Submission to the call for input to the report of the Independent Expert on Sexual Orientation and Gender Identity on marginalisation and exclusion from socio-cultural environments

Introduction

This submission focuses on questions one and two from the call for inputs. As background document we refer to our recently published legal overview in regard to criminalization, protection and recognition of issues pertaining to sexual orientation (State Sponsored Homophobia Report 2019)[1].

We have divided the answers to each of the questions in three sections. In regard to question one, *key areas of socio cultural and economic exclusion* we have analysed how UN Special Procedures and Treaty Bodies have addressed socio-cultural and economic exclusion in recent years. This is followed by a section in which we have collected references and examples on how socio-cultural and economic exclusion has been documented in the areas of education, health care, employment, housing and poverty. The chapter then concludes with a presentation of the main findings of a study conducted among the trans communities in Singapore, Vietnam, Malaysia and Thailand by APTN, about access of trans persons to the labour market.

In regard to question two, *root causes and structural factors* we aimed at analysing the root causes of exclusion. The three sections each discuss one key mechanism:

- Restrictive legal frameworks
- Acts of discrimination and violence based on SOGI
- Absence of public policy affirming sexual and gender diversity

[1] https://ilga.org/state-sponsored-homophobia-report-2019

1. Key areas in which people suffer socio-cultural and economic exclusion as a result of violence and discrimination on the basis of SOGI

How do UN Special Procedures and Treaty bodies respond to the issue in question?

UN Special Procedures: In 2018-2019, ILGA World and ISHR conducted a research[2] into SOGIESC work of all thematic mandates for the period of 2011-2018. This research shows that generally, the mandates that have engaged the most with SOGIESC issues were human rights defenders, violence against women, freedom of expression, freedom of assembly and association, torture and executions. The primary focus has therefore been on civil and political rights, in particular the situation of LGBTI human rights defenders. Meanwhile, SOGIESC references have overwhelmingly been absent in the areas of economic, social and cultural rights, although several mandates increasingly tend to SOGIESC issues, especially health, cultural rights, water and sanitation, and privacy. At the same time, the Special Rapporteurs on education and housing made almost no LGBTI references.

UN Treaty Bodies:[3] The main Committee observing implementation of social and economic rights is CESCR. It has made some progress since 2014, particularly when it comes to particular challenges faced by trans persons (see Table below).

CESCR – CONCLUDING OBSERVATIONS	SOGIESC-INCLUSIVE COS		TRANS-INCLUSIVE REFERENCES		TRANS-SPECIFIC REFERENCES	
	NN	%	NN	% OF SOGIESC REFERENCES	NN	% OF SOGIESC REFERENCES
2014	7	30%	7	88%	1	13%
2015	13	76%	18	90%	1	5%
2016	9	53%	8	89%	2	22%
2017	7	70%	10	83%	1	8%
2018	6	50%	8	80%	3	30%

The topic of discrimination based on sexual orientation remains to be one of the most frequently covered by the Committee. Nevertheless, most of the recommendations are still of quite general nature and rarely address the root causes and specific consequences of socio-economic exclusion.

Other Committees, particularly CEDAW, CRC and CRPD refer to discrimination against LGBT persons in socio-economic sphere when it intersects with other factors (gender, age or disability, respectively). Similar to the CESCR committee root causes and consequences of socio-economic exclusion of persons of diverse SOGI are rarely addressed or analysed.

2 https://ilga.org/UN-Special-Procedures-LGBTI-SOGIESC-factsheet.

3 Analysis based on ILGA World's annual research. See 2014, 2015 and 2016 reports here: https://ilga.org/treaty_bodies_annual_reports.

Specific areas of social exclusion

Education: LGBT persons' access to education are limited because of discrimination, harassment and bullying from part of both other students and teachers. This has been confirmed and supported by a number of studies in different states.[4]

For trans persons, access to education can be additionally hampered in situations when official documents and the gender identity or expression do not match.

Acknowledging the structural barriers that trans persons may face in some contexts regarding the access to education, affirmative actions have been created in some of these locations in order to overcome these barriers.[5]

In some countries LGBT teachers may be harassed and dismissed because of the wrongful connection of LGBT with paedophilia, or because of the existence of legal norms prohibiting so-called 'propaganda of homosexuality' among minors.[6] As in many contexts teaching jobs are still occupied mainly by women, because of the remaining gender stereotypes, such harassment may particularly affect LB women and trans persons.

Educational materials do not usually provide correct information about sexual orientation and gender identity, and sometimes they even promote negative attitudes, prejudices and stereotypes.[7] Particularly, LGBT persons and their needs remain invisible in sex education programmes.

Health Care: Discrimination and exclusion based on sexual orientation and gender identity may have different forms, including denial of services, lack of appropriate information or friendly medical professionals, ignorance of LGBT persons' partners or children, physical or verbal abuse, etc.

Particular problems exist in the field of sexual and reproductive health and rights. Specifically, LB women in all parts of the world does not have the same access to sexual and reproductive

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4 According to the 2012 study of 119 LGBT individuals in Sri Lanka conducted by EQUAL GROUND, of the 20 respondents who had attended school in the past two years, 75% had been dismissed, suspended or prevented from attending school on the basis of their gender identity or expression and/or sexual orientation. In a subsequent 2016 study, excessive bullying, marginalization and discrimination were reported to have forced many LGBT students to drop out of school. See: Submission by EQUAL GROUND and Center for International Human Rights (CIHR) of Northwestern Pritzker School of Law for the 2018 CESCR Session.

