

# LESBIAN, GAY, BISEXUAL AND TRANSGENDER AND INTERSEX PEOPLE



**Discriminatory attitudes, laws and practices, combined with inadequate legal protections, 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.**



Laws criminalizing same sex relationships and cross-dressing violate fundamental human rights, including to privacy and non-discrimination. They also feed stigma, limit or deny access to health care services<sup>1</sup> and drive LGBT people underground, thus preventing them from enjoying their sexual and reproductive health and rights.<sup>2</sup> “The health-related impact of discrimination based on sexual conduct and orientation is far-reaching and prevents

affected individuals from gaining access to other economic, social and cultural rights as well as the full range of civil and political rights. In turn, the infringement of other human rights impacts on the realization of the right to health, such as by impeding access to employment or housing.”<sup>3</sup>

The legal obligations of States to safeguard the human rights of LGBT and intersex people are well established in international human rights law. 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.<sup>4</sup> Additionally, all people, without distinction, “are entitled to enjoy the protections provided for by international human rights law, including in respect of rights to life, security of person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, association and peaceful assembly.”<sup>5</sup>

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

- 1 **Protect** individuals from violence targeting LGBT and intersex people.
- 2 **Prevent** torture and cruel, inhuman and degrading treatment of LGBT and intersex people.
- 3 **Repeal** laws criminalizing homosexuality and cross-dressing.
- 4 **Prohibit** discrimination based on sexual orientation and gender identity and against intersex people.
- 5 **Safeguard** freedom of expression, association and peaceful assembly for all LGBT and intersex people.<sup>6</sup>

**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,  
AND/OR CHROMOSOME  
PATTERNS THAT DO NOT  
FIT THE TYPICAL  
DEFINITION OF  
MALE OR FEMALE

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In June 2011, the United Nations Human Rights Council adopted the first United Nations resolution on human rights, sexual orientation and gender identity, which expressed grave concern at acts of violence and discrimination committed against individuals because of their sexual orientation and gender identity.<sup>8</sup> Its adoption 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 in all regions against LGBT people. In September 2014, the Human Rights Council adopted a second resolution reiterating concern and requesting the High Commissioner to update this report, with a focus on “sharing good practices and ways to overcome violence and discrimination, in application of existing international human rights law and standards.”<sup>8</sup>





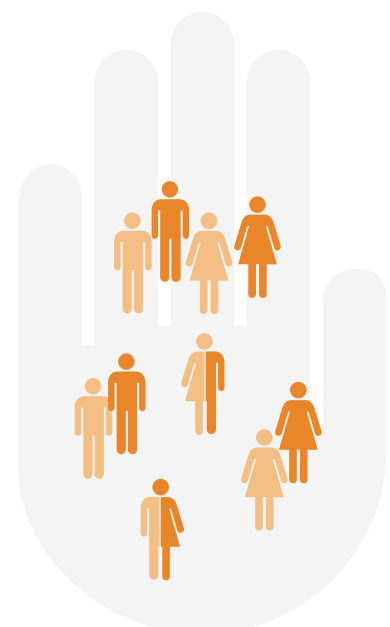
## KEY ISSUES

### 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<sup>9</sup>

#### *International law prohibits discrimination – including against LGBT and intersex people.<sup>10</sup>*

Human rights bodies have expressed concern regarding discriminatory practices and attitudes that affect the enjoyment of rights by LGBT and intersex people. For example, transgender persons, including young people, face particular difficulties in accessing health care and related information on sexual and reproductive health and rights.<sup>11</sup> Gender reassignment therapy, 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 transgender and intersex persons and lack the necessary professional training.<sup>12</sup> Health professionals have sometimes refused to treat homosexual patients altogether, or respond with hostility when compelled to do so.<sup>13</sup>

The right to be protected from discrimination applies to the enjoyment of all civil, political, economic, social and cultural rights, including the right to work,<sup>14</sup> to education and to the highest attainable standard of physical and mental health, including sexual and reproductive health.<sup>15</sup> With regards to the provision of health care, the Committee on Economic, Social and Cultural Rights has clarified that “health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population.”<sup>16</sup> The Committee has clearly established that “the Covenant proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds ... of sexual orientation” and has also expressed concern at discrimination against transgender and intersex people in health care.<sup>17</sup>



## 2 LAWS CRIMINALIZING PRIVATE, CONSENSUAL SAME-SEX RELATIONSHIPS AND “CROSS-DRESSING” VIOLATE HUMAN RIGHTS, INCLUDING SEXUAL AND REPRODUCTIVE HEALTH RIGHTS

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

The Special Rapporteur on the right to health has stated that “sanctioned punishment by States reinforces existing prejudices, and legitimizes community violence and police brutality directed at affected individuals.”<sup>18</sup> Laws criminalizing same-sex consensual activity also represents a considerable impediment to the realization of the right to health<sup>19</sup> because they can “deter individuals from seeking health services for fear of revealing criminal conduct, and results in services, national health plans and policies not reflecting the specific needs of LGBT persons.”<sup>20</sup>

