



OUTRIGHT
ACTION INTERNATIONAL

Gender Justice and Freedom of Opinion and Expression for LGBTI persons

Submission to United Nations Independent Expert on Special Rapporteur on the promotion and protection of freedom of opinion and expression.

June 2021

1. 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, bisexual, transgender, and intersex (hereinafter, “LGBTI”)¹ people. This submission is a response to the “United Nations Special Rapporteur on the promotion and protection of freedom of opinion and expression” call for inputs for the thematic report on the right to freedom of opinion and expression and gender justice for the 76th session of the General Assembly.

In this submission, we argue that the violence and challenges to which LGBTI persons are subject to when they exercise their right to freedom of expression, access to information and participation in political life, is rooted in gender-based violence and hurtful gender stereotyping. Both women and LGBTI persons are harassed or violently attacked because of these root causes that attack their gender, sexual orientation and gender identity and expression.

All persons, including LGBTI persons must be able to exercise their right to freedom of expression and access to information in the same conditions as the rest of the population, but unfortunately, they are often banned or invisibilized from the public discourse because of their sexual orientation, gender identity and expression. Censorship of LGBTI persons and content is justified by governments on the so-called grounds of morals and protection of children, but the evidence shows that such limited approach is discriminatory and results in more harm, because it fosters an

¹ OutRight Action International uses the acronym LGBTI 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.

environment of intolerance against LGBTI people, perpetuates stigmatization, and deprives LGBTI youth to access correct and accurate information regarding their rights, including sexual and reproductive health and rights.

According to the Office of the High Commissioner for Human Rights (OHCHR),

“limitations on the right to freedom of expression, association and peaceful assembly that are based on the sexual orientation or gender identity of an individual violate rights guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights. Limitations on these rights must be compatible with the non- discrimination provisions of international law.”²

The right to freedom of expression entails seeking, receiving, and imparting information and ideas of all kinds through any chosen media. It is essential to the enjoyment of the rights of association and assembly.³

When states limit the ability of LGBTI persons to express their opinions supporting their communities, or censor information because it is deemed as “LGBTI content”, they are unfairly and illegitimately violating the right to freedom of expression. Parallely, when any individual, including LGBTI persons, teachers, health providers or other professionals share content related to LGBTI issues and receive backlash, violence or harassment from state authorities or private individuals, their freedom of expression is limited, and their voices are silenced by the chilling effect of such actions.

Through this submission we recount instances of violations of the right to freedom of expression of LGBTI persons in different countries around the world, starting with censorship laws that ban LGBTI content, studying cases of LGBTI journalists, activists and political figures who have been targeted and scrutinized in their private lives because of their identity. Finally, we briefly analyze the issue of hate speech and how it is a violation of freedom of expression, as well as the role the media has in either perpetuating stereotypes or putting an end to them. At the end of this submission, we offer some recommendations for States, media outlets and human rights organizations.

² UN Office of the High Commissioner for Human Rights (OHCHR), *Born Free and Equal: Sexual Orientation and Gender identity in International Human Rights Law*, September 2012, HR/PUB/12/06, available at: <https://www.refworld.org/docid/5065a43f2.html> [accessed 10 June 2021]. p.52

³ Ibidem. p. 55

2. Gender Justice and LGBTI Persons

Traditionally, gender is understood based on the false premise that there are only two genders in the world—male and female, which are immutably linked to the biological sex assigned at birth.⁴ While the construct of a gender binary is prevalent in many societies, there are many persons with gender identities and gender expressions that transgress the majority rule of binaries, and who do not conform with the social expectations of their sex assigned at birth. These persons can identify as trans, non-binary, gender non-conforming, queer, two-spirits, intersex, lesbian, gay or an array of other gender identities. In this submission we will generally use “LGBTI” as an umbrella designation, which includes all persons who fall outside the binary or who are perceived by others as deviant from the binary.⁵

LGBTI persons have historically suffered from violence and discrimination based on the gender stereotypes that follow the rule of binaries, such as unsuccessful efforts to change their sexual orientation and gender identity when it does not conform with the traditional expectations of their gender and sex assigned at birth, involuntary medical interventions, and social stigmatization. In this sense, violence and discrimination against LGBTI persons is gender-based violence and gender-based discrimination, therefore the protection of the rights LGBTI persons is also Gender Justice.

