



Protection against violence and discrimination based on sexual orientation and gender identity, in relation to the human rights to freedom of expression, association and assembly

Introduction

Outright International works together for better LGBTIQ lives. Outright is dedicated to working with partners around the globe to strengthen the capacity of the LGBTIQ human rights movement, document and amplify human rights violations against LGBTIQ people, and advocate for inclusion and equality. Founded in 1990, with staff in over a dozen countries, Outright works with the United Nations, regional human rights monitoring bodies, governments, humanitarian and development institutions, and civil society partners. Outright holds consultative status at the United Nations, where it also serves as the secretariat of the UN LGBTI Core Group.

This submission is in response to the call for inputs by the Independent Expert on Sexual Orientation and Gender Identity for his upcoming report on the protection against violence and discrimination based on sexual orientation and gender identity (SOGI) in relation to the human rights to freedom of expression, association, and assembly. Outright wishes to provide two significant pieces of original research on the rights to the freedom of assembly and association. The first, entitled [The Global State of LGBTIQ Organizing: The Right to Register and the Freedom to Operate](#)¹, is relevant to the nexus between SOGI and the freedom of association. The second, entitled [We Remain Resilient: Pride Around the World in 2023](#)², speaks to the relationship between SOGI and the freedom of assembly. The reports are linked and in footnotes. This submission will summarize key points in the reports. We encourage the Independent Expert to make use of these documents as much as he would like in preparing for his report. In this submission, we will also offer a series of recommendations for United Nations member states.

Freedom of Association

¹ Outright International, *The Global State of LGBTIQ Organizing: The Right to Register and the Freedom to Operate* (Sept. 14, 2023) available at: <https://outrightinternational.org/right-to-register2023>.

² Outright International, *We Remain Resilient: Pride Around the World in 2022* (June 21, 2023) available at: <https://outrightinternational.org/2023-pride-around-world-report>.

Outright's report [The Global State of LGBTIQ Organizing: The Right to Register and the Freedom to Operate](#) assesses the ability of LGBTIQ organizations to register and operate globally. We surveyed 196 countries including all 193 UN member states, Taiwan, the Occupied Palestinian Territories, and Kosovo. We looked not only at the letter of the law, but at the lived experiences of activists. We found that LGBTIQ organizations can register openly and operate freely in only 94 countries, mostly located in parts of the Americas and Europe. In 74 countries in parts of the Global South, LGBTIQ groups exist but cannot register and operate openly.³ In 26 countries, Outright could not identify any LGBTIQ civil society organizations.

We found that in **Sub-Saharan Africa**, LGBTIQ civil society organizations face challenges simply existing due to the widespread institutionalization of homophobia and transphobia. In eight sub-Saharan African countries—Central African Republic, Comoros, Djibouti, Eritrea, Gabon, The Gambia, São Tomé and Príncipe, and South Sudan—Outright did not identify any LGBTIQ organizations at all in 2023. Laws in 25 Sub-Saharan African countries criminalize same-sex intimacy, thwarting the ability of LGBTIQ advocacy groups to demand rights protections and build movements. Uganda and Nigeria explicitly criminalize queer organizing, placing them among the world's worst offenders with regard to LGBTIQ freedom of association, and Ghana's parliament is considering a similar law.

In other countries, NGO boards reject attempts to register LGBTIQ organizations or leave applicants in limbo for years. Some activists, anticipating the risk of rejection or the danger of exposure, do not attempt to register at all. Some LGBTIQ organizations in Africa register as organizations working on "key populations," gender, youth, or human rights, and work with some degree of openness. Others operate almost entirely underground, as in Senegal, where an activist told Outright that frequent arrests on charges of same-sex conduct impede movement-building and impact morale. The activist added that the situation has "rendered us illegal entities in a country that is supposed to be a free country, making us look clandestine."⁴

Where judiciaries are independent, LGBTIQ activists may have recourse for denial of their associative rights. In Kenya, activists took to court in 2013 when the NGO Board refused to reserve the name "National Gay and Lesbian Human Rights Commission" for registration. The

³ In addition, in two countries in Asia, nascent groups exist and it is still unclear whether registration as openly LGBTIQ organizations will be possible. Outright International, *The Global State of LGBTIQ Organizing: The Right to Register and the Freedom to Operate*, p. 12.

