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A Better Understanding of Privacy

The privacy rights of children (under the age of 18) and issues relating to their independence and autonomy

Questionnaire by the Special Rapporteur on the right to privacy October 2020

Introduction

OutRight Action International is an ECOSOC accredited civil society organization working at the international, regional and national levels to research, document, defend, and advance human rights for lesbian, gay, transgender and intersex (LGBTI) people. This submission is a response to the questionnaire by the Special Rapporteur on the right to privacy on the topic of privacy rights of children and issues relating to their independence and autonomy.

In all regions of the world, lesbian, gay, bisexual, trans and intersex (LGBTI) people— or otherwise perceived to have different sexualities or gender identities that fall outside what is perceived to be the norm — suffer discrimination, intimidation, harassment and violence. This is also true to LGBTI children and adolescents. Too often, when real or perceived sexual orientation or gender identity does not conform to social norms, vulnerabilities increase. This includes exposure to discrimination in schools, hospitals, sporting teams and many other settings; abandonment and rejection by family, community or society; forced marriage; hate motivated violence, including murder and corrective rapes; and increased health risks owing to lack of access to appropriate life-skills education and health services.

When it comes to the right to privacy, the Convention on the Rights of the Child, in its article 16(1), states that

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks

Moreover, the Yogyakarta Principles, a universal guide to human rights which affirm binding international legal standards with which all States must comply, state that:

“Everyone, regardless of sexual orientation or gender identity, is entitled to the enjoyment of privacy without arbitrary or unlawful interference, including with



OUTRIGHT
ACTION INTERNATIONAL

regard to their family, home or correspondence as well as to protection from unlawful attacks on their honour and reputation. The right to privacy ordinarily includes the choice to disclose or not to disclose information relating to one's sexual orientation or gender identity, as well as decisions and choices regarding both one's own body and consensual sexual and other relations with others"¹

The so-called “Conversion Therapy”

OutRight has published the report [“Harmful Treatment: The Global Reach of So-called Conversion Therapy”](#). The Committee on the Rights of the Child (CRC) has explicitly stated that it: “strongly endorses the rights of adolescents to freedom of expression and respect for their emerging autonomy, and deplores the imposition of treatments to try to change sexual orientation and gender identity, and that transgender identity and same-sex attraction are often pathologized as psychiatric disorders. The Committee urges States to eliminate such practices, and to repeal all laws criminalizing or otherwise discriminating against individuals on the basis of their sexual orientation or gender identity.”² This is highly important because the criminalization of same sex relations, and by extension the criminalization of LGBTI individuals, legitimizes such actions with total disregard to the psychological and emotional trauma it causes the individual victims.

The Williams Institute estimates that 20,000 LGBT youths (ages 13-17) will receive “conversion therapy” from a licensed health care professional before the age of 18, and 57,000 youths (ages 13-17) will receive “conversion therapy” from religious or spiritual advisors before reaching 18.³ The age range at which sexual orientation and gender identity and expression (SOGIE) non-consensual converting practices are most likely to occur (24 and younger) often coincides with stages at which young people live with their parents or other family members, and are hence subjected to pressure or coercion to change. The age at which “conversion therapy” largely seems to occur also has implications for the focus of bans and policies against SOGIE change practices. For example, bans that only focus on minors and on practices that are carried out within formal professional health or mental health settings (as in the 18 U.S. states, Washington, D.C., and Puerto Rico), likely leave individuals older than 18 vulnerable and

¹ Yogyakarta Principles, Principle 6

² Committee on the Rights of the Child: General comment on the implementation of the rights of the child during adolescence. (April 2016).
https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/HRBodies/CRC/GC_adolescents.doc&action=default&DefaultItemOpen=1

³ Mallory et al, 2018 <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Conversion-Therapy-LGBT-Youth-Jan-2018.pdf>



OUTRIGHT
ACTION INTERNATIONAL

lacking recourse. It is therefore vital that in their efforts against conversion therapy, legislative interventions target all vulnerable age groups.