Several United Nations Mechanisms and bodies have increasingly noted the importance of including LGBTI individuals in their work towards gender justice against gender-based discrimination. This inclusion has led to a comprehensive and intersectional gender analysis that 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. Firstly, State parties to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) are obligated to ensure the elimination of gender-based—and not merely sex-based—discrimination. This is clarified by the Committee in General Recommendation No. 28, which states that:

⁴ Gender can be more extensively defined as the “*socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for those biological, hormonal, anatomical, and physiological characteristics on whose basis one is labeled at birth as differences*”. See OAS, Permanent Council of the Organization of American States, Committee on Juridical and Political Affairs. Sexual orientation, gender identity and gender expression: key terms and standards. Study prepared by the Inter-American Commission on Human Rights, OEA/Ser.G. CP/CAJP/INF. 166/12. April 23, 2012, para. 14.

⁵ Outright International, *Intersections Between Age and Gender*. Available at: <https://www.ohchr.org/Documents/Issues/OlderPersons/OlderWomen/submissions-csos/OutRight-International.pdf>

“Although the Convention only refers to sex-based discrimination (...) the Convention covers gender-based discrimination against women...The application of the Convention to gender-based discrimination is made clear by the definition of discrimination contained in article 1. This definition points out that any distinction, exclusion or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women of human rights and fundamental freedoms is discrimination, even where discrimination was not intended. This would mean that identical or neutral treatment of women and men might constitute discrimination against women if such treatment resulted in or had the effect of women being denied the exercise of a right because there was no recognition of the pre-existing gender-based disadvantage and inequality that women face”.⁶

The Committee’s General Recommendations on the application of CEDAW increasingly have begun to incorporate the recognition of lesbian, bisexual, transgender and intersex individuals.⁷ For instance, in General Recommendation No. 32, the Committee affirms that:

“Discrimination against women based on sex and/or gender is often inextricably linked with and compounded by other factors that affect women, such as race, ethnicity, religion or belief, health, age, class, caste, being lesbian, bisexual or transgender and other status”.⁸

On General Recommendation No. 33, the Committee states:

Discrimination against women, based on gender stereotypes, stigma, harmful and patriarchal cultural norms and gender-based violence, which affects women in particular, has an adverse impact on the ability of women to gain access to justice on an equal basis with men. In addition, discrimination against women is compounded by intersecting factors that

⁶ 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.

⁷ 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, 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).

⁸ UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, 5 November 2014, CEDAW/C/GC/32, para 6.

affect some women to degrees or in ways that differ from those affecting men or other women. Grounds for intersecting or compounded discrimination may include ... [those who] *identity as a lesbian, bisexual or transgender woman or intersex person*. These intersecting factors make it more difficult for women from those groups to gain access to justice.⁹

Many States have also adopted gender as a key lens of analysis in developing laws and policies aimed at protecting women and LGBTI persons against violence and discrimination. Following these recommendations from multiple International and Regional Organizations, this submission will discuss the Right to Freedom of Opinion and Expression from the perspective of Gender Justice that includes LGBTI Persons.

3. Censorship and criminalization of LGBTI content and information

Many countries around the world do not only criminalize homosexuality and transgender identities, but they also censor and criminalize the reproduction of LGBTI information.¹⁰ The wrongful artificial rationale used to justify such bans is the so-called protection of public morality, traditional values, children and family. Conservative and authoritarian governments use these bans for political gain, in a phenomenon Human Rights Watch has labeled as “political homophobia” using “anti-LGBTI moral panic”¹¹ for electoral wins or the legitimization of their authority figure. Ultimately, the outcome of these bans is the increase of hostilities towards LGBTI individuals across all levels of a society.

LGBTI websites and mobile applications are blocked in several countries around the world, as reported by The Open Observatory of Network Interference (OONI).¹² The censorship is included in the domestic law following the approval of anti-LGBTI moral panic laws by legislative bodies, or by the administrative organs in charge of the regulation of the media.

⁹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 33 on women's access to justice*, 3 August 2015, CEDAW/C/GC/33, para 8.