⁴ Outright International, *The Global State of LGBTIQ Organizing: The Right to Register and the Freedom to Operate*, p. 22.

Supreme Court found this action discriminatory in February 2023.⁵ A Member of Parliament filed a Petition in challenge, citing “moral” grounds, which the court dismissed.⁶ NGLHRC is now undergoing the registration process in what will be a test case of Kenya’s willingness to uphold the rule of law. Similarly, Eswatini’s Registrar of Companies refused to register Eswatini Sexual and Gender Minorities in 2019, after which the organization approached the court to set aside this decision.⁷ The Supreme Court held in 2023 that the Registrar’s action was *ultra vires* and ordered the Minister responsible to decide on ESGM’s registration status, as required by law.⁸ Presently, local authorities still refuse to register ESGM, claiming the name offends Swazi legal and customary principles.⁹

Even in countries that have decriminalized same-sex intimacy and provide some civic space, governments obstruct rights to freedom of association. One Angolan activist told Outright:

LGBTIQ themes, objectives and principles are seen as immoral in Angolan society ... this makes access to registration difficult for many LGBTIQ+ organizations and many of them give up registration or do not try to register.¹⁰

In the **Middle East and North Africa** region, LGBTIQ organizations are unable to register and operate openly in most countries due to pervasive criminalization, religiously motivated

⁵ NGLHRC, Strategic Litigation, <https://nglhrc.com/strategic-litigation/> (accessed 22 January 2024).

⁶ Patrick Gathara, “How an LGBTQ Court Ruling Sent Kenya into a Moral Panic,” AlJazeera, 15 March 2023, <https://www.aljazeera.com/opinions/2023/3/15/how-an-lgbtq-court-ruling-sent-kenya-into-a-moral-panic> (accessed 22 January 2024); Benjamin Muriuki, “Russia Weighs In On Kenya’s LGBTQ Debate,” Citizen Digital, 3 March 2023, <https://www.citizen.digital/news/russia-weighs-in-on-kenyas-lgbtq-debate-n315420> (accessed 22 January 2024); Petition: <https://www.google.com/url?q=https://supremecourt.judiciary.go.ke/wp-content/plugins/download-attachments/includes/download.php?id%3D4816&sa=D&source=docs&ust=1706702694875572&usq=AOvVaw3necgGDjRTcPwHln1fmtQA>, (accessed 22 January 2024).

⁷ Southern Africa Litigation Centre, “Eswatini Supreme Court to Hear Case on Registration of Eswatini Sexual and Gender Minorities,” 21 April 2023, <https://www.southernafricalitigationcentre.org/2023/04/21/media-advisory-eswatini-supreme-court-to-hear-case-on-registration-of-eswatini-sexual-and-gender-minorities/> (accessed 22 January 2024).

⁸ Southern Africa Litigation Centre, “Supreme Court of Eswatini Unanimously Finds Registrar’s Decision on LGBTIQ+ Organization Unconstitutional,” 16 June 2023, <https://www.southernafricalitigationcentre.org/2023/06/16/supreme-court-of-eswatini-unanimously-finds-registrars-decision-on-lgbtq-organisation-unconstitutional/> (accessed 22 January 2024).

⁹ Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders and the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Ref.: AL SWZ 2/2023, 24 November 2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=28628> (accessed 22 January 2024).

¹⁰ Outright interview with Líria de Castro, LGBTIQ activist in Angola, email, January 2023.

LGBTIQ-phobia, and authoritarian leaders' general hostility toward civil society. Only Israel generally allows LGBTIQ organizations to register, though Palestinian-led or focused LGBTIQ organizations in Israel face challenges operating due to Israel's obstruction of Palestinian freedom of movement and association. In Tunisia, activists indicated that open registration of LGBTIQ organizations was not prohibited, but was extremely challenging. In the ten other countries in the region in which LGBTIQ organizations exist, registration is prohibited or almost entirely impossible. In eight MENA countries—Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, Syrian Arab Republic, United Arab Emirates, and Yemen—Outright could not identify any LGBTIQ organizations at all.

