

RIGHTS OF LGBTI

and gender non-conforming women and people

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While progress on the human rights of lesbian, bisexual, transgender, intersex (LBTI) and gender non-conforming (GNC) women and people, has been made in the region, gross human rights violations persist and exist in every UNECE country. These violations include killings, violent attacks, torture, arbitrary detention, so called “corrective rape”, conversion therapy, hate crimes, honor killings, forced marriage, infanticide, denial of rights to assembly and expression, and family or intimate partner violence, and harassment by state authorities.

Notably LBTI and GNC women and people continue to face violence, exclusion and discrimination perpetrated on the basis of real or perceived sexual orientation, gender identity and expression, and sex characteristics. Furthermore, barriers to critical dimensions of development, such as education, employment, and housing, access to health and social services, continue to be woefully under addressed.

Systematic attacks across the region on all women’s human rights, including on sexual reproductive health and rights, driven by conservative, populist, and fundamentalist agendas, fueled by sexism, racism, and xenophobia, have a direct impact on the lives of LBTI and GNC women and people. Furthermore, ideological divides, nationalism, declining democracy, and increased undermining of regional and multilateral institutions continue to have far-reaching implications on the rights and lives of LBTI and GNC women and people.



Structural barriers and negative trends

Structural barriers across the UNECE region are diverse and national social, cultural, and legislative contexts across the region vary significantly. However, common human rights violations and mechanisms of exclusion from critical areas of development among LGBTI and GNC women and people are ubiquitous.

Punitive legislation and climate

Laws that directly or indirectly criminalize LGBTI and GNC women and people, such as laws criminalizing same-sex sexual acts between women, “anti LGBTI propaganda” laws, laws which restrict comprehensive sexuality education, sex work, or abortion, and laws against “cross-dressing,” increase LGBTI and GNC women and peoples’ vulnerabilities and their risk to violence and discrimination.(1) In Russia, after the adoption of an anti-propaganda law targeting LGBTI people more widely, attacks against LGBTI people and activists became more violent and brazen; the law was used to ban street demonstrations and cultural events, as well as to close web-resources; it has been used to harass LGBTI teachers, particularly those who were LGBTI and GNC women and people; and to threaten LGBT parents, especially mothers.(2,3) Notably, after an “anti-LGBT propaganda” law was tabled in Kyrgyzstan, local LGBTI human rights organization, Labrys, reported a 300% upsurge in violent attacks against the wider LGBTI community.(4) Belarus, Kazakhstan, Latvia, Lithuania, Moldova and Ukraine, have all also considered similar laws. (5) Even in countries where laws guarantee and protect LGBTI rights, such as in the Western Balkans, the legal norms remain largely unenforced. Lack of access to protective legal structures and deep-rooted homophobia, lesbophobia, biphobia, and transphobia among law enforcement, exacerbates the situation, leaving LGBTI and GNC women and people highly vulnerable and without access to proper recourse or redress. The response to these violations is often inadequate, underreported, and rarely properly investigated and prosecuted, leading to widespread impunity, and lack of justice, remedies, and support for victims. Human Rights Defenders that defend the rights of lesbian, bisexual, transgender, intersex, and GNC women and people suffer specific and escalating challenges, violence and discrimination, and restrictions are imposed on the organizations they represent.

LGBTI and GNC women and people frequently experience hate crimes and hate speech and do not have access to justice and reparation due to lack of legislation which explicitly recognises hatred motivated by SOGIESC as an aggravating circumstance and because of discriminatory attitudes among law enforcement officials. For instance, according to a survey organised by the Kazakhstan Feminist Initiative, “Feminita”, 44% of LBQ women declared that they had experienced violence or negative attitudes because of their sexual orientation,

with 14% having faced physical violence. At that, 71% never took any actions to access justice or report the incidents. (6) Trans women, and especially trans women of color and sex workers, are particularly vulnerable. For example, according to the 2016 report of the National Coalition of Anti-Violence Programs in the US, transgender and gender non-conforming people, particularly transgender women of color, made up a majority of the homicides reported to the National Coalition of Anti-Violence Programs. (7)

Legal gender recognition

A historic ruling by the European Court of Human Rights in 2017 found that requiring sterilisation in accessing legal gender recognition (LGR) violates human rights law. This legal precedent required that all remaining 22 countries in Europe, which continued to enforce sterilization in order to access LGR, amend their laws to reflect this decision. However, currently, within the EU and in the wider European and Central Asian region, the organization Transgender Europe (8) (TGEU) reports that sixteen countries still require sterilisation of transgender persons seeking legal gender recognition. (9) Only five countries in the region, Norway, Ireland, Estonia, Malta, and Denmark, currently have gender identity recognition policies that are based on the principle of self-determination without any medical requirements.

