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PROTECTING THE HUMAN RIGHTS OF LGBTI PEOPLE DURING THE COVID-19 PANDEMIC

The COVID-19 pandemic, while affecting almost all people and communities around the world, is having a disproportionate impact on vulnerable groups. This includes lesbian, gay, bisexual, transgender and intersex (LGBTI) people who have been historically marginalized in the allocation of resources, faced discrimination in access to health care, employment and housing, and have faced targeted criminalization laws, harassment, intimidation, arbitrary arrests, and killings by state and non-state actors. This crisis, and the individual government responses to it are likely to add to the discrimination resulting in LGBTI people facing a unique set of challenges through this pandemic.¹

SUMMARY

The human rights of LGBTI people who are historically marginalized and discriminated against in their access to health care, employment, housing, basic goods and services, and often live in poverty², are particularly at risk during the COVID-19 pandemic. The pressures caused by COVID-19 on public health systems around the world is leading to health care services prioritizing emergency responses to COVID-19 which will pose additional challenges for LGBTI people to access health care and other medical services including hormone treatment, gender affirming surgeries and procedures³, and other treatment and medical attention that may be viewed by governments and health-care providers as 'non-essential'⁴, but is critical to the physical and mental wellbeing of LGBTI people⁵. The discrimination and stigma LGBTI people have routinely experienced in accessing health care poses an additional barrier leading to many people being reluctant to seek medical help. LGBTI people who are isolated with hostile family members and others are at risk of violence, harassment, intimidation and abuse.⁶ In countries where same-sex conduct or expressions of gender identity are criminalized, people in such situations are at additional risk as they will be unable to access support or justice for fear of facing persecution and criminalization⁷. Physical ('social') distancing measures will pose greater challenges to LGBTI people working in informal sectors, such as sex workers, in accessing a normal daily wage⁸ - resulting in poverty,

¹ Human Rights Campaign: 'The Lives and Livelihoods of Many in the LGBTQ Community are at Risk Amidst COVID-19 Crisis', last accessed on 15 April 2020: <https://www.hrc.org/resources/the-lives-and-livelihoods-of-many-in-the-lgbtq-community-are-at-risk-amidst>

² ILGA, 'World Health Day Joint Statement', 7 April 2018: <https://ilga.org/world-health-day-2018>

³ NBC News, 'Trans surgeries postponed indefinitely amid coronavirus pandemic', 3 April 2020, <https://www.nbcnews.com/feature/nbc-out/trans-surgeries-postponed-indefinitely-amid-coronavirus-pandemic-n1167756>

⁴ World Health Organisation: 'COVID-19: Operational guidance for maintaining essential health services during an outbreak', 25 March 2020: file:///C:/Users/nrahman/OneDrive%20-%20Amnesty%20International/Downloads/WHO-2019-nCoV-essential_health_services-2020.1-eng.pdf

⁵ Principle 17 of the Yogyakarta Principles states that "everyone has the right to the highest attainable standard of physical and mental health, without discrimination on the basis of sexual orientation or gender identity. Sexual and reproductive health is a fundamental aspect of this right", <https://yogyakartaprinciples.org/principle-17/>

⁶ Outright Action International, 'Domestic violence and COVID-19', 31 March 2020, <https://outrightinternational.org/content/domestic-violence-and-covid-19>

⁷ ILGA, 'LGBTI Caucus Statement in response to the COVID-19 Pandemic', 6 April, 2020, <https://ilga.org/lbti-caucus-covid19-statement>

⁸The Hindu, 'COVID-19 lockdown: transgender community pushed further to the margin', 6 April 2020, <https://www.thehindu.com/news/cities/mumbai/covid-19-lockdown-transgender-community-pushed-further-to-the-margin/article31265535.ece>

food insecurity, homelessness, negative effects on health and wellbeing, and increased risk taking while accessing potential earnings. LGBTI people also face discrimination from law enforcement agencies in relation to measures restricting freedom of movement related to COVID-19, such as lockdowns and curfews.⁹

Amnesty International calls on governments to ensure that LGBTI people are not discriminated against while accessing health care services, and that equal health care is provided to all people, including those in need of non-COVID-19 related treatment, medication and access to health services, including hormone therapy and gender-affirming surgeries. Governments must ensure provisions which allow those facing domestic or family violence to access justice, support and services, including helpline facilities to report incidents of violence. They must also ensure that those providing services including shelters and support organizations are resourced and able to do so without interruptions. Governments must ensure that food and other relief packages reach marginalized and vulnerable LGBTI populations working and living under precarious conditions and that measures implemented to enforce COVID-19 precautions relating to physical distancing do not have a discriminatory impact on people who are already marginalized. Authorities should ensure engagement with LGBTI communities in the development and implementation of responses to COVID-19, including by working in partnership with LGBTI people's associations and groups.

