

Rape and other forms of sexual violence against lesbian and bisexual women and non-binary, trans and intersex persons

*Submission to the Special Rapporteur on violence against women
for the thematic report on rape as a grave and systematic human rights violation
and gender-based violence against women*

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Executive Summary

Lesbian and bisexual women and non-binary, trans and intersex persons (LNBNTI women/persons) are specifically vulnerable to sexual violence, including rape.

Legislation: States shall ensure that laws against rape, sexual assault and sexual harassment protect all persons regardless of their sexual orientation, gender identity, gender expression and sex characteristics. Yet, many countries in the world do not have legislation to fully protect LNBNTI women/persons.

- **Definition of rape and other forms of sexual violence.** Definitions of rape or other forms of sexual violence may be applied only to specific genders or specific types of sexual acts. This can result in the exclusion of sexual violence committed against LNBNTI women/persons.

When legislation constructs different crimes of rape committed by a man against a woman and other sexual acts, such as non-consent “sodomy and lesbianism”, it may perpetuate discrimination and stigmatization experiences by LNBNTI women/persons.

Legislation should recognize rape and other forms of sexual violence experiences by LNBNTI women/persons. This requires gender-neutral definition of rape which covers different types of actions.

- **Aggravating circumstances.** Only a small proportion of countries in the world consider hatred based on sexual orientation as aggravating circumstance of a crime, including rape and other forms of sexual violence. Even less protect gender identity, gender expression and sex characteristics.

Legislation should recognize the motive of hatred based on sexual orientation, gender identity, gender expression and sex characteristics as an aggravating circumstance, particularly for sexual crimes, including rape. A good example is the Criminal Code of Brazil defining “corrective rape” as a rape committed “to control the victim’s social or sexual behavior” and establishing increased penalties for it.

When family relationship between a perpetrator and a survivor is considered a factor aggravating crimes, including rape and other forms of sexual violence, LNBNTI women/persons may be excluded if their relationships are not recognized as family.

- **Mitigating circumstances.** LNBNTI women/persons may be affected by laws excluding marital sexual violence from the definition of rape, especially when they are forcedly married. In some cases, the very SOGIESC of survivors are held to be a mitigating factor in the sentencing of the perpetrators.

Protection and support services: barriers, gaps and good practices: While legislation on rape and other forms of sexual violence affects victims and survivors who are LNBNTI women/persons, other factors also contribute to the picture. This includes:

- criminalization of consensual same-sex sexual acts, certain forms of gender identity or expression and sex work;
- attitudes of police: police may not only refuse to protect LNBNTI women/persons, document and investigate cases of rape and other forms of sexual violence against them, but also commit such crimes);
- family pressure: family members may arrange or commit rape and other forms of sexual violence against LNBNTI women/persons to “cure” them, or may prevent survivors from reporting;
- health care services: health professionals may not be sensitive to the experience of sexual violence experienced by LNBNTI women/persons and their SOGIESC; they may even provide “conversion therapies” towards survivors referring to them;
- other support services: in many countries, there are no state-led services to support LNBNTI survivors of rape and other forms of sexual violence; mainstream support services, such as shelters, may not be sensitive to the needs of LNBNTI survivors and may even re-victimize them; LGBTI grassroots groups provides multiple good practice examples of organizing support services for LNBNTI survivors.

Data and cases: most countries in the world do not collect official statistics on rape and other forms of sexual violence experiences by LNBNTI women/persons. At the same time, civil society organizations, especially LGBTI groups, in all parts of the world organize systems to document cases and collect data on rape and other forms of sexual violence experiences by LNBNTI women/persons.

Such data and cases are provided in this submission, including specific information on certain topics (“corrective rape”; detention; armed conflicts) and populations (lesbian and bisexual women; trans women and persons; intersex women and persons; and sex workers).

A number of **recommendations** to States are suggested to ensure better protection of LNBNTI women/persons.

Recommendations

Legislation

- Ensure that laws against rape and other forms of sexual violence protect all persons regardless of their sexual orientation, gender identity, gender expression and sex characteristics.
- Define rape and other forms of sexual violence in gender-neutral manner and covering different acts so that rape and other forms of sexual violence committed against lesbian and bisexual women and non-binary, trans and intersex persons are included.
- Repeal or amend all laws establishing different forms of crimes and/or punishment for rape and other forms of sexual violence committed by a man against a woman compared to those committed by other combination of actors.
- Recognize the motive of hatred based on sexual orientation, gender identity, gender expression and sex characteristics as an aggravating circumstance for crimes in general, and for rape and other forms of sexual violence in particular.
- Ensure that when family or other close relationship between a perpetrator of a rape or other forms of sexual violence and a survivor is considered an aggravating circumstance, it covers diverse families, including those formed by lesbian and bisexual women and non-binary, trans and intersex persons.
- Ensure that sexual orientation, gender identity, gender expression and sex characteristics, and marriage are not considered as mitigating circumstances for rape and other forms of sexual violence.
- Repeal all laws criminalizing consensual same-sex sexual acts between adults, certain forms of gender identity or gender expression, and sex work.

Law enforcement practice

- Take all measures necessary to prevent, investigate, prosecute and punish acts of rape and other forms of sexual violence based on sexual orientation, gender identity, gender expression and sex characteristics perpetrated by the State and non-State actors, and provide reparations to survivors.
- Create effective systems for recording and reporting rape and other forms of sexual violence based on sexual orientation, gender identity, gender expression and sex characteristics.
- Adopt specific policies, guidelines and protocols related to sexual orientation, gender identity, gender expression and sex characteristics, and provide specialized training to law enforcement personnel and persons working in the justice system to address bias that may permeate investigation, prosecution and punishment.

Support services

- Establish sensitive, inclusive, community and survivor-based support services, including health care services, psychological and legal support and shelters, for lesbian and bisexual women and non-binary, trans and intersex persons subjected to rape and other forms of sexual violence.

Awareness-raising and education

- Design and conduct, with participation of lesbian and bisexual women and non-binary, trans and intersex persons, public awareness and education campaigns to promote the culture of acceptance and respect for diversity in relation to sexual orientation, gender identity, gender expression and sex characteristics.

Data collection

- Develop comprehensive data-collection procedures in order to be able to assess uniformly and accurately the type, prevalence, trends and patterns of rape and other forms of sexual violence against lesbian and bisexual women and non-binary, trans and intersex persons. Data should be disaggregated by communities, but also by other factors such as race, ethnicity, religion or belief, health status, age, class, caste, migration or economic status, disability or occupation.
- Use the collected data to inform the policies and legislative actions of States with a view not only to prevent further acts of rape and other forms of sexual violence but also to address gaps in investigations, prosecution and the remedies provided.
- Follow a human rights-based approach to data, taking into consideration the principles of participation, self-identification, privacy, transparency and accountability.

1. Legislation

As the Special Rapporteur on violence against women pointed out in one of her country visit reports, “[s]ome groups of women, including ... LGBTQ2 women ... are especially vulnerable to sexual violence.”¹

Indeed, lesbian and bisexual women and non-binary, trans and intersex persons (hereinafter – LNBNTI women/persons), being exposed to criminalization, discrimination, stigmatizations and exclusion, are specifically vulnerable to sexual violence, including rape.

According to Yogyakarta Principles plus 10, states shall ensure that **laws against rape, sexual assault and sexual harassment protect all persons regardless of their sexual orientation, gender identity, gender expression and sex characteristics.**²

Yet, many countries in the world do not have legislation to fully protect LNBNTI women/persons.

Definitions of rape or other forms of sexual violence may be applied only to specific genders or specific types of sexual acts. This can result in the exclusion of sexual violence committed against LNBNTI women/persons from the scope of legislation.

Legislation may have no provisions on hate crimes or aggravating circumstance applicable to rape and other forms of sexual violence committed with a motive to punish or cure LNBNTI women/persons based on their sexual orientation, gender identity, gender expression and sex characteristics (hereinafter – SOGIESC).

1.1. Definition of rape and other forms of sexual violence

Definitions of rape or other forms of sexual violence in legislation of many countries do not cover sexual violence committed against LNBNTI women/persons. This may be a result of gender-restrictive definition of the crimes, or the limited forms of acts considered as rape or other forms of sexual violence.

According to a comprehensive research of the Commonwealth sexual offences legislation conducted by the Human Dignity Trust³ (see *Table 1*), out of 60 jurisdictions only 33 have gender-neutral sexual assault crimes. Moreover, out of the 60 jurisdictions only 16 criminalizes all non-consensual sexual acts involving penetration and all non-penetrative, non-consensual physical sexual acts.

Table 1: Sexual offences legislation in the Commonwealth countries (Human Dignity Trust)⁴

| | Sexual assault crimes are gender-neutral | All non-consensual sexual acts involving penetration are offences | All non-penetrative, non-consensual physical sexual acts are criminal offences |
|----------------------------------|------------------------------------------|-------------------------------------------------------------------|--------------------------------------------------------------------------------|
| Caribbean & Americas | | | |
| Antigua and Barbuda | No | No | No |
| Bahamas | Yes | Yes | No |
| Barbados | Partly | Partly | No |
| Belize | Yes | No | Yes |
| Canada | Yes | Yes | Yes |
| Dominica | Partly | Yes | No |
| Grenada | Yes | Partly | No |
| Guyana | Yes | Yes | Yes |
| Jamaica | No | Partly | No |
| Saint Kitts and Nevis | No | No | No |
| Saint Lucia | Yes | Yes | No |
| Saint Vincent and the Grenadines | No | No | No |
| Trinidad and Tobago | Yes | Partly | No |
| Asia | | | |
| Bangladesh | No | No | Partly |
| Brunei Darussalam | No | No | No |
| India | No | Yes | No |

¹ Special Rapporteur on violence against women (2019), *Visit to Canada*, [A/HRC/41/42/Add.1](#), para. 50.

² The Yogyakarta Principles plus 10: Additional principles and state obligations on the application of international human rights law in relations to sexual orientation, gender identity, gender expression and sex characteristics to complement the Yogyakarta Principles: Adopted on 10 November 2017, Geneva. Available at: http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf. Principle 30 – The right to state protection (item “G”).

³ Five regional reports are available at: <https://www.humandignitytrust.org/hdt-resources/?type=filter=&tag=filter=&country=filter=&keyword=filter=%22NEXT+STEPS+TOWARDS+REFORM%3A+ASSESSING+GOOD+PRACTICE+AND+GAPS+IN+COMMONWEALTH+SEXUAL+OFFENCES+LEGISLATION+%22>.

⁴ The table is compiled based on the data provided in the five regional reports published by the Human Dignity Trust.

| | | | |
|-------------------------------------|--------|--------|--------|
| Malaysia | Partly | Partly | No |
| Pakistan | No | No | No |
| Singapore | Yes | Yes | No |
| Sri Lanka | Partly | Yes | Yes |
| Africa | | | |
| Botswana | Partly | Partly | No |
| Cameroon | Yes | No | No |
| Eswatini | Yes | Yes | Yes |
| Gambia | No | No | No |
| Ghana | Partly | No | Yes |
| Kenya | Yes | Yes | Yes |
| Lesotho | Yes | Yes | Partly |
| Malawi | No | No | No |
| Mauritius | Partly | No | No |
| Mozambique | Yes | No | No |
| Namibia | Partly | Yes | No |
| Nigeria | No | No | No |
| Rwanda | Yes | Yes | Yes |
| Seychelles | Yes | Yes | Yes |
| Sierra Leone | Yes | Yes | Yes |
| South Africa | Yes | Yes | Yes |
| Uganda | No | No | No |
| United Republic of Tanzania | Partly | No | No |
| Zambia | Partly | No | No |
| The Pacific | | | |
| Australia | | | |
| <i>Australian Capital Territory</i> | Yes | Yes | No |
| <i>New South Wales</i> | Yes | Yes | Yes |
| <i>Northern Territory</i> | Yes | Yes | No |
| <i>Queensland</i> | Yes | Yes | No |
| <i>South Australia</i> | Yes | Yes | Partly |
| <i>Tasmania</i> | Yes | Yes | No |
| <i>Victoria</i> | Yes | Yes | Yes |
| <i>Western Australia</i> | Yes | Yes | No |
| Fiji | Yes | Yes | Partly |
| Kiribati | No | No | No |
| Nauru | Yes | Yes | Yes |
| New Zealand | Yes | Yes | No |
| Papua New Guinea | Partly | Yes | Yes |
| Samoa | Yes | Yes | Yes |
| Solomon Islands | Yes | Yes | No |
| Tonga | No | No | No |
| Tuvalu | No | No | No |
| Vanuatu | Yes | Yes | No |
| Europe | | | |
| Cyprus | Partly | No | No |
| Malta | Yes | Yes | Yes |
| United Kingdom | Yes | Yes | Yes |

One example of exclusive legislation is **Bangladesh** where the definition of rape is limited to penetration and can be committed against a woman or a child only. In **Nepal**, the Penal Code (chapter 18, article 219) defines rape as “sex with a woman without her consent or with the consent of a child under 18”. Therefore, this legislation also recognizes rape as inflicted only upon women and children.

Such legislation excludes, for instance, a rape of a woman by another woman or rape committed against non-binary persons, intersex persons or trans women whose legal gender is male.

Some countries criminalize sexual violence committed by a man towards a woman, as well as by a man committed to another man or a woman committed to another woman. They may even provide equal sanctions for “heterosexual” and same-sex sexual violence. However, the differentiation between the two types of sexual violence hardly serves any other purpose than additionally stigmatize and discriminate against LBNBTI women/persons.