In his report on the harms of the so-called conversion therapy, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has stated that

“Children and young people are particularly vulnerable to practices of “conversion therapy”, which are extremely harmful to their well-being and development, and the Committee on the Rights of the Child has urged States to eliminate such practices.¹²⁹ While the decision to subject children to those practices may be taken by some parents due to the belief that it serves the child’s best interests, ¹³⁰ research has shown that parents tend to be motivated by religious beliefs that consider sexual and gender diversity to be “immoral” and incompatible with their religious tenets, ¹³¹ but are ill-informed about the nature of sexual and gender diversity, the invalidity and ineffectiveness of those practices and the significant and possibly life-long injury that they will cause their children. In the light of those realities, subjecting children to practices of “conversion therapy” constitutes ill treatment and may constitute torture, as well as contravene domestic and international laws against child abuse and neglect.

The Independent Expert recalls States’ obligations to protect children from violence, harmful practices and cruel, inhuman or degrading treatment and torture, to respect the right of the child to identity, physical and psychological integrity, health and freedom of expression and to uphold the core principle of the best interests of the child at all times. Moreover, the Committee on the Rights of the Child has clarified that the right of the child to identity, which includes sexual orientation and gender identity, must be respected and taken into consideration when assessing the child’s best interests. According to the Committee, assessment of the child’s best interests must also include consideration of the child’s safety, that is, the right to protection against all forms of physical or mental violence, injury or abuse.

The Independent Expert therefore concludes that the imposition of practices of “conversion therapy” on children runs counter to States’ obligation to protect them from violence, harmful practices and cruel, inhuman or degrading treatment, to respect the right of the child to identity, physical and psychological integrity, health and freedom of expression and to uphold the core principle of taking the best interests of the child as a primary consideration at all times.



OUTRIGHT
ACTION INTERNATIONAL

The Independent Expert is therefore persuaded that it is contrary to international human rights law to subject children to practices of “conversion therapy”, such as those described above, and urges States to take urgent measures to ban them.”⁴

Bullying and Discrimination

Bullying, or intentional, repetitive aggressive behavior inflicted on someone perceived to have less power than the perpetrator, represents a form of peer-violence and hence is contrary to the Convention on the Rights of the Child.⁵ Furthermore, discrimination in schools and other educational settings can severely impair the ability of young people perceived as lesbian, gay, bisexual, transgender or intersex to enjoy their right to education. In some cases, education authorities and schools actively discriminate against young people because of their sexual orientation or gender expression. This includes refusing admission or expelling such youth.⁶ In addition, LGBT and intersex youth frequently experience violence and harassment from classmates and teachers. Confronting this kind of prejudice and intimidation requires concerted efforts from school and education authorities and integration of principles of non-discrimination and diversity in school curricula and discourse. The media also has a role to play in eliminating negative stereotyping of LGBTI people, including through positive representation in television programs popular among young people.

According to UNESCO, “it is often in the primary school playground that boys deemed by others to be too effeminate or young girls seen as tomboys endure teasing and sometimes the first blows linked to their appearance and behavior, perceived as failing to fit in with the hetero-normative gender identity.” Isolation and stigma generate depression and other health problems and contribute to truancy, absenteeism, children being forced out of school and, in extreme cases, attempted or actual suicide. A survey in the United Kingdom found that almost 65 per cent of lesbian, gay and bisexual youth had been bullied in schools because of their sexual orientation and more than a quarter had been physically abused. These findings are mirrored by results of studies carried out in other countries. A related concern is sex education. The right to education includes the right to receive comprehensive, accurate and age-appropriate information regarding human sexuality in order to equip young people to lead

⁴ Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, A/HRC/44/53, p.71-74.

⁵ General Assembly Seventy Third Session, Protecting Children from Bullying (A/73/265) at paras 8-9

⁶ OHCHR, Free and Equal, Bullying and Violence in Schools. Available at: <https://www.unfe.org/wp-content/uploads/2017/05/Bullying-and-Violence-in-School.pdf>



OUTRIGHT
ACTION INTERNATIONAL

healthy lives, make informed decisions and protect themselves and others from sexually transmitted infections. This importance of comprehensive sex education for LGBTI persons been affirmed at the highest level. For instance, the Special Rapporteur on the right to education noted that “in order to be comprehensive, sexual education must pay special attention to diversity, since everyone has the right to deal with his or her own sexuality.”

