



# CURBING DECEPTION

A world survey on legal regulation  
of so-called “conversion therapies”

2020

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**ilga.org**



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# ILGA CO-SECRETARIES' GENERAL FOREWORD

By Luz Elena Aranda<sup>1</sup> and Tuisina Ymania Brown.<sup>2</sup>

As more and more survivors find the courage and the strength to come forward to share their stories, we are becoming more and more determined to put an end to so-called “conversion therapies”.

For centuries we have been told we need to be mended, that we need some kind of fix because we are “evil”, “sick” or somehow “abnormal”. Our gender expression is policed by our parents, siblings, friends, extended family members, community members, and strangers alike even well before we become aware of our own sexual orientation or our gender identity, and from an early age many of us come to learn and internalise that there is something about us that needs to be silenced, concealed or even “corrected”.

As archival academic material shows how members of our communities were subjected to the most egregious “medical” procedures in the name of science, we continue to receive reports of equally damaging “therapies” being carried out in the name of religion, culture, and family honour in all corners of the world today. Both brutal and veiled attempts to force us into the hetero-cis binary are still being imposed onto us in the name of religion, culture, science and even compassion.

In fact, research shows that religious leaders appear to be among the most outspoken proponents of “conversion therapies” and that

those who seek their services tend to do so motivated by their perceived inner conflict between their religious identity and their sexual or gender identity. Therefore, it is vital that we pay special attention and listen to the members of our communities whose lived experience of faith, religion or spirituality may pose a threat to their well-being and their mental health. Fighting against institutionalized prejudice entrenched in religious institutions should not entail animosity against those of us who are religious and were convinced that being who they are or loving whom they love makes them unworthy of god’s love.

When parental decisions related to our upbringing are informed by fear and prejudice, a caring and loving relationship turns into a damaging nightmare with the potential of causing permanent irreparable harm. Children and adolescents are particularly vulnerable to this, either because they can be easily coerced into “conversion therapies” by fearful parents or because false and biased ideas about sexual and gender diversity are systematically instilled into them.

Since 2017, *State-Sponsored Homophobia* has tracked the countries where laws are in force to restrict these harmful practices and, although only 3 UN Member States have nationwide bans thus far, this report shows how considerable progress is being made at various levels. In any case, legal

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<sup>2</sup> **Tuisina Ymania Brown** is a survivor of 40 years of institutionalised discrimination and spousal gender-based violence, racial profiling, and trans violence and persecution. She lives her truth as a trans woman of colour from Polynesia, a human rights defender and a former corporate In-house Counsel. She practices in trademarks and intellectual property law and holds a Masters of Intellectual Property Law and a Master of Law. She has over 15 years of volunteer experience in international NGOs including: Astraea Lesbian Foundation for Justice (New York, International Advisory Board Member); Global Interfaith Network on Sex, Sexual Orientation, Gender Identity and Expression (Johannesburg, Former Co-Chair); International Trans Fund (New York, Co-Chair), ILGA World (Co-Secretary General). Born and raised in Samoa, she currently lives as a single parent to two sons in Brisbane Australia.

reform is only one of the many avenues that can be explored to tackle so-called “conversion therapies” within a multi-faceted strategy. In this report ILGA World presents a wide array of tools, legal or otherwise, that our member organisations could discuss and eventually incorporate into their strategies to fight “conversion therapies” within their communities.

Too many lives have been ruined and many others will be if these inhumane attempts and conversion therapies are not stopped. We launch this report in the hope that these pages will add to raising awareness on this issue and inform debates on how to strategise against these dangerous pseudo-scientific attempts that harm our communities so deeply.

*To all of those who contributed to the production of this report, our deepest and sincere appreciation.*

*To all the survivors, and to those we have lost because of these practices, our heartfelt thank you for bringing your stories to light, so our communities can continue the fight.*

***We issue this report in honour of your courage.***

# AUTHOR'S PREFACE

By Lucas Ramón Mendos.<sup>1</sup>

As Andrew Park explains, stigma and prejudice operate to constrain people's lives through social and legal structures. These place demands on individuals in three different ways: the demand to convert, the demand to hide and pretend, and the demand to downplay. The most strident is the demand to "convert to heterosexuality and to express a gender identity which conforms to local norms". Criminalisation and attempts at "conversion therapy" are examples of this demand.<sup>2</sup>

In recent times, legal regulation of so-called "conversion therapies" has become a subject of great interest and controversy. Many complex questions—legal and otherwise—arise when this topic is debated in legislatures, in the media, and even among activists and scholars. Granted, these questions will vary greatly in each community and no one way of tackling this issue will be the "correct" one. This publication does not intend to bring definitive answers for all these questions. Those answers lie within each of our communities and will be the result of debates and efforts informed by local perspectives, strategies, ideas and testimonies.

However, as we engage in global conversations, it is essential that we become familiar with some of the main elements and arguments that could be of use when debating this issue.

For too long, too much suffering has been validated or justified in the name of medicine, culture and religion. Much of this suffering was unknown to many of us, as the shame that still dominates our lives managed to silence stories of harm, desperation and deep emotional despair.

In light of the progress that has already been achieved—and hoping that we may one day be free from the harm produced by the mere existence of "conversion therapies"—ILGA World has decided to produce a report that will hopefully contribute to

the ongoing discussions on how to legally restrict these harmful pseudo-scientific practices around the world.

## Roadmap

Chapter 1 of the report deals with the complexities around terminology and explores the underlying assumptions of many of the terms we commonly use when talking about efforts to change a person's sexual orientation, gender identity or gender expression.

In Chapter 2, the report walks our readers through a vast field of practices and techniques that have been used in the past—and continue to be used today—for the purpose of "rendering" lesbians, gays and bisexuals heterosexual, to prevent trans youth from transitioning or make trans people de-transition, or to force our gender expressions or roles to fit and align with the social binary stereotypes of masculinity and femininity. Our readers will be able to explore and become aware of how science, culture, religion, prejudice and sheer ignorance have come together to form a disturbing mosaic of damaging, hurtful and even bizarre attempts to erase us from our families and communities. For too long many of these attempts took place (and still occur) under the legitimising cloak of science and, in many places, they still enjoy that impunity.

*Note: Survivors of these practices may find parts of this chapter upsetting.*

Chapter 3 provides a quick glance at the global consensus against SOGIECE and the main driving forces behind the progress made thus far in the battle against these pseudo-scientific practices. Annexes 1 and 2 expand this chapter with a list of professional associations that have repudiated

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<sup>2</sup> Andrew Park, *A Development Agenda for Sexual and Gender Minorities* (Los Angeles, Williams Institute, 2016), 60.

SOGIECE a list of former prominent leaders that have come out to reject their effectiveness and to warn about the harms produced by many of the techniques they created, or they were involved in.

Chapter 4 maps the array of SOGIECE proponents as we may find them today. This chapter is just an exploratory exercise and could be further developed to include many more proponents.

Chapter 5 is an attempt to map many of the rights that have been discussed when restrictions to these deceptive practices became laws, regulations or position statements, or upon being challenged in local courts. The relevance of many of the arguments discussed in this chapter will greatly depend on elements that lie beyond the scope of this report, such as local legislation and caselaw, constitutional clauses, and even the level of influence of religious laws and regulations in each country.

Chapter 6 explores the elements of a multifaceted strategy to restrict SOGIECE including legal bans but going beyond legal reform. Complementary initiatives, legal or otherwise, are explored. Additionally, the role of other relevant stakeholders is also discussed.

Chapter 7 analyses the legal restrictions that are currently in force around the world, both at the national and the sub-national level. Our readers will be able to become familiar with how these laws operate, how they protect victims and how they regulate, among other things, the professional conduct of mental health professionals. Additionally, this chapter maps ongoing discussions, initiatives and bills currently under discussion in at least 10 countries at the national level, reviews relevant caselaw from the United States of America, China and Costa Rica and lists a wide array of statements and interventions by governmental bodies and officials against SOGIECE.

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## CHAPTER 1

**RELEVANT TERMS****MISNOMERS FOR A MYRIAD OF HARMFUL PRACTICES**

There is no one single term consistently and universally adopted to denote attempts to modify a person's sexual orientation, gender identity or gender expression. Numerous terms of art and colloquial expressions have been used in the past to refer to such attempts and, even today, these terms vary greatly across time and location.

One of the few aspects that all of the practices that fall under this category share in common is the fact that they entail efforts with an *a priori* goal of achieving gender expressions that align with stereotypical binary gender norms, a cisgender identity, and/or heterosexual desire, behaviour or identity.<sup>1</sup> In other words, these efforts are not intended to change any given SO/GIE from one to another, as if all alternatives existed on an equal footing. On the contrary, these attempts are certainly not neutral about SOGIE. Rather they work on a logic that conceives anything that deviates from heterosexual or cisgender identities as problematic and undesirable.

**1. "Conversion therapy"**

"Conversion therapy" has nowadays become the common umbrella expression to refer to any sustained effort to modify a person's sexual orientation, gender identity or gender expression.

As most of these efforts were originally conceived in the mid-twentieth century as a response to what was largely considered to be a "pathology", they were framed and administered in the mental health field as "therapies". Under such paradigm, heterosexuality and the alignment of the sex assigned at birth with the gender identity was

understood as "the biologic norm" and sexual diversity was characterized as a deviation, a perversion or a mental illness which could be cured, shifted or "converted" with specific "treatment".<sup>2</sup>

However, there are several reasons why the use of this expression can be problematic on various levels:

- ▶ First, common definitions of the word "therapy" refer to any treatment "of a physical problem or an illness",<sup>3</sup> "of someone with a particular illness",<sup>4</sup> or a "treatment that helps someone feel better, grow stronger, etc., especially after an illness".<sup>5</sup> Therefore, using this term to refer to efforts that aim to change a person's sexual orientation, gender identity or expression implies the idea that these characteristics constitute illnesses or that there is something to "heal" or "cure" in those who are not cisgender, gender conforming or heterosexuals. As it will be developed below, this runs contrary to the medical and social consensus on the matter, especially after these categories were officially depathologised.
- ▶ Secondly, the use of the term "therapy" conveys the idea that these practices are grounded on sound medical or scientific research but, as it will be developed below, an extensive list of reputable medical and mental health professional associations have repudiated these practices precisely because they lack scientific support.
- ▶ Thirdly, the wide array of practices that were (and still are) employed with the aim of modifying a person's SOGIE is so vast and diverse that the term "therapy" does not

<sup>1</sup> Substance Abuse and Mental Health Services Administration (SAMHSA) - (U.S. Department of Health and Human Services), *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* (Rockville: SAMHSA, 2015), Appendix A.

<sup>2</sup> See, generally: Eli Coleman, "Changing Approaches to the Treatment of Homosexuality: A Review", *American Behavioral Scientist* 25, No 4 (1982); Jack Drescher, "I'm Your Handyman: A History of Reparative Therapies" in *Sexual Conversion Therapy: Ethical, Clinical and Research Perspectives* (New York: Haworth Medical Press, 2001); Tom Waidzunus, *The Straight Line: How the Fringe Science of Ex-Gay Therapy Reoriented Sexuality* (Minneapolis: University of Minnesota Press, 2015), 35-66.

<sup>3</sup> "Therapy", *Oxford Learner's Dictionaries* (online edition).

<sup>4</sup> "Therapy", *Collins Online Dictionary* (online edition).

<sup>5</sup> "Therapy" *Cambridge Dictionary* (online edition).

accurately reflect the nature of many of the practices involved. This is especially the case when brutal or heinous methods are used. In this sense, the use of the word “therapy” in cases where the “patient”/victim is humiliated, debased, intimidated, abused, or even raped, is clearly inadequate.

- ▶ Last, but not least, the term “conversion” implies the idea that people can actually be changed or “converted”, whereas the efficacy of any of these attempts has been seriously put to question.

The expression “conversion practices”<sup>6</sup> and other subtle variations like “sexual orientation change therapy”<sup>7</sup> or “sexual reorientation therapy”<sup>8</sup> are subject to the same caveats.

Therefore, in order to explicitly denounce the expression “conversion therapy” as a misnomer and hence question the problematic aspects mentioned above, when using this expression, it is recommended that *both* words be written between inverted commas or otherwise preceded by the expression “so-called”.

## 2. “Reparative therapy”

Oftentimes used interchangeably with “conversion therapy”, the term “reparative therapy” presents specific nuances that are worth noting. In the late 80s and 90s, when consensus for depathologising sexual and gender diversity was growing, a group of American mental health practitioners adopted the term “reparative therapy” to frame their practices to change a person’s sexual orientation. Led by Joseph Nicolosi, this particular approach is “based loosely on psychoanalytic ideas”<sup>9</sup> and includes “a fusion of spiritual and psychoanalytic thought”,

drawing on literature from the field of pastoral counselling.<sup>10</sup>

Even though the term “reparative therapy” has been trademarked by Nicolosi in the United States of America,<sup>11</sup> it has become widely used to refer to “conversion” practices more generally. The term “reparative” is highly problematic as it conveys the idea that there is something “broken” or “wrong” about a person’s sexual orientation, gender identity or gender expression, “with practitioners acting as if trying to repair or fix them”.<sup>12</sup>

Therefore, “reparative therapy” should always be written between inverted commas or otherwise preceded by the expression “so-called”.

## 3. “Gay cure”

“Gay cure” is a colloquial term that has become widely used in several countries to informally refer to attempts to change a person’s SO/GIE. It is a short, powerful, catchy expression that has been favoured by the media in journalistic headlines and campaigns.<sup>13</sup> For instance, in 2015, All Out launched an online tool called “Gay Cure Watch” that allowed users to easily report where attempts to change SO/GIE were taking place.<sup>14</sup>

The term “cure” reflects the pathologizing views that support “conversion therapies” and, even though it frames the issue as though it only affected gay men, it is frequently used to refer to “conversion therapies” broadly and regardless of whether the take place in a medical setting or not.

As with other problematic terms frequently used to name efforts to change a person’s SO/GIE, it should always be used between inverted commas.

<sup>6</sup> This is the term adopted by the Maltese ban on SO/GIECE, *The Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act*. Act No. LV of 2016 (2016).

<sup>7</sup> See, for example: Marshall Forstein, “The pseudoscience of sexual orientation change therapy” *BMJ* 328 (2004), e287; Ozanne Foundation, *2018 National Faith & Sexuality Survey* (2019), 5, 17, 18.

<sup>8</sup> See, for example: Annesa Flentje, Nicholas C. Heck and Bryan N. Cochran, “Sexual Reorientation Therapy Interventions: Perspectives of Ex-Ex-Gay Individuals” *Journal of Gay & Lesbian Mental Health* 17, No. 3.

<sup>9</sup> American Psychological Association (APA), *Report of the American Psychological Association Task Force: Appropriate Therapeutic Responses To Sexual Orientation* (2009), 22.

<sup>10</sup> Jack Drescher, “I’m Your Handyman: A History of Reparative Therapies” in *Sexual Conversion Therapy: Ethical, Clinical and Research Perspectives* (New York: Haworth Medical Press, 2001), 34.

<sup>11</sup> Justia Trademarks, “Reparative Therapy” - Trademark Details. Status: 700 – Registered (2018). Registered as: “Mental health therapy services, namely, voluntary psychotherapy for individuals seeking to explore underlying psychodynamic factors which may have led to the development of unwanted same-sex attractions, in which treatment interventions are directed toward resolution of underlying gender-related traumas reported by the client using evidence-based treatment interventions”.

<sup>12</sup> Florence Ashley *Torture Isn’t Therapy: Banning Conversion Practices Targeting Transgender People* (2020) (under review).

<sup>13</sup> See, for example: Owen Jones “Giving the ‘gay cure’ quack a TV platform is an abuse of free speech”, *Irish Times*, 7 September 2017; “The damage done by ‘gay cure’ therapy”, *The Guardian*, 5 June 2019; “Spanish Church defends bishop in ‘gay cure’ controversy”, *France 24*, 5 April 2019; “Juez brasileño avala las polémicas terapias de ‘cura gay’”, *Deutsche Welle*, 16 December 2017; “Amazon deixa de vender livros sobre terapia de cura gay”, *Carta Capital*, 15 September 2019.

<sup>14</sup> Joseph McCormick, “New online tool launched to eradicate gay ‘cure’ therapies”, *Pink News*, 23 November 2015.

#### 4. “Ex-gay therapy”

The term “ex-gay therapy” can also be found as an equivalent of “conversion therapies”, especially in informal or journalistic sources. The prefix “ex-” again implies the possibility that sexual orientation can be changed completely (and even consider it as a “status” one used to have in the past).

In light of the growing evidence against the actual possibilities of change, many SOGIECE proponents are starting to be more specific and explicit about the aspects of sexual orientation (desire/attraction, behaviour, identity) that they claim can actually be changed. In some cases, they go as far as admitting that same-sex *desire/attraction* will rarely change, as opposed to same-sex *behaviour*, which, according to some of them, could be targeted more easily. However, the aspect that can be changed—at least based on the simple decision—is the *identity* element. Many people who identify as “ex-gay” may have ceased to *identify* as gay, lesbian or bisexual but may still experience same-sex *attraction* and may even still engage in same-sex *behaviour*.

Therefore, the term “ex-gay” is problematic in and of itself as it creates a category that validates the idea that sexual orientation is actually modifiable or something that can be “overcome”. In response to this term, those who have denounced SOCE after having suffered its effects may call themselves “ex-ex-gays”.<sup>15</sup>

#### 5. “Gender critical therapy”

Activists and survivors have pointed out that the term “gender critical therapy” is a term used to refer to a form of “conversion therapy” practiced on trans youth: both notions “rely on the same ideas and want the same end results”.<sup>16</sup> As it will be developed below, “conversion” practices targeting trans youth include sustained efforts to deter them from transitioning.<sup>17</sup> In February 2020, an Irish psychotherapist—who had previously written a chapter for the book “Inventing Transgender Children”, which portrays trans people as an “ideology” and “dangerous”—announced she would

be creating a list of therapists for parents with transgender children. She said she hated the phrase “gender critical” but she “was making a list!” [sic] anyway.<sup>18</sup>

As explained by a survivor, “often such ‘therapy’ is performed by putting us in extreme pain, to create an association between who we are and pain to act as a deterrent”.<sup>19</sup> Research found that trans people who were exposed to “conversion therapy” before the age of 10 were four times more likely to try to die by suicide over the course of their lifetime than trans people who weren’t subjected to attempts to change their gender identity.<sup>20</sup>

#### 6. Sexual Orientation Change Efforts (SOCE)

Since 2009, the American Psychological Association (APA) has adopted the term “Sexual Orientation Change Efforts” (SOCE) to describe all means to change sexual orientation, including behavioural techniques, psychoanalytic techniques, medical approaches, religious and spiritual approaches.<sup>21</sup> As stated by the APA, this includes “efforts by mental health professionals, lay individuals, including religious professionals, religious leaders, social groups, and other lay networks such as self-help groups”.<sup>22</sup>

This term has gained acceptance in the academic field term as it appears to be the most appropriate way to refer to practices aimed at modifying or altering a person’s sexual orientation: it clearly reflects their aims and avoids the misrepresentations explained above. When addressing the issue with technical precision this term should be the preferred way to refer to these practices.

SOCE are not designed to change *any* given sexual orientation from one to another, as if all alternatives existed on an equal footing. On the contrary, SOCE attempt only to “convert” gay, lesbians or bisexuals into heterosexuals. This should be noted as a clear starting point evincing how SOCE are not neutral about sexual orientation,

<sup>15</sup> Annesa Flentje, Nicholas C. Heck and Bryan N. Cochran, “Sexual Reorientation Therapy Interventions: Perspectives of Ex-Ex-Gay Individuals” *Journal of Gay & Lesbian Mental Health* 17 No. 3 (2013).

<sup>16</sup> “Gender critical mental health professionals are trans conversion therapists by another name” *The Independent*, 16 February 2020. See also: QuillsQuackings “The wrong side of history”-A response to Graham Linehan” *Medium*, 12 February 2020.

<sup>17</sup> See Section 2.13 in Chapter 2 below.

<sup>18</sup> Oisín Kenny, “Graham Linehan calls for list of Irish ‘gender critical’ therapists for trans children” *GCN*, 5 February 2020.

<sup>19</sup> “Gender critical mental health professionals are trans conversion therapists by another name” *The Independent*, 16 February 2020.

<sup>20</sup> See Section 2.13 in Chapter 2 below.

<sup>21</sup> American Psychological Association, Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts (2009), fn. 1.

<sup>22</sup> American Psychological Association, Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts (2009), fn. 1.

but rather work on a logic that conceives anything that deviates from heterosexual or cisgender identities as problematic and undesirable.

## **7. Sexual orientation, gender identity or gender expression change efforts (SOGIECE)**

In this report, the acronym “SOGIECE” will be used to refer to efforts to change a person’s sexual orientation, gender identity or gender expression. This choice should not be understood as the ultimate and definitive way of conceptualising these practices. As discussions on the matter progress in different parts of the world, other terms may be found to more accurately reflect these practices in the future. For instance, it has been recently suggested that the term “change” may not properly reflect how attempts to modify a person’s gender identity actually operate.<sup>23</sup> Reference to other terms may also be used, especially if used by sources. As with other terms that have evolved in the past, it is reasonable to expect that the same will occur with the terminology we use today in this specific field of activism.

<sup>23</sup> See below, Section 2.13 in Chapter 2.

## CHAPTER 2

## WHAT FORMS CAN SOGIECE TAKE?

Efforts to change a person’s sexual orientation, gender identity or gender expression can adopt a myriad of forms, methods or practices. Hence, capturing the whole universe of techniques implemented to this end in the entire world in an exhaustive way is an almost impossible task. The object of this section is to offer an overview of the methods that have been documented in the past and those that continue to be used at present. However, certain caveats and variables need to be stated and put in context.

Historically, medical standards have evolved in a way that certain forms of experimentation and medical practices that were regularly carried out in the name of mental health care, especially in Europe and North America, would under current standards be tantamount to torture and heinous practices.

Many SOGIECE proponents, especially in the Global North, are frequently quick to repudiate and to take distance from any of the practices that were used during the times in which “homosexuality” and “transvestism” were treated as mental illnesses. They often argue that those who oppose SOGIECE try to intentionally conflate those “archaic/barbaric” techniques with their “psychotherapeutic” approach, so as to create confusion and push for restrictive legislation in the political arena.

However, despite the fact that a number of the practices that will be described below abhor current medical standards and have been deprecated and explicitly rejected by numerous professional associations,<sup>1</sup> there is a large grey area between the methods that have been effectively abandoned and those that continue to be used to this day. In fact, in recent years numerous reports showing that many of these heinous practices are still being administered in several countries in different regions of the world have become known thanks to the tireless efforts and advocacy work carried out by survivors and activists.

The global scope of this report poses an additional challenge in this regard. Academic literature on the

issue—mostly produced in the English-speaking Global North—cannot be used to draw conclusions on how the situation is understood in the entire world today. When reading about the type of practices that “patients”/victims were subjected to in the mid-50s and 60s, it may be easy to assume that such brutal attempts definitely belong in the past. For instance, the idea of patients being electroshocked in public hospitals to eliminate their same-sex attractions is likely to appear unrealistic to many people. However, the recent court cases brought before the Chinese judiciary show that such “treatment” is still taking place, to cite just one single example.

Moreover, although many of these practices were widely documented by professionals in the past, it has become increasingly difficult to access information on the extent to which these “therapies” are being carried out these days. Therefore, a wide array of different sources needs to be consulted in order to get a clearer image of the current situation worldwide. This includes judicial decisions, transcripts of judicial proceedings, accounts by victims who were able to survive SOGIECE and share their stories in public hearings or to the media, journalistic investigations that have gone undercover to penetrate the often opaque field in which practitioners operate, and reports by human rights organisations working on the ground, among many others.

Another particular aspect of the overview that is presented in this section has to do with the large scope of *providers* of these efforts to change a person’s SO/GIE. The list of methods described below includes attempts carried out by medical doctors, mental health practitioners, counsellors, nurses, religious or spiritual leaders, coaches and non-professionals in general. The methods, procedures, standards and the paradigm under which they operate will vary greatly in each case.

Additionally, much of the focus and discussions around “conversion therapies” (as stated above, frequently referred to as “gay cure” or “ex-gay therapy”) has frequently revolved around attempts to “make gay people straight”. However, the issue

<sup>1</sup> For a list of associations that have adopted position statements against SOGIECE, see Annex 1 of this report.

of SOGIECE affects lesbian and bisexual women, trans people and gender diverse children and adults alike, albeit in different ways. As with other aspects of cis-heteronormative oppression, research on the impact on these populations is not abundant and discussions are still ongoing. As explained by Jack Drescher:

Many cultures routinely conflate homosexuality with transgender identities because they rely upon several beliefs that use conventional heterosexuality and cisgender identities as a frame of reference. Once regarded as synonymous, it is only relatively recently that *sexual orientation* [...] and *gender identity* [...] have been regarded as separate categories.<sup>2</sup>

Additionally, gender expression also tends to be conflated with a person's sexual orientation or misrepresented as a definite predictor of how a child will identify or behave as an adult, especially among SOGIECE proponents. Indeed, under this logic, a large number of so-called "conversion therapies" target gender non-conformity in an attempt "to prevent homosexuality". As it will be analysed below, gender non-conformity in children and lack to adherence to stereotypical gender roles are among the reasons why many parents force their children to undergo SOGIECE.

These preliminary observations offer an idea of how vast and complex this issue can be. The broad category of SOGIECE encompasses so many different practices, techniques and conducts – including acts which are of an evident criminal nature—that it is impossible to think of one single way by which this phenomenon can be tackled.

## 1. Pathologisation of sexual and gender diversity

Even though an in-depth analysis on the issue of pathologisation is beyond the scope of this report, it should be noted that the paradigm under which any form of sexual or gender diversity is considered a "pathology", a "deviant" or "abnormal behaviour", or even a "perversion", provides the basis for the

search for "cures" or "treatment" to "reverse" people into "normalcy".

Pathologisation can be defined as "the psycho-medical, legal and cultural practice of identifying a feature, an individual or a population as intrinsically disordered".<sup>3</sup> With the advent of secular societies, and especially since the late 19<sup>th</sup> century, scholars explain that science took the role of casting a critical eye on a range of "socially unacceptable behaviours". Hence, many conducts that had been considered "sins" under moral or religious beliefs would eventually come to be classified as illnesses, including "homosexuality" and later on "transvestism", among many others.<sup>4</sup> Under this paradigm, largely driven by the Global North, sexual and gender diversity would be framed as manifestations of a set of mental illnesses that could be "cured" if "underlying causes" were properly treated.

Outright speculation and questionable research informed most professional fields and led to a profusion of academic literature elaborating on the ultimate causes of "sexual deviancy", which mainly revolved around the idea of "unconscious childhood conflicts", developmental "arrest", sexual abuse, dysfunctional parenting, among many others. As it will be outlined below, much of this literature led to experimentation with human beings and to the administration of "therapies" that have caused irreparable harm and unmeasurable suffering, ruining or putting an end to the life of millions of people.

The process of depathologisation progressively gained momentum in the Global North in the mid and late twentieth century, especially after homosexuality was depathologised in 1973 in the United States of America and then internationally, by the World Health Organisation (WHO), in 1990. For diverse and gender expressions and under the auspices of the WHO, the process started much later and is still ongoing and far from conclusive.<sup>5</sup>

However, the global picture of depathologisation is far more complex. Even though the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association may be considered a reputable source in many countries, the process advanced in the United States cannot be taken as a global standard. Additionally, despite

<sup>2</sup> Jack Drescher, "Queer Diagnoses: Parallels and Contrasts in the History of Homosexuality, Gender Variance, and the Diagnostic and Statistical Manual Article" *Archives of Sexual Behavior* 39 (2010), 440.

