

Written submissions relating to the Draft General Comment on Article 6 of the International Covenant on Civil and Political Rights – Right to life

5 October 2017

These comments were prepared jointly by the International Lesbian, Gay, Trans and Intersex Association (ILGA), the Global Forum on MSM & HIV (MSMGF) and LGBTI defenders from China.

The purpose of this document is to suggest specific proposals for the Draft General Comment on article 6 of the ICCPR (hereinafter – *Draft*) to reflect experiences of lesbian, gay, bisexual, trans and intersex (LGBTI) persons.

Even though our submission focuses on LGBTI, it is also crucial to address intersectional issues in relation to the right to life. In this regard, we commend the inclusion of concerns related to access to abortion and gender-based violence in the Draft. At the same time, we ask the Committee in the Draft to make a strong call for States to: repeal discriminatory laws and policies to guarantee that all individuals, without discrimination and respecting the principles of confidentiality and privacy, have access to affordable and quality sexual and reproductive health services and comprehensive sexuality education; liberalize restrictive abortion laws and guarantee cisgender women and girls and trans persons access to safe abortion services and quality post-abortion care; decriminalize abortion and respect the right of all persons to make autonomous decisions about their sexual and reproductive health; and address all forms of gender-based violence as they may constitute a threat or a risk to a person's right to life.

Comments to para. 10 of the Draft

We agree that States should take adequate measures to prevent suicide, especially among individuals in vulnerable situations. We are conscious that LGBTI persons can often be in a vulnerable situation; negative mental outcomes are more prevalent among LGBTI persons than non-LGBTI persons. Indeed, attempted suicide rates have consistently been found to be higher among LGBTI individuals than in the general population.¹

A systematic review of general population studies conducted in Australia, Europe, and North America found that compared with heterosexual people, lesbian, gay, and bisexual people are at higher risk of suffering mental disorders, including depression and anxiety, suicidal ideation and deliberate self-harm. Furthermore, gay and bisexual men have suicidal ideation rates almost twice those of heterosexual individuals.² A U.S. national survey found 41% of transgender respondents reported ever attempting suicide compared to 4.6% of the general population.³ According to an Australian survey, rates of suicidality among intersex persons far exceed the average for Australia, including suicide attempts by 19% of respondents.⁴

In countries where same-sex relations and gender non-conforming identities are criminalized, data shows mental health is worsened by the impact of punitive laws. A review

of criminalization of same-sex conduct between women in 44 countries asserts that the effects on lesbian and bisexual women include mental health issues and suicide.⁵

Studies conducted in several countries have established that sexual minority women experience more depressive symptoms than heterosexual women, and that bisexual women, particularly younger women, have higher levels of depressive symptoms than lesbians.⁶ LGBT youth demonstrate higher rates of emotional distress, symptoms related to mood and anxiety disorders, self-harm, self-stigma, suicidal ideation, and suicidal behavior compared to non-LGBT youth.⁷

Incidence of mental health problems vary within LGBTI populations, and several studies have demonstrated that depression symptoms are more prevalent among trans people relative to cisgender LGB people.⁸

In light of this, we suggest that a specific enumeration of LGBTI persons be made following “especially among individuals in particularly vulnerable situations.” The wording should be as follows:

*States should take adequate measures, without violating their other Covenant obligations, to prevent suicides, especially among individuals in particularly vulnerable situations; **Persons from groups that face specific discrimination, such as LGBTI persons, are often in particularly vulnerable situations and States should take specific measures to ensure sufficient and appropriate support is provided to them.***

Comments to para. 27 of the Draft

We welcome the inclusion of LGBTI persons into the list of groups in situations of vulnerability in the context of the duty to protect the right to life and special measures of protection that should be taken by State parties (para 27). Legislative amendments, such as recognising hate motivation of perpetrators as an aggravating circumstance and other hate crime provisions, as well appropriate trainings for public officials, proved to be effective measures to protect LGBTI persons, as well as other groups facing hate violence, including murders, from violation of their right to life. The Committee indeed recommended that the State parties implement such measures on numerous occasions.⁹ Taking this into account, we suggest adding the following sentence into para. 27 of the Draft:

State parties must take particular measures in law and in practice to ensure protection of the right to life of the persons from such groups, including by providing trainings for law enforcement and judicial personnel, and by recognising the hate motivation of perpetrators as an aggravating circumstance.