TGEU finds that, access to LGR is only possible in some European and Central Asian Countries, and out of the 53 countries reviewed by TGEU, only 42 countries had LGR laws. (10) Furthermore, of the 42 countries reviewed, “36 prescribe a mental health diagnosis...22 require a divorce... and 33 countries impose age barriers, making access to legal gender recognition harder or impossible for minors.”

Inaccessible legal gender recognition laws for young people contribute to high levels of stigma and social exclusion, and negative impacts on mental and physical well being, even leading to higher rates of suicide among trans youth, and violates their rights to identity, privacy, education, and highest attainable level of health. (11) In the region, only Malta and Luxembourg do not have age restrictions on access to LGR, while some States explicitly restrict LGR for minors including, Czech Republic, Denmark, Finland, Lithuania, Poland, and the United Kingdom.

Ban on unnecessary, non-consensual surgeries on intersex infants

The practice of nonconsensual and unnecessary genital surgery on intersex infants remains an underrecognized and underserved issue, notably, Malta and Portugal remain among the only countries in the world to ban non-consensual and unnecessary medical interventions on intersex infants. Intersex people continue to be subjected to irreversible surgical interventions that share many of the same impacts of female genital mutilation – including physical and psychological suffering, scarring, a reduction or erasure in sexual pleasure, function, and fertility. Medical needs are often cited as justification for these surgeries, however evidence supporting this notion is extremely limited. Multiple United Nations treaty

bodies and human rights experts have recognized that harmful, forced, coercive, and non-consensual procedures on intersex persons violates their rights to bodily integrity and to be free from torture and ill treatment.

Family and intimate partner violence

Discrimination in education, housing, health, and employment, compounded by patriarchal social and legal environments, can make lesbian, bisexual, transgender, intersex, and GNC women and people further economically dependent on male relatives and increase their risk to violence. This includes abuse at the hands of their family members and intimate partners, going so far as to being forced into marriage, marital rape, harassment, and violence. In countries like, Tajikistan, where domestic violence or marital rape is not criminalized, individuals who face domestic abuse lack adequate social protection systems, services, and sustainable infrastructure. (12) Additionally, many countries in Eastern Europe do not recognize domestic violence as a category of crime, this can be partially attributed to pressure from religious entities and lack of political will to adopt laws that would allow investigation and prosecution of domestic violence as a specific crime, such as is the case in Belarus and Russia. (13)

Many societies in this region view family and domestic violence as private and internal affairs, safeguarding family honor and protecting family honor therefore take precedence over reporting abuse or violence. This leads many LGBTI and GNC women and people to suffer in silence, avoid reporting violence, and fear coming out. Social conservatism and the need to protect family honor may lead to gross human rights violations such as honor killings of LGBTI and GNC women and people, such as has been reported in Chechnya and the wider North Caucasus region, and other parts of the UNECE region. (14,15)

Family

The right to family is a fundamental human right for every human being. Families exist in all diversities, which all require respect and protection under the law. LGBTI and GNC women and people, however, continue to face violations to their right to family, including through non-recognition of non-heterosexual couples as forms of family, but also barriers and restrictions to guardianship, recognition of same-sex co-parenting, equal access to parental leave, adoption, assisted reproduction including artificial insemination, in vitro fertilization, and surrogacy, and access to reproductive health and rights. As an example of discrimination, in Zurich, Switzerland, same-sex couples have to pay 3'000 CHF per child for step-parent adoption, and in Russia, the Family Code has recently been amended to explicitly prohibit adoption and custody for those who are in same-sex marriage or partnership. There have been cases of children being separated from their parents, specifically lesbian couples, because of this restriction. Furthermore, in many countries, trans individuals who want to access legal gender recognition have their rights to a family denied by the explicit need for them to be either single or to divorce before they can go through with LGR. Furthermore, requirements of sterilization for trans individuals for LGR

also disable them from having children. Other restrictions also exist for trans parents, in regards to non-recognition of identity and denial of custody.

In a sign of progress, to address restrictions on the freedom of movement of same-sex couples and their families in the EU, on 5 June, 2018, the Court of Justice of the European Union confirmed that the term 'spouse' must be interpreted as being inclusive of same-sex spouses of EU citizens. The judgement means that all EU Member States must treat same-sex couples in the same way as different-sex couples when they exercise freedom of movement rights, which includes being fully recognised and granted residence rights on an equal basis.