¹⁰ ILGA World: Lucas Ramon Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Ilia Savelev and Daron Tan, *State-Sponsored Homophobia 2020: Global Legislation Overview Update* (Geneva: ILGA, December 2020). p. 24

¹¹ Human Rights Watch. No Support: Russia's Gay Propaganda Law imperils LGBT Youth. <https://www.hrw.org/report/2018/12/11/no-support/russias-gay-propaganda-law-imperils-lgbt-youth>. See also, Human Rights Watch. Human Rights and Public Health Impacts of Indonesia's Anti-LGBT Moral Panic. <https://www.hrw.org/report/2018/07/01/scared-public-and-now-no-privacy/human-rights-and-public-health-impacts>

¹² Outright International. Let's Measure the Blocking of LGBTIQI Websites Around the World. Available at: <https://outrightinternational.org/content/let%E2%80%99s-measure-blocking-lgbtqi-websites-around-world>

In Indonesia, OONI found that alongside websites criticizing Islam or the government, authorities also blocked LGBTI sites and other internet outlets that promote sexual health education, HIV/AIDS prevention, and feminism.¹³ LGBTI sites are typically banned under Section 4:1a 2008 Bill on Pornography, which “prohibits the action of, or any writing/audio-visual presentation of sexual activities involving same sex relations.”¹⁴ The Indonesian Ministry of Information and Communication has also enforced control and suppression of TV stations airing LGBTI content, and even forced the LINE messaging app to remove stickers with LGBTI themes.¹⁵ All these bans continue to happen while sexual orientation and gender identity and expression change efforts¹⁶ are publicly offered on social media accounts, targeting LGBTI individuals and framing them as “confused”.¹⁷

In Ethiopia, evidence shows that the government blocks sites that advocate for freedom of expression and LGBTI rights.¹⁸ Three LGBTI websites were found to be banned from access in Ethiopia: hwww.ifge.org, which is a US-based organization that promotes acceptance for trans people; www.samesexmarriage.ca, a Canadian site advocating for same-sex marriage; and www.queernet.org, which provides free online services, such as email hosting, for LGBTI communities.¹⁹

In Iran, from 2014 to 2017, 46 LGBTI websites were blocked, including the webpage of ILGA (the International Lesbian and Gay Association). Dating sites and apps were also blocked, including Grindr.²⁰

In Russia, the Parliament unanimously passed the “law aimed at Protecting Children from Information Promoting the Denial of Traditional Family Values” in 2013. It bans the “promotion of nontraditional sexual relations to minors.” The law prevents teachers, health professionals, traditional press, television, radio, and internet outlets from sharing LGBTI inclusive content. Under this law, many Russian activists have been sanctioned and silenced even for merely sharing on social media posts about the news of LGBTI rights progress in other countries. Human Rights

¹³ OONI. Indonesia Internet Censorship. Available at: <https://ooni.org/post/indonesia-internet-censorship/#lgbt>

¹⁴ Ibidem.

¹⁵ QZ. Indonesia is Banning Gay Emoji to Protect Nation’s Children. Available at: <https://qz.com/615680/indonesia-is-banning-gay-emoji-to-protect-the-nations-children/#:~:text=All%20LGBT%2Drelated%20stickers%20are,deemed%20sensitive%20to%20local%20cultures.>

¹⁶ In the mainstream known as “conversion therapy”.

¹⁷ PinkNews. Conversion Therapy Websites Target LGBT+ Activists in Indonesia. Available at: <https://www.pinknews.co.uk/2021/02/21/conversion-therapy-website-targets-lgbt-activists-indonesia/>

¹⁸ OONI. Ethiopia: Evidence of Social Media Blocking and Internet Censorship. Available at: <https://ooni.org/post/ethiopia-report/#lgbti-websites>

¹⁹ Ibidem.

²⁰ OONI. Internet Censorship in Iran. Available at: <https://ooni.org/post/iran-internet-censorship/>

Watch reported that health professionals and teachers at schools have started self-censoring in their interactions with LGBTI youth, becoming unable to provide correct services and accurate information in fear of being fined and suspended.²¹

In the United States, recent forms of LGBTI censorship have been fought in courts. In *Gillman v. School Board for Holmes County, Florida*, 567 F. Supp. 2d 1359 (N.D. Fla. 2008), the school board had banned students from displaying or carrying LGBTI symbols at school, like rainbow flags or LGBTIO-friendly pins, because they were deemed as sexually suggestive and disruptive. The District Court for the Northern District of Florida found that the school had no grounds to ban the free speech students had to express their support to a marginalized group such as the LGBTI community.²² More than a decade after *Gillman v. School Board for Holmes County*, 2021 has reportedly been called the worst year in anti-LGBTI legislative efforts, with hundreds of bills in state legislatures being introduced to prevent LGBTI content in education for youth. Most defenders of these bills wrongly argue that LGBTI content in education diminishes religious freedom of families and parents who do not want their children to be exposed to such content.²³

