations on the part of States are immediate and inescapable. Simply put, people may not be discriminated against in the enjoyment of rights on the bases of sexual orientation, gender identity or sex characteristics. As the High Commissioner has stated, "The struggle for the rights of LGBTI people is a core part of the human rights struggle."¹⁰

¹⁰ Remarks by Michelle Bachelet, United Nations High Commissioner for Human Rights, to the LGBTI Core Group High-level Event on Violence against LGBTI Persons, United Nations Headquarters, 25 September 2018.

DEFINITIONS¹¹

Gender identity

Gender identity reflects a deeply felt and experienced sense of one's own gender. Most people have a gender identity, which is part of their overall identity. A person's gender identity may or may not be aligned with the sex assigned to them at birth. **Trans** and **transgender** are both umbrella terms used to describe people with a wide range of gender expressions and identities – including transsexual people, people who cross-dress, people who identify as third gender, people who identify outside of the male/female binary, and others whose appearance and characteristics are perceived as gender atypical and whose sense of their own gender is different to the sex that they were assigned at birth. Some transgender people seek surgery or take hormones to bring their body into alignment with their gender identity; others do not. Trans people may have any sexual orientation and sex characteristics. **Cisgender** (sometimes shortened to "**cis**") is a term used to describe people whose sense of their own gender is aligned with the sex that they were assigned at birth. Some people identify as agender and/or reject the idea of a fixed gender identity.

Gender expression

Gender expression is the way in which we express our gender through actions and appearance, including dress, speech and mannerisms. A person's gender expression is not always linked to the person's biological sex, gender identity or sexual orientation.

Intersex/Sex characteristics

Sex characteristics refer to each person's physical characteristics relating to sex, including genitalia and other reproductive anatomy, chromosomes and hormones, and secondary physical characteristics emerging from puberty. **Intersex** people are born with physical sex characteristics that do not fit the normative definitions for male or female bodies. For some intersex people, these are apparent at birth, while for others they emerge later in life, often at puberty. Intersex persons may have any sexual orientation and gender identity.

¹¹ Adapted from the United Nations Free & Equal campaign website and factsheets (see "Additional United Nations Human Rights Resources" in this publication).

Sexual orientation

Sexual orientation refers to a person's physical, romantic and/or emotional attraction towards other people. Most people have a sexual orientation, which is part of their identity. **Gay** men and **lesbian** women are attracted to individuals of the same sex as themselves. **Heterosexual** people are attracted to individuals of a different sex from themselves. **Bisexual** (sometimes shortened to "bi") people may be attracted to individuals of the same or different sex. Lesbian, gay and bisexual people may have any gender identity or sex characteristics.

Sexual orientation, gender identity and sex characteristics are not the same. They are each distinct, but intersecting aspects of a person. It is important to respect people's choice of terms, names and pronouns to refer to themselves.

While this publication predominantly uses the terms lesbian, gay, bisexual, transgender and intersex, many of the practices, gaps and challenges highlighted herein are also relevant to addressing violence and discrimination on the basis of sexual orientation, gender identity and sex characteristics against people who identify with or use other terms.

While lesbian, gay, bisexual, transgender and intersex people face different challenges, they share a common risk of human rights violations because they have identities, expressions, behaviours or bodies that are perceived to transgress dominant gender norms and roles, including the binary system of male/female. This publication addresses their situations together.

Lesbian, gay, bisexual, trans and intersex people are diverse populations that not only must contend with human rights violations on the basis of their sexual orientation, gender identity and/or sex characteristics, but also face multiple and intersecting discrimination and violence based on skin colour, ethnic origin, sex, gender, disability, age, migratory status, family status, nationality, religion, health status, income level, and other grounds. Indeed, abuse, violence and discrimination become more rife where such factors interplay and are compounded.

SUMMARY OF RECOMMENDATIONS

— Five Steps —

- 1. Protect LGBTI people from violence.** Include sexual orientation, gender identity, and sex characteristics as protected grounds in laws on hate crime and incitement to violence. Ensure violent acts are properly recorded and investigated, perpetrators prosecuted and victims provided with redress. Recognize that persecution on account of one's sexual orientation, gender identity, or sex characteristics may be a valid basis for an asylum claim.
- 2. Prevent the torture and ill treatment of LGBTI persons,** including degrading physical examinations, so-called "conversion" therapy, forced or coerced sterilization of transgender persons, and medically unnecessary procedures performed on intersex children and adults without their consent. Prohibit and investigate all such acts, punish perpetrators and provide redress to victims. Ensure places of deprivation of liberty are regularly monitored by independent bodies. Provide appropriate training to healthcare providers and law enforcement officers.
- 3. Repeal laws that criminalize LGBT persons,** including laws criminalizing consensual same-sex relations and expression of gender identity, and other laws used to harass, arbitrarily detain, prosecute and discriminate against persons on the basis of their actual or perceived gender identity or expression or sexual orientation. Ensure that individuals are not arrested or detained on the basis of their sexual orientation or gender identity or expression.
- 4. Prohibit and address discrimination on the basis of sexual orientation, gender identity and sex characteristics** by enacting relevant comprehensive legislation and policies. Legally recognize same-sex couples and their children, without discrimination, and ensure that transgender persons can obtain legal recognition of their gender identity through a simple administrative process without abusive requirements. Ensure non-discriminatory access to basic services, education, employment, housing and health care. Reform outdated medical classifications that brand LGBTI people as ill or disordered. Combat stigma and discrimination, including through training, education and awareness-raising activities for public officials and the general public. Consult LGBTI people on legislation and policies that affect their rights.
- 5. Safeguard freedom of expression, peaceful assembly and association for LGBTI people.** Any limitations on these rights must be compatible with international human rights law, including on non-discrimination. Protect individuals who exercise their rights to freedom of expression, and freedom of peaceful assembly and association, including human rights defenders, from acts of violence and discrimination by public officials and private parties and prosecute such acts when they occur.



CORE LEGAL OBLIGATIONS OF STATES WITH RESPECT TO PROTECTING THE HUMAN RIGHTS OF LGBTI PERSONS

The application of international human rights law is guided by the fundamental principles of universality, equality and non-discrimination, as framed by Article 1 of the Universal Declaration of Human Rights, which states: “All human beings are born free and equal in dignity and rights.”¹² These core principles are reaffirmed through international human rights covenants and treaties, many of which contain open-ended provisions against discrimination,¹³ and have been interpreted to include discrimination on the basis of sexual orientation, gender identity, and sex characteristics.¹⁴

States are obliged to respect, protect and fulfil the human rights of all persons within their jurisdiction, including LGBTI persons. These obligations extend to refraining from interference in the enjoyment of rights; preventing abuses by State agencies and officials, private corporations and individuals; monitoring, investigating and combating such abuses when they occur; and providing remedy to victims. States must also proactively tackle barriers to the enjoyment of human rights, including violence and discriminatory attitudes and practices. In this context, States should take steps to address stigma and prejudice, including through education, training and public information campaigns. States should also collect, analyse and publish data on violence and discrimination against LGBTI individuals, and consult with relevant organizations representative of LGBTI communities in shaping policy responses.

United Nations human rights experts, including a wide range of treaty monitoring bodies and special procedures, have repeatedly drawn attention to infringements of the rights of LGBTI persons, and provided recommendations

¹² Universal Declaration of Human Rights, art. 1.

¹³ See, for example, International Covenant on Civil and Political Rights, art. 2(1); International Covenant on Economic, Social and Cultural Rights, art. 2; Convention on the Rights of the Child, art. 2; International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, arts. 1 and 7.

¹⁴ See, for example, Committee on Economic, Social and Cultural Rights, General Comments No. 20 [E/C.12/GC/20], 2009, para. 27, and No. 22 [E/C.12/GC/22], 2016, at paras. 9, 23; *Toonen v. Australia*, Human Rights Committee, Communication No. 499/1992 [CCPR/C/50/D/499/1992], para. 8.7; Committee on the Rights of the Child, General Comments No. 4 [CRC/GC/2003/4], 2003, para. 6, and No. 9 [CRC/C/GC/9], 2007, para. 8; Committee against Torture, General Comments No. 2 [CAT/C/GC/2], 2008, para. 21, and No. 3 [CAT/C/GC/3], 2012, paras. 32, 39.

on how States can fulfil obligations under international human rights law in this area.¹⁵ For example, in numerous concluding observations, the Human Rights Committee – the body of United Nations experts tasked by States with monitoring compliance with the International Covenant on Civil and Political Rights – has repeatedly urged States Parties to guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation and gender identity, and called on States to address violence and discrimination against LGBTI people.¹⁶ The Committee on Economic, Social and Cultural Rights, which monitors compliance with the International Covenant on Economic, Social and Cultural Rights, has affirmed that the non-discrimination guarantee of the Covenant includes sexual orientation and gender identity and intersex status.¹⁷ It has reflected this in general comments relating to the rights to sexual and reproductive health, work, water, social security, and health, as well as in a general comment on the general meaning of the non-discrimination guarantee.¹⁸ The Committee on the Rights of the Child also interprets the right to non-discrimination in Article 2 of the Convention on the Rights of the Child to include sexual orientation¹⁹, gender identity²⁰ and intersex status²¹/sex characteristics²² and has regularly addressed violations of the rights of children who are or who are perceived to be LGBTI.²³ The Committee against

¹⁵ See, for example, Committee on Economic, Social and Cultural Rights, General Comment No. 20 (E/C.12/GC/20), 2009, para. 32; *Young v. Australia*, Human Rights Committee, Communication No. 941/2000 (CCPR/C/78/D/941/2000), para. 10.4; *X v. Colombia*, Human Rights Committee, Communication No. 1361/2005 (CCPR/C/89/D/1361/2005), at para. 9; Committee on the Rights of the Child, General Comment No. 13 (CRC/C/GC/13), 2011, paras. 60 and 72(g); Committee against Torture, General Comments No. 2 (CAT/C/GC/2), 2008, para. 21, and No. 3 (CAT/C/GC/3), 2012, paras. 32 and 39; Committee on the Elimination of Discrimination against Women, General Recommendation No. 33 (CEDAW/C/GC/33), 2015, para. 8.

¹⁶ See for example, Human Rights Committee, Concluding Observations on Ecuador (CCPR/C/EQU/CO/6) 2016, paras. 11-12; *Venezuela* (CCPR/C/VEN/CO/4), 2015, para. 8; *Austria* (CCPR/C/AUT/CO/5), 2015, paras. 11-12; *Republic of Korea* (CCPR/C/KOR/CO/4), 2015, para. 13; *Iraq* (CCPR/C/IRQ/CO/5), 2013, para. 12(d); *Chile* (CCPR/C/CHL/CO/5), 2009, at para. 16.

¹⁷ As indicated in the introduction, different terms are used to describe the ground of discrimination on the basis of which intersex persons face human rights violations. This publication generally uses the term “sex characteristics”. The Committee on Economic, Social and Cultural Rights has used the term “intersex status” in its recent General Comments.

¹⁸ Committee on Economic, Social and Cultural Rights, General Comments No. 23 (E/C.12/GC/23), 2016, paras. 11, 48, 65(a); No. 22 (E/C.12/GC/22), 2016, at para. 23; No. 20 (E/C.12/GC/20), 2009, para. 32; No. 19 (E/C.12/GC/19), para. 29; No. 18 (E/C.12/GC/18), 2006, para. 12(b); No. 15 (E/C.12/2002/11), 2003, para. 13; No. 14 (E/C.12/2000/4), 2000, para. 18.

¹⁹ Committee on the Rights of the Child, General Comments No. 4 (CRC/GC/2003/4), 2003, para. 6; and No. 3 (CRC/GC/2003/3), 2003, para. 8.

²⁰ Committee on the Rights of the Child, General Comment No. 13 (CRC/C/GC/13), 2011, paras. 60 and 72(g); and No. 15 (CRC/C/GC/15), 2013, at para. 8.

²¹ Committee on the Rights of the Child, General Comment No. 20 (CRC/C/GC/20), 2016, para. 34.

²² Joint statement of United Nations and regional human rights experts, “End violence and harmful medical practices on intersex children and adults”, 24 October 2016, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E

²³ *Ibid.*

Torture has also underscored that State obligations under the Convention against Torture apply to all persons regardless of sexual orientation, gender identity or sex characteristics and reaffirmed the obligation of States to prevent and address torture and ill-treatment against LGBTI people.²⁴ The Committee on the Elimination of Discrimination against Women has emphasized the intersectionality of all forms of discrimination and has addressed human rights violations against lesbian, bi, trans and intersex women.²⁵ The Committee on Migrant Workers has expressed concern about violence targeting LGBT people and discriminatory migration provisions based on sexual orientation and gender identity.²⁶ The Committee on the Rights of Persons with Disabilities has expressed concern about discrimination against LGBTI people with disabilities and sterilization and other procedures on intersex children.²⁷ The Committee on the Elimination of Racial Discrimination has expressed concern with regard to discrimination faced by LGBTI people of African descent.²⁸

State obligations to respect, protect and fulfil the human rights of LGBTI persons do not only derive from treaties; some of these obligations also derive from customary international law. This includes peremptory norms of international law, such as the absolute prohibition against torture and other acts of cruel, inhuman, or degrading treatment or punishment.²⁹ A number of United Nations and other human rights experts have also elaborated the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics.³⁰

The next chapters examine in greater detail the five core obligations of States to protect, respect and fulfil the human rights of LGBTI people on the basis of existing international human rights norms and standards.

²⁴ *Ibid.* See also, Committee against Torture, General Comment No. 2 (CAT/C/GC/2), 2008, para. 21; and General Comment No.3 (CAT/C/GC/3), 2012, paras. 32, 39.

²⁵ Committee on the Elimination of Discrimination against Women, General Recommendations No. 28 (CEDAW/C/GC/28), 2010, para. 18, and No. 33 (CEDAW/C/GC/33), 2015, para. 8. See also Committee on the Elimination of Discrimination against Women, Concluding Observations on Kyrgyzstan (CEDAW/C/KGZ/CO/4), 2015; on Ecuador (CEDAW/C/ECU/CO/8-9), 2015; on Denmark (CEDAW/C/DNK/CO/8), 2015; on India (CEDAW/C/IND/CO/4-5), 2014; on Cameroon (CEDAW/C/CMR/CO/4-5), 2014.

²⁶ See, for example, Committee on Migrant Workers, Concluding Observations on Jamaica (CMW/C/JAM/CO/1), 2017, para. 62 and Concluding Observations on Belize (CMW/C/BLZ/CO/1), 2014, paras. 18-19.

²⁷ See, for example, Committee on the Rights of Persons with Disabilities, Concluding Observations on Canada (CRPD/C/CAN/CO/1), 2017, para. 19, Lithuania (CRPD/C/LTU/CO/1), 2016, paras. 15-16, Uganda (CRPD/C/UGA/CO/1), 2016, paras. 8-9, Chile (CRPD/C/CHL/CO/1), 2016, para. 42.

²⁸ See, for example, Committee on the Elimination of Racial Discrimination, Concluding Observations on Uruguay (CERD/C/URY/CO/21-23), 2017, para. 27; Concluding Observations on Germany (CERD/C/DEU/CO/19-22), 2015, para. 16.

²⁹ See for example, Committee against Torture, General Comment No. 2 (CAT/C/GC/2), 2008, para. 1 and Report of the Special Rapporteur on torture (A/HRC/25/60), 2014, at para. 40.

³⁰ Yogyakarta Principles, 2006 and Yogyakarta Principles plus 10, 2017.



I. PROTECT INDIVIDUALS FROM VIOLENCE

Hate-motivated violence against LGBTI people is perpetrated by both State and non-State actors whether police, private individuals, families, organized groups, or extremist organizations. Failure by State authorities to investigate and punish this kind of violence is a breach of States' obligation to protect everyone's right to life, liberty and security of person, as guaranteed by international human rights norms and standards, including the non-exhaustive list below. Use of the death penalty and violence, which is tantamount to torture or ill-treatment, is dealt with in following chapters.

Universal Declaration of Human Rights

Article 3: Everyone has the right to life, liberty and security of person.

Article 14(1): Everyone has the right to seek and to enjoy in other countries asylum from persecution.

International Covenant on Civil and Political Rights

Article 6: Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 9: Everyone has the right to liberty and security of person.

Convention on the Rights of the Child

Article 19(1): States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Convention against Torture

Article 3(1): No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

Convention relating to the Status of Refugees

Article 33(1): No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Declaration on the Elimination of Violence against Women

Article 4: States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women.³¹

A. POSITIONS TAKEN BY UNITED NATIONS HUMAN RIGHTS MECHANISMS

The United Nations Human Rights Committee has emphasized that States have an obligation to take appropriate measures to prevent and respond to acts of violence, as well as to protect individuals from foreseeable threats to life or bodily integrity proceeding from State or private actors.³² LGBTI individuals in all regions are at particular risk of targeted violence at the hands of private actors. Such violence may be physical or psychological (including murder, beatings, kidnappings, rape and sexual assault, threats, coercion and arbitrary deprivations of liberty).³³ Violence against LGBTI persons extends into the family sphere and includes physical assault and sexual violence by family members and violence committed in the name of culture, religion and tradition.³⁴ These attacks constitute a form of gender-based violence, driven by a desire to punish those seen as defying gender norms. LGBTI people also face violence and ill treatment in medical settings and in detention settings (see Chapter II).

³¹ United Nations Declaration on the Elimination of Violence against Women (A/RES/48/104), 1993, article 4.

³² Human Rights Committee, General Comment No. 35 (CCPR/C/GC/35), 2014, at para. 9.

³³ Article 2 of the Declaration on the Elimination of Violence against Women notes that violence against women encompasses violence within the family, within the community, and physical, sexual or psychological violence perpetrated and condoned by the State, wherever it occurs.

³⁴ Report of the United Nations High Commissioner for Human Rights on discrimination and violence against individuals based on their sexual orientation and gender identity (A/HRC/29/23), 2015, para. 66; Report of the Special Rapporteur on freedom of religion or belief (A/68/290), 2013, para. 38; Report of the Special Rapporteur on violence against women (A/HRC/20/16/Add.4), 2012, para. 20; Report of the Special Rapporteur on human rights in the Islamic Republic of Iran (A/HRC/22/56), 2013, para. 70; Report of the Special Rapporteur on the human rights of migrants, on a mission to Qatar (A/HRC/26/35/Add.1), 2014, para. 19.

B. TARGETED KILLINGS

The State obligation to protect life requires that the State exercise due diligence in preventing, punishing and redressing deprivations of life, by public and private parties, including in instances where the victim has been targeted on grounds of their sexual orientation, gender identity or expression, or sex characteristics.³⁵ States have obligations under international law to prevent extrajudicial executions, investigate such killings and bring those responsible to justice. The United Nations General Assembly has called on States “to ensure the protection of the right to life of all persons under their jurisdiction” and investigate promptly and thoroughly all killings, including those motivated by the victim’s sexual orientation or gender identity.³⁶ Any failure of a State to exercise due diligence in this regard is a breach of its obligations under international law.

Murders of individuals targeted because of their sexual orientation or gender identity are well documented by human rights treaty bodies and special procedures.³⁷ For example, in the case of Uruguay, the Human Rights Committee expressed:

*... consternation at the violent death of at least five transsexual women in 2012 under circumstances that could be regarded as indicative of a pattern of violence based on gender identity.*³⁸

In a report focused on gender-related killings, the Special Rapporteur on violence against women reported that LGBTI persons “are especially vulnerable to many kinds of violent crime, from killings in private homes to killings in public spaces known as ‘social cleansing.’”³⁹ The Special Rapporteur on extrajudicial, summary or arbitrary executions has regularly drawn attention to persons being

³⁵ Human Rights Committee, General Comments No. 6, 1982, and No. 31, 2004, at para. 8.

³⁶ General Assembly resolutions on extrajudicial executions: resolution 57/214, 2002, at para. 6; resolution 61/173, 2006, at para. 5(b); resolution 63/182, 2008, at para. 6(b); resolution 65/208, 2010, at para. 6(b); resolution 67/168, 2012, at para. 6(b); resolution 69/182, 2014, at para. 6(b); resolution 71/198, 2016, at para. 6(b).

³⁷ Concluding Observations of the Human Rights Committee on Poland (CCPR/CO/82/POL), 2004, at para. 18; and El Salvador (CCPR/CO/78/SLV), 2003, at para. 16; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, (A/HRC/14/24/Add.2), 2010, at para. 74, on her mission to Mexico (E/CN.4/2000/3/Add.3), 2000, at paras. 91-92; Report of the Special Rapporteur on violence against women on her mission to El Salvador (A/HRC/17/26/Add.2), 2011, at para. 28; Report of the Special Rapporteur on human rights defenders on her mission to Colombia (A/HRC/13/22/Add.3), 2010, at para. 50; Committee on the Elimination of Discrimination against Women, Concluding Observations on South Africa (CEDAW/C/ZAF/CO/4), 2011, at para. 39.

³⁸ Human Rights Committee, Concluding Observations on Uruguay (CCPR/C/URY/CO/5), 2013, at para. 12.

³⁹ Report of the Special Rapporteur on violence against women, (A/HRC/20/16), 2012, para. 72.

subjected to death threats or killed because of sexual orientation and gender identity.⁴⁰ In the 2014 report on his mission to Mexico, the Special Rapporteur on executions stated that he:

... was alerted to an alarming pattern of grotesque homicides of lesbian, gay, bisexual and transgender (LGBT) individuals and broad impunity for their perpetration, sometimes with the suspected complicity of investigative authorities. Several interlocutors stated that between 2005 and March 2013, 555 homicides targeting the sexual orientation or gender identity of the victim were recorded. Sharp weapons are apparently used to kill in many of the cases, and the victims' bodies often show deep cuts and further signs of torture including anal rape and genital mutilation.⁴¹

The United Nations has drawn attention to the particularly intense and brutal nature of violence exercised against transgender persons,⁴² noting that killings of transgender persons are “inflicted with severe violence and [are] charged with a strong emotional component of anger or rage.”⁴³

United Nations human rights experts have also documented lethal attacks against defenders of the human rights of LGBTI persons in different regions (see also Chapter V).⁴⁴

LGBTI people are among the victims of killings committed in the name of culture, tradition or religion, carried out against those seen by family or community members as having brought “shame” or “dishonour” on a family, often for being perceived to transgress gender norms, for sexual behaviour including

⁴⁰ See reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions: (E/CN.4/1999/39), 1999, at para. 76; (E/CN.4/2000/3), 2000, at para. 54; (E/CN.4/2001/9), 2001, at para. 48; (E/CN.4/2002/74), 2002, at para. 62; (A/57/138), 2002, at para. 38; (E/CN.4/2003/3), 2003, at para. 66; (A/59/319), 2004, at para. 60; (A/HRC/4/20 and Add.1), 2007; (A/HRC/11/2/Add.7), 2009; (A/HRC/14/24/Add.2) at paras. 74, 2010; and (A/HRC/17/28/Add.1), 2011; (A/HRC/23/47/Add.2) at paras. 47, 2013; (A/HRC/26/36/Add.1), 2014; (A/HRC/35/23) 2017.

⁴¹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on his mission to Mexico (A/HRC/26/36/Add.1), 2014, at paras. 85-88.

⁴² Reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions: (E/CN.4/2000/3), 2000, at para. 54; (E/CN.4/2001/9), 2001, at para. 49; (E/CN.4/2003/3/Add.2), 2003 at para. 68; (E/CN.4/2003/3), 2003, at para. 66; (A/HRC/17/28/Add.1), 2011, para. 31.

⁴³ OHCHR and UN Women, Latin American Model Protocol for the investigation of gender-related killings of women, 2014, para. 155.

⁴⁴ See for example, A/67/357 (2012) para. 27; A/HRC/23/47/Add.5 (2013; JAL 28/06/2012, Case No. ZAF 2/2012, Alleged killing of a LGBTI rights defender); JAL 2/08/2013, Case No. HTI 1/2003; Committee on the Elimination of Discrimination against Women, Concluding Observations on Argentina (CEDAW/C/ARG/CO/7), 2016, para. 20(e).

actual or assumed same-sex sexual activity, or based on sex characteristics.⁴⁵ While women are generally the targets of this sort of punishment, these attacks can be directed at individuals of any gender or sex.⁴⁶ The Special Rapporteur on torture has noted that in some cases, taboo and stigma lead to the killing of intersex infants.⁴⁷

The United Nations Security Council, the High Commissioner for Human Rights, the Committee on the Rights of the Child and the Independent Commission of Inquiry on Syria have all expressed alarm at the targeted killing of LGBTI people by terrorist and armed groups operating in conflict-affected areas.⁴⁸ In August 2015, the Security Council held a special meeting to discuss extrajudicial executions of LGBTI individuals by Islamic State (also known as Daesh, IS, ISIS and ISIL), and, in June 2016, the Council issued a statement condemning the mass shooting at the Pulse Club in Orlando (United States), noting that individuals were “targeted as a result of their sexual orientation.”⁴⁹

The Special Rapporteur on extrajudicial executions has encouraged governments to renew efforts to protect the security and right to life of LGBTI persons and to thoroughly, promptly, effectively and impartially investigate acts of murder and death threats, without discrimination.⁵⁰

⁴⁵ See for example, United Nations High Commissioner for Refugees (UNHCR), “The Protection of Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees”, 2010 at para. 53.