It is also important to address the specific situation of persons belonging to different groups, as it has been already done in relation to persons with disabilities (para 28). In the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in 2016, the SP noted that LGBTI persons face torture and ill-treatment in health care settings.¹⁰ The report noted that LGBTI persons are often denied health care which threatens the right to life.¹¹ Specifically, they are denied access to HIV treatment; forced into involuntary sterilization; and, in some cases where children are born with atypical sex

characteristics, taboo and stigma lead to the killing of intersex infants. Therefore, we suggest the following additional paragraph describing particular challenges faced by LGBTI people:

States have the duty to protect the rights of LGBTI persons and they should take special measures of protection so as to ensure their effective enjoyment of the right to life on an equal basis with others. Such measures of protection include ensuring access to life-saving medical services including antiretroviral medicines for LGBTI people living with HIV, ensuring freedom from nonconsensual medical procedures, prohibiting so-called “conversion” therapies, forced anal exams, forced sterilization, intersex genital mutilation, and ensuring protection from blackmail, extortion, discrimination, violence, and honor killings.

Comments to para. 30 of the Draft

We fully agree with the crucial importance of addressing general conditions in society that could lead to violence and other violations of the right to life. LGBTI persons throughout the world continue to face violence, including murders, and this situation is aggravated by discriminatory laws, negative stereotypes and prejudice and hate speech against them. On numerous occasions, the Committee has recommended the State parties to intensify their efforts to combat and condemn stereotypes regarding and prejudices against LGBTI persons.¹²

Therefore, we are suggesting the following amendments to para 30 of the Draft:

*(...) State parties should also develop action plans for advancing the enjoyment of the right to life, which may comprise strategies to fight the stigmatization associated with diseases, including sexually-transmitted diseases, which hamper access to medical care; detailed plans to promote education to non-violence and de-radicalization programs, **including awareness raising campaigns and other measures to combat stereotypes regarding and prejudices against vulnerable groups, such as LGBTI persons**; and campaigns for raising awareness against domestic violence and for improving access to medical examinations and treatments designed to reduce maternal and infant mortality. (...)*

Comments to paras. 34 and 35 of the Draft

Certain groups, such as LGBTI persons, frequently have a well-founded fear of prosecution or face a real risk that their right to life will be violated in their country of origin. As such, LGBTI persons should be protected under the scope of the principle of *non-refoulement* in international refugee law.

In 71 states, consensual same-sex relations are criminalised. In eight states, the death penalty is implemented as a punitive measure.¹³ Consequently, LGBTI persons must be protected from this kind of persecution, and threats to their life, in their country of origin by being afforded asylum status in other states.¹⁴

We urge the Committee to refer to its own jurisprudence¹⁵ by highlighting the prohibition of *refoulement* of persons to countries where their life or freedom are at risk as a result of their real or perceived sexual orientation, gender identity and expression and sex characteristics,

especially in countries where the criminal law has hugely disproportionate impacts on persons due to their SOGIESC.

Therefore, we suggest the following addition to the wording of para. 34:

*Similarly, it would be inconsistent with article 6 to... deport an individual to an extremely violent country in which he has never lived, has no social or family contacts and cannot speak the local language. **It would also be inconsistent with article 6 to deport an individual who would be subject to the risk of persecution, prosecution or death because of their real or perceived sexual orientation, gender identity and expression and/or sex characteristics.***

We also suggest the following amendments to para. 35:

*State parties must, however, allow all asylum seekers claiming a real risk of violation of their right to life in the State of origin access to refugee or other individualized status determination procedures that could offer them protection against refoulement; **this includes those whose right to life would be threatened upon refoulement because of their real or perceived sexual orientation, gender identity and expression and/or sex characteristics.***