In **New Zealand**, sexual violence laws do cover trans and intersex people. The current version of the Crimes Act 1961⁵ (section 128) defines “sexual violation” as “the act of a person who (a) rapes another person; or (b) has unlawful sexual connection with another person”. Rape, in turn, is defined as “a sexual connection effected by the penetration of one person’s genitalia by another person’s penis”.

⁵ Available at: <http://www.legislation.govt.nz/act/public/1961/0043/latest/versions.aspx>.

In 2005, the offence of rape in section 128 of the Crimes Act 1961 was specifically preserved as an exception to one of the aims of the proposed reforms, namely gender neutrality. That retention was in response to lobbying by some women’s groups and the definition became one based on genitalia. As explained by country experts, this had significant implications for trans women, and also for trans men and intersex people.⁶

Another illustrative example of this problem is criminal laws in **some Post-Soviet countries** (see *Table 2*). Historically, criminal legislation of these countries differentiated sexual violence committed by a man towards a woman and same-sex sexual violence at least partly for the reason of criminalization of homosexuality. Nowadays, after decriminalization of consensual same-sex sexual acts and with the equal penalties for the both types of offences, such differentiation does not serve any valid purpose.

Table 2: Definition of sexual violence offences in some of the Post-Soviet countries

| Kazakhstan | Kyrgyzstan | Russian Federation |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Definition of rape | | |
| “Sexual intercourse with the use of violence or with a threat thereof to a female victim or to other persons or with the use of helplessness of the female victim.” ⁷ Should be understood as “a sexual intercourse in a natural form [<i>penetrative sexual intercourse – explanation by the Kazakhstan Feminist Initiative “Feminita”</i>] with a woman against or without her will, with the use of violence or with a threat thereof to the female victim or to other persons or with the use of helplessness of the female victim.” ⁸ | “Sexual intercourse with the use of violence not dangerous to life and health, or with a threat to use it to a female victim or to other persons, or with the use of helplessness of the female victim.” ⁹ | “Sexual intercourse with the use of violence or of a threat thereof, with respect to the victim or to other persons or with the use of a helplessness of the victim.” ¹⁰ “A sexual intercourse should be understood as sexual act between a man and a woman.” ¹¹ |
| Definition of “violent acts of sexual nature” | | |
| “Sodomy, lesbianism or other acts of sexual nature with the use of violence or with a threat thereof to the male (female) victim or to other persons or with the use of helplessness of the male (female) victim.” ¹² Should be understood as “actions committed with the aim of satisfaction of sexual desire in unnatural form with women or men (lesbianism, sodomy, etc.).” ¹³ | “Sodomy, lesbianism or other acts of sexual nature in a perverse form, committed with the use of violence not dangerous to life and health, or with a threat to use it to a male (female) victim or to other persons, or with the use of helplessness of the male (female) victim.” ¹⁴ | “Sodomy, lesbianism or other acts of sexual nature with the use of violence or with a threat thereof with respect to a male (female) victim or to other persons or with the use of the helpless state of the victim.” ¹⁵ “Sodomy [should be understood] as sexual contacts between men; lesbianism – as sexual contacts between women. Other acts of sexual nature should be understood as satisfaction of sexual desire by other means, including forcing a man to sexual act by a woman through the use of violence or of a threat thereof.” ¹⁶ |
| Sanctions | | |
| Equal for the both offences: Shall be punished by imprisonment for the term of five to eight years. | Equal for the both offences: Shall be punished by imprisonment of the degree III. | Equal for the both offences: Shall be punished by imprisonment for the term of three to six years. |

Such differentiation has been criticized by civil society and United Nations human rights mechanisms.

For example, one shadow report to the Committee on the Elimination of Discrimination against Women on **Kyrgyzstan** mentioned:

⁶ McDonald, E., Byrne J. and Dickson, S. (October 2017) ‘The significance of naming harm for trans women: Defining rape in Aotearoa New Zealand’. In Hazenberg, E. and M. Meyerhoff [2017] *Representing Trans: Linguistic, Legal and Everyday Practices*. Wellington: Victoria University Press.

⁷ Criminal Code of the Republic of Kazakhstan of 3 July 2014 (as of 27 December 2019), art. 120, part 1. Available at: https://online.zakon.kz/document/?doc_id=31575252#pos=146:-59.

⁸ Normative ruling of the Supreme Court of the Republic of Kazakhstan of 11 May 2007 No. 4 (as of 20 April 2018), part. 1. Available at: https://online.zakon.kz/document/?doc_id=30105463#sub_id=500.

⁹ Criminal Code of the Kyrgyz Republic of 2 February 2017 (as of 3 April 2020), art. 161, part 1. Available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/111527>.

¹⁰ Criminal Code of the Russian Federation of 13 June 1996 (as of 12 April 2020), art. 131, part 1. Available at: http://www.consultant.ru/document/cons_doc_LAW_10699/.

¹¹ Plenary Decision of the Supreme Court of the Russian Federation of 15 June 2004 no. 11. Available at: <http://base.garant.ru/1353563/> (currently not in force).

¹² Criminal Code of the Republic of Kazakhstan, art. 121, part 1.

¹³ Normative ruling of the Supreme Court of the Republic of Kazakhstan of 11 May 2007 No. 4.

¹⁴ Criminal Code of the Kyrgyz Republic of 2 February 2017 (as of 3 April 2020), art. 162, part 1.

¹⁵ Criminal Code of the Russian Federation, art. 133, part 1.

¹⁶ Plenary Decision of the Supreme Court of the Russian Federation of 15 June 2004 no. 11. Available at: <http://base.garant.ru/1353563/> (currently not in force).

“While ‘sodomy’ was deleted from the 1999 edition of the Criminal Code of Kyrgyz Republic, there are still provisions for forced ‘sodomy’ and ‘lesbianism’ mentioned in Articles 130, 131 and 132. This constitutes a form of discrimination in itself and a failure to comply with requirements of the Convention. In addition, Concluding Comments of the CEDAW Committee on the initial report of Kyrgyz Republic ... express the Committee’s concern with the fact that ‘lesbianism is classified as a sexual offence in the Penal Code’, and recommended the Kyrgyz government to reconceptualize lesbianism as a sexual orientation and abolish penalties for its practice. However, ‘lesbianism’ is still included in the Criminal Code of Kyrgyz Republic ... – and moreover, is specified as a special kind of forced sexual violence.”¹⁷

In 2013, the Working Group on discrimination against women noted, following its country visit to the **Republic of Moldova**, that “the rationale for differentiating rape (article 171) and “homosexual rape” (article 172) remains unclear. This contributes to exacerbating the bias against homosexuality, particularly of law enforcement agencies and the judicial system.”¹⁸

In 2019, the Committee on the Elimination of Discrimination against Women recommended **Kazakhstan** to “revise articles 121 to 123 of the Criminal Code to remove the reference to ‘lesbianism’”.¹⁹

One good practice example related to this problem is a reform of criminal legislation in **Ukraine**.

In the past, the Criminal Code of Ukraine stipulated three different offences: (1) rape understood as “a sexual intercourse with the use of physical violence or a threat of thereof, or with the use of helplessness of a female victim” (three to eight years of imprisonment); (2) “fulfillment of sexual desire in an unnatural way with the use of physical violence or a threat of thereof, or with the use of helplessness of a female victim” (up to six years of imprisonment); and (3) “sodomy” understood as “a sexual intercourse of a man with another man committed with the use of physical violence or a threat of thereof, or with the use of helplessness of a male victim” (two to five years of imprisonment).²⁰

However, the new Criminal Code of Ukraine²¹ introduced a gender-neutral definition of rape based on the penetration criteria, leaving other forms of sexual violence for another offence. According to article 152 of the Criminal Code of Ukraine, rape is understood as “commitment of acts of sexual nature related to a vaginal, anal or oral penetration of the other persons’ body by genitals or any other object, without a voluntary consent of the victim” three to five years of imprisonment). According to article 153 (“Sexual violence”), “commitment of any violent acts of sexual nature not related to penetration of the other person’s body without a voluntary consent of the victim” shall be punishable by imprisonment for the term up to five years.

Gender-neutral definitions of rape help to ensure protection of LBNBTI women/persons subjected to sexual violence.

Another example of gender-neutral definition of rape is provided by the Penal Code of **Denmark**. Section 216 of the Danish Penal Code stipulates:

(1) Any person, who enforces sexual intercourse by violence or under threat of violence, shall be guilty of rape and liable to imprisonment for any term not exceeding eight years. The placing of a person in such a position that that person is unable to resist the act shall be equivalent to violence.

(2) If the rape has been of a particularly dangerous nature, or in particularly aggravating circumstances, the penalty may be increased to imprisonment for any term not exceeding 12 years.

In **Colombia**, the definition of rape is also gender-neutral. The types of sexual violations contemplated in the Colombian Penal Code includes, *inter alia*:

(1) violent carnal intrusion (article 205) which is defined as “carnal intrusion in relation to another person through violence”. The definition of carnal access is found in article 212 of the Penal Code: “carnal access is understood as penetration of anal, vaginal or oral route by penis, as well as vaginal or anal penetration by any other part of the human body or other object” (art. 212 of the Colombian penal code).

(2) violent sexual act (article 206), which consists of any "sexual act other than carnal access through violence".

¹⁷ Labrys (2008), *Discrimination and violence against lesbian and bisexual women and transgender people in Kyrgyz Republic*: shadow report, p. 6.

¹⁸ Working Group on discrimination against women (2013), *Mission to the Republic of Moldova*, [A/HRC/23/50/Add.1](#), para. 17.

¹⁹ Committee on the Elimination of Discrimination against Women (2019), *Concluding observations: Kazakhstan*, [CEDAW/C/KAZ/CO/5](#), para. 48.

²⁰ Criminal Code of Ukraine of 28 December 1960 (as of 17 May 2001), arts. 117, 118 and 121. (Repealed). Available at: http://search.ligazakon.ua/l_doc2.nsf/link1/KD0006.html.

²¹ Criminal Code of Ukraine of 2001 (as of 13 April 2020). Available at: <https://zakon.rada.gov.ua/laws/show/2341-14>.

1.2. Aggravating circumstances

(a) Hatred based on SOGIESC

The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity called on States to **enact legislation on hate crimes that defines homophobia, misogyny, biphobia and transphobia as aggravating factors for the purposes of sentencing.**²²

The motive of hatred based on SOGIESC may be included in both general criminal law provisions on aggravating circumstances, and specific penalty-enhancement provisions on rape and other forms of sexual violence.

Yet, only 46 countries in the world enacted laws on hate crimes based on sexual orientation.²³

In Europe, 28 out of 49 countries (57%) have legislation on hate crimes based on sexual orientation, 19 countries (39%) adopted legislation protecting gender identity, and only 4 countries (8%) protect sex characteristics.²⁴

Globally, most of the countries still do not provide legal frameworks allowing to consider rape or other forms of sexual violence against LBNBTI women/persons as hate crimes.

For example, in **Kyrgyzstan**, articles on rape and other forms of sexual violence do not cover hatred towards any protected group among the specific penalty-enhancement provisions.²⁵ General provisions on aggravating circumstances mention only motives of racial, ethnic, national, religious or inter-regional hatred.²⁶

In **Kazakhstan**, similarly, a hatred motive for a crime can be considered as an aggravating circumstance only when it is based on ethnic, racial or religious grounds.²⁷ At the same time, a hatred motive is not mentioned among the specific penalty-enhancement provisions on rape and other forms of sexual violence.²⁸

In **Ukraine**, committing a crime motivated by hatred based on race, ethnicity, religious or gender, is considered an aggravating circumstance.²⁹ As noted by lawyers working with LGBTI communities, not all the investigators are aware about this article and could actually apply it. Explicit inclusion of hatred based on SOGIESC would make the work of attorneys and human rights defenders easier and would help vulnerable groups of people.

In **Russia**, a hatred motive is also not mentioned among the specific penalty-enhancement provisions on rape and other forms of sexual violence.³⁰ More generally, committing a crime by reason of political, ideological, racial, national or religious hatred or enmity or by reason of hatred or enmity with respect to a social group shall be deemed to be aggravating circumstances.³¹ In theory, a motive of hatred against LBNBTI women/persons could be considered hatred with respect to a social group. In 2015, the Human Rights Committee specifically recommended the Russian Federation to do this.³² However, there are no known cases where rape or sexual violence against LBNBTI women/persons were actually persecuted as committed with an aggravating circumstance in accordance with article 63 of the Criminal Code.

When countries do have legislation on hate crimes on SOGIESC, it can be done through different ways.

For example, in **Denmark**, the Penal Code stipulates in § 81 (6) that if a crime is committed based on hatred based on sexual orientation, this will factor in as an aggravating circumstance. This also applies to Section 216 of the Danish Penal Code on rape.

In **France**, the Penal Code protects sex, sexual orientation and gender identity under the general aggravating circumstances provisions (article 132-77).³³ Before 2017, the Penal Code also mentioned sexual orientation in specific penalty-enhancement provisions on rape (section 9 of article 222-23). However, in 2017 section 9 of

²² Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (2018), [A/HRC/38/43](#), para. 93.

²³ ILGA World: Lucas Ramon Mendos (2019), [State-Sponsored Homophobia 2019: Global Legislation Overview Update](#).

²⁴ ILGA-Europe (2020), [Rainbow Europe: Index 2020](#).

²⁵ Criminal Code of the Kyrgyz Republic, arts. 161 and 162.

²⁶ Criminal Code of the Kyrgyz Republic, arts. 75.

²⁷ Criminal Code of the Republic of Kazakhstan, art. 54, part 1, item 6.

²⁸ Criminal Code of the Republic of Kazakhstan, arts. 120 and 121.