Health

Punitive and violent environments which marginalize people based on their sexual orientation, gender identity, gender expression or sex characteristics create significant barriers to accessing health resources. In such contexts, service providers that work with these individuals are also often impacted and forced to stop working due to retraction of funding, harassment, or fear of persecution. Individuals may not disclose their sexual orientation, gender identity, or intersex status to medical professionals for fear of judgement, malpractice, harassment, exclusion, or detention.

Lesbian, bisexual, transgender, intersex and GNC women and people lack health insurance coverage, preventative health services, a secure income, access to culturally competent health and social service providers, and face cultural beliefs that decrease utilization of available services. Therefore, they are less likely to seek routine medical care such as mammograms and pap smear tests, and have higher risks for heart disease, cancer and depression. Transgender women also lack access to hormonal, surgical, psychological, or other specific health needs and services. Studies indicate that suicide or attempted suicide by lesbian, bisexual, transgender, intersex, and GNC women and people are relatively common, due to compounding stigma, isolation, and acute mental stresses. In Eastern Europe, political decisions to limit information on sexual health among the wider population as well as information about sexual and reproductive health for young people, has contributed to this region being the only in the world to have a 27% increase in HIV infections between 2010-2018. (16) Conservative legislation on same-sex relationships, sex work, and drug use, have also increased stigma and stunted HIV responses among key populations. This epidemic is the most concentrated in Russia and Ukraine.

Despite ample research demonstrating the inefficacy of so-called conversion therapy on changing an individual's sexual orientation or gender identity, States, religious groups, and anti-LBTI groups continue to endorse this harmful practice. So-called conversion therapy can include aversion therapy, shock therapy, talk therapy, and other forms intended to change, "correct," or "cure" an individual's sexual orientation, gender identity or expression to align with heteronormative and/or cisgender standards. (17,18) It has been discredited on multiple grounds, including by mental health professionals, including in the United Kingdom and the United States. Survivors of conversion therapy have time and time again spoken out against

the practice, speaking of experiences and exposure to physical and mental abuse. (19) In 2014 the United Nations Committee Against Torture also issued a public statement against the practice and elevating it as an international human rights concern. (20) Conversion therapy has been internationally debunked as faulty psychology that is driven by anti-gay bigotry. Yet, in a 2018 report produced by the government of the United Kingdom, one in five LGBT people surveyed, amounting to tens of thousands of individuals, have been exposed to conversion therapy. (21) A Williams Institute Report also published in 2018, found that, “698,000 LGBT adults (ages 18-59) in the U.S. have received conversion therapy, including about 350,000 who received treatment as adolescents.” (22) After receiving information from civil society, the United Nations Committee on the Rights of Persons with Disabilities recommended that Poland end the practice of “conversion therapy.” (23,24)

These kinds of practices contribute to the exclusion, discrimination, violence, even torture against individuals who are LGBTI and GNC. In 2016, Malta became the first country in the world to ban any form of so-called conversion therapy and remains the only country in the region with a national ban.

Education

Young people commonly face discrimination and violence on the basis of real or perceived sexual orientation, gender identity, or gender expression in education settings. Homophobic, lesbophobic, biphobic, transphobic and interphobic bullying, including cyber bullying, leads to unsafe environments for youth who are or are perceived to be lesbian, bisexual, transgender or intersex. This leads to higher absenteeism, and negative impacts on school performance and mental and physical well-being, such as self-esteem issues, depression, and suicide.

Trans and GNC youth are subjected to elevated rates of violence, harassment, and bullying by peers and educators. For example, young girls have reported being expelled from school or beaten by peers for appearing too masculine. Trans, non-binary, gender variant and intersex students also face additional barriers when it comes to having their gender, gender marker, or name recognised in the education institutions, especially in relation to binary gender segregated spaces (i.e. gymnasiums, toilets, etc.)

In the United States, a 2017 government survey found that “high school students who self-identify as lesbian, gay, or bisexual (LGB) report having been bullied on school property (33%) and cyberbullied (27.1%) in the past year”, a prevalence that is higher than their heterosexual peers (17.1% and 13.3%, respectively.) (25) In the United Kingdom, organization Stonewall UK, found that transgender students are twice as likely to commit suicide, with two in five have attempted to do so, and one in five lesbian, gay, and bisexual students. (26)

Schools lack comprehensive sexuality education programmes inclusive of sexual orientation, gender identity and expression, and sex characteristics. The affirming inclusion of LGBTI and GNC identities and realities across curricula and learning materials ensures that teachers

have many opportunities to discuss diversity. Likewise, IGLYO's Inclusive Education Index shows that teacher training comprehensive programmes are lacking in most countries. (27) Many teachers still report that they lack the confidence and knowledge to discuss sexual orientation, gender identity and expression, and sex characteristics or to support LGBTI and GNC learners.