⁴⁶ See Report of the Secretary-General on Violence against Women (A/61/122/Add.1), 2006, para. 124. Reports of the Special Rapporteur on violence against women: (E/CN.4/2002/83), 2002, paras. 27-28; (A/HRC/4/34/Add.2), 2007, para. 19, and (A/HRC/4/34/Add.3), 2007, para. 34; Report of the Special Rapporteur on torture (A/HRC/31/57), 2016, at paras. 59-60.

⁴⁷ Report of the Special Rapporteur on torture (A/HRC/31/57), 2016, at para. 50.

⁴⁸ Committee on the Rights of the Child, Concluding Observations on Iraq (CRC/C/IRQ/CO/2-4), 2015, paras. 27-28, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (A/HRC/31/68), 2016, paras. 106, 113, OHCHR, press briefing notes on ISIL/Iraq, 20 January 2015.

⁴⁹ Security Council Press Statement on Terrorist Attack in Orlando, Florida, www.un.org/press/en/2016/sc12399.doc.htm.

⁵⁰ Reports of the Special Rapporteur on extrajudicial executions, (A/HRC/35/23), 2017, at paras. 57, 100, 110, (A/HRC/32/39/Add.2), 2016, at para. 45, (E/CN.4/2000/3), 2000, at para. 116.

C. OTHER VIOLENCE, INCLUDING SEXUAL VIOLENCE

United Nations experts continue to express their alarm at violence directed at individuals on the grounds of their sexual orientation or gender identity.⁵¹ Examples include cases of gay men who have been kidnapped, beaten and humiliated, with film clips of their abuse shared on social media;⁵² transgender people harassed, beaten and sexually abused;⁵³ and lesbians assaulted and raped.⁵⁴ Concerns have also been expressed about the risk of violence against children who are perceived to transgress gender norms.⁵⁵ In addition to “street” violence and other spontaneous attacks in public settings, those perceived as LGBT may be targets of more organized abuse, including by religious extremists, paramilitary groups, neo-Nazis and extreme nationalists.⁵⁶ Cases in which violence and ill treatment against LGBTI people, including in medical, detention and related settings, may be deemed to constitute torture are addressed in Chapter II.

Human rights defenders, including women human rights defenders, have faced violence and reprisals for their work to uphold the rights of LGBT persons (see also Chapter V).⁵⁷

Lesbians and transgender people are at particular risk of violence because of gender inequality and power imbalances within families and wider society.⁵⁸ The Committee on the Elimination of Discrimination against Women has expressed grave concern about reported sexual violence committed against

⁵¹ Report of the Special Rapporteur on violence against women on her mission to Kyrgyzstan (A/HRC/14/22/Add.2), 2010, at paras. 37-38.

⁵² Report of the Special Rapporteur on racism (A/HRC/26/50), 2014, para. 14.

⁵³ See for example, Special Rapporteur on freedom of opinion and expression, report on communications (E/CN.4/2005/64/Add.1), 2005, para. 648; Special Rapporteur on violence against women, reports on communications (E/CN.4/2005/72/Add.1), 2005, para. 232, (E/CN.4/2006/61/Add.1), 2006, para. 131, (A/HRC/4/34/Add.1), 2007 (para. 448-454).

⁵⁴ See Committee on the Elimination of Discrimination against Women, Concluding Observations on Guyana (CEDAW/C/GUY/CO/7-8), 2012, para. 22; Report of the Special Rapporteur on violence against women (A/HRC/20/16), 2012, paras. 55, 71, 73, 76.

⁵⁵ See for example, Committee on the Rights of the Child, Concluding Observations on Sweden (CRC/C/SWE/CO/5), 2015, para. 15(d); on the Dominican Republic (CRC/C/DOM/CO/3-5), 2015, para. 17(d); on Colombia (CRC/C/COL/CO/4-5), 2015, para. 19(a).

⁵⁶ Report of the Special Rapporteur on racism (A/HRC/29/47), 2015, para. 13; joint letter of allegation, IDN 2/2016, 19/4/2016.

⁵⁷ See Special Rapporteur on human rights defenders, report on communications with governments (A/HRC/25/55/Add.3), 2014, paras. 433-435, 480-482; thematic report (A/HRC/31/55), 2016, paras. 27, 38, 48; Report of the Secretary-General on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights (A/HRC/39/41) para. 81 and Annex I, paras. 7-8.

⁵⁸ Report of the United Nations High Commissioner for Human Rights on “Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity” (A/HRC/19/41), 2011, para. 21.

women on account of their sexual orientation.⁵⁹ The Special Rapporteur on violence against women has reported alleged incidents of gang rapes, family violence and murder experienced by lesbian and bisexual women and transgender people in India, Azerbaijan, Honduras, El Salvador, Kyrgyzstan and South Africa,⁶⁰ where the Rapporteur noted that “lesbian women face an increased risk of becoming victims of violence, especially rape, because of widely held prejudices and myths”, including “for instance, that lesbian women would change their sexual orientation if they are raped by a man”.⁶¹

In addition to physical trauma, the mental pain and suffering inflicted on victims of rape and other forms of sexual violence is often exacerbated and prolonged due, *inter alia*, to subsequent stigmatization and isolation.⁶² This is particularly true in cases where the victim is shunned or formally banished from the family or community.⁶³ The Special Rapporteur on torture has noted that rape constitutes torture when it is carried out by, at the instigation of, or with the consent or acquiescence of public officials (see Chapter II).⁶⁴ States are responsible for the acts of private actors when they fail to exercise due diligence to prevent, stop or sanction them, or to provide reparations to victims.⁶⁵

Young LGBT people who are seen to be transgressing social norms are more likely to be exposed to violence, including within the family, community, and particularly at school.⁶⁶ UNESCO has documented a high prevalence of physical, psychological, and sexual violence, as well as bullying and cyberbullying, against students, based on sexual orientation and gender identity/expression (see also Chapter IV, section on education).⁶⁷ The Committee on the Rights of the

⁵⁹ Committee on the Elimination of Discrimination against Women, Concluding Observations on South Africa (CEDAW/C/ZAF/CO/4), 2015, paras. 39-40.

⁶⁰ See reports of the Special Rapporteur on violence against women, on communications (A/HRC/11/6/Add.1) 2009, paras. 239-241; on a mission to Azerbaijan (A/HRC/26/38/Add.3), 2014, para. 79; on a mission to Honduras (A/HRC/29/27/Add.1), 2015, paras. 17, 38; on a mission to Kyrgyzstan (A/HRC/14/22/Add.2), 2010, paras. 37-38, and on a follow-up mission to El Salvador (A/HRC/17/26/Add.2), 2011, paras. 28-29.

⁶¹ Report of the Special Rapporteur on violence against women, on communications with governments (A/HRC/4/34/Add.1), 2007, paras. 632-633; on her mission to Kyrgyzstan (A/HRC/14/22/Add.2), 2010, para. 38. See also Committee on the Elimination of Discrimination against Women, Concluding Observations on South Africa (CEDAW/C/ZAF/CO/4), 2011, para. 39.

⁶² Reports of the Special Rapporteur on torture (A/HRC/7/3), 2008, para. 34, (A/HRC/31/57), 2016, para. 51.

⁶³ *Ibid.*, 2008, and *Ibid.*, 2016, para. 51.

⁶⁴ *Ibid.*, 2016, para. 51.

⁶⁵ See, Committee against Torture, General Comment No. 2 (CAT/C/GC/2), 2008, paras. 17-18.

⁶⁶ Committee on the Rights of the Child, General Comment No. 13 (CRC/C/GC/13), 2011, para. 72(g) and UNESCO, “Out in the Open: Education sector responses to violence based on sexual orientation and gender identity/expression”, 2016.

⁶⁷ UNESCO, 2016.

Child has recommended that States take all necessary measures to protect LGBT children and children demonstrating any kind of non-conformist behaviour from violence.⁶⁸ Treaty bodies have also condemned violence and harmful practices against intersex children in medical settings including medically unnecessary surgery and treatment without their consent (see Chapter II).⁶⁹

The High Commissioner for Human Rights has noted that lesbian, bisexual and transgender women may be at greater risk and may experience particularly severe forms of online violence, which includes online threats and harassment and gross and demeaning breaches of privacy, such as “revenge pornography”.⁷⁰

Discriminatory laws and practices, including pathologization, can legitimize such violence and create a climate in which perpetrators go unpunished (see Chapter III).⁷¹ When lodging complaints of violence by third parties, LGBT people have reportedly been subject to further victimization by the police, including verbal, physical and sexual assault, including rape (see Chapter II).⁷² Silencing through shame or threat by law enforcement officials may keep a considerable number of victims from reporting abuses.⁷³ Laws on sexual violence that only consider women victims, or that restrict the definition of sexual violence only to penile penetration, can leave survivors of other forms of sexual violence, as well as victims who are not women or who are not legally recognized as women, with no access to recourse.⁷⁴ Quantifying violence is further complicated by

⁶⁸ See for example, Committee on the Rights of the Child, Concluding Observations on Iraq (CRC/C/IRQ/CO/2-4), 2015, para. 28.

⁶⁹ See, for example, Committee on the Rights of the Child, Concluding Observations on Nepal (CRC/C/NPL/CO/3-5), 2016, paras. 41, 42; South Africa (CRC/C/ZAF/CO/2), 2016, paras. 37, 38; Chile (CRC/C/CHL/CO/4-5), 2015, paras. 48-49; Committee on the Elimination of Discrimination against Women, Concluding Observations on the Netherlands (CEDAW/C/NL/CO/6), 2016, para. 21(e); Committee against Torture, Concluding Observations on Denmark (CAT/C/DNK/CO/6-7), 2016.

⁷⁰ Report of the United Nations High Commissioner for Human Rights on “Promotion, protection and enjoyment of human rights on the Internet: ways to bridge the gender digital divide from a human rights perspective”, (A/HRC/35/9), 2017, paras. 35-36.

⁷¹ See, for example, Report of the Special Rapporteur on health (A/HRC/32/32), 2016, paras. 38-41, 94, 113(e). See also joint statement of United Nations and regional experts, “Pathologization – Being lesbian, gay, bisexual and/or trans is not an illness”, 12 May 2016, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19956&LangID=E.

⁷² See, for example, OHCHR Press Briefing Note on Turkey (14 July 2015), available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16233.

⁷³ Committee against Torture, Concluding Observations on Tunisia (CAT/C/TUN/CO/3), 2016, para. 41; Committee on the Elimination of Discrimination against Women, Concluding Observations on Ecuador (CEDAW/C/ECU/CO/8-9), 2015, para. 20; Report of the Special Rapporteur on human rights defenders on a mission to Burundi (A/HRC/31/55/Add.2), 2015, para. 56; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, on communications (A/HRC/29/37/Add.5) 2015, para. 57; Report of the Special Rapporteur on torture (A/56/156), 2001, paras. 18, 21.

⁷⁴ See, for example, UNHCR study, “Sexual Violence against Men and Boys in the Syria Crisis” by Dr. Sarah Chynoweth, Geneva, October 2017. Available from: <https://data2.unhcr.org/en/documents/download/60864>.

the fact that few States have systems in place for monitoring, recording and reporting incidents of violence against LGBTI people. Even where systems exist, incidents may go unreported or are misreported because victims distrust the police, are afraid of reprisals or threats to privacy, are reluctant or unable to identify themselves as LGBT, or because those responsible for registering the incidents fail to recognize the motives of the perpetrators.⁷⁵

United Nations human rights mechanisms have urged States to ensure that violence against LGBTI persons is thoroughly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions.⁷⁶ The sexual orientation, gender identity or sex characteristics of the victim should never be accepted as a mitigating circumstance.⁷⁷ Victims should be adequately compensated and protected against reprisals for reporting acts of violence.⁷⁸ Redress and support to victims should include referral to legal support, specialist medical and psychological services, and shelters and safe houses, as necessary.⁷⁹ Human rights defenders who advocate for protection of the human rights of LGBTI people should be protected from violence and other reprisals for their work.⁸⁰

States should ensure that law enforcement officials recognize, accurately register (in a disaggregated manner) and respond to reports of such crimes. They should institute training programmes for law enforcement officials for this purpose, to sensitize them to bias-motivated violence against LGBTI persons.⁸¹

⁷⁵ Report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/19/41), 2011, para. 23.

⁷⁶ See Human Rights Committee, Concluding Observations on the former Yugoslav Republic of Macedonia (CCPR/C/MKD/CO/3), 2015, para. 7; on Latvia (CCPR/C/LVA/CO/3), 2014, para. 19; on Kazakhstan (CCPR/C/KAZ/CO/2), 2016, para. 10; Committee against Torture, Concluding Observations on Iraq (CAT/C/IRQ/CO/1), 2015, para. 25; on Macedonia (CAT/C/MKD/CO/3), 2015, para. 13.

⁷⁷ See for example, Committee on the Rights of the Child, Concluding Observations on Iraq (CRC/C/IRQ/CO/2-4), 2015, para. 28.

⁷⁸ Report of the Special Rapporteur on the human right to safe drinking water and sanitation (A/HRC/33/49), 2016, para. 77(d); Human Rights Committee, Concluding Observations on Kyrgyzstan (CCPR/C/KGZ/CO/2), 2014, para. 9.

⁷⁹ OHCHR, *Living Free and Equal: What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people*, 2016, p. 34, available at: www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf.

⁸⁰ Report of the Secretary-General on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights (A/HRC/39/41) para. 81.

⁸¹ Committee on Economic, Social and Cultural Rights, Concluding Observations on the former Yugoslav Republic of Macedonia (E/C.12/MKD/CO/2-4), 2016, para. 26; Committee against Torture, Concluding Observations on Uruguay (CAT/C/URY/CO/3), 2014, para. 21(c). See also, OHCHR, *Living Free and Equal*, sections 1.4, 1.8 and 1.9.

D. INCITEMENT TO VIOLENCE AND HATE SPEECH

Human rights mechanisms continue to express concern at rhetoric used to incite homophobic and transphobic hatred and related violence.⁸² Such language is used by some political, community and religious leaders to promote negative stereotypes, stir up prejudice and harass particular individuals, especially during electoral periods, and during periods of political tension and armed conflict. The High Commissioner has expressed concern at inflammatory rhetoric used in Belarus, the Gambia, Malawi and Honduras.⁸³ The Committee on the Rights of the Child has criticized statements by the Holy See as contributing to the stigmatization of, and violence against LGBT adolescents and children raised by same-sex couples,⁸⁴ and about the impact of hate speech on LGBTI people in Switzerland.⁸⁵ Impunity for incitement to violence by authorities, or community or religious leaders, can encourage threats and attacks by both State officials and private individuals.

The Special Rapporteur on freedom of opinion and expression has analysed the different kinds of hate speech and clarified the corresponding obligations of States to address these through legal and/or non-legal measures, in line with international norms and standards that place limits on how and when States may restrict freedom of expression.⁸⁶

The Special Rapporteur on human rights defenders has expressed concern about the media reproducing and reinforcing patterns of inequality and marginalization, noting that LGBTI activists and women defenders are sometimes targeted in social media smear campaigns and vilified by mainstream media outlets.⁸⁷ The media can combat negative stereotyping by inter alia undertaking proactive training about the rights of LGBTI persons, expressing stronger support for defenders working on these issues, reporting in a factual and sensitive manner and raising awareness of discrimination and negative stereotyping.⁸⁸

⁸² See Human Rights Committee, Concluding Observations on Ukraine (CCPR/C/UKR/CO/7), 2013, para. 10; Report of the Special Rapporteur on freedom of opinion and expression (A/67/357), 2012, para. 75; see also judgment by the European Court of Human Rights, case of Vejdeland and others v. Sweden, No. 1813/07, 2012.

⁸³ Pillay, N., "Prejudice fuels the denial of rights for LGBT people", Jakarta Post, 30 April 2014; Report of the Special Rapporteur on human rights defenders on a mission to Honduras (A/HRC/22/47/Add.1), 2013, para. 91; see also OHCHR Press Briefing Note on Malawi, 22 January 2016, available at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16985&LangID=E.

⁸⁴ Committee on the Rights of the Child, Concluding Observations on the Holy See (CRC/C/VAT/CO/2), 2014, para. 25.

⁸⁵ Committee on the Rights of the Child, Concluding Observations on Switzerland (CRC/C/CHE/CO/2-4), 2015, para. 24.

⁸⁶ Report of the Special Rapporteur on freedom of opinion and expression (A/67/357), 2012. See also Rabat Plan of Action (A/HRC/22/17/Add.4), 2013 and Chapter V of this publication.

⁸⁷ Report of the Special Rapporteur on human rights defenders (A/HRC/31/55), 2016, para. 80.

⁸⁸ Ibid. See also OHCHR, Rabat Plan of Action (A/HRC/22/17/Add.4), 2013, para. 58.

States have an obligation to enact legislation that addresses homophobic and transphobic incitement to violence.⁸⁹ In the case of Poland, the Human Rights Committee noted “with concern a significant rise in manifestations of hate speech and intolerance directed at lesbian, gay, bisexual and transgender people,” and recommended that the authorities: “amend the Penal Code to define hate speech and hate crimes based on sexual orientation or gender identity among the categories of punishable offences; and intensify awareness-raising activities aimed at the police force and wider public.”⁹⁰

In Concluding Observations on Norway, the Committee Against Torture urged the government to ensure that hate speech, including against LGBT persons, is “systematically investigated, prosecuted and the alleged perpetrators prosecuted, if found guilty, convicted and sanctioned with penalties commensurate with the gravity of the offence”⁹¹

POSITIVE PRACTICE

United Kingdom: College of Policing – Hate Crime Operational Guidance Manual

In 2014, the College of Policing of the United Kingdom released a set of guidelines for police officers responding to incidences of hate crime. The guidelines were intended to improve the overall quality of police responses and reduce under-reporting by building public confidence in the capacity of the police force to respond to homophobic and transphobic hate crimes. The guidance covers legislation and case studies that reflect recent developments in law, policy and practice in the realm of hate crimes, including those committed against LGBT persons. The *Manual* was produced in consultation with a range of stakeholders, including civil society organizations and the victims of hate crimes themselves, with the objective of building trust between the police and the population groups targeted by hate crime.⁹²

⁸⁹ Concluding Observations of the Human Rights Committee on the United States of America (CCPR/C/USA/CO/3), 2006, at para. 25; Uzbekistan (CCPR/C/UZB/CO/3), 2010, at para. 22; Committee against Torture, Concluding Observations on Poland (CAT/C/POL/CO/4), 2013, at para. 19; Mongolia (CAT/C/MNG/CO/1), 2011, at para. 25; Republic of Moldova (CAT/C/MDA/CO/2), 2010, at para. 27; Reports of the Special Rapporteur on violence against women on missions to Kyrgyzstan (A/HRC/14/22/Add.2), 2010, at para. 92; to El Salvador (A/HRC/17/26/Add.2), 2011, at paras. 28-29, 77; Report of the Special Rapporteur on the human rights of migrants on his mission to South Africa (A/HRC/17/33/Add.4), 2011, at para. 77(a); Report of the Special Rapporteur on racism (A/HRC/29/47), 2015, para. 45.

⁹⁰ Human Rights Committee, Concluding Observations on Poland (CCPR/C/POL/CO/6), 2010, at para. 8.

⁹¹ Committee against Torture, Concluding Observations on Norway (CAT/C/NOR/CO/6-7), 2012, para. 21.

⁹² OHCHR, *Living Free and Equal: What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people*, 2016, p. 38, available at www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf.

E. ASYLUM CLAIMS

Under Article 14(a) of the Universal Declaration of Human Rights, everyone has the right to seek and to enjoy in other countries asylum from persecution. Signatory States to the 1951 Refugee Convention have a duty to provide safe refuge to LGBTI individuals fleeing persecution,⁹³ including on grounds of actual or perceived sexual orientation, gender identity or sex characteristics.⁹⁴ In addition, all States are prohibited from expelling, returning or extraditing a person to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture.⁹⁵ The Special Rapporteur on torture has affirmed that gender, sexual orientation, and other grounds should be taken into account in such determinations, and noted that gender non-conforming persons are particularly at risk of physical abuse and/or imprisonment or institutionalization in unsafe conditions upon return to their country of origin.⁹⁶ The United Nations High Commissioner for Refugees (UNHCR) estimates that 37 States have granted asylum to individuals with a well-founded fear of persecution owing to perceived sexual orientation and/or gender identity.⁹⁷

Asylum laws and policies should recognize persecution on account of one's actual or perceived sexual orientation, gender identity, gender expression or sex characteristics as a valid basis for an asylum claim,⁹⁸ and LGBTI asylum-seekers and refugees should be treated with respect.⁹⁹ UNHCR has published detailed guidance for States on this issue.¹⁰⁰

⁹³ Universal Declaration of Human Rights, art. 14(1); Convention Relating to the Status of Refugees, art. 33(1); Convention Against Torture, art. 3(1); UNHCR, "Resettlement Assessment Tool: Lesbian, Gay, Bisexual, Transgender and Intersex Refugees", 2013, p. 7.

⁹⁴ Convention Relating to the Status of Refugees, art. 1. (Documents published by UNHCR refer to "LGBTI people", and grounds of "intersex status" and "bodily diversity". OHCHR uses "sex characteristics" to refer to the ground of protection of/discrimination against intersex people, although other terms including "intersex status" and "bodily integrity" are sometimes used by other stakeholders). See also, International Commission of Jurists, "Refugee Status Claims Based on Sexual Orientation and Gender Identity: A Practitioners' Guide", 2016, p. 20; UNHCR, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (HCR/GIP/12/01), 23 October 2012, available at: www.refworld.org/docid/50348afc2.html.

⁹⁵ Convention against Torture, article 3(1).

⁹⁶ Reports of the Special Rapporteur on torture (A/59/324), 2004, para. 39; communication with the United States of America (A/HRC/31/57/Add.1), 2016, paras. 666-669.

⁹⁷ UNHCR Brazil, Information Booklet on the Protection of LGBTI Refugees and Asylum Seekers, 2017.

⁹⁸ Convention Relating to the Status of Refugees, art. 1; UNHCR, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (HCR/GIP/12/01), 2012.

⁹⁹ UNHCR, Guidelines on International Protection No. 9, 2012; UNHCR, "Working With Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Forced Displacement", 2011, p. 9.

¹⁰⁰ UNHCR, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (HCR/GIP/12/01), 2012.

UNHCR notes that past persecution is not a prerequisite to refugee status and that applicants do not need to show that the authorities knew about their sexual orientation and/or gender identity before they left the country of origin.¹⁰¹ UNHCR further stresses that the possibility of applicants avoiding persecution by concealing or by being “discreet” about their identity, or having done so previously, is not a valid reason to deny refugee status, and may also result in significant psychological and other harm¹⁰² – LGBTI people are as much entitled to freedom of expression and association as others (see Chapter V).¹⁰³ Indeed, previous discretion or suppression of such fundamental aspects and expression of identity is indicative of a fear of persecution, and can be taken as evidence of an applicant’s well-founded fear of persecution.¹⁰⁴

Even in countries that recognize these grounds for asylum, practices and procedures often fall short of international standards. Review of applications is sometimes arbitrary and inconsistent. Officials may have little knowledge about or sensitivity towards conditions facing LGBTI people,¹⁰⁵ and may impose intrusive, humiliating and inappropriate requirements to establish the credibility of their claim.¹⁰⁶ LGBTI refugees and asylum-seekers are sometimes subjected to violence and discrimination while in detention facilities; in countries of asylum, including in refugee camps, they may continue to experience additional risks related to their sexuality, gender identity or sex characteristics.¹⁰⁷ United Nations experts have expressed concern with regard to homophobic, biphobic and transphobic behaviour by employees at asylum facilities, questioning by civil servants about sexual acts, harassment by fellow detainees and refoulement of asylum seekers fearing persecution because of their sexual orientation.¹⁰⁸

UNHCR has called on States and other actors to incorporate LGBTI-sensitive measures into their asylum determination practice, including sensitivity training

¹⁰¹ Ibid. para. 18.

¹⁰² Ibid. paras. 31, 33; UNHCR, “Resettlement Assessment Tool: Lesbian, Gay, Bisexual, Transgender and Intersex Refugees”, 2013, p. 3.

¹⁰³ UNHCR Guidelines, *supra* note 77, para. 31.

