

LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PERSONS



Discriminatory attitudes, laws and practices, combined with insufficient legal protection, expose lesbian, gay, bisexual, transgender (LGBT) and intersex people of all ages and in all regions of the world to egregious violations of their human rights.

According to the United Nations Special Rapporteur on the right to health, discrimination against LGBT or intersex persons has far-reaching health-related impacts because it “prevents affected individuals from gaining access to other economic, social and cultural rights”.¹ Laws criminalizing same-sex relationships and cross-dressing violate fundamental human rights, including the rights to privacy and non-discrimination. These laws also feed stigma, limit or deny access to health care services and drive LGBT persons underground, thus preventing them from enjoying their sexual and reproductive health and rights.²



Everyone has the right to be free from discrimination, including on the basis of their sexual orientation, gender identity or expression, and sex characteristics. International standards prohibit discrimination in the enjoyment of the right to the highest attainable standard of physical and mental health, including on the basis of sexual orientation, gender identity and other status.³ The Committee on Economic, Social and Cultural Rights has clearly established that “non-discrimination, in the context of the right to sexual and reproductive health, also encompasses the right of all persons, including lesbian, gay, bisexual, transgender and intersex persons, to be fully respected for their sexual orientation, gender identity and intersex status.”⁴

HUMAN RIGHTS BODIES HAVE HIGHLIGHTED FOUR KEY STATE OBLIGATIONS TO PREVENT AND ADDRESS HUMAN RIGHTS VIOLATIONS RELATED TO SEXUAL ORIENTATION AND GENDER IDENTITY:

- 1 PROTECT** from discrimination on grounds of sexual orientation and gender identity.
- 2 PROTECT** LGBT and intersex persons from violence, including torture and cruel, inhuman and degrading treatment.
- 3 DECRIMINALIZE** homosexuality and repeal other laws used to punish individuals on the basis of sexual orientation and gender identity.
- 4 PROTECT** the rights of LGBT and intersex persons to freedom of expression, association and assembly and to take part in the conduct of public affairs.⁵

SEXUAL ORIENTATION REFERS TO A PERSON’S PHYSICAL, ROMANTIC AND/OR EMOTIONAL ATTRACTION TOWARDS OTHER PEOPLE



GENDER IDENTITY REFLECTS A DEEPLY FELT AND EXPERIENCED SENSE OF ONE’S OWN GENDER



TRANSGENDER PEOPLE DO NOT IDENTIFY WITH THE GENDER THEY WERE ASSIGNED AT BIRTH



INTERSEX PEOPLE ARE BORN WITH SEXUAL ANATOMY, REPRODUCTIVE ORGANS, HORMONAL AND/OR CHROMOSOME PATTERNS THAT DO NOT FIT THE TYPICAL DEFINITION OF MALE OR FEMALE