ACCESS TO HEALTH CARE

An increase in COVID-19 cases globally is seen to be putting increased pressure on public health systems, which are having to prioritize health care in response to the pandemic. This will adversely impact people who otherwise need regular access to health care that is unrelated to COVID-19 - including people who are pregnant; those that need access to hormone therapy; are in the process of gender affirming treatment and require regular health care and medication; and are living with HIV and need access to Antiretroviral Therapy. The introduction of public health measures such as lockdowns and quarantines, coupled with a reprioritization of health care is making it increasingly difficult for LGBTI people to get appropriate, timely and regular access to health care including essential medical services particularly those that sometimes necessitate a doctor to administer the treatment. There have been reports of delays for people accessing gender-affirming surgeries, and in at least one country, they have been postponed indefinitely¹⁰. Gender-affirming surgeries are an essential part of health care to allow transitioning people to live their lives. Delaying could result in increasing levels of anxiety and depression amongst transgender people. Under the Yogyakarta Principles¹¹, "States must facilitate access by those seeking body modifications related to gender reassignment to competent, non-discriminatory treatment, care and support".¹²

LGBTI people have historically faced stigma and discrimination in accessing health care and hospital treatment. This adds an additional barrier to medical care for those LGBTI people who are facing COVID-19 related symptoms, have had exposure to people with symptoms, or are caring for those who are unwell. Many LGBTI people fear they will not get the appropriate access or treatment if they present themselves to hospitals or to health providers, similar to the discrimination and stigma they have experienced in non-pandemic conditions. This may therefore lead to LGBTI people being reluctant to seek medical help during the pandemic.

The conditions of lockdown imposed by many governments create additional barriers to medical care for LGBTI people who are poor, live in remote areas, and do not have easy access to services. This will particularly impact older LGBTI

⁹ Human Rights Watch, 'Uganda LGBT Shelter Residents Arrested on COVID-19 Pretext', 3 April 2020, <https://www.hrw.org/news/2020/04/03/uganda-lgbt-shelter-residents-arrested-covid-19-pretext>

¹⁰ NBC News, 'Trans surgeries postponed indefinitely amid coronavirus pandemic', 3 April 2020, <https://www.nbcnews.com/feature/nbc-out/trans-surgeries-postponed-indefinitely-amid-coronavirus-pandemic-n1167756>

¹¹ Although not legally binding, they are a set of principles drafted by human rights experts relating to the application of international human rights law to sexual orientation and gender identity adopted in Yogyakarta, Indonesia in 2006. The YP plus 10 was adopted on 10 November 2017 to supplement the Yogyakarta Principles.

¹² Principle 17, part of Yogyakarta Principles +10, available here: <https://yogyakartaprinciples.org/principle-17/>.

people or those that fall under multiple risk categories, making them more vulnerable to being severely impacted by the virus. This is compounded in circumstances where they may not have access to health care, financial security or family and support systems.

The right to health without discrimination on the basis of sexual orientation or gender identity includes the provision of both physical and mental health services.¹³ Discrimination and stigma can lead to mental health concerns amongst LGBTI people which could include depression, anxiety, and in some cases, suicide ideation, attempts or completion.¹⁴ All of these may be exacerbated by the high stress situations caused by COVID-19 creating worry and panic; forced situations of lockdown that cause loneliness and isolation; risks associated with being isolated with abusive family members or co-habitants; and in some cases, harassment and discrimination from health care workers. There are reports of the pandemic triggering traumatic memories for those LGBTI people who experienced the HIV/AIDS epidemic and saw the deaths of people close to them, and violent discrimination against LGBTI people.