A recent survey conducted among lesbian, bisexual and queer (LBQ) women in Macedonia shows that almost 34% of the LBQ women experience discrimination in education. See: Submission of the European Lesbian* Conference, Monitoring of the Implementation of the Recommendation CM/Rec 2010(5) of the Council of Europe, September 2018.

In Spain, up to 80% of the LGB students hear their own sexual orientation as an insult in their schools. According to another survey, 35% of the general students expressed a complete repudiation against lesbians. See: Ibid.

A survey conducted by the Brazilian Trans Institute for Education (IBTE - As Fronteiras da Educação: a realidade dxs estudantes trans no Brasil) in 2018 found that for 37% of trans students considered their colleagues as the main obstacles for their permanence in school, while for 27% the mains obstacle were the teachers. The report also highlights the imbrication between economic exclusion and access to education, showing that almost 40% of trans students dropout of school because they have to work or because of financial reasons. These reasons are followed by transphobia and depression as the motivation for the school dropout.

5 12 public universities in Brazil already have affirmative actions for the access to trans persons in undergraduate and graduate studies. See: IBTE, op cit.

6 See e.g. Submission by Union of Independent LGBT Activists of Russia for the 2015 CEDAW session.

7 For example, only a quarter of the Dutch high school students indicate that there were proper lessons on acceptation of LGBT at their school. Four out of ten high school students (38%) indicate that the subject acceptation of LGBT has never been addressed in any way at their school. The same number of students indicated that the issues had been raised only very briefly. A mere 13% of students is very satisfied about the manner in which LGBT acceptation is discussed in school, see: Submission by Transgender Netwerk Nederland – TNN, Nederlands Netwerk voor Intersekse/DSD – NNID and Federatie van Nederlandse verenigingen tot integratie van Homoseksualiteit – COC Nederland for the 2017 SESCR Session.

Other examples of inappropriate educational materials in North Macedonia see: Submission by Coalition "Margins" and Helsinki Committee for Human Rights of Republic of Macedonia - LGBTI Support Centre for the 2018 CEDAW Session.

health services and information as do heterosexual women. They also face specific problems when planning their families, and during pregnancy and childbirth (*see ILGA World's submission to the Special Rapporteur on violence against women in the Annex to this submission*).

Trans persons have specific needs when it comes to gender reassignment treatment and other forms of trans-specific health care. However, access to appropriate information and services may be difficult because of the lack of non discriminating and competent doctors, because of the financial considerations (where they are not covered by health insurance or similar programmes), or because of direct discrimination and abuse.[8]

Employment: LGBT persons throughout the world are discriminated based on their sexual orientation and gender identity when finding the job, getting promotion, or leaving the job.[9]

For trans people, employment discrimination is frequent and particularly agravated in situations of an incongruence between their gender identity and expression and their legal name and gender in official documentation.

Housing: LGBT persons' access to housing is deteriorated because of discrimination based on sexual orientation and gender identity.[10]

In particularly vulnerable situations are LGBT youths (who could be denied by their families without their own source of money) and LGBT older persons (who may have no support from their families and no access to appropriate social services).

LGBT persons may have no access to shelters for gender-based violence survivors, as well as facilities for internally displaced people or refugees.

Same-gender families may not be covered by housing programmes or credits, and trans people may not be able to rent housing because of documentation not reflecting their gender identity.

Poverty: Exclusion of LGBT persons from different spheres throughout their life cycle leads to their more vulnerable situation in terms of poverty. LGBT persons and their families often

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8 For instance, according to a survey done by "Coming Out" (St. Petersburg, Russia), 67% of respondents (transgender people who lived in Russia) had some financial problems, 60% of respondents had problems with collecting money for gender reassignment surgery, and 31% of respondents mentioned that they were not able at all to collect funds needed for surgery. 24% of respondents told that they did not have access to a qualified endocrinologist because of financial reason. See: Submission by Transgender Legal Defense Project for the 2017 CESCR Session.

9 For example, in South Korea, according to a 2014 survey, 41%, 11.4%, 14.1%, and 7.4% of the total respondents had experienced workplace harassment, sexual harassment, recommended resignation/dismissal, and voluntary retirement, respectively. See: Submission by Rainbow Action to the 60th CESCR PSWG.

According to an online survey of LGBT people carried out by the Russian LGBT Network, 653 of the 3759 respondents (17.3%) encountered problems with employers and/or colleagues related not to the professional qualities, but to the sexual orientation and/or gender identity of the respondents; at the same time 521 respondents (13.9%) were victims of layoffs motivated by homophobia or transphobia, and 49 people (1.3%) were not recruited for this reason. See: Submission by civil society coalition for the 2018 CESCR Session.

According to the 2012 study of 119 LGBT individuals in Sri Lanka conducted by EQUAL GROUND, 24% of respondents reported that they had lost their job in the previous two years because of their sexual orientation or gender identity, 22% indicated that they had been refused employment or other work opportunities because of their sexual orientation or gender identity, and 12% stated that they had been denied a promotion or had experienced an adverse change in their job description or the nature of their work. See: Submission by EQUAL GROUND and Center for International Human Rights (CIHR) of Northwestern Pritzker School of Law for the 2018 CESCR Session.

