

Violence and its impact on the right to health

Special Rapporteur on the highest attainable standard of physical and mental health

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, intersex and queer (hereinafter, “LGBTIQ”)¹ people.

LGBTIQ people continue to experience human rights violations because of their real or perceived sexual orientation, gender identity and expression, and sex characteristics (SOGIESC). This includes targeted killings, violent attacks, torture, arbitrary detention, incarceration, forced marriage, so-called honor killings, infanticide, hate speech, sexual orientation and gender identity change efforts (SOGICE), impingements on rights to assembly, association and free expression, family or intimate partner violence, and harassment by both state and non-state actors. Those who are marginalized on account of age, race, ethnicity, religion, language, migrant status, economic status, disability, health status or caste, among other marginalized identities, experience compounded discrimination and violence of all forms. Human rights defenders who defend the rights of gay, lesbian, bisexual, transgender, intersex, and queer people suffer specific and escalating challenges and vulnerabilities, such as prosecution, violence, harassment, and the imposition of discriminatory restrictions on their organizations, without access to mechanisms for recourse and redress.

Socially constructed gender roles, norms, and stereotypes intersect with multiple other forms of discrimination, exacerbating the exclusion and oppression that LGBTIQ persons suffer. They have historically suffered from violence and discrimination based on the gender stereotypes that follow the rule of binaries, such as SOGICE, involuntary medical interventions, and social stigmatization when their sexual orientation and/or gender identity does not conform with the traditional expectations of their gender and sex assigned at birth. In this sense, violence and discrimination against LGBTIQ persons is gender-based violence and gender-based discrimination; therefore, the protection of the rights of LGBTIQ persons is also gender justice.

Several United Nations Mechanisms and Bodies have increasingly noted the importance of including LGBTIQ individuals in their work towards gender justice against gender-based discrimination.² This inclusion has led to a comprehensive and intersectional gender analysis that

¹ OutRight International uses the acronym LGBTIQ to denote the lesbian, gay, bisexual, transgender, queer and intersex community. We believe this acronym is inclusive of a broad range of people across our community. It is not exhaustive, nor is it universally accepted or used.

² United Nations, Committee on the Elimination of Discrimination against Women – CEDAW, General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, 16 December 2010, para. 5; UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 35 (2017) on Gender-based Violence Against Women, Updating General Recommendation No. 19,

has influenced the interpretation of rights recognized in International Human Rights Law. The recognition that gender is a socio-cultural construct increasingly informs United Nations advocacy around eliminating gender discrimination and gender-based violence.

The COVID-19 pandemic also had a devastating impact on LGBTIQ persons, as OutRight has shown in the report *Vulnerability Amplified: “The Impact of the COVID-19 Pandemic on LGBTIQ People”*.³ As the report shows, across various countries, there were steep increases in cases of domestic and gender based violence. In Kosovo, for instance, the Ministry of Justice reported a 17% increase in reported cases of gender-based violence, with one city registering a 100% increase, compared to the same time period in 2019. Similarly, in countries like Nigeria, the ability of LGBTIQ people living with HIV was hampered due to their living closely with family with no access to inclusive health services, they suffered increased mental health challenges, and the discovery of their identities also led to violence, homelessness, loss of livelihoods, with the experience of more familial verbal, emotional, and physical violence, including conversion practices.⁴

During this period, LGBTIQ people faced higher risks of violence due to their sexual orientation or gender identity and expression from family members. At the same time, access to services and safe spaces was limited or non-existent due to measures imposed to address the pandemic.

As stated above, gender-based violence (GBV) against LGBTIQ persons is present everywhere around the globe. The lack of comprehensive disaggregated data collection in most countries of the world makes it also impossible to fully grasp the magnitude of the impact of GBV in LGBTIQ populations. Moreover, even when there is data collection, LGBTIQ persons still suffer discrimination by State officials due to gender stereotypes and prejudices. LGBTIQ persons also find difficulties when trying to access justice after suffering GBV. There are gaps in legal frameworks to protect them, State personnel are not trained and they fear persecution and victimization for looking for judicial redress.⁵

However, there are States that are implementing laws, policies and programs to try to address these issues and to include LGBTIQ persons in their protection mechanisms. Those measures are

26 July 2017, CEDAW/C/GC/35, paras 12 and 29; UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 37 (2018) on the Gender-related Dimensions of Disaster Risk Reduction in the Context of Climate Change, 13 March 2018, CEDAW/C/GC/37, paras 57(e); 68(f).