The UN High Commissioner for human rights has stated: “To effectively combat the outbreak means ensuring everyone has access to treatment, and is not denied health care because they cannot pay for it or because of stigma.”¹⁵ This point was further expanded in a joint statement released by UN experts on 26 March, where it was noted: “Everyone, without exception, has the right to life-saving interventions and this responsibility lies with the government...People with disabilities, older persons, minority communities, indigenous peoples, internally displaced people, people affected by extreme poverty and living in overcrowded settings, people who live in residential institutions, people in detention, homeless people, migrants and refugees, people who use drugs, LGBT and gender diverse persons – these and other groups need to receive support from governments.”¹⁶

The right to health is contained in several international human rights treaties, and most countries in the world have ratified at least one treaty that requires them to respect, protect and fulfil aspects of the right to health. The most prominent of these is the International Covenant on Economic, Social and Cultural Rights (ICESCR), which in Article 12 guarantees “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”, including steps to be taken necessary for the “prevention, treatment and control of epidemic, endemic, occupational and other diseases”. The Committee on Economic, Social and Cultural Rights (CESCR) – the UN body tasked with monitoring implementation of the ICESCR – has spelled out in detail states’ duties flowing from this right, in particular in its General Comment 14.¹⁷ As per the CESCR, “Measures to prevent, treat and control epidemic and endemic diseases” are “obligations of comparable priority” to core obligations (or “the minimum, essential levels”) of the right to health. The CESCR has stated that a state party cannot, under any circumstances, justify its non-compliance with its core obligations, “which are non-derogable”.¹⁸

General Comment 14 also specifically requires non-discrimination and equal treatment in the provision of health care: “By virtue of article 2.2 and article 3, 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 race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental

¹³ Principle 17 of the Yogyakarta Principles states that “everyone has the right to the highest attainable standard of physical and mental health, without discrimination on the basis of sexual orientation or gender identity. Sexual and reproductive health is a fundamental aspect of this right”, <https://yogyakartaprinciples.org/principle-17/>

¹⁴ ILGA, ‘LGBTI Caucus Statement in response to the COVID-19 Pandemic’, 6 April, 2020, <https://ilga.org/lbti-caucus-covid19-statement>

¹⁵ UN Office of the High Commissioner: ‘Coronavirus: Human rights need to be front and centre in response, says Bachelet’, 6 March 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25668&LangID=E>

¹⁶ UN Office of the High Commissioner: ‘No exceptions with COVID-19: “Everyone has the right to life-saving interventions” – UN experts say’, 26 March 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25746&LangID=E>

¹⁷ Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/2000/4 (2000) (hereinafter: CESCR General Comment 14).

¹⁸ CESCR General Comment 14, paras 43, 44 and 47. Paragraph 47 states that the “core obligations” in paragraph 43 are non-derogable. As per the Committee in paragraph 44, states’ responsibilities towards the obligations listed in paragraphs 43 and 44 are “of comparable priority”, and therefore treated equivalently.

disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health.”¹⁹

RECOMMENDATIONS

- Ensure LGBTI people are not discriminated against while accessing health care services.
- Ensure equal health care for all people, including those in need of non-COVID-19 related treatment, medication and access to other health services, including hormone therapy and gender affirming surgeries.

RISK OF VIOLENCE AND HARASSMENT IN ISOLATION SPACES

Quarantine and isolation measures pose risks of domestic violence and abuse by family members and partners. LGBTI people who are isolated in their homes or other spaces and do not have access to safe spaces, in particular those living with hostile or unsupportive family members or co-habitants, are at risk of violence, harassment, intimidation and abuse.²⁰ This puts those in countries where same-sex conduct or expressions of gender identity are criminalized at additional risk as they will be unable to access support or justice for fear of facing persecution and criminalization.²¹ Quarantine measures and other restrictions on movement, such as curfews and lockdowns also limit access to justice for victims who may not be able to access shelters and support organizations if they are experiencing violence in their own quarantine spaces or communities.

RECOMMENDATIONS

- States must ensure provisions which allow those facing domestic or family violence to access justice, support and services, including helpline facilities to report incidents of violence.
- States must ensure that shelters are designated as essential services and are kept open and are easily accessible by LGBTI people facing domestic violence. Other mechanisms such as protection orders, to help prevent perpetrators from gaining access to victims, should also be used where necessary.

ACCESS TO EMPLOYMENT

Many LGBTI people have historically faced discrimination in accessing employment; while those who find work are often discriminated against, not paid the same as non-LGBTI colleagues, or harassed in work settings. This has led to many LGBTI people finding jobs in the informal work sector, including as daily wage workers. For many LGBTI people, including transgender women and gender non-conforming people, this means engaging in sex work, blessing weddings and child births, or begging on the streets in some countries to make ends meet.²² Social distancing measures will mean greater challenges to those that work in the informal sectors in accessing a normal daily wage²³, resulting in

¹⁹ CESCR General Comment 14, Article 12, paragraph 18.