The 2017 regional study conducted by the World Bank and ERA - LGBTI Equal Rights Association for Western Balkans and Turkey, on average, 61% of lesbian women in the region of Western Balkans (Slovenia, Croatia, Serbia, Bosnia and Herzegovina, Macedonia, Kosovo, Montenegro, Albania) have hidden or disguised their sexual orientation at work, while 43% have experienced a general negative attitude at work against people because they are LGBTI. In addition, a study that was conducted by organization Labris in Serbia in 2014, has revealed that a majority of physical attacks against lesbians happen at the workplace. See: Submission of the European Lesbian* Conference, Monitoring of the Implementation of the Recommendation CM/Rec 2010(5) of the Council of Europe, September 2018.

10 According to the 2012 study of 119 LGBT individuals in Sri Lanka conducted by EQUAL GROUND, 24% of survey respondents reported that, within the past two years, they had been unable to rent housing or had been forced to change their residence because of their sexual orientation or gender identity. See: Submission by EQUAL GROUND and Center for International Human Rights (CIHR) of Northwestern Pritzker School of Law for the 2018 CESCR Session.

have lower level of income,[11] and they may have no support from their relatives, at the same time being excluded from public support programmes. It is well documented that women face higher risks of poverty which doubly affects lesbian, trans feminine or female lead households.

Findings from the APTN study: "**Denied Work: An audit of employment discrimination on the basis of gender identity in Asia**"[12]

The study examines discrimination faced by trans people in applying for jobs in four South-East Asian countries – Malaysia, Singapore, Thailand and Viet Nam. The report draws on research conducted in 2016 and 2017, and explores discrimination against trans men and trans women in all four countries. The report focuses on discrimination in relation to four job sectors in Malaysia, Thailand and Viet Nam, and three job sectors in Singapore. The study involved sending pairs of resumes in response to entry-level job advertisements to examine how signals of gender identity ('cis' or 'trans') affect the likelihood of receiving a positive response to a job application. By comparing responses, the research showed levels of discrimination in each country and job sector. In summary, across the four countries and in each of the job sectors studied, it is clear that trans women and men encounter far greater difficulty in being invited to attend an interview (or to even receive a positive response) than cis applicants with equivalent resumes

Discrimination was evident in all the studied countries including Singapore, Vietnam, Malaysia, and Thailand. Across all job sectors targeted, and two genders examined in the study (male and female), the cis applicants overall received an average of 50.6 percent more positive responses to job applications than trans applicants. They were 54.5 percent more likely to be invited to an interview. This was despite the resumes being rigorously tested to ensure equivalent attractiveness in the job market.

Overall, a cis woman was 59.6 percent more likely to receive a positive response to a job application than a trans woman. She was 64.2 percent more likely to be invited to an interview. A cis man was 40.8 percent more likely to receive a positive response to a job application than a trans man, and 44.4 percent more likely to receive an invitation for an interview.

The data has indicated that Singapore had the highest level of discrimination among 4 studied countries followed by Vietnam, Malaysia, and Thailand. Trans women and trans men in Singapore affected to a similar extent. Cis applicants there were 81.5 percent more likely than trans applicants to get a positive response (76.5 percent more likely for cis women and 90 percent for cis men), and 107.2 percent more likely to get invited to interview (112.5 percent for cis women and 100 percent for cis men).

Even if a high degree of discrimination is reported, there are minimal protection and redress mechanism for Trans in this region. Among 4 studied countries, only Thailand has the law which prohibits discrimination based on gender and explicitly defines gender to include

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[11] For example, in the Netherlands transgender persons more often, compared to the general population, have a low income (53% transgender persons against 30% of the general population) and have no work (59% transgender persons against 38% of the general population), see: Submission by Transgender Netwerk Nederland – TNN, Nederlands Netwerk voor Intersekse/DSD – NNID and Federatie van Nederlandse verenigingen tot integratie van Homoseksualiteit – COC Nederland for the 2017 SESCR Session.

Roughly 43% of TLDP's respondents (trans persons in Russia) can be considered living in poverty (cannot afford to buy enough food, or can afford food but not clothing). This is slightly worse than for the Russian population in general and greatly worse than for the young Russian population (aged 18-30). See: Submission by Transgender Legal Defense Project for the 2017 CESCR Session.

[12] Winter, S., Davis-McCabe, C., Russell, C., Wilde, D., Chu, T.H., Suparak, P. and Wong, J. (2018). Denied Work: An audit of employment discrimination on the basis of gender identity in Asia. Bangkok: Asia Pacific Transgender Network and United Nations Development Programme. https://www.weareaptn.org/2018/11/02/deniedwork/

"persons whose expression differs from the sex by birth". It allows a legal redress mechanism that is overseen by the Committee on Consideration of Unfair Gender Discrimination for those experiencing discrimination on the basis of gender.

Additionally, only Singapore and Vietnam has the legal frameworks which allow trans people to change name and gender marker on their legal documents. It could help trans people to access employment because trans could not 'out' themselves to employers at the very beginning of the application process when providing their name and identity information. However, the applicants for this change must provide evidence of gender-affirming surgery. In Vietnam, It was reported in October 2017 that the Ministry of Health is drafting a law that will allow trans people to register under their chosen gender, regardless of whether they have had surgery or not. However, the draft law may not be reviewed until 2019

2. Root causes and structural factors responsible for marginalisation and socio-cultural and economic exclusion, such as laws, public policies, institutional practices, organizational behaviours, and prevailing ideologies, values and beliefs?