Activists in Algeria decried the shrinking civic space and hostile context and its implications for advocacy. Long-term activist Farid M. (pseudonym) stated that LGBTIQ organizations "...have little practical ability to fight for relevant antidiscrimination laws or the repeal of laws criminalizing same-sex relations" due to the real fear of arrest, imprisonment and further discrimination. He added:

LGBTQ organizations are secret organizations. They work underground. Many organizations do not even know each other as people are so afraid of disclosing who they are, because they don't trust others or know [who is] working for the government. This means that most organizations work alone. It can lead to a fragmentation of the movement.¹¹

In **Asia** and **the Pacific**, while activism is robust, the socio-legal climate and bureaucratic hurdles impede the ability of LGBTIQ organizations to exercise their right to freedom of association. Among the 42 Asian and Pacific countries Outright surveyed, activists stated that it is possible for LGBTIQ organizations to register openly in 14. In nine Asian and Pacific countries—Afghanistan, Brunei Darussalam, the Maldives, Marshall Islands, Nauru, North Korea, Solomon Islands, Turkmenistan, and Tuvalu—Outright could not identify any LGBTIQ organizations in 2023.

Chinese LGBTIQ activists face particular challenges: many have fled the country or gone underground due to heightened government hostility and surveillance. Tao C. (pseudonym), the founder of an LGBTIQ organization, informed Outright:

We tried to register as an NGO in different cities, but we were rejected, even in provinces where we had good relationships with some public officials. State officials told us that 'we cannot support the registration of an organization working on LGBT issues. If you want to be registered, you must change your name. You have to change the categories and the objectives you're working on, and not describe your work as LGBT issues.'

¹¹ Outright interview with Farid M., (pseudonym), Algerian LGBTIQ activist, virtual, May 2023.

After this, we went to another province, changed our name and objectives to be social workers and we got registered. Just like we need to hide our identities and sexual orientations; we also have to hide the work that we do among LGBTQ communities.¹²

Tao C. described how officials routinely summon and interrogate LGBTIQ rights advocates, sometimes under the cloak of “meeting for tea.” Declining the invitation is not an option:

The policeman will ask you to come drink tea. It is used to give warnings and get information from us. Sometimes, they ask us to keep a low profile and tell us not to do advocacy work, just focus on providing services like HIV prevention and care.

In the **Caribbean**, LGBTIQ organizations have withstood socio-legal and institutional impediments to create an outspoken movement despite conservative religious influences in the region. In **Latin America, North America** and **Europe**, LGBTIQ organizations register and operate most freely, with the exceptions of Nicaragua, Russia, and Belarus. Russia shut down two major LGBTIQ rights organizations in 2022, and a November 2023 Supreme Court ruling preposterously declared the entire “international LGBT social movement” illegal.¹³ In Nicaragua, a 2020 “foreign agents” law threatens freedom of association and assembly for all organizations that receive foreign funding, including LGBTIQ groups.¹⁴ The state has designed the legislation to make compliance impossible and has canceled 950 CSOs’ registration since 2018.¹⁵ A Nicaraguan LGBTIQ activist reported to Outright that LGBTIQ organizations are at risk not so much because of their work on gender and sexuality, but because civil society as a whole is under attack: “The politicians and government officials... have branded us as coup plotters by us simply claiming our rights as people.”¹⁶

The ability to register organizations is crucial in protecting LGBTIQ and other minority populations. Registration provides access to funding sources and advocacy platforms while

¹² Tao C. interview.

¹³ Steve Rosenberg, “Russia Court Bans ‘LGBT Movement’,” BBC News, 30 November 2023, <https://www.bbc.com/news/world-europe-67565509> (accessed 22 January 2024).

¹⁴ Valeska Fonseca Torrez, “Law on the Regulation of Foreign Agents in Nicaragua,” García & Bodán, 1 December 2020, <https://garciabodan.com/en/law-on-the-regulation-of-foreign-agents-in-nicaragua/> (accessed 22 January 2024).