<sup>3</sup> Sheherezade Kara, *Gender is not an illness. How pathologizing trans people violates international human rights law* (GATE, 2017), 4.

<sup>4</sup> For an overview of the history of pathologisation of sexual and gender diversity, see: Jack Drescher, "Queer Diagnoses: Parallels and Contrasts in the History of Homosexuality, Gender Variance, and the Diagnostic and Statistical Manual Article" *Archives of Sexual Behavior* 39 (2010).

<sup>5</sup> See, generally: Sheherezade Kara, *Gender is not an illness. How pathologizing trans people violates international human rights law* (GATE, 2017).

the steps taken by the WHO at the international levels, many countries kept (and still keep) pathologising many forms of sexual and gender diversity under their own national compendiums of illnesses. To cite only a few examples, in China, “homosexuality” was removed from the Chinese Classification of Mental Disorders (CCMD-3) in 2000,<sup>6</sup> and in Lebanon, the Lebanese Psychiatric Society followed suit only in 2013.<sup>7</sup> Further, there is only a handful states on the globe that depathologised gender diversity—among them Argentina or Malta—and, even with such measures, pathologising practice has not yet eradicated in those countries.

Even more, in the case of sexual orientation, when homosexuality was removed from the DSM and the International Classification of Diseases (ICD), a residual pathology was introduced to frame the situation of people who suffered stress or were otherwise “troubled” by their sexual orientation. In the case of the DSM, this pathology was named “Sexual Orientation Disturbance (SOD)”<sup>8</sup> and in the case of the ICD it was called “Ego-dystonic Homosexuality”.<sup>9</sup> These pathologies were removed only in 1987 (from the DSM-III-R)<sup>10</sup> and in 2018 (for the ICD-11).<sup>11</sup> Many efforts aimed at changing a person’s sexual orientation were (and still are) “justified” under these clinical classifications. Indeed, the Chinese CCMD-3 still lists “ego-dystonic sexual orientation” as a mental disorder.<sup>12</sup>

## 2. Early attempts: bicycle riding, lobotomy and castration

Early attempts to “cure” homosexuality can be traced back to the late 19<sup>th</sup> century. In 1892, an

American doctor formally reported that he had found nothing “more serviceable” to a young man suffering from “sexual abnormality” than bicycle riding. Therefore, he prescribed “severe and fatiguing bicycle riding” and found that the “patient”/victim’s sexual appetite was thereby eliminated.<sup>13</sup>

Even though there are no extensive records on the widespread use of lobotomy (also referred to as “leucotomy”) to “treat” gays or lesbians to modify their sexual orientation, in the United States, trans or gender diverse people appear to have been the primary target of this practice. Documented cases show that lobotomies were performed on “homosexuals” when other factors were the primary target such as “marked cross-gendered behaviour”.<sup>14</sup>

During the Nazi regime, both before and during World War II, attempts to find a “cure” to homosexuality led to experimentation with gay men, especially through hormonal treatment (see below). However, a pre-war report by Friedemann Pfäfflin analysed 600 cases of castration of homosexual men, including 120 “volunteers”, and emphasized its “beneficial and therapeutic effects”.<sup>15</sup>

## 3. Hormone intake

Early endocrinological research during the 1930s led doctors to hypothesize that lesbian women had lower levels of oestrogens and higher levels of testosterone than “normal” women (and the reverse for gay men). Even without any serious support for the idea that hormones affected sexual

<sup>6</sup> Sing Lee, “From Diversity to Unity: The Classification of Mental Disorders in 21<sup>st</sup> Century China” *Psychiatric Clinics of North America* 24, No. 3 (2001), 421.

<sup>7</sup> Arab Foundation for Freedoms and Equality: Nour Nasr and Tarek Zeidan, *As long as they stay away” Exploring Lebanese Attitudes Towards Sexualities and Gender Identities* (2015), 16.

<sup>8</sup> Jack Drescher, “Out of DSM: Depathologizing Homosexuality”. *Behavioural Sciences* 5, No. 4 (2015): “SOD regarded homosexuality as an illness if an individual with same-sex attractions found them distressing and wanted to change. The new diagnosis legitimized the practice of sexual conversion therapies (and presumably justified insurance reimbursement for those interventions as well), even if homosexuality per se was no longer considered an illness”.

<sup>9</sup> Susan D Cochran et al., “Proposed declassification of disease categories related to sexual orientation in the International Statistical Classification of Diseases and Related Health Problems (ICD-11)” *Bulletin of the World Health Organisation (WHO)* 92, No. 9 (2014).

<sup>10</sup> Jack Drescher, “Out of DSM: Depathologizing Homosexuality”. *Behavioural Sciences* 5, No. 4 (2015).

<sup>11</sup> Susan D Cochran et al., “Proposed declassification of disease categories related to sexual orientation in the International Statistical Classification of Diseases and Related Health Problems (ICD-11)” *Bulletin of the World Health Organisation (WHO)* 92, No. 9 (2014).

<sup>12</sup> China LBT Rights Initiative, *Discrimination Faced By Lesbian, Bisexual and Transgender Women in China* (2014), 2 (The report also adds that China’s mental health educational and information materials still commonly describe homosexuality as a perversion, despite the 2001 revision to the CCMD).

<sup>13</sup> Timothy F. Murphy, “Redirecting sexual orientation: Techniques and justifications” *The Journal of Sex Research* 29 No. 4 (1992), 502 (citing Graeme. M. Hammond, “The bicycle treatment in the treatment of nervous diseases” *Journal of Nervous and Mental Disease* VIII, Vol. XIX (1986 reprint) (1892) 34-46).

<sup>14</sup> Vernon A. Rosario, *Homosexuality and Science: A Guide to the Debates* (Denver and London: ABC CLIO, 2002), 97.

<sup>15</sup> Florence Tamagne, *A History of Homosexuality in Europe: Berlin, London, Paris 1919-1939*, Volume II (2004), 387.

orientation, hormonal therapy was extensively prescribed for “sexual perverts”.<sup>16</sup>

Experimentation with hormonal treatment was also used by doctors in the German Third Reich. Experiments on prisoners to find a “cure” for homosexuality were mainly conducted in Buchenwald concentration camp, led by Danish physician Carl Peter Jensen (alias Carl Vaernet). Gay prisoners were implanted a metal capsule which contained a hormonal preparation that was supposed to act as an “artificial male sexual gland” that would “normalize” sexual orientation.<sup>17</sup> These experiments were not explicitly mentioned during the Nuremberg trials, and Vaernet escaped to South America, where he was eventually hired by the Argentine Ministry of Health.<sup>18</sup> It is believed that his experimentation with gay men was known to the Allies, who allowed him to escape, and that he continued experimenting with hormonal treatment to “cure” homosexuality until his death in Buenos Aires in 1965.<sup>19</sup>

In South Africa, an extensive report published in 1999 called “The Aversion Project”, revealed that during apartheid years medical personnel working with South African Defence Force subjected white gay and lesbian personnel to brutal forms of “treatment” to “cure” their homosexuality, including systematic hormonal treatment.<sup>20</sup> The head of the program, Colonel Aubrey Levin, former chief psychiatrist at the Voortrekkerhoogte military hospital, fled to Canada when the apartheid system crumbled.<sup>21</sup>

As recently as 2015, a journalistic investigation in India led by Mail Today revealed that hormonal treatment was still being prescribed in Delhi. Sexologist Vinod Raina, who claimed to have “cured over 1,000 homosexuals” in the past 15 years, was reported offering a hormone replacement therapy package, promising a “100 per cent cure”. According to the local media outlet, the “treatment” required a six to nine-month contract “until the boy

gets cured” and an upfront payment of Rs 1.1 lakh.<sup>22</sup>

As a mere example of how prevalent misinformation about sexual orientation can still be, a survey conducted in Lebanon in 2015 found that around 79% of respondents thought homosexuality was a “hormonal sickness” and agreed that homosexuals “should be taken in for psychological or hormonal treatment”.<sup>23</sup>

#### 4. Aversion therapy

Aversion therapy is a type of treatment that aims at modifying behaviour by subjecting a person to a negative, painful or otherwise uncomfortable sensation while being exposed to a certain stimulus, under the premise that the stimulus will become associated with the negative sensation. The use of aversion therapy to “cure” homosexuality has been profusely documented, especially since the mid-1930s in the United States and in Britain.<sup>24</sup>

Not only did these procedures expose “patients”/victims to traumatic and life-threatening techniques but they also proved to be highly unsuccessful. Many victims have reported suffering severe mental health problems as a consequence of these “therapies”, including anxiety, depression, and post-traumatic stress disorder, requiring further treatment from supportive mental health professionals.

Most of the academic literature documenting extreme forms aversion therapies taking place in mental health facilities or hospitals in the United States and the United Kingdom was mainly produced between the 1940s and 1960s, when “homosexuality” and “transvestism” were officially considered mental illnesses. Even though these “therapies” have seen a sharp decline in use in the

<sup>16</sup> Vernon A. Rosario, *Homosexuality and Science: A Guide to the Debates* (Denver and London: ABC CLIO, 2002), 95.

<sup>17</sup> Florence Tamagne, *A History of Homosexuality in Europe: Berlin, London, Paris 1919-1939*, Volume II: Appendix IV, Dr. Carl Vaernet’s Experiments at Buchenwald (2004), 427.

<sup>18</sup> Gunter Grau, Günter Grau and Claudia Schoppmann, *Hidden Holocaust?: Gay and Lesbian Persecution in Germany, 1933-45* (Taylor & Francis, 1995), 291.

<sup>19</sup> “The Nazi doctor who experimented on gay people – and Britain helped to escape justice”, *The Guardian*, 5 May 2015; Dolores Curia, “El siniestro Doctor No”, *Página/12*, 13 June 2014.

<sup>20</sup> Mikki van Zyl et al., *The Aversion Project: Human rights abuses of gays and lesbians in the South African Defence Force by health workers during the apartheid era* (Cape Town: Simply Said and Done, 1999), 85; Robert M Kaplan, “Treatment of homosexuality during apartheid: More investigation is needed into the shameful way homosexuality was treated” *BMJ* 329, No. 7480 (2004): 1415-16.

<sup>21</sup> Ana Simo, “South Africa: Apartheid Military Forced Gay Troops Into Sex-Change Operations”, *The Gully*, 25 August 2000.

<sup>22</sup> Sangeeth Sebastian and Kumar Vikram, “Mail Today Exclusive: Delhi doctors use electric shock to treat homosexuality” *India Today*, 27 May 2015.

<sup>23</sup> Arab Foundation for Freedoms and Equality: Nour Nasr and Tarek Zeidan, *As long as they stay away” Exploring Lebanese Attitudes Towards Sexualities and Gender Identities* (2015), 16.

<sup>24</sup> M. P. Feldman and M. J. MacCulloch, *Homosexual Behavior: Therapy and Assessment* (Oxford, Pergamon Press, 1971), 26.



United States, especially after the late 1970s,<sup>25</sup> recent accounts shared by survivors of SOGIECE suggest that aversion techniques are still being administered as ancillary “treatments” in several parts of the world.

In 2001, the United Nations Special Rapporteur on torture reported on this issue for the first time, indicating that in a number of countries, members of sexual minorities had been involuntarily confined to state medical institutions, where they were allegedly subjected to forced treatment on grounds of their sexual orientation or gender identity, including electric shock therapy and other “aversion therapy”, reportedly causing psychological and physical harm.<sup>26</sup>

The following is a brief overview of the main aversive methods by which sexual orientation or gender identity change efforts have been (and are being) attempted.

#### 4.1. Electroshock aversion therapy

Electroshock aversive therapy is one of the most extensively reported techniques to “treat” lesbian, gay, bisexual, trans and gender diverse people.

British mental health practitioners documented their treatment of “transvestism” via an aversive therapy which consisted of asking the “patient”/victim (assigned male at birth) to start dressing in their favourite female clothes until the moment they received an electric shock (conductors had been concealed in the shoes and clothes), at which point the “patient”/victim was supposed to get rid of the clothes. The whole process was repeated in a number of trials per day that varied between 65 and 75, until 400 trials were carried out over a total period of six days. The meticulous academic paper that explains the procedure indicates that the aim of the study was to condition the “patient”/victim in such a way that they would develop “an aversion for transvestite behaviour”.<sup>27</sup> Most notably, the paper also explains that the motivation of “patient”/victim for seeking treatment included a fear that their young son

would discover “his abnormality” [sic], possible legal consequences of being discovered in public dressed in female clothes, and a wish to be rid of “perversion” [sic] in the hope that this would reduce associated chronic anxiety.<sup>28</sup>

For gay and bisexual men, the most common form of electroshock aversive therapy consisted of being exposed to shocks of varying intensity while being shown male erotica on a large screen (and sometimes getting relief when pictures of women were displayed). This “therapy” was also administered in sessions where the “patient”/victim would be asked to read out cards with specific words. The subject would be electrically shocked when reading words “connected with homosexual practices”, including words like “gay pub”, “sodomy”, “in bed with a male”, and even “flapping wrists”. Relief stimuli would come with cards containing the expressions “sex with a woman”, “women”, “girl-friend”, and “female breasts”.<sup>29</sup> In some cases, once the “treatment” had started, the level of the electric shocks would be progressively increased “due to tolerance developing” by the “patient”/victim.<sup>30</sup> With the advent of portable electric shockers, “patients”/victims were asked to carry the device and instructed to give shocks to themselves each time they experienced “deviant desires”.

Electroshock therapy to “cure” homosexuality was also used during the apartheid years in South Africa by medical personnel working with South African Defence Force.<sup>31</sup>

In India, the use of electroshock therapy for SOGIECE purposes was documented in the Indian Journal of Psychiatry up to the mid 1980s. Reports indicate that “patients”/victims were exposed to up to 45 sessions in which voltage of alternating current passed between two wet saline-soaked gauze electrodes tied to the left forearm. Notably, one of the papers explained motivation for electroshock therapy in the following terms:

some patients had an urgent and pressing need to get cured, e.g. impending marriage or engagement, indirect family pressures

<sup>25</sup> Ariel Shidlo and Michael Schroeder, “Changing Sexual Orientation: A Consumers’ Report” *Professional Psychology: Research and Practice* 33, No. 3 (2002), 250.

<sup>26</sup> *Question of torture and other cruel, inhuman or degrading treatment or punishment*, A/56/156, 3 July 2001, para. 24.

<sup>27</sup> C. B. Blakemore et al., “The application of faradic aversion conditioning in a case of transvestism” *Behaviour Research and Therapy* 1, No. 1 (1963), 33.

<sup>28</sup> *Id.*, 30.

<sup>29</sup> J. Thorpe et al., “Aversion-relief therapy: A new method for general application” *Behaviour Research and Therapy* 2, No. 1 (1964), 75.

<sup>30</sup> John Bancroft, “Aversion Therapy of Homosexuality: A pilot study of 10 cases” *The British Journal of Psychiatry* 115 (1969), 1418.

<sup>31</sup> Mikki van Zyl et al., *The Aversion Project: Human rights abuses of gays and lesbians in the South African Defence Force by health workers during the apartheid era* (Cape Town: Simply Said and Done, 1999), 81-85; “Gays tell of mutilation by apartheid army” *The Guardian*, 29 July 2000.

and an ardent desire to set up a house and settle down in life like other normal people. [...] We feel that positive motivation with indirect social pressure played a significant role in the improvement of the patients and indicates good prognosis in behaviour therapy.<sup>32</sup>

Possibly in light of cultural demands, the study indicates that after “treatment” “patients”/victims “had good prospects of marriage”.<sup>33</sup> In another study, after being exposed to up to 40 sessions of electroshock therapy, “patients”/victims were asked “to maintain daily chart of frequency of homosexual and heterosexual feelings and acts” as “a reinforcer in controlling the homosexual behaviour”.<sup>34</sup>

In May 2001, the Naz Foundation, one of the main civil society organisations working on HIV/AIDS and sexual health issues in India, filed a formal complaint with the National Human Rights Commission of India about a case of a young man in his early twenties who had been forced by his parents to undergo nearly four years of so-called “conversion therapy”. He had received counselling, psychotropic medication and electroshock therapy as part of the “treatment” administered at the All India Institute of Medical Sciences, the largest hospital in Delhi.<sup>35</sup> However, the Commission rejected the complaint on the grounds that Section 377 of the Penal Code criminalised consensual same-sex activity and, therefore, the “conversion treatment” was not against the law.<sup>36</sup> In 2018, a doctor who had been banned by the Delhi Medical Council (DMC) was summoned by a Delhi High Court after a complaint was filed against him for “treating” gay and lesbian people using electric shock “therapy”.<sup>37</sup>

In Latin America, accounts by SOGIECE survivors indicated that electroshock “therapy” was used in the so-called “de-homosexualisation” clinics in Ecuador (see below).<sup>38</sup>

Moreover, there is indication that electroshock therapy is still widely used in Chinese private and public health institutions. In 2014, the Beijing Municipality Haidian District People’s Court issued a judicial decision<sup>39</sup> in which it ordered the Xinyu Piaoxiang Psychotherapy Center in the city of Chongqing to formally offer an apology to a man who was subjected to electroshock therapy as part of the “treatment” to eliminate his attraction to people of the same sex.<sup>40</sup> However, the decision did not include any conclusion regarding the legality of “conversion therapy” in China. According to later reports, the Xinyu Center is still practicing “conversion therapies” and explicitly lists “transvestism” as one of the areas for which they offer treatment.<sup>41</sup> In 2015, Chinese activists went undercover to expose how “conversion therapy” is still practiced in the country. One of the activists involved was inquired by the police after secretly filming electroshock therapy sessions, despite the fact that police officers had previously clarified that they were aware of the filming project.<sup>42</sup>

After this information was brought to the attention of the UN Committee against Torture, the Committee expressed concern about the administration of electroshock therapy and regretted China’s failure to clarify whether such practices are prohibited by law, have been investigated and ended, and whether the victims have received redress that the decision.<sup>43</sup>

In 2017, Lebanese urologist Dr. Raef Rida openly stated that he still practices electroshock therapy “to convert homosexual people”. This statement was part of his intervention during a seminar

<sup>32</sup> P. V. Pradhan et al., “Homosexuality: Treatment by behaviour modification” *Indian Journal of Psychiatry* 24 (1982), 81.

<sup>33</sup> *Id.*, 83.

<sup>34</sup> “Homosexuality - a study of treatment and outcome” *Indian Journal of Psychiatry* 25, No. 3 (1983), 236.

<sup>35</sup> Preston G. Johnson, “Lessons for Legalizing Love: A Case Study of the Naz Foundation’s Campaign to Decriminalize Homosexuality in India” *Capstone Collection* 3063 (2017), 36.

<sup>36</sup> *Ibid.*

<sup>37</sup> “Delhi HC Summons Doctor Treating Homosexual Patients Using Electric Shocks” *Outlook*, 8 December 2018.

<sup>38</sup> Annie Kathryn Wilkinson, *Sin sanidad, no hay sanidad: Las prácticas reparativas en Ecuador* (Quito: FLACSO, 2013), 178, 182; María Alejandra Torres y Marjorie Ortiz “Oración y encierro para ‘curar’ a gays”, *El Universo*, 18 May 2008.

<sup>39</sup> Alternative titles: Haidian District People’s Court of Beijing (2014) Haimin Chuzi No. 16680 “Peng and a consulting center infringement dispute case” / 北京市海淀区人民法院(2014)海民初字第16680号“彭某与某咨询中心等侵犯纠纷案” / “彭燕辉诉重庆心语飘香心理咨询中心等侵犯身体权、健康权和一般人格权纠纷案”

<sup>40</sup> “China China takes on landmark gay conversion case”, *Al Jazeera*, 31 July 2014; Justin Caba, “Gay Conversion Therapy Lawsuit: Chinese Psych Clinic Performs Electric Shock Therapy On Patient To Reverse His Homosexuality”, *Medical Daily*, 31 July 2014. “Victory for plaintiff in gay conversion case”, *China Daily*, 19 December 2014.

<sup>41</sup> “Services”, *Chongqing Xinyu Piaoxiang Psychological Counseling Center (website)*. Accessed 30 January 2020.

<sup>42</sup> Richard Macauley, “Undercover activists show what happens at electroshock gay conversion therapy clinics in China”, *Quartz*, 14 October 2015.

<sup>43</sup> Committee against Torture, *Concluding observations on the fifth periodic report of China*, CAT/C/CHN/CO/5, 3 February 2016, para. 55.

organized by the Muslim organization “Jamiyat al Irshad wal Islah al Khayriya al Islamia” at the Arts, Sciences and Technology University.<sup>44</sup>

Several sources indicate that electroshock therapy to “treat” lesbian, gay, bisexual and trans people is still being used at least in Malaysia,<sup>45</sup> Indonesia<sup>46</sup> and Iran.<sup>47</sup>

#### 4.2. Chemical aversion therapy

Chemical aversion therapy was administered in a similar way to electroshock therapy. Instead of being electrically shocked patients were injected different kinds of nausea inducing drugs while being exposed to erotic material on a large screen.

Metrazol shock therapy—a drug that induces seizures—was one of the techniques used. Records show that it was believed that a regimen of twenty to thirty induced seizures “would free the arrested psychosexual energy and permit easier psychotherapy”.<sup>48</sup>

In other cases, “patients”/victims were given caffeine and apomorphine to generate nausea. They would be shown slides of undressed men until the induced vomiting started. A few hours later the “patient”/victim would receive a dose of testosterone propionate while being exposed to films of nude or semi-nude women.<sup>49</sup>

At least one recent report shows that this form of extreme “therapy” is still being used in Iran.<sup>50</sup>

#### 4.3. Other forms of aversive techniques

A study published in the United States in 2013 showed that among the practices that were still

being used, mainly by religious counsellors, certain forms of aversive techniques were included in their sessions. For example, a survivor explained that his “therapist” had once asked him to close his eyes and rub himself to arousal and then broke an ammonia capsule under his nose to generate aversion.<sup>51</sup>

Another survivor explained that at one point he was instructed to wear a rubber band around his wrist and to snap it every time he thought about a man sexually.<sup>52</sup> Other accounts include the use of ice or hot coils being placed on the “patient”/victim’s hands to inflict pain while being exposed to certain type of gay-related visual content.<sup>53</sup>

In what appears to be a veiled form of aversion therapy by means of conversation and mental representation of images, a SOGIECE survivor who participated in a study published in 2013 explained an exercise he was put through called “image conditioning” which involved fantasizing about homosexual encounters and then introducing mental pictures of vomit, excrement, and urine. After that, he was supposed to envision water washing away that scene to end up with a non-sexual situation with a female.<sup>54</sup>

#### 5. Masturbatory reconditioning

Academic papers from the 1960s show that this technique was administered in hospitals with the purpose of changing the cause of sexual arousal. Male “patients”/victims were provided with heterosexual erotic material and asked to masturbate “as often as possible” using

<sup>44</sup> Omar Fattal, “Dr. Rida, urologist, discusses homosexuality and advocates for the use of “electrical shock therapy” as a form of conversion therapy”, *The Huffington Post*, 4 April 2017.

<sup>45</sup> Jia Vern Tham, “Here’s How Malaysia “Cures” LGBTs With Conversion Therapy”, *SAYS*, 20 December 2018.

<sup>46</sup> Amie Bishop, *Harmful Treatment: The Global Reach of So-Called Conversion Therapy* (New York: OutRight Action International, 2019), 27.

<sup>47</sup> See Section 7 below (subsection on clinics to “cure” homosexuality in Iran).

<sup>48</sup> Vernon A. Rosario, *Homosexuality and Science: A Guide to the Debates* (Denver and London: ABC CLIO, 2002), 98.

<sup>49</sup> M. P. Feldman and M. J. MacCulloch, *Homosexual Behavior: Therapy and Assessment* (Oxford, Pergamon Press, 1971), 10 (citing Kevin Freund, “Some Problems in the Treatment of Homosexuality”, in Henry J. Eysenck (ed.), *Experiments in Behaviour Therapy* (London, 1960)).

<sup>50</sup> “Reparative Therapies on Gays and Lesbians through Cruel, Inhumane and Humiliating Treatments Has Increased in Iran” *6Rang (ILGA Asia repost)*, 13 July 2018.

<sup>51</sup> Annesa Flentje, Nicholas C. Heck and Bryan N. Cochran, “Sexual Reorientation Therapy Interventions: Perspectives of Ex-Ex-Gay Individuals” *Journal of Gay & Lesbian Mental Health* 17 No. 3 (2013), 267.

<sup>52</sup> Annesa Flentje, Nicholas C. Heck and Bryan N. Cochran, “Sexual Reorientation Therapy Interventions: Perspectives of Ex-Ex-Gay Individuals” *Journal of Gay & Lesbian Mental Health* 17 No. 3 (2013), 267.

<sup>53</sup> Sam Ames “NCLR Urges U.N. Committee Against Torture to End Conversion Therapy”, *National Center for Lesbian Rights (website)*, 7 November 7, 2014; “#BornPerfect Campaign Leader Samuel Brinton Addresses U.N. Committee Against Torture”, *NCLRights YouTube Channel*, 18 November 2014. See, also: Account by Jerry Spencer: “Discussing Conversion Therapy” *Southern Poverty Law Center YouTube Channel*, 20 August 2012; “Student recounts painful conversion therapy, abuse” *The Collegian*, 7 December 2009.

<sup>54</sup> Annesa Flentje, Nicholas C. Heck and Bryan N. Cochran, “Sexual Reorientation Therapy Interventions: Perspectives of Ex-Ex-Gay Individuals” *Journal of Gay & Lesbian Mental Health* 17 No. 3 (2013), 268.

heterosexual fantasies only, thus women “would become associated with sexual reinforcement”.

The following excerpt shows an example of how the masturbatory process administered to a young homosexual “patient”/victim was documented:

At first, though masturbation was successful, he took a long time to reach orgasm, his fantasy was brief and the girl [in the pictures he was given] “just a body not a person”. By the seventh session he reported a definite change—his fantasy now involved more prolonged and more satisfying sexual activity and the time taken to reach emission had decreased considerably.<sup>55</sup>

This person had been subjected to a “treatment” that had combined both electroshock aversive therapy and masturbatory reconditioning. The following excerpt illustrates the way in which the results were reported:

In the course of treatment, the patient developed depression and various gastric ailments. However, he persisted and completed treatment because he felt it was doing him good and really changing his sexual orientation. He had observed that his reaction to the homosexuals he met both in and out of hospital was now one of aggression and disgust rather than pleasure. Also he was claiming great satisfaction from his heterosexual masturbation fantasies and from seeing and kissing his girlfriend. He soon felt confident enough to leave hospital. He had had 30 aversion sessions, at the rate of 1 session per day, and 38 masturbation sessions.<sup>56</sup>

Recent survivor accounts explain that they have been encouraged to masturbate while fantasising with persons of a different sex as ancillary methods during the “therapies” they received with the aim of modifying their sexual orientation. In a study carried out in the United States in 2009, a male

SOCE survivor explained that he was asked to masturbate while thinking of women, an exercise “due to be registered in a grid”.<sup>57</sup> In an interview with *El País*, another survivor from Spain explained in 2010 that masturbating while thinking of women was also part of the “therapy” he endured.<sup>58</sup> Likewise, in 2019, a SOCE survivor from Arequipa, Peru, explained that he was instructed to masturbate to gay porn but to ejaculate only to heterosexual porn.<sup>59</sup>

## 6. Hypnosis

Hypnosis has also been commonly reported as an ancillary method used in “conversion therapies”.