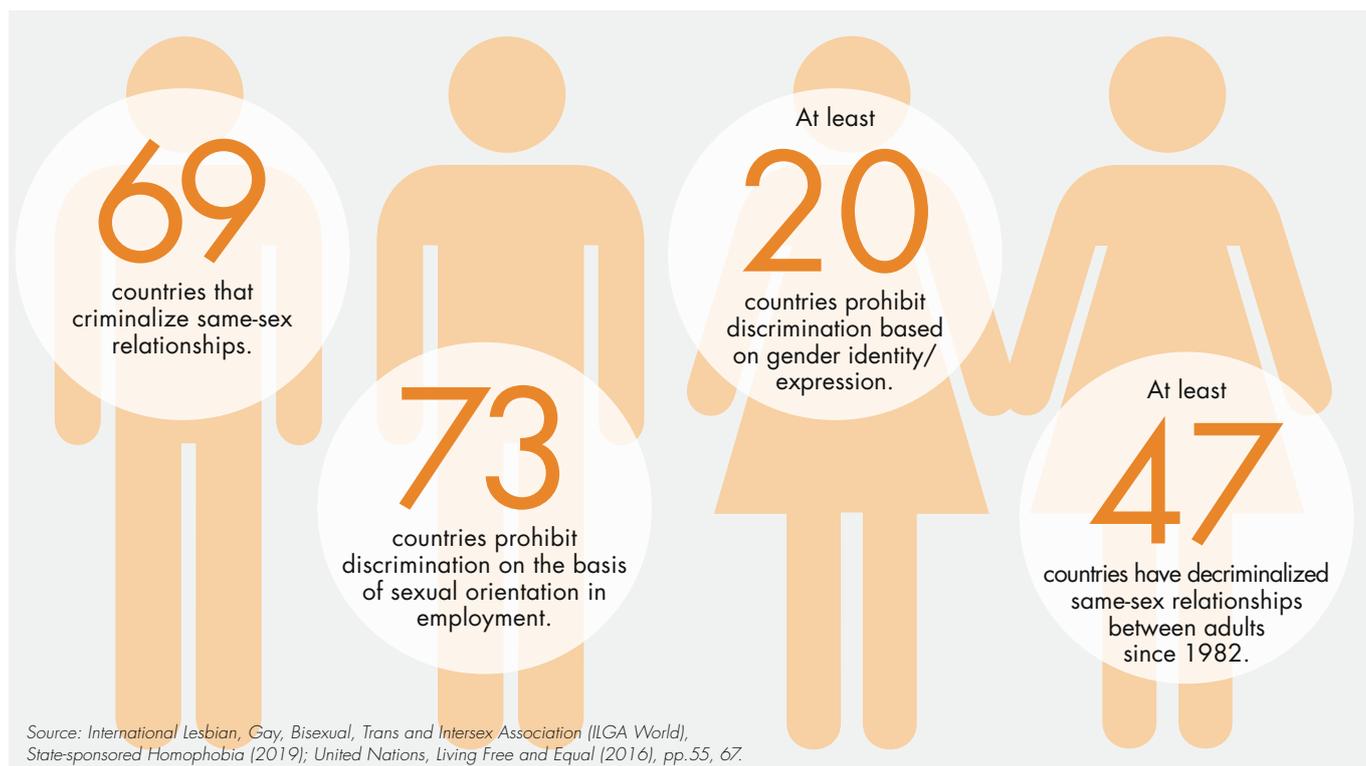
Source: United Nations, Living Free and Equal (2016), p. 18.



Since 2011, the United Nations Human Rights Council has adopted several resolutions on human rights, sexual orientation and gender identity. The first resolution, adopted in 2011, paved the way for the first official United Nations report on the subject, which presented evidence of a pattern of systematic violence and discrimination directed against LGBT and intersex persons in all regions.⁶ In 2016, the Human Rights Council adopted a resolution appointing an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity,⁷ which was renewed in 2019.⁸



IN SEPTEMBER 2015, **TWELVE UNITED NATIONS ENTITIES RELEASED AN UNPRECEDENTED JOINT STATEMENT** CALLING FOR AN END TO VIOLENCE AND DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE, EXPLICITLY URGING STATES TO REPEAL DISCRIMINATORY LAWS WHICH PERPETUATE STIGMA AND IMPEDE ACCESS TO, INTER ALIA, HEALTH AND HIV SERVICES.⁹



KEY ISSUES

1 STATES HAVE AN OBLIGATION TO GUARANTEE EQUAL RIGHTS TO EVERYONE REGARDLESS OF THEIR SEXUAL ORIENTATION, GENDER IDENTITY OR OTHER STATUS, INCLUDING IN THE ENJOYMENT OF SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS

Human rights bodies have expressed concern regarding discriminatory practices and attitudes that affect the enjoyment of sexual and reproductive health and rights by LGBT and intersex persons.