These laws limiting the dissemination of LGBTI content are a violation of the right to freedom of expression as they are not legitimately founded. These laws only produce harm to society and perpetuate intolerance towards a marginalized group. The OHCHR has expressed concerns over the restrictions to freedom of expression that censorship and bans of LGBTI information-sharing imply, even when justified on grounds of “alleged threats to public health, morality or State security”²⁴, and has noted that “restrictions on information on sexual orientation, including those allegedly intended to protect “decency”, can have a deleterious impact on public health efforts, including in relation to transmission of the HIV virus.”²⁵

In 2014, the United Nations Committee on the Rights of the Child had the opportunity to express its concerns about the legislation prohibiting content of unconventional sexual relationships in Russia. The Committee argued that even if the law is stated as intended protect children, it still “encourages the stigmatization of and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, including children, and children from LGBTI families, (and leads)

²¹ <https://www.hrw.org/report/2018/12/11/no-support/russias-gay-propaganda-law-imperils-lgbt-youth>

²² ACLU. Open Letter to schools about LGBT Censorship. Available at: <https://www.aclu.org/letter/open-letter-schools-about-lgbt-censorship>

²³ Human Rights Watch. 2021 Slated to become the worst year for LGBTQ state legislative attacks. Available at: <https://www.hrc.org/press-releases/2021-slated-to-become-worst-year-for-lgbtq-state-legislative-attacks>

²⁴ UN Human Rights Council, *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*, 17 November 2011, available at: <https://www.refworld.org/docid/4ef09202.html> [accessed 10 June 2021]. para. 66

²⁵ Ibidem.

to the targeting and ongoing persecution of the country's LGBTI community, including through abuse and violence, in particular against underage LGBTI rights activists."²⁶ Ultimately, these laws silence any discussion of sexuality in the public sphere.²⁷

4. Threats against LGBTI Human Rights Defenders and Politicians

The OHCHR considers that lesbian, gay, bisexual, transgender and intersex activists are also gender equality activists, "as issues related to sexual orientation and gender identity are part of achieving gender equality."²⁸ In that sense, LGBTI activists may encounter similar acts of gender-based violence and harassment that women in the feminist movement face.

Many LGBTI human rights defenders find themselves to be the subject of harassment in the streets and online, by State or private actors, because of their expressed opinions in favor of LGBTI people and rights, or merely because of their sexual orientation, gender expression and identity. As a measure of survival, many activists and organizations censor their speech against governments who abuse LGBTI rights, or masquerade the work they do so that government officials will not close their offices. In fact, OutRight Action International found that out of 194 countries, only 109 permit LGBTIQ organizations to legally register as LGBTIQ organizations.²⁹ Most organizations have to hide their work and regulate their speech in order to avoid barriers for legal registration.

Harassment against LGBTI human rights defenders have been widely reported. For example, in Tunisia, activist Rania Amdouni was arrested in February 2021 by the Tunisian police, after she had come to file a complaint for harassment. She had been suffering harassment from some police officers in the streets and online. The officers at the station ridiculed her gender expression and did not admit her complaint. She began to verbally express her disappointment at the poor job the police were doing to defend her, after which the authorities responded by arresting her. For months Amdouni had received insults, rape and death threats on her Facebook page, by people who identified as cops. She was also the target of a hate post made by a member of parliament, Seif

²⁶ UN Committee on the Rights of the Child (CRC), Concluding observations on the combined fourth and fifth periodic reports of the Russian Federation, 25 February 2014, CRC/C/RUS/CO/4-5, available at: <https://www.refworld.org/docid/52f89e2b4.html> [accessed 11 June 2021] para. 24

²⁷ UN Office of the High Commissioner for Human Rights (OHCHR), Born Free and Equal: Sexual Orientation and Gender identity in International Human Rights Law, September 2012, HR/PUB/12/06, available at: <https://www.refworld.org/docid/5065a43f2.html> [accessed 11 June 2021] para. 56