¹⁰⁴ International Commission of Jurists, “Refugee Claims Based on Sexual Orientation and Gender Identity: A Practitioner’s Guide”, 2016, p. 60.

¹⁰⁵ UNHCR, Guidelines on International Protection No. 9, 2012.

¹⁰⁶ UNHCR, Guidelines on International Protection No. 9; UNHCR, “Working With Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Forced Displacement”, 2011, p. 10; UNHCR, “The Protection of Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees”, 2010, para. 33; International Commission of Jurists, “Refugee Status Claims Based on Sexual Orientation and Gender Identity: A Practitioners’ Guide”, 2016, p. 35.

¹⁰⁷ UNHCR, “Resettlement Assessment Tool: Lesbian, Gay, Bisexual, Transgender and Intersex Refugees”, 2013, p. 3.

¹⁰⁸ See for example, Committee on the Elimination of Racial Discrimination, Concluding Observations on The Netherlands (CERD/C/NLD/CO/19-21), 2015, para. 33.

for those involved in the decision-making process, and guidelines on assessment procedures to ensure that claims are reviewed in an objective and sensitive manner, unhindered by stereotyping and cultural bias.¹⁰⁹ In addition, the Committee on the Elimination of Discrimination against Women has recommended that States address the specific risks and particular needs of internally displaced and refugee women who are subjected to multiple and intersecting forms of discrimination, including women belonging to sexual minorities.¹¹⁰

F. CONCLUSION

In order to respect and protect the right to life and security of person guaranteed under international law, States must exercise due diligence to effectively investigate, prosecute and punish perpetrators responsible for violence against LGBTI persons, and enact hate crime laws that protect individuals from violence on the bases of sexual orientation, gender identity and sex characteristics, as well as provide redress to victims. Effective systems should be established for recording and reporting hate-motivated acts of violence, while providing for the security of those reporting. States must also take steps to combat incitement to violence against LGBTI people, including through adopting appropriate laws and non-legal measures and holding to account those who incite violence. Law enforcement personnel and judges should be trained in gender-sensitive approaches to addressing violations against LGBTI persons. States should establish comprehensive policies to prevent and address violence on the bases of sexual orientation, gender identity and sex characteristics in schools and other education settings, including through training teachers and other staff, and providing access to accurate and non-judgemental information on these issues. Asylum laws and policies should recognize that persecution on account of one's actual or perceived sexual orientation, gender identity or sex characteristics may be a valid basis for an asylum claim; ensure that no one fleeing persecution is returned to a territory where his or her life or freedom would be threatened; eliminate intrusive, inappropriate questioning; and sensitize officials.

¹⁰⁹ See for example, UNHCR, Guidelines on International Protection No. 9; UNHCR, "Working With Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Forced Displacement", 2011, pp. 7-11 ("The privacy of LGBTI refugees should be respected at all times, and a person's sexual orientation, gender identity or bodily status should be recorded in a manner that respects this."); UNHCR, "Resettlement Assessment Tool: Lesbian, Gay, Bisexual, Transgender and Intersex Refugees", 2013, pp. 8-9

¹¹⁰ Committee on the Elimination of Discrimination against Women, General Recommendation No. 32 (CEDAW/C/GC/32) 2014, para. 38, General Recommendation No. 30 (CEDAW/C/GC/30), 2013, para. 57(b).



II. PREVENT TORTURE AND CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT

States have an obligation under international law to protect all individuals, including LGBTI people, from torture and other cruel, inhuman or degrading treatment or punishment. This includes the obligation to prohibit torture and other forms of ill-treatment, and to provide redress for such acts. The failure to investigate and bring to justice perpetrators of torture is itself a breach of international human rights law. These rights are guaranteed by various international human rights instruments, including the non-exhaustive list below. The absolute prohibition of torture and other acts of cruel, inhuman, or degrading treatment or punishment is binding on all States as a peremptory norm of international law.

Universal Declaration of Human Rights

Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

International Covenant on Civil and Political Rights

Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Convention against Torture

Article 1(1): For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Article 2(1): Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

Convention on the Rights of the Child

Article 37(a): No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.

Convention on the Rights of Persons with Disabilities

Article 15: 1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

A. POSITIONS TAKEN BY UNITED NATIONS HUMAN RIGHTS MECHANISMS

The Committee against Torture, the Special Rapporteur on torture, and other human rights bodies and mechanisms, have documented substantial evidence of abuse and mistreatment of LGBTI individuals in police stations, prisons, military, juvenile and migration detention facilities and other places of detention, as well as in hospitals and other medical settings.¹¹¹

The Committee against Torture has highlighted that individuals “may be subject to violations of the Convention on the basis of their actual or perceived non-conformity with socially determined gender roles.”¹¹² The Special Rapporteur

¹¹¹ Committee against Torture, General Comment No. 2 (CAT/C/GC/2), 2008, para. 21; Committee against Torture, Concluding Observations on Hong Kong, China (CAT/C/CHN-HKG/CO/5), 2016, paras. 28-29; Austria (CAT/C/AUT/CO/6), 2016, paras. 44-45; the United States of America (CAT/C/USA/CO/3-5), 2014, paras. 21, 26; Paraguay (CAT/C/PRY/CO/4-6), 2011, para. 19; Germany (CAT/C/DEU/CO/5), 2011, para. 20; Ecuador (CAT/C/ECU/CO/3), 2006, para. 17; Argentina (CAT/C/CR/33/1), 2004, para. 6(g); Egypt (CAT/C/CR/29/4), 2002, para. 5(e). Human Rights Committee, Concluding Observations on the United States of America (CCPR/C/USA/CO/3), 2006, para. 25. Ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/57/4), 2016, paras. 49, 60. Reports of the Special Rapporteur on torture (A/HRC/31/57), 2016, paras. 13, 34-36, and section D; (A/HRC/22/53) 2013, paras. 76-79. Committee on the Elimination of Discrimination against Women, Concluding Observations on Costa Rica (CEDAW/C/CR/CO/5-6), 2011, para. 40. Committee on the Rights of the Child, Concluding Observations on Switzerland (CRC/C/CHE/CO/2-4), 2015, paras. 42-43. Reports of the Special Rapporteur on violence against women, on a mission to Italy (A/HRC/20/16/Add.6), 2012, para. 98; on incarceration (A/68/340), 2013, para. 58. See also, joint statement of the United Nations Subcommittee on Prevention of Torture, the United Nations Committee against Torture, the United Nations Special Rapporteur on torture, and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, “Targeted and tortured: United Nations experts urge greater protection for LGBTI people in detention”, June 2016, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20165&LangID=E.

¹¹² Committee against Torture, General Comment No. 2 (CAT/C/GC/2), 2008, at para. 22; General Comment No. 3 (CAT/C/GC/3) 2012, at paras. 32, 39.

on torture has emphasized that States fail in their duty to prevent torture and ill-treatment whenever their laws, policies or practices perpetuate harmful gender stereotypes in a manner that enables or authorizes, explicitly or implicitly, prohibited acts to be performed with impunity. States are also complicit in violence against lesbian, gay, bisexual and transgender persons whenever they create and implement discriminatory laws and practices that trap them in abusive circumstances or foster a climate in which such violence by both State and non-State actors is condoned and met with impunity,¹¹³ or where LGBTI victims are dehumanized, which is often a necessary condition for torture and ill-treatment to take place.¹¹⁴

Under international law, States have the obligation to prohibit, prevent and provide redress for torture and ill treatment in all contexts of State custody or control, investigate such acts and bring perpetrators to justice.¹¹⁵ The prohibition of torture is absolute, non-derogable, and constitutes *jus cogens* – a peremptory norm of international law that is binding on all States.¹¹⁶

B. ARREST AND DETENTION

A joint report of the Association for the Prevention of Torture and Penal Reform International has identified eight risk factors and situations for human rights abuse of LGBT persons in detention: targeted arrest and violence in police custody; abusive interrogations; allocation of transgender detainees; humiliating and abusive body searches; violence from fellow inmates; abuse by prison personnel; isolation and solitary confinement as an alleged protective measure; and discrimination in accessing services and benefits.¹¹⁷

¹¹³ Report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015; Report of the Special Rapporteur on torture (A/HRC/31/57), 2016, paras. 10, 15.

¹¹⁴ Report of the Special Rapporteur on torture (A/HRC/22/53), 2013, paras. 77-79; Report of the Subcommittee on Prevention of Torture (CAT/C/57/4), 2016, para. 48.

¹¹⁵ Committee against Torture, General Comment No. 2 (CAT/C/GC/2), 2008, at para. 15, Human Rights Committee, General Comment No. 31 (CCPR/C/21/Rev.1/Add.13), 2004 at para. 18.

¹¹⁶ See for example, Committee against Torture, General Comment No. 2 (CAT/C/GC/2), 2008, para. 1 and report of the Special Rapporteur on torture (A/HRC/25/60), 2014, at para. 40.

¹¹⁷ See Association for the Prevention of Torture, "Towards the effective protection of LGBT persons deprived of liberty: a monitoring guide", 2018; Association for the Prevention of Torture, outcome report of the 2015 Jean-Jacques Gautier Symposium: "Addressing situations of vulnerability of LGBT persons in detention", 2015, available from www.appt.ch/content/files_res/report-jig-symposium-2015-en.pdf; Association for the Prevention of Torture and Penal Reform International, "LGBTI persons deprived of their liberty: a framework for preventive monitoring", London: 2015.



Physical and sexual violence

United Nations human rights mechanisms have repeatedly raised serious concerns about sexual, physical and psychological abuse of LGBT persons in detention, that it is often motivated by discrimination, including by law enforcement authorities, prison staff, immigration staff and other detainees.¹¹⁸ Sexual violence may constitute torture when it is carried out by, or at the instigation of, or with the consent or acquiescence of public officials.¹¹⁹

For example, a group of United Nations experts condemned the abduction and arbitrary detention of men perceived to be gay in Chechnya (Russian Federation), with reports of local militia and local security forces subjecting them to torture including with electric shocks, beatings, insults and humiliations.¹²⁰

¹¹⁸ Committee against Torture, Concluding Observations on Costa Rica (CAT/C/CRI/CO/2), 2008, para. 18; Tunisia (CAT/C/TUN/CO/3) 2016, para. 41; United States of America (CAT/C/USA/CO/2), 2006, at para. 32. Committee on the Elimination of Discrimination against Women, Concluding Observations on Ecuador (CEDAW/C/ECU/CO/8-9) 2015, para. 20. Report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, paras. 34-36. Reports of the Special Rapporteur on torture: (A/HRC/31/57), 2016, para. 35; (E/CN.4/2005/62/Add.1), 2005, at paras. 1019, 1161; (E/CN.4/2004/56/Add.1), 2004, at para. 1327; (E/CN.4/2003/68/Add.1), 2003, at paras. 446, 463-465; (E/CN.4/2003/68/Add.2), 2003 at para. 42; (E/CN.4/2002/76), 2002, at Annex III; (E/CN.4/2002/76/Add.1), 2002, at paras. 16, 507-508, 829, 1709-1716; (A/56/156), 2001, at paras. 21, 23; (E/CN.4/2001/66/Add.2), 2001, at paras. 199, 1171; (E/CN.4/2000/9), 2000, at paras. 145, 151, 726. Report of the Special Rapporteur on violence against women (A/HRC/14/22/Add.1), 2010, at para. 17.

¹¹⁹ Reports of the Special Rapporteur on torture (A/HRC/7/3), 2008, at para. 34; (A/HRC/31/57), 2016, para. 51.

¹²⁰ "End abuse and detention of gay men in Chechnya, United Nations human rights experts tell Russia", 13 April 2017, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21501.

In its concluding observations on the United States of America, the Committee against Torture expressed concern about law enforcement officials' brutality and use of excessive force, including against persons of different sexual orientation, as well as assaults by fellow detainees, and lack of adequate investigations. The Committee recommended that the State ensure "its law enforcement personnel are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished."¹²¹

Special rapporteurs have regularly reported allegations of mistreatment of LGBT detainees at the hands of police, prison and other officials. Examples include reports of "metis"¹²² in Nepal being beaten by police, who allegedly demanded money and sex¹²³; a lesbian couple in Brazil being beaten at a police station, verbally abused, and forced to perform oral sex;¹²⁴ and a human rights defender in Uzbekistan, charged with homosexuality, being beaten and threatened with rape by police.¹²⁵ In a communication with the United States in 2013, the Special Rapporteur on torture expressed concern that immigration detention facility staff subjected 16 gay and transgender individuals to "solitary confinement, torture and ill-treatment, including sexual assault."¹²⁶

The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment has reported that transgender detainees were "beaten and forced to enact sex scenes in front of fellow inmates, practices that are often sponsored by guards who charge for viewings."¹²⁷ Trans detainees were also required to shower in the presence of persons of the opposite gender, were patted down by officers of the opposite gender, and groped with the sole purpose of determining the nature of their genitalia.¹²⁸ The Subcommittee noted the deaths of transgender women in custody, including an occurrence of death after anal rape with a club.¹²⁹

¹²¹ Committee against Torture, Concluding Observations on the United States of America (CAT/C/USA/CO/2), 2006 at paras. 32, 37.

¹²² "Meti" is a term used in Nepal to describe *people who have been assigned a male gender at birth and who have a feminine gender identity/gender expression*.

¹²³ Reports of the Special Rapporteur on violence against women, (E/CN.4/2006/61/Add.1), 2006, at paras. 1 and 2, (A/HRC/4/34/Add.1), 2007, at paras. 448-454.

¹²⁴ Report of the Special Rapporteur on torture, on a mission to Brazil (E/CN.4/2001/66/Add.2), 2001 at para. 199.

¹²⁵ Report of the Special Rapporteur on torture, on communications with governments (E/CN.4/2004/56/Add.1), 2004, at paras. 1878, 1899.

¹²⁶ Report of the Special Rapporteur on torture, on communications with governments (A/HRC/22/53/Add.4), 2013, para. 178 on joint urgent action, Case No. USA 15/11, 19/08/2011.

¹²⁷ Ninth annual report of the United Nations Subcommittee on Prevention of Torture (CAT/OP/C/57/4), 2016 para. 66.

¹²⁸ Ibid.

¹²⁹ Ibid.

The Special Rapporteur on violence against women has expressed concern about female prisoners whom guards view as “masculine” in appearance being subjected to harassment, physical abuse and “forced feminization.”¹³⁰

Torture and ill-treatment of persons on the basis of actual or perceived sexual orientation or gender identity has also been documented in armed conflict and perpetrated by State and non-State actors alike, with rape and other forms of sexual violence sometimes being carried out to terrorize lesbian, gay, bisexual and transgender persons and violently enforce societal gender norms.¹³¹ For example, the Independent International Commission of Inquiry on the Syrian Arab Republic reported that men were “tortured and raped on the grounds of their sexual orientation at government checkpoints”, and “six homosexual men were beaten viciously with electric cables by security agents and threatened with rape.”¹³²

Anal examinations

The practice of subjecting cisgender men and transgender women who are arrested on homosexuality-related charges to anal examinations that are intended to obtain physical evidence for prosecution has been condemned by the Committee against Torture, the Working Group on Arbitrary Detention, and the Special Rapporteur on torture, who has also criticized it as “medically worthless”.¹³³ The Special Rapporteur on torture has described such invasive forensic examinations as being intrusive and degrading with the potential to amount to torture or ill-treatment.¹³⁴ The Working Group on Arbitrary Detention has stated that “forced anal examinations contravene the prohibition of torture and other cruel, inhumane and degrading treatment.”¹³⁵

¹³⁰ Report of the Special Rapporteur on violence against women (A/68/340), 2013, para. 59

¹³¹ Report of the Secretary-General on conflict-related sexual violence (S/2015/203), 2015 para. 20; Report of the Commission of Inquiry on the situation in the Syrian Arab Republic (A/HRC/25/65), 2014, para. 67.

¹³² Report of the Commission of Inquiry on the situation in the Syrian Arab Republic (A/HRC/25/65), 2014, para. 67.

¹³³ See for example, Committee against Torture, Concluding Observations on Tunisia (CAT/C/TUN/CO/3), 2016, paras. 41-42, and on Egypt (CAT/C/CR/29/4), 2002, at paras. 5-6; Reports of the Special Rapporteur on Torture (A/HRC/22/53), 2013, paras. 76, 79; report on communications (A/HRC/31/57/Add.1), 2016, paras. 118-119, 713-714. See also Human Rights Watch, “Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions”, 2016.

¹³⁴ Reports of the Special Rapporteur on torture (A/56/156), 2001, at para. 24; on communications (A/HRC/31/57/Add.1), 2016, paras. 713-714, (A/HRC/10/44/Add.4), 2009, at para. 61, (A/HRC/4/33/Add.1), 2007, at para. 317, and (A/HRC/16/52/Add.1), 2011.

¹³⁵ Working Group on Arbitrary Detention Opinion No. 25/2009 on Egypt (A/HRC/16/47/Add.1), 2011, at paras. 23, 28-29.



Solitary confinement

The Special Rapporteur on torture has highlighted that the placement of LGBT people “in solitary confinement or administrative segregation for ‘protection’ can constitute an infringement of the prohibition of torture and ill-treatment,”¹³⁶ and that “although segregation of such individuals may be necessary for their safety, lesbian, gay, bisexual and transgender status does not justify limitations on their social regime, e.g., access to recreation, reading materials, legal counsel or medical doctors.”¹³⁷ The revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Mandela Rules”) stress that indefinite and prolonged solitary confinement must be prohibited,¹³⁸ and that “solitary confinement shall only be used in exceptional cases as a last resort, for as short a time as possible”.¹³⁹ Authorities have a responsibility to take reasonable measures to prevent and combat violence against LGBT detainees by other detainees, without subjecting them to solitary confinement or other restrictions.¹⁴⁰

¹³⁶ Report of the Special Rapporteur on torture (A/HRC/31/57), 2016, para. 35.

¹³⁷ Report of the Special Rapporteur on torture (A/66/268), 2011, para. 69.

¹³⁸ General Assembly resolution 70/175 on the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 17 December 2015, Rule 43.

¹³⁹ General Assembly resolution 70/175 on the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 17 December 2015, Rule 45.

¹⁴⁰ Report of the Special Rapporteur on torture (A/HRC/31/57), 2016, para. 35.

Respecting the identity of transgender persons in detention

Transgender prisoners, specifically, face unique and particularly harsh circumstances in prison systems, including lack of respect for their gender identity when being placed, administrative segregation, barriers to the accessibility of hormone treatment, and higher instances of abuse and discriminatory treatment.¹⁴¹ The Mandela Rules specify that the identity and self-perceived gender of prisoners should be respected in the prisoner file management system.¹⁴² All transgender detainees, regardless of whether they have changed gender on legal documents or undergone surgery, should be treated on the basis of their self-identified gender, including in the context of placement, dress and appearance, access to health services, search and other procedures, and decisions on allocation should be made on a case-by-case basis and in consultation with the detainee.¹⁴³ The Special Rapporteur on extrajudicial, summary or arbitrary executions has called on States to ensure “that judicial and prison authorities, when deciding allocation of transgender person to either a male or female prison, do so in consultation with the prisoner concerned and on a case-by-case basis. Safety considerations and the wishes of the individual must be paramount.”¹⁴⁴ The Special Rapporteur has also drawn attention to the denial of life-saving medical treatment and access to essential services for transgender women in detention, sometimes with fatal consequences.¹⁴⁵

Monitoring and oversight

Fear of reprisals and a lack of trust in complaints mechanisms frequently prevent LGBT persons in custody from reporting abuses.¹⁴⁶ In some prison systems, complaints by LGBTI prisoners about sexual abuse and rape are less likely to receive a response from prison administrations, leading to impunity and continued abuse.¹⁴⁷

¹⁴¹ Report of the Special Rapporteur on violence against women (A/68/340), 2013, para. 63; Report of the Special Rapporteur on torture (A/56/156), 2001, para. 23; Report of the Special Rapporteur on torture (A/HRC/31/57), 2016, para. 34.

¹⁴² General Assembly resolution 70/175 on the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 17 December 2015, Rule 7(a).

¹⁴³ Ibid. See also, OHCHR, *Living Free and Equal: What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people*, 2016, p. 43, 128.

¹⁴⁴ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings, A/HRC/35/23, 2017, para. 110.

¹⁴⁵ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings, A/HRC/35/23, 2017, para. 46.

¹⁴⁶ Report of the Special Rapporteur on torture (A/HRC/31/57), 2016, para. 35.

¹⁴⁷ Report of the Special Rapporteur on violence against women (A/68/340), 2013, para. 58.

The Special Rapporteur on torture has called on States to ensure that “all places of detention are subjected to effective oversight and inspection and unannounced visits by independent bodies established in conformity with the Optional Protocol to the Convention against Torture, as well as by civil society monitors; and ensure the inclusion of lesbian, gay, bisexual and transgender persons and other minority representation on monitoring bodies.”¹⁴⁸ The Committee against Torture has recommended training and awareness programmes for police officers, border guards and prison personnel to prevent abuse of LGBT people.¹⁴⁹

POSITIVE PRACTICE

Nepal: Nepalese National Human Rights Commission Monitoring of Detention Facilities and Prisons

The National Human Rights Commission (NHRC) of Nepal has a mandate that enables it to freely monitor alleged human rights abuses and conduct independent investigations. The Commission can visit any prison, detention centre or government institution and make recommendations for conditions to be brought in line with international human rights standards.

In this capacity, the NHRC has identified a number of human rights violations experienced by LGBT people in police custody and detention, including cases of LGBT individuals arrested on allegations of being involved in sex work. The Commission has received complaints relating to illegal detention, discrimination and ill-treatment amounting to torture of LGBT persons at the hands of staff who run detention facilities. In response to one such complaint, the Commission issued an order to the Nepal Police to investigate and prosecute security personnel involved in a serious case of torture, inhuman and degrading treatment.

C. MEDICAL SETTINGS¹⁵⁰

United Nations human rights mechanisms and agencies have increasingly drawn attention to the treatment of LGBTI persons in medical and related settings, including so-called “conversion therapy”, forced and otherwise involuntary treatment, including sterilization and coerced gender reassignment interventions, as well as medically unnecessary interventions performed on

¹⁴⁸ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016, para. 70 (y).

¹⁴⁹ Committee against Torture, Concluding Observations on Costa Rica (CAT/C/CRI/CO/2), 2008, at para. 11, 18.

¹⁵⁰ See also sections on access to healthcare and pathologization in Chapter IV.

intersex children without informed consent by the affected person.¹⁵¹ The failure by States to take effective steps to prevent third parties from carrying out such practices is a violation of their obligation to protect human rights.¹⁵² As noted by the Special Rapporteur on torture, “medical care that causes severe suffering for no justifiable reason can be considered cruel, inhuman or degrading treatment or punishment, and if there is State involvement and specific intent, it is torture.”¹⁵³

Surgery and other interventions on intersex children and adults

Many intersex children, born with bodies that differ from normative definitions of female or male, are subjected to medically unnecessary surgery and other interventions, performed without their informed consent, in an attempt to force their physical appearance to align with binary sex stereotypes. Such procedures are typically irreversible and can cause severe, long-term physical and psychological suffering, affecting children’s rights to physical integrity, to health, privacy and autonomy and may constitute torture or ill-treatment.¹⁵⁴

United Nations and regional human rights experts, including the Committee on the Rights of the Child, the Committee against Torture, the Subcommittee on Prevention of Torture and the Special Rapporteur on torture, have indicated that States must urgently prohibit medically unnecessary surgery and procedures

¹⁵¹ Report of the High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, paras. 14, 38. See also, Joint United Nations statement on ending violence and discrimination against LGBTI persons, 2015, available from: www.ohchr.org/EN/Issues/Discrimination/Pages/JointLGBTIstatement.aspx and Joint United Nations Statement on Ending Discrimination in Health Care Settings, 2017, available at www.unaids.org/sites/default/files/media_asset/ending-discrimination-healthcare-settings_en.pdf.

¹⁵² Committee on Economic, Social and Cultural Rights, General Comment No. 22 (E/C.12/GC/22), 2016, at para. 59.

¹⁵³ Report of the United Nations Special Rapporteur on torture (A/HRC/22/53), 2013, para. 39.