Across the globe, LGBT people continue to face social exclusion in different spheres of life on the basis of their sexual orientation, gender identity, gender expression (SOGIE).

Even though a recent study by the Williams Institute has found that social acceptance for LGBT people and rights have increased globally since 1980, this shift has occurred in a geographically polarised manner having increased in the most accepting countries but decreasing in the least. The international rise of authoritarian populism has also resulted in increasing hostility towards LGBT people even in countries once thought to be at the forefront of LGBT equality and acceptance, further exacerbating their exclusion.

Restrictive legal frameworks, discrimination and violence based on prejudice against sexual and gender diversity (perpetrated by State and non-State actors) and the lack of public policy measures that affirm sexual and gender diversity are among the most prominent causes for the exclusion of LGBT people.

Restrictive legal frameworks

a. Criminalization of consensual same-sex sexual conduct

As of March 2019, 70 UN Member States still criminalise consensual same-sex sexual acts between adults. ILGA World has collected information on actual enforcement of these laws showing that at least 38 UN Member States still actively arrest, prosecute and sentence people to prison, corporal punishment, or even death, based exclusively or partially on laws criminalising consensual sexual activity.

Several UN Member States also have laws specifically criminalising diverse forms of gender expression and cross-dressing, which are used to persecute trans and gender diverse people. Furthermore, the criminalisation of consensual same-sex intimacy does not only affect LGB people alone but are also used to target trans and gender diverse people. Recent examples of such persecution have been documented in Indonesia, Tunisia and Papua New Guinea.

Incarceration as a result of these laws represents one of the most blatant and direct forms of exclusion and usually sends victims down a spiral of aggravated exclusion due to shame and power dynamics as well as social stigma. Moreover, even where such laws are not actively enforced, they nevertheless legitimate violence and discrimination, social prejudice and hostility against LGBT people. Law enforcement and other State officials, service providers and even vigilante groups frequently use these laws to blackmail and harass people based on their perceived sexual orientation or gender expression.

b. Lack of Legal Gender Recognition (LGR) for trans people

Legal Gender Recognition (LGR) refers to the right of trans persons to legally change their gender markers and names on official identity documents. The impossibility of having official documents that match the holder's identity can become a huge obstacle to carry out common activities in daily life, such as opening a bank account, applying for scholarships, finding a job, renting or buying property, having access to social services and medical care, travelling across borders, among many others. It also exposes trans people to the scrutiny of strangers, distrust and even violence. In many countries, LGR is granted only under prohibitive and pathologizing requirements as preconditions to recognition, such as surgeries, invasive treatments and third-party submissions, among many others.

Furthermore, the absence of LGR contributes to the exclusion of trans persons from their communities by exposing them to discrimination in schools, the workplace and healthcare institutions. For instance, transgender students may be forced to conform with gender expectations that eventually result in them dropping out of school. This perpetuates a cycle of exclusion as they may lack the qualifications to be gainfully employed and cannot fully participate in the market and their communities.

Even though LGR is a fundamental legal tool for trans inclusion, having access to matching IDs is not a panacea to the experiences of discrimination and marginalization faced by trans and gender diverse people. Other socio-legal barriers, related to the rejection, discrimination and violence they are subjected to from an early age, prohibit them from achieving their full potential.

c. Legal restrictions in relation to SOGIE

ILGA has found that at least 32 UN Member States restrict the public discussion, circulation or dissemination of information regarding SOGIE and at least 41 UN Member States have laws that restrict the possibilities of registering or running NGOs that work on issues related to sexual and gender diversity. These restrictions, either *de iure* or *de facto*, impair the capacity of LGBT people to speak about their realities and bring their lived experiences of exclusion to public debates and discussions. If this is coupled with the impossibility of legally registering groups and organisations to advocate for the rights of LGBT people, the prospect of any progress is severely limited.

Other laws that represent an obstacle to full social inclusion of LGBT people, either directly or indirectly, and affect their ability to take part in society include: lack of protection (or outright prohibition) of same-sex partnerships, civil unions or marriages, which exclude LGB people from legal protection of their families; bans on blood donation, especially on MSM (men who have sex with men) and trans women; prohibitions to enrol in the armed forces; and entry bans to certain countries, among others.

d. Absence of legal protection against discrimination

The lack of remedies to counter acts of discrimination perpetuates social exclusion suffered by LGBT people. When anti-discrimination laws do not expressly protect people based on their SOGIE, LGBT people are unable to seek justice against acts of discrimination that may prevent them from accessing vital services, including healthcare services, education, housing, social security and employment.

Additionally, the absence of SOGIE categories in anti-discrimination legislations fails to address the disproportionate vulnerability of LGBT people and may affect the availability, design and implementation of public policies aimed at reducing stigma and discrimination against them.

The criminalisation of consensual same-sex sexual conduct is also significantly correlated with the absence of anti-discrimination protections for LGBT persons. For example, only 7 out of the 70 UN Member States (10%) which criminalise consensual same-sex sexual conduct protect LGB persons from employment discrimination on the basis of sexual orientation.