²⁹ Criminal Code of Ukraine, art. 67.

³⁰ Criminal Code of the Russian Federation, arts. 131 and 132.

³¹ Criminal Code of the Russian Federation, art. 63, part 1, item f.

³² Human Rights Committee (2015), *Concluding observations: Russian Federations*, [CCPR/C/RUS/CO/7](#), para. 10.

³³ Code pénal (Dernière modification : 12 mai 2020). Available at:

https://www.legifrance.gouv.fr/affichCode.do;jsessionid=644039A9C465AF8A2A31F15805C18793.tplqfr34s_2?cidTexte=LEGITEXT000006070719&dateTexte=20160414.

article 222-23 was repealed.³⁴ The practical result, however, remained the same: while a “simple” rape shall be punished by 15 years of imprisonment, the penalty for the aggravated form of rape shall be higher – 20 years of imprisonment.

While these provisions look relatively progressive in book, they are not always applied in practice. The following case is an illustrative example of this.

On the night of 8 October 2017, a lesbian woman Jeanne (first name changed) was raped by a man N.T. She reported the rape to the police, and the perpetrator was identified soon. At the end of the investigation, the investigating judge decided to refer the case to the criminal trial court as a rape with an aggravating circumstance as it was committed because of the sexual orientation of the victim.³⁵ However, on 6 March 2020 the criminal trial court of Bobigny, Seine-Saint-Denis, sentenced N.T. to fifteen years in prison only. The homophobic nature of the attack was not retained.³⁶

In **Colombia**, the Penal Code considers an aggravating circumstance committing a crime motivated by intolerance or discrimination based on race, ethnicity, ideology, religion or beliefs, sex or sexual orientation, or any illness or disability of the victim.³⁷

While gender identity has not been explicitly mentioned in the Penal Code, the Constitutional Court of Colombia extended the interpretations of the above-mentioned provision. Based on a systematic and teleological interpretation of the notions of “sex” and “sexual orientation”, the Constitutional Court concluded that discrimination based on gender identity should also be considered as an aggravating circumstance:

“First, because Article 58.3 of the Criminal Code does aggravate crimes motivated by aversion to the sex of the victim, and the determination of the sex of persons may take into account not only their biological conditions but also their own perception of their sexual identity; in other words, the category of sex subsumes that of sexual orientation. And secondly, because Article 58.3 of the Criminal Code aggravates crimes motivated by aversion to the victim’s sexual orientation, and when the Criminal Code was issued in the legal community the notions of sexual orientation and gender identity were assimilated, so it must be presumed that the legislator intended to aggravate both forms of discrimination.”³⁸

In **South Africa**, according to the Oxford Pro Bono Publico, there are very few cases where the South African courts have used their common law discretion to establish the hate element for sentencing, and only one that attributed prejudice against sexual orientation. In particular, the report highlights egregious cases of “corrective rape” of gay men and lesbians that have failed to declare the acknowledged homophobic element to be an aggravating factor.³⁹

The Special Rapporteur on violence against women, following her visit to the country, reported: “While there is no specific crime against specific persons or groups, the SR welcomes recent case law which shows that courts have started to address such crimes as hate crimes even in the absence of specific hate crimes legislation. In November 2014, the Johannesburg High Court issued a strong condemnation of the discriminatory attitudes that fuelled such crimes and pronounced a sentence of thirty-year imprisonment against the murderer of a young lesbian. The Rapporteur welcomes ongoing discussion in relation to the possibility of drafting legislation on hate crimes.”⁴⁰

In April 2018, the Prevention and Combating of Hate Crimes and Hate Speech Bill was introduced to the National Assembly of the Parliament of South Africa. Currently, the Bill is under consideration by the National Assembly.⁴¹

The Bill provides a definition of a hate crime which is understood as “an offence recognised under any law, the commission of which by a person is motivated by that person’s prejudice or intolerance towards the victim of the crime in question because of one or more of the following characteristics or perceived characteristics of the victim or his or her family member or the victim’s association with, or support for, a group of persons who

³⁴ LOI n° 2017-86 du 27 janvier 2017 relative à l'égalité et à la citoyenneté. Available at:

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033934948&categorieLien=id>.

³⁵ (03 mars 2020). Bobigny : un homme devant les assises pour viol «punitif» d'une lesbienne. *Le Figaro*. <https://www.lefigaro.fr/bobigny-un-homme-devant-les-assises-pour-viol-punitif-d-une-lesbienne-20200303?fbclid=IwAR3aAkr7gozB04LmEJyFpvdEYJ4Lk45vgyokfyED3I9U-5SPM4HFL5ECi8>.

³⁶ Dryef, Z. (07 mars 2020). Aux assises de Bobigny, l'histoire du viol punitif d'une jeune femme lesbienne. *Le Monde*. https://www.lemonde.fr/police-justice/article/2020/03/07/devant-les-assises-de-bobigny-une-jeune-femme-violee-parce-que-lesbienne_6032173_1653578.html.

³⁷ Article 58, paragraph 3 of the current Colombian Penal Code (Law 599 of 2000).

³⁸ Corte Constitucional de Colombia. Sentencia C-257 de 2016, M.P.: Luis Guillermo Guerrero Pérez.

³⁹ Human Dignity Trust (2019), *Legislating to Address Hate Crimes against the LGBT Community in the Commonwealth*, p. 44. (Citing: Oxford Pro Bono Publico (2014). Comparative Hate Crime Research Report: A report prepared for the Hungarian Civil Liberties Union. Oxford: University of Oxford (2014), pp. 17, 28-30).

⁴⁰ Special Rapporteur on violence against women (2016), *Mission to South Africa*, [A/HRC/32/42/Add.2](https://www.unhcr.org/refugees/32/42/Add.2), para. 34.

⁴¹ See more information on the Bill: <https://pmg.org.za/bill/779/>.

share the said characteristics: ... (h) gender or gender identity; ... (p) sex, which includes intersex; or (q) sexual orientation.”

The Bill also suggests amendments to the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 to specifically address rape constituting a hate crime.

Additionally, the Bill establishes a number of preventive measures, such as conducting education and information campaigns to inform the public about the prohibition against hate crimes and hate speech; ensuring that all public officials who may be involved in the investigation and prosecution of hate crimes and hate speech are educated and informed of the prohibition against these offences; providing assistance and advice to any person who wants to lodge a complaint of a hate crime or hate speech; and training public officials on the prohibition, prevention and combating of hate crimes and hate speech, which training must include social context training.

One of the good examples is also legislation in **Brazil**. Since 2018, the Criminal Code contains a legal definition of “corrective rape” (*estupro corretivo*) (a rape committed “to control the victim’s social or sexual behavior”) and it implies increased penalties for it.⁴²

(b) Family relationship

Another aggravating circumstance of rape and other forms of sexual violence specifically affecting LBNBTI women/persons is family relationship between a perpetrator and a survivor.

Same-sex couples and other forms of families of LBNBTI women/persons are by no means always recognized by states. Same-sex marriages are recognized only in 27 countries (14% of UN Member States), and civil unions – in 31 countries (16% of UN Member States).⁴³

If family relationships are not recognized, rape and other forms of sexual violence most likely cannot be prosecuted with consideration of this aggravating circumstance.

For example, in **Ukraine**, committing a rape against someone’s spouse, a former spouse or a person who is in family or close relationship with a perpetrator, shall be punished with more severe sanctions.⁴⁴ As same-sex families are not recognized in Ukraine, it is not clear whether or not a rape committed, for example, by a woman towards her lesbian ex-partner, would be punished more severe.

In contrast, more exclusive legislation, including in countries recognizing diverse families, provide better protection to LBNBTI women/persons.

For instance, in **Colombia**, committing sexual violence against a person with whom a perpetrator is in close relationship is considered an aggravating circumstance.⁴⁵ The definition of close relationship is broad and covers, specifically, partnerships or unions formed by LBNBTI women/persons. Additionally, by means of the constitutionality sentence C-029 of 2009, couples of the same gender are included in the norms that regulate other crimes such as intra-family violence or aggravating homicide.

The Penal Code of **France** establishes more severe sanctions for a rape committed by a spouse or cohabitee of the victim or a partner linked to the victim by a civil solidarity pact.⁴⁶

1.3. Mitigating circumstances

In some instances, the identification of a woman as lesbian has been held to be a mitigating factor in the sentencing of her attacker. According to one study from the Asia-Pacific region, “in the case of lesbian women in particular, their gender identity and/or sexual orientation can become a mitigating factor in the punishment of the perpetrator [of family violence]. Furthermore, in many cases, violence against [lesbian, bisexual and trans] women is socially and culturally justified in the name of protecting families’ reputations as well.”⁴⁷

⁴² See [Lei nº 13.718](#), de 24 de setembro de 2018.

⁴³ ILGA World: Lucas Ramon Mendos (2019), [State-Sponsored Homophobia 2019: Global Legislation Overview Update](#).

⁴⁴ Criminal Code of Ukraine, art. 67, part 1.

⁴⁵ Art. 211 of the Colombian Penal Code, art. 30 of the Law no. 1257 of 2008.

⁴⁶ Code pénal (Dernière modification : 12 mai 2020), art. 222-24 (11).

⁴⁷ Human Dignity Trust (2016), [Breaking the Silence: Criminalization of Lesbians and Bisexual Women and its Impacts](#), p. 24. (Citing: Asia Pacific Forum on Women, Law and Development, *Summary Report of the Asia Pacific Regional Consultation with the United Nations Special Rapporteur on Violence Against Women, its Causes and Consequences: ‘Multiple Dimensions of Equality for Women’*, 2011, p. 18, available at <http://apwld.org/wp-content/uploads/2013/10/SRVAV-2010-Different-but-not-Divided-Web-Resolution.pdf>).

A significant number of countries still either do not consider sexual violence in marriage as rape at all, or establish that a subsequent marriage mitigates the liability for sexual violence.

For example, in **Bangladesh**, the legislation states that rape is only an offence “without lawful marriage” unless the spouse is under 14 years (s 9 Prevention of Oppression Against Women and Children Act 1995). Sexual oppression is understood as “illegal” touching or assault or indecent gesture excluding married persons (s 10 Prevention of Oppression Against Women and Children Act 1995).⁴⁸

In **Russia**, the Criminal Code criminalizes sexual intercourse with a person younger than 16 y.o. by a person of 18 y.o. or older (punishable by imprisonment for up to four years).⁴⁹ Similar provisions exist for “sodomy or lesbianism” with a person younger than 16 y.o. by a person of 18 y.o. or older (punishable by imprisonment for up to six years).⁵⁰ However, if a perpetrator (only for art. 134, part 1, i.e. heterosexual sexual intercourse) marries a survivor and if he had not committed similar crimes previously, he shall not be punished.

Such provisions have an extremely negative effect on LBNBTI women/persons. For instance, the situation of a survivor may be extremely hard when their family arranges a forced marriage with a rapist, or when a family actually initiate sexual violence to “cure” an LBNBTI woman/person.

2. Protection and support services: barriers, gaps and good practices

While legislation on rape and other forms of sexual violence affects victims and survivors who are LBNBTI women/persons, other factors also contribute to the picture.

This includes: criminalization of consensual same-sex sexual acts, certain forms of gender identity or expression and sex work; attitudes of police; family pressure; sensitivity of health professionals and availability of health services; and availability of other support services provided by states or civil society.

2.1. Criminalization of consensual same-sex sexual acts, certain forms of gender identity or expression and sex work

According to the latest edition of the *State-Sponsored Homophobia Report* by ILGA World, 44 countries in the world still criminalize consensual same-sex sexual acts between consenting adults of any gender.⁵¹

As noted by the Human Dignity Trust in their report on criminalization of lesbian and bisexual women and its impacts, “lesbians and bisexual women ... frequently experience targeted rape, through which abusers purport to ‘correct’ a victim’s sexual orientation. The criminalisation of their sexuality means that lesbians and bisexual women are often afraid to report these crimes, or if they do, that the crimes are not investigated.”⁵²

For example, victims of sexual assault from **Cameroon** explained that they did not report their rape to the authorities because they feared being discovered as lesbians and arrested under the law that criminalises all same-sex sexual relations.⁵³

According to one report from Cameroon, a woman who told a man that she was a lesbian was raped by him and then warned that if she dared to take any action against him he would report her homosexuality to the police. She reported the rape to police anyway; her assailant denied the charge and told the police that she was a lesbian. The police released the alleged perpetrator without charge after a few hours.⁵⁴

In a similar way, experts from **Bangladesh** explain that “as it is a criminal offence to be a part of this community, the community people also stay away to file such cases”.

In **Kenya**, lesbians and bisexual women report random arrests and overnight lock-up, with release without charge the following day. “Most times, however, they had to pay hefty bribes in order to be released or to

⁴⁸ Human Dignity Trust (2020). [Next Steps Towards Reform: Assessing good practice and gaps in Commonwealth sexual offences legislation, Asia](#), p. 46.

⁴⁹ Criminal Code of the Russian Federation, art. 134, part 1.

⁵⁰ Criminal Code of the Russian Federation, art. 134, part 2.

⁵¹ ILGA World: Lucas Ramon Mendos (2019), [State-Sponsored Homophobia 2019: Global Legislation Overview Update](#).

⁵² Human Dignity Trust (2016), [Breaking the Silence: Criminalization of Lesbians and Bisexual Women and its Impacts](#), p. 5.

⁵³ Human Dignity Trust (2016), [Breaking the Silence: Criminalization of Lesbians and Bisexual Women and its Impacts](#), p. 25.