¹⁵⁴ See for example, Committee on Economic, Social and Cultural Rights, General Comment No. 22 (E/C.12/GC/22), 2016, para. 59; Committee on the Rights of the Child, Concluding Observations on Nepal (CRC/C/NPL/CO/3-5), 2016, paras. 41, 42; on South Africa (CRC/C/ZAF/CO/2), 2016, paras. 37, 38; on New Zealand (CRC/C/NZL/CO/5), 2016, para. 25; Committee on the Rights of Persons with Disabilities, Concluding Observations on Chile (CRPD/C/CHL/CO/1), 2016, para. 42; on Germany (CRPD/C/DEU/CO/1), 2015, paras. 37, 38; Committee against Torture, Concluding Observations on France (CAT/C/FRA/CO/7), 2016, para. 34, 35; on Hong Kong, China (CAT/C/CHN-HKG/CO/5), 2016, paras. 28, 29; Report of the High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, para. 53; Reports of the Special Rapporteur on torture (A/HRC/22/53), 2013, paras. 77, 88, (A/HRC/31/57), 2016, paras. 50, 72; Reports of the Special Rapporteur on health, (A/HRC/32/32), 2016, paras. 85, 94; (A/70/213), 2015, paras. 84-86, (A/64/272), 2009, para. 49. See also, joint statement of international and regional human rights experts, “End violence and harmful medical practices on intersex children and adults”, 2016, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E, and Committee on Bioethics of the Council of Europe, “The Rights of Children in Biomedicine: Challenges Posed by Scientific Advances and Uncertainties,” Council of Europe, January 16, 2017, www.coe.int/en/web/children/-/study-on-the-rights-of-children-in-biomedicine.

on intersex children.¹⁵⁵ United Nations human rights experts have called on States to “uphold the autonomy of intersex adults and children and their rights to health, to physical and mental integrity, to live free from violence and harmful practices and to be free from torture and ill-treatment.”¹⁵⁶

Intersex children and adults should be the only ones who decide whether they wish to modify the appearance of their own bodies – in the case of children, when they are old or mature enough to make an informed decision for themselves.¹⁵⁷ States should ensure that intersex people have access to psycho-social and peer support as well as to medical services that respond to their specific health needs and that are based on non-discrimination, informed consent and respect for their fundamental rights.¹⁵⁸ In addition, States should educate medical and psychological professionals about bodily diversity and intersex traits, as well as about the consequences of unnecessary surgical and other medical interventions on intersex children and adults.¹⁵⁹

POSITIVE PRACTICE

In 2015, Malta adopted a law prohibiting surgery and medical interventions on the sex characteristics of minors without their consent, in particular when driven by social factors, being the first State in the world to protect the rights of intersex children to bodily integrity in this way. A court in Germany has awarded damages to an intersex person whose reproductive organs were removed by a surgeon without consent or prior notification.¹⁶⁰

¹⁵⁵ See joint statement of international and regional human rights experts, “End violence and harmful medical practices on intersex children and adults”, 2016, available at <http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E>.

¹⁵⁶ Ibid. See also OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO, “Eliminating forced, coercive and otherwise involuntary sterilization: an interagency statement”, 2014.

¹⁵⁷ See, for example, Committee on the Rights of the Child, Concluding Observations on New Zealand (CRC/C/NZL/CO/5), 2016, para. 25; on Switzerland (CRC/C/CHE/CO/2-4), 2015, para. 43; on Nepal (CRC/C/NPL/CO/3-5), 2016, para. 42; Committee against Torture, Concluding Observations on Denmark (CAT/C/DNK/CO/6-7), 2016, para. 43; and on Austria (CAT/C/AUT/CO/6), 2016, para. 45.

¹⁵⁸ See for example, Committee on the Rights of the Child, Concluding Observations on France (CRC/C/FRA/CO/5), 2016, para. 48; on Chile (CRC/C/CHL/CO/4-5), 2015, para. 49; Committee against Torture, Concluding Observations on Hong Kong, China (CAT/C/CHN-HKG/CO/5), 2016, para. 29; Committee on the Elimination of Discrimination against Women, Concluding Observations on France (CEDAW/C/FRA/CO/7-8), 2016, para. 18; Committee on the Rights of Persons with Disabilities, Concluding Observations on Chile (CRPD/C/CHL/CO/1), 2016, para. 42. Lee et al., “Consensus Statement on Management of Intersex Disorders”; Lee et al., “Global Disorders of Sex Development Update Since 2006: Perceptions, Approach and Care”; United Nations World Health Organization (WHO), “Genomic Resource Center: Patient Support Groups”, www.who.int/genomics/public/patientsupport/en/.

¹⁵⁹ Committee on the Rights of the Child, Concluding Observations on New Zealand (CRC/C/NZL/CO/5), 2016, para. 25; and on Ireland (CRC/C/IRL/CO/3-4), 2016, para. 40.

¹⁶⁰ OHCHR, *Living Free and Equal: What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people*, 2016, p. 47.

Forced and otherwise involuntary sterilization and treatment of transgender people

Transgender people are often forced or coerced to undergo sterilization, gender reassignment surgery, other medical procedures and medical certification in violation of international human rights standards, including as abusive requirements for recognition of gender identity.¹⁶¹ The Special Rapporteur on torture has indicated that such practices are unlawful, noting that “not only does enforced surgery result in permanent sterility and irreversible changes to the body, and interfere in family and reproductive life, it also amounts to a severe and irreversible intrusion into a person’s physical integrity.”¹⁶²

United Nations human rights mechanisms have affirmed the right to legal recognition of gender identity and modification of gender markers on official documents without requirements of psychological assessment, diagnosis, surgery or sterilization (see also Chapter IV).¹⁶³ In a 2014 review of Belgium, for example, the Committee on the Elimination of Discrimination against Women called on the authorities to abolish the requirements for a psychiatric assessment, sterilization and surgery for transgender women who wish to obtain legal recognition of their gender.¹⁶⁴

States should respect the physical and psychological integrity of transgender persons by removing all requirements of sterilization, forced surgery and treatment, medical diagnosis or certification from laws, policies and regulations relating to legal gender recognition, reform outdated medical classifications regarding transgender identities (see Chapter IV), and ensure accountability for such practices and remedy for victims.

¹⁶¹ Committee on Economic, Social and Cultural Rights, General Comment No. 22 (E/C.12/GC/22), 2016, para. 58; Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (A/73/152), para. 28; Report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, para. 70; Human Rights Committee, Concluding Observations on Ukraine (CCPR/C/UKR/CO/7), para. 10; Report of the Special Rapporteur on torture (A/HRC/22/53), 2013, para. 88; and the joint statement by OHCHR, UN-Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO, “Eliminating forced, coercive and otherwise involuntary sterilization”, 2014.

¹⁶² Report of the Special Rapporteur on torture (A/HRC/22/53), 2013, paras. 36-38, 76-79, 88.

¹⁶³ See for example: Human Rights Committee, Concluding Observations on Ireland (CCPR/C/IRL/CO/3), 2008, para. 8, and on Ukraine (CCPR/C/UKR/CO/7), 2013, para. 10; Committee on the Elimination of Discrimination against Women, Concluding Observations on the Netherlands (CEDAW/C/NLD/CO/5), 2010, paras. 46-47, and on Belgium (CEDAW/C/BEL/CO/7), 2014, para. 45; Committee on Economic, Social and Cultural Rights, Concluding Observations on Germany (E/C.12/DEU/CO/5), 2011, para. 26.

¹⁶⁴ Committee on the Elimination of Discrimination against Women, Concluding Observations on Belgium (CEDAW/C/BEL/CO/7), 2014, para. 45.

So-called “conversion therapies”

United Nations experts have expressed concern about so-called “conversion therapies” intended to change same-sex attraction or transgender identity.¹⁶⁵ Such therapies have been found to be unethical, unscientific and ineffective and, in some instances, tantamount to torture – leading to successful legal challenges and bans in several countries.¹⁶⁶ The Committee against Torture and the Special Rapporteur on torture have expressed concern about forced treatment to change sexual orientation or gender identity, including through involuntary confinement in psychiatric and other institutions, the administration of electroshocks, and other “aversion therapy”, which could result in physical and psychological harm.¹⁶⁷

As an example, in Ecuador, concerns have been raised by civil society and the government has taken measures to close so-called “rehabilitation clinics”, where gay, lesbian and transgender youths have been forcibly detained with the collusion of family members and subjected to torture, including sexual abuse.¹⁶⁸

States should take the necessary legislative, administrative and other measures to guarantee respect for the autonomy and physical and personal integrity of LGBT persons and prohibit the practice of “conversion therapy” and other forced, involuntary or otherwise coercive or abusive treatments performed on them.¹⁶⁹ In addition, States should ensure that health professionals and public officials receive training in respecting the human rights of LGBTI persons.¹⁷⁰

¹⁶⁵ Report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, paras. 14, 38, 52; Pan-American Health Organization, “Cures for an illness that does not exist”, available at www.paho.org/hq/?option=com_docman&task=doc_view&gid=17703&Itemid=270.

¹⁶⁶ Report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, para. 52.

¹⁶⁷ Committee against Torture, Concluding Observations on China (CAT/C/CHN/CO/5), 2016, para. 55; Human Rights Committee, Concluding Observations on Ukraine (CCPR/C/UKR/CO/7), 2013, para. 10; Report of the Special Rapporteur on torture (A/56/156), 2001 at para. 24.

¹⁶⁸ Human Rights Committee, Concluding Observations on Ecuador (CCPR/C/ECU/CO/5), 2009, para. 12; See also, Inter-American Commission on Human Rights, Press Release: “IACHR expresses concern about violence and discrimination against LGBTI persons, particularly youth, in the Americas”, 15 August 2013, available at www.oas.org/en/iachr/media_center/PReleases/2013/060.asp.

¹⁶⁹ Committee against Torture, Concluding Observations on China (CAT/C/CHN/CO/5), 2016, para. 56; Human Rights Committee, Concluding Observations on Korea (CCPR/C/KOR/CO/4), 2015, para. 15; Report of the Special Rapporteur on torture (A/HRC/22/53), 2013, para. 88; Report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, para. 78(g).

¹⁷⁰ Ibid. See also, Human Rights Committee, Concluding Observations on Korea (CCPR/C/KOR/CO/4), 2015, para. 15.



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D. CONCLUSION

All individuals, including LGBTI persons, must be protected from torture and cruel, inhuman or degrading treatment or punishment. Under international law, States must prohibit, investigate and punish acts of torture and ill-treatment – including in detention, medical and other settings.¹⁷¹ This means that a State must define torture and ill-treatment as offences under domestic criminal law, and must ensure that all such acts are independently, promptly and thoroughly investigated, and that those responsible are brought to justice, regardless of the sexual orientation, gender identity or expression, or sex characteristics of the victims. States must provide victims of such acts with adequate redress, including compensation. States are also under an obligation to take preventive measures, such as monitoring places of detention, prohibiting abusive medical procedures through law and regulation, training law enforcement officers and health care providers, and repealing abusive preconditions for legal gender recognition, such as sterilization, forced treatment and medical certification.

¹⁷¹ Human Rights Committee, General Comment No. 20, 1992; Committee against Torture, General Comment No. 2. (CAT/C/GC/2), 2008.



III. REPEAL DISCRIMINATORY LAWS

Laws that criminalize consensual same-sex relations and expression of gender identity, and other vague and discriminatory laws that are used to punish LGBT individuals, give rise to a number of separate but interrelated human rights violations. Such laws violate, inter alia, an individual's right to be free from discrimination (see also Chapter IV), equality before the law, equal protection of the law, as well as the rights to be protected against arbitrary detention and unreasonable interference with privacy. Imposition of the death penalty for sexual conduct additionally violates the right to life. All such laws, even if they are never enforced, breach State obligations under international human rights norms and standards, including the non-exhaustive list below. Legal restrictions on freedoms of expression, association and assembly are addressed in Chapter V.

Universal Declaration of Human Rights

Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 9: No one shall be subjected to arbitrary arrest, detention or exile.

Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.

International Covenant on Civil and Political Rights

Article 2(1): Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 6(2): In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to

the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

Article 9: Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Article 17: No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

A. POSITIONS TAKEN BY UNITED NATIONS HUMAN RIGHTS MECHANISMS

United Nations human rights treaty bodies and special procedures have repeatedly emphasized the obligation of States under international law to repeal laws that criminalize private, consensual sexual relationships between persons of the same sex, laws that criminalize transgender people based on their gender expression, and other laws that are used to criminalize, prosecute, harass and otherwise discriminate against people based on their actual or perceived sexual orientation and gender identity.¹⁷² In a 2016 report, the Special Rapporteur on torture wrote:

*States are complicit in violence against women and lesbian, gay, bisexual and transgender persons whenever they create and implement discriminatory laws that trap them in abusive circumstances.*¹⁷³

¹⁷² See, for example, Toonen v. Australia, Human Rights Committee, Communication No. 488/1992 (CCPR/C/50/D/488/1992), 1994, paras. 8.3-10; Human Rights Committee, Concluding Observations on Kuwait (CCPR/C/KWT/CO/2), 2011, para. 30; Committee on Economic, Social and Cultural Rights, Concluding Observations on the Islamic Republic of Iran (E/C.12/IRN/CO/2), 2013, para. 7; Committee on the Elimination of Discrimination against Women, Concluding Observations on Uganda (CEDAW/C/UGA/CO/7), 2010, paras. 43-44; Committee on the Rights of the Child, Concluding Observations on the Gambia (CRC/C/GMB/CO/2-3), 2015, paras. 29-30; Report of the Special Rapporteur on the right to health (A/HRC/14/20), 2010, paras. 17-26; Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (A/HRC/38/43), 2018, paras. 50-56 and 90-91.

¹⁷³ Report of the Special Rapporteur on torture (A/HRC/31/57), 2016, para. 10.

The United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has recognized that such laws “are part of the background environment that leads to violence and discrimination” and that “there is thus a need to move towards decriminalization.”¹⁷⁴ United Nations agencies have also called for the decriminalization of same-sex consensual conduct, cross-dressing and other forms of gender expression, and the repeal of other discriminatory laws.¹⁷⁵ Discriminatory laws restricting freedoms of expression, association and assembly are addressed in Chapter V.

B. CRIMINALIZATION OF SAME-SEX RELATIONS

At the time of publication, 69 countries have laws in effect that are used to criminalize private, consensual sexual relationships between persons of the same sex.¹⁷⁶ Such laws typically prohibit either certain types of sexual activity or any intimacy or sexual activity between persons of the same sex, though they are also frequently used to penalize trans people, regardless of their sexual orientation. In some cases, the language used refers to vague and undefined concepts, such as “crimes against the order of nature”, “morality”, “debauchery” or “vagrancy”, many of which date back to colonial era provisions.¹⁷⁷ The criminalization of consensual relations, sexual or affective, between persons of the same gender or sex breaches a State’s obligations under international law, including the obligations to guarantee equality, non-discrimination and privacy.¹⁷⁸

This has been the consistent position of United Nations human rights experts since 1994, when the Human Rights Committee found in *Toonen v. Australia* that “consensual sexual activity in private is covered by the concept of ‘privacy’” and concluded that the laws in Tasmania were neither proportional nor necessary, that they did not achieve the aim of protecting public health, and

¹⁷⁴ Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (A/HRC/35/36), 19 April 2017, paras. 52-54.

¹⁷⁵ See Joint United Nations statement on ending violence and discrimination against LGBTI persons, 2015, and Joint United Nations statement on ending discrimination in health care settings, 2017

¹⁷⁶ Number updated by OHCHR as at July 2019. See also International Lesbian, Gay, Bisexual, Trans and Intersex Association: Lucas Ramon Mendos, *State-Sponsored Homophobia 2019* (Geneva; ILGA, March 2019).

¹⁷⁷ See reports of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, paras. 43-49; (A/HRC/19/41), 2011, para. 40; Report of the Working Group on Arbitrary Detention on a mission to Colombia (A/HRC/10/21/Add.3), 2009, paras. 56-58; Human Rights Committee, *Concluding Observations on the Russian Federation* (CCPR/C/RUS/CO/7), 2015, para. 10; Report of the Special Rapporteur on health (A/HRC/14/20), 2010, para. 8; Report of the Special Rapporteur on the Islamic Republic of Iran (A/HRC/31/69), 2016, para. 14.

¹⁷⁸ See for example, Committee on Economic, Social and Cultural Rights, General Comment No. 22 (E/C.12/GC/22), 2016, para. 40.



that they were not necessary to protect public morals.¹⁷⁹ United Nations human rights treaty bodies have repeatedly urged States to reform laws criminalizing same-sex relations and have welcomed the legislative or judicial repeal of such laws.¹⁸⁰ An individual's rights are violated even if the law in question is never enforced.¹⁸¹

The trend over the past decades has been towards decriminalization.¹⁸² Since the decision of the Human Rights Committee in the Toonen case in 1994, more than 40 countries have decriminalized consensual same-sex relations, either through legislation or through the courts. Between 2012 and mid-2018, seven countries did so: Belize, India, Mozambique, Palau, Sao Tome and Principe,

¹⁷⁹ Toonen v. Australia, Human Rights Committee, Communication No. 488/1992 (CCPR/C/50/D/488/1992), 1994, paras. 8.5 and 8.6.

¹⁸⁰ Human Rights Committee, Concluding Observations on Grenada (CCPR/C/GRC/CO/1), 2015, at para. 21; United Republic of Tanzania (CCPR/C/TZA/CO/4), 2015, at para. 22; Togo (CCPR/C/TGO/CO/4), 2011, at para. 14; Uzbekistan (CCPR/C/UZB/CO/3), 2010, at para. 22; Botswana (CCPR/C/BWA/CO/1), 2008, at para. 22; St. Vincent and the Grenadines (CCPR/C/VCT/CO/2), 2008; Algeria (CCPR/C/DZA/CO/3), 2007, at para. 26; Chile (CCPR/C/CHL/CO/5), 2007, at para. 16; Barbados (CCPR/C/BRB/CO/3), 2007, at para. 13; United States of America (CCPR/C/USA/CO/3), 2006, at para. 9; Kenya (CCPR/C/CO/83/KEN), 2005, at para. 27; Egypt (CCPR/CO/76/EGY), 2002, at para. 19; Romania (CCPR/C/79/Add.111), 1999, at para. 16. Committee on Economic, Social and Cultural Rights, Concluding Observations on Kyrgyzstan (E/C.12/Add.49), 2000, at paras. 17, 30; Cyprus (E/C.12/1/Add.28), 1998, at para. 7. Committee on the Elimination of Discrimination against Women, Concluding Observations on Uganda (CEDAW/C/UGA/CO/7), 2010, at paras. 43-44; Kyrgyzstan (A/54/38), 1999, at paras. 127, 128. Committee on the Rights of the Child, Concluding Observations on Chile (CRC/C/CHL/CO/3), 2007, at para. 29.

¹⁸¹ Toonen v. Australia, Human Rights Committee, Communication No. 488/1992 (CCPR/C/50/D/488/1992), 1994, at para. 8.2, Concluding Observations of the Human Rights Committee on Ethiopia (CCPR/C/ETH/CO/1), 2011, para. 12.

¹⁸² OHCHR, *Living Free and Equal: What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people*, 2016, pp. 54-58.

the Seychelles, and Trinidad and Tobago.¹⁸³ The decision of the Supreme Court of India to overturn that country's colonial-era law criminalizing consensual same-sex conduct is an especially important milestone – lifting the threat of criminalization from millions of people in the world's second most populous country, and potentially setting an example for courts in other countries that had similar laws imposed by British colonial authorities.

Even so, while there has been progress in some countries, there has also been a hardening of attitudes in others and, in a few cases, moves to strengthen existing criminal penalties for same-sex relations. The United Nations High Commissioner for Human Rights and United Nations mechanisms have expressed concern about States considering and adopting laws broadening the scope of criminalization and/or increasing penalties, and even creating criminal sanctions where these did not exist before.¹⁸⁴ In the case of Burundi, special procedures emphasized that a draft law criminalizing consensual sexual acts between persons of the same sex was not only contrary to international human rights law, but would also have a negative effect on efforts to combat HIV/AIDS, and would place human rights defenders in a vulnerable position as potential targets for attacks and intimidation by both the authorities and the public.¹⁸⁵

United Nations human rights mechanisms and agencies have frequently called attention to the ways in which criminalization of consensual, same-sex relations legitimizes prejudice and exposes people to hate crimes, police abuse, harassment, intimidation, blackmail, torture and family violence (see Chapters I and II),¹⁸⁶ and perpetuates discrimination in the enjoyment of various human rights (see Chapter IV).¹⁸⁷

¹⁸³ For an overview of longer-term trends, visit the United Nations Free & Equal campaign website and access the campaign's interactive map at www.unfe.org/the-history-of-the-right-to-love-if-youre-gay/.

¹⁸⁴ See, for example, OHCHR press statements, "United Nations human rights chief denounces new anti-homosexuality law in Nigeria", Geneva, 14 January 2014; "Anti-Homosexuality law in Uganda violates human rights and endangers LGBT people – Pillay", Geneva, 24 February 2014; "The Gambia: Zeid criticizes harsh legal amendment, violence and arrests targeting gay men and lesbians", Geneva, 20 November 2014; "Kyrgyzstan: 'Don't condemn LGBT people to silence' – United Nations rights experts urge Parliament to withdraw anti-gay bill", 26 November 2014. Committee on Economic, Social and Cultural Rights, Concluding Observations on Uganda (E/C.12/UGA/CO/1), 2015, para. 16.

¹⁸⁵ Report of the Special Rapporteur on human rights defenders (A/HRC/10/12/Add.1), 2009, at para. 353.

¹⁸⁶ See, for example, the report of the Special Representative of the Secretary-General on human rights defenders (E/CN.4/2002/16/Add.1), 2002, at para. 154; Report of the Special Rapporteur on violence against women (E/CN.4/1999/68), 1999, at para. 15. See also, reports of the Special Rapporteur on torture: (C/CN.4/2002/76), 2002, and (A/56/156), 2001, at paras. 18-25.

¹⁸⁷ See, for example, Concluding Observations of the Human Rights Committee on Jamaica (E/C.12/JAM/CO/3-4), 2013, at para. 9. See also, Joint United Nations statement on ending violence and discrimination against LGBTI persons, 2015, available at www.ohchr.org/EN/Issues/Discrimination/Pages/JointLGBTIstatement.aspx, and Joint United Nations Statement on Ending Discrimination in Health Care Settings, 2017, available at www.unaids.org/sites/default/files/media_asset/ending-discrimination-healthcare-settings_en.pdf.

The Special Rapporteur on extrajudicial, summary or arbitrary executions has noted that the criminalization of “matters of sexual orientation” increases social stigmatization and makes people “more vulnerable to violence and human rights abuses, including death threats and violations of the right to life, which are often committed in a climate of impunity.”¹⁸⁸

Even when based on national laws, arrest or detention on discriminatory grounds such as sexual orientation or gender identity is in principle arbitrary and prohibited under international law, as affirmed on many occasions by the Human Rights Committee and the Working Group on Arbitrary Detention.¹⁸⁹ The Working Group found the arrest of 11 men in Cameroon under article 347 bis of the Criminal Code, which criminalizes sexual relations between persons of the same sex, to be arbitrary.¹⁹⁰ On the arrest and subsequent conviction of four men on charges of so-called “debauchery” in Egypt, it stated: “The vilification and persecution of persons for their sexuality violate the principles of international human rights law.”¹⁹¹ The Human Rights Committee has likewise called on the Islamic Republic of Iran to “ensure that anyone held solely on account of freely and mutually agreed sexual activities or sexual orientation should be released immediately and unconditionally.”¹⁹²

In some countries, there are different ages of sexual consent for same-sex and different-sex relationships.¹⁹³ This also constitutes discrimination on the basis of sexual orientation.¹⁹⁴ International standards require that the age of consent is the same, regardless of gender or sexual orientation.¹⁹⁵

¹⁸⁸ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/57/138), 2002, at para. 37.

¹⁸⁹ Human Rights Committee, General Comment No. 35 (CCPR/C/GC/35), 2014, para. 17, Working Group on Arbitrary Detention, Opinion No. 42/2008 on Egypt (A/HRC/13/30/Add.1, 2010); and No. 25/2009 on Egypt (A/HRC/16/47/Add.1, 2011). See also, report of the Working Group on Arbitrary Detention (A/HRC/16/47, 2011), at Annex para. 8(e).

¹⁹⁰ Working Group on Arbitrary Detention, Opinion No. 22/2006 on Cameroon (A/HRC/4/40/Add.1, 2007), at para. 19.

¹⁹¹ Working Group on Arbitrary Detention, Opinion No. 42/2008 on Egypt (A/HRC/13/30/Add.1, 2010) at para. 25.

¹⁹² Concluding Observations of the Human Rights Committee on the Islamic Republic of Iran (CCPR/C/IRN/CO/3), 2011, at para. 10.

¹⁹³ ILGA: Carroll, A., and Mendos, L.R., “State-Sponsored Homophobia 2017” (May 2017).

¹⁹⁴ Concluding Observations of the Committee on the Rights of the Child on Chile (CRC/C/CHL/CO/3) 2007, at para. 29; Isle of Man, United Kingdom (CRC/C/15/Add.134), 2000, at para. 22; Austria (CCPR/C/79/Add.103), 1998, at para. 13.

¹⁹⁵ Convention on the Rights of the Child, Article 2; Report of the United Nations High Commissioner for Human Rights on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity (A/HRC/19/41) 2011, para. 84(d).