Acts of discrimination and violence based on SOGIE

There is abundant research showing how LGBT people suffer from rejection, erasure, negation, discrimination and violence (which has also been regarded as an extreme form of discrimination) based on prejudice against sexual and gender diversity. Such violence can be perpetrated by family members, neighbors, acquaintances, school peers or teachers, coworkers, service providers, State agents, or strangers, among others. The diversity of perpetrators corresponds to the many environments in which LGBT people are exposed to violence and discrimination.

a. Family violence and home eviction

The spiral of rejection may start a very young age inside the family, with close relatives forcing youth of diverse sexual orientation and gender identities to change or conceal their non-normative behaviours or desires, including by forcing them to undergo "conversion therapies".

When expelled from their homes, youth of diverse sexual orientation and gender identities are left in a critical state of vulnerability that has the potential of completely excluding them from education and employment opportunities, and of exposing them to homelessness, substance abuse, mental health issues, risky behaviour and eventually suicide.

b. Education

Persons of diverse sexual orientation and gender identities may face institutional exclusion where they may be refused enrolment or expelled on the basis of their SOGIE. Numerous sources indicate that school bullying based on gender expression, gender identity and sexual orientation tends to be pervasive in educational environments and when verbal abuse goes unaddressed, it usually escalates to physical and even sexual violence. Students who are victims of such persistent violence and discrimination suffer higher rates of truancy and dropout, lower qualifications and mental health issues.

c. Employment and economic well-being

Exclusion from educational and training opportunities can heavily impact the chances of entering the labour market or limiting LGBT people to entry-level or unqualified jobs, further exacerbating social exclusion.

Additionally, prejudice against sexual and gender diversity can affect recruitment processes and employee appraisals, which may negatively impact the career of a qualified worker based only on their SOGIE.

Additionally, mobbing perpetrated by supervisors or colleagues in the form of group exclusion, rumour mongering, verbal abuse, or even physical violence can affect LGBT workers' sense of worth and their work performance.

d. Health & Psycho-pathologisation

LGBT people are vulnerable to be excluded from healthcare services because of hostile or abusive healthcare providers as well as the fear of punishment or mistreatment should they disclose their sexual orientation or gender identity. This is especially the case in contexts in which same-sex intimacy or diverse forms of gender expressions are criminalised or otherwise heavily persecuted.

Because of the obstacles they face in accessing healthcare services, LGBT people suffer poorer health outcomes and often engage in more risky behaviour which exposes them to a higher risk of sexually transmitted infections, HIV/AIDS, substance abuse and mental health issues.

Furthermore, persons of diverse sexual orientation and gender identities may lack the ability to afford healthcare services due to their socio-economic condition stemming from educational and employment exclusion, which further exacerbates their negative health outcomes.

LGBT people have been historically labelled as "mentally ill" or "deviant" and, even though WHO depathologised same-sex attraction and behaviour in 1990 and trans identities in 2019, in many contexts sexual and gender diversity is still treated and considered an illness. Extensive research has documented the deleterious effects of pathologisation.

e. Hate crimes and violence based on prejudice

Extensive research shows how people of diverse SOGIE are commonly victims of hate crimes. As noted above, criminalisation strongly contributes to the exclusion of LGBT people by legitimising stigma and prejudice, which perpetuates family and institutional violence against them. Moreover, negative socio-cultural attitudes that dehumanise LGBT people further exposes them to hate crimes, death threats and other abuses. Therefore, in parallel to the violence suffered in each of the contexts explained above, LGBT people are exposed to a very specific form of brutal, and oftentimes lethal, violence motivated by the desire of perpetrators to harm the victim and to "punish" them for their diverse identities, expressions, behaviors or bodies that challenge binary gender norms and roles. These crimes have a strong social impact that affects the LGBT community at large: a chilling effect against any form of visibility of diverse sexual orientations or gender expressions.

State officials, especially law enforcement personnel, tend to be among the main perpetrators of violence and abuse against LGBT people through arbitrary arrest and detention, blackmailing, humiliation, harassment and forced medical examination. LGBT persons also face exclusion when seeking access to justice, which contributes to underreporting of this type of violence and extremely low prosecutions of perpetrators of such violence because they are often isolated from state institutions for fear of self-incrimination and further abuses.

Absence of public policy affirming sexual and gender diversity

The third main group of causes of social exclusion of LGBT people has to do with State inaction with regard to public policy on issues of sexual and gender diversity. As with other social groups that have been subjected to protracted discrimination, full social inclusion of LGBT people will not be achieved simply by removing discriminatory legislation or with the enactment of protections against discrimination. Effective public policies must be strategically designed and implemented to tackle, reduce, and eventually eradicate, social prejudice and stigma suffered by LGBT people. Furthermore, affirmative action is required to counter the effects of systemic exclusion, especially in favour of those living in poverty.

a. Absence of accountability procedures and denial of justice

Enacting laws that protect LGBT people from discrimination needs to be followed by the implementation of public policies to ensure that an effective mechanism is in place to bring perpetrators to justice and victims are sufficiently compensated when such discrimination occurs. State institutions should also be held accountable where there may be instances of discrimination and violence perpetrated against LGBT persons by state officials, especially law enforcement personnel. Otherwise, legal protections become dead letter with no real significance.

b. Absence of awareness raising campaigns and sensibilisation

Social prejudice against LGBT people needs to be addressed with targeted campaigns that question existing norms and values on gender and sexuality. Specific efforts must be made at all levels and tackling all forms of violence and discrimination, especially by designing strategies to train and sensitise State agents. When governments fail to implement such initiatives, they contribute to and legitimise the root causes of hostility, discrimination and violence.