⁵⁴ Human Dignity Trust (2016), [Breaking the Silence: Criminalization of Lesbians and Bisexual Women and its Impacts](#), p. 25.

avoid being taken to court on trumped up charges. Some ... were raped by police as a form of bribe to ensure their release.”⁵⁵

Some countries also criminalize certain forms of gender identity or expression and sex work. This puts LBNBTI women/persons in a particular difficult situation.

The following case from **Kyrgyzstan** (Bishkek, June 2017) provides an example of this.

*A sex worker was at home with her LGBT friends when four police officers came. She knew one of them. She came to the police officers alone not to reveal her friends. The police officers took her to a car with them. In the car, they pulled her hair to see if it was real, and took away her mobile phone. She was deprived of liberty for eight hours. The police officers demanded from her money of 20,000 Soms (approx. 300 USD) for being a sex worker; they also threatened her with a charge for organizing a brothel. When she said that she did not have that money, the police officers requested her to have sex with all four of them. They drove towards the mountains where one of the police officers had a house. She was forced to have sex with each of the police officers. After that, they brought her back and left near her house. The victim left the country and did not report the case to the police.*⁵⁶

2.2. Attitudes of police

In the ideal situation, police support victims and survivors of rape and other forms of sexual violence and document and investigate the incidents. However, **LBNBTI women/persons in all parts of the world frequently not only do not receive any support from police, but instead are subjected to re-victimization. Sometimes police officers are themselves perpetrators of rape and other forms of sexual violence.**

A leading activist in **Namibia** reported that “[l]esbians in Namibia often face threats of rape from men seeking to “cure” them,” adding: “if lesbians try to go to the police, they say ‘you asked for it’ and dockets go missing”.⁵⁷

Another lesbian woman from **Jamaica** who survived a corrective rape told: “When I took the police back to the scene of the crime, a policeman referred to me as a sodomite. A female officer suggested that if I had been a good Christian girl, dating boys, this wouldn’t have happened to me. ‘Why don’t you leave this lifestyle and return to the church?’ she said. ‘What do you expect?’”⁵⁸

Following her country visit to the **Bahamas**, the Special Rapporteur on violence against women reported: “Given the current stigmatization of homosexuality in Bahamian society, there is a concern that the discrimination they face could influence police attitudes, thereby having an impact on sexual assault investigations. The Task Force for Gender-Based Violence noted that crimes against lesbian, gay, bisexual and transgender individuals, such as rape, sexual assault and domestic violence, were among the most unreported and undocumented crimes.”⁵⁹

In all **Central Asian countries**, police persecution of trans women “is notable for its extreme heavy-handedness. The methods include ‘sham dates’, during which officers take their phones and insult, beat, blackmail, and rape transgender women and force them to cooperate”.⁶⁰

Multiple problems related to the police misconduct are reported also in **South Asia**. One of the reports of the South Asia Human Rights Association of People Marginalised because of their Sexualities and Gender Identity/Expression (SAHRA) analyses 810 cases of human rights violations recorded from sexual and gender minorities in 2018 in five of the South Asian countries, namely Bangladesh, Bhutan, India, Nepal and Pakistan. Only 12% of the cases were reported to the police; 37% of the cases were not reported anywhere; and 44% of those who reported to the police remained further victimised.⁶¹ Of those who reported the cases to the police, 15% were rejected; 11% were illegally detained or arrested; 6% were abused and blackmailed; and

⁵⁵ Human Dignity Trust (2016), *Breaking the Silence: Criminalization of Lesbians and Bisexual Women and its Impacts*, p. 22. (Citing: Gay and Lesbian Coalition of Kenya (GALCK), Research on the Lived Experiences of Lesbian, Bisexual and Queer Women in Kenya, 2016, p. 25, available at https://issuu.com/galckkenya/docs/research_on_the_lived_experiences_o).

⁵⁶ Case documented by “Kyrgyz Indigo”.

⁵⁷ Human Dignity Trust (2016), *Breaking the Silence: Criminalization of Lesbians and Bisexual Women and its Impacts*, p. 25.

⁵⁸ (6 October 2019). *Corrective Rape: ‘I was raped to “cure” me of being a lesbian’*. Marie Claire.

<https://www.marieclaire.co.uk/news/corrective-rape-6626>.

⁵⁹ Special Rapporteur on violence against women (2018), *Mission to the Bahamas*, [A/HRC/38/47/Add.2](#), para. 23.

⁶⁰ ADC Memorial (2020), *LGBTI+ In the Region of Central Asia: Repressions, Discrimination, Exclusion*, p. 24.

⁶¹ SAHRA, *2019 Human Rights Violations Report*, p. 10.

3% were demanded sexual favours and/or bribes.⁶² The main reason for not reporting the cases was the fear of arrests due to sexual orientation.⁶³

According to a trans-led **Aotearoa New Zealand** Trans and Non-Binary Health Survey “Counting Ourselves” published in 2019,⁶⁴ only 3% of participants, trans and non-binary persons who experienced sexual violence, received support from the police at the time, and 4% received such support later.⁶⁵

One of the respondents said: “When I had to do the tier 3 level interview with the adult sexual assault team at the police, at no point did they ask my gender or correctly refer to my gender. The whole thing was traumatic enough, I didn’t bring it up at the time, but I wish I did.” (Trans man, adult)⁶⁶

The lack of sensitive approach and actual abuse from police contribute to the mistrust and avoidance of LNBNTI women/persons to report cases of rape and other forms of sexual violence against them.

A report on the **European Union** published recently by FRA found out that bisexual and lesbian women are less likely to report the incidents of physical or sexual attack to police. Only 8% of bisexual women and 11% of lesbian women who experienced such attacks reported them to police.⁶⁷

According to the Public Association “Kyrgyz Indigo”, they have documented several cases of sexual violence against LNBNTI women/persons in **Kyrgyzstan**. However, neither of the survivors applied to the police.

Experts from **Bangladesh** wrote: “We have some case description. But there was no investigation, prosecution or punishment for rape/sexual violence against LGBTI women/person in our country”.

LGBTI human rights defenders in **India** evidenced: “We see high trust deficit of victims with the police. Not a single case of rape or sexual harassment was reported to the police”.⁶⁸

Even when LNBNTI women/persons do report cases of rape and other forms of sexual violence against them, police frequently do not take proper action aimed at effective investigation.

The following two cases from **Colombia** illustrate this.

Neighbour raped a lesbian woman because of her sexual orientation. On October 8, 2016, a man raped a lesbian woman in Santa Rosa de Osos, Antioquia. At 1:30 am the victim left a bar where she had been drinking with her friends, and a neighbour offered to accompany her. That night he tried to hug her several times while they were walking and asked her why she didn’t like men. When they reached a remote dark area, he pushed and then raped her. The victim arrived at her house at 3:00 am, her clothes stained with dirt and blood. The 32-year-old man had told her on other occasions that he “had to try a male, so that he would stop the nonsense of ‘arepiando’”.⁶⁹

The next day, the victim went to the authorities and made the whole procedure to file the complaint and identified the aggressor. The forensic examination confirmed the rape. However, two weeks after the complaint was filed, the assailant was still free and finally fled the village. Before fleeing, the perpetrator threatened the victim several times in text messages and phone calls to withdraw the complaint. As reported in the press, the investigating prosecutor did not request the arrest warrant despite having all the evidence to do so. Moreover, the victim was not given the psychosocial support provided for such cases.⁷⁰

Men tried to kill a trans woman after attempting to rape her. On July 13, 2019, three men tried to rape a trans woman, beat her and stabbed her in Ipiales, Nariño. According to press sources, the victim left a bar on the Pan-American Highway and got into a pirate transport vehicle carrying two passengers and the driver. The three men took her to a staged area on the Umbarud road. There they groped her, forced her to perform oral sex and when they tried to rape her they realized she was a trans woman, so they beat her and stabbed her several times. The victim managed to escape with serious injuries.

The victim was inconvenienced in the process of filing the complaint because the authorities were not familiar with the concept of gender identity and did not give her timely and necessary attention. The procedure took

⁶² *Ibid*, p. 11.

⁶³ *Ibid*, p. 13.

⁶⁴ Veale, J. F., Byrne, J. L., Tan, K. K. H., Guy, S., Yee, A., Nopera, T., & Bentham, R. M. (2019) *Counting Ourselves: The health and wellbeing of trans and non-binary people in Aotearoa New Zealand*. Hamilton, New Zealand: Transgender Health Research Lab, University of Waikato <https://countingourselves.nz/index.php/community-report/>.

⁶⁵ SAHRA, 2019 Human Rights Violations Report, p. 78.

⁶⁶ *Ibid*, p. 78.

⁶⁷ European Union Agency for Fundamental Rights (2020), [A long way to go for LGBTI equality](#), p. 47.

⁶⁸ SAHRA, 2019 Human Rights Violations Report, p. 23.

⁶⁹ A derogatory term used in Colombia for women who have sex with other women.

⁷⁰ El Colombiano, Mujer denuncia que fue violada por ser lesbiana. Versión Web. Consultado el 16 de mayo. Disponible en: <https://www.elcolombiano.com/antioquia/seguridad/violacion-de-mujer-por-ser-lesbiana-en-santa-rosa-de-osos-antioquia-KD5207059>.

almost 8 days to legalize the documentation at both the National Institute of Forensic Medicine and the Prosecutor's Office.⁷¹

2.3. Family pressure

Criminalization and social stigmatization of LNBNTI women/persons is accompanied by the lack of acceptance and support from families. **Instead of finding support, LNBNTI women/persons who are victims or survivors of rape and other forms of sexual violence are rejected and re-victimized in their own families.**

Moreover, family members themselves may arrange or commit rape or other forms of sexual violence to “cure” LNBNTI women/persons.

According to experts from **Nepal**, it is difficult to collect the data on sexual violence against LNBNTI women/persons because with the pressure of family members these cases do not come out. In one case, a lesbian woman was raped by her father; her mother did not want to file a report and threatened her daughter that if she files a case, she will lose her family member. With this fear, most of LNBNTI women/persons deny to report their cases.

In **India**, as in many countries, most cases of so-called “corrective rape” are believed to be arranged or carried out by family members, which also inhibits women from reporting these crimes. According to one source, “[v]ictims find it traumatising to speak of their brothers/cousins turning rapists and prefer to delete the incident from their memories and cut off ties with their families. Which is why such cases almost never get reported.” The rapist is usually a relative that is handpicked by the victim’s parents, and ‘it’s like a “disciplining project” designed to “cure” and “correct” the homosexual.’⁷²

According to a member of a crisis intervention team from India:

"We are sure there are many more cases, but they go unreported.

We came across such cases not because they reported the rape, but because they sought help to flee their homes. Victims find it traumatising to speak of their brothers/cousins turning rapists and prefer to delete the incident from their memories and cut off ties with their families. Which is why such cases almost never get reported.

It's usually a cousin who's roped in for this 'project'. In some communities in South India, marriages amongst cousins are common. Many times, a girl's parents may decide that she would be married off to a cousin (i.e. her father's sister's son or mother's brother's son) soon after her birth. Now, if this girl happens to be queer and if it is found out that she is in a relationship with another girl, elders in the family believe having sex with the 'would-be', even if it's forcibly, will cure her."⁷³

In **Italy**, a 23-year-old woman revealed years of sexual assault she suffered at the hands of her father, who attempted to “correct” her sexuality. She suffered years of “corrective rape” and beatings, with her mother once telling her: “Better a dead daughter than a lesbian.”⁷⁴

Families of lesbian and bisexual women may force them to marry a man. As noted by the Human Dignity Trust, “[i]t is a major, unaddressed dimension of LGBT persecution that lesbians often have no choice but to marry men and endure sexual relationships with their husbands, which effectively means a lifetime of invisible, undocumented rape.”⁷⁵

The following case from **Cameroon** shows how complicated may be the situation of LNBNTI women/persons due to family pressure.

Viviane’s family beat and lashed her after they discovered explicit text messages she had sent to her girlfriend. Her aunt and brothers then took her to their village where the local witch doctor forced her to drink concoctions made of chicken blood and inserted hot pepper up her anus, justifying it as a “cleansing” ritual.

Finding a husband who was a church pastor was a chance to clear the family name, she explained. The fact that he had two wives and was more than 30 years older was not a consideration. “There was no discussion about it,”

⁷¹ Extra, Se arrepiñieron de violarla al notar que era transgénero: insólito caso en Nariño, Versión Web. Consultado el 16 de mayo. Disponible en: <https://pasto.extra.com.co/noticias/judicial/se-arrepiñieron-de-violarla-al-notar-que-era-transgenero-545191>.

⁷² Human Dignity Trust (2016), *Breaking the Silence: Criminalization of Lesbians and Bisexual Women and its Impacts*, p. 25.

⁷³ (2 June 2015). 'Corrective rape' used in India to 'cure' homosexuality. DAWN. <https://www.dawn.com/news/1185745>.

⁷⁴ Di Salvo, P. (6 March 2019). Il coraggio di Francesca. “Meglio morta che lesbica” abusi e botte alla figlia e il paese è dalla loro parte. *La Repubblica*. https://rep.repubblica.it/pwa/generale/2019/03/06/news/lesbica_abusi_denuncia_genitori-220885931?fbclid=IwAR14n-M6pA3n6NbMhRsgccl01dpwprd9MTxqSH2NKHtDVdw3fMMfsgubUs&refresh_ce.

⁷⁵ Human Dignity Trust (2016), *Breaking the Silence: Criminalization of Lesbians and Bisexual Women and its Impacts*, p. 27.

she said, adding that her family received the dowry from the pastor even before they informed her of the arrangement. “To them, I was like a necklace they sold.”