POSITIVE PRACTICE

Mozambique: Decriminalizing same-sex relationships

Mozambique's criminal code prior to 2015 included provisions dating from the colonial era allowing for "security measures" against those who "habitually engage in vices against nature". While not explicitly referencing same-sex relations, the vague language echoed legal provisions in other countries used to criminalize lesbian, gay and bisexual people. In June 2015, the new penal code of Mozambique entered into effect, dropping these provisions, ensuring that same-sex relations are not criminalized.¹⁹⁶

C. DEATH PENALTY

Six countries that criminalize consensual same-sex relations, as well as some regions of at least two other countries, apply and/or have penal code provisions for the death penalty for "offences" relating to same-sex conduct.¹⁹⁷ The imposition of the death penalty gives rise to additional and separate violations under article 6 of the International Covenant on Civil and Political Rights and article 3 of the Universal Declaration of Human Rights. Article 6 provides that in countries which have not abolished the death penalty, a "sentence of death may be imposed only for the most serious crimes." International human rights law stipulates that same-sex sexual conduct should not be criminalized at all, meaning that it most certainly cannot be considered as one of "the most serious crimes", the latter being restricted to "intentional killings."¹⁹⁸ Resolutions of the Human Rights Council have called on States to ensure that the death penalty is not imposed as a sanction for consensual same-sex relations.¹⁹⁹

¹⁹⁶ OHCHR, *Living Free and Equal: What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people*, 2016, pp. 58-59.

¹⁹⁷ These are Brunei, the Islamic Republic of Iran, Mauritania, Saudi Arabia, the Sudan and Yemen, plus regions of Nigeria and Somalia. In Afghanistan, some interpretations of Shari'a law include the possibility of applying the death penalty for consensual same-sex relations, though other interpretations differ, and there is no information that this has been applied in recent years. See Report of the United Nations High Commissioner for Human Rights, on discrimination and violence against individuals based on their sexual orientation and gender identity (A/HRC/29/23), 2015, para. 46. See also ILGA: Carroll, A., and Mendos, L.R., "State-Sponsored Homophobia 2017" (May 2017).

¹⁹⁸ See for example, report of the United Nations Secretary General on capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (A/HRC/30/18), 2015, para. 16.

¹⁹⁹ Human Rights Council Resolution A/HRC/RES/36/17, 2017.



Treaty bodies and special procedures have reaffirmed this.²⁰⁰ The Human Rights Committee has stated that the imposition of the death penalty for offences which cannot be characterized as the most serious, including same-sex relations, is incompatible with article 6 of the Covenant.²⁰¹ In her 2000 report, the Special Rapporteur on extrajudicial, summary or arbitrary executions expressed:

*... great concern that in some States homosexual relationships are still punishable by death. It must be recalled that under article 6 of the International Covenant on Civil and Political Rights death sentences may only be imposed for the most serious crimes, a stipulation which clearly excludes matters of sexual orientation.*²⁰²

The Special Rapporteur has further emphasized that “the ‘mere possibility’ that [the death penalty] can be applied threatens the accused for years, and is a form of cruel, inhuman or degrading treatment or punishment. Its status as a law justifies persecution by vigilante groups, and invites abuse.”²⁰³

²⁰⁰ Concluding Observations of the Human Rights Committee on the Sudan (CCPR/C/79/Add.85), 1997, at para. 8. Reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/14/24/Add.1), 2010, at paras. 450-451; (E/CN.4/2006/53/Add.2), 2006, at para. 2; (E/CN.4/2006/53/Add.4), 20116, at paras. 26, 35, 37, 104; (E/CN.4/2002/74), 2002, at para. 65.

²⁰¹ Concluding Observations of the Human Rights Committee on the Sudan (CCPR/C/SDN/CO/3), 2007, at para. 19.

²⁰² Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2000/3), 2000, at para. 57. See also report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2006/53/Add.4), 2006, at para. 37.

²⁰³ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/8/3/Add.3), 2008, at para. 76.

D. CRIMINALIZATION OF LESBIAN AND BISEXUAL WOMEN

Of the 69 countries which criminalize consensual same-sex sexual relations, at least 44 criminalize same-sex conduct between women.²⁰⁴ Even in jurisdictions that do not criminalize them, lesbian and bisexual women have been subjected to arrest or threat of arrest on the basis of sexual orientation.²⁰⁵ Lesbian and bisexual women can be particularly vulnerable to certain forms of control and abuse given that women continue to be subordinated by male-dominated societies.²⁰⁶ Patriarchal attitudes and entrenched gender norms contribute to economic deprivation, family control and a loss of sexual autonomy, which can result in lesbian and bisexual women being forced into marriages, where they will be subject to “a lifetime of invisible, undocumented rape.”²⁰⁷ Crucially, the existence of laws which criminalize consensual same-sex relations between women only serve to compound these difficulties, perpetuating stigma and denying lesbian women the protection of the law.²⁰⁸

E. CRIMINALIZATION OF TRANSGENDER PEOPLE

In addition to transgender people facing sanctions under laws prohibiting same-sex relations in several countries,²⁰⁹ some laws also specifically target transgender people on the basis of their gender identity or expression.²¹⁰ At least six countries criminalize so-called “cross-dressing”.²¹¹ In many more countries, transgender people face arrest and prosecution on the basis of other, often vaguely defined laws.²¹² In a report on Malaysia, the Special Rapporteur

²⁰⁴ Number updated by OHCHR as at July 2019. See also: International Lesbian, Gay, Bisexual, Trans and Intersex Association: Lucas Ramon Mendos, *State-Sponsored Homophobia 2019* (Geneva; ILGA, March 2019) Human Dignity Trust, *Breaking the Silence: Criminalisation of Lesbians and Bisexual Women and Its Impacts* (May 2016), p. 4.

²⁰⁵ See, for example, judgment of the South African High Court in *National Coalition for Gay and Lesbian Equality v. Minister of Justice*, 6 BHR 127 (CC, 1998); 1998 (12) BCLR 1517 (CC), para. 109. Also, Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Jamaica*, OEA/Ser.L/V/II.144 Doc. 12, 10 August 2012, para. 271.

²⁰⁶ Human Dignity Trust, *Breaking the Silence: Criminalisation of Lesbians and Bisexual Women and Its Impacts* (May 2016), pp. 15-16.

²⁰⁷ *Ibid.*, pp. 23-28.

²⁰⁸ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 33 on women's access to justice* (CEDAW/C/GC/33) 2015, paras. 8-10.

²⁰⁹ See, for example, opinion adopted by the Working Group on Arbitrary Detention, No. 7/2002, on Egypt (E/CN.4/2003/8/Add.1), 2003.

²¹⁰ OHCHR, *Living Free and Equal: What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people*, 2016, p. 57; UNAIDS, “The Gap Report”, 2014, p. 223.

²¹¹ Human Rights Watch, “‘I’m Scared to Be a Woman’ – Human Rights Abuses Against Transgender People in Malaysia”, 2014, footnote 12.

²¹² Transgender Europe, *Trans Respect versus Transphobia project: Criminalisation and prosecution of trans people*, 2016. Available from <http://transrespect.org/>.

on the right to health stated that the criminalization of different forms of gender identity and expression:

*... has reinforced negative societal attitudes and has led to serious human rights violations of the rights of this group of the population, including significant barriers in access to health care. Law enforcement officials arrest transgender women and subject them to various abuses, including humiliation in the media, and physical and verbal abuse.*²¹³

United Nations special procedures and treaty bodies have called for such laws to be repealed.²¹⁴ For example, the Human Rights Committee called on Kuwait to repeal penal code provisions on so-called “imitation of the opposite sex” in order to bring its legislation in line with the Covenant.²¹⁵ The Human Rights Committee has further expressed concern regarding the arbitrary arrest and detention of transgender persons, and has called on States to put an end to such practices, to investigate all instances of ill-treatment, and hold perpetrators accountable.²¹⁶

POSITIVE PRACTICE

Samoa: Decriminalizing so-called “cross-dressing”

In Samoa, the fa’afafine are people who are predominantly assigned as male at birth, express a range of gender expressions, including feminine ones, and are considered by many as a third gender. While the fa’afafine form an integral part of Samoan society and culture, the previous criminal code issued in 1961 included a discriminatory provision (58N) that specifically criminalized the so-called “impersonation of females” by males. In the context of reform of the criminal code, the Samoa Law Reform Commission held hearings and received submissions relating to this provision, including from the Samoa Fa’afafine Association. The Commission’s final report recommended the repeal of the provision. This recommendation was taken up and the new penal code, adopted in 2013, no longer contains the provision.²¹⁷

²¹³ Report of the Special Rapporteur on health, on a visit to Malaysia (A/HRC/29/33/Add.1), 2015, para. 86.

²¹⁴ See for example, Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 (CEDAW/C/GC/35), 2017, para. 31(a); Report of the Special Rapporteur on health, on a visit to Malaysia (A/HRC/29/33/Add.1), 2015, paras. 84-89, 111; Committee on Economic, Social and Cultural Rights, Concluding Observations on Guyana (E/C.12/GUY/CO/2-4), 2015, paras. 24-25; Human Rights Committee, Concluding Observations on Kuwait (CCPR/C/KWT/CO/2), 2011, para. 30.

²¹⁵ Human Rights Committee, Concluding Observations on Kuwait (CCPR/C/KWT/CO/2), 2011, para. 30.

²¹⁶ Human Rights Committee, Concluding Observations on Suriname (CCPR/C/SUR/CO/3), 2015, paras. 27-28.

²¹⁷ OHCHR, *Living Free and Equal: What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people*, 2016, p. 59.

F. LAWS ON “DEBAUCHERY”, “VAGRANCY” AND SEX WORK USED TO TARGET LGBT PEOPLE

Laws on “debauchery”, “vagrancy” and other laws used to penalize sex work are often systematically applied in a discriminatory manner to target people based on their perceived sexual orientation and gender identity, regardless of whether or not the individuals detained are LGBT and/or engaged in sex work.²¹⁸ The wording of such laws is often vague, giving authorities considerable leeway in determining the type of conduct deemed to fall within the ambit of the related offence. People have been profiled and arrested under these laws based on stereotypes about sexual orientation or gender identity, perceived mannerisms, gender expression, style of dress, or for having condoms in their possession.²¹⁹ In addition to the repeal of other discriminatory laws (see preceding sections), United Nations human rights experts, including the Committee on the Elimination of Discrimination against Women²²⁰ and the United Nations Special Rapporteur on health²²¹, as well as United Nations agencies²²² have repeatedly emphasized that States should repeal laws that criminalize sex workers.

Where sex work is criminalized, there have been reports of violence against transgender sex workers not being reported or monitored and, instead of being offered legal protection, trans sex workers being subject to police harassment, particularly in the forms of sexual abuse, extortion and discrimination.²²³ There is also reliable evidence that the criminalization of adult consensual sex work

²¹⁸ See Human Rights Committee, Concluding Observations on the Philippines (CCPR/C/PHL/CO/4), 2012, para. 10; Report of the Working Group on Arbitrary Detention (A/HRC/10/21/Add.3), 2009, para. 56; Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (A/72/172), 2017, para. 34; OHCHR press release, “Azerbaijan: United Nations rights experts alarmed by reports of persecution of people perceived to be gay or trans”, Geneva 13 October 2017; OHCHR press briefing on Azerbaijan, Egypt and Indonesia/LGBT, Geneva, 13 October 2017; UNAIDS, The Gap Report, 2014, pp. 192, 217.

²¹⁹ See, for example, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (A/HRC/38/43), 2018, para. 54; OHCHR press statement, “Azerbaijan: United Nations rights experts alarmed by reports of persecution of people perceived to be gay or trans”, 17 October 2017; OHCHR press briefing on Cameroon, 16 November 2012; Global Commission on HIV and the Law, Risks, Rights and Health, July 2012, p. 47

²²⁰ Committee on the Elimination of Discrimination against Women, Concluding Observations on Fiji (CEDAW/C/FJI/CO/4), 2010, paras. 22-23 and Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 (CEDAW/C/GC/35), 2017, para. 31(a).

²²¹ See, reports of the Special Rapporteur on Health (A/HRC/23/41), 2013, para. 60; (A/HRC/14/20), 2010, para. 76(b); report on a mission to Ghana (A/HRC/20/15/Add.1), 2012, para. 60(b).

²²² Joint United Nations Statement on Ending Discrimination in Health Care Settings, July 2017 www.ohchr.org/Documents/Issues/ESCR/InterAgencyStatementDiscriminationHealthCare.pdf.

²²³ Report of the Special Rapporteur on Health (A/HRC/14/20), 2010, para. 42; Committee on the Elimination of Discrimination against Women, Concluding Observations on Kyrgyzstan (CEDAW/C/KGZ/CO/3), 2008, para. 43; UNAIDS, The Gap Report, 2014, p. 192; UNDP, Global Commission on HIV and the Law, “Risks, rights & health”, 2012, pp. 36-37.

increases vulnerability to HIV and other sexually transmitted infections,²²⁴ and contributes to discrimination in accessing health care,²²⁵ and stigma and discrimination more broadly²²⁶, all of which is likely to have a disproportionate impact on LGBT people in countries where they are targeted on grounds of “debauchery”, “vagrancy” and other laws used to penalize sex work.

G. CONCLUSION

The discriminatory laws described here violate State obligations under international law to uphold rights to inter alia equality, non-discrimination, privacy, liberty and security of the person, and freedom of expression, association and assembly, and give rise to a number of separate but interrelated violations. The application of the death penalty for consensual sexual conduct is furthermore in violation of the right to life. Arresting or detaining individuals on discriminatory grounds, including on the basis of their sexual orientation or gender identity and expression, is likewise prohibited by the guarantee against arbitrary detention. Even if never enforced, such laws are in breach of State obligations under international human rights law. States should immediately repeal all laws criminalizing private, consensual same-sex conduct, so-called “cross-dressing”, laws criminalizing sex workers, other discriminatory laws used to arbitrarily arrest, harass and discriminate against LGBT people, and discriminatory laws restricting freedom of expression, association and peaceful assembly, including so-called “anti-propaganda laws” (see Chapter V).

²²⁴ WHO, UNFPA, UNAIDS, Global Network of Sex Work Projects. “Prevention and treatment of HIV and other sexually transmitted infections for sex workers in low- and middle-income countries: Recommendations for a public health approach”, 2012, p. 16; UNAIDS, “We can remove punitive laws, policies, practices, stigma and discrimination that block effective responses to HIV”, 2010, p. 7; Report of the Special Rapporteur on violence against women (E/CN.4/2000/68/Add.5), 2000, para. 51.

²²⁵ Committee on Economic, Social and Cultural Rights, Concluding Observations on Kyrgyzstan (E/C.12/KGZ/CO/2-3), 2015, para. 22(a)

²²⁶ See joint United Nations statement on ending discrimination in health care settings, 2017, available at http://www.unaids.org/sites/default/files/media_asset/ending-discrimination-healthcare-settings_en.pdf; Report of the Working Group on discrimination against women (A/HRC/32/44), 2016, para. 76.



IV. PROHIBIT AND ADDRESS DISCRIMINATION

Everyone is entitled to enjoy all human rights without discrimination, including on the basis of sexual orientation, gender identity and expression, and sex characteristics. This right is protected by the provisions of the Universal Declaration of Human Rights and core international human rights treaties on non-discrimination, equality before the law and equal protection of the law, including the non-exhaustive list below.

Universal Declaration of Human Rights

Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

International Covenant on Civil and Political Rights

Article 2(1): Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

International Covenant on Economic, Social and Cultural Rights

Article 2: The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Convention on the Rights of the Child

Article 2: States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Convention on the Elimination of All Forms of Discrimination against Women

Article 2(f): States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.



A. POSITIONS TAKEN BY UNITED NATIONS HUMAN RIGHTS MECHANISMS

In addition to the discriminatory laws outlined in Chapter III, LGBTI persons also experience discrimination in practice, in the form of social stigma, exclusion, and bias in public and private life, at work, at home, at school and in health care institutions. Yet, international human rights law prohibits discrimination on grounds of sexual orientation, gender identity and sex characteristics; in the same way as race, sex, colour, or religion, they are not permissible reasons for making distinctions.

International law defines discrimination as any distinction, exclusion, restriction or preference, or other differential treatment, that is directly or indirectly based on a prohibited ground of discrimination and that has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of rights guaranteed under international law.²²⁷ Differences in treatment based on prohibited grounds are considered discriminatory, unless a State can show that there is a justification for the difference in treatment that is reasonable, objective, necessary and proportionate, and if the difference in treatment is otherwise compatible with international human rights law.²²⁸

The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child all include lists of prohibited grounds of discrimination in their non-discrimination guarantees. These lists all commence with the words “such as” and/or conclude with the words “other status”, emphasizing that they are open-ended, illustrative and not limited to the grounds explicitly listed in the treaties. According to the Committee on Economic, Social and Cultural Rights:

*The nature of discrimination varies according to context and evolves over time. A flexible approach to the ground of “other status” is thus needed in order to capture other forms of differential treatment that cannot be reasonably and objectively justified and are of a comparable nature to the expressly recognized grounds in article 2, paragraph 2. These additional grounds are commonly recognized when they reflect the experience of social groups that are vulnerable and have suffered and continue to suffer marginalization.*²²⁹

²²⁷ See the International Convention on the Elimination of All Forms of Racial Discrimination, art. 1; the Convention on the Elimination of All Forms of Discrimination against Women, art. 1; and the Convention on the Rights of Persons with Disabilities, art. 2; Human Rights Committee, General Comment No. 18, 1989, para. 7; Committee on Economic, Social and Cultural Rights, General Comment No. 20 (E/C.12/GC/20), 2009, para. 7.

²²⁸ See for example, Committee on Economic, Social and Cultural Rights, General Comment No. 20 (E/C.12/GC/20), 2009, para. 13; Human Rights Committee, General Comment No. 18, 1989, para. 13.

²²⁹ Committee on Economic, Social and Cultural Rights, General Comment No. 20 (E/C.12/GC/20), 2009, para. 27.

In their jurisprudence, general comments, concluding observations, reports and communications, United Nations treaty bodies and special procedures have repeatedly held that sexual orientation, gender identity and sex characteristics are prohibited grounds of discrimination under international law (see section on core legal obligations of States). All lists of prohibited grounds of discrimination in treaties include “sex”, which the Human Rights Committee has interpreted as including sexual orientation, and also contain reference to “other status”, which treaty bodies have interpreted as including sexual orientation and gender identity.²³⁰ Treaty bodies have called on States to adopt anti-discrimination legislation that explicitly includes sexual orientation, gender identity and sex characteristics as grounds for protection and have welcomed enactment of such legislation.²³¹

B. PARTICULAR AREAS OF CONCERN

The right to be protected against discrimination on the basis of sexual orientation, gender identity and sex characteristics applies to the enjoyment of all civil, political, economic, social and cultural rights. Particular areas of concern – including discrimination on multiple grounds, health, pathologization, education, employment, housing, recognition of gender identity, access to justice, discrimination within the family and community, relationship recognition and political participation and consultation – are discussed below. Treaty bodies and special procedures have also noted discrimination in access to other basic services, such as access to social benefits.²³²

²³⁰ See, for example, Human Rights Committee, *Toonen v. Australia*, Communication No. 499/1992 (CCPR/C/50/D/499/1992), paras. 8.7; Committee on Economic, Social and Cultural Rights, General Comments No. 20 (E/C.12/GC/20), 2009, paras. 32; Committee on the Rights of the Child, General Comments No. 13 (CRC/C/GC/13), 2011, paras. 60, 72(g); Committee against Torture, General Comments No. 2 (CAT/C/GC/2), 2008, para. 21, and No. 3 (CAT/C/GC/3), 2012, paras. 32, 39; Committee on the Elimination of Discrimination against Women, General Recommendation No. 28 (CEDAW/C/GC/28), 2010, para. 18.

²³¹ Committee on the Rights of the Child, Concluding Observations on Poland (CRC/C/POL/CO/3-4), 2015, at para. 16(c); Guyana (CRC/C/GUY/CO/2-4), 2013, at para. 24; Australia (CRC/C/AUS/CO/4), 2012, at para. 29; New Zealand (CRC/C/NZL/CO/3-4), 2011, at para. 25; Slovakia (CRC/C/SVK/CO/2), 2007, at para. 27; Malaysia (CRC/C/MYS/CO/1), 2007, at para. 31; China (CRC/C/CHN/CO/2), 2005, at para. 31; Isle of Man, United Kingdom (CRC/C/15/Add.134), 2000, at para. 22. Human Rights Committee, Concluding Observations on Sweden (CCPR/C/SWE/CO/7), 2016, at para. 3; Greece (CCPR/CO/83/GRC), 2005, at para. 5; Denmark (CCPR/C/DNK/CO/5), 2008, at para. 4; France (CCPR/C/FRA/CO/4), 2008; Committee on the Elimination of Discrimination against Women, Concluding Observations on Montenegro (CEDAW/C/MNE/CO/1), 2014, at para. 4(b). Also see joint statement of United Nations and international human rights experts, “End violence and harmful medical practices on intersex children and adults”, 24 October 2016.

²³² Human Rights Committee, Concluding Observations on the Russian Federation (CCPR/C/RUS/CO/6), 2009, at para. 27; Japan (CCPR/C/JPN/CO/5), 2008, at para. 29; Committee on Economic, Social and Cultural Rights, General Comment No. 20 (E/C.12/GC/20), 2009, at para. 32; Reports of the Special Rapporteur on housing (A/HRC/10/7/Add.3), 2009, at para. 50; (A/HRC/7/16), 2008; (A/HRC/4/18/Add.2), 2007, at para. 125; (E/CN.4/2006/118), 2006, at para. 30; (E/CN.4/2005/43), 2005, at para. 63; Reports of the Special Rapporteur on health, (E/CN.4/2004/49), 2004, at para. 38; (E/CN.4/2003/58), 2003, at para. 68; Reports of the Special Rapporteur on the right to education (E/CN.4/2006/45), 2006, at para. 113; (E/CN.4/2001/52), 2001, at para. 75; Report of the Special Rapporteur on violence against women (E/CN.4/2005/72/Add.1), 2005, at paras. 232-234.

C. DISCRIMINATION ON MULTIPLE GROUNDS

A wide range of United Nations human rights bodies have recognised that discrimination based on sexual orientation, gender identity and/or sex characteristics is commonly compounded by discrimination on other grounds, including gender, race, age, religion, disability, health, immigration status and economic status.²³³

For example, the Special Rapporteur on violence against women has noted this in relation to the murders of black lesbian women,²³⁴ as well as violence against women with disabilities:

*Lesbians and other sexual minorities who identify as female and who have disabilities confront social barriers, isolation, exclusion and violence due to both sexual minority status and disability.*²³⁵

In its General Comment No. 28, the Committee on the Elimination of Discrimination against Women has called on States to integrate within anti-discrimination legislation intersecting forms of discrimination, including on grounds of sex, gender, race, ethnicity, religion or belief, health, status, age, class, caste, sexual orientation and gender identity, and to implement policies and programmes designed to eliminate such occurrences.²³⁶

D. HEALTH

LGBTI people face a variety of impediments in exercising the right to the highest attainable standard of health, a right guaranteed inter alia by article 12(1) of the International Covenant on Economic, Social and Cultural Rights, and article 24 of the Convention on the Rights of the Child. In its General Comment on article 12, the Committee on Economic, Social and Cultural Rights stated:

²³³ Report of the High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, at para. 42; Committee on Economic, Social and Cultural Rights, General Comment No. 22 (E/C.12/GC/22), 2016, para. 2; Report of the Special Rapporteur on extrajudicial executions (A/HRC/35/23), 2017, paras. 20-23, 96(c); Committee on Migrant Workers, Concluding Observations on Jamaica (CMW/C/JAM/CO/1), 2017, para. 62 and Concluding Observations on Belize (CMW/C/BLZ/CO/1), 2014, paras. 18-19; Committee on the Rights of Persons with Disabilities, Concluding Observations on Lithuania (CRPD/C/LTU/CO/1), 2016, paras. 15-16 and Concluding Observations on Uganda (CRPD/C/UGA/CO/1), 2016, paras. 8-9; CERD, Concluding Observations on Uruguay (CERD/C/URY/CO/21-23), 2017, para. 27, and Concluding Observations on Germany (CERD/C/DEU/CO/19-22), 2015, para. 16.

²³⁴ Report of the Special Rapporteur on violence against women (A/HRC/20/16), 2012, para. 73.

²³⁵ Report of the Special Rapporteur on violence against women (A/67/227), 2012, at para. 27.

²³⁶ Committee on the Elimination of Discrimination against Women, General Comment No. 28 (CEDAW/C/GC/28), 2010, at para. 18.