c. Erasure of sexual and gender diversity

Governments need to enact policies to fight against the erasure of issues related to sexual and gender diversity. For instance, when such issues are not included in school curricula, students in general, and LGBT youth in particular, are deprived of the opportunity to have access to unbiased, scientific information about human gender and sexuality. In the same vein, the fact that sexual and gender diversity is rarely discussed or included in university programmes, such as in the education of health professionals, social scientists or in other fields, reinforces the marginalisation of such issues as irregular, unwanted or inappropriate subjects for open and public discussion. Further, the lack of positive LGBT representation in the media and in cultural products results in a lack of role models, characters and leaders with whom youth and LGBT people in general can identify with.

d. Absence of affirmative action measures

In most regions, the exclusion suffered by LGBT people has been so persistent and systemic that States may need to implement affirmative action policies to effectively achieve progress in inclusion of LGBT people. Such measures include employment quotas, school scholarships, tax exemptions for employers or entrepreneurs, and special lines of support or services. Professional trainings or micro funding for entrepreneurs or organisations within specific communities that would otherwise be unable to access education or improve their qualifications are additional ways by which the vicious cycle of exclusion can be interrupted.

Annex: Mistreatment and violence against lesbian and bisexual women and trans persons during reproductive health care with a focus on childbirth

Submission to the Special Rapporteur on violence against women, its causes and consequences

17 May 2019

This paper has been prepared by ILGA World as a response to call for submissions published by the Special Rapporteur on violence against women, its causes and consequences. It provides an overview of recent studies of the experiences of lesbian and bisexual (LB) women and trans persons in reproductive health care, primarily when it comes to conception, pregnancy, childbirth and postnatal period; identifies main challenges faced by LB women and trans persons; illustrates examples of good practices; and suggests recommendations to improve the situation.

Introduction

The political, social and scientific developments of last decades allowed LB women and trans persons to include parenthood experiences into their life strategies and to practice different forms of reproduction. This also provoked some developments in practice of the United Nations Treaty Bodies,[1] though questions and recommendations on the topic are still very limited.

The level of health care system involvement may be different with different combinations of reproductive choices made by LB women and trans persons, however in general at least some participation of health professionals is needed or required. At the same time, reproductive health care, being based on heteronormative assumptions and a very narrow concept of family and birth, may exclude, marginalize or discriminate against LB women and trans persons. These issues may negatively impact the quality of care, and prevent LB women and trans people from either providing significant information about their health and personal or family status, or from referring to the health care system at all.

At the same time, concrete situation of LB women and trans people in reproductive health care and particularly in childbirth differs significantly in different countries. Despite the emerging pool of studies of the reproductive health care implications for LB women and, more recently, trans people as well, these are mostly qualitative studies of quite privileged cohort of the population living, with a very few exception, in countries such as Australia and New Zealand, North America or some countries in Western Europe. Though even in these territories, with comparatively favorable legal and political situations, there is still a room for mistreatment, discrimination and marginalization of LB women and trans persons in reproductive health care. And there is almost complete lack of data on the situation of LB women and trans persons in reproductive health and childbirth in other countries, especially where their identities are officially denied or punished.

Therefore, information provided in this submission, is mostly based on the experiences of a very limited cohort of LBT population, and it could only be assumed that LB women and trans people outside of this cohort face much more difficulties, mistreatment and violence.

I. Challenges faced by LB women and trans persons in reproductive health care

- LB women and trans persons may have no access to assisted reproductive technologies (ART) at all, or it could be deteriorated because of a number of barriers: legal (for instance, in Europe only 13 out of 49 countries provide access to ART to same-sex couples[2]; some forms of ART, such as IVF, may require an established medical infertility diagnosis), financial (because of the cost of ART, their exclusion from insurance coverage, or because friendly clinics are only the private ones) or geographical (in remote areas there may be even harder to find a friendly clinic or just

a doctor). Some jurisdictions still require trans persons to be sterilized in order to obtain legal gender recognition and new documentation.

- LB women and trans persons have to make a specific decision on whether or not to disclosure information about their sexual orientation, gender identity and family status to health professionals.[3] While this information may be relevant from a medical point of view or just to ensure open communication and support, the fear of mistreatment based on negative perceptions of LBT persons may prevent patients from disclosing data. Sometimes LB women and trans persons indeed face negative reaction after coming out to medical personnel.

*"When I first disclosed my relationship status with my GP she was very disappointing. She stated outright that a woman should not consider childrearing unless married to a man; she was in fact quite rude."**[4]***

*"The midwife said she had never heard of people like us. She wouldn't book me in; espoused her Christian beliefs."**[5]***

Trans persons may be mistreated by providers and medical staff because of the lack of cultural competency. Concrete forms of inappropriate treatment include using wrong titles and pronouns, calling by legal name rather than the name used by a person, or presuming to know the shape of a patient's genitals by their name or face.[6]

Trans people who are pregnant and give birth face a multitude of legal barriers resulting from the fact that only a few States recognize pregnant trans men as fathers or parents of their children, even if their legal gender is male, but rather enter them as "mother" in their child's birth certificate. This constitutes state-driven discrimination and may trigger stigma and discrimination towards both the trans person who is pregnant and towards the baby once born. The same problem exists for trans women having children with other women who will not be recognized as co-mother or parent but as father, even if their legal gender is female. Many trans people therefor avoid becoming pregnant or having children of their own or will travel to states that offer appropriate recognition when delivering the child.