Soviet doctor Nikolai Ivanov appears to have promoted such “treatment” for “patients”/victims who showed a clear will to “cooperate”. During the session, the subject was asked to constantly repeat to himself a phrase like “I am now free of my previous desires” or pledge that they “would not succumb to anything tempting”.<sup>60</sup>

More recently, in 2017, BBC News reported that these techniques were still being offered in Russia. For example, psychotherapist Yan Goland, claimed that he had “cured” 78 gay men and 8 trans people using Ivanov’s method in sessions that may take up to 18 months and even longer in the case of trans people. As he explained to the media outlet, he also uses “a mixture of psychoanalysis and identity therapy” to influence a person’s dreams.<sup>61</sup> Other providers include the Nikitenko brothers, who claim to be “psycho-hypnologists” and offer a treatment for homosexuality under the premise that it is a type of “obsessive-compulsive disorder”.<sup>62</sup>

In 2013, the Indonesian Clinical Hypnotherapy Association stated that sexual orientation could be modified through hypnosis based on the belief that same-sex orientation is caused by “subconscious thoughts induced by a traumatic past”.<sup>63</sup> According to a local practitioner, “this method only takes about 2 hours. After that, the gay man can return to normal, because the past memory which is the root cause has been removed”.<sup>64</sup>

<sup>55</sup> J. Thorpe et al., “Aversion-relief therapy: A new method for general application” *Behaviour Research and Therapy* 2, No. 1 (1964), 75.

<sup>56</sup> *Ibid.*

<sup>57</sup> Annesa Flentje, Nicholas C. Heck and Bryan N. Cochran, “Sexual Reorientation Therapy Interventions: Perspectives of Ex-Ex-Gay Individuals” *Journal of Gay & Lesbian Mental Health* 17 No. 3 (2013), 268.

<sup>58</sup> Alejandra S. Inzunza, “Oraciones para dejar de ser gay”, *El País*, 20 June 2010.

<sup>59</sup> Melissa Goytizolo y Fabiola Torres, “Las terapias de la tortura”, *La República*, 12 August 2019.

<sup>60</sup> Rustam Alexander, *Homosexuality in the USSR (1956–82)* (2018), 92.

<sup>61</sup> Anastasia Golubeva “Hypnosis and holy water: Russian ‘cures’ for gay people” *BBC News*, 3 May 2017.

<sup>62</sup> *Ibid.*

<sup>63</sup> “*Hipnoterapi Klinis Bisa Sembuhkan Gay*”, *Berita Satu*, 14 November 2013.

<sup>64</sup> *Ibid.*

## 7. Internment in clinics or camps

Numerous reports have revealed that forced internment for SOGIECE purposes is a modality still perpetrated in many parts of the world. In most cases, victims are either coerced, tricked or even kidnapped with the complicity or at the request of close relatives and taken to “clinics”, camps or other “institutions” in which they are isolated from the outer world. During the time they are interned, they can also be subjected to other forms of abuse, including torture and other forms of cruel or inhumane treatment.

In its 2015 report on violence against LGBT people, the Inter-American Commission on Human Rights (IACHR) indicated that it had received numerous reports on instances in which LGBT people, especially lesbian women, were subjected to psychotherapeutic treatment, internment in “clinics” or camps, and physical abuse with the aim of modifying their sexual orientation or gender identity.<sup>65</sup>

According to the information received by the IACHR, these “clinics” are privately run but remain under the control of either the National Council for Narcotics and Psychotropic Substances and the Ministry of Health. Reports indicate that authorities failed to control the appointment of professionals in these clinics, many of whom were not health professionals but religious extremists, failed to control housing conditions, and failed to supervise the legality of procedures through which “patients” were committed to residential clinics.<sup>66</sup> Survivors indicated that once interned, they were exposed to systematic verbal abuse, yelling, humiliation, and rape threats, housed in overcrowded rooms; held in isolation for long periods of time; deprived of food for several days or forced to eat unsanitary food, forced to “dress and behave like prostitutes to learn feminine behaviour” and have sexual relations with other

male interns by order of their “therapists”, among other brutal measures.<sup>67</sup>

The scale of the crisis caught the attention of international human rights bodies—including the UN Human Rights Committee,<sup>68</sup> CEDAW,<sup>69</sup> and CAT<sup>70</sup>—and led to the adoption of legal measures to outlaw “conversion practices”.<sup>71</sup>

In 2017, an investigation led by Brian Ross for ABC News in several states in the United States of America revealed that multiple camps—where parents send their gay and lesbian teenage children “to make them straight”—were still in operation. Undercover investigators found that a camp in Alabama, operating as an un-licensed Christian ministry, charged a USD 21,000 fee “to deal” with teenagers who consider themselves gay “using a Bible and sometimes a belt”. Survivors revealed that they were left in isolation and beaten up because of their sexual orientation.<sup>72</sup> In Texas, another ranch-like Christian facility was found to function as a camp where parents sent their teenage children for same-sex attractions. One of the pastors in charge of a camp was soon after sentenced to 20 years imprisonment for child abuse.<sup>73</sup>

A Kenyan refugee living in the United States of America explained that the practice “conversion therapy” within the Muslim community utilizes abusive tactics as a way of policing what they consider to be “deviant” behaviour. According to his testimony, leaders operate camps in Somalia and Kenya and subject their captives to severe beatings, shackling, food deprivation and other cruel practices, usually involving a rigorous Islamic curriculum.<sup>74</sup> In the same line, in 2019, Afro Queer podcast reported the case of a Somali-American queer woman named “K” who travelled to Mogadishu to visit her family in Somalia. After a few weeks, she was interned by her father in a “rehabilitation facility” where people are sent to receive “an Islamic education” geared to get rid of

<sup>65</sup> IACHR, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas* (2015), para. 200.

<sup>66</sup> *Id.*, para. 203.

<sup>67</sup> *Id.*, para. 205.

<sup>68</sup> Human Rights Committee, *Concluding observations by the Human Rights Committee: Ecuador*, CCPR/C/ECU/CO/5, 4 November 2009, para. 12; *List of issues prior to the submission of the sixth periodic report of Ecuador*, CCPR/C/ECU/QPR/6, 24 April 2014, para 8; *Concluding observations on the sixth periodic report of Ecuador*, CCPR/C/ECU/CO/6, 11 August 2016, para 11.

<sup>69</sup> Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined eighth and ninth periodic reports of Ecuador*, CEDAW/C/ECU/CO/8-9, 11 March 2015, para. 19; *List of issues and questions prior to the submission of the tenth periodic report of Ecuador*, CEDAW/C/ECU/QPR/10, 20 March 2019, para 7.

<sup>70</sup> Committee against Torture, *List of issues prior to submission of the eighth periodic report of Ecuador*, CAT/C/ECU/QPR/8, 26 December 2019, para 36.

<sup>71</sup> See Section 1.2 in Chapter 7 of this report.

<sup>72</sup> “Escaping gay conversion” ABC News (YouTube Channel), 10 March 2017.

<sup>73</sup> “Gay teen describes traumatizing experiences at gay conversation camps” ABC News (YouTube Channel), 11 March 2017.

<sup>74</sup> Owen Amos “Ex-Muslims: The American who fled ‘gay conversion’ in Africa” BBC News, 26 February 2018; “Escaping gay conversion therapy in Kenya”, *The Ithacan*, 7 February 2018.

behaviour that is deemed “culturally unacceptable”. These facilities provide a “return to the culture” for people who need to be reintegrated to their culture. She was beaten up, chained and left uncommunicated.<sup>75</sup>

In spring 2012, 16-year-old Ivan Kharchenko was reportedly forcibly interned by his father in a Moscow clinic where an attempt to “cure” him of homosexuality using psychotropic drugs was made. As reported in local media, activists and journalists were able to liberate Ivan out of the clinic. When interrogated by the police, the clinic provided the police with false documents, according to which Ivan appeared as a 19-year-old who had consented to treatment for drug addiction.<sup>76</sup>

#### Iran: clinics to “cure” homosexuality

In 2018, 6Rang (the Iranian Lesbian and Transgender Network’s) found that the use of many of the methods described in this chapter—such as electric shock therapy, psychoactive medication, hypnosis, masturbatory reconditioning—has continually increased.<sup>77</sup>

Their field study on the polyclinics, institutions and private clinics that have listed counselling to LGBT people as one of the areas of their expertise, has shown that these centres consider homosexuality to be a “disease” or “sexual deviation”, and have made a business by alleging in their advertisements that they can “cure” this disease. Some of them believe that homosexuality is a form of addiction and treat it with the same methods used to cure drug addicted patients. A total number of 11 medical centres, counselling clinics and private clinics were identified in the report. Five of them are located in the capital (Tehran) and the rest in cities across Iran. Furthermore, an institution called “The Anonymous Sex Addicts Association of Iran” with branches in 18 provinces, has listed “curing homosexuality” among its programs. The institution’s website claims that participation in these sessions can result in transforming same-sex sexual feelings into “brotherly feelings” towards someone of the same-sex.<sup>78</sup>

## 8. Psychotherapy and counselling

Psychotherapy appears to be among the most commonly used methods by mental health practitioners in attempting to change a person’s SOGIE. During the first half of the 20<sup>th</sup> century, most schools within psychology and psychiatry have operated as promoters of such “treatments” based on the notion that sexual and gender diversity were pathological or in some way “abnormal or deviant forms of behaviour”, thereby contributing to the proliferation of many of the brutal and inhumane treatments described above and of less aggressive, albeit equally harmful, attempts through to psychotherapy, counselling and other forms of talking therapy. In many cases, practitioners combined psychoanalysis with other techniques “in recalcitrant patients who supposedly posed too much resistance to treatment”.<sup>79</sup>

Several psychiatrists contributed to the notion that “homosexuality” constituted a pathology in numerous treatises published mainly between the 1930s and 1960s, among them Sandor Rado and Albert Ellis. The work of these authors had profound implications on how sexual and gender diversity was categorised not only in the United States but on global scale.<sup>80</sup>

Austrian psychoanalyst Edmund Bergler was among the many influential voices defending the idea that that homosexuality was “a perversion” that could be “cured” with “intensive psychotherapy”, especially after the publication of his book “Homosexuality: Disease or Way of Life?” in 1957, where he proclaimed, among other things that “every homosexual is an exquisite injustice collector, and consequently a psychic masochist”.<sup>81</sup>

He also explained that:

the sometimes visible flippant hilarity of the “gay”—the homosexual’s term for themselves—is a very thin pseudoeuphoric camouflage. It is a technique for warding off masochistic depression; another such technique is the

<sup>75</sup> “Season Two - Episode 05: From Minneapolis To Mogadishu”, *Afro Queer Podcast*, 21 November 2019.

<sup>76</sup> Charity Foundation for Social and Legal Community Assistance “Rainbow” et al., *Alternative Report: Implementation of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment in the Russian Federation in relation to sexual orientation and gender identity*. Submitted for the 49<sup>th</sup> session of the UN Committee against Torture (2012), 82 (citing “Pochti dve nedeli shkol’nika, priznavshegosya v gomoseksual’noy orientacii, proderzhali v narkologicheskoy klinike” *Novaya Gazeta*, 25 April 2012). See also: “Gay Teen Forcibly Taken to Drug Rehab Clinic Released” *The Moscow Times*, 25 April 2012.

<sup>77</sup> “Reparative Therapies on Gays and Lesbians through Cruel, Inhumane and Humiliating Treatments Has Increased in Iran” *6Rang (ILGA Asia repost)*, 13 July 2018.

<sup>78</sup> “The Anonymous Sex Addicts Association of Iran”. Website accessed 5 February 2020.

<sup>79</sup> Vernon A. Rosario, *Homosexuality and Science: A Guide to the Debates* (Denver and London: ABC CLIO, 2002), 96.

<sup>80</sup> See: Annie Kathryn Wilkinson, *Sin sanidad, no hay santidad: Las prácticas reparativas en Ecuador* (Quito: FLACSO, 2013), 52.

<sup>81</sup> Edmund Bergler, *Homosexuality: Disease or Way of Life?* (New York: Hill and Wang, 1957), 16.

homosexual's exaggerated and free-flowing malice, which is ready for use at any time.<sup>82</sup>

Other inflammatory definitions featured in his academic work include that bisexuality is “a state that has no existence beyond the word itself” and that it is a “fraud, involuntarily maintained by some naive homosexuals”,<sup>83</sup> that “lesbians are characterized by enormous tension and pathological jealousy”,<sup>84</sup> that it is “futile to expect a satisfactory human relationship within the framework of lesbianism”,<sup>85</sup> and that lesbians are “incapable of conscious happiness”.<sup>86</sup> Evincing how prevalent the pathologising paradigm was at that time, these affirmations, among thousands of similar ones which would outrage any serious professional in our days, do not appear to have harmed or tarnished the book's or the author's reputation.<sup>87</sup> On the contrary, with notable exceptions, it was well-received among professionals who further elaborated on his premises.

Bergler even openly advocated for “the dissemination of knowledge that homosexuality is a curable disease”<sup>88</sup> and for the “creation and maintenance of outpatient departments for the treatment of homosexuals, within the framework of existing psychiatric departments in large hospitals, to be staffed with specially trained psychiatrists”.<sup>89</sup> Even if not specifically based on his own recommendations, these were ideas that were largely heard and followed in those times.

Among those who followed Bergler's line of thought were influential American psychoanalysts Irving Bieber and Charles Socarides. Bieber was responsible for aversion experiments administered to gay men in the 1960s and, even though he reported a 27% “cure” rate, a decade later he was unable to demonstrate that any of his cases had

actually been successful.<sup>90</sup> Socarides reported having successfully “treated” numerous gay men using psychotherapy. In average, the “treatment” would extend for more than 40 months, with sessions occurring three to five times each week. Under his view, psychoanalytic treatment of homosexuality involved, among other things, helping the client gain insight “into the origins of his pathology” and resolving anxiety, anger, and guilt that stems from “failed psychosexual development”.<sup>91</sup>

Socarides would become one of the most cited authors among SOGIECE proponents, even after “homosexuality” was depathologised. Even in 1995, Socarides stated that:

I think that most, if not all, homosexuals who say they are “in love” are lying to themselves. Deep down, they harbor aggressive impulses and even incestuous feelings toward their lovers, impulses and feelings that often drive them to keep looking for other partners.<sup>92</sup>

In a peculiar twist of fate, Charles Socarides' son—to whom he dedicated one of the treatises on the treatment of homosexuality—came out as gay and served as the White House liaison to the Labour Department as an adviser to the Clinton Administration on lesbian and gay issues during the 90s.<sup>93</sup>

By the early 1970s, consensus on the effectiveness and ethical implications pathologising “homosexuality” and offering treatments to “cure” it was shifting in the Global North, especially in the United States of America. This turning point was possible thanks to the influential work carried out by sexologists and mental health practitioners,

<sup>82</sup> Edmund Bergler, *Homosexuality: Disease or Way of Life?* (New York: Hill and Wang, 1957), 21.

<sup>83</sup> *Id.*, 89.

<sup>84</sup> *Id.*, 265.

<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*

<sup>87</sup> The author even expressed that: “Homosexuals are essentially disagreeable people, regardless of their pleasant or unpleasant outward manner”. (*Id.*, 21). See also: “Their ‘invisible influence’ is even greater. Recently I devoted an entire book, *Fashion and the Unconscious*, to the fantastic state of affairs that prevails in the fashion industry. Since many of the prominent male fashion designers are homosexuals, women are dressed by their worst enemies” (*Id.*, 239).

<sup>88</sup> Edmund Bergler, *Homosexuality: Disease or Way of Life?* (New York: Hill and Wang, 1957), 291.

<sup>89</sup> *Ibid.*

<sup>90</sup> Jack Drescher, “Queer Diagnoses: Parallels and Contrasts in the History of Homosexuality, Gender Variance, and the Diagnostic and Statistical Manual Article” *Archives of Sexual Behavior* 39 (2010), 433.

<sup>91</sup> Annesa Flentje, Nicholas C. Heck and Bryan N. Cochran, “Sexual Reorientation Therapy Interventions: Perspectives of Ex-Gay Individuals” *Journal of Gay & Lesbian Mental Health* 17 No. 3 (2013), 258.

<sup>92</sup> Charles Socarides, *Homosexuality: A Freedom Too Far* (Washington DC: Adam Margrave Books, 1995), 111.

<sup>93</sup> “Coming Out to My Dad, the Founder of Conversion Therapy (by Richard Socarides)”, *ImFromDriftwood YouTube Channel*, 8 April 2013; David W. Dunlap, “An Analyst, a Father, Battles Homosexuality” 24 December 1995.

including that of Alfred Kinsey<sup>94</sup> and of Evelyn Hooker.<sup>95</sup> Their research lent support to a view that homosexuality, like heterosexuality, is a normal variation of human sexual expressions.<sup>96</sup> Additionally, advocacy efforts by the nascent American gay movement contributed in bringing light to the stigma and damaging effects that pathologisation had in the lived experience of people belonging to sexual and gender minorities.<sup>97</sup> Furthermore, most practitioners—including many who had been previously involved in SOGIECE—adopted a critical view of how the notion of “pathology” and the idea that homosexuality was “undesirable” had actually guided the research to find it’s “underlying causes” and possible “cures”.<sup>98</sup>

Even after consensus against pathologisation started to grow, a marginal group of psychiatrists in the United States refused to change their views.<sup>99</sup> Among them, Charles Socarides referred to the APA’s removal of homosexuality from the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) as “a huge mistake”.<sup>100</sup> In 1992, Socarides and Joseph Nicolosi founded the National Association for Research and Therapy of Homosexuality (NARTH),<sup>101</sup> which became the leading institution promoting “reparative therapy”. This entity, which profusely published pseudo-scientific journals and papers on the topic, became an important source of validation to the efforts of

religious institutions and organizations that encourage the use of these practices.

The basis for “reparative therapy” includes notions of what is to be considered a “normal” sexuality and masculinity,<sup>102</sup> relies on hostile or otherwise stereotyped views about the so-called “gay lifestyle” and relationships,<sup>103</sup> and refers to ways in which “non-gay homosexuals” can live “in harmony with the gendered world that is God’s creation”.<sup>104</sup> Therefore, the term “reparative” would make reference to the use of psychotherapy to attempt to repair the “damage” or the “trauma” that allegedly leads to deviations from normality in sexuality.<sup>105</sup> In line with this, survivors have explained how practitioners instill the idea that any sexual abuse they may have suffered as a child is the cause for their sexual orientation,<sup>106</sup> even when research shows that there is no scientific evidence that abnormal parenting, sexual abuse, or other adverse life events influence sexual orientation.<sup>107</sup>

Even though NARTH claimed not to be a religious organisation, besides the fact that the writings of its leaders often made explicit reference to spiritual values, it tied close alliances with religious ministries advocating for SOGIECE globally. In 2000, the American Psychiatric Association noted that practitioners of “reparative therapy” had openly integrated older psychoanalytic theories that pathologized homosexuality with traditional

<sup>94</sup> Alfred Kinsey et al., *Sexual Behavior in the Human Male* (Bloomington: Indiana University Press, 1948); *Sexual Behavior in the Human Female* (Bloomington: Indiana University Press, 1953).

<sup>95</sup> Laud Humphreys, “An interview with Evelyn Hooker”, *Alternative Lifestyles* 1, No. 2 (1978): 191-206, 193; Katharine S. Milar, “The Myth Buster: Evelyn Hooker’s Groundbreaking Research Exploded The Notion That Homosexuality Was A Mental Illness, Ultimately Removing It From The DSM”, *Monitor on Psychology* 42, vol. 2 (2011): 24, 24. See also: Evelyn Hooker, “The Adjustment of the Male Overt Homosexual”, *Journal of Projective Techniques* 21, vol. 1 (1957): 18-31.

<sup>96</sup> Jack Drescher, “Can Sexual Orientation Be Changed?” *Journal of Gay & Lesbian Mental Health* 19 No. (2015), 85.

<sup>97</sup> *Ibid.*

<sup>98</sup> Gerald Davison, “Homosexuality, The Ethical Challenge” *Journal of Consulting and Clinical Psychology* 44, No. 2 (1976), 159.

<sup>99</sup> Vernon A. Rosario, *Homosexuality and Science: A Guide to the Debates* (Denver and London: ABC CLIO, 2002), 108.

<sup>100</sup> Charles Socarides, *Homosexuality: A Freedom Too Far* (Washington DC: Adam Margrave Books, 1995), 157.

<sup>101</sup> In 2014 NARTH was renamed “Alliance for Therapeutic Choice and Scientific Integrity” and is currently presented as “a multi-disciplinary professional and scientific organization dedicated to preserving the right of individuals to obtain the services of a therapist who honors their values, advocating for integrity and objectivity in social science research, and ensuring that competent licensed, professional assistance is available for persons who experience unwanted homosexual attractions”. Source: Alliance for Therapeutic Choice and Scientific Integrity Website ([www.therapeuticchoice.com](http://www.therapeuticchoice.com)), accessed January 31, 2020.

<sup>102</sup> See, for example: Joseph Nicolosi, *A Parent’s Guide to Preventing Homosexuality, Rev. Edition* (Liberal Mind Publishers, 2017): “The idea is to prevent the boy from detaching from his normal maleness and to encourage him to claim the masculine identity for which he was designed” (page 18); “A gender-nonconforming boy can be sensitive, kind, social, artistic, gentle – and heterosexual. He can be an artist, an actor, a dancer, a cook, a musician – and a heterosexual. These innate artistic skills are “who he is”, part of the wonderful range of human abilities. No one should try to discourage those abilities and traits. With appropriate masculine affirmation and support, however, they can all be developed within the context of normal heterosexual manhood” (page 56).

<sup>103</sup> See, among others: Joseph Nicolosi, *Reparative Therapy of Male Homosexuality: A New Clinical Approach* (Maryland: Rowman and Littlefield Publishers, 1991). See, esp.: Chapter 11: “Homosexual Love Relationships” and Chapter 12 “Gay Sexuality”; Joseph Nicolosi, “The Traumatic Foundation of Male Homosexuality”, *Crisis Magazine: A Voice for the Faithful Catholic Laity*, 19 December 2016.

<sup>104</sup> Joseph Nicolosi, “A Developmental Model for Effective Treatment of Male Homosexuality” *American Journal of Pastoral Counseling* 3, No. 3-4 (2001), 99.

<sup>105</sup> An excerpt of an interview with Joseph Nicolosi by Stephen Fry’s show “Out There” can be found here.

<sup>106</sup> Scott Douglas Jacobsen, “Author Peter Gajdics on Conversion Therapy” Medium, 28 January 2018.

<sup>107</sup> Barbara L. Frankowski, “Sexual Orientation and Adolescents”, *Pediatrics* 113 (2004), 1828.



religious beliefs condemning homosexuality.<sup>108</sup> In fact, individuals who received “reparative therapy” from a mental health professional frequently got support or counselling from an “ex-gay” ministry as well, so the line between psychotherapy and religious counselling often became blurry or even non-existent. Moreover, there is always the possibility for licensed (or non-licensed) mental health professionals to be participating in and working for religious organizations who provide services intended to produce sexual orientation change, while using their professional knowledge and skills.<sup>109</sup>

Amongst NARTH’s main partners was Exodus International, an interdenominational Christian organization that promoted the message of “freedom from homosexuality through the power of Jesus Christ”, which had more than 400 local ministries offering SOGIECE in the United States and Canada and in more than 17 countries around the world.<sup>110</sup>

In 2003, an influential academic paper gave new vigour to SOGIECE proponents. A study carried out by Robert L. Spitzer—ironically, one of the psychiatrists who played a key role in removing “homosexuality” from the DSM in 1973—concluded that there was evidence that “change in sexual orientation following some form of [‘]reparative therapy[‘] does occur in some gay men and lesbians”.<sup>111</sup> Spitzer came to this conclusion after interviewing 143 men and 57 women who retrospectively self-reported on the outcomes of the “reparative therapy” they had undergone in years prior to the study.

This paper was systematically cited by SOGIECE proponents as evidence that attempts to change a person’s sexual orientation were actually effective. As expressed by Arana, what translated into the larger culture was: “The father of the 1973 revolution in the classification and treatment of homosexuality, who could not be seen as just another biased ‘ex-gay’ crusader with an agenda, had validated ex-gay therapy”.<sup>112</sup>

However, the paper was criticised for severe methodological flaws, including sample bias in the subject recruitment (approximately 20% of subjects were professional “ex-gays” who led their own “ex-gay” ministries); lack of follow up; the use of retrospective rather than prospective accounts among many others. Additionally, despite the study’s methodological limitations, it was published without conventional peer review and, instead, only reviewer commentaries accompanied the study’s publication.<sup>113</sup>

In 2012, Spitzer repudiated his 2003 study acknowledging that the major critiques his paper received were “largely correct”.<sup>114</sup> He also indicated that there was a “fatal flaw” in the study, given that there was no way to judge the credibility of subject reports of change. To conclude, he stated:

I believe I owe the gay community an apology for my study making unproven claims of the efficacy of [‘]reparative therapy[‘]. I also apologize to any gay person who wasted time and energy undergoing some form of [‘]reparative therapy[‘] because they believed that I had proven that [‘]reparative therapy[‘] works with some ‘highly motivated’ individuals.<sup>115</sup>

Despite this retraction, the 2003 study continues to be used as “evidence” of the possibility of change.

While “conversion therapies” attempted through psychotherapy may appear as less shocking when compared to the techniques used in the past, they are equally lacking scientifically supported evidence. Additionally, as it will be developed below, SOCE survivors commonly refer to therapists as harbouring biased views about sexual diversity. In many cases, they discounted identification as LGB, blamed problems on sexual orientation, lacked basic knowledge of LGB issues, did not make participants feel good about themselves or recommended an increase in

<sup>108</sup> American Psychiatric Association, *Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies)*, Document Ref. No. 200001 (2000), 2.

<sup>109</sup> Annesa Flentje, Nicholas C. Heck and Bryan N. Cochran, “Sexual Reorientation Therapy Interventions: Perspectives of Ex-Ex-Gay Individuals” *Journal of Gay & Lesbian Mental Health* 17 No. 3 (2013), 261.

<sup>110</sup> For more information on Exodus International, see Section 10 below (“Religious counselling”).

<sup>111</sup> Robert L. Spitzer, “Can Some Gay Men and Lesbians Change Their Sexual Orientation? 200 Participants Reporting a Change from Homosexual to Heterosexual Orientation” *Archives of Sexual Behavior* 32, No. 5 (2003), 403–417.

<sup>112</sup> Gabriel Arana, “My So-Called Ex-Gay Life” *The Prospect*, 11 April 2012.

<sup>113</sup> Jack Drescher, “Can Sexual Orientation Be Changed?” *Journal of Gay & Lesbian Mental Health* 19 No. (2015), 88.

<sup>114</sup> Robert L. Spitzer, “Spitzer Reassesses His 2003 Study of Reparative Therapy of Homosexuality” *Archives of Sexual Behavior* 41, No. 4 (2012).