Comments to para. 40 of the Draft

We also welcome the reference to “homosexuality” in para 40 of the Draft in the context of death penalty and criminalisation. Notably, during its 36th session in September 2017 the Human Rights Council adopted a resolution on the question of the death penalty¹⁶ condemning the imposition of the death penalty as a sanction for, inter alia, consensual same-sex relations, and urging States “*that have not yet abolished the death penalty to ensure that it is not imposed as a sanction for specific forms of conduct such as [...] consensual same-sex relations.*”

However, the diversity of circumstances in which specific conduct or activities are criminalised and could lead to the death penalty, should be taken into account. According to the recent ILGA’s study,¹⁷ there are eight States where the death penalty is activated: in four at country level, in two only in certain provinces, and in two States a death penalty is carried out by non-State actors. Further, there are another five States where interpretation of Sharia, or where black letter law, permits the death penalty technically. In these States, there is different wording for criminalised conduct or activities, such as “acts against nature,” “unnatural behavior,” “homosexuality,” “sodomy” or “imitating members of the opposite sex.”

Therefore, we are suggesting the following amendments to para. 40 of the Draft:

*Under no circumstances can the death penalty ever be applied as a sanction against conduct whose very criminalisation violates the Covenant, including adultery, **consensual same-sex behavior and relations, non-conforming gender expressions and identities**, apostasy [establishing political opposition groups,] or offending a head of state. (...)*

Comments to para. 62 of the Draft

As noted in the Draft, there is a connection between the right to life and propaganda which incites hatred, discrimination and violence. Ongoing situations in many states demonstrate

how prejudicial laws, policy and political rhetoric can provoke and often justify violence against LGBTI persons. Moreover, violent crimes against LGBTI persons are rarely investigated as hate crimes.

In its 2014 Concluding Observations on Russia, the Committee on the Rights of the Child noted concern that legislation ‘*prohibiting “propaganda of unconventional sexual relationships”...lead to the targeting and ongoing persecution of the country’s LGBTI community.*’¹⁸ In Nigeria, the Same Sex Marriage (Prohibition) Act is used to legitimize violence, sexual assault and torture against LGBTI persons by the public and authorities alike.¹⁹ Since January 2016, anti-LGBTI statements by state officials in Indonesia have intensified violent attacks against members of the LGBTI community.²⁰

Hence, we would like to suggest the following additions to para. 62:

*A particular connection exists between article 6 and article 20, which prohibits any propaganda for war and certain forms of advocacy constituting incitement to discrimination, hostility or violence. **State parties should under no circumstances compound or legitimize instances of discrimination and violence by using legislation against a particular group because of their sex, language, religion, political or other opinion, national or social origin, property, birth, or any other status including caste, sexual orientation, gender identity and expression, sex characteristics, disability, albinism and age.***

Comments to para. 64 of the Draft

We highly appreciate a reference to sexual orientation and gender identity made in para 64 that states that the right to life must be respected and ensured without distinction of any kind. At the same time, it should be taken into account that, along with sexual orientation and gender identity, the right to life could be violated in connection with a person’s gender expression or sex characteristics.

Some individuals might not self-identify as transgender or gender non-conforming, but they could experience harassment, intimidation or even physical assault that severely undermines their right to life only because their gender expression differs from the norm.²¹

Moreover, intersex infanticide,²² intersex genital mutilation, and forced sterilization all impact intersex people’s right to life. Intersex genital mutilation and gonad removal can end options for fertility and will lead to lifelong need for hormone therapy.²³

Therefore, we would like to suggest the following additions:

*The right to life must be respected and ensured without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or any other status, including caste, sexual orientation, gender identity **and expression, sex characteristics**, disability, albinism and age.*