Due to the persecution of LGBTI persons and those perceived as LGBTI within the educational system, as well as the lack of information on the educational system on their realities, several LGBTI youth quit their education or hide who they really are in order to be able to finish their studies.

Gender Recognition of Children

Trans and gender-diverse children and adolescents are protected from discrimination based on gender identity. In its general comment No. 20 (2016) on the implementation of the rights of the child during adolescence, the Committee on the Rights of the Child stated:

“Adolescents who are ... transgender ... commonly face persecution, including abuse and violence, stigmatization, discrimination, bullying, exclusion from education and training, as well as a lack of family and social support, or access to sexual and reproductive health services and information. In extreme cases, they face sexual assault, rape and even death. These experiences have been linked to low self-esteem, higher rates of depression, suicide and homelessness ...

The Committee emphasizes the rights of all adolescents to freedom of expression and respect for their physical and psychological integrity, gender identity and emerging autonomy. ... States should also take effective action to protect [...] transgender [...] adolescents from all forms of violence, discrimination or bullying by raising public awareness and implementing safety and support measures.”⁷

As the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has highlighter:

“Many States assume that children are not able to consent to gender recognition procedures. Children are thus often de jure and de facto excluded from gender

⁷ Committee on the Rights of the Child, general comment No. 20 (2016) on the implementation of the rights of the child during adolescence, paras. 33 and 34.



OUTRIGHT
ACTION INTERNATIONAL

recognition with the corresponding heightened risk of persecution, abuse, violence and discrimination. Despite many legal reforms in recent years to allow and facilitate gender self-determination, few countries allow children to change their legal gender to their self-determined gender and, when they do, a minimum age is normally set.”⁸

In that sense, it is of highly importance that States and other stakeholders work in the full recognition of the gender identity of all persons, including trans and non-binary youth.

Physical integrity of intersex children

The practice of non-consensual and unnecessary genital surgery on intersex infants remains an underrecognized and underserved issue. Intersex people continue to be subjected to irreversible surgical interventions that share many of the same impacts of female genital mutilation – including physical and psychological suffering, scarring, incontinence; and a reduction or erasure in sexual pleasure, function, and fertility. Medical needs are often cited as justification for these surgeries, however evidence supporting this notion is extremely limited. More often than not, intersex people are not informed of their medical history and live until adulthood without knowing that they have been subjected to surgeries. These surgeries are regularly performed without the full, free and informed consent of the person concerned, who is frequently too young to be part of the decision-making. These procedures violate their rights to physical integrity, to be free from torture and ill-treatment, and to live free from harmful practices.⁹

Multiple United Nations treaty bodies and human rights experts have recognized that harmful, forced, coercive, and non-consensual procedures on intersex persons violates their rights to bodily integrity and freedom from torture, ill treatment and harmful practices. Despite this, Malta and Portugal are the only countries in the world to have banned non-consensual and unnecessary medical interventions in intersex infants.

Such procedures are frequently justified on the basis of cultural and gender norms and discriminatory beliefs about intersex people and their integration into society. However, in fulfilment of international human right instruments such as the Conventions on the Elimination of All Forms of Discrimination Against Women (CEDAW) and CRC, States are obliged to ensure

⁸ Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; A/73/152; p. 33

⁹ OHCHR, Free and Equal, FACT SHEET Intersex. Available at: <https://www.unfe.org/wp-content/uploads/2017/05/UNFE-Intersex.pdf>



OUTRIGHT
ACTION INTERNATIONAL

that cultural values do not trump individual rights, and are required to actively engage in transforming the normative belief systems that make harmful practices possible.¹⁰

Recommendations

As stated in this response, LGBTI persons and especially, LGBTI youth, are particularly vulnerable to violence, discrimination and stigmatization around the globe. In order to combat violations of their human rights and improve the compliance with international human rights standards, OutRight Action International has the following recommendations:

- Ban completely the so-called “conversion therapy” practices, especially when it comes to minors
- Introduce comprehensive sex education in schools to provide accurate and age-appropriate information regarding human sexuality to include a SOGIESC perspective.
- Prohibit any unnecessary medical intervention on intersex children without their free, prior and informed consent
- Create Gender Identity Recognition Laws that allows trans persons from their young age to rectify their gender and name in official documents

¹⁰ Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices, at paras 11 and 31.