Not only do schools and their staff lack knowledge and skills to discuss sexual orientation, gender identity and sex characteristics, or to react to the bullying, in many countries in the UNECE region, education is one of the main sources of instilling prejudice and stereotypes against LGBTI and GNC women and people. For example, textbooks used in schools can be outdated or explicitly depict non-heterosexual and cisgender sexual orientations and gender identities as "unnatural" or as "mental disorders," despite medical evidence that says otherwise. This is made worse by homo/transphobic statements of members of academia, as well as by religious education available or mandatory within schools. Intersex people in these textbooks are still referred to as hermaphrodites and no discussion on human rights, at all, is encouraged within the educational system.

Situations are made worse for lesbian, bisexual, transgender, intersex, and GNC youth who may be forced out of their homes by their families, leaving them vulnerable and without housing.

Employment, economic security, social protection

Lesbian, bisexual, transgender and intersex women and GNC people experience exclusion from the formal labor market, discriminatory practices in hiring, promotion, remuneration, and report losing employment or job opportunities due to their gender expression or for being open about their sexual orientation or gender identity. Transgender women face systemic discrimination in employment and high rates of workplace harassment, in conjunction with other forms of anti-transgender bias, leading to disproportionate rates of poverty.

Discrimination in education, housing, health, and employment can make lesbian, bisexual, transgender, intersex, and GNC women and people further economically dependent on male relatives and coerces them to enter into heterosexual relationships. This increases risks of physical abuse and sexual violence by partners or family members, further decreasing access to public services, social protection systems, and sustainable infrastructure. Studies indicate that suicide or attempted suicide by this group is relatively common, due to compounding stigma, isolation, and acute mental stresses.

LGBTI and GNC sex workers face restrictions on their agency and right to freely choose their employment due to paternalistic and discriminatory laws which criminalize consensual sex work. Faulty laws which are veiled in arguments on the protection of violence against women, such as the Nordic Model, perpetuate institutional and systematic persecution and discrimination against sex workers, exposes this community to heightened police surveillance and harassment, and deters or prohibits LGBTI and GNC sex workers from accessing public health and social services. (28,29) A form of these prejudiced laws exists

in, Sweden, Norway, Iceland, Northern Ireland, Canada, France, and Ireland. Sex work also continues to be criminalized in Albania, Armenia, Bosnia and Herzegovina, Georgia, Montenegro, Russia, Tajikistan, Macedonia, and Ukraine. (30) The decriminalization of consensual sex work has positive impacts on the dignity, safety, and health and well-being of LGBTI and GNC sex workers, and fights against the stigma of this community; positive results that have been publicly researched and reported. The decriminalization of sex work has also been recommended to many countries listed above by the United Nations Committee on the Elimination of Discrimination Against Women.

Restrictions on civil society

NGOs in many parts of this region face continued and systematic attacks from politicians, work in an increasingly restrictive legal environment, and face high barriers to funding or decreased funding opportunities. (31) Politicians and government authorities in places such as Bulgaria, Croatia, Hungary, Italy, Poland, Russia and Romania have engaged in public smear campaigns targeting NGOs leading to greater stigmatization and deterring local support in activities or donations. (32) In countries where NGOs working on LGBTI and GNC women and people's issues are already stigmatized and receive marginal, if any funding, consequences on the human rights and well being of LGBTI and GNC women and people are high. Furthermore, the imposition of restrictive laws and bureaucratic policies in many countries, such as in Hungary, Romania, and Russia, make it harder, or even impossible, for NGOs to operate and receive foreign funding, thereby limiting their already restrained capacities and increasing burden. (33)

Within the EU, there are virtually no cross-regional funding mechanisms or access to EU funding for NGOs operating in non-Development Assistance Committee funding States, making it impossible for some NGOs, especially those operating in hostile countries, to access financial support. In a regional environment where democracy, human rights, and formal or informal State secularism are deteriorating, mechanisms must be put in place to assist organizations working on fundamental rights issues, such as those working on the rights of LGBTI and GNC women and people's issues.

Human rights protections

The human rights of lesbian, bisexual, transgender, intersex and gender non-conforming women and people are not new or special rights, it is the application of existing international human rights law equally to everyone irrespective of their sexual orientation, gender identity, gender expression or sex characteristics.

Over the past 20 years, all United Nations treaty bodies have addressed violence and discrimination based on sexual orientation, gender identity, gender expression, and sex characteristics. The Human Rights Council appointed its first Independent Expert on Sexual Orientation and Gender Identity, confirmed by the universal membership of the General

Assembly, in 2016, and has approved three resolutions on violence and discrimination based on sexual orientation and gender identity.