<sup>115</sup> *Ibid.*

participation in activities that are gender typical, and spiritual or religious practices.<sup>116</sup>

As stated above, in most cases, the boundaries between psychotherapy and religious counselling in the guise of “therapy” can be blurry or even non-existent. For instance, in 2012, reports indicated that a therapeutic clinic in Quebec, the Outaouais Christian Therapy clinic, offered psychotherapy under “a Christian/biblical perspective”. Many of the practitioners working in the clinic were licensed professionals. Services included couple and family therapy and “treatment for homosexuality”. The director of the clinic, André Mousseau, explained that “all those who had sinned needed to enter into communion with Jesus Christ” so “patients”/victims were taught “to overcome sin” in their daily lives.<sup>117</sup>

In 2015, then President Barak Obama stated that his administration would support the efforts to ban “conversion therapies” in reaction to the suicide of Leelah Alcorn, a 17-year-old transgender youth.<sup>118</sup> As Leelah explained in her suicide note, she had been forced by her parents to undergo SOGIECE administered by Christian therapists who told her that she was “selfish and wrong” and that she “should look to God for help”.<sup>119</sup>

In early 2020, Bowen Yang, a Chinese American comedian, podcaster, and writer, explained that after coming out to his family, his father told him he had arranged for eight sessions “with a specialist” who turned out to be a SOCE practitioner. He explained that, even though he was incredulous at first, he then considered the possibility that the therapy might work. At the first session, he was asked whether he wanted to receive a “Christ centred” or a “secular experience” and he opted for the “nonreligious” version of the deal. He described the first few sessions as “talk therapy” which then moved to conversations in which the therapist would try to instil the idea that his attraction to men stemmed from “shame”. He later abandoned the

therapy describing it as “explain the gay away with pseudoscience”.<sup>120</sup>

A 28-year-old survivor from Lebanon explained that his Christian family sent him to a psychologist who convinced his parents that therapy “could make him straight” and declared: “That is what really harmed me the most – living in this in-between. Thinking I could change, but I knew I couldn't”.<sup>121</sup>

In Mexico, Everardo Martínez Macías, founder of the VenSer Clinic, claims to be a psychologist with a master’s degree in labour psychology from Universidad Autónoma de Nuevo León and more than 20 of expertise. He advertises that he has the ability of rendering gay men “heterosexual” in a 5-month therapy.<sup>122</sup> In his writings he claims that he is “an instrument of Jesus Christ” –the only one who can heal people, as he explains– and attributes homosexuality to stereotypical, frivolous or outlandish reasons such as difficulties in interacting with “the opposite sex”, being raised in a “matriarchy”, allowing “boys to have long hair” or “young girls play football” and even “boredom”.<sup>123</sup> Media reports indicate that he even offers his “services” through WhatsApp messages.<sup>124</sup>

In 2011, John Becker, an American “conversion therapy” survivor and member of Truth Wins Out (a non-profit organisation raising awareness against “conversion therapies”), went undercover to expose Marcus Bachmann, a therapist from Minnesota, United States of America, who provided services to “change” his sexual orientation through “therapy” sessions.<sup>125</sup> The “treatment” he started would take up to six months and “the least he could expect” was to get his homosexuality down to “manageable levels”. He was also given referrals to join Church support groups.<sup>126</sup> After being exposed Bachmann even attempted to collect \$150 in no-

<sup>116</sup> Annesa Flentje, Nicholas C. Heck and Bryan N. Cochran, “Sexual Reorientation Therapy Interventions: Perspectives of Ex-Ex-Gay Individuals” *Journal of Gay & Lesbian Mental Health* 17 No. 3 (2013), 266.

<sup>117</sup> “Guérir» son homosexualité pour 12 000 \$” *La Presse*, 18 December 2012; “Une clinique thérapeutique de Gatineau choque” *Radio Canada*, 19 December 2012.

<sup>118</sup> Michael D. Shear, “Obama Calls for End to ‘Conversion’ Therapies for Gay and Transgender Youth”, *The New York Times*, April 8, 2015. See also: V. Jarrett, “Official White House response to enact Leelah’s Law to ban all LGBTQ+ Conversion Therapy”, 2015.

<sup>119</sup> Leelah Alcorn, “Suicide Note” *Tumblr*, 28 December 2014; Fallon Fox, “Leelah Alcorn’s Suicide: Conversion Therapy Is Child Abuse”, *Huffington Post*, 11 January 2015. See also Section 12 below on specific forms of GICE.

<sup>120</sup> “Bowen Yang of ‘S.N.L.’ Is a Smash. And a Mensch”, *The New York Times*, 25 January 2020.

<sup>121</sup> “I had suicidal thoughts’: Gay Lebanese speak out against conversion therapy” *Qantara*, 9 November 2018.

<sup>122</sup> “Psicólogo ofrece terapia para “quitar homosexualidad” y lo critican en redes” *ABC Radio*, 24 May 2017

<sup>123</sup> Everardo Martínez Macías “La homosexualidad y el cristianismo”, *Venser (website)*. Accessed: 31 January 2020.

<sup>124</sup> “Las terapias que ofrecen “curar” la homosexualidad por 900 pesos y vía mensajes de WhatsApp”, *Sinembargo.mx*, 2 April 2019; Javier Risco, “La Terapia del Fraude” *El Financiero*, 3 April 2019.

<sup>125</sup> Mariah Blake “‘God Has Created You for Heterosexuality’: Clinics Owned by Michele Bachmann’s Husband Practice Ex-Gay Therapy” *The Nation*, 8 July 2011; John Becker, “Ex-Gay Undercover”, *In The Life Media (YouTube channel)*, 31 August 2012.

<sup>126</sup> “Gay Man Goes Undercover To Expose Conversion Therapy Clinic”, *I’m From Driftwood (YouTube Channel)*, 27 February 2018.

show fees from two appointments to which Becker did not attend.<sup>127</sup>

It is impossible to have a clear picture of how many mental health practitioners still engage in SOGIECE around the world. The difficulties of tracking their activities and lack of awareness or political will by State officials are only a few of the reasons that complicate things even more. Survivor accounts and undercover investigations have so far been the main source of information showing that these “therapies” are still widely offered. Based on anecdotal evidence, there is strong indication that psychologists and other mental health professionals are still engaging in these practices all around the world.

### *Modern times: moulding and rebranding*

In countries where SOGIECE has been largely repudiated—or even legally restricted—proponents had to reshape and adapt the way in which they present and offer their “treatment”. Many openly deny they provide “conversion therapy”, even accepting that “conversion therapy” is harmful and that “homosexuality” or gender variance is not an illness, distancing themselves from the idea of pathologising sexual and gender diverse people. In fact, this has been described as efforts by SOGIECE proponents that make these pseudo-scientific practices “a constant moving target”.<sup>128</sup>

Common terms that reflect the way in which these “services” are currently being offered in many countries include assistance on how to deal with “unwanted same-sex attraction”; promoting a “healthy sexuality”, addressing “sexual brokenness”; helping clients explore their “gender confusion”.

Many SOGIECE proponents also support their therapies by distorting research on sexual and gender fluidity. For instance, the Alliance for Therapeutic Choice and Scientific Integrity (formerly “NARTH”) now provides “Sexual Attraction Fluidity Exploration in Therapy” ironically abbreviated “SAFE-T”.<sup>129</sup> In 2019, the founder of the New Creation Association, a

Christian group in Hong-Kong, stated that his organisation is “simply providing support to people” because sexual orientation is fluid “and change is possible”. He denied that his group practices “conversion therapy” but reaffirmed that people “still have a choice to be gay or not to be gay”.<sup>130</sup>

In Spain, Elena Lorenzo, a professional coach who was fined in 2019 for engaging in SOGIECE,<sup>131</sup> has recently launched a “course” in which she provides “identity coaching” framing it as “a process of personal growth aimed at people with homosexual feelings”.<sup>132</sup> She explicitly states: “We cannot be confused with aversion or conversion therapies that have the purpose of modifying a person's sexual orientation or gender identity”.<sup>133</sup> “Identity coaching”—as she presents it—is a guided process in which individuals receive help “to reconnect with their identity” and are assisted “in the growth and development of the areas that were “stuck” or “slowed down” at an early age”, terminology that resonates with the postulates of “reparative therapy”.<sup>134</sup> Despite the distance she claims to take from “conversion therapies”, the course—and the website—are called “Road to Heterosexuality” (*Camino a la heterosexualidad*, in Spanish).<sup>135</sup>

In another form of rebranding, many SOGIECE proponents are moving towards adopting a rights-based discourse, framing their “therapies” as “services” that people have the right to receive. As an example of this, when the National Association for Research & Therapy of Homosexuality (NARTH) was re-established as the Alliance for Therapeutic Choice and Scientific Integrity (ATCSI) in 2014, it was announced that the organisation would continue “preserving the right of individuals to obtain the services of a therapist who honours their values, advocating for integrity and objectivity in social science research, and ensuring that competent licensed, professional assistance is available for persons who experience unwanted homosexual (same-sex) attractions”.<sup>136</sup>

Another example of the adoption of a rights-based discourse based on religious arguments can be found in the arguments presented by the ultraconservative organisation CitizenGo when

<sup>127</sup> John M. Becker “So Marcus Bachmann Called Yesterday...” *Truth Wins Out (Website)*, 15 November 2011; Jonathan Weisman, “Marcus Bachmann to Gay Rights Activist: Pay Your Bill” *The Wall Street Journal*, 16 November 2011.

<sup>128</sup> Bella FitzPatrick, “Conversion Therapy & the Problem with Banning it” *Medium*, 7 April 2019.

<sup>129</sup> “Answers to Frequently Asked Questions about the Alliance for Therapeutic Choice and Scientific Integrity and Homosexuality”, *Alliance for Therapeutic Choice and Scientific Integrity (website)*, Question 6.

<sup>130</sup> “In Hong Kong, gay people prescribed prayers and no sex as a ‘cure’” *Reuters*, 31 May 2018.

<sup>131</sup> For more information on the lawsuit brought against Elena Lorenzo, see Section 2.2 in Chapter 7.

<sup>132</sup> “Camino a la Heterosexualidad: Un caso de Elena Lorenzo”, *Camino a la Heterosexualidad (website)*. Accessed 1 February 2020.

<sup>133</sup> *Ibid.*

<sup>134</sup> See Section 2 in Chapter 1 and above.

<sup>135</sup> “Camino a la Heterosexualidad: Un caso de Elena Lorenzo”, *Camino a la Heterosexualidad (website)*. Accessed 1 February 2020.

<sup>136</sup> Katie Rose Quandt, “‘Ex-Gay’ Conversion Therapy Group Rebrands, Stresses ‘Rights of Clients’” *Mother Jones*, 8 August 2014

advocating against legal measures to restrict so-called “conversion therapies”:

To be fair, some of the practices used in “conversion therapy” in the past have been highly questionable. Some doctors have used electro-shock therapy or vomit-inducing chemicals to create a psychological aversion to homosexual impulses. Some have advocated forced “conversion therapy”. We are not advocating any of these techniques or ideas and would agree that they should be restricted.

However, we are advocating for the freedom of LGBT people who are struggling with unwanted desires, feelings, or behaviours to seek and receive the help they want and need. We are advocating for the freedom of doctors, counsellors, pastors, and lay people to help those in need.

We are advocating for the freedom to preach the Bible, which speaks about the reality that LGBT people can experience change: “Neither fornicators, nor idolaters, nor adulterers, nor homosexuals, nor sodomites, nor thieves, nor covetous, nor drunkards, nor revilers, nor extortioners will inherit the kingdom of God. And such were some of you. But you were washed, but you were sanctified, but you were justified in the name of the Lord Jesus and by the Spirit of our God”. (1 Corinthians 6:9-11).<sup>137</sup>

## 9. Abusive or otherwise questionable methods used within psychotherapy or counselling

With rare exceptions, the methods and procedures used by SOGIECE proponents can sometimes be difficult to document and scrutinize as they usually happen behind closed doors. Furthermore, in many cases, SOGIECE practitioners require confidentiality agreements before they start providing their “services”.

Recent court litigation in which victims and survivors of these pseudo-scientific practices have managed to come forward have served as a valuable opportunity to know more about the techniques implemented by these “therapists”. Undercover investigations by media outlets or survivors accounts reported by the media have started to cast more light into some of the methods used. The following is just an overview of a few of them.

### 9.1. Nudity

In the case brought against Jews Offering New Alternatives for Homosexuality/Healing (JONAH),<sup>138</sup> plaintiffs explained that part of the “therapy” involved activities in the nude. This was confirmed by one of the “therapy” providers, who explained that nudity was used to de-stigmatize the male body<sup>139</sup> and confirmed that, in their view, “it was important for a client to get completely nude because that’s the most vulnerable place symbolically and psychologically”.<sup>140</sup> Furthermore, a number of activities required that both participants and staff members be completely naked.<sup>141</sup> One of the specific exercises explained in the litigation was one in which the client would associate a piece of clothing with a self-limiting belief to consciously state his intention to shed such beliefs as he removes the articles of clothing. Once the client is naked, an invitation is made for the client to explore their body tactilely.<sup>142</sup>

In 2019, David Matheson, a former SOGIECE proponent, revealed that “there’s a lot of nudity” in the retreats he helped create and organise and that he had personally designed many of the activities he now repudiates.<sup>143</sup> One of these “retreats” was “Journey into Manhood”.<sup>144</sup>

### 9.2. Touch therapy

According to an expert report filed in favour of JONAH, the use of non-sexual “healthy touch” is meant

to help clients experience a positive attachment to the therapist, in individual and group psychotherapy, as well as for men within a same-sex attraction support

<sup>137</sup> “Helping LGBT People is Not a Crime! Petition to Justice Minister Lametti and Senator Joyal”, *Citizen Go*, 19 August 2019.

<sup>138</sup> For more information on the legal arguments discussed in the case, see Section 4.1.3 in Chapter 7.

<sup>139</sup> *Michael Ferguson, et al. vs. JONAH (Jews Offering New Alternatives for Healing)*, Proceedings, 11 June 2015, p. 1415.

<sup>140</sup> *Id.*, p. 1421.

<sup>141</sup> *Id.*, p. 1478.

<sup>142</sup> *Id.*, p. 1638.

<sup>143</sup> “Gay conversion therapist’ comes out: Exclusive interview” *Channel 4 News*, 31 January 2019.

<sup>144</sup> *Ibid.*

or therapeutic group to bond in non-erotic ways in order to facilitate emotional intimacy and healthy need fulfilment.<sup>145</sup>

One of the staff members providing the “therapy” also declared that the purpose of “healthy touch” is to help someone relax into an earlier state of emotional self and “to address some of that deprivation, things, connections that they didn't have, whether it be actual physical connection or some kind of psychic spiritual connection”.<sup>146</sup>

Much before this case was litigated in New Jersey, in 2006, during an interview with CNN, Richard Cohen, a SOCE provider who was expelled from the American Counseling Association in 2002, explained that he used “touch therapy” as one of the methods to assist people in overcoming “unwanted same-sex attraction” and even illustrated to the audience how such session would actually take place by hugging and softly caressing another man who was lying on his sofa.<sup>147</sup>

Hugging and cuddling while lying on the therapist's lap was also among the methods that “therapists” administered to Peter Gajdics, a survivor of SOCE who explained that this was referred to as “reparenting”. These sessions were supposedly aimed at healing his “inner brokenness”.<sup>148</sup> Another SOGIECE survivor explained that once during the “therapy” he underwent when he was in his early teens, an “ex-gay” man volunteered to rock him in his arms.<sup>149</sup>

In 2018, going undercover into “Journey into Manhood”—a \$650, 48-hour weekend retreat for men who want to “overcome” their unwanted same-sex attractions<sup>150</sup>—journalist Ted Cox

participated in an exercise which involved “healthy touch”. He explained that while sitting on the floor with his head leaning back against the shoulder of one of the staff members, the guide sat behind him with his arms wrapped around his chest. Five men surrounded the two of them, their hands resting gently on his arms, legs, and chest. Other men were cradled “the way a parent would hold a child”.<sup>151</sup> In 2019, Matt Ashcroft shared his story of survival to SOCE, which included attending this retreat as a participant, indicating that during this routine, men sit between each other's legs and hold each other while a nursery baby song was played in the background.<sup>152</sup>

### 9.3. Bioenergetics

In the same interview with CNN where he explained how he performed “touch therapy”, Richard Cohen also showed how bioenergetics were part of the “treatment” he offered. Graphically explaining the “therapeutic” exercise to the camera, he grabbed a tennis racket and repeatedly hit a pillow with increasing force while angrily screaming: “Mum! Mum! Mum! Mum! Why did you do that to me?!” The exercise is supposed to help “clients” release memories stored in the muscles.<sup>153</sup>

In what looked like a similar exercise, in 2014, SOCE survivor Matt Ashcroft explained that while participating in “Journey into Manhood”, he was told to hit a punching bag with a baseball bat that represented his father, while swearing and cursing at him.<sup>154</sup> The exercise was designed to get camp attendees angry at their fathers for being the cause

<sup>145</sup> *Michael Ferguson et. al. vs. JONAH (Jews Offering New Alternatives for Healing f/k/a Jews Offering New Alternatives to Homosexuality)*, Docket No. L-5473-12. Exhibit No. 34: Expert Report of Christopher Doyle, M.A., p. 21.

<sup>146</sup> *Michael Ferguson, et al. vs. JONAH (Jews Offering New Alternatives for Healing f/k/a Jews Offering New Alternatives to Homosexuality)*, Proceedings, 11 June 2015, p. 1503.

<sup>147</sup> Tom Waidzunas, *The Straight Line: How the Fringe Science of Ex- Gay Therapy Reoriented Sexuality* (Minneapolis: University of Minnesota Press, 2015), 129. The interview is available on YouTube. Illustration of “touch therapy” at 0'24" (link here).

<sup>148</sup> “Conversion therapy survivor describes treatment as ‘torture’”, *CBC News (YouTube Channel)*, 13 July 2019.

<sup>149</sup> Annesa Flentje, Nicholas C. Heck and Bryan N. Cochran, “Sexual Reorientation Therapy Interventions: Perspectives of Ex-Ex-Gay Individuals” *Journal of Gay & Lesbian Mental Health* 17 No. 3 (2013), 271.

<sup>150</sup> The website of “Journey into Manhood” has a section entitled “Are We Claiming that People Can Go from Gay to Straight?” in which they explain that many men “may experience a shift in how they experience their attractions from homo-sexual to more homo-emotional — where same-sex platonic affection and attachment meet their needs more deeply and authentically than sexual or romantic connections can. In some cases, a man's distress may really be about his same-sex lust or out-of-control same-sex sexual behaviors, not his same-sex attractions themselves. So when his lust diminishes, or he gets his behavior in line with his personal morals and values, his same-sex attraction distress may all but disappear. Perhaps less frequently, but still significantly, some men do in fact report a degree of heterosexual interests emerging where none existed before”. See: “Does Sexuality Ever Change?” *Brothers Road website*. Accessed 1 February 2020.

<sup>151</sup> Ted Cox, “Undercover at a Christian Gay-to-Straight Conversion Camp”, *The Good Men Project*, 25 October 2018.

<sup>152</sup> “‘Conversion therapy’ survivor shares his story” *CBC Radio*, 2019.

<sup>153</sup> Tom Waidzunas, *The Straight Line: How the Fringe Science of Ex- Gay Therapy Reoriented Sexuality* (Minneapolis: University of Minnesota Press, 2015), 129. The interview is available on YouTube. Illustration of “bioenergetics” at 0'56" (link here).

<sup>154</sup> “‘Conversion therapy’ survivor shares his story” *CBC Radio*, 2019.

of their sexual attractions, he explained.<sup>155</sup> After 18 months following the program online, Matt said he was still gay and the experience left him traumatized.<sup>156</sup>

## 10. Religious counselling

When SOGIECE performed by mental health practitioners declined in the Global North, especially after homosexuality was depathologised, religious groups and institutions became progressively involved in the provision of these so-called “therapies”. In fact, several sources indicate that faith or religion-based organisations are currently the most active and prominent proponents of SOGIECE.

In the early 1970s, a connected network of organizations offering “conversion therapy” emerged in the United States of America and progressively expanded to numerous countries around the world, many of them operating as “ministries”. Among the first of these groups was “Love in Action”. This ministry was founded in 1973 by Frank Worthen, who would later “export” his model to The Philippines as *Bagong Pag-asa* (“New Hope”).<sup>157</sup> Love in Action published and disseminated several books with testimonies of people that were presented as successful in “leaving homosexuality” and, in 1979, it launched the first residential program for SOCE purposes called “Refuge”. As explained by one of its organisers, children were admitted to these residential programs “on the will of their guardians or parents”.<sup>158</sup>

Founded shortly after Love in Action, “Exodus International”, would become the largest and most influential network of “ex-gay” ministries, at its peak spanning across the United States, Canada and 17 other countries around the world.<sup>159</sup> Exodus International offered a hybrid therapeutic-theological approach to gain “freedom from homosexuality through the power of Jesus

Christ”.<sup>160</sup> In fact, the name “Exodus” was a metaphor for homosexuals finding freedom like “the children of Israel leaving the bondage of Egypt and moving towards the Promised Land”.<sup>161</sup> Such “freedom from homosexuality” was “achieved” through intensive Christian counselling complemented by various types of activities such as live-in programs, support groups, workshops and conferences.

A distinct entity, the Exodus Global Alliance is the international network of Christian ministries (of which Exodus International was a member until its shutdown in 2013) that is still in full operation and is globally structured in four regions: Asia Pacific, Brazil, East Asia and Latin America. Each of these regions has a rich network of local ministries, churches and individuals that provide Christian counselling to people “who have been impacted by homosexuality”. There are also ministries, churches, and individuals affiliated with the Exodus Global Alliance in Canada, the Caribbean, and the United States of America.<sup>162</sup> Even though Exodus Global Alliance denies engaging in “conversion therapy”, the organisation’s website includes articles and materials that explicitly cite Charles Socarides<sup>163</sup> to question the depathologisation of homosexuality,<sup>164</sup> and include “reparative therapy” materials as part of the resources they endorse.<sup>165</sup> In 2013, in an attempt to take distance from SOGIECE, the organisation proclaimed:

The primary impact of sin’s devastation is that we are born spiritually dead. The devastation of sin also includes sinfulness in our sexual relationships: every person will be tempted to use sexuality in ways that are in conflict with God’s intention. For some people the temptation will be sexual intimacy with the same gender. Homosexual activity and expression are outside of God’s design. Homosexual behavior, not the feelings or the temptation, is sinful. The most important problem of those impacted with

<sup>155</sup> Jonathan di Carlo, “The fight to ban conversion therapy” *Fulcrum*, 13 October 2019.

<sup>156</sup> Kevin O’Keefe, “How religious organizations use conversion therapy to try to make LGBTQ people straight”, *The Loop*, 31 January 2020.

<sup>157</sup> Tanya Erzen, *Straight to Jesus: Sexual and Christian Conversions in the Ex-Gay Movement* (Los Angeles: University of California Press, 2006), 37.

<sup>158</sup> Eartha Melzer, “Tenn. probes ‘ex-gay’ camp: Teen’s blog leads to outcry, charges of child abuse”, *Washington Blade*, 24 June 2005.

<sup>159</sup> “About Exodus” *Exodus International* (archived website). Accessed 1 February 2020.

<sup>160</sup> S. J. Creek and Jennifer L. Dunn, “‘Be Ye Transformed’: The Sexual Storytelling of Ex-gay Participants” *Sociological Focus* 45, No. 4 (2012), 307.

<sup>161</sup> Tanya Erzen, *Straight to Jesus: Sexual and Christian Conversions in the Ex-Gay Movement* (Los Angeles: University of California Press, 2006), 33.

<sup>162</sup> “Comunicado de Exodus Global Alliance” *Exodus Latin America* (website), 11 June 2013.

<sup>163</sup> For a brief overview of Socarides’ views on sexual orientation, see Section 8 above.

<sup>164</sup> “Homosexuality and the Truth” *Exodus Global Alliance* (website). Accessed 1 February 2020.

<sup>165</sup> “Common Questions about Homosexuality” *Exodus Global Alliance* (website). Accessed 1 February 2020.

homosexuality is not sexual, but spiritual – they are spiritually dead and need life, they need a change of spiritual orientation rather than a change of sexual orientation.<sup>166</sup>

It has been pointed out that styles of “therapy” vary from one “ex-gay” group to the next: oftentimes certain groups touting one style are quite critical of groups featuring a different style.<sup>167</sup> When looking at how these organisations and their members operate, it is hard to frame them under one single line of thought, even within each major religion. Therefore, the task of tracking each of the organisations and ministries and the methods and techniques they implement in their counselling is a huge challenge, if not impossible.<sup>168</sup> In this section, a brief overview of the way in which they appear to operate is provided only as an exploratory exercise.

The following list includes certain commonalities among religious organisations and groups offering these type of “conversion” practices:

- ▶ Claims that no one is “born” lesbian, gay, bisexual or trans, or that God does not “create” people with diverse sexual orientations or gender identities are used to justify the possibility of change.
- ▶ Cisnormativity and heteronormativity tend to be fundamental underlying premises: a non-heterosexual orientation or a non-cisgender identity is the result of negative events or trauma, especially during childhood. Terms like “brokenness” to refer to non-cisheterosexual identities and “healing” to refer to the process of “change” evinces these conceptions.
- ▶ Internal psychological struggles and harm experienced as a consequence of societal prejudice against sexual and gender diversity—including taunting, bullying, humiliation and harassment—are usually attributed to the person’s sexual orientation, gender identity or gender expression rather than to external hostility. The “healing” process is portrayed as allowing people to escape from this suffering.
- ▶ In Christian contexts, literal interpretations of the Bible are usually presented as the main source of evidence that God condemns “homosexuality”. The most commonly cited passages include the destruction of the cities of Sodom and Gomorrah, as an example of how God “reacts” to “homosexuality”, and the Leviticus, where the term “abomination” is used to describe the act of “a man lying with another man”.
- ▶ The “homosexual lifestyle” is frequently portrayed as a “way of life” that leads to unhappiness and characterised by lust, promiscuity, use of pornography, selfishness and even substance abuse. Straying “from the path of God” is portrayed as a consequence of embracing such lifestyle.
- ▶ Living openly as lesbian, gay, bisexual or trans is usually seen as incompatible with God’s divine plan. In Christian settings, Jesus Christ is usually portrayed as embracing and welcoming those who “repent” from such “lifestyle”.
- ▶ Accounts of past failed or abusive same-sex relationships are usually provided as “evidence” of how non-heterosexual relations lead to unhappiness and are not normal, healthy or sustainable in the long term.
- ▶ Sexual desire towards a person of the same gender is sometimes seen as inevitable or unavoidable, but the focus is set on how the person *acts* upon those feelings. Sinfulness is mainly linked to the act rather than on the desire and celibacy is presented as a way of obtaining “redemption”.
- ▶ Possibilities of change with regard to desire are oftentimes relativized. However, change in *identity*—not embracing a “gay or lesbian” identity or “de-transitioning” to a cisgender identity— and change in *behaviour* are presented as the main aim of the counselling. Additionally, even though it is proclaimed that God can make people “change”, possibilities of success are usually made contingent upon the faith and willpower of the person.<sup>169</sup>

<sup>166</sup> “Exodus International” *Exodus Global Alliance (website)*. Accessed 1 February 2020.

<sup>167</sup> S. J. Creek and Jennifer L. Dunn, “Be Ye Transformed’: The Sexual Storytelling of Ex-gay Participants” *Sociological Focus* 45, No. 4 (2012), 311.

<sup>168</sup> For a non-exhaustive list of organisations in the United States of America and background information on each of them, see: Southern Poverty Law Center, *Quacks: Conversion Therapists, the Anti-LGBT Right, and the Demonization of Homosexuality* (2016), 38.

<sup>169</sup> This can be clearly seen in a statement made by Catholic Archbishop Samuel J. Aquila from Denver (USA) during his opening remarks at an archdiocese-sponsored conference featuring Andrew Comiskey, a well-known SOCE proponent: “It is believing in the power and authority of Jesus Christ and that he can heal any wound, he can forgive any sin, he can heal any disorder, if we truly put our faith in him, and our trust and confidence in him. “And what Living Waters does is it really helps us to submit ourselves to

- ▶ Attending church services and intensive prayer are often a central aspect of the process aimed at changing a person's sexual orientation or gender identity. This has led to the colloquial term “pray the gay away” sometimes used to refer to religious “conversion” practices. Praying is also seen as a way to ask for redemption from “brokenness”.
- ▶ In highly religious contexts, it is not uncommon for leaders to associate sexual and gender diversity to “demonic” forces.<sup>170</sup> In many cases, these beliefs prompt the performance of rituals and exorcisms as an ancillary method to achieve “change” (see specific section below).
- ▶ Religious counselling tends not to take place in formal settings. Sessions with a priest or religious leader can take place at churches or other informal spaces outside of a professional framework. Group sessions emulating those of Alcoholics Anonymous have also been reported as common practice.<sup>171</sup> In Latin America, the use of the ASAC method (Sex Addicts Learning to Trust) consist of lessons “centred on Christ” to strengthen men and women “to regain sexual purity” and to “to be healed and liberated”.<sup>172</sup> “Theophostic Prayer” has also been cited as a method by which individuals call on Christ to guide them through painful memories, some prenatal in origin.<sup>173</sup>

One of the many concerning aspects of these efforts is that individuals and organizations that promote religion based SOGIECE often target adults, adolescents, and their families with messages that include extremely negative portrayals of homosexuality.<sup>174</sup> The contribution of religious groups and institutions to the stigmatization of sexual and gender diversity is a relevant element in the debates on “conversion” practices, especially when religious beliefs promote

ideas of “eternal damnation” as God’s punishment for not being cisgender or heterosexual.