For example, transgender persons, including young people, face particular difficulties in accessing health care and related information on sexual and reproductive health and rights.¹⁰ Gender-affirming treatment, where available, is often prohibitively expensive and State funding or insurance coverage is rarely available. Health-care professionals can be insensitive to the health needs of LGBT and intersex persons and lack the necessary professional training.¹¹ Further, LGBT and intersex persons are also “disproportionately affected by intersectional discrimination in the context of sexual and reproductive health.”¹²

2 LAWS CRIMINALIZING PRIVATE, CONSENSUAL SAME-SEX RELATIONSHIPS AND/OR FORMS OF GENDER EXPRESSION, SUCH AS “CROSS-DRESSING”, VIOLATE HUMAN RIGHTS¹³

Laws criminalizing same-sex relationships legitimize prejudice and violence and prevent access to health services.

The Special Rapporteur on the right to health has explained that legislation criminalizing same-sex consensual activity violate the realization of the right to health because it

can “deter those engaging in consensual same-sex conduct from seeking out and gaining access to health services”¹⁴.

The Special Rapporteur on extrajudicial, summary or arbitrary executions has documented the State practice of criminalization of humanitarian actors’ provision of sexual and reproductive health



services to LGBT and intersex populations which “can lead to discrimination, and have consequences for beneficiaries’ pursuit of the right to life.”¹⁵

The criminalization of private consensual sex between adults of the same-sex and of

“cross-dressing” as well as of transgender identity or expression breaches human rights.¹⁶

Laws criminalizing homosexuality constitute discrimination and violate the right to privacy protected under the International Covenant on Civil and Political Rights.¹⁷ The Special Rapporteur on the right to health has pointed out that criminalizing consensual same-sex conduct “has the potential to jeopardize the obligations of confidentiality that arise during the course of the doctor-patient relationship, as health professionals may be required by law to divulge details of patient interaction.”¹⁸ This is also emphasized by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity who has observed that “in countries where non-conforming sexual orientation and

gender identities are criminalized and health policies are discriminatory, abuses and discriminatory attitudes in health-care institutions are explicitly condoned. Such an environment has a negative impact on access to health-care services and health-related information, and on the quality of the services provided”.¹⁹

Further, such laws are used to harass and prosecute individuals because of their actual or perceived sexuality or gender identity. Arresting or detaining individuals on the basis of their sexual orientation, same-sex sexual conduct or gender identity amounts to arbitrary detention.²⁰ The application of the death penalty for consensual sexual conduct is in violation of the right to life.²¹ Even when not enforced, such criminal laws are in breach of State obligations under international human rights law.²²



IN 2018, THE INTER-AMERICAN COURT OF HUMAN RIGHTS ISSUED AN ADVISORY OPINION ON GENDER IDENTITY, EQUALITY AND NON-DISCRIMINATION OF SAME-SEX COUPLES.²⁴ IN THE LANDMARK OPINION, THE COURT HELD THAT MEMBER STATES HAVE AN OBLIGATION TO PERMIT TRANSGENDER INDIVIDUALS TO CHANGE THEIR NAME AND GENDER ON IDENTITY DOCUMENTS, TO RECOGNIZE SAME-SEX MARRIAGE AND TO ENSURE THE ECONOMIC RIGHTS OF PARTNERS IN SAME-SEX RELATIONSHIPS.



THE UNITED NATIONS HUMAN RIGHTS COMMITTEE FIRST AFFIRMED THAT STATES HAVE AN OBLIGATION TO PROTECT INDIVIDUALS FROM DISCRIMINATION BASED ON SEXUAL ORIENTATION IN A CASE WHICH WAS DECIDED IN 1994. Since then, the Human Rights Committee and other treaty bodies have affirmed that violence and discrimination against lesbian, gay, bisexual, transgender and intersex persons violate State obligations under international human rights law.²³



3 LGBT AND INTERSEX PEOPLE ARE TARGETED AND SUBJECT TO ABUSE AND MISTREATMENT AT HEALTH CARE FACILITIES

Human rights bodies have condemned subjecting lesbian, gay, bisexual, transgender and intersex people to ill-treatment and non-consensual medical procedures.