³ OutRight Action International, [“Vulnerability Amplified: “The Impact of the COVID-19 Pandemic on LGBTIQ People”](#), p.43 , 2020

⁴ The Initiative for Equal Rights & Education as a Vaccine, Gender and COVID-19 in Nigeria: Impacts on LGBTIQ+ People <https://theinitiativeforequalrights.org/wp-content/uploads/2021/02/Gender-and-COVID-19-in-Nigeria-PART-2.pdf> See also Gender and COVID-19 in Nigeria: Violence against Women and Girls <https://theinitiativeforequalrights.org/wp-content/uploads/2021/02/Gender-and-COVID-19-in-Nigeria-1-1.pdf>

⁵ Piotr Godzisz and Giacomo Viggiani, “Running through Hurdles: Obstacles in the Access to Justice for Victims of Anti-LGBTI Hate Crimes” P. 315 see more: <https://lgbthatecrime.eu/researchbook/2018%20Running%20through%20hurdles.pdf>

only effective when civil society and other stakeholders have a sit at the table and a voice in its implementation, bringing their on the ground and lived realities expertise.

One example of a good practice is the the Public Prosecutor's Office of the Argentine Republic (MPF) that created the Specialized Prosecutor's Unit on Violence against Women (UFEM), which has, among its legal abilities, the mandate to intervene in cases of gender-based violence against women and against the LGBTIQ population. Additionally, The General Directorate for Training and School of the MPF has conducted multiple workshops and courses on standards in the areas of equality and non-discrimination, access to justice and the rights of LGBTIQ persons, as well as criminal prosecution of cases of gender violence and hate crimes, with the participation and training of MPF agents from all over the country.⁶

In a case on attacks suffered during a pride celebration in Georgia, the European Court of Human Rights has stated that “[w]hen investigating violent incidents, such as ill-treatment, State authorities have the duty to take all reasonable steps to unmask possible discriminatory motives” and that States must take measures to do “whatever is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of violence motivated by gender-based discrimination”.⁷

Good practices need also to be collected and systematized and Member States should cooperate on sharing barriers and success that they have achieved along the way in order to widespread better practices everywhere.

Sexual orientation and gender identity change efforts

As mentioned previously, LGBTIQ individuals are subjected to SOGICE when their sexual orientation and/or gender identity does not conform with traditional expectations of their gender and sex assigned at birth. SOGICE refers to any and all treatments, practices, or sustained efforts that aim to suppress or change a person’s sexual orientation, gender identity, or gender expression⁸. These harmful practices, perpetrated largely in the name of religion or pseudo-science, occur globally and take on various forms including exorcisms, talk therapy, physical beatings, food deprivation and electric shock therapy⁹.

OutRight Action International in its report, *Harmful Treatment: The Global Reach of So-called Conversion Therapy*, found that over 57% of respondents knew someone who had experienced

⁶ IACHR, “Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas”, 2018 p. 96

⁷ European Court of Human Rights, *Identoba and others v. Georgia*, (Application no. 73235/12), May 12, 2015, para. 67.

⁸ OutRight Action International. *Harmful Treatment: The Global report on so called conversion therapy*. <https://outrightinternational.org/reports/global-reach-so-called-conversion-therapy>

⁹ UN Human Rights Council, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on Conversion Therapy*, May 2020 <https://www.ohchr.org/EN/Issues/SexualOrientationGender/Pages/ReportOnConversiontherapy.aspx>

“conversion practices.” And 100 respondents, or about 22% of all respondents globally had undergone some form of “conversion practices.” Among those who had been subjected to some form of “conversion practices” or SOGICE, 67.5% reported that they were coerced, while 33.5% said that they voluntarily sought out “treatment”. The findings further suggest that in Africa (76%) and the Latin America and the Caribbean (88%) religious leaders and institutions are believed to be, by far, the leading perpetrators of conversion practices, followed by traditional healers and private and public mental health providers. This is further supported by the data on forms of “conversion therapy,” which indicated that religious rituals involving physical violations such as the use of canes, blades, hot candle-wax, and prayer were predominately used within Africa.¹⁰