Many reports from the Human Rights Council, United Nations Secretary General, and Special Procedures across the UN system, highlight violence and discrimination against lesbian, gay, bisexual, transgender and intersex people; multiple General Assembly resolutions on extrajudicial executions and Human Rights Council resolutions also note these concerns.



Progress on implementing the Beijing Platform for Action

In order to achieve any of the commitments in the Beijing Platform for Action, Member States must adequately address the multiple and intersecting forms of discrimination and violence faced by LGBTI and GNC women and people. In the national reports submitted by states to discuss their progress on the commitments, several UNECE Member States included reference to National Action Plans and government sponsored initiatives addressing issues LGBTI and GNC women and people face. However, in order to fully implement the commitments and achieve gender equality, States must outline precise and detailed ways in which LGBTI and GNC women and people are inherently included in discussions on implementation of each of the commitments and address the numerous violations still experienced by the community in every State in the region.



Recommendations beyond Beijing+25

In order to fully comply with the commitments and spirit of the Beijing Platform for Action, Member States must commit to specific recommendations that ensure the full integration of LGBTI and GNC women and people's lived experiences. These recommendations include:

- Annul legal provisions that discriminate on the basis of sexual orientation, gender identity, gender expression or sex characteristics, including laws that directly or indirectly criminalize LGBTI and GNC women and people, such as “anti LGBTI propaganda” laws, or laws which restrict comprehensive sexuality education.
- Adopt gender identity laws that recognize the right of trans persons to rectify their name and gender component on birth certificates, identity documents and other legal documents.

- Gender identity laws should guarantee expeditious and simple procedures, based on self-determination, without the need for medical or psychological/psychiatric evaluations or certificates or limiting access to other rights.
- Gender identity laws must guarantee the right of all, including adolescents, access to gender identity recognition procedures, always seeking autonomy, protection and the development of the personality of all adolescents.
- Prohibit any unnecessary medical intervention on intersex children without their free, prior and informed consent.
- Commit to ending stigma and discrimination based on sexual orientation, gender identity and expression, and sex characteristics in provision of healthcare services including in prevention, promotion and treatment.
- Ensure that LGBTI and GNC women and people are actively and meaningfully participating in framing health policy that is responsive and respectful to the needs of LGBTI people.
- Ensure that healthcare professionals are technically trained and supported to responsively address health needs of LGBTI and GNC women and people in a non-discriminatory manner.
- Ensure that sexual and reproductive health programs are tailored to the specific needs of LGBTI people, including hormone therapy, routine sexual and reproductive health screenings, sexually transmitted infection testing and treatment, and family planning services responsive to diverse family forms.
- National governments should ban all forms of so-called conversion therapy
- End all forms of gender-based violence and adopt protective legislation that also includes domestic and sexual violence as a crime.
- Ensure that families in all of their diversity are respected and protected under the law including through recognition, equal access to parental leave, adoption, assisted reproduction, including in vitro fertilization and surrogacy, and access to reproductive health services.
- Include human rights and comprehensive sexuality education in school curriculum with a SOGIESC perspective.
- Train education professionals in order to create a school environment for LGBTI and GNC women and people free from discrimination.
- Decriminalize consensual sex work, guaranteeing the dignity, safety, and health and well-being of LGBTI and GNC sex workers.
- Collect data disaggregated according to sexual orientation, gender identity, gender expression and sex characteristics to continue to capture accurate and up to date information related to the lives of LGBTI and GNC women and people.
- Support civil society and LGBTI and GNC women and people through targeted and robust funding opportunities to ensure that those furthest left behind are meaningfully included in the achievement of the Beijing Platform for Action commitments.

Three priority overarching recommendations:

- Repeal laws and policies that sanction violence against and which directly or indirectly criminalize people based on their real or perceived sexual orientation, gender identity and or expression, and sex characteristics, including laws which criminalize same-sex sexual behaviors, “anti-propaganda” laws, laws against cross dressing, loitering, sex work, vagrancy, and public morality laws, among others.
- Adopt and enforce legislation and policies which explicitly protect LGBTI and GNC women and people from discrimination on the basis of sexual orientation, gender identity and expression, and sex characteristics, including in access to employment, education, housing, healthcare, and social services, by adopting legal gender recognition laws based on self-determination, and recognizing LGBTI and GNC women and people and their families before the law.
- Ban all non-consensual, harmful, and medically unnecessary surgeries on intersex children.

Useful sources

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