Treaty bodies have expressed concern that lesbian, gay, bisexual, transgender and intersex persons are often “victims of abuses and mistreatment by health service providers.”²⁵ The types of mistreatment that are abusive include “conversion therapy”, forced medical examinations, including anal examinations, involuntary treatment, forced or otherwise involuntary psychiatric evaluations, forced or coerced surgery, sterilization and other coercive medical

procedures imposed on lesbian, gay, bisexual, trans and gender nonconforming persons.²⁶ According to the Special Rapporteur on torture, “these procedures are rarely medically necessary, can cause scarring, loss of sexual sensation, pain, incontinence and lifelong depression and have also been criticized as being unscientific, potentially harmful and contributing to stigma.”²⁷ In certain circumstances, the so-called “conversion therapies” treatment have been found to be “tantamount to torture – leading to successful legal challenges and bans in several countries.”²⁸

The United Nations and regional human rights bodies have called for an end to the pathologization and forced or coercive

treatment of LGBT persons, in particular transgender adults and children, through medical classifications.²⁹ According to the Committee on Economic, Social and Cultural Rights, “regulations requiring that lesbian, gay, bisexual transgender and intersex persons be treated as mental or psychiatric patients, or requiring that they be ‘cured’ by so-called ‘treatment’, are a clear violation of their right to sexual and reproductive health.”³⁰ United Nations human rights bodies have also expressed concern over the involuntary sterilization of transgender persons, and called on States to revise such practices.³¹

STATES HAVE OBLIGATIONS TO RESPECT, PROTECT AND FULFIL THE HUMAN RIGHTS OF LGBT AND INTERSEX PEOPLE

RESPECT States should refrain from interfering directly or indirectly with the enjoyment of human rights by LGBT and intersex persons. For instance, States must repeal laws that criminalize private, consensual sexual relationships between adults of the same-sex, laws that criminalize cross-dressing, and other laws used to punish individuals on the basis of their sexual orientation and gender identity.³²

PROTECT The State has an obligation to ensure that third parties do not infringe the human rights of LGBT and intersex persons by performing forced medical interventions or denying necessary medical care.³³ In cases of hate-motivated violence against LGBT and intersex persons committed by private individuals, organized groups, or extremist organizations, failure by States to investigate and punish this kind of violence and ensure remedies to victims is in breach of their human rights obligations.³⁴

FULFIL The obligation to fulfil requires States to take appropriate legislative, administrative, budgetary, judicial and other actions to ensure equal rights and opportunities to LGBT and intersex persons. For example, States must ensure access to health care services for LGBT and intersex persons on an equal basis with others.³⁵ States also have an obligation to combat homophobia and transphobia.³⁶