²⁸ OHCHR. Women Human Rights Defenders. Available at: <https://www.ohchr.org/en/issues/women/wrgs/pages/hrdefenders.aspx>

²⁹ OutRight International. The Global State of LGBTIQ Organizing: The Right to Register. Available at: https://outrightinternational.org/sites/default/files/CSOReportJuly2018_FINALWeb.pdf p. 7

Eddine Makhoulf, who mocked her gender expression. She had to delete her social media accounts to avoid further scrutiny.³⁰

On the other hand, laws that censor LGBTI content have often been used to intimidate LGBTI human rights defenders. For example, in Russia, the 2013 “law aimed at Protecting Children from Information Promoting the Denial of Traditional Family values”, was used to target LGBTI activist Evdokiya Romanova, who posted LGBTI affirmative posts on her private Facebook page:

“the charges (a fine of approximately USD \$870) were based on her sharing a link to the YCSRR’s website which called for youth activists to campaign for LGBTI rights. Charges also related to her reposting of media articles from Vkontakte, The Guardian and BuzzFeed articles on Facebook, including a story on Ireland’s same sex marriage referendum and an article about an LGBTI exhibition in St Petersburg.”³¹

The more severe forms of abuse of hate speech against LGBTI leaders result in violent crimes and death. In July 2019, Russian activist Yelena Grigoryeva was killed after her name was published on a “gay hunt” website that encourages people to kill LGBTI activists. She was assassinated near her home. The website offered personal information of queer activists, their picture, their address, and a prize for the person who completed the task.³²

Similarly, to activists, LGBTI politicians are often the subject of major scrutiny of their sexuality and private life in public debates or other forums, or of outright hate speech attacks targeting them. For example, in 2018 Gina Ortiz Jones, a Democratic candidate for the 23rd Congressional District of Texas in the USA, was “outed” in a televised debate by an opponent who asked her to clarify for voters if she was a lesbian.³³ The same year, State Rep. Brianna Titone, who became the first transgender lawmaker in Colorado received transphobic insult from a political group that paid Facebook to run ads in which she was misgendered and referred to by her name before transitioning, and was accused of sexualizing children. In 2020, Michigan state representative Jon Hoadley was targeted by homophobic ads against his campaign in which he was portrayed as a pedophile, misogynist, sexual predator and drug abuser, which are common “anti-gay stereotypes”.

³⁰ Human Rights Watch. Tunisia: Harassment, Arbitrary Detention of LGBT Rights Activists. Available at:

<https://www.hrw.org/news/2021/03/09/tunisia-harassment-arbitrary-detention-lgbt-rights-activist>

³¹ Frontline Defenders. Evdokiya Romanova found guilty of gay propaganda. Available at:

<https://www.frontlinedefenders.org/en/case/evdokiya-romanova-found-guilty-gay-propaganda>

³² NBC News. Russian LGBT activist killed. Available at: <https://www.nbcnews.com/feature/nbc-out/russian-lgbtq-activist-killed-after-being-listed-saw-inspired-site-n1032841>

³³ New York Times. Facing Threats and Bias, L.G.B.T. Candidates Are Running in Record Numbers. Available at:

<https://www.nytimes.com/2018/11/05/us/politics/lgbt-candidates.html>

The paid ads were broadcasted on TV, and were followed by internet blogs and tweets that referred to him as a pedophile.³⁴

Annise Parker, the president of the organization L.G.B.T.Q. Victory Fund, explains that the visibility of LGBTQ politicians and public figures alarms those who are against the community, and therefore find ways to attack them “in the form of overt anti-gay messages or they are dog whistles or sideways references based on stereotypes.”³⁵

The Special Rapporteur on the Situation of Human Rights Defenders has expressed deep concern about the “denigration campaigns and violent threats against defenders of lesbian, gay, bisexual and transgender rights.”³⁶ On his part, the Special Representative of the Secretary-General on Human Rights Defenders expressed that “those defending the rights of LGBT and intersex persons had had their houses and offices raided, and been attacked, tortured, sexually abused, threatened and killed, adding that “a major concern in this regard is an almost complete lack of seriousness with which such cases are treated by concerned authorities.””³⁷

The violence and harassment received by LGBTI activists and politicians results in an unfair limitation to their right to freedom of expression, as they have to police their own speech in fear of retaliation for their work and opinions, and the hostile environment against them prevents their work for human rights to reach further.