The right to health contains both freedoms and entitlements. The freedoms include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.²³⁷ (See also Chapter II)

In its General Comments, the Committee on Economic, Social and Cultural Rights has stated that the Covenant proscribes any discrimination in access to health care on the grounds of sexual orientation and gender identity.²³⁸ Ensuring the “right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups” is an immediate obligation of States.²³⁹ The Committee on the Rights of the Child has also highlighted the obligation of States to ensure that children’s health is not undermined as a result of discrimination on grounds of a child’s, parent’s or legal guardian’s sexual orientation and gender identity.²⁴⁰

The criminalization of consensual same-sex sexual conduct, so-called “cross-dressing” and other discriminatory laws (see Chapter III) has a negative effect on the right to health of LGBT persons. It leads to poorer health outcomes as

²³⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 14 (E/C.12/2000/4), 2000, at para. 8.

²³⁸ *Ibid.*, at para. 18 and Committee on Economic, Social and Cultural Rights, General Comment No. 20 (E/C.12/GC/20), at para. 32.

²³⁹ Committee on Economic, Social and Cultural Rights, General Comment No. 14 (E/C.12/2000/4), 2000, at para. 43(a).

²⁴⁰ Committee on the Rights of the Child, General Comment No. 15 (CRC/C/GC/15), 2013, para 8.

a result of violence and abuse, stigma, denial of access to health services, discriminatory attitudes on the part of health professionals, and because it deters individuals from seeking health care out of fear that they may be reported to law enforcement officials and face prosecution.²⁴¹

Criminalization also perpetuates stigma by reinforcing existing prejudices and stereotypes, which in turn prevents legislative and policy-making institutions from adequately addressing health-related matters in vulnerable communities.²⁴² States must repeal these discriminatory laws in order to meet core obligations of the right to health, including creating an enabling environment, facilitating the exchange of information and reducing fear and stigma.²⁴³

Discriminatory laws also have a negative impact on public health campaigns against HIV/AIDS.²⁴⁴ The World Health Organization and UNAIDS have further stressed that laws that penalize possession of condoms and lubricants negatively impact the prevention of HIV transmission and HIV incidence for key populations, including men who have sex with men and transgender women.²⁴⁵

LGBTI people also commonly face discrimination in accessing health services and information, sometimes in contexts where they do not face penal sanctions. For example, the Committee on the Rights of the Child has expressed concern that “young people do not have access to the appropriate information, support and necessary protection to enable them to live their sexual orientation.”²⁴⁶

The World Health Organization has noted that transgender and gender non-conforming people worldwide experience substantial health disparities and barriers in accessing appropriate health services.²⁴⁷ Such obstacles are prevalent in access to general health services, as well as access to gender-affirming care. Health-care professionals are often insensitive to the needs of

²⁴¹ Report of the Special Rapporteur on health (A/HRC/14/20), 2010, at paras. 6-26.

²⁴² *Ibid.*, at paras. 22-23, 39-40.

²⁴³ *Ibid.*, at paras. 26, 76; See also, report of the Special Rapporteur on health (A/HRC/23/41), 2013 at para. 60.

²⁴⁴ Concluding Observations of the Human Rights Committee on Cameroon (CCPR/C/CMR/CO/4), 2010, at para. 12; Jamaica (CCPR/C/JAM/CO/3), 2011, at para. 9. See also, UNAIDS, *The Gap Report, 2014*, pp. 191-193, 217-255; *Toonen v. Australia*, Communication No. 488/1992 (CCPR/C/50/D/488/1992), 1994, at para. 8.5.

²⁴⁵ UNAIDS, “Guidance note: Condom and lubricant programming in high HIV prevalence countries”, 2014, p. 8; WHO, “Brief sexuality-related communication: recommendations for a public health approach”, 2015.

²⁴⁶ Committee on the Rights of the Child, *Concluding Observations on the United Kingdom (CRC/C/15/Add.188)*, 2002, para. 43.

²⁴⁷ WHO, “Sexual Health, Human Rights and the Law”, 2015, p. 24.

transgender persons and lack the necessary professional training.²⁴⁸ Effective procedures are also needed to ensure patient privacy and confidentiality. This is especially important for LGBTI people, for whom a breach of confidentiality can greatly increase risk of exposure to violence and discrimination.²⁴⁹

Many trans people do not fit easily within binary sex-segregated categories of health services targeted at cisgender women and men. For example, trans women may require prostate examinations and trans men may require cervical smears. Trans people have died after being denied access to these and other life-saving services.²⁵⁰

Gender-affirming services, where available, are often prohibitively expensive and State funding or insurance coverage is rarely available. As a result, trans people may be forced into unsafe alternatives.²⁵¹ In some States, transgender people are forced or coerced to undergo psychological assessment, diagnosis, surgery or sterilization as a prerequisite to legal recognition of their gender, which infringes rights guaranteed under international law (see Chapter II, and section below on recognition of gender identity).

Trans people also often face unique, discriminatory barriers in accessing bathroom facilities. The Special Rapporteur on the human right to safe drinking water and sanitation has documented evidence of transgender and gender non-conforming persons facing exclusion, denial of access, verbal harassment, physical abuse and even arrest when using bathrooms.²⁵² He has stressed that States must take all necessary measures to remove such barriers and ensure that everyone is able to use the toilet corresponding to their gender identity, without discrimination.²⁵³ As the Committee on Economic, Social and Cultural Rights has noted, the right to sanitation, while being a distinct right,²⁵⁴ is also integrally related to the right to health.²⁵⁵

²⁴⁸ Council of Europe Commissioner for Human Rights, "Human Rights and Gender Identity", 2009, para. 3.3; WHO, "Prevention and treatment of HIV and other sexually transmitted infections", 2011 pp. 30-31.

²⁴⁹ WHO, "Sexual Health, Human Rights and the Law", p. 16; UNDP, "Discussion paper: trans health and human rights", 2013, p. 17; report of the Special Rapporteur on Health (A/HRC/14/20), 2010, para. 21.

²⁵⁰ UNDP, "Discussion paper: trans health and human rights", 2013, p. 17.

²⁵¹ *Ibid.*, p. 21.

²⁵² Reports of the Special Rapporteur on the human right to safe drinking water and sanitation (A/HRC/21/42) 2012, at para. 40; (A/HRC/33/49) 2016, para. 30.

²⁵³ Report of the Special Rapporteur on the human right to safe drinking water and sanitation (A/HRC/33/49) 2016, paras. 9, 31 and 48.

²⁵⁴ General Assembly resolution on the human right to water and sanitation (A/RES/64/292).

²⁵⁵ Committee on Economic, Social and Cultural Rights, Statement on the right to sanitation, (E/C.12/2010/1), 2011, para. 7.

Because of the shame and trauma inflicted through their early encounters with medical providers, sometimes involving non-consensual surgery and treatment, intersex people often avoid accessing healthcare altogether.²⁵⁶ The medical field's intense focus on early irreversible interventions effectively limits the care that is available for intersex adults.²⁵⁷ In addition to prohibiting medically unnecessary surgery and procedures on intersex children (see Chapter II), and discrimination against intersex people, United Nations human rights experts have also called on States to ensure that intersex children and adults have access to “medical services that respond to their specific health needs and that are based on non-discrimination, informed consent and respect for their fundamental rights”, and have emphasized that “it is critical to strengthen the integration of these human rights principles in standards and protocols issued by regulatory and professional bodies.”²⁵⁸

E. PATHOLOGIZATION

International and regional human rights experts have noted that medical classifications that pathologize LGBTI people – i.e. label them as ill, disordered, malformed or abnormal on the basis of their sexual orientation, gender identity/ expression or sex characteristics – are one of the root causes of the violence, discrimination and stigma they face.²⁵⁹ In some contexts, legislation that criminalizes LGBT people, as well as violence and ill-treatment of LGBTI people in medical and other settings, has been justified on the basis of such outdated classifications (see also Chapter II). These classifications can also create significant barriers for LGBTI people in accessing services that address their actual health needs, and in some countries pose a grave obstacle to legal recognition of gender identity.²⁶⁰

In almost all countries, transgender persons are treated as ill or disordered, and intersex people as malformed or defective, based on existing international and national medical classifications.²⁶¹ Although the World Health Organization

²⁵⁶ Human Rights Watch, “Medically Unnecessary Surgeries on Intersex Children in the US”, July 2017.

²⁵⁷ *Ibid.*

²⁵⁸ See joint statement of United Nations and international human rights experts, “End violence and harmful medical practices on intersex children and adults”, 24 October 2016.

²⁵⁹ OHCHR, *Living Free and Equal: What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people*, 2016, pp. 74-75; Joint statement of United Nations and regional human rights experts, “Pathologization – Being lesbian, gay, bisexual and/or trans is not an illness”, 17 May 2016; Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, (A/73/152), 2018, paras. 10-16.

²⁶⁰ Report of the Special Rapporteur on health (A/HRC/35/21), 2017, para. 48; Council of Europe Commissioner for Human Rights, Issue Paper: Human Rights and Gender Identity, 2009, available at <https://rm.coe.int/16806da753>.

²⁶¹ See UNDP, “Trans health and human rights”, 2013, pp. 20-21; UN Free and Equal Fact Sheet: Intersex; Committee on Economic, Social and Cultural Rights, Concluding Observations on Germany (E/C.12/DEU/CO/5), 2011, para. 26.

removed homosexuality from its classification of diseases in 1990, a number of countries still classify homosexuality as an illness.

United Nations and regional human rights mechanisms have called for the reform of outdated medical classifications that pathologize LGBTI persons, in particular transgender and intersex adults, adolescents and children, and for measures to ensure that LGBTI people can access health services, including gender-affirming healthcare for trans people, based on informed consent and free from stigma, pathologization and discrimination.²⁶²

F. EDUCATION

United Nations treaty bodies have expressed concern about the impact of discrimination in schools and other educational settings on the ability of young LGBT, intersex and gender non-conforming people to enjoy their right to education.²⁶³ In some cases, education authorities and schools have actively discriminated against, refused admission to, or expelled young people because of their sexual orientation or gender identity or expression, in violation of children's and adolescents' rights to education, to non-discrimination and to respect for gender identity.²⁶⁴ LGBTI youth frequently experience bullying, violence and harassment in school from classmates and teachers (see also the Chapter I, section on other violence).²⁶⁵ They may also be subject to "implicit" violence in education policies, regulations, curricula, teaching materials and teaching practices.²⁶⁶

²⁶² Joint statements of international and regional human rights experts, "Pathologization – Being lesbian, gay, bisexual and/or trans is not an illness", 17 May 2016, and "End violence and harmful medical practices on intersex children and adults", 24 October 2016. See also Council of Europe Commissioner for Human Rights, "Issue Paper: Human rights and intersex people", 2015.

²⁶³ See, for example, Human Rights Committee, Concluding Observations on Mexico (CCPR/C/MEX/CO/5), 2010, para. 21; Committee on Economic, Social and Cultural Rights, Concluding Observations on Poland (E/C.12/POL/CO/5), 2009, paras. 12-13; Committee on the Rights of the Child, General Comment No. 3 (CRC/GC/2003/3), 2003, para. 8; No. 13 (CRC/C/GC/13), 2011, paras. 60 and 72 (g); No. 20 (CRC/C/GC/20), 2016, paras. 33-34; Committee on the Rights of the Child, Concluding Observations on New Zealand (CRC/C/NZL/CO/3-4), 2011, para. 25; Slovakia (CRC/C/SVK/CO/2), 2007, paras. 27-28; and Malaysia (CRC/C/MYS/CO/1), 2007, para. 31.

²⁶⁴ Report of the Special Rapporteur on the right to education (E/CN.4/2006/45), 2006, para. 113; Human Rights Committee, Concluding Observations on Mexico (CCPR/C/MEX/CO/5), 2010, para. 21; Committee on Economic, Social and Cultural Rights, Concluding Observations on Poland (E/C.12/POL/CO/5), 2009, para. 32. Committee on the Rights of the Child, General Comment No. 20 emphasizes the right of adolescents to respect for their gender identity – see (CRC/C/GC/20), 2016, at para.34.

²⁶⁵ See, for example, Reports of the Special Rapporteur on the right to education (E/CN.4/2001/52), para. 75, and (E/CN.4/2006/45), 2006, para. 113; Human Rights Committee, Concluding Observations on Mexico (CCPR/C/MEX/CO/5), 2010, para. 21; Report of the independent expert for the United Nations study on violence against children (A/61/299), 2006, para. 52.

²⁶⁶ UNESCO, "Education sector responses to violence based on sexual orientation and gender identity/expression", 2016, p. 25.



Discrimination in education can have a life-long impact, for example by excluding LGBTI people from accessing gainful employment.²⁶⁷ In its General Comment No. 20, the Committee on the Rights of the Child called on States to “take effective action to protect all lesbian, gay, bisexual, transgender and intersex adolescents from all forms of violence, discrimination or bullying by raising public awareness and implementing safety and support measures.”²⁶⁸

Isolation and stigma may generate low self-esteem and depression, and contribute to truancy, absenteeism, children being forced out of school and, in extreme cases, suicide.²⁶⁹ A study from New Zealand, in 2014, showed that lesbian, gay and bisexual students were three times more likely to be bullied than their heterosexual peers, and transgender students were five times more likely to be bullied than non-transgender students.²⁷⁰ Research undertaken in Australia revealed that 18% of people with intersex variations had only had a primary school education – nine times the level in the general Australian population (2%).²⁷¹

²⁶⁷ International Labour Organization, Results of the ILO’s PRIDE Project, “Gender Identity and Sexual Orientation: Promoting Rights, Diversity and Equality in the World of Work”, 2016, p. 2.

²⁶⁸ Ibid.

²⁶⁹ See, for example, report of the Special Rapporteur on the right to education (E/CN.4/2006/45), 2006, para. 113; Report of the Special Rapporteur on violence against women (E/CN.4/2003/75/Add.1), 2003, para. 1508; Committee on the Rights of the Child, General Comment No. 20 (CRC/C/GC/20), 2016, para. 33.

²⁷⁰ UNESCO, “Out in the Open: Education Sector Responses to Violence Based on Sexual Orientation and Gender Identity/Expression”, 2016, p. 23.

²⁷¹ UNESCO, “From Insult to Inclusion: Asia-Pacific report on school bullying, violence and discrimination on the basis of sexual orientation and gender identity”, 2015, p. 38.

The right to education includes the right to receive comprehensive, accurate and age-appropriate information regarding sexuality, in order to ensure young people can lead healthy lives, make informed decisions and protect themselves and others from sexually transmitted infections.²⁷² In order to be comprehensive, sexuality education must pay special attention to diverse sexual orientations, gender identities and sex characteristics.²⁷³ In a 2014 report, the Special Rapporteur on freedom of opinion and expression expressed concern that, in some countries, child protection arguments were being used to block access to information on LGBTI issues, or to provide negatively biased information (see also Chapter V).²⁷⁴

Confronting prejudice and bullying against young LGBTI people in education requires authorities and schools to actively combat discrimination and ensure school curricula integrate diversity positively. The United Nations study on violence against children recommended that States “encourage schools to adopt and implement codes of conduct applicable to all staff and students that confront all forms of violence, taking into account gender-based stereotypes and behaviour and other forms of discrimination,” and “specific programmes which address the whole school environment including through ... implementing anti-bullying policies and promoting respect for all members of the school community”.²⁷⁵

G. EMPLOYMENT

The Committee on Economic, Social and Cultural Rights has stated that the International Covenant on Economic, Cultural and Social Rights requires States, as a minimum core obligation, to “guarantee through law the exercise of the right [to work] without discrimination of any kind as to ... sexual orientation,

²⁷² See Committee on the Rights of the Child, General Comment No. 4 (CRC/GC/2003/4), 2003, paras. 26 and 28 and Committee on the Elimination of Discrimination against Women, General Comment No. 36 (CEDAW/C/GC/36), 2017, paras 68-69. See also International Conference on Population and Development, Programme of Action, para. 7.47; Commission on Population and Development resolution 2009/1, para. 7; UNESCO International Technical Guidance on Sexuality Education, sections. 2.3 and 3.4; Human Rights Committee, Concluding Observations on the Republic of Korea (CCPR/C/KOR/CO/4) 2015, para. 15.

²⁷³ Report of the Special Rapporteur on the right to education (A/65/162), 2010, para. 23. See also UNFPA, Comprehensive sexuality education, at www.unfpa.org/comprehensive-sexuality-education; and World Health Organization Regional Office for Europe and the Federal Centre for Health Education “Standards for Sexuality Education in Europe”, 2010, incl. p. 27.

²⁷⁴ Report of the Special Rapporteur on the right to freedom of opinion and expression (A/69/335), 2014, paras. 39, 43, 44, 53.

²⁷⁵ Report of the independent expert for the United Nations study on violence against children (A/61/299), 2006, para. 111.

gender identity, intersex status.”²⁷⁶ This obligation includes refraining from denying or limiting access to decent work, especially for “disadvantaged and marginalized groups and individuals”²⁷⁷ and ensuring that hiring, promotion and termination are not discriminatory against LGBTI persons.²⁷⁸ Furthermore, relevant legislation should criminalize and punish sexual and other forms of harassment in the workplace, with explicit reference to harassment on the basis of sexual orientation, gender identity and sex characteristics.²⁷⁹

Two International Labour Organization (ILO) recommendations explicitly refer to discrimination on the basis of sexual orientation,²⁸⁰ in addition to the more general prohibition contained in the Discrimination (Employment and Occupation) Convention. Research undertaken by the ILO in Argentina, Costa Rica, France, Hungary, India, Indonesia, Montenegro, South Africa and Thailand points to the prevalence of discrimination against LGBT people in the workplace on the basis of their sexual orientation and/or gender identity, both in relation to hiring practices²⁸¹ and throughout the employment cycle.²⁸² In extreme cases, this may “result in LGBT workers being bullied, mobbed, and sexually or physically assaulted.”²⁸³ Lesbian, gay and bisexual people reported facing stereotyping and invasive questioning in the workplace regarding their sexuality, as well as pressure to conform to stereotyped masculine or feminine dress and mannerisms.²⁸⁴ Transgender people reported

²⁷⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 23 (E/C.12/GC/23), 2016, at para. 65(a); and General Comment No. 18 (E/C.12/GC/18), 2006, para. 12(b)(1).

²⁷⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 18 (E/C.12/GC/18), 2006, at para. 23.

²⁷⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 23 (E/C.12/GC/23), 2016, at para. 31.

²⁷⁹ *Ibid.*, at para. 48. See also Human Rights Committee, Concluding Observations on United States of America (CCPR/C/USA/CO/3/Rev.1), 2006; on Cambodia (CCPR/C/KHM/CO/2), 2015, para. 9; Committee on Economic, Social and Cultural Rights, Concluding Observations on Guatemala (E/C.12/GTM/CO/3), 2014, para. 9; Report of the Independent Expert on the enjoyment of all human rights by older persons, mission to Austria (A/HRC/30/43/Add.2), 2015, paras. 18, 100.

²⁸⁰ Paragraph 9 of the Private Employment Agencies Recommendation, 1997 (No. 188) includes the ground of “sexual orientation”. Paragraph 14 of the HIV and AIDS Recommendation, 2010 (No. 200) recommends that “[m]easures should be taken in or through the workplace to reduce the transmission of HIV and alleviate its impact by [...] (e) promoting the involvement and empowerment of all workers regardless of their sexual orientation and whether or not they belong to a vulnerable group”.

²⁸¹ See, for example, “PRIDE at work: A study on discrimination at work on the basis of sexual orientation and gender identity in Thailand”, ILO, 2015, p.30; “ORGULLO (PRIDE) en el trabajo - Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Argentina”, ILO, 2015, pp. 28-29.

²⁸² International Labour Organization, Results of the ILO’s PRIDE Project, “Gender Identity and Sexual Orientation: Promoting Rights, Diversity and Equality in the World of Work”, 2016, p. 2, available at www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/briefingnote/wcms_481575.pdf. See also ILO, Final report on Meeting of Experts on Violence against Women and Men in the World of Work (MEVWM/2016/7), 2016, p. 40 at para. 12.

²⁸³ *Ibid.*

²⁸⁴ See, for example, International Labour Organization, “PRIDE at work: a study on discrimination at work on the basis of sexual orientation and gender identity in South Africa”, ILO, 2016, pp.14, 17-19.

high rates of exclusion from formal employment, discrimination and harassment in the workplace, and discouragement from using bathrooms appropriate to their gender.²⁸⁵ This is exacerbated for trans people whose documentation does not match their identity.²⁸⁶ Discrimination and exclusion from the formal economy leave many with no option but to work in the informal economy and unregulated sectors,²⁸⁷ which increases the risk of exploitation and abuse. A survey of intersex people revealed higher unemployment levels and lower average income than for non-intersex people, as well as instances of stigma, harassment and discrimination at work.²⁸⁸ In 2016, 67 States afforded protection against discrimination in employment based on sexual orientation, whereas only 20 protected against discrimination based on gender identity/expression, and only three protected intersex people from discrimination.²⁸⁹

H. HOUSING

The International Covenant on Economic, Cultural and Social Rights enshrines the right of everyone to adequate housing, without discrimination, and requires States parties to immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination in access to housing.²⁹⁰ This includes legislation to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds,²⁹¹ including sexual orientation, gender identity and sex characteristics.

LGBT people experience discrimination in access to housing as a result of unfair treatment by public and private landlords. Concerns include LGBT individuals and same-sex couples denied leases, harassed by neighbours and evicted or forced out of their homes, including in public housing.²⁹² More research needs

²⁸⁵ See, for example, International Labour Organization, "Fierté (PRIDE) au travail: une étude sur la discrimination au travail pour motifs d'orientation sexuelle et d'identité de genre (en France)", ILO, 2016, pp. 47, 49; "PRIDE at work: A study on discrimination at work on the basis of sexual orientation and gender identity in Thailand", ILO, 2015, pp. 30-33; "PRIDE at work: a study on discrimination at work on the basis of sexual orientation and gender identity in Indonesia", ILO, 2016, p. 23.

²⁸⁶ International Labour Organization, "Discrimination at work on the basis of sexual orientation and gender identity: Results of the ILO's PRIDE Project", 2015, p. 1.

²⁸⁷ International Labour Organization, "Discrimination at work on the basis of sexual orientation and gender identity: Results of the ILO's PRIDE Project", 2015, p. 2.

²⁸⁸ Jones, Carpenter et al, "Intersex: stories and statistics from Australia", Open Book Publishers, 2016.

²⁸⁹ OHCHR, *Living Free and Equal: What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people*, 2016, p. 67.

²⁹⁰ International Covenant on Economic, Social and Cultural Rights article 11(1), Committee on Economic, Social and Cultural Rights, General Comment No. 7 (E/1992/23), 1992 and General Comment No. 20 (E/C.12/GC/20), 2009, para. 8.

²⁹¹ Committee on Economic, Social and Cultural Rights, General Comment No. 20 (E/C.12/GC/20), 2009, para. 11.

²⁹² Report of the Special Rapporteur on the right to housing (A/70/270), 2015, para. 49. See also European Union Agency for Fundamental Rights, EU LGBT Survey: Results at a Glance, 2014, p. 18.



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to be undertaken to assess the level of discrimination faced by intersex people in accessing housing.

The Special Rapporteur on housing has noted that individuals facing discrimination on the basis of sexual orientation or gender identity are at greater risk of homelessness.²⁹³ In a 2015 report, she also noted that LGBTI young people face stigmatization and social exclusion from their families and communities, are more vulnerable to violence and are more likely to be turned away from shelters.²⁹⁴ The Special Rapporteur on water and sanitation has drawn attention to research from India indicating that transgender persons face difficulties in finding rental housing and are often forced to live in remote slum areas.²⁹⁵

A 2012 survey of 354 support agencies in the United States suggested that some 40 per cent of homeless youth identify as LGBT, with family rejection the leading cause of homelessness among this group.²⁹⁶

²⁹³ Reports of the Special Rapporteur on the right to housing (A/HRC/31/54), 2015, paras. 39, 44, 87; (A/HRC/31/54/Add.2) 2016, para. 52; (A/70/270) 2015, para. 49; (A/69/274), 2014, para. 12; (A/HRC/19/53), 2011, paras. 50, 51, 63.

²⁹⁴ Report of the Special Rapporteur on the right to housing (A/HRC/31/54) 2015, para. 44.

²⁹⁵ Report of the Special Rapporteur on water and sanitation (A/HRC/33/49) 2016, para. 30.

²⁹⁶ See "Serving Our Youth", Williams Institute, True Colors Fund and the Palette Fund, 2012, p. 3; Report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015 para. 59.