Though rape is a crime in Cameroon, there was no question that such a charge could ever be leveled at her husband, Viviane said. “A pastor in Cameroon is like a god. God can’t rape. And if you accuse him of rape, you’re the devil,” she said.⁷⁶

2.4. Health care services

Being victims or survivors of rape and other forms of sexual violence, **LNBNTI women/persons need access to health care services provided by professionals who are sensitive to both their experience of sexual violence and their SOGIESC. However, in practice this is not always the case.**

As reported by the Special Rapporteur on the right to health, “[m]any adolescents, in particular girls and those identifying as lesbian, gay, bisexual and transgender, are deterred from approaching health professionals in anticipation of a judgemental attitude that results from social norms or laws that stigmatize or criminalize their sexual behaviour. Rights to sexual and reproductive health for many adolescents are further compromised by violence, including sexual and institutional violence, coercion into unwanted sex or marriage, and patriarchal and heteronormative practices and values. This reinforces harmful gender stereotypes and unequal power relations that make it difficult for many adolescent girls to refuse sex or insist on safe and responsible sex practices.”⁷⁷

The Independent Expert on sexual orientation and gender identity noted that “[i]n health-care settings, LBT women are often discriminated against, mistreated and misdiagnosed by medical providers, which deters them from seeking health services or carrying through with treatment. Systemic discrimination also limits access to sexual and reproductive health care, and the mandate holder is concerned about LBT women who are denied autonomy with regard to whether they choose to bear children in contexts in which rape and forced marriage are practiced.”⁷⁸

As noted by the Human Dignity Trust, “[l]esbians and bisexual women similarly face unique challenges in accessing proper health care. In addition to the obvious health risks posed by rape and other forms of targeted violence, and by the general lack of autonomy over sexual and reproductive choices, lesbians and bisexual women can face discrimination in access to health care services. For example, one study from **Kenya** revealed that ‘research participants all spoke of cases in which [lesbian, bisexual and queer] women were discriminated against by health care providers or were refused services in government hospitals,’ and that many such women ‘would rather avoid seeking medical services at all than risk having their privacy breached by medical professionals’ when they sought advice related to their sexual health.”⁷⁹

The following case from **Nepal** though not directly related to sexual violence, demonstrates how mistreatment by health care providers may affect LNBNTI women/persons.

*Madhuri Majhi (a trans-woman, 35 y.o.) faced considerable discrimination and humiliation while seeking medical treatment in 2019. Suffering from acute diarrhoea, Majhi was rushed to hospital and admitted into the emergency ward. Doctors did not start any medication immediately. Instead, upon finding out the patient’s gender identity, doctors shifted Majhi to the general ward. Majhi was forced to change rooms late at night which caused great inconvenience given the patient’s condition. Upon finding out that the patient was HIV positive, the medical team initially refused treatment. The nurse did not take Majhi’s blood test, fearing she might acquire the infection. Majhi was the subject of gossip in the nurses’ ward, leaving her feeling humiliated and discriminated. Eventually, with intervention from a CBO (Blue Diamond Society), Majhi’s treatment started. The event left Majhi ashamed of her gender identity, humiliated and worried about whether she would receive proper treatment. It also left her worried that she would be subjected to the same discrimination in future hospital visits.*⁸⁰

An additional barrier faced by LNBNTI women/persons in accessing health care services after experiencing sexual violence is so-called “conversion therapy”.

⁷⁶ (2 October 2018). Lesbian ‘witches’ chained and raped by families in Cameroon. *Thomson Reuters Foundation*.

<https://www.reuters.com/article/us-cameroon-lgbt-rape/lesbian-witches-chained-and-raped-by-families-in-cameroon-idUSKCN1MC001>.

⁷⁷ Special Rapporteur on the right to health (2016), *A/HRC/32/32*, para. 84.

⁷⁸ Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (2019), *A/74/181*, para. 39.

⁷⁹ Human Dignity Trust (2016), *Breaking the Silence: Criminalization of Lesbians and Bisexual Women and its Impacts*, p. 22. (Citing: Gay and Lesbian Coalition of Kenya (GALCK), Research on the Lived Experiences of Lesbian, Bisexual and Queer Women in Kenya, 2016, pp. 28-29, available at https://issuu.com/galckkenya/docs/research_on_the_lived_experiences_o).

⁸⁰ Case documented by the Blue Diamond Society.

“Conversion therapy” may include such methods as electroshock aversion therapy, chemical aversion therapy and other forms of aversive techniques.⁸¹

Even though it has been declared unethical, unscientific and violating the human rights of LGBTI persons by numerous professional medical associations and international human rights bodies, “conversion therapy” is still practiced by doctors in different parts of the world.

As reported by the Special Rapporteur on the right to health, “[s]ame-sex attraction is still considered by doctors in many countries to be a mental disorder. Lesbian, gay and bisexual adolescents may be subjected to harmful therapeutic interventions intended to eliminate or suppress their sexual instincts. Such therapies have been deemed unethical, unscientific, ineffective and, in some instances, tantamount to torture.”⁸²

Knowing that instead of support they may face additional violations of their dignity and bodily integrity, LBNBTI women/persons often avoid referring to health care professionals after sexual violence.

2.5. Other support services

According to Yogyakarta Principles plus 10, states shall **establish support services for victims of rape, sexual assault and harassment, and other forms of violence and harm on grounds of sexual orientation, gender identity, gender expression, and sex characteristics.**⁸³

However, in many countries there are no state-run support services available to LBNBTI women/persons who faced sexual violence, including rape.

Even mainstream non-governmental organizations – for example, those supporting victims of gender-based violence, may not be sensitive to LBNBTI women/persons and may even perpetuate discrimination and violence against them.

For example, in **Kazakhstan**, there are no support services, either state-funded or delivered by NGOs, specifically targeting LBTI women/persons experiencing rape or other forms of sexual violence. LBTI women/persons with such experience have to apply to mainstream support services which, as a rule, are not sensitive to their needs.

In 2018, a lesbian couple I. and A. (both 22 y.o.) were placed in a shelter for women victims of domestic violence in Almaty. This happened with help from LBTQ activists after I. and A. were harassed and abused by N., I.'s mother. The Almaty shelter for victims of domestic violence belonged to the Kazakhstan's Crisis Centres network financed by the state.

While at the shelter, I. and A. both filed complaints to the police against N. Due to these complaints, a police inspector showed up at the shelter around and convinced I. to write two letters to withdraw all complaints against her mother. The inspector yelled at I. for having no respect and compassion for her mother who might lose her job. The police inspector also revealed the lesbian relationship between I. and A. to the shelter's night shift staff. They later revealed it to other shelter residents. A few women in the shelter wrote complaints to the shelter management that they do not want to live next to lesbians in the shelter.

N. and her relatives found the shelter where I. and A. were staying. Due to the unsafe and unfriendly environment in the shelter and being forced to leave the shelter A. refused to continue pursuing justice furthermore.⁸⁴ The shelter recommended to I. and A. to “find right men” and “build heterosexual families”.

In the **United States**, a research conducted in 2017 showed that transgender women were nearly two and a half times more likely to experience violence in a shelter making them not only more vulnerable to experiencing sexual violence and financial abuse, but they also are more likely to experience violence even when seeking support.⁸⁵

In **New Zealand**, according to “Counting Ourselves” research, only a small proportion of participants, trans and non-binary persons who experienced sexual violence, received any support at the time. It was most common for participants to get support later from friends, counsellors, partners or other trans and non-binary

⁸¹ See, e.g. ILGA World: Lucas Ramon Mendos, Curbing Deception: A world survey on legal regulation of so-called “conversion therapies” (Geneva: ILGA World, 2020).

⁸² Special Rapporteur on the right to health (2016), [A/HRC/32/32](#), para. 73.

⁸³ The Yogyakarta Principles plus 10. Principle 30 – The right to state protection (item “H”).

⁸⁴ Case documented by the Kazakhstan Feminist Initiative “Feminita”.

⁸⁵ National Coalition of Anti-Violence Programs (2018), Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Hate and Intimate Partner Violence in 2017, p. 28.

people. Only 2% of participants received support from a rape or sexual abuse service at the time, and 9% received such support later.⁸⁶ Some of the respondents specifically described their experience of exclusion:

“Because I was viewed as male, they put me in male sexual abuse counselling, which just wasn’t suitable, but I was told the female one was inappropriate because ‘I looked male’.” (Non-binary, adult)⁸⁷

“I was rejected from a specialist service for being trans.” (Non-binary, adult)⁸⁸

“I’ve attended survivors’ support groups which have been helpful, but sometimes I’ve been scared about being accepted as non-binary amongst cis women. Sometimes places such as Rape Crisis don’t make clear whether their service is trans or nonbinary inclusive.” (Nonbinary, adult)⁸⁹

In this situation, local LGBTI groups try to fill this gap and support members of their communities through hotline services, legal and psychological consultations, shelters, etc.

For instance, in **Kyrgyzstan**, LBNBTI women/persons can obtain psychological and legal help and social support for obtaining medical aid, filing a report and forensic examination in LGBT organizations in Kyrgyzstan. Public Association “Kyrgyz Indigo” can also provide shelter accommodation, if needed.

In **Bangladesh**, there are no support services provided by state agencies available to LBNBTI women/persons who experienced rape/sexual violence. But there are a few organizations who are providing some mental health and other services “under cover”.

In **Colombia**, even though LBNBTI survivors of sexual violence have access to numerous support services guaranteed by the state, civil society organizations also organize different support services. For example, *Corporación Sisma Mujer* provides psycho-legal support completely free of charge. This support consists of providing information on the rights that women victims of violence have, the laws that protect them and the mechanisms to demand them; guidance on the institutional path and the services offered by the State; and emotional support and orientation on the impacts of the experiences of violence against women. Likewise, *Colombia Diversa* (consultasjuridicas@colombiadiversa.org) provides legal advice and accompaniment in these cases. Finally, *Fundación Grupo de Acción y Apoyo a Personas Trans (GAAT)* has an e-mail address (logistica@fundaciongaat.org) where people can report acts of sexual violence and receive accompaniment.

In the **United Kingdom**, the Gay London Police Monitoring Group (GALOP)⁹⁰ provides a free, confidential and independent service for all LGBT+ people who have experienced sexual assault, violence or abuse, however or whenever it happened.

3. Data and cases

The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity in his report presented to the Human Rights Council in June 2018, called upon States to develop comprehensive data-collection procedures in order to be able to assess uniformly and accurately the type, prevalence, trends and patterns of violence and discrimination against LGBT and gender non-conforming persons. Data should be disaggregated by communities, but also by other factors such as race, ethnicity, religion or belief, health, status, age, class, and caste, or migration or economic status. The data should then inform the policies and legislative actions of States with a view not only to prevent further acts of violence and discrimination but also to address gaps in investigations, prosecution and the remedies provided. In order to prevent the misuse of collected data, States should follow a human rights-based approach to data, taking into consideration the principles of participation, self-identification, privacy, transparency and accountability. The overriding human rights principle of “do no harm” should always be respected.⁹¹

Hence, in most of the countries there is no official statistics on rape and sexual violence experiences by LBNBTI women/persons.

⁸⁶ Veale, J. F., Byrne, J. L., Tan, K. K. H., Guy, S., Yee, A., Nopera, T., & Bentham, R. M. (2019) *Counting Ourselves: The health and wellbeing of trans and non-binary people in Aotearoa New Zealand*. Hamilton, New Zealand: Transgender Health Research Lab, University of Waikato <https://countingourselves.nz/index.php/community-report/>, p. 78.

⁸⁷ *Ibid*, p. 78.

⁸⁸ *Ibid*, p. 78.

⁸⁹ *Ibid*, p. 78.

⁹⁰ <http://www.galop.org.uk/>.

⁹¹ Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (2018), [A/HRC/38/43](#), para. 94.

In order to fill in this gap at least partly, civil society organizations, especially LGBTI human rights groups, collect and document statistics and cases on violence, including sexual violence, experienced by LGBTI persons.

3.1. Official statistics

As was mentioned, **most of the countries do not collect official statistics on rape and sexual violence experiences by LBNBTI women/persons.**

For example, in **Denmark**, the Danish Crime Prevention Council announces statistics every year on rape or attempted rape with numbers from the Danish Police. The statistic show difference in gender and age but not sexual orientation.

In **Kazakhstan**, there is no official statistics on rape or other sexual violence against LBNBTI women/persons. Data on sexual crimes (“sodomy, lesbianism or other acts of sexual nature”) are collected only in total values and cannot be disaggregated.

Experts from **Bangladesh, Kyrgyzstan, Nepal** and **Ukraine** also informed that official statistics on rape or other sexual violence against LBNBTI women/persons is not collected in their countries

The Special Rapporteur on violence against women reported, following her country visit to **Argentina**, that “nationwide statistics on rape were not available and that there were no disaggregated data on ... on rape and hate crimes against lesbian, gay, bisexual, transgender and intersex persons, or on investigations, prosecutions and convictions of perpetrators of such crimes and redress provided to victims.”⁹²

One of the very few cases of official statistics on rape and sexual violence based on SOGIESC is Colombia.

In Colombia, several state institutions produce statistical information on rape/sexual violence as part of their mission. Their information systems have the technical capacity to identify LGBT persons among their records, and to differentiate types of violence.

However, as explained by experts from Colombia Diversa, this information is rarely open to the public or disseminated through government open data pages and official publications.

In addition, these information systems have various problems, such as: (1) the lack of suitable variables; (2) the lack of clarity about the protocols for collecting and processing information; (3) the lack of articulation of the systems that record and follow up on violent or criminal acts; and (4) the lack of training of officials to use the variables or systems, as well as the lack of awareness on the subject.⁹³

Among the information systems providing data is that of the **Attorney General's Office**, the entity responsible for investigating human rights violations. This entity has implemented the LGBT variable as a vulnerable population group among its categories for recording cases, and has carried out, with the support of civil society organizations, awareness-raising activities for staff responsible for handling and recording information in the system. However, public figures on sexual crimes do not show this information and only disaggregate it by sex in the victim's documentation.