5. Threats against LGBTI Journalists

In 2018, The Inter-American Commission on Human Rights (IACHR) published a report about “The Situation of Women Journalists in the Americas”. In its report the Commission expresses that:

“women (...) still face structural obstacles and discriminatory practices that exclude (them) from public debate and prevent them, forcibly and persistently, from exercising their right to express their ideas and opinions publicly and to receive information on an equal footing with men. Many of these obstacles and practices are manifestations of gender-based discrimination, in addition to other factors, such as race, ethnicity, religion or belief, age, class, **sexual orientation, and gender identity**, that women in the region face, and they

³⁴ Victory Fund. TV Ad Latest Tactic In “Most Homophobic Campaign” in Nation; Incumbent U.S. Rep. Fred Upton Encourages Anti-Gay Attacks. Available at: <https://victoryfund.org/news/tv-ad-latest-tactic-in-most-homophobic-campaign-in-nation-incumbent-u-s-rep-fred-upton-encourages-anti-gay-attacks/>

³⁵ Op. Cit. New York Times.

³⁶ A/HRC/13/22, para. 49

³⁷ A/HRC/4/37, paras. 94-96

continue to create disparities in women's exercise of the right to freedom of expression in comparison to their male peers.”³⁸

The IACHR explained that women journalists encounter additional risks in their profession compared to their male peers, because they receive attacks for exercising their freedom of expression as well as because of their gender, subjecting them to gender-based violence. They are the subject of gender-based violence when specifically targeted because of their gender. Such violence may include workplace harassment, murder, sexual violence, and online violence.³⁹ Online violence is common when women journalists “cover topics traditionally covered by male journalists (political, judicial, or sports-related) or when they address issues related to women's rights and/or the LGBTI community, and when they speak out to denounce gender-based discrimination”.⁴⁰ The same experience of violence is true for LGBTI journalists, who find themselves at a double risk of attacks for expressing their opinions and for being LGBTI.

In Cuba, LGBTI journalist Maykel González Vivero has denounced “institutional homophobia” from the government throughout his career. In 2019 he covered the independent pride march in La Habana, after which he received harassment from State authorities and had to flee the country. Previously, he had been detained for expressing criticism of the homophobic policies of the government, and his private life had been ridiculed and exposed by the government.⁴¹

In Great Britain, the National Union of Journalists (NUJ) reported that “a third of LGBT+ journalists working in the British media have experienced bullying, harassment, ill-treatment or discrimination at work as a result of their sexuality or gender identity”.⁴² In 2018, Ben Hunte became the first LGBTI BBC correspondent. He often reports on issues of sexual orientation and gender identity, and because of it he has received online harassment and invasion of his private life. In response to a stream of hate tweets and messages he received in the fall of 2020, and for which he started a police investigation, the NUJ released an official statement in his support:

“It is beyond appalling and disgraceful that Ben Hunte, the BBC LGBT's correspondent, has been subjected to racist and homophobic abuse No journalist simply doing their job should be

³⁸ Inter American Commission on Human Rights. Women Journalists and Freedom of Expression. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/WomenJournalists.pdf> para. 2. (the parenthesis and bold are ours.)

³⁹ Ibidem. para. 2 and 3

⁴⁰ Inter American Commission on Human Rights. Women Journalists and Freedom of Expression. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/WomenJournalists.pdf>

⁴¹ VICE. Mykel Gonzalez Vivero. Available at: <https://www.vice.com/es/article/ep4vpm/orgullo-vice-maykel-gonzalez-periodismo-contra-la-homofobia-estatal-cubana>

⁴² Pinknews. LGBT Journalists are bullied, harass and discriminate against. Available at: <https://www.pinknews.co.uk/2021/03/16/lgbt-journalists-bullied-harassed-national-union-journalists/>

subjected to such harassment and hate-filled comments. It is right that the police are now involved.”⁴³

6. Hate speech against LGBTI persons and negative media narratives

According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), hate speech consists of “expressions that advocate incitement to harm (particularly, discrimination, hostility or violence) based upon the target’s being identified with a certain social or demographic group. It may include, but is not limited to, speech that advocates, threatens, or encourages violent acts. For some, however, the concept extends also to expressions that foster a climate of prejudice and intolerance on the assumption that this may fuel targeted discrimination, hostility and violent attacks.”⁴⁴