¹⁵ Human Rights Watch, “Nicaragua: Government Dismantles Civil Society: Arbitrary Closures of Groups Impede Rights, Humanitarian Work,” 19 July 2022, <https://www.hrw.org/news/2022/07/19/nicaragua-government-dismantles-civil-society> (accessed 22 January 2024).

¹⁶ Responses by Adriana D. (pseudonym), LGBTIQ activist and CSO founder, to Outright’s questionnaire, March 2022.

creating visibility and growth for national movements. Where LGBTIQ organizations cannot register, Outright has witnessed impeded growth of movements, while violence and discrimination flourish. In certain countries, like Algeria, activists risk legal consequences for operating NGOs without registration. UN member states must uphold this right.

Freedom of Assembly

Outright's report [We Remain Resilient: Pride Around the World in 2022](#) examines how Pride and LGBTIQ visibility events are acts of resistance that constitute an exercise of the right to freedom of assembly. Outright identified 102 countries where Pride and other LGBTIQ visibility events were held in 2022. At least 63 countries held Pride events both within and outside capital cities, an important marker that signifies the spread of awareness and inclusion beyond urban areas.¹⁷

The ability to publicly celebrate LGBTIQ rights is viewed as sacrosanct by many LGBTIQ people. Pride as a manifestation of the right to freedom of assembly has become a crucial organizing tool for people and movements that remain marginalized: Pride events aim at resisting repression, elevating public awareness and support for diversity, building community within LGBTIQ populations, and celebrating gains. Pride events also unify movements, including in challenging contexts. In Ukraine, activists held Pride in Kharkiv, as well as the 2022 Kyiv–Warsaw Pride, promoting a unified queer spirit in the face of Russian aggression—“a triumph of the movement,” according to one activist. Similarly a Namibian transgender rights activist stated:

Pride for me is like ubuntu – I am because you are. It is a time of unity, a time of resilience. Pride means community, ubuntu, inspiration, innovation, support, reinventing culture, and dismantling oppressive systems.¹⁸

Namibia is notable for providing an environment conducive to Pride despite ongoing criminalization of same-sex intimacy. State respect for freedom of assembly creates a virtuous circle: through visibility, LGBTIQ people can articulate political demands and attract public support to their cause, increasing the possibility of favorable legal and policy change, resulting in further protection of fundamental freedoms.

¹⁷ For instance, at least 25 cities in Peru now hold Pride, showing increased LGBTIQ acceptance beyond urban areas. Press statement by General Victor Sanabria, head of the Lima Police Region, on 19 January 2023, confirmed by activist Jorge Apolaya in an interview with Outright International on 3 March 2023.

¹⁸ Outright interview with Jholerina Theodora Timbo, Program Coordinator at Positive Vibes Namibia, virtual, April 2023.

In Jamaica, despite criminalization and a hostile climate for LGBTIQ people, Pride celebrations have flourished in Kingston since 2015.¹⁹ Yet Jamaican activists interviewed by Outright pointed out that the right to freedom of assembly is not universally respected throughout the country. Montego Bay successfully held Prides from 2015 to 2018, but in 2019, the mayor refused to allow activists to use city venues, and private landlords followed suit. The hostile climate led organizers to cancel Pride: “The local police have advised that the hysteria whipped up against LGBT Jamaicans by the mayor and the councilor is so violent right now that the police can’t provide security for our Walk for Rights without extraordinary measures and expense.”²⁰

LGBTIQ people who seek to exercise the right to freedom of assembly in other countries have frequently been met with state-sanctioned discrimination and abuse, including arrests, physical attacks, and refusal to grant permits, which infringe on the right to freedom of assembly. Many countries in sub-Saharan Africa, the Caribbean, Asia and the Middle East and North Africa cannot hold Pride at all due to social stigma and institutionalized discrimination against LGBTIQ people. Attacks on Pride are taking place even in localities where the tradition of Pride is well established. In the US state of Florida, city officials canceled a Pride parade in 2023 “and restricted other pride events to people 21 years and older.”²¹ Symbols of queer visibility are also attacked in events other than Pride: in Bosnia and Herzegovina, assailants verbally and physically attacked women’s rights marchers for holding a rainbow flag on International Women’s Day.²²

Türkiye has been the site of escalating government crackdowns on Pride events since 2015, including bans against Pride marches in multiple cities, mass arbitrary arrests, and police violence.²³ In 2022, police beat marchers and arrested about 530 LGBTIQ people and rights

¹⁹ Outright interview with Noelle Campbell, the Wellness Program Manager at the Jamaican Forum for Lesbians, All-Sexuals and Gays (J-FLAG), virtual, May 2023.