²⁰ Outright Action International, ‘Domestic violence and COVID-19’, 31 March 2020, <https://outrightinternational.org/content/domestic-violence-and-covid-19>

²¹ ILGA, ‘LGBTI Caucus Statement in response to the COVID-19 Pandemic’, 6 April, 2020, <https://ilga.org/lbti-caucus-covid19-statement>

²² Amnesty International, ‘As The World Comes Together, India’s Transgender Community Fights COVID-19 Alone’, 1 April 2020, <https://amnesty.org.in/as-the-world-comes-together-indias-transgender-community-fights-covid-19-alone/>

²³ The Hindu, ‘COVID-19 lockdown: transgender community pushed further to the margin’, 6 April 2020, <https://www.thehindu.com/news/cities/mumbai/covid-19-lockdown-transgender-community-pushed-further-to-the-margin/article31265535.ece>

poverty, food insecurity, homelessness, and negative effects on health and wellbeing. Many LGBTI people who are sex workers will be forced into even more unsafe situations to counter financial insecurity, putting them at additional risk of physical and sexual violence, and because of social distancing measures in place, they may face exacerbated difficulties in accessing justice. Those who are in employment risk being made redundant or unfairly dismissed with no access to redress. Those living in poverty are particularly at risk as they may not have resources to buy health, hygienic, food and other supplies.

The right to an adequate standard of living for everyone, including adequate food, clothing and housing is enshrined in Article 11 of the ICESCR²⁴. The CESCR's General Comment No. 20, which relates to non-discrimination in state responses to ensuring economic, social and cultural rights, includes a number of prohibited grounds of discrimination. These include "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The inclusion of "other status" in Article 2, paragraph 2²⁵, includes sexual orientation²⁶, i.e. "States parties should ensure that a person's sexual orientation is not a barrier to realizing Covenant rights" and "gender identity is recognized as among the prohibited grounds of discrimination."²⁷

RECOMMENDATIONS

- Governments must ensure that any efforts in providing food security, economic stimulus and relief packages must reach marginalized and vulnerable populations, including LGBTI people working and living under precarious conditions.

GENDER DESIGNATED DAYS TO LEAVE QUARANTINE SPACES

Countries such as Peru²⁸ and Panama²⁹ are imposing gender-based quarantine schedules in response to COVID-19, by allowing men and women out on separate designated days. This raises concerns for trans and gender non-conforming people as these quarantine measures may not take into account people's gender identities if they differ with the gender markers they have been labelled with at birth or on their ID documents. This is seen to have been impacting some trans people in Panama³⁰, and if other countries also adopt this model, it will leave trans and gender non-conforming people at risk of harassment, arrest and violence by police and other law enforcement officials.

RECOMMENDATIONS

- Protocols should be adopted to ensure that quarantine enforcement measures will be sensitive to transgender and gender non-conforming people's realities.
- Police and other law enforcement officials should respect the right of individuals to self-identify their gender.

²⁴ International Covenant on Economic, Social and Cultural Rights, Article 11, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

²⁵ Of the International Covenant on Economic, Social and Cultural Rights, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

²⁶ CESCR General Comments Nos. 14 and 15.

²⁷ CESCR General Comment 20, Para 32

²⁸ New Straits Times, 'Peru restricts movement by gender during Covid-19 lockdown', 3 April 2020, <https://www.nst.com.my/world/world/2020/04/580816/peru-restricts-movement-gender-during-covid-19-lockdown>

²⁹ CNN, 'In Panama, coronavirus lockdown means separating men and women', 2 April 2020, <https://edition.cnn.com/2020/04/01/world/panama-coronavirus-sex-intl/index.html>

³⁰ Human Rights Watch, 'Panama's Gender-Based Quarantine Ensnarers Trans Woman', 2 April 2020, <https://www.hrw.org/news/2020/04/02/panamas-gender-based-quarantine-ensnarers-trans-woman>

CRIMINAL PENALTIES IN THE COVID-19 RESPONSE

In response to the COVID-19 pandemic, many states have introduced measures to 'protect public health', including mandatory quarantine, self-isolation or other physical distancing measures, with penalties such as fines or prison sentences for those who breach them. Coercive approaches contradict evidence-based public health best practice, and often target disadvantaged communities which are marginalized, impoverished or at risk of discrimination resulting in stigma, fear and thwarting trust in authorities.