In general, freedom of expression protects most manifestations, even if vulgar or inflammatory. The United Nations Special Rapporteur on Minority Issues has expressed that “in order to develop consistent and effective legislation and measures to prohibit and penalize incitement to hatred, hate speech should not be confused with other types of inflammatory, hateful or offensive speech. As experts have stated, the intended or actual effects of speech can be a useful indicator to distinguish incitement to hatred from other categories of hate speech.”⁴⁵

The United Nations Strategy and Plan of Action Against Hate Speech, defines hate speech as:

“Any kind of communication in speech, writing or behavior, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, color, descent, gender or other identity factor. This is often rooted in, and generates, intolerance and hatred, and in certain contexts can be demeaning and divisive.”⁴⁶

The United Nations Human Rights Committee has found “a significant rise in manifestations of hate speech and intolerance directed at lesbian, gay, bisexual and transgender people.”⁴⁷ Some examples of hate speech include the Polish officials' call for LGBTI-free zones, which implies that

⁴³ <https://www.nuj.org.uk/resource/nuj-statement-on-the-online-abuse-of-ben-hunte.html>

⁴⁴ UNESCO. Countering Online Hate Speech. 2015, pp. 10 -11.

⁴⁵ UN, Human Rights Council, Report by the Special Rapporteur on Minority Issues, Rita Izsák, A/HRC/28/64, 5 January 2015, para. 54.

⁴⁶ UN. United Nations Strategy and Plan of Action on Hate Speech. Available at: https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20PoA%20on%20Hate%20Speech_Guidance%20on%20Addressing%20in%20field.pdf

⁴⁷ OHCHR, *Born Free and Equal: Sexual Orientation and Gender identity in International Human Rights Law*, September 2012, HR/PUB/12/06, available at: <https://www.refworld.org/docid/5065a43f2.html> [accessed 11 June 2021] p. 20

LGBTI persons cannot exist freely or do not belong in certain regions of the country. As of early 2021, over a hundred towns have passed resolutions approving LGBT-free zones.⁴⁸

Additionally, in 2017 in Chechnya, state official Alvi Karimov said the following about the existence of gay people in the republic: “You cannot arrest or repress people who don’t exist. If such people existed in Chechnya, law enforcement wouldn’t have any problems with them, as their own relatives would have sent them to a place they would never return from”.⁴⁹ After this statement and following the hostile environment against LGBTI people in Chechnya, reports of hundreds of LGBTI people being abducted and tortured started to arise.⁵⁰

Online hate speech around the world has also seen a rise, which is forcing LGBTI persons back into silence and preventing them from fully participating in society.⁵¹ During the COVID 19 pandemic, the Digital Security Helpline (DSH)⁵² documented the highest number of hate speech reports since 2013. Most of them came from middle eastern countries, and included direct threats on the life and integrity of LGBTQ activists. DSH found that “among all the at-risk groups (...) LGBTQ groups are facing a much higher exposure to online harassment. This security issue is a growing problem for LGBTQ people, with an increase of 7.1% reported cases between 2019 and 2020.”⁵³

Other forms of discriminatory expression in the media also foster an atmosphere of animosity against the LGBTI population, making public spaces less safe for them. In Indonesia, even though same-sex relations have never been criminalized on a federal level, “several provinces operate under Sharia law which criminalizes consensual same-sex activity and prescribes a punishment of 100 lashes, up to 100 months in prison, or a fine of 1m rupiah”⁵⁴ and authorities abuse anti-

⁴⁸ News Trust. Hate crime, violence feared in Polish LGBT-free zones. Available at: <https://news.trust.org/item/20210210140510-94odc/>

⁴⁹ Article 19. Russia: ARTICLE 19 Condemns Incitement to Violence against LGBT people in Chechnya. Available at:

<https://www.article19.org/resources/russia-article-19-condemns-incitement-violence-lgbt-people-chechnya/>

⁵⁰ Amnesty International. Russia: End the persecution of LGBTI people in Chechnya. Available at: <https://www.amnesty.org/en/get-involved/take-action/chechnya-stop-abducting-and-killing-gay-men/>

⁵¹ ILGA. Hate speech on social media is forcing LGBTI persons back into silence. It is time to take action. Available at: <https://ilga.org/hate-speech-social-media-forcing-lgbti-back-silence-take-action>

⁵² An online platform that documents hate speech and advocates for access to the internet without violence, in existence since 2013.