²⁰ Michael K. Lavers, “Security Concerns Prompt Montego Bay Pride Cancellation,” Washington Blade, 21 September 2019,

<https://www.washingtonblade.com/2019/09/21/security-concerns-prompt-montegobay-pride-cancellation/>.

²¹ Associated Press, “Gay Pride Parade Canceled After Anti-Drag Show Law Passes,” 20 April 2023, US News, <https://www.usnews.com/news/us/articles/2023-04-20/gay-pride-parade-canceled-after-anti-drag-showlaw-passes>;

Kate Hussey, “Scaled-back Treasure Coast PrideFest takes place after Port St. Lucie, organizer mutual decision,” WPTV, 23 April 2023,

<https://www.wptv.com/news/lgbtq/city-of-port-st-lucie-says-mutual-decision-to-scale-back-treasure-coast-pridefest>.

²² Azem Kurtic, “Bosnia Women Rights Marchers Attacked in Banja Luka Over LGBT Flag,” Balkan Insight, 9 March 2023,

<https://balkaninsight.com/2023/03/09/bosnia-women-rights-marchers-attacked-in-banjaluka-over-lgbt-flag/>

²³ See Umut Rojda Yıldırım, From 2015 to Today – Prohibitions on Istanbul LGBTI+ Pride Marches, Social Policy, Gender Identity and Sexual Orientation Studies Association, Istanbul, December 2022,

defenders within 37 days.²⁴ A lawyer and LGBTIQ rights activist in Türkiye who went to police stations to provide legal support, said that in Istanbul, “the number of detainees was so high that the whole procedure was about 24 hours long.”²⁵

Some governments exemplify support for LGBTIQ freedom of assembly through active participation in Pride. In Malta, government officials work with LGBTIQ groups in conducting events. Taiwan Pride hit 20 years in 2022, with growing support and participation from political leaders.

Pride remains an important exercise of the rights to freedom of assembly and freedom of expression. States must uphold these rights.

Recommendations to United Nations Member States:

- Repeal laws criminalizing same-sex acts between consenting adults and criminalizing gender diversity.
- Enact laws that protect against discrimination, including on the grounds of sexual orientation, gender identity and expression, and sex characteristics.
- Publicly condemn hate speech and human rights violations against LGBTIQ persons including the violation of rights to freedom of assembly, expression, association, and non-discrimination.
- Repeal all laws that prohibit public support and advocacy for LGBTIQ people’s rights and that limit LGBTIQ people’s freedom of expression, assembly, and association.
- Repeal all laws that prohibit civil society organizations from operating without being registered. Enact laws specifically allowing the registration of civil society organizations.
- Provide increased, flexible, and sustainable funding to LGBTIQ organizations, including those unregistered and unable to register and those working in hostile or unfriendly legal contexts.

<https://www.stgm.org.tr/en/e-library/2015-today-prohibitions-istanbul-lgbti-pride-marches> (accessed 22 January 2024).

²⁴ Yunus Emre Demir, “Government Waged War Against LGBTI+s: 10 Bans and at Least 530 Detainees in 37 Days,” Kaos GL, 27 June 2022, <https://kaosgl.org/en/single-news/government-waged-war-against-lgbti-s-10-bans-and-at-least-530-detainees-in-37-days> (accessed 22 January 2024).

²⁵ Outright interview with Umut Rojda Yıldırım, lawyer and LGBTIQ rights activist in Türkiye, virtual, May 2023.

- Work with civil society organizations to ensure that Pride and other LGBTIQ visibility events are protected.
- Ensure State security apparatus do not infringe upon the right to freedom of assembly by arresting or intimidating participants, or preventing or shutting down LGBTIQ Pride events.