There are reports that criminal penalties to enforce public health measures in the COVID-19 response have been used to police and target marginalized groups including LGBTI people, people living with HIV/AIDS, sex workers, people who use drugs, and those who are homeless. As stated by UNAIDS, "such tactics have been known to be implemented in a discriminatory manner and have a disproportionate effect on the most vulnerable: people who for whatever reason cannot stay at home, do not have a home or need to work for reasons of survival".³¹ In Uganda, LGBTI people were arrested from a shelter they lived in on the pretext that they were guilty of "a negligent act likely to spread infection of disease," as well as "disobedience of lawful orders."³² Even though there are no limits set on the number of people who can reside in a shelter or private home, these young people were arrested from the place they lived in under orders to 'prohibit public gatherings of more than 10 people'. In Peru and Colombia, LGBTI people have experienced human rights violations as a result of government imposed restrictions.³³ LGBTI people have previously been blamed for natural disasters such as earthquakes and floods, and there are some reports that this is happening in the context of the COVID-19 pandemic too³⁴, leading to further stigmatization³⁵, exclusion, increased levels of homophobia and transphobia³⁶, and possible incitement to violence.

RECOMMENDATIONS

- Any restrictions on the right to freedom of movement or liberty, such as curfews, isolation or lockdowns for the specific aim to contain the COVID-19 pandemic must be proportionate to that aim or another legitimate purpose under international human rights law, necessary, non-arbitrary, evidence-informed and provided by law.
- States must put in place measures for people to be able to comply with any restrictions on freedom of movement, including by enabling them to satisfy their essential needs, and take into account the situation of marginalized groups who may require support in order to be in a position to comply with the restrictions.
- The imposition of penalties as enforcement measures of COVID-19 related measures must be the last resort. In considering the application of penalties for violating the conditions of any restrictions imposed, authorities

³¹ UNAIDS: 'UNAIDS condemns misuse and abuse of emergency powers to target marginalized and vulnerable populations', 9 April 2020, https://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2020/april/20200409_laws-covid19

³² Human Rights Watch, 'Uganda LGBT Shelter Residents Arrested on COVID-19 Pretext', 3 April 2020, <https://www.hrw.org/news/2020/04/03/uganda-lgbt-shelter-residents-arrested-covid-19-pretext>

³³ United Nations Human Rights Council, 'Joint NGO Statement on Civil and Political Rights', 9 April 2020, <https://www.amnesty.org/download/Documents/IO4021232020ENGLISH.pdf>

³⁴ UN Human Rights Council, 'COVID-19 and the human rights of LGBTI people', 17 April 2020, <https://www.ohchr.org/Documents/Issues/LGBT/LGBTIpeople.pdf>

³⁵ Amnesty International India, 'As the world comes together, India's Transgender community fights COVID-19 alone', 1 April 2020, <https://amnesty.org.in/as-the-world-comes-together-indias-transgender-community-fights-covid-19-alone/>

³⁶ Hate posters stuck on metro walls in Hyderabad India which read "If you talk to transgenders, you will get Corona", The New Indian Express, 'Transgenders shocked by hate posters in Hyderabad amid coronavirus fear', 30 March 2020, <https://www.newindianexpress.com/cities/hyderabad/2020/mar/30/transgenders-shocked-by-hate-posters-in-hyderabad-amid-coronavirus-fear-2123284.html>

must consider the circumstances of groups at risk who may be disproportionately affected and consider alternatives to alleviate the disproportionate impact of these penalties.

- Each order, rule, policy or practice by law enforcement officials must also be reviewable by a court of law. Law enforcement powers must be narrowly defined, proportionate to and necessary for a legitimate aim.³⁷
- Measures restricting movement should provide protection and special consideration for trans and gender non-conforming persons. Law enforcement officials should be instructed and adequately trained not to discriminate against people based on their sexual orientation or gender identity.
- Authorities should ensure engagement with LGBTI communities in the development and implementation of responses to COVID-19, including by working in partnership with LGBTI people's associations and groups.

³⁷ UNAIDS: 'UNAIDS condemns misuse and abuse of emergency powers to target marginalized and vulnerable populations', 9 April 2020, https://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2020/april/20200409_laws-covid19