⁵³ Access Now. Digital Security Helpline: In 2020, LGBTQ groups are facing more online harassment than ever. Available at:

<https://www.accessnow.org/digital-security-helpline-in-2020-lgbtq-groups-are-facing-more-online-harassment-than-ever/>

⁵⁴ Outright International. Indonesia. Available at: <https://outrightinternational.org/region/indonesia>

pornography laws as an excuse to detain LGBTI people, and then advertise the detentions in humiliating ways to shame LGBTI persons.⁵⁵

For example, in 2017 Indonesian police authorities raided a hotel room in Surabaya, forced 14 men to have HIV tests, and showed the media condoms, lubricants and HIV test results while 8 detainees covered their faces.⁵⁶ Media outlets have also published pictures of half-naked gay men after being detained, or posted pictures of gay couples being paraded by the police after being arrested in their homes.⁵⁷ The negative way in which the media covers news related to LGBTI persons contributes to the inflammatory hate speech that portrays LGBTI people in Indonesia as a threat to the morals and wellbeing of Indonesian society.

To combat hate speech and discrimination in the media, the OHCHR holds that media outlets have a role to play in the elimination of hate speech and discrimination, by discontinuing negative stereotyping of LGBTI people, including in television programs popular among young people.⁵⁸ On its part, the UN Special Rapporteur has underscored the importance of ensuring accountability for what is reported in the media, and has stressed that “media outlets and journalists should adopt voluntary ethical codes and standards that do not allow hate speech and promote high standards of professional journalism”⁵⁹

7. Recommendations

As shown in this submission, around the globe LGBTI persons suffer gender-based violence and discrimination when exercising their right to freedom of expression, access to information and participation in political life. In order to improve this scenario, we recommend that:

- States should decriminalize consensual same sex acts between adults and the expression of diverse gender identities, as they foster an environment of intolerance against LGBTI persons, which prevents them from publicly engaging in conversations and express their opinions in safety.

⁵⁵ Human Rights Watch. Human Rights and Public Health Impact of Indonesia’s anti-LGBT moral panic. Available at: <https://www.hrw.org/report/2018/07/01/scared-public-and-now-no-privacy/human-rights-and-public-health-impacts>

⁵⁶ Ibidem.

⁵⁷ Ibidem.

⁵⁸ OHCHR, *Born Free and Equal: Sexual Orientation and Gender identity in International Human Rights Law*, September 2012, HR/PUB/12/06, available at: <https://www.refworld.org/docid/5065a43f2.html> [accessed 11 June 2021] p. 51

⁵⁹ United Nations, General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357. September 7, 2012, para. 74.

- States should enact laws that recognize the true gender identity of individuals, and anti-discrimination laws to protect LGBTI persons in the exercise of all their rights, including the right to freedom of expression.
- States should take into account that limitations on the right to freedom of expression, that are based on the sexual orientation or gender identity of an individual, violate rights guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights. The protection of morals and traditional values, and/or of children, are not legitimate grounds to restrict the right to freedom of expression.
- States should take measures to prevent harassment of LGBTI people online and off-line, and hold accountable those responsible for harassing them. States should lift restrictions on LGBTI websites and lift bans of educational LGBTI content at schools.
- State officials should refrain from spreading hate speech against LGBTI persons, recognizing their position of power and dangers of igniting violence into their audiences. They shall be held accountable to the highest standards when inciting to violence and promoting hate speech.
- In States where governments refuse to lift bans, local human rights organizations should look for temporary relief strategies in order to access safe and free hotspot shields (VPN) that may allow them to access LGBTI information, websites, sites, apps.⁶⁰
- Media outlets should take on an active role in dismantling gender stereotypes, and be conscious of their actions that perpetuate hate speech and discriminatory behavior.
- State and social media outlets should monitor websites offering services to correct sexual orientation and gender identity, and take them down immediately.
- Social Media companies should implement protocols to rapidly detect hate speech, take it down and prevent it from spreading. They should develop zero tolerance policies towards hate speech against LGBTI persons.

⁶⁰ <https://www.hotspotshield.com/resources/lgbt-sites-blocked-indonesia-heres-access/>