These practices violate the fundamental human rights of LGBTIQ individuals, including their right to freely express themselves and their freedom from torture or other cruel, inhuman, or degrading treatment. In 2016, the UN Special Rapporteur on Torture, in his report to the Human Rights Council, acknowledged that conversion efforts to change a person’s SOGIE lead to severe and life-long physical and mental pain and suffering and could amount to torture and ill-treatment¹¹. This conforms with the American Psychological Association’s landmark summary of evidence related to so-called conversion therapy.¹² The same was reiterated by the Independent Expert on SOGI in his 2020 report on Conversion Therapy, where he stated that “These practices also violate the prohibition of torture and ill-treatment, since they take point of departure in the belief that sexually diverse or gender-diverse persons are somehow inferior – morally, spiritually or physically – than their heterosexual and cisgender siblings and must modify their orientation or identity to remedy that inferiority.”¹³

Unnecessary and nonconsensual surgeries on Intersex people

The practice of nonconsensual and unnecessary surgeries 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, and a reduction or erasure in sexual pleasure, function, and fertility. Medical need is often cited as justification for these surgeries, however there is little to no medical evidence supporting the need for such intervention or its alleged short or long term medical benefits. Multiple United Nations treaty bodies and human

¹⁰ OutRight Action International. Harmful Treatment: The Global report on so called conversion therapy.

<https://outrightinternational.org/reports/global-reach-so-called-conversion-therapy>

¹¹ UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 5 January 2016, A/HRC/31/57, available at: <https://www.refworld.org/docid/56c435714.html>

¹² American Psychological Association (APA), Task Force on Appropriate Therapeutic Responses to Sexual Orientation. (2009). *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation*. Retrieved from <https://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf>

¹³ UN Human Rights Council, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on Conversion Therapy*, May 2020

<https://www.ohchr.org/EN/Issues/SexualOrientationGender/Pages/ReportOnConversiontherapy.aspx>

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 and ill treatment. Additionally, nonconsensual and unnecessary genital surgery performed on intersex youth directly violates both the spirit and letter of the 1989 Convention on the Rights of Children. In 2021, for instance, a state government in northern Nigeria carried out medically unnecessary intersex surgeries (also known as Intersex Genital Mutilation) on 7 persons, and disclosed its plans to ‘fish out’ more intersex persons for the same.¹⁴ The police have also been found to be one of the major perpetrators of violence in the form of extortion, physical assaults, intimidation and so on against LGBTQI persons in countries like Nigeria where diverse sexual orientation is criminalized.¹⁵

Pathologization and stigmatization

Pathologization and stigmatization relating to gender identity and expression in medical classifications are used to justify subjecting trans people, even at young ages, to forced or coercive sterilization, hormone therapy, surgeries, and psychiatric evaluations, violating their human rights. These pathologizing classifications also create abusive obstacles to access safe gender affirming procedures, which leads to unsafe and clandestine procedures that create lifelong consequences and can even be deadly.

Homosexuality was removed from the International Classification of Diseases in 1990, and transgender identities were removed from ICD-11 in 2019¹⁶. Further, the American Psychological Association has affirmed repeatedly that insufficient evidence exists to support the use of psychological interventions to change sexual orientation and, in fact, these interventions are likely to do harm.¹⁷ Nevertheless, perceptions of LGBTQ identities as disorders persist, and

¹⁴ The Guardian ‘Kano Government sponsors surgery of 7 patients with intersex problem’
<https://guardian.ng/news/kano-government-sponsors-surgery-of-7-patients-with-intersex-problem/>

¹⁵ The Initiative for Equal Rights ‘2021 Human Rights Violations Report Based on SOGIESC’
<https://theinitiativeforequalrights.org/wp-content/uploads/2022/01/2021-Human-Rights-Violations-Report.pdf>

¹⁶ World Health Organisation. Proposed declassification of disease categories related to sexual orientation in the *International Statistical Classification of Diseases and Related Health Problems* (ICD-11).
<https://www.who.int/bulletin/volumes/92/9/14-135541/en/>

¹⁷ American Psychological Association. APA Policy Statements and Resolutions; the Committee About APA Policy Statements and Resolutions; the Committee on Lesbian, Gay, Bisexual, and Transgender Concerns; and the on Lesbian, Gay, Bisexual, and Transgender Concerns; and the Lesbian, Gay, Bisexual, and Transgender Concerns Office (2011)

efforts to change, “convert”, suppress or divert one’s SOGIE - by medical and mental health practitioners - continue.