**I was scared, broken, afraid. I cried myself to sleep so many nights praying “God, please change me!” I was a missionary, I tried everything to be the best Christian. And I would just wake up and... I was still gay.**

Adam Trimmer, SOCE survivor.<sup>175</sup>

Interestingly, in 2019, Andre Afamasaga, a gay Samoan Christian and former pastor, reacted to an Instagram post by a famous rugby player who reinforced the notion that hell awaited homosexuals and that they should repent, as “only Jesus saves”.<sup>176</sup> Having gone through 15 years of efforts to change his sexual orientation, Afamasaga stressed how such remarks “expose Pacific LGBTIQ+ people—an already vulnerable group—to further risk of suicide and harm”.<sup>177</sup> He shared how “praying the gay away” had consumed him and how he had “absorbed” the Bible, books, sermons and talks, courses, conferences and “conversion therapy” groups. He added that “innumerable prayers were prayed over me – and by me” and that “he dated girls, hoping a magic straight switch would be activated”. More than once, “he fasted for 10 days”.<sup>178</sup>

Also relevant to harsh messages promoted by religious beliefs regarding sexual and gender diversity, SOCE survivor Thomas Swanson, shared his experience of going through counselling at the age of 14. His “therapist” said he was an “abomination” and in the first session he listed all the religious reasons why he was evil.<sup>179</sup> Swanson explained that, as a missionary kid, he had already memorized all the verses the “therapist” was

God and put our faith in God”, Aquila continued. “Faith is absolutely essential, and faith in Jesus Christ. And the healing may not be immediate” (Jason Salzman, “Denver Archbishop Urges Catholics To Form Groups In Their Churches To “Heal” LGBTQ People”, *Colorado Times Recorder*, 23 January 2019).

<sup>170</sup> Morgane Giuliani “Homothérapies : ‘Personne n’a jamais changé la sexualité de quelqu’un, surtout pas par la prière’”, *Marie Claire*, 10 January 2020.

<sup>171</sup> Annesa Flentje, Nicholas C. Heck and Bryan N. Cochran, “Sexual Reorientation Therapy Interventions: Perspectives of Ex-Ex-Gay Individuals” *Journal of Gay & Lesbian Mental Health* 17 No. 3 (2013), 267.

<sup>172</sup> Annie Kathryn Wilkinson, *Sin sanidad, no hay santidad: Las prácticas reparativas en Ecuador* (Quito: FLACSO, 2013), 67.

<sup>173</sup> S. J. Creek and Jennifer L. Dunn, “‘Be Ye Transformed’: The Sexual Storytelling of Ex-gay Participants” *Sociological Focus* 45, No. 4 (2012), 311.

<sup>174</sup> American Psychological Association (APA), *Report of the American Psychological Association Task Force: Appropriate Therapeutic Responses To Sexual Orientation* (2009), 25.

<sup>175</sup> “Why Adam Trimmer is speaking out against conversion therapy” *The Roanoke Times*, 22 February 2019

<sup>176</sup> Sophie Bateman, “Israel Folau claims gay people are destined for hell again, gets blasted” *News Hub*, 4 October 2019.

<sup>177</sup> Andre Afamasaga “Gay, Christian and a former preacher, I’m coming out to help anyone hurt by Folau” *The Sydney Morning Herald*, 27 December 2019.

<sup>178</sup> *Ibid.*

<sup>179</sup> “Student recounts painful conversion therapy, abuse” *The Collegian*, 7 December 2009.



reading to him. For a 14-year-old who had had almost no contact with the world outside of missionary compounds, Swanson said he was actually “terrified” because he believed “every word” and only hoped for God’s deliverance. He now understands that his parents and the “therapist” had sought his complete emotional and mental breakdown to ensure “he would disconnect from his homosexual attractions” and he referred to the time he spent in “therapy” as “mental torture”.<sup>180</sup>

### *Unveiling religious attempts*

As SOGIECE’s risks and harms became increasingly known, some organisations started to communicate their methods in ways that do not directly speak to gender identity or sexual orientation change. Reacting to these attempts to avoid scrutiny (and the fact that religious counselling usually takes place in informal contexts and without much publicity), in recent years, numerous journalistic undercover investigations have contributed to the increased knowledge of religious organisations providing SOGIECE and their methods. The following are only a few of these investigations, which reported on the situation in certain parts of Australia, Canada, France, Ireland, Iran, New Zealand, Peru, Spain, the United States of America, and the United Kingdom.

- ▶ In June 2018, a New Zealand television network unveiled “conversion therapies” happening at religious organisations that offer courses and counselling that suggests people can change their sexuality. The investigation exposed Church organisations, a school teacher, and a trainee counsellor as they talked to an undercover journalist offering or describing such treatments. When they were formally approached, however, all of them denied that what they were offering was in fact “conversion therapy”.<sup>181</sup> A couple of months later, a petition was launched asking the New Zealand House of Representatives to ban the practice.<sup>182</sup>
- ▶ In December 2018 a Peruvian female journalist infiltrated a church posing as a lesbian seeking to “become heterosexual”. A priest in that church

directed the undercover journalist to “La Reina”, a clinic in Lima, where she was offered a hormonal exam and a prescription based on Bach flower remedies to “assess” and “cure” her lesbianism.<sup>183</sup> As part of the same research project, in February 2019, a female journalist infiltrated the office of Luis Guizada, a psychologist and Christian priest who also offered “conversion therapy” services operating under a fraudulent degree from the National University of San Marcos. In his office, the “counsellor” spoke about his theories on the origins and types of lesbianism and made libidinous comments to the undercover journalist.<sup>184</sup> After this report was published, the National University of San Marcos denied its support for Guizada and stated its intention to take legal action. According to the report, neither Guizada nor the “counsellors” of La Reina Clinic were penalised by the College of Psychologists of Lima, nor by the College of Psychologists of Peru.<sup>185</sup>

- ▶ In the United Kingdom, the majority of “conversion therapy” survivors have reportedly endured SOCE provided by churches, especially in Pentecostal churches.<sup>186</sup> In 2009, gay journalist Patrick Strudwick contacted providers of “conversion therapy” services with the intention of exposing them. After several years of investigation, one the providers was legally punished after being found guilty of professional malpractice.<sup>187</sup> Largely as a result of this case, the British Association for Counselling and Psychotherapy, the British Medical Association, the United Kingdom Council for Psychotherapy, the Department of Health, and the Association of Christian Counsellors, eventually all expressed their disavowal of “conversion therapy”.<sup>188</sup>
- ▶ In Ireland, journalist Cormac O’Brien went undercover and attended the Catholic apostolate “Courage” in South County Dublin. Even though the aim of the group is to help people with same-sex attraction live their lives in chastity, participants were given materials authored by SOGIECE proponents (among them Richard Cohen, whose “techniques” are

<sup>180</sup> “Student recounts painful conversion therapy, abuse” *The Collegian*, 7 December 2009.

<sup>181</sup> “New Zealand TV shows expose on gay conversion therapy”, *Out in Perth*, 17 June 2018.

<sup>182</sup> “Petition of Max Tweedie for Young Labour and the Young Greens: Ban Gay Conversion Therapy”, *New Zealand Parliament (website)*, accessed 27 February 2019.

<sup>183</sup> Melissa Goytizolo and Fabiola Torres, “Las terapias de la tortura”, *Transnacionales de la fe*, 12 August 2019.

<sup>184</sup> Melissa Goytizolo and Fabiola Torres, “Las terapias de la tortura”, *La República*, 12 August 2019.

<sup>185</sup> *Ibid.*

<sup>186</sup> Chitra Ramaswamy, “‘I still have flashbacks’: the ‘global epidemic’ of LGBT conversion therapy”, *The Guardian*, 8 August 2018.

<sup>187</sup> Patrick Strudwick, “This Is What Happens When You Undergo Gay Conversion Therapy”, *BuzzFeed News*, 9 April 2015.

<sup>188</sup> *Ibid.*

described above<sup>189</sup>) and materials which included expressions like: “SSAD (Same Sex Attraction Disorder): ‘It’s not gay, it’s not bad, it’s SSAD’” as well as false and biased information about sexual and gender diversity. Among the topics touched upon in the talks he attended were avoiding saunas and group sex and the fact that homosexual people “will never find happiness, no matter how much they tried”.<sup>190</sup>

- ▶ In February 2018, journalist Ted Cox took on the identity of a closeted Mormon to obtain insight into “conversion therapy” rituals practised at “Journey into Manhood”, a 48-hour weekend retreat aimed at gay men wishing “to become heterosexual”, which took place two hours outside of Phoenix, Arizona, United States of America. In his article “Undercover at a Christian Gay-to-Straight Conversion Camp”, Cox vividly details the numerous rituals practised in this retreat and stresses the programme’s ineffectiveness and bizarreness, evident to him as a heterosexual man who abandoned the Mormon faith several years beforehand.<sup>191</sup>
- ▶ In November 2018, an undercover reporter of British television network ITV filmed an encounter with a pastor at Winners Chapel, a Pentecostal church in Dartford, southeast of London, who had claimed to be able “to stop him from being gay”.<sup>192</sup> The pastor told the reporter, who was posing as a gay man, that society’s acceptance of gay people was similar to Nazi propaganda, that Satan was controlling parts of his body and mind, and that “God could change him through prayer”. Hidden camera footage shows the pastor performing prayers while screaming at the journalist, in a session that reportedly lasted for 20 minutes.<sup>193</sup>
- ▶ In Portugal, in January 2019, psychologists, psychiatrists, and Catholic Church priests who claim to be able to “cure” homosexuals were exposed in a 33-minute-long documentary by TVI channel, with the help of an undercover gay man who filmed the “conversion therapy” sessions with a hidden camera. The sessions were individual and in groups, held at private offices and church premises.<sup>194</sup>
- ▶ In September 2019, Robert Williams, a former “conversion therapy” victim from Melbourne, worked with TV channel 60 Minutes to investigate these practices in Australian churches and religious groups. During the investigation, Williams went undercover to attend group therapy sessions and one-on-one sessions with counsellors and church ministers for three months. While the sessions emphasised celibacy over homosexuality, Williams found them just as harmful, as the groups involved promoted the idea that a person “cannot be Christian and gay”.<sup>195</sup>
- ▶ In April 2019, an undercover investigation found that the bishopric of Alcalá de Henares, a city within the Community of Madrid, Spain, was offering “conversion” courses and counselling to people with “unwanted same-sex attraction”.<sup>196</sup> The attendance of several minors was also reported, some as young as 13.<sup>197</sup> The vice-president and spokesperson of the Government of the Community of Madrid stated that they would look into the matter and, if the allegations were eventually proven, sanctions would be imposed.<sup>198</sup> The bishopric claimed that it was “fake news” and added that it would not renounce to offer “company” to people “who freely request it” and that such pastoral and spiritual accompaniment was always done “in the light of the Word of God and the Magisterium of the Catholic Church”.<sup>199</sup>
- ▶ In November 2019, two journalists published “Dieu est amour” (“God is love”), a book detailing their findings after infiltrating two groups offering “conversion therapy” in France (*Torrents de Vie* and *Courage*) and remaining undercover for two years. The journalists found that both of these groups treat homosexuality as a pathological behaviour deriving from

<sup>189</sup> See sections 9.2 and 9.3 in this chapter.

<sup>190</sup> Cormac O’Brien, “Gay Conversion Therapy: Is It Brand New To Ireland?”, *GCN*, 15 December, 2017

<sup>191</sup> Ted Cox, “Undercover at a Christian Gay-to-Straight Conversion Camp”, *The Good Men Project*, 25 October 2018.

<sup>192</sup> David Barden, “Undercover Reporter Exposes Gay ‘Conversion Therapy’ In British Church”, *HuffPost*, 12 November 2018.

<sup>193</sup> *Ibid.*

<sup>194</sup> Ana Leal, “‘Ana Leal’: grupo secreto quer “curar” homossexuais”, *TVI 24*, 10 January 2019.

<sup>195</sup> Deirbhile Brennan, “Conversion therapy victim reveals his own experience in undercover investigation”, *Gay Community News*, 17 September 2019.

<sup>196</sup> “El obispado de Alcalá celebra cursos ilegales y clandestinos para ‘curar’ la homosexualidad”, *eldiario.es*, 1 April 2019.

<sup>197</sup> “El obispado de Alcalá también hace terapias homófobas con menores: ‘Si hubiera seguido allí, me habría suicidado’”, *eldiario.es*, 2 April 2019.

<sup>198</sup> “La Comunidad de Madrid investigará los cursos para “curar” la homosexualidad que el Obispado de Alcalá niega impartir”, *RTVE*, 2 April 2019.

<sup>199</sup> “Comunicado: ‘Otras Noticias Falsas’”, *Obispado de Alcalá De Henares (website)*, 2 April 2019.

personal or family trauma. The authors also pointed out that in order to avoid problems with human rights associations, the groups speak of “deviance”, “suffering”, and “restoration” instead of “healing”. Finally, the researchers emphasized the tremendous potential for harm that these groups have for vulnerable LGBTI people in France, having personally undergone the diverse types of rituals and psychological manipulation aimed at sexual orientation change practiced there.<sup>200</sup>

- ▶ In Iran, volunteers working with 6Rang (the Iranian Lesbian and Transgender Network’s) went undercover to several clinics disguised as clients and documented how they were treated after disclosing feelings of same-sex attraction. One of the groups of medical centres took advantage of the client’s dissatisfaction at their own orientation and identity and making use of the client’s religious tendencies and the sense of guilt, health-care professionals intimidate them by warning of homosexuality’s dangerous physical and mental consequences, social stigma and familial rejection. The centres aim to direct clients to “choose heterosexuality” as the only sensible option. In this method known as “spiritual therapy,” the focus is on practicing prayer, piety and overcoming evil thoughts.<sup>201</sup>

## 11. Exorcism and spiritual/miracle cures

Conversion therapies can also be based on esoteric, spiritual or religious beliefs that attribute the causes of “homosexuality” to ghosts or demons who malignly possess people.<sup>202</sup> Different techniques such as exorcisms have been reportedly used to “ward them off” or “expel them”.<sup>203</sup>

As shown in several videos from around the globe,<sup>204</sup> these rituals are focused on making LGBTI people believe they are being controlled by evil spirits and in need of help to cast them out. They are usually performed by “experts” in “spiritual warfare”,<sup>205</sup> on occasions in front of big audiences, and they can include people praying, speaking “in tongues”, shouting, laying hands and even grabbing or shaking the body of those involved. Screaming in agony, collapsing, convulsing and vomiting are some of the most common reactions from the “possessed”.

A young gay man in Hamburg, Germany claimed he underwent “therapy” to expel the demon causing his homosexuality, as indicated by his doctor and also Evangelical pastor.<sup>206</sup>

An LGBTI activist has allegedly voluntarily gone through a “gay exorcism” at Saharna Monastery in Moldova to prove the deceitful and harmful nature of such ritual.<sup>207</sup>

A charity dedicated to helping LGBTI young people experiencing homelessness or living in a hostile environment in the United Kingdom has reported having dealt with cases concerning Muslims who had fled from exorcisms planned to get rid of their “gay demons”.<sup>208</sup>

In Nigeria, exorcism to “cure” homosexuality appears to be a common practice. In late 2019, a survivor explained that the ritual he was put through to rid him “of his demons” involved stripping naked and being flogged repeatedly until he passed out overwhelmed by pain and exhaustion.<sup>209</sup> Temitope Balogun Joshua, a pastor and televangelist, has been portrayed in the media as “liberating” people from “homosexual spirits”.<sup>210</sup> Many videos available at his channel show people

<sup>200</sup> Morgane Giuliani, “Homothérapies : ‘Personne n’a jamais changé la sexualité de quelqu’un, surtout pas par la prière’”, *Marie Claire*, 10 January 2020.

<sup>201</sup> “Reparative Therapies on Gays and Lesbians through Cruel, Inhumane and Humiliating Treatments Has Increased in Iran” *6Rang (website)*, 13 July 2018.

<sup>202</sup> Graham Gremore, “85% of gay people are possessed by ghosts according to ‘spiritual research’”, *LGBTQ Nation*, 7 December 2016; “Symptoms of Ghost Affecting or Possessing a Person”, *Spiritual Science Research Foundation (website)*, accessed 1 February 2020;

<sup>203</sup> “Gay Parades: Spiritual Perspective”, *Spiritual Science Research Foundation (website)*, accessed 12 February 2020; “They Tried to Cure Me of Being Gay”, *Glamour*, 1 April 2007.

<sup>204</sup> Andrew Ramos, “Apparent Gay Exorcism in Conn. Church Causes Outrage”, *Los Angeles Times*, 24 June 2009; “Liberación de homosexual por el poder de Dios”, *Jesús Nuestro Rey (YouTube Channel)*, 9 July 2014; see footnote in paragraph on Nigeria.

<sup>205</sup> Annesa Flentje, Nicholas Heck and Bryan Cochran, “Sexual Reorientation Therapy Interventions: Perspectives of Ex-Ex-Gay Individuals”, *Journal of Gay & Lesbian Mental Health* 17 No. 3 (2013), 267.

<sup>206</sup> Salvador Martínez, “El exorcismo a Bastian para liberarle del ‘demonio gay’: todos sus ahorros en falsas terapias”, *El Español*, 13 October 2018.

<sup>207</sup> Marcio Rolim, Exorcismo gay: veja depoimento de jovem que presenciou terror dentro de igreja (vídeo), *Hornet*, 25 April 2018.

<sup>208</sup> “Homeless charity warns of increase in gay Muslims fleeing family violence”, *Pink News*, 11 January 2010.

<sup>209</sup> “Gay in Nigeria: ‘Everybody sees me as an abomination’” *BBC News*, 30 December 2019.

<sup>210</sup> Tom Wyke, “Man who was ‘possessed by a homosexual demon’ after swimming with men in Kenya is exorcised by a priest to ‘cure’ him after it ‘drove him to download gay porn’”, *Mail Online*, 1 July 2015; “Unbelievable!! Prophet TB Joshua Allegedly Transforms ‘Woman’ To Man (See Photos)”, *Naija News*, 23 August 2017; Sibulo Mokoena, “Shocking: T.B. Joshua ‘heals’ man of homosexuality”, *Malawi 24*, 14 October 2019;

who present themselves as gay or lesbian fainting, screaming or vomiting while being held or hit or kicked during “deliverance sessions” aimed at freeing them from same-sex attraction.<sup>211</sup> Joshua has recently led a “crusade” in Paraguay, where he also engaged in these practices.<sup>212</sup>

A testimony of “deliverance sessions” being carried out by ministers of the Pentecostal Church in Montreal, Canada, to exorcise the “demon of homosexuality” can be found in a 2018 report by Alliance Arc-en-ciel de Québec.<sup>213</sup> This type of exorcism is therein described as also requiring previous fasting.<sup>214</sup>

In Italy, Catholic priests have purportedly been called by parents to exorcise LGBTI children.<sup>215</sup> A number of Evangelical churches in Brazil,<sup>216</sup> Bolivia,<sup>217</sup> France,<sup>218</sup> Perú,<sup>219</sup> and the United Kingdom<sup>220</sup> have also been reported in recent years as carrying out similar practices. In 2018, a Mexican pastor announced he had “removed homosexuality” from an “ex-trans woman”, calling it a “miracle”.<sup>221</sup>

Almost a decade ago, a video uploaded by Manifested Glory Ministers depicting an American 16-year-old boy being subjected to an apparent exorcism to cast out a “homosexual demon” caused public outrage.<sup>222</sup> In 2013, as Illinois Governor was signing the marriage equality bill into law, a Bishop of the Diocese of Springfield performed an exorcism to cast out the alleged satanic forces behind same-sex marriage.<sup>223</sup> As informed by the media, the rite took place in a mostly full cathedral

and consisted of prayers to deliver the State from the “evil” that had inspired the local law.<sup>224</sup>

In Indonesia, the *ruqyah* is a common form of exorcism that is used to cure a wide variety of “problems”, including sexual and gender diversity, by ridding the afflicted person of demons known as “jinn”.<sup>225</sup> In his personal account a survivor explained in 2019 that for him “the hardest part was not during the *ruqyah*, but after it, when I had to keep pushing myself to be straight. It was frustrating and made me depressed.”<sup>226</sup>

The “djinn expulsion” appears to be prevalent in Chechnya, Russia. It is a form of exorcism found commonly in society and in some mosques. The procedure variously includes physical restraint, and high-volume reading of the Koran through screaming in the ears of the person or headphones. The exorcist speaks to the bad spirit or “djinn”, asking about its location in the body, the way it entered into the person, and its desires. Then the exorcist persuades the “djinn” to escape the body through threats. Making the “djinn” exit the body will often require physical pressure of the body part where the “djinn” allegedly resides. In some mosques, it is the mullah who decides whether a “djinn” exists, but if none is detected the outcome may be worse because this may be interpreted as the person having consciously chosen their non-traditional sexual behaviour, therefore seeking and deserving death.<sup>227</sup>

<sup>211</sup> “Homosexual demon speaks out!!!”, *Emmanuel TV (YouTube Channel)*, 2 May 2015; “Yo usaba poderes malignos para seducir a los hombres”, *Emmanuel TV (YouTube Channel)*, 15 December 2016; “¡Esta confesión de un homosexual te impactará!”, *Emmanuel TV (YouTube Channel)*, 7 July 2017; “Satanás me volvió homosexual ¡ Jesús me hizo heterosexual!”, *Emmanuel TV (YouTube Channel)*, 18 February 2018; “Shocking: Woman Living Inside Man!!!”, *Emmanuel TV (YouTube Channel)*, 15 March 2018; “TB Joshua Addresses ‘Lesbian Partners’ In Church!!!”, *Emmanuel TV (YouTube Channel)*, 6 April 2018.

<sup>212</sup> “¡Cómo el demonio homosexual entró en mí a través del abuso infantil!”, *Emmanuel TV (YouTube Channel)*, 26 October 2019.

<sup>213</sup> Alliance Arc-en-ciel de Québec: Alex Saulnier, *Qui veut guérir l’homosexualité ? Les pratiques de réorientation sexuelle au Québec* (2018), 15.

<sup>214</sup> *Id.*, 16.

<sup>215</sup> Ambra Radaelli, “Vita da esorcista”, *D La Repubblica*, March 2004.

<sup>216</sup> Carola Solé, “Igreja acolhe gays que passaram por ‘curas’ frustradas e exorcismos”, *Carta Capital*, 4 October 2017; “Exorcismo, manipulação e ameaça de morte: a cura gay numa igreja evangélica”, *Blog da Morango*, 22 January 2019.

<sup>217</sup> “Pastores evangélicos quieren exorcizar a comunidad gay”, *Al Rojo Vivo (YouTube Channel)*, 2 July 2018.

<sup>218</sup> “‘Gritos horribles’ em exorcismo, relata jovem submetido à ‘cura gay’”, *Pragmatismo Político*, 29 November 2019.

<sup>219</sup> “Liberación de homosexual por el poder de Dios”, *Jesus Nuestro Rey (YouTube Channel)*, 9 July 2014.

<sup>220</sup> Jessica Geen, “British churches performing ‘exorcisms’ on gays”, *Pink News*, 23 July 2009.

<sup>221</sup> “Pastor cristiano asegura que cura la homosexualidad”, *Al Rojo Vivo (YouTube Channel)*, 3 August 2017.

<sup>222</sup> “YouTube video shows church ‘exorcism’ of gay teenager”, *The Guardian*, 25 June 2009.

<sup>223</sup> Dioceses of Springfield in Illinois, “Bishop Thomas John Paprocki to Offer ‘Prayers of Supplication and Exorcism in Reparation for the Sin of Same-sex Marriage’”, 14 November 2013; Zack Ford, “Illinois Bishop Will Offer Exorcism For Marriage Equality”, *Think Progress*, 15 November 2013.

<sup>224</sup> Brian Tashman, “Bishop Paprocki Leads Anti-Gay Exorcism”, *Right Wing Watch*, 21 November 2013.

<sup>225</sup> Emily Johnson, “Islamic exorcisms used as a ‘cure’ for homosexuality in Indonesia: ‘If I am Muslim, I can’t be gay’”, *USA Today*, 8 November 2019. Gavin Butler, “Exorcisms are Being Used as Gay Conversion Therapy in Indonesia”, *Vice*, 06 December 2018.

<sup>226</sup> Emily Johnson, “Islamic exorcisms used as a ‘cure’ for homosexuality in Indonesia: ‘If I am Muslim, I can’t be gay’”, *USA Today*, 8 November 2019. Gavin Butler, “Exorcisms are Being Used as Gay Conversion Therapy in Indonesia”, *Vice*, 06 December 2018.

<sup>227</sup> Ekaterina Petrova, “Chechnya: Banishing Devils - Chechen Authorities against Laws of Life?” in International Lesbian, Gay, Bisexual, Trans and Intersex Association: Lucas Ramón Mendos, *State-Sponsored Homophobia 2019* (Geneva; ILGA, March 2019), 157.

In Malaysia, an Islamic doctor published a five-step “treatment” to rid a “victim” from the demons that are responsible for same-sex attraction.<sup>228</sup> The program includes counseling to “spark consciousness” in the “victim”, prayers for repentance, spraying “the victim”’s eyes with chewed black pepper (after reciting certain verses from the Quran over black pepper seeds, the “therapist” will chew on them before spraying them on the victim’s eyes); islamic reflexology, showering “the victim” and providing them with water infused with salt and lime juice.<sup>229</sup>

Miracle cures have also been reported as a practice in Nigeria. A lesbian survivor reported that the process she was put through involved having oil poured into her vagina. She further explained:

I don’t know the content of what was in the oil because it was kind of peppery, so it made me quite uncomfortable. For me, it was intrusive because, what has my vagina got to do with the deliverance? But at that time, I didn’t really know much so I was ready to just do anything to take the whole feeling of same-sex attraction. I was just ready to do anything to make it go away.<sup>230</sup>

In Kuwait, Mariam Al-Sohel, a doctor who was presented as a “scientist” on a TV talk show in 2019, explained how she had discovered that homosexuality is caused by a sperm-eating anal worm. She promoted a “cure” with anal suppositories.<sup>231</sup>

## 12. Specific forms of Gender Identity Change Efforts (GIECE)

Trans and queer activists and scholars have denounced a specific form of gender identity or

gender expression change effort (GIECE) consisting in “sustained efforts to discourage behaviours associated with a gender other than the one assigned at birth and or promote gender identities that are aligned with the person’s sex assigned at birth”.<sup>232</sup> This encompasses any sustained effort to force a child to adhere to stereotypical gender roles as well as preventing trans youth from transitioning, thereby forcing them to identify with or live socially in the sex assigned at birth (i.e. “remain” cisgender).