Another source of official statistics comes from the information system of the **National Institute of Legal Medicine**, the public establishment of technical and scientific reference that directs and controls the system of Legal Medicine and Forensic Sciences in Colombia. This entity records the medico-legal examinations for alleged sexual crimes carried out and publishes the information annually in the Forensic report. This publication has a section dedicated exclusively to sexual violence and analyzes the socio-demographic information of the persons examined. However, the data on LGBT persons is only disaggregated by sex which prevents the identification of lesbian or bisexual women, and makes the gender identity of trans persons invisible.

Since 2015, the Institute reported: 13 cases of women belonging to the LGBT population in 2015, 13 cases in 2016 and 19 cases in 2017. In the last report published in 2019 with figures for 2018, they reported that “it cannot be ignored that by 2018 there were 237 cases of sexual violence against people belonging to the LGBT community, of which 22.36% were bisexual women, 34.14% were lesbians and 33.75% were gays”.

⁹² Special Rapporteur on violence against women (2017), *Mission to Argentina*, [A/HRC/35/30/Add.3](#), para. 18.

⁹³ Colombia Diversa, “Aunque Intenten Borrarnos: Sistemas de Información”. Informe de Derechos de personas LGBT en Colombia 2019.

In addition, as part of the strategies implemented to combat and eliminate gender-based violence, the Colombian state, together with UN Women, developed the **Integrated Information System on Gender Violence (SIVIGE)**.⁹⁴ This system seeks to integrate and centralize information from different entities on gender-based violence against women, and includes sexual orientation and gender identity as separate categories. The information collected is published on the website of the National Observatory on Violence run by the Ministry of Health and Social Security. However, in the public display of statistical data, it is not possible to obtain disaggregated information on lesbian and bisexual women or transgender people.

Finally, the **Office of the Ombudsperson of Colombia**, the entity in charge of protecting the human rights and freedoms of all persons against illegal, unjust, unreasonable, negligent or arbitrary acts, threats or actions by any authority or individuals, has a position of the **Delegated Ombudsperson for Women and Gender Affairs**. The Ombudsperson promotes the incorporation of variables in the information system and publishes figures and reports on violence, including sexual violence against LGBT persons, disaggregated by sexual orientation and gender identity. In the Ombudsman's report on gender-based violence and discrimination, it was stated that: "According to the care provided by the gender duplicates in 2018, 19.4% of the 3,225 care provided was for acts of sexual violence committed against women and people with diverse sexual orientations and gender identities. With regard to women, in 43% of the cases the alleged aggressor was a family member, of which 2.3% belonged to the police or the national army, while for LGBTI persons, 42 % were assaulted by an acquaintance or family member, and 58% by an unknown person."⁹⁵

Regarding investigations, prosecutions and penalties for rape/sexual violence against women/LBTI persons, the Prosecutor's Office has only reported 10 criminal prosecutions for sexual violence against LGBT persons between 2015 and 2019. None of these criminal proceedings have resulted in the conviction of those responsible. Three of the investigations were closed due to the impossibility of identifying perpetrators, six others continued in the first stage of investigation and only one advanced to the trial of the alleged perpetrators.

3.2. Non-official statistics

While in most countries official statistics on rape and other forms of sexual violence experienced by LBNBTI women/persons is not available or not comprehensive, civil society groups in different parts of the world collect their own data to fill in this gap.

One of the most notorious example of statistics is provided by Colombia Diversa (**Colombia**).

As part of the monitoring work for its observatory on violence against LGBT people, Colombia Diversa reviews press and social networks, and requests information from the competent authorities about these cases, in order to triangulate the data and obtain more complete and reliable figures, due to the problems in the state information systems described above. However, official entities sometimes make access to information difficult and the quality of the information provided is not the highest. The consolidated data on cases of sexual violence against lesbian and bisexual women and transgender people reported in the period from 2015 to 2018 are provided below (see *Tables 3, 4 and 5*).

Table 3: Statistics on cases of sexual violence against lesbian and bisexual women and transgender people in Colombia, 2015-2018 (Colombia Diversa)

| | 2015 | 2016 | 2017 | 2018 | TOTAL |
|----------------|-----------|-----------|-----------|-----------|-----------|
| Lesbian women | 7 | 11 | 16 | 13 | 47 |
| Bisexual women | 3 | 1 | 0 | 4 | 8 |
| Trans men | 2 | 1 | 1 | 0 | 4 |
| Trans women | 4 | 3 | 4 | 1 | 12 |
| TOTAL | 16 | 16 | 21 | 18 | 71 |

Between 2015 and 2018, at least 71 lesbian and bisexual women and trans people were victims of some form of sexual violence. The majority of victims were lesbian women (47 cases), followed by trans women (12 cases) and bisexual women (8 cases).

Table 4: Statistics on cases of sexual violence against lesbian and bisexual women

⁹⁴ Consejería presidencial para la equidad de la mujer, Departamento Administrativo Nacional de Estadística, Ministerio de Justicia, Ministerio de Salud. Marco normativo, conceptual y operativo del Sistema Integrado de Información sobre Violencias de Género. Disponible en: http://www2.unwomen.org/-/media/field%20office%20colombia/documentos/publicaciones/2016/sivige_final_web.pdf?la=es&vs=1633.

⁹⁵ Defensoría del Pueblo de Colombia, Informe defensorial sobre violencias basadas en género y discriminación 2019. Disponible en: https://www.defensoria.gov.co/public/pdf/Violencias_basadas_en_genero_y_discriminacion.pdf.

and transgender people in Colombia, 2015-2018, by age groups (Colombia Diversa)

| | 10 to 17 y.o. | 18 to 19 y.o. | 20 to 29 y.o. | 30 to 39 y.o. | 40 to 49 y.o. | 50 to 59 y.o. | No information | TOTAL |
|----------------|------------------|------------------|------------------|------------------|------------------|------------------|-------------------|-----------|
| Lesbian women | 12 | 5 | 23 | 6 | 0 | 0 | 1 | 47 |
| Bisexual women | 2 | 0 | 4 | 0 | 0 | 0 | 2 | 8 |
| Trans men | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 4 |
| Trans women | 3 | 0 | 8 | 1 | 0 | 0 | 0 | 12 |
| TOTAL | 18 | 6 | 36 | 8 | 0 | 0 | 3 | 71 |

In this same period, the age of most victims was in the range of 20-29 y.o. (36 cases), followed by 10-17 y.o. (18 cases) and 30-39 y.o. (8 cases). Of particular concern are cases of minors.

Table 5: Statistics on cases of sexual violence against lesbian and bisexual women and transgender people in Colombia, 2015-2018, by perpetrators (Colombia Diversa)

| | Acquaintances | Strangers | Family member | Guerrillas | Partner or ex-partner | No information | TOTAL |
|----------------|---------------|-----------|---------------|------------|-----------------------|----------------|-----------|
| Lesbian women | 16 | 10 | 6 | 1 | 1 | 13 | 47 |
| Bisexual women | 0 | 1 | 2 | 0 | 0 | 5 | 8 |
| Trans men | 0 | 0 | 1 | 0 | 0 | 3 | 4 |
| Trans women | 1 | 4 | 1 | 0 | 0 | 6 | 12 |
| TOTAL | 17 | 15 | 10 | 1 | 1 | 24 | 71 |

Finally, Colombia Diversa collected information on the relationship of alleged perpetrator to victims (for 47 cases). Most of the sexual violence incidents was perpetrated by acquaintances (17 cases), followed by strangers (15 cases) and family members (10 cases).

Additionally, sexual violence against two trans women and one bisexual woman was present in the events in which the victims lost their lives.

Another example of detailed statistics is *Mapa da violência de gênero*⁹⁶ implemented in **Brazil** (see Table 6).

Table 6: Statistics on cases of rape against lesbian and bisexual women and trans persons in Brazil, 2014-2017

| | | 2014 | 2015 | 2016 | 2017 |
|---------------|----------------|------------|------------|------------|------------|
| LB women | Lesbian women | 413 | 392 | 443 | 487 |
| | Bisexual women | 17 | 19 | 23 | 23 |
| | TOTAL | 430 | 411 | 466 | 510 |
| Trans persons | Trans men | no data | 2 | 7 | 12 |
| | Trans women | 9 | 35 | 43 | 58 |
| | Travesti | 1 | 2 | no data | 3 |
| | TOTAL | 10 | 39 | 50 | 73 |

In the **United States**, some statistics is collected by the National Coalition of Anti-Violence Programs and its members. According to their data on hate crimes, LGBT people reported:

- 87 incidents of sexual violence, and 1 case of sexual violence committed by police in 2015;
- 59 incidents of sexual violence, and 5 cases of sexual violence committed by police in 2016;
- 64 incidents of sexual violence, and 3 cases of sexual violence committed by police in 2017.⁹⁷

A report on **Bangladesh, Bhutan, India, Nepal and Pakistan** by SAHRA contains 810 cases of human rights violations recorded from sexual and gender minorities in 2018. Out of these cases, 101 (12%) were sexual harassment incidents (including 75 cases against trans women, 4 cases against trans men, 1 case against a lesbian woman, and 1 case against an intersex person), and 47 (6%) were rape cases (including 30 cases against trans women and 5 cases against trans men).⁹⁸

⁹⁶ Available at: <https://mapadaviolenciadegenero.com.br/lgbt/>.

⁹⁷ See: National Coalition of Anti-Violence Programs (2018), *Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Hate and Intimate Partner Violence in 2017*; National Coalition of Anti-Violence Programs (2017), *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2016*; National Coalition of Anti-Violence Programs (2016), *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2015*.

⁹⁸ SAHRA, *2019 Human Rights Violations Report*, pp. 6 and 9.

Additionally, according to experts from Mitini Nepal (**Nepal**), five rape cases, including against lesbian women (2 cases) and trans women (3 cases), and one case of attempt to rape a lesbian woman, were documented by the organization within the last five years (2015-2020).

3.3. Cases and data on specific populations and topics

(a) “Corrective rape”

“Corrective rape” (also called “curative rape”, “punitive rape” or “homophobic rape”) is a term reportedly coined in South Africa to describe the practice of rape committed against lesbian women in order to “cure” or punish them. Lately, the term began to be used in other parts of the world and in relation to LGBTI and gender non-conforming women and persons.

Different authors suggested various definition for this phenomena, such as “a practice whereby men rape lesbians in order to ‘turn them straight’, or to ‘cure’ them of their sexual orientation”, “a non-consensual sexual violation which is directed towards lesbians by persons of the opposite sex with the aim of punishing them and/or curing or correcting their sexual orientation” and “a sexual punishment by African men towards black African lesbians for being homosexual and violating traditional gender norms”.⁹⁹

In 2018, the Criminal Code of **Brazil** introduced a legal definition of ‘corrective rape’ (*estupro corretivo*) as a rape committed “to control the victim's social or sexual behavior”.¹⁰⁰

Several United Nations **treaty bodies**¹⁰¹ and **special procedures**¹⁰² referred to “corrective rape” as a form of human rights violations against LGBTI women.

Following her country visit to **South Africa**, the Special Rapporteur on violence against women reported:

*“Despite an explicit prohibition of discrimination based on sexual orientation in the Constitution, lesbian women and other sexual minorities are very vulnerable to extreme forms of violence purported at “correcting” their bodies, including the so-called “corrective rape” often accompanied by a particularly heinous murder. This type of extreme violence was reported on the rise, despite the difficulty to detect it since victims are unlikely to spontaneously report their sexual orientation and police do not record this information”.*¹⁰³

The Independent Expert on sexual orientation and gender identity in his report on country visit to **Mozambique** stated:

*“As part of such attempts to change the sexual orientation of women and girls, the Independent Expert also heard worrying testimonies of “corrective rapes” imposed as a punitive measure for a disease that needed to be cured. Information received suggests that corrective rapes are arranged by the family or the community, or are organized in the context of a “cure” performed by clergy members or traditional healers. A lesbian woman living in the Maratane camp explained that she was raped by boys from the neighbourhood who said: ‘How can a woman love another woman? You must be sexually starving! Let’s correct her.’”*¹⁰⁴

Because of its nature, “corrective rape” could be considered a form of “conversion therapy”.

In August 2019, OutRight Action International published a comprehensive report to provide a global snapshot on what is known about “conversion therapy” including the forms utilized by perpetrators.¹⁰⁵ Throughout the

⁹⁹ Review of different definitions see, e.g. Mwambene, L. and Wheal, M. (2015). Realisation or oversight of a constitutional mandate? Corrective rape of black African lesbians in South Africa, *African Human Rights Law Journal* 15, pp. 59-61.

¹⁰⁰ See [Lei nº 13.718](#), de 24 de setembro de 2018.

¹⁰¹ See e.g. Committee on the Elimination of Discrimination against Women (2019), *List of issues: Ethiopia*, [CEDAW/C/ETH/Q/8](#), para. 8; Committee on the Elimination of Discrimination against Women (2018), *Concluding observations: Tajikistan*, [CEDAW/C/TJK/CO/6](#), para. 43; Committee against Torture (2017), *Concluding observations: Cameroon*, [CAT/C/CMR/CO/5](#), paras. 43 and 44; Human Rights Committee (2016), *Concluding observations: Namibia*, [CCPR/C/NAM/CO/2](#), para. 9.