Notes

- ¹ Strauss, P., Cook, A., Winter, S., Watson, V., Wright Toussaint, D., & Lin, A. (2017). *Trans Pathways: The Mental Health Experiences and Care Pathways of Trans Young People* (Report), Perth.
- ² King, M., et al. (2008). A systematic review of mental disorder, suicide, and deliberate self-harm in lesbian, gay and bisexual people. *BMC Psychiatry*, 8(70): 1-17.
- ³ Haas, A.P., Rodgers, P.L., & Herman, J.L. (January 2014). Suicide Attempts among Transgender and Gender Non-Conforming Adults: Findings of the National Transgender Discrimination Survey. *American Foundation for Suicide Prevention and Williams Institute, UCLA School of Law*, retrieved from <https://williamsinstitute.law.ucla.edu/wp-content/uploads/AFSP-Williams-Suicide-Report-Final.pdf>.
- ⁴ Carpenter, M. (2016) *New publication "Intersex: Stories and Statistics from Australia"*, retrieved from <https://oii.org.au/30313/intersex-stories-statistics-australia/>.
- ⁵ Human Dignity Trust. (2016). *Breaking the Silence: Criminalisation of Lesbian and Bisexual Women and its Impacts*.
- ⁶ McLaren, S. (2016). The interrelations between internalized homophobia, depressive symptoms, and suicidal ideation among Australian gay men, lesbians, and bisexual women. *Journal of homosexuality*, 63(2): 156-168; Manalastas, E. J. (2016). Suicide Ideation and Suicide Attempt Among Young Lesbian and Bisexual Filipina Women: Evidence for Disparities in the Philippines. *Suicide*, 32(3): 101-120; Colledge, L., Hickson, F., Reid, D., Weatherburn, P. (2015). Poorer mental health in UK bisexual women than lesbians: evidence from the UK 2007 Stonewall Women's Health Survey. *J Public Health (Oxf)*, 37(3): 427-437; Pyra, M., Weber, K.M., Wilson, T.E., Cohen, J., Murchison, L., Goparaju, L., ... & Cohen, M.H. (2014). Sexual minority women and depressive symptoms throughout adulthood. *American journal of public health*, 104(12).
- ⁷ Russell, S.T., Fish, J.N. (2016). Mental health in lesbian, gay, bisexual, and transgender (LGBT) youth. *Annual Review of Clinical Psychology*, 12: 465-487; Hickson et al. (September 2016). Mental health inequalities among gay and bisexual men in England, Scotland and Wales: a large community-based cross-sectional survey. *Journal of Public Health; Youth Voices Count*. (2014). The Hidden Dimension: Experiences of self-stigma among young men who have sex with men and young transgender women and the linkages to HIV in Asia and the Pacific. Bangkok.
- ⁸ Su, D., Irwin, J.A., Fisher, C., Ramos, A., Kelly, M., Ariss, D., Mendoza, R., & Coleman, J.D. (2016). Mental Health Disparities Within the LGBT Population: A Comparison Between Transgender and Nontransgender Individuals. *Transgender Health*, 1(1): 12-20.
- ⁹ See, e.g. Concluding Observations: Latvia (2014), para. 19; Concluding Observations: Russian Federation (2015), para. 10; Concluding Observations: Poland (2016), para. 16; Concluding Observations: South Africa (2016), paras. 20-21 and 40-41; Concluding Observations: Serbia (2017), paras. 10-11; Concluding Observations: Swaziland (2017), paras. 18-19.
- ¹⁰ A/HRC/31/57.
- ¹¹ National Center for Lesbian Rights, *Refusal Laws and LGBT Health: Common Causes and Shared Discrimination*, retrieved from <http://www.nclrights.org/legal-help-resources/resource/refusal-laws-and-lgbt-health-common-causes-and-shared-discrimination/>.