Many professional organisations oppose these practices. The American Academy of Child & Adolescent Psychiatry in 2018, has indicated that efforts to change a person’s core gender identity have also been described and more recently subsumed under the “conversion therapy” rubric.<sup>233</sup> In this vein, clinical efforts with gender variant children aimed at getting them to reject their felt gender identity and to identify with their sex assigned at birth have been considered unscientific, unethical, and misguided.<sup>234</sup>

A recently published survey carried out in the United States of America among 27,715 transgender adults found that almost 20% of those who had ever spoken to a professional about their gender identity reported exposure to GIECE in their lifetime. The findings of this study suggest that trans people are exposed to GIECE even at higher rates than the percentage of cisgender LGBTQ individuals who are exposed to SOCE.<sup>235</sup>

This is consistent with data presented in a 2017 survey conducted by the Beijing LGBT Centre, the Peking University Department of Sociology, and UNDP, suggesting that transgender people were nearly twice as likely as other sexual and gender minorities to be forced to undergo “conversion therapy”.<sup>236</sup>

<sup>228</sup> “Kaedah Merawat Lesbian Dan Gay – Tg Dr Hj Jahid B. Sidek” *Jahid B. Sidek (personal website)*, 28 February 2014.

<sup>229</sup> Jia Vern Tham, “Here’s How Malaysia “Cures” LGBTs With Conversion Therapy” *Says*, 20 Dec 2018.

<sup>230</sup> “Gay in Nigeria: ‘Everybody sees me as an abomination’” *BBC News*, 30 December 2019.

<sup>231</sup> “Koweït : une chercheuse dit avoir créé des suppositoires pour “guérir l’homosexualité”” *LCI*, 26 April 2019.

<sup>232</sup> Florence Ashley *Torture Isn’t Therapy: Banning Conversion Practices Targeting Transgender People (2020) (under review)*. Ashley suggests that “definitions foregrounding change fail to accurately capture and communicate the practices’ harm. Conversion practices often target gender creative children not only because they may grow up to be transgender, but also because their gender non-conformity is understood to indicate or be constitutive of being psychologically disordered. \*\*\* It may be more helpful to understand conversion practices not as an attempt to convert gender identity or sexual orientation, but rather to convert them into gender normative subjects. \*\*\* Framing the issue as change to gender identity fails to encapsulate the harm done to youth whose gender identities are difficult to identify, and risks obscuring the harm of trans conversion practices onto those gender creative youth who grow up to be cisgender”.

<sup>233</sup> American Academy of Child & Adolescent Psychiatry, *Policy Statement on Conversion Therapy (2018)*.

<sup>234</sup> Jack Drescher, “Queer Diagnoses: Parallels and Contrasts in the History of Homosexuality, Gender Variance, and the Diagnostic and Statistical Manual Article” *Archives of Sexual Behavior* 39 (2010), 440.

<sup>235</sup> Jack L. Turban et al, “Psychological Attempts to Change a Person’s Gender Identity From Transgender to Cisgender: Estimated Prevalence Across US States 2015” *American Journal of Public Health (2019)*, e1.

<sup>236</sup> Beijing LGBT Center, the Peking University Department of Sociology, and UNDP, “Chinese Transgender Population General Survey Report (2017), 12.

This could be potentially explained by the fact that trans people who want to be medically and surgically affirmed in their identities must interact with clinical professionals.<sup>237</sup> Other hypothesis include the fact that trans people show a greater prevalence and intensity of behavioural gender non-conformity compared to cisgender LGBTQ people, that trans “conversion” practices are more accepted among licensed professionals and that gender non-normative behaviour is socially less accepted than homosexuality.

Furthermore, recalled early exposure to GIECE was associated with adverse mental health outcomes, including lifetime suicide attempts. It was also suggested that rejection of gender identity may have more profound consequences at earlier stages of development.<sup>238</sup>

Transfeminine jurist and bioethicist Florence Ashley has explained how victims of professionals who take this approach have recently come forward to denounce the long-lasting harm they have suffered.<sup>239</sup> According to Ashley, the shame, self-esteem issues, anxiety, depression, and suicidality that former patients link to attempts to discourage being transgender are connected to the pathologizing, moralistic animus of “conversion therapy” which sees gender non-normative behaviour as fundamentally problematic and pathological.<sup>240</sup>

Several victims of GIECE explain that they were subjected to psychological violence by mental health practitioners. For instance, Erika Muse, a trans woman advocating against “conversion therapies” in Canada, explained that when she wanted to transition at the age of 16 she was “treated” for years by doctors and psychiatrists who questioned her convictions.<sup>241</sup> She was relentlessly criticised about her gender presentation and told she “should be a better man” [sic] to fix herself.<sup>242</sup>

Being denied gender-affirming care and the possibility of exploring ways of transitioning were among the reasons that led to the suicide of Leelah Alcorn in 2014, an American trans youth who was forced by her parents to see Christian therapists who shamed her for her gender identity and told her she was being “selfish” in her attitude.<sup>243</sup> In a suicide note posted on her Tumblr account, Leelah explained that her mother had also reacted extremely negatively, telling her she was going through “a phase”, that she “would never truly be a girl”, that “God doesn’t make mistakes”, and that she “was wrong”.<sup>244</sup>

A GIECE survivor, sociologist Karl Bryant, has also shared the negative impact that these practices had on him despite the fact that he grew up to be cisgender and gay:

“The study and the therapy that I received made me feel that I was wrong, that something about me at my core was bad, and instilled in me a sense of shame that stayed with me for a long time afterward. [...] I was told that the way I felt about that aspect of myself was wrong, was sick, needed to be changed. [...] It was a little different than a kid on the playground threatening to beat you up—you know they’re the enemy. This was my parents, people I trusted”.<sup>245</sup>

Fear of being subjected to this kind of treatment acts a deterrent for many trans people to seek mental health care. To cite an example, in 2019, Human Rights Watch reported that many transgender women in Lebanon face familial or societal pressure to seek mental health services as an avenue for “conversion therapy”. Consequently, many trans women refrain from accessing mental

<sup>237</sup> Jack L. Turban et al., “Association Between Recalled Exposure to Gender Identity Conversion Efforts and Psychological Distress and Suicide Attempts Among Transgender Adults” *JAMA Psychiatry* 77, No. 1 (2020), e6. See also: Travis Salway et al., “Prevalence of Exposure to Sexual Orientation Change Efforts and Associated Sociodemographic Characteristics and Psychosocial Health Outcomes among Canadian Sexual Minority Men” *Canadian Journal of Psychiatry* (2020), 5.

<sup>238</sup> Jack L. Turban et al., “Association Between Recalled Exposure to Gender Identity Conversion Efforts and Psychological Distress and Suicide Attempts Among Transgender Adults” *JAMA Psychiatry* 77, No. 1 (2020), e7.

<sup>239</sup> Florence Ashley, “Homophobia, conversion therapy, and care models for trans youth: defending the gender-affirmative approach”, *Journal of LGBT Youth* (2019), 14.

<sup>240</sup> *Ibid.*

<sup>241</sup> “‘I never realized that I could be happy’: Committee hears harrowing accounts of conversion therapy”, *National Post*, 3 June 2015.

<sup>242</sup> “Conversion therapy” *CBC (website)*. Accessed 1 February 2020. Interview with Erica Muse (the comment can be found at 2’44”).

<sup>243</sup> Leelah Alcorn, “Suicide Note” *Tumblr*, 28 December 2014; Fallon Fox, “Leelah Alcorn’s Suicide: Conversion Therapy Is Child Abuse”, *Huffington Post*, 11 January 2015.

<sup>244</sup> “Transgender Teen’s Death Sparks Outcry From Advocates” *Time*, 31 December 2014.

<sup>245</sup> Florence Ashley, “Homophobia, conversion therapy, and care models for trans youth: defending the gender-affirmative approach”, *Journal of LGBT Youth* (2019), 14.

health services for fear of being subjected to these practices when they seek safe spaces.<sup>246</sup>

At the time of writing this report, bills criminalising gender-affirming care are currently being considered in several states of the United States of America. If enacted, these bills would have the effect of institutionalising GIECE and depriving trans adolescents of access to medical transition. The dissemination of false claims about young children being coerced into irreversible surgeries or hormone treatment and the distortion of research on trans health issues are being politically mobilised by conservative groups in North America, which has led to the introduction of these bills that would criminalize medically necessary care for trans children and adolescents in several states. The Catholic Medical Association, the Christian Medical and Dental Association, and the American College of Pediatricians are among the opponents of gender-affirmative care and have come out in support of these regressive proposals. In expressing their support, the South Dakota Catholic Conference stated that the bill introduced in South Dakota would ensure children “are given the chance to develop and grow in understanding the gift of their created nature without pressures towards harmful medicalization.”<sup>247</sup> The bill in South Dakota<sup>248</sup> has been blocked by a senate committee,<sup>249</sup> but further bills are currently being discussed in several states, including, Florida,<sup>250</sup> Colorado,<sup>251</sup> and South Carolina.<sup>252</sup>

### When “Conversion Therapies” meet Legal Gender Recognition

“Gender dysphoria” was considered a mental illness by the World Health Organisation—and hence in almost all member states of the UN—until 2019.<sup>253</sup> While technically this does not imply that trans and gender diverse people were forced to undergo GICE, in practice, the psychological treatment

imposed by laws in several states as a requirement for legal gender recognition often explores this as an option.<sup>254</sup> This includes verifying whether petitioners do not show other mental health pathologies before their gender identity can be legally validated.

Furthermore, in numerous countries legal gender recognition legislation requires a psychological evaluation which oftentimes includes an “assessment of the permanence” of the identity. Such evaluation implies that the gender identity of an applicant for legal gender recognition can and should not be assumed to be permanent. In other words, the assessment revolves around the likelihood of a trans person to turn back to a “normal” identity.

For instance, in Ukraine the legal instrument regulating legal gender recognition in force until 2016 stated that “intensive psychotherapeutic work aimed at the patient's refusal of change of sex should be conducted with them”. Oftentimes, trans people who did not conform to the stereotypical parameters of their self-defined gender identity would be denied legal gender recognition for being considered “not true”. In those cases, they were forced to not transition and “remain” in the sex they had been assigned at birth. Consequently, “conversion therapy” was part of State policy and could be conducted at any psychiatric facility.<sup>255</sup>

### 13. Gender Expression Change Efforts

Gender non-conformity has historically been the object of pathologisation and rejection and, hence, the object of efforts to make it align with the culturally defined binary norms of masculinity and femininity. However, seldom do SOGIECE proponents target gender expression *exclusively*. Rather, gender expression change efforts take place concomitantly with efforts to change a

<sup>246</sup> Human Rights Watch et al., “Don’t Punish Me for Who I Am” *Systemic Discrimination Against Transgender Women in Lebanon* (2019), 77.

<sup>247</sup> “Bill to ban transgender surgery for minors advances in South Dakota”, *Catholic News Agency*, 29 January 2020. This position aligns with a damaging report entitled “Male and Female He Created Them” published by the Vatican in 2019, in which the Catholic Church reinforces the idea that gender is fixed at birth and that “gender ideology” misrepresents gender as something different from “biological sex”. See: Congregation For Catholic Education, “Male And Female He Created Them”: *Towards a Path of Dialogue on the Question of Gender Theory in Education* (Vatican City, 2019).

<sup>248</sup> South Dakota Legislature, *House Bill 1057* (2020)

<sup>249</sup> “South Dakota’s trans health bill is effectively dead, opponents say”, *NBC News*, 10 February 2020.

<sup>250</sup> Florida Senate, *HB 1365: Vulnerable Child Protection Act* (2020).

<sup>251</sup> Colorado General Assembly, *HB20-1114: Protect Minors From Mutilation And Sterilization* (2020).

<sup>252</sup> South Carolina Legislature, *House Bill 4716* (2020).

<sup>253</sup> “Transgender No Longer Classified As ‘Mental Disorder’ By World Health Organisation” *The Independent*, 28 May 2019.

<sup>254</sup> See, generally: International Lesbian, Gay, Bisexual, Trans and Intersex Association: Zhan Chiam, Sandra Duffy, and Matilda González Gil, *Trans Legal Mapping Report 2017: Recognition before the law* (Geneva: ILGA, November 2017).

<sup>255</sup> See: ILGA World and Insight, *Treatment of LGBT persons deprived of liberty in Ukraine: risks of ill-treatment. Submission to the Subcommittee for the Prevention of Torture* (2016), 5.

person's sexual orientation or gender identity. Additionally, efforts to change a child's gender expression have been made with the goal of preventing a trans identity, as well as with the goal of preventing a future non-heterosexual sexual orientation.<sup>256</sup>

**The two defining negative memories I have of my childhood were that, one, I was effeminate in a society where you need to be masculine ... so I thought, well, something's wrong with me, like I had some kind of sin inside of me that makes me impure and God can't touch me like he touches the other people. So, I connected the two: my effeminacy was the reason why I wasn't saved and that was really hard.**

**My older relatives made comments about me when I was a kid like "he's going to be a faggot one day!"**

*Matt Hancock, SOCE Survivor.*<sup>257</sup>

When dealing with their children's gender non-conformity, parents who lack clear information often conflate sexual orientation with gender expression or gender identity and, in many cases, discomfort with the child's gender non-conformity "may be at the root of much of parents' and caregivers' motivations for subjecting their children to "conversion therapies".<sup>258</sup>

In fact, practitioners usually make no clear distinction between gender identity, gender expression, and sexual orientation in a treatment plan, as "failing to comport with socially dominant models of any of the three is cast as a problem to be prevented and corrected".<sup>259</sup> Even when individuals are not being made to feel ashamed of their sexual orientation or gender identity *per se*, they are still highly vulnerable to shame "insofar as their gender

non-conformity is discouraged and positioned as pathological".<sup>260</sup>

Notably, "gender skills training" such as sports activities or makeup application, which lacks clear theoretical foundations or documentation in previous literature, has also been reported as a common practice within SOGIECE.<sup>261</sup>

"Reparative therapy" literature is full of references to "anomalies" in gender expression and how such traits can be "corrected". In numerous studies, "patients"/victims who were subject to aversion therapies were also encouraged to behave and dress in ways that aligned with stereotypical notions of masculinity and femininity.

"Acquisition of social skills", as it was framed, has been reported to be "of great potential value" in assisting "the transition from homosexual to heterosexual".<sup>262</sup> To cite one of many examples, the following excerpt shows how these efforts were documented with two "patients"/victims after they had undergone electroshock therapy:

Our female subject preferred trousers and other male apparel. She was encouraged to wear feminine dresses. Subject 1 [a male] was given assertive therapy for his submissive behaviour. Married subject's wife was counselled regarding interaction with her husband.<sup>263</sup>

Harper Perrin, a Canadian SOCE survivor explained that during their therapy, efforts were made specifically to change the way they walked and talked, making them very mindful of their body and making sure they lived a masculine expression.<sup>264</sup>

<sup>256</sup> Substance Abuse and Mental Health Services Administration (SAMHSA) – (U.S. Department of Health and Human Services), *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* (Rockville: SAMHSA, 2015), 25.

<sup>257</sup> "Man describes what conversion therapy is like" *9News*, 2 May 2019

<sup>258</sup> Caitlin Ryan et al., "Parent-Initiated Sexual Orientation Change Efforts With LGBT Adolescents: Implications for Young Adult Mental Health and Adjustment" *Journal of Homosexuality* (2018), 11.

<sup>259</sup> Florence Ashley, "Homophobia, conversion therapy, and care models for trans youth: defending the gender-affirmative approach", *Journal of LGBT Youth* (2019), 11.

<sup>260</sup> Florence Ashley, "Homophobia, conversion therapy, and care models for trans youth: defending the gender-affirmative approach", *Journal of LGBT Youth* (2019), 13.

<sup>261</sup> Annesa Flentje, Nicholas C. Heck and Bryan N. Cochran, "Sexual Reorientation Therapy Interventions: Perspectives of Ex-Ex-Gay Individuals" *Journal of Gay & Lesbian Mental Health* 17 No. 3 (2013), 272.

<sup>262</sup> "Homosexuality - a study of treatment and outcome" *Indian Journal of Psychiatry* 25, No. 3 (1983), 237.

<sup>263</sup> "Homosexuality - a study of treatment and outcome" *Indian Journal of Psychiatry* 25, No. 3 (1983), 236.

<sup>264</sup> Kevin O'Keefe "How religious organizations use conversion therapy to try to make LGBTQ people straight" *CTV News*, 31 January 2020.



## CHAPTER 3

# THE GLOBAL CONSENSUS AGAINST SOGIECE

In this chapter we provide a brief overview of some relevant stakeholders playing a role in building the global consensus against “conversion therapies”.

## 1. Survivor groups and civil society organisations

One of the main driving forces contributing to the global awareness on “conversion therapies” is the courageous work of those who managed to survive and decided to organise and mobilise against them.

In several countries, survivor groups have been instrumental in creating resources for other survivors, in raising awareness about the existence of groups or institutions offering and providing these “therapies” and advocating before local authorities to bring about legal reform. Numerous organisations working on SOGIECE issues have started working systematically on this specific issue and have contributed to launch campaigns and lawsuits before local courts.

In effect, the progress made in terms of legal reform around the world was propelled by intensive advocacy work carried out by civil society organisations denouncing “conversion therapies”.

## 2. Professional associations

In the last thirty years, numerous national, regional and international professional associations have adopted specific position statements against the administration of so-called “conversion therapies”. Most of them elaborate on the lack of evidence to support their effectiveness, the risks of harm, and the ethical implications of offering these “therapies”.

ILGA World was able to track position statements adopted by more than 65 professional organisations in Aotearoa/New Zealand, Australia, Austria, Brazil, Canada, Chile, Costa Rica, Germany,

Hong Kong (China), India, Ireland, Israel, Lebanon, Norway, Paraguay, Philippines, Poland, South Africa, Spain, Turkey, the United Kingdom and the United States of America (see **Annex I**).

In some cases, professionals and associations that had been previously involved in SOGIECE issued apologies for the harm they had caused. For instance, in 2015, Zbigniew Lew-Starowicz, a well-known Polish sexologist, apologised for the fact that he had “treated” homosexuality with electroshock “therapy”. The apologies were directed at those he treated and to the whole community.<sup>1</sup> Furthermore, in 2017, the Royal College of Psychiatrists (United Kingdom) issued a historic statement acknowledging, for the first time, the harm done to lesbian, gay, and bisexual people who were subjected to aversion therapy.<sup>2</sup>

The statements issued by professional associations—and the occasional apologies—have largely contributed to debunk the practice of SOGIECE by generating a consensus based on the research and the knowledge produced by specialised professionals working on health and social issues.

Even though their reach and impact vary greatly in each country, the growing number of professional associations joining the consensus against SOGIECE pulverises the support that proponents can rely on when advocating for “conversion therapies”.

## 3. Religious institutions and organisations against SOGIECE

Even though religious institutions are among the most vocal proponents of SOGIECE, oftentimes presenting them as a manifestation of their religious views, in recent years, some religious institutions and organisations have started to join the consensus *against* “conversion therapies”.

<sup>1</sup> Łukasz Woźnicki, “Prof. Lew-Starowicz przeprosza gejów za leczenie elektrowstrząsami”, *Wyborcza*, 28 July 2015.

<sup>2</sup> “Psychiatrists Have Issued A Historic Admission Of The Harm Done By Aversion Therapy”, *Buzz Feed News*, 16 October 2017.

### 3.1. Church of England

In July 2017, members of the Church of England's national assembly voted to endorse a memorandum in strong condemnation of "conversion therapy", signed, among others, by the Royal College of Psychiatrists. Jayne Ozanne, laity representative in the Diocese of Oxford and twice survivor of "conversion therapy", raised the motion. During the debate, the Archbishop of York and the Bishop of Liverpool were notoriously vocal about their repudiation of "conversion therapy". The motion passed with overwhelming support from members of all three houses within the Church of England (House of Bishops: 36 for, 1 against, 0 abstained; House of Clergy: 135 for, 25 against, 13 abstained; House of Laity: 127 for, 48 against, 13 abstained).<sup>3</sup>

William Nye, General Synod of the Church of England, backed the motion, which called for a ban on "conversion therapy" in the United Kingdom. In a statement he released shortly after the vote, he elaborated on their (lack of) safety, efficacy, ethics, and prudence.<sup>4</sup>

In December 2018, The Times reported that Senior Church of England bishops were to begin an inquiry into "conversion therapy" amid claims that it was still prevalent among religious groups despite a promised government ban. The inquiry would also contemplate a nationwide survey of "conversion therapy" survivors.<sup>5</sup>

### 3.2. Church of Jesus Christ of Latter-day Saints (LDS)

Up until early October 2019, the Mormon Church publicly opposed attempts to enact a state-wide ban on "conversion therapy" in the state of Utah, in the United States of America. Even more, until the 1970s, researchers at LDS-owned Brigham Young University allegedly used electric shock therapy to attempt to "cure" homosexuality.<sup>6</sup> However, in a starkly contrasting move, the Church of Jesus Christ of Latter-day Saints released an official statement supporting Utah's proposed "conversion therapy" ban October 15, 2019.<sup>7</sup>

Political analyst Bryan Schott attributes this sudden change to two main factors: the LDS Church's concern about Utah's alarmingly and disproportionately high suicide rate, and the Church's fairly reasonable attitude when presented with compelling evidence on the harms produced by "conversion therapies".<sup>8</sup> However, the LDS Church's teachings on LGBTI issues in general are said to remain conservative.<sup>9</sup>

### 3.3. Religious organisations against SOGIECE

A number of other religious organisations and leaders around the world have publicly denounced "conversion therapies" and called for these practices to be banned.

In Canada, Wendy VanderWal Gritter, former Exodus regional representative from 2003 to 2006 and only Canadian member of the Former Ex-Gay Leaders Alliance (FELA), and Executive Director of Generous Space Ministries (a Canadian ministry for Christian LGBTI people), recently released a statement describing the destructive impact of "conversion therapies" in Canada, and recommending the Canadian government—among other things—to ban SOGIECE through the Criminal Code.<sup>10</sup>

More recently, Generous Space Ministries launched "Pastors Stopping the Harm", a campaign to call pastors and church leaders to speak up against the harm caused by "conversion therapy" and the need to ban it. As they explain on their website:

Recently, efforts to ban the practice of conversion therapy, particularly for minors, have intensified. Two Canada-wide petitions asking the government for a federal ban have garnered thousands of signatures. The challenge with legislative efforts is that many SOGIECE experiences do not take place in therapists' offices. Much of the harm is experienced in

<sup>3</sup> "General Synod backs ban on conversion therapy", *Church of England* (website), 8 July 2017.

<sup>4</sup> William Nye (General Synod of the Church of England), "Conversion Therapy: A note from the Secretary General" (2017).

<sup>5</sup> Nicholas Hellen, "Faith groups to defy 'gay cure' therapy ban", *The Times*, 8 December 2018.

<sup>6</sup> Tara Law, "Why the LDS Church Joined LGBTQ Advocates in Supporting Utah's Conversion Therapy Ban", *Time*, 30 November 2019.

<sup>7</sup> "Church Continues to Oppose Conversion Therapy", *The Church of Jesus Christ of Latter-day Saints* (website), 25 October 2019.

<sup>8</sup> Tara Law, "Why the LDS Church Joined LGBTQ Advocates in Supporting Utah's Conversion Therapy Ban", *Time*, 30 November 2019.

<sup>9</sup> *As this report went to press, the LDS issued a handbook including restrictions on participation for trans people that could not be reviewed.*

<sup>10</sup> Generous Space Ministries: Wendy VanderWal Gritter, *Preventing and addressing the harm caused by sexual orientation and gender identity change efforts* (2019).

churches – perpetrated by well-meaning pastors”.<sup>11</sup>

In September 2014, a coalition of five religious organisations (the Unitarian Universalist Association, Faith In America, Presbyterian Welcome, Religious Institute, Women’s Alliance for Theology, Ethics and Ritual) and 21 reverends, ministers, and rabbis, released a joint statement in support of legislation to protect underage LGBTI people against “conversion therapy” in the United States.<sup>12</sup>

Organisations from other parts of the world that have issued similar statements include the European Buddhist Union,<sup>13</sup> Jewish Care Victoria, and the Jewish Community Council of Victoria (JCCV).<sup>14</sup>

#### 4. Repudiation of SOGIECE by so-called “ex-gay” leaders

While science was discrediting “conversion therapy”, a considerable number of high-profile leaders of organisations promoting SOGIECE started to come out and denounce these practices, sometimes offering apologies for the harm they had caused. Many of these leaders had been outspoken promoters of “conversion” practices, leading national and international campaigns and even presenting themselves as the “evidence” that “change was actually possible”.

Among them was Alan Chambers, former president of Exodus International, who claimed that he was “one of tens of thousands of people” who successfully “changed their sexual orientation”.<sup>15</sup> In 2004, when 7 same-sex couples were litigating the case that would make the state of Massachusetts the sixth jurisdiction in the world to legalise same-sex marriage, Chambers testified before the Judiciary Committee in the following terms:

I hope that the Massachusetts Supreme Judicial Court will deny these 7 couples marriage licenses thus guarding this state, and quite possibly our entire nation, against frivolous lawsuits, which ultimately restrict our overall freedoms. These couples have every right to be

together, but their behavioural, not genetic, choices should not be allowed to infringe on society as a whole.<sup>16</sup>

However, in 2012 he retracted, declaring that “conversion therapy” was ineffective and harmful. He also apologised for the “pain” he had inflicted on so many people and stated:

I would say the majority, meaning 99.9% of them, have not experienced a change in their orientation or have gotten to a place where they could say that they could never be tempted, or are not tempted in some way or experience some level of same-sex attraction.<sup>17</sup>

Annex 2 includes a list of prominent organisation leaders or SOGIECE proponents who played a lamentable role in perpetuating these practices and fuelling stigma against sexual and gender diversity. A considerably larger number of people could also be listed on that list.

The fact that so many of them have abandoned their leadership roles to live openly as LGBT—most of them are gay cisgender men—has further contributed to the discredit of SOGIECE. In a few cases, these so-called “ex-ex-gays” are now advocates against “conversion therapies”.

<sup>11</sup> “Pastors Stopping The Harm”, *Generous Space (website)*. Retrieved 1 February 2020.

<sup>12</sup> Unitarian Universalist Association et al., *Conversion Therapy Faith Leader Letter* (2014).

<sup>13</sup> “Conversion therapy has no place in the modern world”, *European Buddhist Union (website)*. Retrieved 10 February 2020.

<sup>14</sup> “Partnering to Support Ban of LGBTQ+ Conversion Therapy Services”, *Jewish Care*, 12 December 2019.

<sup>15</sup> Natasha Barsotti, “Ex-gay leader admits changing sexuality is unlikely” *Daily Extra*, 18 January 2012.

<sup>16</sup> “Massachusetts Marriage Affirmation & Protection Amendment: Alan Chambers Testifies Before the Massachusetts Judiciary Committee”, *AlanChambers.org (web archived)*, 12 February 2004.

<sup>17</sup> Natasha Barsotti, “Ex-gay leader admits changing sexuality is unlikely”, *Daily Extra*, 18 January 2012.



## CHAPTER 4

# OVERVIEW OF SOGIECE PROPONENTS TODAY

In this chapter provide an overview of the wide array of SOGIECE proponents as we may find them today. This chapter is just an exploratory exercise and could be further developed to include many more proponents.