Discrimination and violence are exacerbated by laws that directly or indirectly criminalize individuals based on their real or perceived SOGIESC. Punitive laws, policies and practices combined with lack of access to justice or protective legal structures leave LGBTIQ people without forms of redress. Furthermore, they face targeted violence and discrimination when seeking refuge from persecution, as well as in humanitarian emergencies. Responses to these violations are inadequate, underreported, and rarely properly investigated and prosecuted, leading to impunity for those responsible and depriving victims of justice, remedies, and support.

Criminalization of sexual orientation and gender identity is not only a violation of human rights, but also legitimizes prejudice in societies, exposing LGBTIQ people to possible hate crimes. This criminalization also sanctions abuse and ill-treatment of LGBTIQ persons by state actors..¹⁸ Therefore, abuse is by both state and non-state actors. In spaces where LGBTIQ persons are under the constant threat of criminalization and violence, they are unable to publicly express themselves and fully access their right to health, due to a constant threat of prosecution and persecution.

For example, in 2019 in Uganda, where same-sex relations are criminalized with severe punishments, police officials arrested sixteen LGBTIQ activists who were gathered peacefully at a sexual health organization. The arrest cited presence of condoms, lubricants, HIV-medicine; anal exams were performed and interrogations about sexual orientation was used as evidence of the crime of “carnal knowledge against the order of nature” under Section 145 of the Ugandan Penal Code.¹⁹

¹⁸ United Nations. Free & Equal Fact Sheet. Available at:

[https://www.unfe.org/system/unfe-43-UN_Fact_Sheets_-_FINAL_-_Criminalization_\(1\).pdf](https://www.unfe.org/system/unfe-43-UN_Fact_Sheets_-_FINAL_-_Criminalization_(1).pdf)

¹⁹ The Washington Post. “Uganda arrested 16 LGBTQ activists. Here’s where else gay rights are a battleground in the world”. Available at:

<https://www.washingtonpost.com/world/2019/10/26/uganda-arrested-lgbtq-activists-heres-where-else-gay-rights-are-battleground-world/>; Young Park, Onen Cylus. Stigmatization and Criminalization of LGBT Persons in Uganda during the COVID-19 pandemic. Available at:

<http://opiniojuris.org/2021/06/30/stigmatization-and-criminalization-of-lgbt-persons-in-uganda-during-the-covid-19-pandemic/>

In addition, gender non-conforming, transgender and intersex people experience multiple layers of discrimination preventing access to basic healthcare, and specific care needed by these groups of persons.²⁰ This results in the infringement of their rights to health, privacy, freedom from non-discrimination, among others.

Sex workers

OutRight would just like to highlight that there is an overrepresentation of trans people among sex workers, which is “undeniably a result of widespread structural, institutional, and interpersonal violence experienced by trans people from their early lives with regards to receiving support from their families and their immediate environments and accessing education and alternative employment”²¹.

Sex workers experience specific challenges in attaining their right to sexual and reproductive health. For instance, sex workers might only be able to seek health services at night²², access to which might be severely limited when resources are stretched thin to accommodate COVID-19 cases.

In that sense, a lot of the State and non-State violence and discrimination that sex workers are victim of come from the same root causes and stereotypes that are at the birth of GBV and discrimination against LGBTIQ persons.

²⁰ The Initiative for Equal Rights ‘Equal in Dignity’ <https://youtu.be/eqPE6-a0hj4>

²¹ Transgender Europe, *The vicious circle of violence: Trans and gender-diverse people, migration, and sex work*, October 2017.

²² IE SOGI, Report A/75/258, para. 47