"I am a pregnant trans man and my country will not recognize me as the father. I will therefore have to travel to Sweden to deliver my baby in order to obtain a birth certificate for my child that properly reflects our family."

Another concrete form of challenges faced by LB women and trans persons is inappropriate questions asked by health professionals in relation to their patients' sexual orientation, gender identity or family status. Such questions are not asked of heterosexual/cisgender persons, and they as such do not relate to health services being provided.

*Out of 50 lesbian mothers participating in a research conducted by Wilton and Kaufmann, 25 were asked by health professionals how they got pregnant, six what they would tell their child about its biological father, and four if they had ever been heterosexual.**[7]***

Coming out to health professionals also could raise some issues related to confidentiality. Some LB women, for example, may not want their sexual orientation to be recorded and instead keep it entirely private, while others would prefer all their caregivers knew their sexual orientation upfront in order to avoid repeating experience of coming out.[8]

*"I know that in [name of the clinic in Saint Petersburg] they have been writing in the medical history sheet with big red letters – HOMO. It is like a stigma; of course, it is at once some 'other' person in front of you."**[9]***

- Health care providers may have not enough medical knowledge on LB women' and trans persons' reproductive experiences, and consequently patients do not receive any or full information relevant for their health. This is particularly problematic for trans persons as

such procedures as hormonal therapy and gender reassignment surgeries may affect reproductive capacity, and in order to take truly informed decisions trans persons need to have relevant information in advance.[10]

*"…they [providers] didn't have anything to refer to. [A transgender man seeking pregnancy] was too new and too different for them, and they didn't have studies to look at. They didn't know if this was safe, none of that."**[11]***

· Antenatal and postnatal education usually does not take into account LB women and trans persons. The classes provided to patients are oriented exclusively to heterosexual/cisgender persons. Partners of LB women and trans persons who are going to give birth to a child, may feel particularly overlooked and excluded.

· Non-birth parents, such as non-biological mothers in lesbian couples, face particular challenges because of the specificity of their role in the parental project (the lack of biological linkage presupposed under the traditional understanding of parentage), but also because they may not be recognised as co-parents in law and/or by health professionals. For example, in Europe, only 10 out of 49 countries provide automatic co-parent recognition.[12]

*"My partner was not given automatic rights equal to that of a male partner, not included fully in decision making, not taken seriously or given proper acknowledgment/respect."**[13]***

*"And when we went into the room, the birth mother went into the bathroom, and her partner was sitting holding the baby in the rocking chair… and the postpartum nurse came in, and kind of looked around and said, who are you? The patient's partner said, 'I'm the mom', and she [the nurse] said, 'no you're not', and it was really terrible. She said, 'no, where's the baby's real mom'."**[14]***

*"I read in a book that postpartum blues are hormonal, but in our relationship I was the one who had the postpartum blues. It started in the hospital when someone referred to the donor as the baby's father, and then every form referred to the father, not the other parent."**[15]***

· Pathologisation of LB women' and trans persons' identities, especially when it comes to their ability to raise children.

*Several participants in a study conducted by Hoffkling et al., trans men, reported social services threatening or attempting to remove their children from their care, even before the birth.**[16]***

II. Examples of good practices

· Collecting information about clinics friendly to LB women and trans persons

o The GLMA (Gay and Lesbian Medical Association) provider directory, US, https://glmaimpak.networkats.com/members_online_new/members/dir_provider.asp

o The National Lesbian and Gay Health Foundation, Inc., of Washington, D.C. had developed a directory of friendly health care providers[17]

· Guidelines for health care providers

o Nursing Guidelines for Assessing Adaptation to Parenting in the Lesbian Childbearing Couple (includes such developmental tasks as acceptance of the pregnancy by others, binding-in, safe passage, self-giving, maternal role development and the co-parent role development; provides concrete questions for the lesbian couple assessment)[18]

- Schemes developed for primary care physicians dealing with lesbian women (including counseling and testing, preconception care, donor choice, donor testing, ordering the semen and insemination process)[19]
- Recommendations for providers on trans men's pregnancy and birth support***[20]***

· Creating welcoming environment for LB women and trans persons at antenatal or postnatal education (*"The midwife who run the antenatal classes was so supportive – she realized that we were lesbians, rang us the first night after the class to check that we felt welcome, always acknowledged my partner"*[21])

· Accepting the role of non-birth parents, such as partners of lesbian women giving birth to a child (*"My main midwife would direct questions at my partner and ask how she was feeling, how she was coping with my pregnancy sickness […] and would say hello and goodbye to her. She was seen as being as much a part of the pregnancy I was."****[22]***)

· Amending medical forms and documentation to reflect the realities and needs of LB women and trans persons (*"When we went to the initial booking-in interview they very patiently amended the form, changing reference to 'father' to either 'donor' or 'partner' depending on the circumstances, apologizing for the inadequacies of the form."****[23]***)

· Specific projects aimed at ensuring that LB women and trans persons are well-received in maternal care and during childbirth