## 1. Religious leaders, organisations and institutions

As developed in Chapter 2 of this report, religious leaders and organisations are currently among the most vocal proponents of SOGIECE. In their advocacy efforts they also rely on religiously affiliated media outlets and religious lobby groups and platforms that play an important role in disseminating their ideas and advocating for SOGIECE as a practice intimately related to religious practice.<sup>1</sup>

Even though religious organisations promote SOGIECE under their own methods and views, joint interreligious initiatives have also been reported. In ILGA's *State-Sponsored Homophobia 2019* the situation in Ghana was reported in the following terms:

The anti-gay rhetoric of national and local government officials, Catholic institutions<sup>2</sup> and Evangelical<sup>3</sup>, Islamic<sup>4</sup> and Traditional<sup>5</sup> religious leaders has allegedly played a significant role in fomenting the stigmatisation of sexual and gender minorities, and in producing

feelings of guilt and shame among its members.<sup>6</sup> In August 2018, media outlets reported that "as many as 400 LGBTI people had voluntarily signed up for conversion therapies", to be provided by the National Coalition for Proper Human Sexual Rights and Family Values. This organisation is composed of Christians, Muslims and Traditionalists reported to have as a strategic objective to forcefully articulate the "correct" stance on human sexual behaviour and put forward a well-reasoned position against the rights of sexual and gender minorities.<sup>7</sup>

According to the Coalition's leader, who revealed plans to propose a bill to make "conversion therapy" mandatory for gay men, the program would be run by psychiatrists, psychologists, medical doctors, religious leaders and experts in traditional medicine at a Holistic Sexual Therapy Unit of the Korle Bu Teaching Hospital in Accra.<sup>8</sup>

Similarly, in 2019, reports indicated that religious leaders in Ethiopia were forming a new association to promote so-called "conversion therapy" to change gay people's sexual orientation, led by an Orthodox Christian priest who has spent more than a decade warning about the "spread of homosexuality" in Ethiopia.<sup>9</sup>

<sup>1</sup> See, for instance: "¿Se puede dejar atrás la atracción homosexual con terapia? Joven cuenta su testimonio" *Ací Prensa*, 19 de enero de 2020; "Richard Cohen afirma que "la ciencia afirma que nadie nace homosexual. El cambio es posible" *Hazte Oír*, 25 January 2017.

<sup>2</sup> "Knights of Marshall condemn acts of homosexuality", *Graphic Online*, 17 January 2018.

<sup>3</sup> "Don't bow to foreign pressure on homosexuality", *Graphic Online*, 5 January 2018; "Prayers against gay rights to start June 30 - Pentecostal Council", *GhanaWeb*, 6 June 2018; "CAC Ghana chair lauds Nana Addo for bold rejection of homosexuality", *Graphic Online*, 21 August 2018.

<sup>4</sup> "God created Adam and Hawa, not Adam and Husein - Federation of Muslim Councils", *GhanaWeb*, 7 December 2017; "Muslim Council pushes for law to criminalize homosexuality", *GhanaWeb*, 10 December 2017.

<sup>5</sup> "Kill yourselves if you can't be straight - Homosexuals told", *GhanaWeb*, 13 March 2017.

<sup>6</sup> "Ghana: Discrimination, Violence against LGBT People", *Human Rights Watch Website*, 8 January 2018.

<sup>7</sup> "400 Homosexuals register for counselling", *Graphic Online*, 21 August 2018.

<sup>8</sup> "Hundreds of gay people to be 'treated for homosexuality' at camp in Ghana", *PinkNews*, 21 August 2018.

<sup>9</sup> "Ethiopian Church Leaders Push Gay 'Conversion Therapy'" *Eye Witness News*, 6 September 2019,

Religious professional associations also play a role in legitimising “conversion therapies”. Among them, the Catholic Medical Association has vocally advocated in favour of SOGIECE and reinforced ostensibly hostile and stereotypical information about sexual and gender diversity.<sup>10</sup> Even more, in 2001, the association endorsed the proliferation of Courage (a Catholic apostolate that has been denounced as offering veiled forms of “conversion therapy”<sup>11</sup>):

The Catholic Medical Association looks forward to the day when *Courage*, a support group for those struggling with homosexual temptations which faithfully promotes Catholic teaching, and *Encourage*, for families, will be established in every diocese. [...] There is every reason to hope that every homosexually attracted person who seeks help from the Church can find freedom from sinful behaviour and many can find much more.<sup>12</sup>

In 2011, The Lesbian and Gay Federation in Germany (LSVD) denounced that the Union of Catholic Physicians (UCP) had been offering “Therapy Options for Homosexuality”. According to local sources, the religious association—which calls itself the “voice of the Catholic medical community”—stated on its website that while “homosexuality is not an illness”, a host of treatments are available to keep such “inclinations” at bay, including homeopathy, psychotherapy, and religious counselling.<sup>13</sup>

Accounts of survivors explain that religious leaders refer people to “conversion therapies”<sup>14</sup> and even religious schools and institutions have been reported as referring people to SOGIECE on a regular basis and oftentimes as part of their policies and procedures.

In a study published in 2013, participants described episodes where they had been forced to attend “therapy” by the pastor of the church where they worked. One of the survivors stated that he had

been required to see a counsellor “because [he] had been suspended from a Christian college for homosexual behaviour and one stipulation for [his] returning to that school was to see a counsellor for a semester”.<sup>15</sup>

In 2016, the Inter-American Commission on Human Rights (OAS) issued an admissibility decision in a case filed by a Chilean lesbian teacher who had been dismissed from a Catholic school when the authorities of the institution found out that she was living with another woman. The petitioners indicated that the school had imposed on her the additional condition of submitting to “psychiatric therapy” for the purpose of “reversing her alleged mental disorder” [sic]. As indicated in the petition, the alleged victim did not agree to such conditions, so the vicar proceeded to revoke her certificate of suitability (a document she required to be able to work).<sup>16</sup>

In 2019, an American news outlet reported that a teenager attending a Catholic high school in Los Angeles had been subjected to “over two years of deeply detrimental conversion therapy”. Her parents declared that they would have never allowed the 17-year-old high school student to continue attending her school if they had known she was being “pulled out of class to attend the counselling sessions”.<sup>17</sup>

## 2. Health care practitioners

In contradiction to the growing professional consensus opposing SOGIECE, many health care practitioners continue to promote and endorse “conversion therapies”. A few recent surveys carried out in different countries have tracked to what extent professionals still engage or refer people to these debunked practices but, in general, statistical information is scarce or non-existent. The following are only a few examples.

In the United Kingdom, a survey carried out in 2009 of over 1,300 accredited mental health professionals found that more than 200 had

<sup>10</sup> “Homosexuality and Hope: The Statement of the Catholic Medical Association” *The Linacre Quarterly* 68, No. 2 (2001).

<sup>11</sup> “Wolf in Sheep’s Clothing: Courage and ‘Conversion’ Therapy” *Huff Post*, 10 October 2012; Jade Wilson, “Mary McAleese Condemns Gay Conversion Therapy” *GCN*, 8 April 2019; “Calls to ban ‘abhorrent and shameful’ gay therapy by Courage International” *The Times*, 9 April 2019; “‘Dangerous’ gay therapy condemned by Mary McAleese”, *The Times*, 8 April 2019.

<sup>12</sup> “Homosexuality and Hope: The Statement of the Catholic Medical Association” *The Linacre Quarterly* 68, No. 2 (2001), 139-140.

<sup>13</sup> Christoph Seidler, “German Catholic Doctors Offer Homeopathic ‘Gay Treatment’”, *Spiegel*, 2 June 2011.

<sup>14</sup> See, among many others: S. J. Creek and Jennifer L. Dunn, “‘Be Ye Transformed’: The Sexual Storytelling of Ex-gay Participants” *Sociological Focus* 45, No. 4 (2012), 307. “El exorcismo a Bastian para liberarle del ‘demonio gay’: todos sus ahorros en falsas terapias” *El Español*, 13 October 2018.

<sup>15</sup> Annesa Flentje, Nicholas C. Heck and Bryan N. Cochran, “Sexual Reorientation Therapy Interventions: Perspectives of Ex-Ex-Gay Individuals” *Journal of Gay & Lesbian Mental Health* 17 No. 3 (2013), 271.

<sup>16</sup> IACHR, *Report No. 30/15*, Petition 1263-08. Admissibility. Sandra Cecilia Pavez Pavez. Chile. July 21, 2015, para. 10.

<sup>17</sup> “‘Enraged’ Parents Say Catholic School Made Gay Teen Undergo Conversion Therapy”, *Huff Post*, 12 November 2019.

offered some form of “conversion therapy”, with 35% of patients referred to them for “treatment” by general practitioners.<sup>18</sup> The National LGBT Survey published by the UK Government Equality Office in 2018 found that the second largest group of SOGIECE providers were healthcare providers or medical professionals.<sup>19</sup> Additionally, according to a survey carried out by the British organisation Stonewall, one in ten health and social care practitioners with direct responsibilities for patient care have witnessed staff in their workplace express the belief that someone can be “cured” of being lesbian, gay or bisexual.<sup>20</sup>

A study conducted in South Korea by the Network for the Elimination of Conversion Therapy in 2016 found that “conversion therapy” was conducted by counselling specialists (57.1%), religious persons (46.4%) and psychiatrists (28.6%); medical specialists were also found to have been involved in “conversion therapy”.<sup>21</sup>

In China, a report by Beijing Gender and other LGBT rights groups found that these practices are offered by at least 96 centres and hospitals across China.<sup>22</sup> A survey carried out in 2019 by The Paper (an online publication covering diverse issues in China) found that staff at medical facilities in six cities—Jinan, Zhengzhou, Zhumadian, Guangzhou, Nanning, and Chongqing—offered “conversion therapy” services to a reporter who posed as a potential client.<sup>23</sup> A 2014 experiment by phone with a clinic in Shenzhen had yielded similar results.<sup>24</sup>

There is indication that in Hong Kong “conversion therapy” is still practiced by some social workers. According to the Equal Opportunities Commission, this involves counselling and other non-medical treatment of homosexual people “aimed at

converting them to heterosexuality”, inappropriately treating homosexuality as a mental disorder which can be “cured”.<sup>25</sup>

### 3. State-Sponsored Conversion Therapies

In some States, “conversion therapies” are actively promoted by governments as the appropriate way to “correct” or forcibly “heal” lesbian, gay, bisexual and trans people.

In this regard, the UN Committee on Economic, Social and Cultural Rights (CESCR) has indicated that regulations requiring that LGBTI people be treated as mental or psychiatric patients or requiring that they be “cured” by so-called “treatment”, are a clear violation of their right to sexual and reproductive health. Consequently, it emphasised that States have an obligation to combat discrimination based on sexual orientation and gender identity.<sup>26</sup>

Malaysia and Indonesia are two well-documented cases in which “conversion therapies” are openly sponsored by governmental agencies as the official response to sexual and gender diversity issues. Other less vocal official endorsements can be identified in several other countries.<sup>27</sup>

#### 3.1. Malaysia

In Malaysia, multiple government officials, particularly from the Department of Islamic Development (*Jabatan Kemajuan Islam Malaysia*, “JAKIM”), have issued statements encouraging “conversion therapy” over several years already.<sup>28</sup> A series of government-sponsored “educational” materials such as videos,<sup>29</sup> manuals,<sup>30</sup> and

<sup>18</sup> Annie Bartlett, Glenn Smith and Michael King, “The response of mental health professionals to clients seeking help to change or redirect same-sex sexual orientation” *BMC Psychiatry* 9, No. 11 (2009).

<sup>19</sup> Government Equality Office (United Kingdom), *National LGBT Survey: Research Report* (2018), 93.

<sup>20</sup> Stonewall: Catherine Somerville, *Unhealthy Attitudes: The treatment of LGBT people within health and social care services* (2015), 17.

<sup>21</sup> Korean Society of Law and Policy on Sexual Orientation and Gender Identity (SOGILAW), *Human Rights Situation of LGBTI in South Korea 2016* (2017), 81.

<sup>22</sup> “Many LGBT people in China forced into illegal ‘conversion therapy’ groups”, *Reuters*, 21 November 2019.

<sup>23</sup> Bibek Bhandari, “Conversion Therapy Still Promoted in China”, *The Sixth Tone*, 19 April 2019.

<sup>24</sup> Lin Ping, “中国首例‘同性恋治疗案’开庭审理”, *Radio Free Asia*, 31 July 2014.

<sup>25</sup> Equal Opportunities Commission Hong Kong, China, *Public Consultation on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity* (2017), 12.

<sup>26</sup> Committee on Economic, Social and Cultural Rights, *General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/22, 2 May 2016, para. 22.

<sup>27</sup> See Section 5 below.

<sup>28</sup> “Bicara Usrati Jannati & Majlis Pelancaran Portal Pisiwi, Pelan Tindakan Keluarga Sakinah Dan Pelan Tindakan Menangani Gejala Sosial Perlakuan LGBT”, *Malaysia Department of Islamic Development*, 2 August 2016; Mohd Izwan bin Md Yusof et al., “Hadith Sahih on Behaviour of Lesbian, Gay, Biseksual, and Transgender”, *Malaysia Department of Islamic Development*, 2015.

<sup>29</sup> “Sexual orientation can be changed, Jakim says in new LGBT video”, *Malay Mail*, 13 February 2017. Vic Parsons, “Malaysian authorities release video with instructions on how to ‘reverse’ homosexuality”, *Pink News*, 16 December 2019.

<sup>30</sup> Katrina Khairul Azman, “The Government Has Released An e-Book To Guide LGBT Muslims To The ‘Right Path’”, *SAYS*, 24 October 2018. A PDF version of the book can be accessed here.

university programmes have also promoted “conversion therapy”.<sup>31</sup>

Since 2011, JAKIM has also actively involved in the organisation of *Mukkhayam* [“conversion therapy”] programs.<sup>32</sup> In February 2017, JAKIM released a video explaining how Muslims can “help” LGB people change their sexual orientation. The video claims that non-heterosexual orientation is a “test of Allah” and people must “face the test appropriate with what Islam demands”.<sup>33</sup> Also in 2017, the Malaysian state of Terengganu announced the launch of a government-sponsored “conversion therapy” course aimed at transgender people.<sup>34</sup> A local activist explained that those who are “soft spoken” and those who “dress against masculinity” have been reportedly forced to attend “conversion camps” to change their behaviour and sexual orientation.<sup>35</sup>

In October 2018, an official from JAKIM, stated that these programmes had “helped 1,450 people”, indicating that “some have gone on to get married, some have changed their dressing, and some are practising control from going back to that lifestyle”.<sup>36</sup> Also in October 2018, Mujahid Yusof Rawa, Minister in the Prime Minister's Department, announced in Parliament that “since the government does not accept LGBT lifestyles”, they would continue to reach out to the community in order to “rehabilitate” them”.<sup>37</sup>

LGBT youth, especially those who are at school, have reported being bullied by their peers in the form of physical, verbal, and cyber bullying. These

bullying behaviours have been justified to “correct” those who are perceived as non-heterosexual or are suspected of engaging in same-sex sexual acts or cross-dressing behaviour.<sup>38</sup>

The promotion of “conversion therapy” in Malaysia has been condemned by human rights groups such as the Malaysian Aids Council,<sup>39</sup> Human Rights Watch,<sup>40</sup> and the Galen Centre for Health and Social Policy.<sup>41</sup> In 2017, the CEDAW Committee requested information from the State of Malaysia regarding the policies aimed at “rehabilitating” or “curing” LBT women,<sup>42</sup> and in 2018 urged the State to urgently discontinue all such policies.<sup>43</sup>

#### *A State-Sponsored App for Self-Taught “Conversion Therapy”*

In October 2018, the government released an online application called “Hijrah Diri – Homoseksualiti”,<sup>44</sup> The application, which can still be downloaded from Google Play,<sup>45</sup> offers users a set of resources to “overcome the problem of homosexuality”, including audio files with thematic talks, an eBook with Islamic teachings and a step-by-step guide through topics such as “Understanding the Challenges” and “Controlling Your Lust”.

### 3.2. Indonesia

Several political, religious, and medical associations have expressed their support for “conversion therapies” which are partly legitimised by pseudo-

<sup>31</sup> “Malaysia: Health Ministry Propagates Harmful Anti-LGBT Myths”, *Human Rights Watch*, 7 June 2017.

<sup>32</sup> Jerry Choong “Jakim issues e-book on LGBT rehab; minister says phenomenon ‘under control’” *Malay Mail*, 24 October 2018.

<sup>33</sup> “Sexual orientation can be changed, Malaysia's Islamic authority says in new video”, *Today Online*, 13 February 2017.

<sup>34</sup> “Malaysian state of Terengganu to launch ‘conversion therapy’ courses for transgenders; activists alarmed”, *Firstpost*, 30 December 2017.

<sup>35</sup> Jeremy Tan Fok Jun, “On the impact of government policies to “convert” LGBT people” in International Lesbian, Gay, Bisexual, Trans and Intersex Association: Lucas Ramón Mendos, *State-Sponsored Homophobia 2019* (Geneva; ILGA, March 2019), 451.

<sup>36</sup> Sarah Mckenna Barry, “Malaysian Official Claims Conversion Therapy ‘Cured’ 1,500 People”, *Gay Community News*, 30 October 2018.

<sup>37</sup> Katrina Khairul Azman, “The Government Has Released An e-Book To Guide LGBT Muslims To The ‘Right Path’ Says”, 24 October 2018.

<sup>38</sup> Jeremy Tan Fok Jun, “On the impact of government policies to “convert” LGBT people” in International Lesbian, Gay, Bisexual, Trans and Intersex Association: Lucas Ramón Mendos, *State-Sponsored Homophobia 2019* (Geneva; ILGA, March 2019), 451.

<sup>39</sup> “AIDS council slams Jakim’s ‘conversion therapy’ for LGBTs”, *FMT News*, 24 December 2018; Mohd Azwar Aizam, “Malaysian AIDS Council denounces LGBT conversion therapy”, *Malaysian AIDS Council*, 22 December 2018.

<sup>40</sup> Sagaree Jain and Neela Ghoshal, “Malaysia Should Find ‘Right Path’ on LGBT Rights”, *Human Rights Watch*, 7 August 2018.

<sup>41</sup> “Conversion therapy a form of violence against LGBTs, says pressure group”, *FMT News*, 22 April 2019. The original report can be accessed here.

<sup>42</sup> Committee on the Elimination of Discrimination against Women, *List of issues and questions in relation to the combined third to fifth periodic reports of Malaysia*, CEDAW/C/MYS/Q/3-5, 31 July 2017, para 21.

<sup>43</sup> Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined third to fifth periodic reports of Malaysia*, CEDAW/C/MYS/CO/3-5, 14 March 2018, para 48(c).

<sup>44</sup> “The Government Just Released An E-Book To Guide LGBT Muslims To The ‘Right Path’” *The Coverage Malaysia*, 24 October 2018.

<sup>45</sup> “Hijrah Diri – Homoseksualiti” *Google Play (website)*. The application was successfully downloaded and installed by the editorial team on 5 February 2020 directly from Google Play. The book is described in the following terms: “The latest e-book to help consumers find a guide on Muslim journey to deal with homosexuality. Welcome to this most wonderful journey, Insha Allah you will benefit by learning how to take the first step in the right direction to achieve real success in this world and the hereafter!”



scientific research conducted by religious universities.<sup>46</sup>

In 2012, after the Islamic Indonesian Ulema Council ruled against recognition of transgender people's identities, a member the council reportedly declared that if transgender people were not willing to "cure themselves medically and religiously" they must "accept their fate to be ridiculed and harassed".<sup>47</sup>

In 2016, the Indonesian Psychiatrists Association (PDSKJI) classified "homosexuality", "bisexuality" and "transsexualism" as mental disorders, which "can be cured through proper treatment".<sup>48</sup> Also in 2016, several religious councils released a joint statement saying that LGBT could be helped to "get back on track to normalcy" by restricting the promotion of LGBT activities, as such limitations would act as a form of "treatment" to eradicate deviant sexual tendencies.<sup>49</sup>

In February 2018, Indonesia moved to officially classify homosexuality as a "mental disorder". According to Human Rights Watch, government officials in various regencies of West Java province called for policies that would target LGBT people for arrest and "rehabilitation". Local decrees and other official documents proposed handing over lists of allegedly gay and bisexual men to authorities and subject them to medical intervention in an attempt to change their sexual orientation or gender identity.<sup>50</sup> In 2019, it was reported that the Office Head of Indonesia's Ministry of Law and Human Rights in West Java District had forced gay and lesbian prison inmates to undergo "conversion therapy".<sup>51</sup>

#### 4. Court mandated "treatment"

When sodomy laws were still in force in the United States of America and the United Kingdom, it was common practice for courts to impose ancillary or alternative punishment to imprisonment consisting in undergoing "conversion therapy" to those who

were convicted for consensual same-sex sexual acts. In several studies cited in Chapter 2, a large number of "patients"/victims were actually referred to "treatment" by courts. Their lack of self-motivation was oftentimes seen as a factor that diminished the chances of "success" of the "treatment".<sup>52</sup> These therapies could even entail institutionalization in mental health facilities.<sup>53</sup>

One of the most well-known tragic cases of court mandated treatment was the one imposed to British mathematician Alan Turing, famous for having largely contributed to the breaking of the "Enigma" code used by Nazi Germany during World War II. Upon being convicted for "gross indecency" for having a consensual sexual relation with another man, he opted for court mandated oestrogen "therapy" (commonly referred to as "chemical castration"). The hormone injections lowered Turing's libido, but also led to the growth of breasts and to depression, which eventually led to his suicide.<sup>54</sup>

There is at least one UN Member State—the Commonwealth of Dominica—that still contemplates psychiatric treatment as the penalty established by law for consensual same-sex sexual acts. Section 16 of the Sexual Offences Act (1998) establishes that a person who commits "buggery" is liable to imprisonment for ten years and, if the Court thinks it fit, it may order that the convicted person "be admitted to a psychiatric hospital for treatment". The same ancillary punishment is established for "attempted buggery".<sup>55</sup>

In 2018, Human Rights Watch documented a case in Tunisia where a young man was arrested by the police at his family's behest and sentenced by a judge to two months in a juvenile detention centre. While deprived of his liberty a psychiatrist conducted "conversion therapy" to try to change his sexual orientation.<sup>56</sup> It is unclear whether this case involves *court mandated* "treatment" or enforced by the penitentiary system on its own accord.

<sup>46</sup> Setiadi, Riandini Aisyah et al., "Why and How Someone Can Be LGBT in Surakarta Residency, Indonesia" *International Journal of Humanities Social Sciences and Education* 4, No. 7 (2017), 53-59.

<sup>47</sup> "Letter: MUI's statement on transgender people" *The Jakarta Post*, 9 March 2012

<sup>48</sup> Liza Yosephine, "Indonesian psychiatrists label LGBT as mental disorders", *The Jakarta Post*, 24 February 2016.

<sup>49</sup> Liza Yosephine, "World Psychiatric Association opposes 'reparative therapy' for LGBT people", *The Jakarta Post*, 24 March 2016.

<sup>50</sup> "Indonesia: Fresh Wave of Anti-LGBT Rhetoric, Arrests", *Human Rights Watch (website)*, 29 October 2018.

<sup>51</sup> "Indonesia: prison officials believe inmates are 'turning gay' after sleeping next to the same sex", *Prison Insider*, 11 July 2019.

<sup>52</sup> M. P. Feldman and M. J. MacCulloch, *Homosexual Behavior: Therapy and Assessment* (Oxford, Pergamon Press, 1971), 26.

<sup>53</sup> Sam Ashworth et al., *The Pernicious Myth of Conversion Therapy: How Love In Action Perpetrated a Fraud on America* (Washington DC, The Mattachine Society of Washington, DC, 2018), 6.

<sup>54</sup> Tommy Dickinson, 'Curing Queers': *Mental nurses and their patients, 1935-74* (Manchester: Manchester University Press, 2015), 63.

<sup>55</sup> ILGA World: Lucas Ramón Mendos, *State-Sponsored Homophobia 2019* (Geneva; ILGA, March 2019), 404.

<sup>56</sup> Neela Ghoshal, "Tunisia's Assault on Gay Men's—and Everyone's – Right to Privacy", *Human Rights Watch (website)*, 3 December 2018.

## 5. Political leaders

In several countries, political leaders have publicly endorsed “conversion therapies”, providing further support to these harmful practices. This support is particularly worrying as it legitimises a practice that reinforces false information about the efficacy and the validity of SOGIECE and its underlying cis-heteronormative ideology. These are only a few examples of high-ranking politicians who have expressed their views in recent years.

- ▶ The president of the Philippines, Rodrigo Duterte, declared that “he used to be gay” but that he has since been “cured”.<sup>57</sup> Duterte has also used terms like “bakla” and “bayot”—words that mean “gay”—as insults to his political enemies to imply “weakness”.<sup>58</sup>
- ▶ In 2014, Texas Republicans adopted a party platform that included support for “voluntary psychological therapy” targeted at converting homosexuals to heterosexuals. Almost 10,000 attendees gathered in Fort Worth at the annual Texas GOP Convention to vote on the platform ahead of the 2016 race for the White House.<sup>59</sup> In an interview with CNN, Bryan Hughes, a Texas state representative, stated that the language of the platform was based on their belief for “free speech and free choice”, especially of those who wanted to access “that kind of counselling”.<sup>60</sup>
- ▶ Simon Lokodo, the minister in charge of ethics and integrity in Uganda, reportedly stated that a program had been developed to “rehabilitate members of the LGBT community, with the ultimate aim of giving them a chance to lead ‘normal’ lives again”.<sup>61</sup>
- ▶ In Colombia, a member of the Chamber of Deputies stated that God “restores homosexuals” and shared a picture in which she posed with a group of men with the following legend: “As defenders of the family it is a joy to share with men who someday were confused about their sexuality; today thanks to God and his power they have been able to recover their identity”.<sup>62</sup>
- ▶ In Israel, the education minister defended “conversion therapy” during a TV interview. “I think that it is possible to convert [someone’s sexual orientation]” he added. “I have a deep familiarity on the issue of education, and I have also done this” he explained.<sup>63</sup>
- ▶ At odds with the trend to enact bans against “conversion therapies” in the United States of America, in 2019, a Texas state Representative introduced a bill that would protect mental health providers who engage in practices motivated by their “sincerely held religious beliefs”. Advocates considered this to be a thinly veiled attempt to legalise “conversion therapy” in that state.<sup>64</sup>
- ▶ In Minnesota, United States of America, a Republican member of the local Senate who led the opposition to the bill against “conversion therapies” declared that these practices should remain legal, arguing that “people turn gay because of bad parenting or sexual abuse”.<sup>65</sup> Local reports indicate that one of the Senator’s child identifies as non-binary and was actually forced by him to undergo “conversion therapy” when they were in their teens. Indeed, he acknowledged sending their child to “therapy” as a teenager, but said that “it was for healing, not for sexual-identity conversion”.<sup>66</sup>
- ▶ In 2019, Ann Widdecombe, a British Member of the European Parliament, reiterated her support for “conversion therapies” saying that “science may ‘produce an answer’ to being gay”.<sup>67</sup> In 2012 she had declared that “almost anybody can get help for anything from psychotherapists in this country except apparently gays who do not want to be gay”.<sup>68</sup>

<sup>57</sup> “Rodrigo Duterte Says He ‘Cured’ Himself From Being Gay” *The New York Times*, 3 June 2019.

<sup>58</sup> Bea Cupin “‘Bayot, bakla’ don’t mean ‘weak,’ transgender bet tells Duterte” *Rappler*, 14 April 2016.

<sup>59</sup> Azadeh Ansari, Suzanne Presto and Vivian Kuo Texas “Republicans favor ‘reparative therapy’ platform for gays” *CNN*, 8 June 2014; “Texas Republicans endorse ‘reparative therapy’ for gays” *CBS News*, 7 June 2014.

<sup>60</sup> “Anderson debates Texas GOPer on reparative therapy”, *CNN YouTube Channel*, 12 June 2014.

<sup>61</sup> “Uganda vows to ‘suppress’ gay pride activities”, *CBS News*, 8 August 2016.

<sup>62</sup> “Diputada colombiana causa polémica por proponer curar homosexuales” *Ego City*, 12 January 2018.

<sup>63</sup> “Israel education minister defends ‘gay conversion therapy’”, *BBC News*, 13 July 2019.