¹⁰² See e.g. Working Group on discrimination against women (2016), [A/HRC/32/44](#), para. 58 (“In some settings, [lesbians] are subjected to coercive, inhumane and degrading practices such as “corrective” or punitive rape”); Special Rapporteur on the right to health (2016), [A/HRC/32/32](#), para. 41 (“Lesbian, bisexual and transgender youth are at risk of “punitive” rape on the basis of their sexual orientation or gender identity”); Special Rapporteur on the right to health (2016), [A/HRC/32/33](#), para. 51 (“In certain jurisdictions, lesbian athletes have been harassed and subjected to violence, including “corrective rape”, on the basis of their sexual orientation”); Special Rapporteur on torture (2016), [A/HRC/31/57](#), para. 57 (“Sexual violence, including the practice of “corrective rape”, uniquely affects lesbian, gay, bisexual, transgender and intersex individuals”); Special Rapporteur on violence against women (2019), *Visit to Nepal*, [A/HRC/41/42/Add.2](#), para. 69 (concerns about “reports suggesting the use of ‘corrective rape’ and reports of violence allegedly perpetrated by police officers, including verbal abuse, indiscriminate body searches and severe beatings, as well as harassment and arbitrary detention, on the grounds of sexual orientation or gender identity”).

¹⁰³ Special Rapporteur on violence against women (2016), *Mission to South Africa*, [A/HRC/32/42/Add.2](#), para. 33.

¹⁰⁴ Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (2019), *Visit to Mozambique*, [A/HRC/41/45/Add.2](#), para. 52.

¹⁰⁵ OutRight Action International (2019). [Harmful Treatment: The Global Reach of So-Called Conversion Therapy](#).

report, the testimonies from interviewees as well as the literature reviewed on the topic unveiled the ways in which “corrective rape” was used as a method of so called “conversion therapy” worldwide.

In **India**, reports of “conversion therapy” persist, however, with assertions that electric shock therapy, psychotropic medications, hormonal treatments, aversion therapy, and corrective rape all are used.¹⁰⁶

In **Ecuador**, it has been illegal since 2014 for a professional to offer or perform conversion practices on any person, whether or not compensation is received in exchange. The push for a ban was initiated in 2011 by a group of Ecuadoran human rights organizations who petitioned the Ministry of Health to close down “de-homosexualization clinics” that reportedly were using “corrective rape”, beatings, electric shock, and lengthy solitary confinement to “cure” same-sex attraction. Enforcement of the ban remains a concern, however, as reports persist that about 200 unlicensed clinics are still in operation, largely as clandestine, private drug and alcohol clinics, and they remain a lucrative business.¹⁰⁷

In **sub-Saharan Africa**, Pentecostal churches, as well as Christian African Independent Churches, have a growing influence and most are fundamentalist in their view of SOGIE diversity, treating homosexuality, in particular, as needing a “cure.” The horrific perpetration of “corrective rape” is a well-known phenomenon in South Africa (and other countries in the region). Premised on the belief that forced sex will show people (mostly women who are or are perceived to be lesbians, but also transgender people and gay men) how to conform to expected gender norms, this vicious practice is perpetrated by family members, acquaintances, and strangers. Victims of corrective rape often face little chance of recourse, often being re-victimized by police or other authorities who believe that they brought the assault on themselves.¹⁰⁸

According to the Initiative for Equal Rights (TIERS) in **Nigeria**, the main perpetrators of “conversion therapy” are family members and religious leaders. TIERS also has received reports of corrective rape. In general, it appears that homosexuality is considered a spiritual or moral problem, rather than a mental illness, and thus requires religious intervention.¹⁰⁹

In **Russia**, In December 2018, Queer Women North Caucasus (QWNC) released a report detailing results from interviews with 21 women in Chechnya, Daghestan, Ingushetia, and North Ossetia. These women reported that attempts to “cure” them involved beatings, rape, and forced marriage.¹¹⁰

In **Central Asia**, the quack procedures of driving “male jinns” out of women are accompanied by psychological, physical, and even sexual violence; there have even been cases of rape, generally committed by relatives, that is intended to “cure” women; at home the women face beatings and threats at home and are not allowed to go out.¹¹¹

(b) Lesbian and bisexual women

As the Independent Expert on sexual orientation and gender identity wrote in one of his reports:

“Misogyny, patriarchy and gender inequalities put lesbian and bisexual women at risk of violence. They are victims of rape — targeted to punish them or, allegedly, in efforts to ‘change’ their sexual orientation — and also of forced marriage, female genital mutilation, forcible impregnation, collective beatings for public display of affection, attacks with acid and ‘conversion therapies’. In many cases, stigma is reinforced by deeply-rooted cultural norms and beliefs about masculinity, the concept of the ‘traditional’ family or the use of women as a source of income in circumstances where there is great poverty. Lesbian and bisexual women are especially at risk of acts of sexual or intrafamily and domestic violence.”¹¹²

Lesbian and bisexual women frequently are objectified and sexualized in all parts of the world. For example, as a lesbian woman from Austria evidenced, “[a]s soon as we behave as a couple (holding hands, hugging or kissing) we can assume that a man or often groups of men will start making lewd remarks/gestures or approach us to stand near us and openly to stare.”¹¹³

In the **United States**, the CDC’s National Intimate Partner and Sexual Violence Survey (2010) revealed the significant vulnerability of lesbian and especially bisexual women to sexual violence:

¹⁰⁶ OutRight Action International (2019). *Harmful Treatment*, p. 28.

¹⁰⁷ OutRight Action International (2019). *Harmful Treatment*, p. 31.

¹⁰⁸ OutRight Action International (2019). *Harmful Treatment*, p. 32.

¹⁰⁹ OutRight Action International (2019). *Harmful Treatment*, pp. 32-33.

¹¹⁰ OutRight Action International (2019). *Harmful Treatment*, pp. 33-34.

¹¹¹ ADC Memorial (2020), [LGBTI+ In the Region of Central Asia: Repressions, Discrimination, Exclusion](#), p. 9.

¹¹² Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (2018), [A/HRC/38/43](#), para. 45.

¹¹³ European Union Agency for Fundamental Rights (2020), [A long way to go for LGBTI equality](#), p. 45.

- 44% of lesbian and 61% of bisexual women experienced rape, physical violence, or stalking by an intimate partner, compared to 35% of heterosexual women;
- 46% of bisexual women have been raped, compared to 17% of heterosexual and 13% of lesbian women;
- 22% of bisexual women have been raped by an intimate partner, compared to 9% of heterosexual women.¹¹⁴

According to a report by Human Dignity Trust, the targeted rape of lesbians and bisexual women is common in several countries, including **India, Cameroon, Kenya, Zimbabwe, Jamaica, Uganda** and **South Africa**.¹¹⁵

In **Central Asia**, lesbian and bisexual women are subjected to forced marriages and sexual violence. “Strong family ties and dependence on the instilled primacy of relationships with the family force women to live up to the gender defined expectations of their relatives and go against their own wishes by entering into forced marriages, frequently at a very young age, before they have the chance to get an education or experience even a small taste of independence. Women do not have the ability to refuse sex with their husband and must to all intents and purposes endure rape and other forms of violence committed by their husband or his family.”¹¹⁶

(c) Trans women and trans persons

The 2015 **United States** Transgender Survey found that 47% of transgender people are sexually assaulted at some point in their lifetime. Moreover, one in five (20%) respondents who were incarcerated in jail, prison, or juvenile detention in the past year were sexually assaulted by facility staff during that time. Additionally, 17% of respondents who stayed at one or more homeless shelters in the past year were sexually assaulted at the shelter because they were transgender.¹¹⁷

Transgender women who experienced intimate partner violence in the United States in 2017, were nearly two and a half times more likely to experience sexual violence and nearly four times more likely to experience financial abuse than survivors who did not identify as transgender women.¹¹⁸

A number of studies from **Latin America** showed that transgender individuals had the highest rates of the lifetime experience of sexual violence: Argentina (34.3%);¹¹⁹ Brazil (23.8%);¹²⁰ Chile (42.1%);¹²¹ Colombia (33%);¹²² and Mexico (21.1%).¹²³

In the **United Kingdom**, 14% of trans people experienced sexual assault in their lifetime, and 6% experienced rape.¹²⁴

In **New Zealand**, trans and non-binary persons face very high levels of sexual violence, according to Counting Ourselves report.¹²⁵ Almost half of participants reported that someone had tried to have sex with them against their will. As well as differences between the gender groups, this rate was higher for disabled (65%) and adult

¹¹⁴ Centers for Disease Control and Prevention, *NISVS: An Overview of 2010 Findings on Victimization by Sexual Orientation*.

¹¹⁵ Human Dignity Trust (2016), *Breaking the Silence: Criminalization of Lesbians and Bisexual Women and its Impacts*, p. 24.

¹¹⁶ ADC Memorial (2020), *LGBTI+ In the Region of Central Asia: Repressions, Discrimination, Exclusion*, p. 9.

¹¹⁷ James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., and Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality.

¹¹⁸ National Coalition of Anti-Violence Programs (2018), *Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Hate and Intimate Partner Violence in 2017*, p. 17.

¹¹⁹ Jones, D., Libson., M., Hiller, R. *Sexualidades, política y violencia: la Marcha del Orgullo GLTTBI Buenos Aires 2005 – segunda encuesta*. [Sexualities, politics and violence: second survey of the GLTTBI march of pride – Buenos Aires 2005]. Buenos Aires: Antropofagia, 2006.

¹²⁰ Carrara, S., Facchini, R., Simões, J., Ramos, S. *Política, direitos, violência e homossexualidade: pesquisa 9a parada do orgulho GLBT – São Paulo 2005*. [Politics, rights, violence and homosexuality: survey 9th LGBT Pride – São Paulo 2005]. Rio de Janeiro: Centro Latino-Americano em Sexualidade e Direitos Humanos, 2006.

¹²¹ Barrientos, J., Meza, P., Gómez, F., Catalán, S., Longueira, J., Silva, J. *Política, derechos, violencia y diversidad sexual: primera encuesta marcha del orgullo y diversidad sexual Santiago de Chile 2007*. [Politics, rights, violence and sexual diversity: first survey of the march of pride and sexual diversity – Santiago de Chile 2007]. Rio de Janeiro: Centro Latino-Americano em Sexualidade e Direitos Humanos, 2008.

¹²² Brigeiro, M., Castillo, E., Murad, E. *Sexualidad y derechos – participantes de la marcha de la ciudadanía LGBT de Bogotá, 2007*. [Sexuality and rights – survey of the participants of the LGBT march of Bogota, 2007]. Rio de Janeiro: Centro Latino-Americano em Sexualidade e Direitos Humanos, 2009.

¹²³ Brito, A., Jiménez de Sandi, A., Sívori, H., Lacerda, P., Glockner, N., de la Garza, L. A. *Política, derechos, violencia y sexualidad: encuesta marcha del orgullo y la diversidad sexual Ciudad de México – 2008*. [Politics, rights, violence and sexuality: survey of the march of pride and sexual diversity – Mexico City 2008]. Rio de Janeiro: Centro Latino-Americano em Sexualidade e Direitos Humanos, 2012.

¹²⁴ McNeil, J., Bailey, L., Ellis, S., Morton, J., Regan, M. *Trans mental health and emotional wellbeing study 2012*. Edinburgh: Scottish Transgender Alliance, 2012.

¹²⁵ Veale, J. F., Byrne, J. L., Tan, K. K. H., Guy, S., Yee, A., Nopera, T., & Bentham, R. M. (2019). *Counting Ourselves: The health and wellbeing of trans and non-binary people in Aotearoa New Zealand*. Hamilton, New Zealand: Transgender Health Research Lab, University of Waikato <https://countingourselves.nz/index.php/community-report/>.

(54%) participants and lower for youth (40%). Participants who had someone have sex with them against their will since age 13 were twice as likely to have attempted suicide in the past year (18%) than participants who did not report this (9%). Trans women, trans men and non-binary participants all reported someone having had sex with them against their will at rates two to three times higher than that for women in the general population and seven to 12 times higher than for men in the general population.¹²⁶

In **Pakistan**, 77% of the rapes and 67% of all sexual harassments against LGBTI persons reported in 2018 were from trans women.¹²⁷

The following cases reveal some realities faced by trans persons.

*In November 2019, a trans man was raped by a friend of his father in **Kyrgyzstan**. Though this, his father tried to "fix" him. The victim decided not to report the case to the police.*

*Sonam is a 34-year-old transgender woman living in Thimphu, **Bhutan**. She works as a dancer to make a living in the capital. One night in 2018, after a get-together with her friends, Sonam was heading home and on the way she was offered a ride by a group of four men. Instead of driving to Sonam's home, the men took her to an isolated road and forced her to take off all her clothes to see her genitals. After stripping, they raped her, robbed her and left her on the road. Shattered and in deep distress and pain, Sonam barely managed to gather all her clothes and walk back home.¹²⁸*

*Police officers gang rape transwoman in **Nepal** (2018). Aruna is a 23-year old trans woman. She was returning home around midnight. A group of police officers were in the street, and they called her to come to them and started touching her body and face. Uncomfortable and shocked, Aruna began shouting in protest. In response, the police officers threatened to take her into custody. She was intimidated and left with no option but to do as the police said. The policemen took her to a dark stretch of the road, and one by one they raped her. After raping, the policemen threatened Aruna of arrest and dire consequences if she ever spoke to anybody of the incident. But Aruna shared the trauma with some of her friends, who also warned her not to go to the police because she could be harassed further. Instead, now Aruna is staying away from the area where she was raped, and she told others to do the same. She is scared that the police will rape her again, and she needs someone with her when she moves around the city.¹²⁹*

(d) Intersex women and intersex persons

Because of the gap in intersex research, much less is known about experience of sexual violence by intersex persons.