I. RECOGNITION OF GENDER IDENTITY

Everyone has the right to recognition as a person before the law, including persons of diverse gender identities.²⁹⁷ Each person's self-defined gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.²⁹⁸ Legal recognition of the gender identity of transgender persons is also important in relation to protection from violence, torture and ill-treatment, discrimination, rights to health, education, employment and housing, access to social security, political participation and freedom of movement.²⁹⁹ This includes persons who have non-binary gender identities.³⁰⁰

In spite of recent advances, in most countries transgender persons are generally still unable to obtain legal recognition of their gender identity, including changes to their recorded sex and first name on State-issued identity documents.³⁰¹ Most States that do have procedures for trans people to change the name and/or gender recorded on their documents often impose lengthy and costly court proceedings, and abusive requirements, as a precondition of recognition of gender identity – for example, by requiring that applicants be unmarried (or obtain divorce) and undergo forced or coerced sterilization, gender reassignment surgery, other medical procedures, diagnosis or medical certification, in violation of international human rights standards.³⁰² This contributes to and exacerbates the many other rights abuses faced by trans people, including in education, employment, health, housing, applying for bank credit or State benefits, or when travelling abroad.³⁰³

²⁹⁷ Universal Declaration of Human Rights, art. 6; International Covenant on Civil and Political Rights, art. 16; Convention on the Elimination of All Forms of Discrimination against Women, art. 15; Convention on the Rights of the Child, art. 8.

²⁹⁸ Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity, Principle 3.

²⁹⁹ See Report of the United Nations High Commissioner for Human Rights, on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015 paras. 69-70; Report of the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, on a visit to Malaysia (A/HRC/29/33/Add.1), 2015, para. 84.

³⁰⁰ Around the world, a significant number of people identify with a wide diversity of gender identities, including hijra, third gender, khwaja sira, two-spirit, fa'afafine, genderqueer, muxe, waria and meti.

³⁰¹ Transgender Europe, Trans Respect versus Transphobia project: Legal Gender Recognition, 2017; ILGA: Chiam, Z., Duffy, S. and González Gil, M., Trans Legal Mapping Report 2017: Recognition before the law (November 2017); UNDP, APTN, Legal Gender Recognition: A Multi-country Legal and Policy Review, 2017.

³⁰² Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, (A/73/152), 2018, paras. 28-32; Report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, para. 70; Human Rights Committee, Concluding Observations on Ireland (CCPR/C/IRL/CO/4), 2014, para. 7; on Ukraine (CCPR/C/UKR/CO/7), 2013, para. 10; Report of the Special Rapporteur on torture (A/HRC/22/53), 2013, para. 88; also OHCHR, UN-Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO, "Eliminating forced, coercive and otherwise involuntary sterilization: an interagency statement", 2014.

³⁰³ Report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, para. 69.



United Nations human rights mechanisms have stressed that in order to fulfil international human rights obligations, States should respect the physical and psychological integrity of transgender persons and legally recognize their self-identified gender without additional requirements that may violate human rights.³⁰⁴ States should provide for a simple administrative process, allow for recognition of non-binary identities, and give minors access to recognition of their gender identity.³⁰⁵

³⁰⁴ Report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, para. 79 (i); Human Rights Committee, Concluding Observations on Ireland (CCPR/C/IRL/CO/4), 2011, para. 7, (CCPR/C/IRL/CO/4), 2014, para. 7; on Ukraine (CCPR/C/UKR/CO/7), 2013, para. 10; on the Republic of Korea (CCPR/C/KOR/CO/4), 2015, paras. 14-15; Committee on the Elimination of Discrimination against Women Concluding Observations on the Netherlands (CEDAW/C/NLD/CO/5), 2010, paras. 46-47; Committee against Torture, Concluding Observations on Hong Kong, China (CAT/C/CHN-HKG/CO/5), 2016, para. 29(a).

³⁰⁵ OHCHR, *Living Free and Equal: What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people*, 2016, p. 95.

POSITIVE PRACTICE

Argentina – Gender Identity Law

In 2012, Argentina adopted pioneering legislation which established the right of all persons to legal recognition of their gender identity. It establishes a simple and free administrative process through the Civil Registry to correct gender markers, names and photos on identity documents and in public records when they are not aligned with a person's self-identified gender identity. The law specifically prohibits any requirements with regards to surgery or psychological or medical treatment to obtain such recognition. It also enshrines the right to be treated with dignity, and stipulates that all public and private actors must respect a person's gender identity, including their self-identified name, regardless of whether this aligns with the information on their national identity document. The law also establishes the right of all adults to access, should they wish to, partial or comprehensive hormonal treatment and surgery to adjust their bodies, in line with their gender identity, as part of their right to comprehensive health, and on the basis of their informed consent. Such procedures are mandated to be included in the basic national public health insurance scheme.

The law establishes the right of minors to have their gender identity legally recognized through their legal representative, on the basis of the express consent of the minor, taking into account the evolving capacities and best interests of the child, in line with the provisions of the Convention on the Rights of the Child.³⁰⁶

J. ACCESS TO JUSTICE AND REMEDY

International human rights law contains guarantees of equal access to the law and equal protection before the law without discrimination of any kind, as well as equal access to remedy for violations of rights.³⁰⁷ As outlined by the Committee on the Elimination of Discrimination against Women, "the right to access to justice is multidimensional. It encompasses justiciability, availability, accessibility, good-quality and accountability of justice systems, and provision of remedies for victims".³⁰⁸ The Committee has recognized that the obstacles and

³⁰⁶ *Ibid.*, pp. 114-115.

³⁰⁷ See, for example, Universal Declaration on Human Rights, art. 7; International Covenant on Civil and Political Rights, arts. 26 and 2(3a); Human Rights Committee, General Comment No. 20, 1992; Committee against Torture, General Comment No. 2 (CAT/C/GC/2), 2008; United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (A/RES/60/147), 2005.

³⁰⁸ Committee on the Elimination of Discrimination against Women, General Comment No. 33 (CEDAW/C/GC/33), 2015, para. 1.

restrictions to realizing the right of access to justice “occur in a structural context of discrimination and inequality, due to factors such as gender stereotyping, discriminatory laws, intersecting or compounded discrimination, procedural and evidentiary requirements and practices, and a failure to systematically ensure that judicial mechanisms are physically, economically, socially and culturally accessible to all”.³⁰⁹ Previous chapters have raised issues affecting LGBTI people’s access to justice, including discriminatory laws, arbitrary arrest and detention, torture and ill-treatment, the right to a fair trial, and effective remedy, redress and compensation.³¹⁰

Discrimination, harassment, and violence on the part of law enforcement officials deter victims of crimes from reporting abuses.³¹¹ For example, following an attack against a human rights defender working on the rights of transgender people and sex workers in Turkey, OHCHR expressed deep concern that “police officers trivialized the attack, used discriminatory language, tried to dissuade the victim from filing a complaint, and did not provide protection from additional threats by the alleged perpetrators”.³¹² The Committee on the Elimination of Discrimination against Women has expressed concern about “mistreatment by the police, and the absence of official statistics on complaints and cases brought to the criminal justice system” in relation to cases of violence against lesbian, bisexual and transgender women in Ecuador.³¹³ The Special Rapporteur on extrajudicial executions has expressed concern that “investigations into deaths of lesbian, gay, bisexual and transgender persons in Honduras continue to be influenced by discriminatory stereotypes, and that only a small fraction (20.6 per cent) of murder cases appear to lead to prosecutions”.³¹⁴

In the case of *Atala Riffo and Daughters v. Chile*, the Inter-American Court of Human Rights found that, in denying a lesbian woman custody of her children based inter

³⁰⁹ Committee on the Elimination of Discrimination against Women, General Comment No. 33 (CEDAW/C/GC/33), 2015, para. 3.

³¹⁰ See Chapters II and III of this publication and Human Rights Committee, Concluding Observations on Costa Rica (CCPR/C/CRI/CO/6), 2016, paras. 11-12; Committee Against Torture, General Comment No. 3 (CAT/C/GC/3), 2012, para. 32; Committee on the Elimination of Discrimination against Women, General Recommendation No. 33 (CEDAW/C/GC/33), 2015, para. 8; report of the Special Rapporteur on human rights defenders, (A/70/217) 2017, para. 66, and report on a mission to India (A/HRC/19/55/Add.1), 2012, para. 122.

³¹¹ Report of the Special Rapporteur on human rights defenders (A/HRC/31/55/Add.2) 2015, para. 56; Committee on the Elimination of Discrimination against Women, Concluding Observations on Ecuador (CEDAW/C/ECU/CO/8-9) 2015, para. 20(f); Report of the Special Rapporteur on torture (A/56/156) 2001, paras. 18, 21.

³¹² OHCHR, Press briefing note on Turkey, 14 July 2015, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16233

³¹³ Committee on the Elimination of Discrimination against Women, Concluding Observations on Ecuador (CEDAW/C/ECU/CO/8-9) 2015, para. 20(f).

³¹⁴ Report of the Special Rapporteur on extrajudicial executions on a visit to Honduras (A/HRC/35/23/Add.1), 2017, para. 41.

alia on her sexual orientation, Chilean courts violated guarantees of impartiality and non-discrimination.³¹⁵ The Court, in particular, ruled that “considerations based on stereotypes of sexual orientation [...] are not admissible” and ordered the State to undertake training of judicial officials to overcome such stereotypes, as part of the measures of redress and non-repetition.³¹⁶

The Human Rights Committee has expressed concern about the lack of effective investigation and prosecution for acts of violence committed against LGBT people,³¹⁷ has called for perpetrators, including State officials, to be brought to justice and punished appropriately,³¹⁸ and has stressed that remedies should take account of the special vulnerability of certain categories of person.³¹⁹ The Committee on the Rights of the Child has expressed concern about the lack of redress and compensation in cases of medically unnecessary procedures on intersex children.³²⁰ The Committee against Torture has expressed concern regarding the lack of adequate redress and compensation in cases of forced, involuntary or otherwise coercive or abusive treatments of LGBTI persons,³²¹ and has noted that States are required to ensure that “access to justice, and to mechanisms for seeking and obtaining redress are readily available and that positive measures ensure that redress is equally accessible to all persons regardless of ... sexual orientation, gender identity”.³²² The Committee on the Elimination of Discrimination against Women has noted that being lesbian, bisexual, transgender or intersex are among intersecting factors that make it more difficult to gain access to justice.³²³

States must ensure that torture, ill-treatment and violence against LGBTI people are prohibited by domestic laws; and must include sexual orientation, gender identity and sex characteristics as protected grounds in laws against discrimination and hate crimes.³²⁴ States have a duty to address impunity for

³¹⁵ *Atala Riffo and Daughters v. Chile*, Inter-Am. Comm. HR, Case 12.502, 2012.

³¹⁶ *Ibid.*, paras. 111 and 271.

³¹⁷ Human Rights Committee, Concluding Observations on Croatia (CCPR/C/HRV/CO/3), 2015, para. 10.

³¹⁸ *Ibid.* See also Human Rights Committee, Concluding Observations on Costa Rica (CCPR/C/CRI/CO/6), 2016, paras. 11-12.

³¹⁹ Human Rights Committee, General Comment No. 31 (CCPR/C/21/Rev.1/Add.1326), 2004, para. 15.

³²⁰ Committee on the Rights of the Child, Concluding Observations on Ireland (CRC/C/IRL/CO/3-4), 2016, para. 39.

³²¹ Committee against Torture, Concluding Observations on Germany (CAT/C/DEU/CO/5), 2011, para. 20, and on China (CAT/C/CHN/CO/5), 2015, para. 56.

³²² Committee against Torture, General Comment No. 3 (CAT/C/GC/3), 2012, paras. 32, 39.

³²³ Committee on the Elimination of Discrimination against Women, General Comment No. 33 (CEDAW/C/GC/33), 2015, para. 8.

³²⁴ Report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, para. 78; Human Rights Committee, Concluding Observations on Jamaica (CCPR/C/JAM/CO/3), 2011, para. 8.

abuses, including by repealing all laws or policies that allow, justify or condone violence and discrimination against LGBTI people.³²⁵ States must also exercise due diligence and independently, promptly and thoroughly investigate all forms of abuse by State and non-State actors and bring perpetrators to justice.³²⁶ States have an obligation to construct a legal and institutional framework, and procedures, which facilitate access to independent and effective judicial mechanisms and ensure a fair outcome for those seeking redress, without discrimination of any kind.³²⁷

POSITIVE PRACTICE

Mexico – Protocol for Judicial Actors on Sexual Orientation and Gender Identity

In 2014, the Supreme Court of Mexico issued a protocol that offers clarification and guiding principles to judges and other judicial officials for the adjudication of cases involving sexual orientation and gender identity, and to some extent also bodily diversity. The protocol, while not legally binding, is a strong affirmation from the highest level of the judiciary of the legal protection available to LGBTI people. It identifies common harmful stereotypes and misconceptions, which may hinder access to justice in various sectors, including gender identity recognition, family life and relationships, employment, the criminal system, health, education, deprivation of liberty, and freedom of expression and association.³²⁸

K. FAMILIES AND COMMUNITY

States' responsibility to protect individuals from discrimination extends to the family sphere, where rejection and discriminatory treatment of LGBTI family members can have serious negative consequences for the enjoyment of human rights.³²⁹ Examples include individuals being excluded from family homes, disinherited, prevented from going to school, sent to psychiatric institutions, forced to marry, forced to give up custody of their children, punished for human rights work and subjected to aggressive attacks on personal reputation.³³⁰

³²⁵ Report of the Special Rapporteur on extrajudicial executions (A/HRC/35/23), 2017, para. 110(b).

³²⁶ See for example, Committee against Torture, Concluding Observations on Peru (CAT/C/PER/CO/5-6), 2013; Human Rights Committee, Concluding Observations on Guatemala (CCPR/C/GTM/CO/3), 2012, para. 11; on Jamaica, (CCPR/C/JAM/CO/3), 2011, para. 8.

³²⁷ Report of the Special Rapporteur on extreme poverty (A/67/278), 2012, para. 11.

³²⁸ OHCHR, *Living Free and Equal: What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people*, 2016, p. 116.

³²⁹ Report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, para. 66.

³³⁰ *Ibid.*

United Nations human rights experts have drawn attention to the many violations of human rights to which discrimination in family settings can give rise, and have highlighted the particular vulnerability of lesbians, bisexual women and transgender persons in this context, in the light of underlying gender inequalities and restrictions on women's autonomy in respect of their sexuality, reproduction and family life choices.³³¹ They have urged States to review policies and implement awareness-raising initiatives in a bid to address the issue.³³²

L. RECOGNITION OF RELATIONSHIPS

States have a positive obligation to provide legal recognition to couples, regardless of sexual orientation, gender identity and sex characteristics, as well as to their children. Legal recognition may take various forms, ranging from civil unions and civil partnerships to marriage. Regardless of the form of relationship recognition, States are obliged to address discrimination in this area by, inter alia, ensuring that benefits traditionally accorded to married partners – including those related to benefits, pensions, and taxation and inheritance – are accorded on a non-discriminatory basis.³³³ States should ensure the right to legal recognition of gender without the requirement of dissolution of marriage or civil partnership.³³⁴ Legislation and procedures regulating marriage and civil unions should not be based on the sex assigned to a person at birth and States should also remove other restrictions on relationship recognition, parenting or adoption on the basis of a person's sex, gender identity or expression, including for persons who are transgender, intersex and/or non-binary.³³⁵

In many countries, the State provides benefits to married and unmarried heterosexual couples but denies these benefits to same-sex couples. Examples include pension entitlements, the ability to leave property to a surviving partner, the opportunity to remain in public housing following a partner's death, or the

³³¹ See Report of the Special Rapporteur on freedom of religion or belief (A/68/290), 2013, para. 38; Report of the Special Rapporteur on violence against women (A/HRC/20/16/Add.4), 2012, para. 20; Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran (A/HRC/22/56), 2013, para. 70; Report of the Special Rapporteur on the human rights of migrants, on a mission to Qatar (A/HRC/26/38/Add.1), 2014, para. 19; Report of the Working Group on the issue of discrimination against women in law and in practice (A/HRC/29/40), 2015, at para. 21.

³³² See, for example, Committee on the Elimination of Discrimination against Women, Concluding Observations on Fiji (CEDAW/C/FJI/CO/5), 2018, para. 51.

³³³ Report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, para. 79(h); *Young v. Australia*, Human Rights Committee, Communication No. 941/2000 (CCPR/C/78/D/941/2000), paras. 10.4; OHCHR, *Living Free and Equal: What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people*, 2016, p. 75.

³³⁴ Human Rights Committee, Concluding Observations on Ireland (CCPR/C/IRL/CO/4), 2014, para. 7.

³³⁵ OHCHR, *Living Free and Equal*, 2016, p. 76.



chance to secure residency for a foreign partner.³³⁶ Lack of official recognition of same-sex relationships and absence of legal prohibition on discrimination can also result in same-sex partners being discriminated against by private companies, organizations or individuals, including health-care providers and insurance companies.³³⁷ The United Nations Children’s Fund (UNICEF), the Committee on the Rights of the Child and the Inter-American Court of Human Rights have expressed concern at discrimination against, and the lack of legal protection of, children of same-sex couples.³³⁸ Some States require married transgender persons to divorce as a requirement for legal gender recognition, while others exclude trans and intersex persons from marriage by only recognising sex assigned at birth.³³⁹ States that define marriage and

³³⁶ *Young v. Australia*, Human Rights Committee, Communication No. 941/2000 (CCPR/C/78/D/941/2000), at para. 10.4; *X v. Colombia*, Human Rights Committee, Communication No. 1361/2005 (CCPR/C/89/D/1361/2005), at para. 7.2.

³³⁷ Report of the United Nations High Commissioner for Human Rights on discriminatory laws and practices and acts of violence based on their sexual orientation and gender identity (A/HRC/19/41), 2011, para. 69.

³³⁸ See report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, para. 122; Committee on the Rights of the Child, General Comment No.15 (CRC/C/GC/15), 2013, para. 8; Committee on the Rights of the Child, Concluding Observations on the Gambia (CRC/C/GAM/CO/2-3), 2015, paras. 29-30; and UNICEF, Position Paper No. 9: Eliminating discrimination against children and parents based on sexual orientation and/or gender identity, 2014.

³³⁹ Transgender Europe, *Trans Respect versus Transphobia project: Legal Gender Recognition*, 2017. Available from <http://transrespect.org/en/map/pathologization-requirement/?submap=marriage-divorce#>; UNDP, APTN, *Legal Gender Recognition: A Multi-country Legal and Policy Review*, 2017, Malawi Marriage, Divorce and Family Relations Act 2015.

other legally recognized relationships as exclusively between men and women further exclude non-binary persons who identify as neither.³⁴⁰

In the case of *G. v. Australia*, the Human Rights Committee found that Australia's refusal for a trans woman to change the sex marker on her birth certificate to align with her gender identity, unless she divorced from her spouse, constituted arbitrary or unlawful interference with her privacy and family, as well as discrimination on the basis of marital and transgender status.³⁴¹

The Committee on Economic, Social and Cultural Rights has called on States to ensure that individuals in same-sex unions are entitled to equal enjoyment of their economic, social and cultural rights,³⁴² including by undertaking a comprehensive review of legislation to ensure de jure equality between de facto and official unions, to legally recognize same-sex couples and to regulate the financial effects of such relationships.³⁴³ When States have legally recognized same-sex marriage, it has been welcomed by various United Nations entities.³⁴⁴

M. POLITICAL PARTICIPATION AND CONSULTATION

The right to participate on a basis of equality in public and political life³⁴⁵ is a crucial factor in ensuring inclusive democratic governance, the rule of law, social inclusion, economic development and the advancement of broader human rights. It is important in empowering individuals and groups, and is one of the core elements of human rights-based approaches aimed at eliminating marginalization and discrimination.³⁴⁶

³⁴⁰ Byrne J., *License to be yourself: Marriage and Forced Divorce*, Brief 1 of 4, Legal gender recognition issue briefs, Open Society Foundations, 2015.

³⁴¹ *G. v. Australia*, Human Rights Committee, Communication No. 2172/2012 (CCPR/C/119/D/2172/2012), 2017, paras. 7.10 and 7.15.

³⁴² See, for example, Committee on Economic, Social and Cultural Rights, *Concluding Observations on Italy* (E/C.12/ITA/CO/5), 2015, para. 17.

³⁴³ See Committee on Economic, Social and Cultural Rights, *Concluding Observations on Bulgaria* (E/C.12/BGR/CO/4-5), 2012, para. 17; and on the former Yugoslav Republic of Macedonia (E/C.12/MKD/CO/2-4), 2016, paras. 25-26.

³⁴⁴ Human Rights Committee, *Concluding Observations on France* (CCPR/C/FRA/CO/5), 2015, para. 3(e); on Canada (CCPR/C/CAN/CO/6), 2015, para. 3(b); on the United Kingdom (CCPR/C/GBR/CO/7), 2015, para. 3(f); on New Zealand (CCPR/C/NZL/CO/6), 2016, para. 3(g); Report of the High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015.

³⁴⁵ Universal Declaration of Human Rights, art. 21; International Covenant on Civil and Political Rights, art. 25; International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(c); Convention on the Elimination of All Forms of Discrimination against Women, art. 7; Convention on the Rights of Persons with Disabilities, art. 29.

³⁴⁶ Report of the Office of the United Nations High Commissioner for Human Rights on "Factors that impede equal political participation and steps to overcome those challenges" (A/HRC/27/29), 2014, at para. 2.

Effective participation in public and political life is limited or prevented by formal and substantive discrimination.³⁴⁷ Such discrimination may be overt – for example, restrictions on freedom of expression related to sexual orientation and gender identity, banning LGBT pride marches and political rallies, shutting down LGBT advocacy organizations and online networks, and using so-called “anti-propaganda laws” to exclude LGBT voices from public policy debates;³⁴⁸ or it may be more indirect – for example promoting crude, negative stereotypes of LGBTI people in an attempt to discredit LGBTI advocates and dismiss their concerns. See, also, Chapter V.

The Working Group on Discrimination against Women and Girls has noted that women who belong to vulnerable groups “are effectively barred from political and public life based on multiple stereotyping”, in respect of inter alia sexual orientation and gender identity.³⁴⁹ Discrimination has also been observed in relation to candidates for elective office who advocate for the rights of lesbian, gay, bisexual, transgender and intersex persons.³⁵⁰

States should not only take preventative measures to protect individuals from discrimination in this area, but should also, in line with international human rights law and the Sustainable Development Goals, encourage and promote effective public, public-private and civil society partnerships.³⁵¹ In this context, it is critical that authorities consult and partner with LGBTI people and civil society organizations in all initiatives and policy-making processes that affect the rights of LGBTI people. Proactive involvement of civil society in the drafting and review of legislation and policy can strengthen the legitimacy of the process, and lead to more inclusive, informed and comprehensive outcomes.³⁵²

³⁴⁷ *Ibid.*, para. 41.

³⁴⁸ Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/26/29), 2014, at paras. 27-78; Report of the United Nations High Commissioner for Human Rights on “Promotion, protection and enjoyment of human rights on the Internet: ways to bridge the gender digital divide from a human rights perspective,” (A/HRC/35/9), 2017, para. 10.

³⁴⁹ Report of the Working Group on the issues of discrimination against women in law and practice (A/HRC/23/50), 2013, at para. 70.

³⁵⁰ Report of the Office of the United Nations High Commissioner for Human Rights on “Factors that impede equal political participation and steps to overcome those challenges” (A/HRC/27/29), 2014, at para. 15.

³⁵¹ Sustainable Development Goals, 17.17.

³⁵² Report of the United Nations High Commissioner for Human Rights on a safe and enabling environment for civil society (A/HRC/32/20), 2016, para. 59.

POSITIVE PRACTICE

Malta: Consultative Body on the Rights of Lesbian, Gay, Bisexual, Transgender, Intersex and Queer People

In 2013, the Minister for Social Dialogue and Consumer Affairs of Malta established the LGBTIQ Consultative Council, an independent consultative body tasked with advising the government on matters relating to the rights of LGBTIQ people, including through putting forward legislation, policies and other measures to advance the rights of LGBTIQ people. A key feature of the Council is that it is comprised of representatives of local civil society organizations that work specifically on the rights of LGBTIQ persons, which facilitates the engagement of key stakeholders in the policy-making process, ensuring that those most affected are able to input into policy development.³⁵³

N. CONCLUSION

States are required to guarantee non-discrimination in the exercise of all human rights for everyone, regardless of sexual orientation, gender identity or sex characteristics. This is an immediate and cross-cutting obligation under international human rights law. States should enact comprehensive legislation that prohibits discrimination on the grounds of sexual orientation, gender identity and sex characteristics in both the public and private sphere, including in the areas highlighted in this chapter. Such legislation should ensure remedies for victims of discrimination and the right to equal and effective access to justice. States should also adopt awareness-raising campaigns and training programmes to prevent and combat discrimination, and tackle discriminatory social attitudes and other root causes of discrimination.

³⁵³ OHCHR, *Living Free and Equal: What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people*, 2016, p. 117.