NOTES

- 1 A/HRC/14/20 (2010), para. 6.
- 2 A/HRC/14/20, para. 9; United Nations Office of the High Commissioner for Human Rights, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, A/HRC/19/41 (2011), para. 55.
- 3 Committee on Economic, Social and Cultural Rights, General Comment 14 (2000) on the right to the highest attainable standard of health, para. 18; General Comment 22 (2016) on the right to sexual and reproductive health, para. 23.
- 4 General Comment 22, para. 23.
- 5 United Nations Office of the High Commissioner for Human Rights, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23 (2015), pp. 5-7.
- 6 A/HRC/RES/17/19 (2011) on Human rights, sexual orientation and gender identity.
- 7 A/HRC/RES/32/2 (2016) on Protection against violence and discrimination based on sexual orientation and gender identity, para. 3.
- 8 A/HRC/41/L.10/Rev.1 (2019) on Mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, para. 2.
- 9 United Nations Joint Statement, *Ending Violence and Discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex People* (2015).
- 10 Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, A/HRC/38/43 (2018), para. 44; Committee on the Rights of the Child, General Comment 20 (2016) on the implementation of the rights of the child during adolescence, para. 33.
- 11 A/HRC/29/23, para. 54; United Nations, *Living Free and Equal*, p. 71.
- 12 Committee on Economic, Social and Cultural Rights, General Comment 22, para. 30.
- 13 *Ibid.*, para. 23; Committee on the Rights of the Child, General Comment 20, para. 34; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/32/32 (2016), para. 113 (e); Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/35/23 (2017), para. 110; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, A/72/172 (2017) para. 31.
- 14 A/HRC/14/20, para. 18.
- 15 A/73/314 (2018), para. 76; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, A/HRC/35/36 (2017), para. 14.
- 16 Committee on Economic, Social and Cultural Rights, General Comment 22, para. 23; A/HRC/19/41, para. 41; A/HRC/14/20, para. 2.
- 17 *Toonen v. Australia*, CCPR/C/50/D/488/1992, para. 8.2.
- 18 A/HRC/14/20, para. 18.
- 19 A/HRC/38/43, para. 59.
- 20 Working Group on Arbitrary Detention, Opinion No. 22/2006 on Cameroon, A/HRC/4/40/Add.1 (2007), para. 19; Opinion No. 42/2008 on Egypt, A/HRC/13/30/Add.1 (2010), para. 27; Opinion No. 25/2009 on Egypt, A/HRC/16/47/Add.1 (2010), para. 24. See also, Working Group on Arbitrary Detention, A/HRC/16/47 (2011), Annex, para. 8(e) (categorizing deprivations of liberty based on discrimination on the ground of sexual orientation, in violation of international law, as arbitrary); Human Rights Committee, General Comment 35 (2014), on liberty and security of person, para. 17.
- 21 Human Rights Committee, General Comment 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, para. 36.
- 22 *Toonen v. Australia*, CCPR/C/50/D/488/1992, para. 8.2; Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/8/3/Add.3 (2008), para. 76; *Living Free and Equal*, p. 54; A/72/172, para. 32.
- 23 Committee on Economic, Social and Cultural Rights, General Comment 22, para. 23; Committee on the Elimination of Discrimination against Women, General Recommendation 35 (2017) on gender-based violence against women, updating general recommendation No. 19, para. 31(a); Human Rights Committee, General Comment 36 (2018), para. 23; Committee on the Rights of the Child, General Comment 20, para. 34; A/HRC/38/43, para. 20 (b).
- 24 Inter-American Court of Human Rights, *State Obligations Concerning Change of Name, Gender Identity, and Rights Derived from a Relationship Between Same-Sex Couples* (Interpretation and Scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights), Advisory Opinion, OC-24/17, Ser. A, No. 24 (2017).
- 25 A/HRC/14/20, paras. 22-23; Committee on the Rights of the Child, General Comment 4, para. 6. See also World Health Organization, *Prevention and treatment of HIV and other sexually transmitted infections among men who have sex with men and transgender people: recommendations for a public health approach* (2011), pp. 10-11.
- 26 A/HRC/38/43, para. 100.
- 27 A/HRC/22/53 (2013), para. 76. See also A/HRC/38/43 para. 47.
- 28 A/HRC/29/23, para. 52.
- 29 United Nations Office of the High Commissioner for Human Rights, "Pathologization — Being lesbian, gay, bisexual and/or trans is not an illness" for International Day against Homophobia, Transphobia and Biphobia (2016); Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/35/21 (2017), para. 48. See also WHO, *International Classification of Diseases - 11th Revision*, <https://icd.who.int/en> (which removed transgender identities from the classification of "mental disorder").
- 30 Committee on Economic, Social and Cultural Rights, General Comment 22, para. 23; Committee on the Rights of the Child, General Comment 20, para. 34.
- 31 A/HRC/22/53, para. 88; A/HRC/38/43 para. 44; Committee on Economic, Social and Cultural Rights, General Comment 22, paras. 58-59. See also, *Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement* (2014), pp. 7-8.
- 32 United Nations Office of the High Commissioner for Human Rights, *Free and Equal Fact Sheet, Criminalization*, available at www.unfe.org.
- 33 A/HRC/22/53, para. 76.
- 34 *Living Free and Equal*, p. 24.
- 35 *Living Free and Equal*, pp. 38, 45-49.
- 36 Committee on Economic, Social and Cultural Rights, General Comment 22, para. 23.