- ¹² See e.g. Concluding Observations: Chile (2014), para. 14; Concluding Observations: Sierra Leone (2014), para. 11; Concluding Observations: Iraq (2015), paras. 11-12; Concluding Observations: Venezuela (2015), para. 8; Concluding Observations: Burkina Faso (2016), paras. 13-14; Concluding Observations: Colombia (2016), paras. 13-14; Concluding Observations: Ecuador (2016), paras. 11-12; Concluding Observations: Jamaica (2016), paras. 17-18; Concluding Observations: Kuwait (2016), paras. 12-13; Concluding Observations: Mongolia (2017), paras. 11-12; Concluding Observations: Swaziland (2017), paras. 18-19.
- ¹³ ILGA: Carroll, A. & Mendos, L.R. (2017). *State Sponsored Homophobia 2017: A world survey of sexual orientation laws: criminalisation, protection and recognition*. Retrieved from http://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf.
- ¹⁴ HRW, Spain: *LGBT Asylum Seekers Abused in North African Enclave*, April 28th, 2017, retrieved from <https://www.hrw.org/news/2017/04/28/spain-lgbt-asylum-seekers-abused-north-african-enclave>.
- ¹⁵ See e.g. *X v Sweden*, communication no. 1833/2008, views of 1 November 2011, [CCPR/C/103/D/1833/2008](https://www.hrw.org/news/2017/04/28/spain-lgbt-asylum-seekers-abused-north-african-enclave); *M. I. v Sweden*, communication no. 2149/2012, views of 25 July 2013, [CCPR/C/108/D/2149/2012](https://www.hrw.org/news/2017/04/28/spain-lgbt-asylum-seekers-abused-north-african-enclave); *M.Z.B.M. v Denmark*, communication no. 2593/2015, views of 20 March 2017, [CCPR/C/119/D/2593/2015](https://www.hrw.org/news/2017/04/28/spain-lgbt-asylum-seekers-abused-north-african-enclave); Concluding Observations: Namibia (2016), paras. 35-36.
- ¹⁶ [A/HRC/36/L.6](https://www.hrw.org/news/2017/04/28/spain-lgbt-asylum-seekers-abused-north-african-enclave).
- ¹⁷ See: ILGA: Carroll, A. & Mendos, L.R., *op.cit.*, p. 40.
- ¹⁸ [CRC/C/RUS/CO/4-5](https://www.hrw.org/news/2017/04/28/spain-lgbt-asylum-seekers-abused-north-african-enclave).
- ¹⁹ HRW, HRW Country Profiles: Sexual Orientation and Gender Identity, 23 June 2017, retrieved from <https://www.hrw.org/news/2017/06/23/human-rights-watch-country-profiles-sexual-orientation-and-gender-identity>.
- ²⁰ Ibid.
- ²¹ See: TvT research project (2017) «Trans Murder Monitoring (TMM) TDoV 2017 Update», Transrespect versus Transphobia Worldwide, TvT project website: <http://transrespect.org/en/trans-murder-monitoring/tmm-resources/>.
- ²² Intersex infanticides have been reported and discussed by a number of intersex advocates and scholars, and is recognized as a pressing issue for the international movement. Ethnographic and historical research has brought to light such practices, particularly in rural areas across the world. See e.g. Ghattas, D.C. (2013),

October). *Human Rights between the Sexes: A preliminary study on the situations of inter* individuals*. Berlin: Heinrich-Boll Stiftung, Volume 34 of the Publication Series on Democracy; Gross, S. (2013, March 12). Not in God's Image: Intersex, Social Death and Infanticide. University of Manchester: Lincoln Theological Institute. (Astraea Lesbian Foundation for Justice. (2016). *We are Real: e Growing Movement Advancing the Human Rights of Intersex People*. New York: Astraea Lesbian Foundation for Justice, retrieved from <http://astraeafoundation.org/wearereal/wp-content/uploads/2016/07/AstraeaWeAreRealReport.pdf>).

²³ See: HRW and InterACT, "I Want to be Like Nature Made Me": Medically Unnecessary Surgeries on Intersex Children in the US' (Report) 25 July 2017, retrieved from <https://www.hrw.org/report/2017/07/25/i-want-be-nature-made-me/medically-unnecessary-surgeries-intersex-children-us>.