The Special Rapporteur on the right to health has indicated that in jurisdictions that criminalize sexual conduct “affected individuals are much more likely to be unable to gain access to effective health services, and preventive health measures that should be tailored to these communities are suppressed. The fear of judgment and punishment can deter those engaging in consensual same-sex conduct from seeking out and gaining access to health services.”<sup>21</sup>

### *The criminalization of private, consensual sex between adults of the same sex and of “cross-dressing” breaches many other human rights.*

Treaty bodies and special procedures have repeatedly affirmed that laws criminalizing homosexuality or sexual conduct between partners of the same sex, laws criminalizing “cross-dressing” and other laws that criminalize transgender expression violate international human rights norms and must be repealed.<sup>22</sup> These laws can infringe on the rights to privacy and equality.<sup>23</sup>

Concerning the right to privacy, the Special Rapporteur on 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.”<sup>24</sup>

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 is prohibited by the guarantee against arbitrary detention.<sup>25</sup> In addition, the application of the death penalty for consensual sexual conduct is in violation of the right to life.<sup>26</sup> Even if never enforced, such criminal laws are a breach of State obligations under international human rights law.<sup>27</sup>


## 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 medically unnecessary and harmful practices.*


Treaty bodies have expressed concern about lesbian, gay, bisexual, transgender and intersex people as “victims of abuses and mistreatment by health service providers.”<sup>29</sup> According to the Special Rapporteur on torture “there is an abundance of accounts and testimonies of persons being denied medical treatment, subjected to verbal abuse and public humiliation, psychiatric evaluation, a

variety of forced procedures such as sterilization, State-sponsored forcible anal examinations for the prosecution of suspected homosexual activities, and invasive virginity examinations conducted by health-care providers, hormone therapy and genital-normalizing surgeries under the guise of so called “reparative therapies”. 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.”<sup>30</sup>

United Nations human rights mechanisms have also expressed concern at the involuntary sterilization of transgender



**THE UNITED NATIONS HUMAN RIGHTS COMMITTEE FIRST AFFIRMED THAT STATES HAVE AN OBLIGATION TO PROTECT INDIVIDUALS FROM DISCRIMINATION BASED ON SEXUAL ORIENTATION IN THE TOONEN V. AUSTRALIA CASE IN 1994.** The Committee affirmed that laws criminalizing homosexuality violate rights to privacy and non-discrimination in breach of States’ legal obligations under the International Covenant on Civil and Political Rights.<sup>28</sup> Since then, the Human Rights Committee and other treaty bodies – including the Committee on Economic, Social and Cultural Rights, the Committee Against Torture, the Committee on the Rights of the Child, and the Committee on the Elimination of Discrimination Against Women – **have all affirmed that violence and discrimination against lesbian, gay, bisexual, transgender and intersex persons violate State obligations under international human rights law.**



persons, and called on States to revise such practices.<sup>31</sup> They have further pointed out that the irreversible sex assignment, involuntary sterilization and involuntary genital normalizing surgery and other treatment performed on intersex children without their informed consent, leaves them with permanent, irreversible infertility and causes severe physical and mental suffering. They have called on States to ensure that no one is subjected to such treatment during infancy or childhood and to guarantee the bodily integrity, autonomy and self-determination of intersex children.<sup>32</sup>

## 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. 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 in violation of international human rights standards.<sup>33</sup>

**PROTECT** The State has an obligation to ensure that third parties do not infringe the human rights of LGBT and intersex persons, including forced medical interventions or denial of necessary medical care.<sup>34</sup> In cases of hate-motivated violence against LGBT and intersex people committed by private individuals, organized groups, or extremist organizations, failure by State authorities to investigate and punish this kind of violence and ensure remedy for victims is in breach of States' human rights obligations.<sup>35</sup>

**FULFIL** The obligation to fulfil requires States to take appropriate legislative, administrative, budgetary, judicial and other actions to eliminate discrimination against LGBT and intersex people. States must enact comprehensive laws that prohibit discrimination on grounds of sexual orientation, gender identity and other status and ensure access to health care services for LGBT and intersex people on an equal basis with others.<sup>36</sup>