According to Tony Briffa, Chair of Intersex Steering Committee, ILGA World:

"Institutional sexual violence is prevalent in the experiences of many intersex girls, especially if they have atypical genitalia or internal testes. This includes being repeatedly penetrated by fingers and other objects for no medical need in a clinical setting – and often in front of other doctors and medical students. The abuse can even go as far as non-consensual surgeries or hormone intervention which is arguably a form of conversion therapy as they have the intent of converting an intersex person to a non-intersex (endosex) person. The violence is further compounded because they are conducted in a hospital where parents take their children for help and where there is a great level of trust in the abusers.

These sexual assaults can have a lasting impact on a person's life far beyond the physical results of the non-consensual surgeries and hormone interventions. They impact self-worth and body image, relationships (including relationships with parents), education, confidence and health. Intersex survivors of sexual violence often experience symptoms of post-traumatic stress disorder including flashbacks, feelings of detachment or isolated from other people, a sense of blame, guilt and shame, nightmares, adverse physical reactions to reminders of the violence, negative thoughts, antisocial behaviour, loss of concentration, irritability, anger, insomnia, and being hypervigilant about danger and threats even when they do not exist.

I am one of the many intersex girls that experienced sexual violence in hospitals as a child. It is such a shame the abuse we experience is hardly ever recognised or mentioned anywhere, including in LGBTQ spaces.

Being subjected to what I described has also made intersex children more prone to being identified by child predators, so intersex children are often also subjected to being sexually abused including raped. I experienced that too as a child but never said anything. Other intersex people speak of this too. We are so shamed and forced into a life of secrecy that we also feel to shamed to disclose other abuse."

The following case from Kyrgyzstan demonstrates that intersex people may have no support from their families.

¹²⁶ *Ibid*, p. 77.

¹²⁷ SAHRA, 2019 Human Rights Violations Report, p. 31.

¹²⁸ SAHRA, 2019 Human Rights Violations Report, p. 21.

¹²⁹ SAHRA, 2019 Human Rights Violations Report, p. 27.

In November 2018, in the city of Talas, a family wanted to marry an intersex man against his will. His gender identity was masculine, but his family raised him as a girl. Trying to "fix" him, the family wanted to arrange a corrective surgery and forcefully marry him. He managed to avoid it after referring to "Kyrgyz Indigo" who helped him to leave his house and to find a safe place.

(e) Sex workers

In **India**, 35% of the LGBTI victims of human rights violations whose cases were registered in 2018 were sex workers.¹³⁰ In **Nepal**, 48% of the victims,¹³¹ and in **Pakistan**, 30% of the victims were sex workers.¹³²

According to the 2015 **United States** Transgender Survey, 72% of respondents who have done sex work reported being sexually assaulted in their lifetime.¹³³

*Chandni is a 25-year-old transwoman sex worker living in Rawalpindi, **Pakistan**. In 2018, she attended a wedding out of city with one of her clients. After the wedding, her client asked her to spend the night at one of his relatives' home, and he ensured her that they will take good care of her until he picked her up the next morning. She went to the relative's house, where 26 men were already present. The men started bullying and physically assaulting her. One by one, the 26 men raped her the entire night and kicked her out of the house in the morning. Chandni couldn't even stand or walk. She dragged herself to the street and rested for a while on the roadside. Later she got a bus and returned home in Rawalpindi.*

This case shows how trans women are seen as sexual objects, making them vulnerable to violence and rape. Chandni did not report this incident to the police, because she feared being arrested. She started spending her life in isolation. She was too afraid to go out for sex work after this incident, and lost her only livelihood.¹³⁴

(f) Detention

LBNBTI women/persons in detention, especially trans women, are particularly vulnerable to sexual violence.

As the Independent Expert on sexual orientation and gender identity reported following his visit to **Mozambique**, "[t]ransgender persons are placed in male or female prisons on the basis of their biological sex, putting them in situations of great vulnerability to violence, including sexual violence."¹³⁵

The Committee against Torture referred to the risks of sexual violence faced by trans women in male prisons in its reviews of **Belarus**, **Guatemala** and **Namibia**.¹³⁶

In **Colombia**, the Constitutional Court protected the rights of a homosexual man deprived of liberty who had been the victim of sexual violence by the other inmates due to his sexual orientation.¹³⁷ In this case, the Court upheld the need to protect the rights of the population deprived of liberty, especially when it comes to a group traditionally discriminated against, such as LGBT people. The authorities were ordered to carry out measures to prevent the violations against the victim from continuing and perpetuate the respective criminal investigations. While this decision did not directly involve LBNBTI women/persons, it can be used for this population as well.

(g) Human rights defenders

LBNBTI women/persons who are human rights defenders are vulnerable to sexual violence, including rape, because of their gender and SOGIESC, but also their human rights work.

The Special Rapporteur on human rights defenders made several communications and addressed a number of cases of rape and sexual violence against LGBT human rights defenders.¹³⁸

As she noted in one of her reports, "[s]exual assaults, including instances of gang rape in detention of LGBT activists, were also reported in Ecuador, Honduras, Mexico, India, and Nepal. The alleged perpetrators of these acts were mostly unknown/unidentified but also included members of the police, military, armed groups, or local members of the community."¹³⁹

¹³⁰ SAHRA, *2019 Human Rights Violations Report*, p. 23.

¹³¹ *Ibid.*, p. 27.

¹³² *Ibid.*, p. 31.

¹³³ James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality.

¹³⁴ SAHRA, *2019 Human Rights Violations Report*, p. 32.

¹³⁵ Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (2019), *Visit to Mozambique*, [A/HRC/41/45/Add.2](#), para. 53.

¹³⁶ Committee against Torture (2018), *Concluding observations: Belarus*, [CAT/C/BLR/CO/5](#), paras. 29 and 30; Committee against Torture (2018), *Concluding observations: Guatemala*, [CAT/C/GTM/CO/7](#), paras. 40 and 41; Committee against Torture (2016), *Concluding observations: Namibia*, [CAT/C/NAM/CO/2](#), paras. 30 and 31.

¹³⁷ Constitutional Court of Columbia, judgment T-1096 of 2004.

¹³⁸ Special Rapporteur on human rights defenders (2010), [A/HRC/16/44](#), paras. 43 and 86.

¹³⁹ Special Rapporteur on human rights defenders (2010), [A/HRC/16/44](#), para. 87.

Sexual violence against LBT women who are human rights defenders was also addressed by the Committee on the Elimination of Discrimination against Women, particularly in its review of **Colombia** and **Guatemala**.¹⁴⁰

(h) Armed conflicts

As was stated by the Special Rapporteur on torture, “[t]orture and ill-treatment of persons on the basis of actual or perceived sexual orientation or gender identity is rampant in armed conflict and perpetrated by State and non-State actors alike, with rape and other forms of sexual violence sometimes being used as a form of “moral cleansing” of lesbian, gay, bisexual and transgender persons.”¹⁴¹

One illustrative example of sexual violence and rape against LGBT persons in armed conflict is **Colombia**.

The Law 1719 of 2014 should be highlighted provides for greater penalties for the perpetrators of sexual violence in the context of the armed conflict and establishes measures to guarantee access to justice for the victims of these same crimes. This law allowed for greater dignity in the treatment of victims of sexual violence in the midst of the armed conflict and made it possible to establish better contextual connections between the conflict and sexual violence as a weapon to advance it. In addition, it protects victims from humiliating defenses, obliges the Attorney General's Office to consider the possibility that sexual violence is a systematic attack against the civilian population and to advance the investigation within a reasonable period of time.

Following the implementation of the Final Agreement, cases of gender-based violence, including sexual violence against LGBT persons in the context of the armed conflict, became relevant for the Special Court for Peace. In February 2020, a request was made to open a case of sexual and reproductive violence and other crimes motivated by the sexuality of the victims.¹⁴²

The criminal offence of femicide, created by Law 1261 of 2015, includes within the elements of context that indicate its commission the exercise of sexual violence concomitant with or preceding the murder of a woman because of her status as a woman or because of her gender identity, thus recognizing the close relationship between sexual violence and gender violence (according to Article 1 of the same law). It also includes a circumstance of punitive aggravation if this conduct is carried out because of the victim's sexual orientation. Colombia was the first country in Latin America to apply this crime of femicide due to prejudice against a trans woman in 2017.¹⁴³

Sexual violence has been one of the repertoires used against LGBT people in the Colombian armed conflict. In this regard, Colombia Diversa has begun to build a database of victimizing events motivated by prejudice during the armed conflict. Of the 139 events of violence, 38 were those of sexual violence. Of these events, 8 were perpetrated by the United Self-Defence Forces of Colombia (AUC), 6 by post-demobilization armed groups (residual criminal cells of the paramilitary groups), 3 by paramilitary groups other than the AUC, 13 by the FARC-EP, 3 by the Army, 3 by the National Police and 3 by unidentified actors. This means that sexual violence has been perpetrated by all actors in the war, attacking the sexual freedom and integrity of LGBT people solely because of their homophobic and transphobic prejudices.

From the study of the cases used to create this database, it was possible to discover that sexual violence was part of prejudice violence for hierarchical purposes, that is, for the purpose of reminding the victim of “her place” in society. This means that the purpose of sexual violence against LGBT people in the armed conflict was always to reinforce social norms about the value of LGBT people in society: none. This look of hate and prejudice plunged individuals into a deep sense of distaste, loneliness and frustration. In several cases, the purpose was achieved, as the victims remained silent or moved away from the community they inhabited.

In particular, armed actors tried to make their victims feel humiliated for being LGBT, violated for “wanting to be women” and punished for living their sexuality or gender identity without hiding. In territories where control was in dispute, armed actors used sexual violence against LGBT people to gain the moral approval of the community's inhabitants. In territories already under the control of a single armed actor, sexual violence against LGBT people sought to establish masculinities fit for war and femininities fit for domestic spaces and political silence. In any case, the outrage against LGBT people had a clear purpose in advancing the warring interests of the armed actors. Despite the clear link to the armed conflict, these acts have remained constantly unpunished.

¹⁴⁰ Committee on the Elimination of Discrimination against Women (2019), *Concluding observations: Colombia*, [CEDAW/C/COL/CO/9](#), paras. 9, 13 and 14; Committee on the Elimination of Discrimination against Women (2017), *Concluding observations: Guatemala*, [CEDAW/C/GTM/CO/8-9](#), paras. 28 and 29.

¹⁴¹ Special Rapporteur on torture, [A/HRC/31/57](#), para. 51.

¹⁴² Colombia Diversa, *Alianza cinco claves pide a la JEP abrir un caso de violencia sexual, reproductiva y otros delitos motivados en la sexualidad de las víctimas*. Febrero 2020.

¹⁴³ <https://www.eltiempo.com/justicia/delitos/primera-condena-por-feminicidio-de-una-mujer-trans-en-colombia-306288>.

As expressed by Colombia Diversa, the role of impunity for sexual violence against LGBT people in Colombia should be reflected upon. It is no coincidence that the State does not keep figures or centralized statistics on the occurrence of these crimes and, at the same time, that their common denominator is impunity or institutional resistance to receiving complaints. There is the lack of institutional will to prevent, address, judge and repair the facts of sexual violence in the midst of the Colombian armed conflict against LGBT people. On one hand, this demonstrates the Colombian state's lack of interest in the comprehensive protection of the rights of LGBT persons and, on the other hand, demonstrates that regardless of the complaints and accusations, the dignity and sexual rights of LGBT victims are not complaints worth attending to. This neglect shows that, *de facto*, LGBT victims of sexual violence in the midst of the armed conflict are not victims that the Colombian state is interested in recognizing or compensating, which is consistent with the social complicity that precedes and legitimizes these crimes.

Figures on sexual violence in armed conflict in Colombia

Law 1448 of 2011 created the Single Registry of Victims, a tool that serves two functions. Firstly, to facilitate the orderly and unified counting of people suffered victimizing acts associated with the armed confrontation in Colombia since 1985, thus facilitating the statistical tracking of the phenomenon of armed violence against the civilian population in Colombia. Secondly, the Register is the mechanism that allows the Unit for the Care and Integral Reparation of Victims (UARIV) to identify the persons who, in accordance with the provisions of the law, will be beneficiaries of the administrative programmes for individual and collective reparation and humanitarian care.

The information is recorded taking as the central piece of information the victimizing event, that is, the human rights violation or breach of IHL to which the person who registers as a victim was subjected. The list of 15 victimizing acts to be reported includes crimes against freedom and sexual integrity in the course of the armed conflict. According to the RUV, on 30 April 2020, 33,506 events of sexual violence associated with the armed conflict were recorded, leaving a balance of 32,092 victims, of whom 487 recognized themselves as LGBT. In this regard, it is important to point out that, as Colombia Diversa has mentioned in many reports, the way in which victimizing events are reported according to the sex of the victims is extremely deficient. When a victim makes a statement, he or she must indicate whether he or she is male, female or LGBT. This is a barrier that reinforces the under-reporting of this violence, as it implies that having a diverse sexual orientation or gender identity is a sort of third sex, which victims are forced to choose when they declare. This is in a context where not only do they not know the official who will take their statement, but where they may be subject to forms of discrimination that make it impossible for them to recognize themselves as LGBT. Another problem is that it does not disaggregate the acronym, so it is impossible to know what sexual orientation and/or gender identity the victims who recognize themselves under that category have.

In any case, the Registry is a valuable tool for tracking the phenomena of armed violence against LGBT people in the armed conflict, considering factors such as temporality, location and age of the victims.