V. RESPECT FREEDOM OF EXPRESSION, PEACEFUL ASSEMBLY AND ASSOCIATION

States have an obligation to guarantee to everyone the rights to freedom of expression, association and peaceful assembly, without discrimination. Limitations on these rights that are based on sexual orientation, gender identity or expression or sex characteristics violate international human rights norms and standards, including the non-exhaustive list below. Any restrictions on these rights must comply with strict safeguards in international human rights law, including non-discrimination provisions.

Universal Declaration of Human Rights

Article 19: Everyone has the right to freedom of thought and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas.

Article 20(1): Everyone has the right to freedom of peaceful assembly and association.

International Covenant on Civil and Political Rights

Article 19(2): Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Article 21: The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22(1): Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

Declaration on Human Rights Defenders

Article 1: Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

A. POSITIONS TAKEN BY UNITED NATIONS HUMAN RIGHTS MECHANISMS

The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights guarantee to everyone the rights to freedom of opinion and expression, peaceful assembly, and association. Freedom of expression includes the right to seek, receive and impart information and ideas of all kinds. It is integral to the enjoyment of the rights of association and assembly. Freedom of association involves individuals joining together to collectively express, promote, pursue and defend common interests. Freedom of assembly refers to any kind of meeting, in public or private, including demonstrations, marches and parades. These rights apply to everyone, without discrimination, and are at the heart of an active civil society and a functioning democracy.³⁵⁴ Under the International Covenant on Civil and Political Rights, strict safeguards apply to the possibility of States constraining these rights: restrictions must be provided for by law, be necessary in a democratic society and be for the protection of a legitimate purpose listed in articles 19, 21 and 22 of the Covenant (including protecting national security, public order, public health, morals, and the rights, freedoms or reputations of others), with the Human Rights Committee issuing authoritative guidance and interpretation of these provisions. Laws restricting these rights “must themselves be compatible with the provisions, aims and objectives of the Covenant” and must “not violate the non-discrimination provisions of the Covenant.”³⁵⁵ Such safeguards apply equally online and offline.³⁵⁶

B. LEGAL RESTRICTIONS ON FREEDOM OF EXPRESSION, ASSOCIATION AND PEACEFUL ASSEMBLY

In recent years, laws have been enacted or proposed in several States that seek to prohibit or restrict public discussion of sexual orientation and gender identity, the work of human rights defenders and civil society organizations working on the human rights of LGBT people and events related to these issues, often under the guise of “protecting minors”.³⁵⁷ They are frequently vaguely worded and

³⁵⁴ See, for example, General Assembly resolution 59/20, and “Guidance Note of the Secretary-General on Democracy”, accessible at www.un.org/democracyfund/sites/www.un.org.democracyfund/files/un_sg_guidance_note_on_democracy.pdf.

³⁵⁵ Human Rights Committee, General Comment No. 34 (CCPR/C/GC/34), 2011, at para. 26; see also, General Comment No. 22, 1994, at para. 8.

³⁵⁶ Human Rights Committee, General Comment No. 34 (CCPR/C/GC/34), 2011, para. 43; Report of the Special Rapporteur on freedom of expression (A/HRC/17/27), 2011.

³⁵⁷ Report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, para. 48; Committee on the Elimination of Discrimination against Women, Concluding Observations on Kyrgyzstan (CEDAW/C/KGZ/CO/4), 2015, paras. 9, 10.

arbitrarily restrict the rights to freedom of expression, peaceful assembly and association, as well as the right to information, enshrined in international law.³⁵⁸ They often also criminalize the legitimate work of human rights defenders and contribute to a broader climate of shrinking civil society space and the ongoing persecution of members of the LGBT community, including young persons who identify or are perceived as LGBT.³⁵⁹

United Nations treaty bodies and special procedures have systematically rejected such restrictions as not meeting the aforementioned strict safeguards in international human rights law, finding that such restrictions were, *inter alia*, not based on any credible evidence, were not necessary, were not proportionate, were discriminatory, and amounted to violations of rights enshrined in international law. For example, special procedures have expressed concerns about restrictions introduced under laws that have also expanded criminalization of consensual same-sex relations (see also Chapter III), as in Nigeria and Uganda, as well as through specific so-called “anti-propaganda” laws and related developments in Kyrgyzstan, the Republic of Moldova, the Russian Federation and Ukraine.³⁶⁰ In the case of *Fedotova v. Russia*, the Human Rights Committee decided that a conviction for so-called “propaganda of homosexuality among minors” amounted to a violation of the right to freedom of expression and equal protection of the law.³⁶¹ Regarding the Same Sex Marriage (Prohibition) Act in Nigeria, a group of special procedures expressed concern with regards to the multiple and far-reaching discriminatory provisions of the law – including the negative impact on organizations that “provide psycho-social support to LGBT people, those who advocate for human rights for all without discrimination, and those working to prevent transmission of HIV”.³⁶²

The Committee on the Rights of the Child has highlighted how, far from protecting minors, such legislation in fact “encourages stigmatization of and

³⁵⁸ *Inter alia*, ICCPR articles 2, 19, 21, 22, 26 and Committee on the Rights of the Child articles 2, 13, 15, 16, 17.

³⁵⁹ Report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, para. 48; *Irina Fedotova v. Russian Federation*, Human Rights Committee, Communication No. 1932/2010 (CCPR/C/106/D/1932/2010), 2012, para. 10.8; Human Rights Committee, Concluding Observations on Lithuania (CCPR/C/LTU/CO/3), 2012, para. 8.

³⁶⁰ See report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, para. 48; Communications reports of special procedures (A/HRC/23/51), 2013, UKR 3/2012, p. 31, (A/HRC/25/74), 2014, MDA 4/2013, p. 51, RUS 3/2013, p. 23, RUS 4/2013, p. 40, (A/HRC/26/21), 2014, NGA 1/2014, p. 40, UGA 1/2014, p. 53, UGA 1/2013; p. 23, (A/HRC/27/72), 2014, KGZ 1/2014, p. 55.

³⁶¹ *Irina Fedotova v. Russian Federation*, Human Rights Committee, Communication No. 1932/2010 (CCPR/C/106/D/1932/2010), 2012, para. 10.8.

³⁶² Joint letter of allegation to Nigeria, NGA 1/2014, (A/HRC/26/21), 2014, p. 40.



discrimination against LGBTI persons, including children, and children of LGBTI families” and “leads to the targeting and ongoing persecution of the country’s LGBTI community, including abuse and violence, in particular against underage LGBTI rights activists”.³⁶³

C. OTHER DISCRIMINATORY RESTRICTIONS

In addition to legal restrictions, States have also sometimes tried to invoke “public morals”, “protecting the rights of children” and “public order” to try to justify other limitations on the rights to freedom of association, expression and assembly of individuals and organizations speaking, meeting or organizing to protect the human rights of LGBT people.

United Nations human rights experts have rejected such justifications and expressed similar concerns as they have with regards to discriminatory legislation (see previous section and Chapter III).³⁶⁴ In a joint statement on freedom of expression and association, United Nations and regional human rights experts

³⁶³ Committee on the Rights of the Child, Concluding Observations on the Russian Federation (CRC/C/RUS/CO/4-5), 2014, paras. 24-25.

³⁶⁴ See, for example, Human Rights Committee, Concluding Observations on Georgia (CCPR/C/GEO/CO/4), 2014, para. 8; Nikolai Alekseev v. Russian Federation, Communication No. 1873/2009 (CCPR/C/109/D/1873/2009) 2013; Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/26/29), 2014, paras. 10, 27, 28, 30, 31, 44, 46, 55, 64; Reports of the Special Rapporteur on human rights defenders, on communications (A/HRC/31/55/Add.1), 2016, para. 109; Report of the Special Rapporteur on violence against women (A/HRC/4/34/Add.1), paras. 28, 29; Reports of the Special Rapporteur on freedom of expression and opinion, (A/71/373), 2016, para. 47, (A/HRC/29/32), 2015, paras. 1, 12; Report of the Special Rapporteur on torture (E/CN.4/2001/66), 2001, para. 1153.

stated that they “categorically reject arguments that such restrictions to the rights of LGBTI people are necessary to protect public morals, health or the well-being of vulnerable people”.³⁶⁵ The Human Rights Committee has found that a ban on a gathering to advocate for the rights of sexual minorities “was not necessary in a democratic society in the interest of public safety, and violated article 21 of the Covenant”.³⁶⁶

Concerns include direct censorship, bans on dissemination of information and restrictions on advocacy, the work of human rights defenders and civil society organizations and peaceful assemblies.³⁶⁷ LGBT organizations continue to have registration applications rejected, reviews delayed and legal registration revoked on discriminatory grounds.³⁶⁸ Permission to hold meetings, workshops and cultural events have been denied in an attempt to suppress political and artistic expression.³⁶⁹ Police officers have raided the offices of LGBT groups, arrested and harassed staff and volunteers, and confiscated materials, sometimes putting the privacy and safety of staff and supporters at risk.³⁷⁰

After LGBT pride marches were banned in Moscow, the Human Rights Committee expressed concern about such infringements and urged the Russian Federation to “take all necessary measures to guarantee the exercise in practice of the right to peaceful association and assembly for the LGBT community”.³⁷¹ In a letter of allegation regarding undue delays in the registration process of a non-governmental organization working on LGBT, intersex and sex worker issues in Zambia, the Special Rapporteur on freedom of association and assembly expressed:

³⁶⁵ Joint statement of international and regional human rights experts, “Free expression and association key to eliminating Homophobia and Transphobia” (May 2014), available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14602&LangID=E.

³⁶⁶ Nikolai Alekseev v. Russian Federation, Communication No. 1873/2009 (CCPR/C/109/D/1873/2009) 2013, para. 9.6.

³⁶⁷ Report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, para. 60; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/20/22/Add.2), 2012, para. 55; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/64/211), 2009, paras. 21-27.

³⁶⁸ Report of the Special Rapporteur on Belarus (A/69/307), 2014, para. 30; Report of the United Nations High Commissioner for Human Rights, on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, para. 61.

³⁶⁹ Report of the Special Rapporteur in the field of cultural rights, on a mission to the Russian Federation (A/HRC/23/34/Add.1), 2013, paras. 101-103; Report of the United Nations High Commissioner for Human Rights, on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, para. 61.

³⁷⁰ Report of the Special Rapporteur on torture (A/HRC/22/53/Add.4), 2013, para. 162; Report of the United Nations High Commissioner for Human Rights, on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, para. 61.

³⁷¹ Concluding Observations of the Human Rights Committee on the Russian Federation (CCPR/C/RUS/CO/6), 2009, at para. 27.

*concern at the reportedly undue delays in reviewing the application for registration of the Engender Rights Centre for Justice and the subsequent refusal to register it for reasons that could be related to the organization's peaceful activities in advocating and speaking out against discrimination and defending the rights of LGBTI persons in Zambia.*³⁷²

A supportive legal framework for civil society actors is integral to rights protection. Courts must be able to review, in a timely manner, sanctions by State authorities against civil society organizations to assess whether such measures are legitimate, necessary and proportionate and otherwise compliant with international human rights norms and standards.³⁷³

D. PROTECTION FROM ATTACKS AND THREATS

In addition to legal and other discriminatory restrictions, LGBTI defenders and those working on related issues also face sexual violence, physical attacks, threats, arrests, torture and ill-treatment, and, in some cases, murder in retaliation for speaking out (see also Chapters I, II and III).³⁷⁴ In some cases, inaction by authorities in relation to such abuses prevents individuals and groups from exercising their right to freedoms of expression, association and peaceful assembly. The Secretary-General has expressed concern at reprisals and intimidation against human rights defenders and their families for their advocacy at the United Nations to protect the human rights of LGBT people.³⁷⁵

The offices of LGBT organizations have been targets of vandalism, burglary and arson,³⁷⁶ and such incidents are seldom investigated promptly.³⁷⁷ For example, in

³⁷² Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/32/36/Add.3), 2016, para. 137.

³⁷³ Report of the United Nations High Commissioner for Human Rights on a safe and enabling environment for civil society (A/HRC/32/20), 2016, para. 22.

³⁷⁴ Reports of the Special Rapporteur on human rights defenders, (A/HRC/16/44), 2011, at paras. 37, 43, 85; (A/HRC/13/22/Add.3), 2010, at paras. 49-51.; (A/HRC/13/22), 2010, at para. 49; (A/HRC/10/12), 2009, at paras. 21, 65, 72, 74, 82. Reports of the Special Rapporteur on freedom of expression and opinion, (A/HRC/17/27/Add.1), 2011, at paras. 1654-1659, and 2228-2231; (A/HRC/14/23/Add.1), 2010, at paras. 485-505, 1018-1048, 2483-2489, and 2093-2113;

³⁷⁵ Report of the Secretary-General on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights (A/HRC/39/41), para. 81.

³⁷⁶ Communications report of special procedures (A/HRC/25/74) 2014, see MKD 2/2013; (A/HRC/23/51), 2013, see CRI 2/2012; Report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, para. 61.

³⁷⁷ Report of the Special Rapporteur on human rights in Belarus (A/69/307), 2014, para. 86; Report of the Special Rapporteur on torture (A/HRC/22/53/Add.4), 2013, para. 162; Report of the independent expert on the situation of human rights in Haiti (A/HRC/25/71), 2014, para. 55; Report of the Independent Expert on the situation of human rights in Côte d'Ivoire (A/HRC/26/52), 2014, para. 33; Report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, para. 61.



Bosnia and Herzegovina, unidentified individuals violently disrupted LGBTI events in 2008 and 2014. In both cases, the police failed to provide protection to the organizers and participants.³⁷⁸ The Human Rights Committee has emphasized that States parties have a duty to protect participants in a demonstration advocating for the rights of LGBT people from violence by others.³⁷⁹

The Special Rapporteur on freedom of association and assembly has recommended that States ensure that administrative and law enforcement officials are adequately trained in relation to respect of the rights of individuals belonging to groups most at risk where freedom of peaceful assembly and association are concerned, in particular in relation to their specific protection needs.³⁸⁰

The Special Rapporteur on Human Rights Defenders has noted that defenders who challenge social and cultural norms, do not fit stereotypes and prescribed roles, or who challenge power structures in society – including human rights defenders working on issues of sexual orientation or gender identity – are often stigmatized and subjected to threats and attacks from members of society because of who they are or what they do.³⁸¹ The obligation of States to protect human rights defenders against threats by others must be adapted to the specific needs and situation of defenders of the rights of LGBTI persons.³⁸²

³⁷⁸ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/26/29), 2014, para. 46.

³⁷⁹ Nikolai Alekseev v. Russian Federation, Communication No. 1873/2009 (CCPR/C/109/D/1873/2009) 2013, para. 9.6.

³⁸⁰ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/26/29), 2014, para. 74.

³⁸¹ Reports of the Special Rapporteur on the situation of human rights defenders (A/HRC/31/55) 2016, para. 27; see also, (A/70/217) 2017, paras. 65-67.

³⁸² Ibid.

POSITIVE PRACTICE

Botswana – The Case of LEGABIBO

The civil society organization Lesbians, Gays and Bisexuals of Botswana (LEGABIBO) was refused its request to register by the Ministry of Labour and Home Affairs on grounds that the organization would, according to the Ministry, be “likely to be used for any unlawful purpose or any purpose prejudicial to, or incompatible with peace, welfare or good order” and because, according to the authorities, “the Constitution of Botswana does not recognize homosexuals”. The High Court and the Court of Appeal in Botswana rejected these arguments as unfounded and established that the denial of registration was illegal and unconstitutional. The Court of Appeal found that the refusal to allow LEGABIBO to register violated the rights of lesbian, gay and bisexual people to freedom of assembly and association protected by the Constitution of Botswana.⁸

E. ONLINE RESTRICTIONS

State obligations to uphold and protect the rights to freedom of expression, association and assembly apply in all contexts – including online. The Special Rapporteur on freedom of expression has expressed concern with regard to online censorship, mass and targeted surveillance and data-collection, digital attacks on civil society and repression resulting from online expression.³⁸³ This has specific impacts on LGBT people: for example, the Special Rapporteur has highlighted that surveillance has a disproportionate impact on gender and sexual minorities, amongst other groups. The Rapporteur has also emphasized the importance of encryption and anonymity to allow those persecuted because of their sexual orientation or gender identity to exercise the rights to freedom of opinion and expression, including for online security, protection of privacy, and to browse, read, develop and share opinions and information without interference.³⁸⁴ The ability to search the web, develop ideas and communicate securely may be the only way in which many can explore basic aspects of identity, such as their gender, religion, ethnicity, national origin or sexuality.³⁸⁵ Blocking, filtering, and other online restrictions must comply with the same safeguards in international law as offline restrictions³⁸⁶ (see also sections in this chapter on legal and other restrictions) – which precludes any discriminatory measures that specifically block or restrict content based on sexual orientation or gender identity or related to the human rights of LGBTI people.

³⁸³ Report of the Special Rapporteur on freedom of expression and opinion, (A/HRC/29/32), 2015, para. 1.

³⁸⁴ Report of the Special Rapporteur on freedom of expression and opinion (A/HRC/29/32), 2015, para. 1 and (A/HRC/32/38), 2016, para. 57.

³⁸⁵ *Ibid.*, at para. 12.

³⁸⁶ Human Rights Committee, General Comment No. 34 (CCPR/C/GC/34), 2011, para. 43.

F. RESTRICTIONS ON FUNDING OF CIVIL SOCIETY ORGANIZATIONS

In addition to the restrictions mentioned in previous sections, some States have also adopted bans on non-governmental organizations receiving funding from abroad, allegedly in order to curb the influence of so-called “foreign agents”.³⁸⁷ The ability of associations to access funding and resources is an integral and vital part of the right to freedom of association, while predictability of core funding is fundamental if civil society organizations are to work effectively and independently, undertake long-term planning and adapt to evolving situations.³⁸⁸ Stigmatization and undue restrictions on access to funding and resources for civil society organizations often constitute attempts to undermine the right to freedom of association, stifle any form of criticism and deny accountability for human rights violations.³⁸⁹

States have a positive duty to strengthen the resources and capacities of civil society, including through human rights education and training, funding and access to information technology.³⁹⁰ In some cases, funding to non-governmental organizations (NGOs) working on LGBT issues has been restricted, whether through specific bans on funding work on these issues or laws that restrict foreign funding.³⁹¹ In some cases, such restrictions may not be formally enshrined in the laws regulating the establishment and functioning of NGOs, but in administrative practices related to their application.

As noted by the Special Rapporteur on freedom of peaceful assembly and association, all associations, registered or unregistered, should have the right to seek, secure and use funding and resources from domestic, foreign, and international entities, including individuals, businesses, civil society organizations, governments and international organizations as part of the right

³⁸⁷ Report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, para. 49; communications report of special procedures (A/HRC/25/74) 2014, see RUS 3/2013 at p. 23.

³⁸⁸ Report of the Special Rapporteur on freedom of peaceful assembly and of association (A/HRC/20/27), 2012, paras. 67-68; Report of the United Nations High Commissioner for Human Rights on a safe and enabling environment for civil society (A/HRC/32/20), 2016, para. 72.

³⁸⁹ See observations on communications transmitted to governments and replies received in the report of the Special Rapporteur on freedom of peaceful assembly and association (A/HRC/20/27/Add.3), 2012.

³⁹⁰ Report of the Special Rapporteur on human rights defenders (A/HRC/31/55), 2016, para. 43; Report of the United Nations High Commissioner for Human Rights on a safe and enabling environment for civil society (A/HRC/32/20), 2016, para. 64.

³⁹¹ Report of the United Nations High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015 para. 49; communications report of special procedures (A/HRC/25/74), 2014, see RUS 3/2013; Report of the Special Rapporteur on health (A/HRC/14/20/Add.1), 2010, para. 344.

to freedom of association.³⁹² The Human Rights Committee has also expressed concern at domestic legislation that limits the ability of NGOs to seek foreign funding, stating its inconsistency with the International Covenant on Civil and Political Rights, and the Human Rights Council has unanimously called on States to “ensure that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders” and that “no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding thereto”.³⁹³

G. CONCLUSION

States must guarantee the rights to freedom of opinion and expression, peaceful assembly and association to everyone, regardless of sexual orientation, gender identity or expression or sex characteristics, including human rights defenders working on these issues, and must ensure that any restrictions on these rights are not discriminatory and comply with all safeguards in international law. These same rights apply online as offline. States must repeal legal restrictions on these rights, remove or cease applying other restrictions and protect these rights, including by preventing or effectively investigating and punishing acts of violence, threats and intimidation that impinge on the exercise of these rights. The State bears an obligation to provide effective and prompt remedy to those whose rights to freedoms of expression, assembly and association have been violated.³⁹⁴

³⁹² Report of the Special Rapporteur on freedom of peaceful assembly and of association (A/HRC/20/27), 2012, paras. 67-68 and (A/HRC/23/39), 2013, para. 8.

³⁹³ See for example, Human Rights Committee, Concluding Observations on Azerbaijan (CCPR/C/AZE/CO/4), 2016, para. 40; on Venezuela (CCPR/C/VEN/CO/4), 2015, para. 20; on the Russian Federation (CCPR/C/RUS/CO/7), 2015, para. 22; and on Israel (CCPR/C/ISR/CO/4), 2014, para. 22; Human Rights Council resolution 22/6.

³⁹⁴ See Human Rights Committee, General Comment No. 31, para. 15.





VI. CONCLUSION

As the preceding chapters show, protecting LGBTI people from violence and discrimination does not require the establishment of new rights, nor does it require the establishment of new international human rights standards. For all the heat and complexity of the political debate about sexual orientation and gender identity at the United Nations, from a legal perspective the issues are straightforward. The obligations that States have to protect LGBTI persons from violations of their human rights are already well established and are binding on all United Nations Member States.

This publication seeks to explain the source and scope of those legal obligations with reference to the substantial body of decisions, recommendations and guidance issued by United Nations human rights mechanisms. It breaks down State responsibilities into five core areas where national action is most urgently needed: protection from violence, prevention of torture, repealing discriminatory laws, prohibiting and combating discrimination, and respect for freedom of expression, association and peaceful assembly.

As highlighted in *Living Free and Equal*, the companion to this publication, many States have made a determined effort to strengthen human rights protection in each of these areas. An array of new laws and policies have been adopted, including laws banning discrimination, penalizing hate crimes, providing simple administrative procedures for legal recognition of the gender identity of transgender people, and granting recognition of same-sex relationships. Training programmes have been developed for police, prison staff, teachers, social workers and other personnel, and anti-bullying initiatives have been implemented in many schools.

Nevertheless, attention to the rights of some populations, including intersex people, transgender people, lesbian and bisexual women, and LGBTI people facing multiple forms of discrimination are lagging behind and need urgent, additional focus. The grounds of sexual orientation, gender identity and sex characteristics must be addressed as distinct but intersecting grounds of discrimination and violence. In the coming years, much more needs to be done to confront prejudice and protect LGBTI people in all countries from violence and discrimination. OHCHR hopes that this publication can help contribute to this end, by providing a practical resource for all those working for change, whether from the perspective of the United Nations, regional organizations, governments, parliaments, the judiciary, national human rights institutions or civil society.

ADDITIONAL UNITED NATIONS HUMAN RIGHTS RESOURCES

- ▶ OHCHR website on combating violence and discrimination based on sexual orientation and gender identity. Available from: www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx.
- ▶ United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity: www.ohchr.org/EN/Issues/SexualOrientationGender/Pages/Index.aspx.
- ▶ United Nations High Commissioner for Human Rights reports to the Human Rights Council on discrimination and violence against individuals based on their sexual orientation and gender identity. Available from: www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNReports.aspx.
- ▶ United Nations Human Rights Council resolutions on human rights, sexual orientation and gender identity. Available from: www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNResolutions.aspx.
- ▶ OHCHR Expert Meeting on Ending Human Rights Violations against Intersex Persons and Factsheet on the Human Rights of Intersex Persons, September 2015. Available from: www.ohchr.org/EN/NewsEvents/Pages/Astepforwardforintersexvisibility.aspx and www.unfe.org/learn-more/.
- ▶ Joint United Nations statement on ending violence and discrimination against LGBTI persons. September 2015. Available from: www.ohchr.org/EN/Issues/Discrimination/Pages/JointLGBTIstatement.aspx.
- ▶ The Role of the United Nations in Combatting Discrimination and Violence against Individuals Based on Sexual Orientation and Gender Identity – A Programmatic Overview of the work of United Nations entities (updated annually). Available from: www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNSystem.aspx.
- ▶ *Living Free and Equal: What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people*. October 2016. Available from: www.ohchr.org/EN/Issues/Discrimination/Pages/LivingFreeEqual.aspx.
- ▶ United Nations Free & Equal campaign. Available from: www.unfe.org.
- ▶ United Nations Free & Equal campaign factsheets, Available from: www.unfe.org/learn-more/.



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