## NOTES

- 1 Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/14/20 (2010), para. 9.
- 2 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 A/HRC/14/20, para. 6.
- 4 Committee on Economic, Social and Cultural Rights, General Comment 14 (2000) on the right to the highest attainable standard of health, para. 18. International human rights bodies have also called for States to combat discrimination against intersex people. Committee on Economic, Social and Cultural Rights, Concluding Observations on Germany, E/C.12/DEU/CO/5 (2011), para. 26; Committee on the Elimination of Discrimination Against Women, Concluding Observations on Costa Rica, CEDAW/C/CRI/CO/5-6 (2011), paras. 40-41. Office of the High Commissioner for Human Rights, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* (2012), p. 53.
- 5 A/HRC/19/41, para. 5.
- 6 *Born Free and Equal*, p. 13.
- 7 United Nations Human Rights Council resolution, A/HRC/RES/17/19 (2011), on human rights, sexual orientation and gender identity.
- 8 United Nations Human Rights Council resolution, A/HRC/RES/27/32 (2014), human rights, sexual orientation and gender identity.
- 9 A/HRC/19/41, para. 48; E/C.12/DEU/CO/5, para. 26; CEDAW/C/CRI/CO/5-6, paras. 40-41; *Born Free and Equal*, p. 53.
- 10 Human Rights Committee, *Young v. Australia*, CCPR/C/78/D/941/2000, para. 10.4; *X v. Colombia*, CCPR/C/89/D/1361/2005, para. 9; See also Committee on Economic, Social and Cultural Rights, General Comment 20 (2009) on non-discrimination in economic, social and cultural rights, para. 32; Committee on the Rights of the Child, General Comment 4 (2003) on adolescent health and development, para. 6; Committee against Torture, General Comment 2 (2008) on implementation of Article 2 by States Parties, para. 21; Committee on the Elimination of Discrimination Against Women, General Recommendation 27 (2010) on older women and protection of their human rights, para. 13; General Recommendation 28 (2010) on the core obligations of States Parties under Article 2 of the Convention, para. 18; E/C.12/DEU/CO/5, para. 26; CEDAW/C/CRI/CO/5-6, paras. 40-41; *Born Free and Equal*, p. 53.
- 11 Committee on the Rights of the Child, Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, CRC/C/15/Add.188 (2008), paras. 43-44; *Born Free and Equal*, p. 51.
- 12 *Born Free and Equal*, p. 51; E/C.12/DEU/CO/5, para. 26; CEDAW/C/CRI/CO/5-6, paras. 40-41.
- 13 A/HRC/14/20, para. 18.
- 14 Committee on Economic, Social and Cultural Rights, General Comment 18 (2006) on the right to work, para. 12(b)(i).
- 15 Committee on Economic, Social and Cultural Rights, General Comment 14, para. 18.
- 16 *Ibid.*, para. 12(b); *Born Free and Equal*, pp. 38-53.
- 17 E/C.12/DEU/CO/5, para. 26.
- 18 A/HRC/14/20, para. 20.
- 19 *Ibid.*, para. 2.
- 20 A/HRC/19/41 para. 55.
- 21 A/HRC/14/20, para. 18.
- 22 A/HRC/19/41, para. 41; Human Rights Committee, Concluding Observations on Kuwait, CCPR/C/KWT/CO/2 (2011), para. 30.
- 23 A/HRC/14/20, para. 2.
- 24 *Ibid.*, para. 18.
- 25 Working Group on Arbitrary Detention, Opinion No. 22/2006 on Cameroon, A/HRC/4/40/Add.1, para. 19; Opinion No. 42/2008 on Egypt, A/HRC/13/30/Add.1, para. 27; Opinion No. 25/2009 on Egypt, A/HRC/16/47/Add.1, 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). See also Human Rights Committee, Concluding Observations on Islamic Republic of Iran, CCPR/C/IRN/CO/3 (2011), para. 10; General Comment 35 (2014), on liberty and security of person, para. 17.
- 26 Human Rights Committee, Concluding Observations on Sudan, CCPR/C/79/Add.85 (1997), para. 8; A/HRC/14/24/Add.1 (2010), paras. 450-451; E/CN.4/2006/53/Add.4, paras. 26, 35, 37, 104; Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2002/74, para. 65; E/CN.4/2000/3, para. 57; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/14/20 (2010), para. 20.
- 27 Human Rights Committee, *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; *Born Free and Equal*, pp. 28-37.
- 28 *Toonen v. Australia*, para. 8.2.
- 29 CEDAW/C/CRI/CO/5-6, paras. 40-41; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/14/20, paras. 22-23; 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; Committee on the Rights of the Child, General Comment 4, para. 6.
- 30 A/HRC/22/53 (2013), para. 76.
- 31 Committee on the Elimination of Discrimination Against Women, Concluding Observations on the Netherlands, CEDAW/C/NLD/CO/5 (2010) paras. 46-47; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/22/53, para. 88.
- 32 A/HRC/19/41, para. 57; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/64/272 (2009), para. 49; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/22/53 (2013), paras. 77, 88; Committee Against Torture, Concluding Observations on Germany, CAT/C/DEU/CO/5 (2011), para. 20. Committee on the Rights of the Child, Concluding Observations on Switzerland, CRC/C/CHE/CO/2.4 (2015), paras. 42-43.
- 33 Office of the High Commissioner for Human Rights, *Free and Equal Fact Sheet, Criminalization*, available at [www.unfhe.org](http://www.unfhe.org).
- 34 A/HRC/22/53, para. 76.
- 35 *Born Free and Equal*, p. 13.
- 36 *Ibid.*, pp. 38, 45-49.