- Together with a county-owned hospital, the MamaMia clinic started a project under which the hospital's delivery ward had staff trained in lesbian health and other issues; during pregnancy, couples had the opportunity to meet other couples in a lesbian relationship who were expecting children; the couples made two visits to the delivery ward with their midwives; in MamaMia, there were also openly lesbian midwives who could be chosen by couples.[24]

III. Recommendations

· Facilitate further research of experiences of LB women and trans persons, particularly those facing intersecting forms of discrimination and oppression, in reproductive health care[25]

· Ensure adaptation of the clinics' routine, from antenatal care to postnatal care and including forms, journals, verbal communication etc., to the needs and realities of LB women and trans persons, including language and medical forms (using more neutral terms such as 'partner' or 'parent', gender-neutral pronouns etc.)[26]

· Develop and disseminate among health care providers and in LGBT communities materials on LB women's and trans persons' reproduction and parenting[27]

· Provide trainings to medical professionals dealing with LB women and trans persons accessing reproductive health care services, including with possible participation of local LBT parent who went through the process of childbirth[28]

· Adopt and implement policies which prevent harassment or discriminatory treatment based on sexual orientation or gender identity of reproductive health clinics' patients[29]

· Organise support groups for LB women and trans persons willing to have children, already going through the reproductive process or recently becoming parents[30]

· Organise databases of LBT-friendly health care facilities and make them available to LB women and trans persons[31]

· Ensure legal, financial and geographical assess of LB women and trans persons to sensitive and professional reproductive health care services and information, particularly related to assisted reproductive technologies

· Ensure legal recognition and acceptance of LB women and trans persons' families, particularly their partners and their children

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[1] See e.g. Human Rights Committee, Concluding Observations on Slovenia (2016), para. 9 (concerns on same-sex couples to reproductive treatment); Human Rights Committee, Concluding Observations on Italy (2017), paras. 10-11 (concerns and recommendations on access of same-sex families to in vitro fertilization); Committee on Economic, Social and Cultural Rights, List of Issues for Argentina (2017), para. 24 (data on sexual orientation in the context of coverage for reproductive health services); Committee on the Elimination of Discrimination against Women, Concluding Observations, Luxembourg (2018), paras. 51-52 (concerns and recommendations on filiation after assisted reproduction); Committee on the Elimination of Discrimination against Women, List of Issues, Serbia (2018), para. 16 (access of LGBTI persons to family-planning services and artificial insemination).

[2] Austria, Belgium, Denmark, Finland, Iceland, Ireland, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden and UK. Source: ILGA-Europe, Rainbow Europe Index – May 2018, https://ilga-europe.org/sites/default/files/Attachments/index_2018_small.pdf (accessed on 16 May 2019).

[3] Wilton, T. & Kaufmann, T. (2001). Lesbian Mothers' Experiences of Maternity Care in the UK. *Midwifery*, 17(3), pp. 203-211; Hoffkling, A., Obedin-Maliver, J. & Sevelius, J. (2017). From Erasure to Opportunity: A Qualitative Study of the Experiences of Transgender Men around Pregnancy and Recommendations for providers. *BMC Pregnancy and Childbirth*, 17(Suppl 2), p. 332.

[4] Wilton, T. & Kaufmann, T. (2001).

[5] Ibid.

[6] Hoffkling, A., Obedin-Maliver, J. & Sevelius, J. (2017).

[7] Ibid.

[8] Ibid.

[9] Zhabenko, A. (2014). Reproductive Choices of Lesbian-Headed Families in Russia: From the Last-Soviet Period to Contemporary Times. *Lambda Nordica*, 3-4, pp. 54-85.

[10] Hoffkling, A., Obedin-Maliver, J. & Sevelius, J. (2017).

[11] Ibid.

[12] Austria, Belgium, Denmark, Ireland, Malta, Netherlands, Norway, Portugal, Spain and UK. Source: ILGA-Europe, Rainbow Europe Index – May 2018.

[13] Wilton, T. & Kaufmann, T. (2001).

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[17] Wismont, J.M. & Reamy N.E. (1989). The Lesbian Childbearing Experience: Assessing Developmental Tasks, *Journal of Nursing Scholarship*, 21(3), pp. 137-141.

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[19] Steele, L.S. & Stratmann, H. (2006). Counseling Lesbian Patients about Getting Pregnant. *Canadian Family Physician*, 52 (5), pp. 605-611.

[20] Hoffkling, A., Obedin-Maliver, J. & Sevelius, J. (2017).

[21] Wilton, T. & Kaufmann, T. (2001).

[22] Wilton, T. & Kaufmann, T. (2001).

[23] Ibid.

[24] Röndahl, G., Bruhner, E. & Lindhe, J. (2009). Heteronormative Communication with Lesbian Families in Antenatal Care, Childbirth and Postnatal Care. *Journal of Advanced Nursing*, 65(11), pp. 2337-44.

[25] Wilton, T. & Kaufmann, T. (2001).

[26] Wilton, T. & Kaufmann, T. (2001); Röndahl, G., Bruhner, E. & Lindhe, J. (2009).

[27] Wilton, T. & Kaufmann, T. (2001).

[28] Ibid.

[29] Ibid.

[30] Ibid.

[31] Hayman, B., Wilkes, L., Halcomb, E.J. & Jackson, D. (2013). Marginalised Mothers: Lesbian Women Negotiating Heteronormative Healthcare Services. *Contemporary Nurse*, 44(1), pp. 120-127.