<sup>64</sup> “In Texas, a Quiet Effort to Protect ‘Conversion Therapy’ Is Underway” *Rewire News*, 20 March 2019.

<sup>65</sup> Alex Bollinger, “Republican leader who sent their child to conversion therapy says child abuse makes people gay” *LGBTQ Nation*, 17 January 2020.

<sup>66</sup> J. Patrick Coolican and Torey Van Oot, “Gay conversion ban gets personal for lawmakers in emotional debate” *Star Tribune*, 10 May 2019.

<sup>67</sup> “Ann Widdecombe says science may ‘produce an answer’ to being gay” *The Guardian*, 2 June 2019.

<sup>68</sup> Ann Widdecombe, “Helping those who aren’t glad to be gay, says Ann Widdecombe” *Express*, 1 February 2012.

## CHAPTER 5

## RIGHTS AT STAKE

Debates on the legal implications of restricting SOGIECE have increased considerably as more bans are enacted in different countries across the world. Proponents and detractors of these practices have focused on certain human rights according to their views and have presented legal arguments before courts of law or in parliamentary debates in which restrictions were being discussed.

It is important to note that not all discussions included in this section will be relevant to every country or community, as these arguments are valid in the context of a specific national legal framework. The aim of compiling these discussions is to offer our readers a comparative overview of the legal debates around the world and to discuss international human rights law standards that could be relevant for discussions before local courts in the future and in international litigation before human rights bodies.

### 1. Freedom from torture

Discussions on “conversion therapies” have oftentimes been framed under the larger issue of torture.<sup>1</sup> Little effort is required to understand that many of the “techniques” and “therapies” described in Chapter 2 can inflict extreme physical pain and mental suffering. This can even be said of methods that do not involve brutal physical violence. In this regard, the UN Special Rapporteur on Torture has stated that

given that “conversion therapy” can inflict severe pain or suffering, given also the

absence both of a medical justification and of free and informed consent, and that it is rooted in discrimination based on sexual orientation or gender identity or expression, such practices can amount to torture or, in the absence of one or more of those constitutive elements, to other cruel, inhuman or degrading treatment or punishment.<sup>2</sup>

The technical distinction made by the Special Rapporteur serves as an indication that—even though they may be informally characterised as “tortuous” procedures—some forms of “conversion therapy” may not always comply with all the elements of the legal definition of “torture”.<sup>3</sup> Concrete legal arguments for a particular case will need to corroborate this very technical aspect. However, there appears to be little doubt that—even if the stringent threshold for “torture” is not reached—many forms of SOGIECE will amount to cruel, inhuman or degrading treatment.

#### *Rights of the child*

In addition to the effects and repercussions of torture in any stage of life, the damage to the child’s dignity and psychophysical integrity has a very special significance when it occurs in stages of growth and development.<sup>4</sup>

Given their state of vulnerability, children need to be especially protected from all forms of physical and mental violence,<sup>5</sup> including that which falls

<sup>1</sup> *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/31/57, 5 January 2016, para. 48; *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/38/43, 11 May 2018, para. 28; *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Relevance of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment to the context of domestic violence*, A/74/148, 12 July 2019, para. 48.

<sup>2</sup> *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/74/148, 12 July 2019, para. 50.

<sup>3</sup> Of particular relevance to this discussion is a report issued by the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, in 2013. In this report he elaborated on the applicability of the torture and ill-treatment framework in health-care settings, including references to “conversion therapies”. Paragraphs 17 to 22 explain the key elements of the definitions of torture and ill-treatment and refer to other sources for further information. See: *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, A/HRC/22/53, 1 February 2013.

<sup>4</sup> UNICEF: Dan O’Donnell and Norberto Liwski, *Child Victims of Torture and Cruel, Inhuman or Degrading Treatment* (2010), 27.

<sup>5</sup> *Convention on the Rights of the Child* (adopted November 1989, entered into force 2 September 1990), 1577 UNTS 3, article 19.

under the definition of torture.<sup>6</sup> Indeed, as explained in Chapter 7, all legal restrictions of so-called “conversion therapies” currently in force in several jurisdictions around the world apply to children.

## 2. Rights to health and psychological integrity

The right to health is defined as the entitlement of individuals to the “full enjoyment of the highest attainable standard of physical and mental health”<sup>7</sup> and includes the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference like torture and non-consensual medical treatment.<sup>8</sup> The right to psychological integrity is a fundamental part of the right to health.

The principle of non-discrimination demands LGBTI people be fully respected for their sexual orientation, gender identity, gender expression and intersex status and not treated as psychiatric patients who need to be “cured” by so-called treatment.<sup>9</sup> As stated by the UN Special Rapporteur on the right to health, this means States must adopt protective measures to prevent third party intrusions and non-evidence-based interventions, such as “conversion therapies”.<sup>10</sup>

As expressed by numerous professional associations based on available research,<sup>11</sup> SOGIECE have been found to cause serious psychological harm, including treatment-related anxiety, confusion, anger, guilt, shame, low self-esteem, self-loathing and hopelessness to loss of

social support, deteriorated relationships with family, social isolation, sexual dysfunction, depression, self-harm and suicidal ideation, all of which makes them inconsistent with the right to health and psychological integrity.

Conversely, the protection of mental health entails the facilitation, promotion and provision of conditions in which psychological well-being can be realised,<sup>12</sup> requiring as a first step that health care providers refrain from labelling, questioning or invalidating a person’s SOGIE as part of a “treatment”.<sup>13</sup> In effect, as stated by the American Psychological Association, people who may need assistance in dealing with internal conflicts with their SOGIE must have the right to access supportive therapy with a human rights-based approach, grounded on identity exploration and development, acceptance, comprehensive assessment, active coping and social support.<sup>14</sup>

### *Rights of the child*

By reason of their physical and psychological immaturity,<sup>15</sup> children are more vulnerable to the harms of “conversion therapies”, in particular at the instigation of their parents or guardians, usually through pressure or coercion.<sup>16</sup> Children are especially susceptible to fostered negative values about sexual and gender diversity and family rejection based on their SOGIE.<sup>17</sup>

The pressure inflicted by a hostile environment frequently leads them to feel compelled to accept SOGIECE.<sup>18</sup> Since children are also at a greater risk of suffering mental health issues because of their

<sup>6</sup> Committee on the Rights of the Child, *General Comment No. 13 (2011) on the right of the child not to be subjected to any form of violence*, CRC/C/GC/13, 18 April 2011, para. 26.

<sup>7</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976), 14531 UNTS 993, article 12.

<sup>8</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 14 (2000) on the right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/2000/4, 11 August 2000, para. 8.

<sup>9</sup> Committee on Economic, Social and Cultural Rights, *General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/22, 2 May 2016, para. 22.

<sup>10</sup> *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/HRC/41/34, 12 April 2019, para. 19.

<sup>11</sup> See Annex 1 of this report.

<sup>12</sup> *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/HRC/41/34, 12 April 2019, para. 20.

<sup>13</sup> Transgender Europe (TGEU), *Guidelines to Human Rights-based Trans-specific Healthcare* (2019), 11.

<sup>14</sup> American Psychological Association, *Appropriate Therapeutic Responses to Sexual Orientation* (2009), 4.

<sup>15</sup> Convention on the Rights of the Child (adopted November 1989, entered into force 2 September 1990), 1577 UNTS 3, Preamble.

<sup>16</sup> American Psychological Association, *Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts* (2009); *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on the relevance of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment to the context of domestic violence*, A/74/148, 12 July 2019, para. 48.

<sup>17</sup> Caitlin Ryan et al., “Family rejection as a predictor of negative health outcomes in White and Latino lesbian, gay, and bisexual young adults”, *Pediatrics* (2009).

<sup>18</sup> Caitlin Ryan et al., “Parent-Initiated Sexual Orientation Change Efforts With LGBT Adolescents: Implications for Young Adult Mental Health and Adjustment”, *Journal of Homosexuality* (2018), 10.

vulnerability,<sup>19</sup> the damaging effects of these practices are exacerbated when practiced on them.

Under International Human Rights Law, children are afforded special protection, mainly through the implementation of the principle to take the best interest of the child as a primary consideration in all actions concerning them.<sup>20</sup> In assessing the child's best interest, their health and psychological integrity must be specially considered. To this end, two particular elements need to be taken into account: the child's right to *identity*<sup>21</sup>—which includes SOGIE—and the child's right to *safety*, i.e., their right to be provided with safeguards against physical and mental violence,<sup>22</sup> such as emotional abuse that makes them believe they are worthless, terrorises them or hurts their feelings.<sup>23</sup>

As explained in Chapter 2 of this report, all forms of SOGIECE, and especially those based in religious beliefs and debunked psychotherapeutic approaches, operate on the basis that there is something intrinsically “wrong”, “sinful” or “pathological” in any form of sexual and gender diversity. Numerous testimonies offered by survivors explain how the “therapy” they were subjected to made them feel demeaned, humiliated or inferior. Being exposed to these hurtful ideas and being led to internalise them are clearly incompatible with the safeguards against mental violence outlined above.

Moreover, in response to the argument that protection of children could be accomplished in a less restrictive manner, i.e., by requiring that children give their informed consent before undergoing them,<sup>24</sup> it has been stated that such measure could not adequately ensure that children would not feel pressured to receive “conversion therapies” despite their fear of being harmed.<sup>25</sup> Therefore, “conversion therapies” can under no circumstance be justified under the principle of the best interest of the child.

**Children are dealing with the fear that they might spend the eternity tortured because of their natural way of being in the world. So, by asking them “do you want that? Do you want to be gay?” you are asking “do you want to go to hell?”**

*Stan Mitchel, Pastor.*<sup>26</sup>

What this principle actually requires is that children and adolescents receive supportive parenting interventions regarding SOGIE-related concerns<sup>27</sup> and health care services that focus on helping them explore and come to terms with their identities, reduce distress and cope with social attitudes towards sexual and gender minorities.<sup>28</sup> In light of the available evidence, any therapy provided with an *a priori* goal to discourage a child or a teenager from transitioning or to encourage them to de-transition, to try to “make” them heterosexual, or to force their expressions to fit stereotypical ideas of femininity or masculinity runs contrary to the best interest of the child.

### 3. Right to life

The right to life concerns the entitlement of individuals to be free from acts and omissions intended or expected to result in their unnatural or premature death, as well as to enjoy a life with dignity,<sup>29</sup> which entails the creation of the necessary conditions to ensure that no violations to this right occur.

As stated by the UN Human Rights Committee, States must take adequate measures to prevent suicides, especially among individuals in

<sup>19</sup> Timothy Jones et al., *Preventing harm, promoting justice: Responding to LGBT conversion therapy in Australia* (2018), 46.

<sup>20</sup> *Convention on the Rights of the Child* (adopted November 1989, entered into force 2 September 1990), 1577 UNTS 3, article 3.1.

<sup>21</sup> Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration* (art. 3, para. 1), CRC/C/GC/14, 29 May 2013, para. 55.

<sup>22</sup> *Id.*, para. 73.

<sup>23</sup> Committee on the Rights of the Child, *General Comment No. 13 (2011) on the right of the child not to be subjected to any form of violence*, CRC/C/GC/13, 18 April 2011, para. 21.

<sup>24</sup> United States Court of Appeals for the Third Circuit, *King et al. v. Christie et al.*, 11 September 2014, 56.

<sup>25</sup> *Ibid.*

<sup>26</sup> “Conversion therapy: God only knows”, *CBS Sunday Morning*, 11 November 2018; Brett Kelman, “Nashville pastor condemns gay conversion therapy on CBS” *Nashville Tennessean*, 11 December 2019.

<sup>27</sup> *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/HRC/41/34, 12 April 2019, 20.

<sup>28</sup> American Psychological Association, *Appropriate Therapeutic Responses to Sexual Orientation* (2009), 24.

<sup>29</sup> Human Rights Committee, *General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights on the right to life*, CCPR/C/GC/36, 30 October 2018, para. 3.

particularly vulnerable situations,<sup>30</sup> such as LGBTI people, who—as a consequence of stigma, discrimination and exclusion—suffer higher rates of depression and suicide.<sup>31</sup>

In numerous cases, the psychological pain and suffering inflicted by SOGIECE is so deep and long-lasting that it has pushed survivors to suicidal ideation, suicide attempts and actual suicide.<sup>32</sup>

When assessing the need to adopt legal measures against SOGIECE, policy makers need to take into account that these practices have the potential of leading people to their death. These completely unfair, avoidable deaths constitute one of the most deplorable outcomes of the ideas that support the existence of “conversion therapies”. Ideas that kill people by completely depriving them of their self-esteem, by preventing them from feeling loved and appreciated as they are, and—in the case of people of faith—by leading them to believe that their god abhors them.

#### *Rights of the child*

Children have been provided with specific safeguards against self-harm as a particular type of violence,<sup>33</sup> which sets out State obligations to adopt all necessary measures to prevent it. In the case of LGBTI children, they are deserving of

special attention in this regard because they are more likely to commit suicide than LGBTI adults.<sup>34</sup>

#### 4. Parental rights

Several human rights treaties confer parents the right to ensure the religious and moral education of their children,<sup>35</sup> thereby providing them with an ample margin to raise them in the way they think is good or necessary without governmental intrusion. Such protection is granted based on the assumption that parents are most likely to make better decisions concerning their children because they have their best interests at heart and act accordingly.<sup>36</sup> Due to affection and proximity, parents are in a good position identify their children’s needs and choosing what is indeed most beneficial to them.

Research shows that “conversion therapies” administered to children most often occur by request of parents and guardians.<sup>37</sup> This usually responds to assimilation demands rooted in their own desires for their children’s heterosexuality and gender conformity.<sup>38</sup> This can be motivated by a number of concerns associated with caregivers’ attitude towards sexual and gender minorities, which include “helping” them to “fit in” or responding to religious and/or cultural values, among others.<sup>39</sup> In other words, parents who want

<sup>30</sup> *Id.*, para. 9.

<sup>31</sup> Timothy Jones et al., *Preventing harm, promoting justice: Responding to LGBT conversion therapy in Australia* (2018), 44.

<sup>32</sup> *Report of the Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity, A/HRC/38/43*, 11 May 2018, para. 47; *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Relevance of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment to the context of domestic violence, A/74/148*, 12 July 2019, para. 48.

<sup>33</sup> *Convention on the Rights of the Child* (adopted November 1989, entered into force 2 September 1990), 1577 UNTS 3, article 19; Committee on the Rights of the Child, General Comment No. 13 (2011) on the right of the child not to be subjected to any form of violence, *CRC/C/GC/13*, 18 April 2011, para. para. 33.

<sup>34</sup> Timothy Jones et al., *Preventing harm, promoting justice: Responding to LGBT conversion therapy in Australia* (2018), 44.

<sup>35</sup> See, among others: *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, Article 13(3); *International Covenant on Civil and Political Rights*, 16 December 1966, article 18(4). The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the UN General Assembly Resolution 45/158 of 18 December 1990 (adopted after the Convention on the Rights of the Child) includes a similar provision under Art. 12 (4) (“States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions”). The equivalent provision in the Universal Declaration of Human Rights is not specific about “religious or moral education” but provides for parental rights in general terms by establishing that “parents have a prior right to choose the kind of education that shall be given to their children”. See: UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Article 26(3).

<sup>36</sup> Marlena McMurchie, “The Dustbin of Quackery”? Senate Bill 1172 and the Legal Implications of Banning Reparative Therapy for Homosexual Minors”, *Southern California Law Review*, Vol. 87 No. 6 (2014), 1529.

<sup>37</sup> *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Relevance of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment to the context of domestic violence, A/74/148*, 12 July 2019, para. 48, Substance Abuse and Mental Health Services Administration (SAMHSA) – (U.S. Department of Health and Human Services), *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* (2015), 24; “Conversion ‘therapy’ begins at home: First study shows pivotal role of parents in conversion efforts to change LGBT adolescents’ sexual orientation”, *Science News*, 8 November 2018.

<sup>38</sup> Orly Rachmilovitz, “Family Assimilation Demands and Sexual Minority Youth”, *Minnesota Law Review*, Vol. 98 (2014), 1380,1382, 1383.

<sup>39</sup> Caitlin Ryan et al., “Parent-Initiated Sexual Orientation Change Efforts With LGBT Adolescents: Implications for Young Adult Mental Health and Adjustment”, *Journal of Homosexuality* (2018), 11.

to enrol their children in “conversion therapies” tend to be motivated by religious beliefs that consider sexual and gender diversity “immoral” and incompatible with their religious tenets.<sup>40</sup> In fact, family religiosity appears to be strongly linked to parental attempts to change sexual orientation, as families that are highly religious have been found to be least likely to accept their LGBT children.<sup>41</sup>

It has been claimed that prohibiting “conversion therapies” on children “hamper religious rights”, by depriving parents of the possibility of choosing these practices for their children in line with their religion.<sup>42</sup> For instance, when a ban was enacted in the state of New Jersey, a couple sued for the right “to turn their gay son straight”.<sup>43</sup> In California, the Pacific Justice Institute warned legislators that the local ban on SOGIECE was an unconstitutional restriction on the First Amendment,<sup>44</sup> and further questioned its legality with arguments that stem from the very same unfounded stereotypical assumptions about homosexuality on which SOGIECE are based. Indeed, the president of the organization stated

This outrageous bill makes no exceptions for young victims of sexual abuse who are plagued with unwanted same-sex attraction, nor does it respect the consciences of mental health professionals who work in a church. We are filing suit to defend families, children, and religious freedom. This unprecedented bill is outrageously unconstitutional.<sup>45</sup>

Opponents to SOGIECE bans argue these prohibitions hamper parental rights by depriving

them from the possibility of deciding that their children be subject to “conversion therapies” as they see fit.<sup>46</sup>

However, the right of parents to decide upon the care, custody and control of their children is not absolute; it is subject to limitations where when the child’s interests are in jeopardy.<sup>47</sup> The deleterious effects caused by these practices provide strong support to justify a restriction based on the child’s best interest.<sup>48</sup> Some have argued that child abuse charges could even be brought against parents who force their children to undergo “conversion therapies” because by doing so they are bound to cause them serious physical or psychological damage.<sup>49</sup>

As an example of how strongly this argument has been pushed in the United States of America, in 2018, after the Legislature of the State of Maine passed a ban on “conversion therapy” for children under 18, the law was vetoed by the Governor.<sup>50</sup> Among the main arguments presented against the norm was the contention that it would prevent parents from seeking religious counsellors for their children.<sup>51</sup>

## 5. Freedom of speech/expression

The right to freedom of speech and expression covers information and ideas of all kinds sought, received and imparted by any means.<sup>52</sup> Its exercise, however, is not entirely exempt from restrictions, since speech can be regulated to protect the rights of others. For these limitations to be lawful, they must not only be provided solely by law, but also

<sup>40</sup> Marlena McMurchie, “The Dustbin of Quackery”? Senate Bill 1172 and the Legal Implications of Banning Reparative Therapy for Homosexual Minors”, *Southern California Law Review*, Vol. 87 No. 6 (2014), 1532.

<sup>41</sup> See, among others: Caitlin Ryan et al., “Parent-Initiated Sexual Orientation Change Efforts With LGBT Adolescents: Implications for Young Adult Mental Health and Adjustment” *Journal of Homosexuality* (2018), 10.

<sup>42</sup> Alerta Cristiano, “El Proyecto del Senado 1000 atenta contra la crianza de mis hijos y mi libertad religiosa”, *change.org*, last accessed 17 February 2020.

<sup>43</sup> Allie Jones, “New Jersey Couple Suing for the Right to Turn Their Gay Son Straight” *The Wire*, November 4, 2013,

<sup>44</sup> The First Amendment of the Constitutions of the United States of America prevents the government from enacting laws which regulate an establishment of religion, prohibit the free exercise of religion, or restrict the freedom of speech, the freedom of the press, the right to assembly, or the right to petition the government for redress of grievances. See: “Amendment I. Religion and Free Expression”, *Legal Information Institute (Cornell Law School)*.

<sup>45</sup> “It’s Official: Gov. Brown Signs Gay Therapy Ban; PJI Filing Suit” *Pacific Justice Institute*, September 30, 2012,

<sup>46</sup> Allie Jones, “New Jersey Couple Suing for the Right to Turn Their Gay Son Straight”, *The Wire*, 4 November 2013; “Parental Rights Disappear with Obama’s Push to Ban Talk Therapy”, *Parents and Friends of Ex-Gays & Gays (PFOX)*, 13 April 2015; Lynn Wardle, “Anti-Gay Conversion Therapy Laws Infringe Parental Rights”, *CNS News.com*, 14 August 2015.

<sup>47</sup> Marlena McMurchie, “The Dustbin of Quackery”? Senate Bill 1172 and the Legal Implications of Banning Reparative Therapy for Homosexual Minors”, *Southern California Law Review*, Vol. 87 No. 6 (2014), 1529.

<sup>48</sup> *Id.*, 1531.

<sup>49</sup> Jonathan Sacks, “Pray away the gay? An analysis of the legality of conversion therapy by homophobic religious organizations”, *Rutgers Journal of Law and Religion*, Vol. 13 (2011), 79, 80.

<sup>50</sup> “In first, Maine governor vetoes ‘ex-gay’ conversion therapy ban”, *Washington Blade*, 6 July 2018.

<sup>51</sup> “Maine governor OKs ban on gay conversion therapy for minors”, *NBC News*, 29 May 2019.

<sup>52</sup> *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171, article 19.2.

pass the strict tests of necessity and proportionality.<sup>53</sup>

Under International Human Rights Law, restrictions to freedom of expression are “necessary” when they serve a legitimate purpose and are applied only for the purpose for which they were prescribed.<sup>54</sup> They satisfy the principle of proportionality when they are not overbroad,<sup>55</sup> that is, by being directly related to the specific need on which they were predicated, establishing a direct and immediate connection between the expression and the threat;<sup>56</sup> as well as when they are the least intrusive instrument amongst those which might achieve their protective function.<sup>57</sup>

Most of the discussions connecting legal restrictions on “conversion therapies” to the right to freedom of expression have taken place in the United States of America by means of legal arguments brought forward by SOGIECE proponents when opposing legal measures to restrict SOGIECE. These claims are oftentimes combined with arguments based on the right to freedom of religion. According to the position of SOGIECE enthusiasts, legal measures that restrict their administration infringe on their right to disseminate their views regarding sexual and gender diversity. Arguing that therapy is administered mainly through speech,<sup>58</sup> they posit that restricting a specific type of therapy would entail an infringement to freedom of expression.<sup>59</sup> This argument has been stretched to suggest that prohibiting “conversion therapies” would “ban the Bible”.<sup>60</sup> However, despite the fact that legal protections against restrictions to freedom of speech are particularly robust in the United States of America, these arguments have been dismissed by judicial decisions.<sup>61</sup>

One of the main arguments against this position has to do with the fact that legal restrictions on “conversion therapies” actually regulate *professional conduct*, rather than free speech. In this regard, courts have decided that given that States have the obligation to protect their citizens and the power to regulate professional conduct,<sup>62</sup> a legitimate interest can be found in prohibiting the administration of harmful “therapies”<sup>63</sup> and protect the public against untrustworthy, incompetent or irresponsible practitioners.<sup>64</sup>

Last, but not least, it should be noted that laws restricting the provision of “conversion therapies” do not bar discussions about these practices themselves, opinions regarding SOGIECE or sexual and gender diversity. Instead, they prohibit psychological “treatments” that aim to bring about a certain result.<sup>65</sup>

## 6. Freedom of conscience and religion

Legal arguments regarding freedom of religion are usually brought forward by SOGIECE proponents who see their religious beliefs on sexual and gender diversity as the basis for their attempts to change a person’s sexual orientation, gender identity or gender expression. Oftentimes, these arguments are closely linked to parental rights and the right to freedom of expression.

The right to freedom of religion has an *internal* dimension that consist of the freedom to adopt, change and maintain one’s religion or belief, and an *external* dimension that basically comprises the right to manifest one’s beliefs through worship, observance, practices and teaching. While the former is an absolute right and is unconditionally protected under International Human Rights Law,

<sup>53</sup> *Id.*, article 19.3.a).

<sup>54</sup> Human Rights Committee, *General Comment No. 34 on Article 19: Freedoms of opinion and expression*, CCPR/G/GC/34, 12 September 2011, paras. 22, 33.

<sup>55</sup> *Id.*, paras. 22, 34.

<sup>56</sup> *Id.*, paras. 22, 35.

<sup>57</sup> *Id.*, para. 34.

<sup>58</sup> United States Court of Appeals for the Third Circuit, *King et al. v. Christie et al.*, 11 September 2014, 17, 18.

<sup>59</sup> See, among others: United States Court of Appeals for the Ninth Circuit, *Pickup et al. v. Brown et al. and Welch et al. v. Brown et al.*, 29 August 2013, pp. 14, 15; United States Court of Appeals for the Third Circuit, *King et al. v. Christie et al.*, 11 September 2014, p. 12; United States District Court for the Middle District of Florida, *Vazzo et al. v. City of Tampa (Verified complaint for declaratory, preliminary and permanent injunctive relief, and damages)*, 4 December 2017, para. 117.

<sup>60</sup> See section 6 on the right to freedom of religion below.

<sup>61</sup> For more information on the decisions issued by courts in the United States of America see Section 4.1 in Chapter 7.

<sup>62</sup> United States Court of Appeals for the Ninth Circuit, *Pickup et al. v. Brown et al. and Welch et al. v. Brown et al.*, 29 August 2013, 21-23.

<sup>63</sup> United States Court of Appeals for the Ninth Circuit, *Pickup et al. v. Brown et al. and Welch et al. v. Brown et al.*, 29 August 2013, 26, 28. See also: Wyatt Fore, “A Joyful Heart Is Good Medicine: Sexuality Conversion Bans in the Courts”, *Michigan Journal of Gender and Law* 21 No. 2 (2014), 315.

<sup>64</sup> United States Court of Appeals for the Third Circuit, *King et al. v. Christie et al.*, 11 September 2014, 30, 37.

<sup>65</sup> Elizabeth Bookwalter, “Getting it Straight: A First Amendment Analysis of California’s Ban on Sexual Orientation Change Efforts and its Potential Effects on Abortion Regulations”, *Journal of Gender, Social Policy and the Law*, Vol. 22 No. 2 (2014), 466.



the right to manifest one's religion or belief can be subject to restrictions.<sup>66</sup>

Religious medical associations and Christian schools in different countries have expressed their concerns about SOGIECE bans restricting religious teaching and pastoral care provided to LGBTI children who are members of faith communities.<sup>67</sup> In the United States of America, legal arguments based on freedom of religion were among the claims brought forward by SOGIECE proponents in court litigation. According to their position, restrictions on SOGIECE interfered with their right to freely practice their religion because the bans prevented mental health professionals from offering therapies consistent with their religion and, at the same time, compelled them to act in contradiction to those beliefs.<sup>68</sup>

These arguments were unsuccessful in courts. However, it should be borne in mind that the bans in force in the United States of America target mental health professionals only. Religious counselling provided by a priest or a lay person was never under discussion in court litigation. Even more, in its decision in favour of the ban enacted in California, the 9<sup>th</sup> Circuit of the Court Appeals expressly accepted the possibility that—even under the ban in force—religious leaders and non-licensed therapists could still administer “conversion therapies” on children under 18 years of age<sup>69</sup> (SOGIECE provided to adults were not affected by the ban either).

In Europe, legal restrictions currently in force protect children from all forms of “conversion therapies”, even when they are administered by clergy or non-professional laypersons.<sup>70</sup> This evinces a legal reasoning by which the State determines that the compelling interest of protecting children from the harms of SOGIECE warrants the restriction of competing rights, such as freedom of religion.

## 7. Patient autonomy

The possibility of having a right to freely consent to “conversion therapies” is one of the most hotly debated legal arguments. The existence of this right is a claim frequently brought forward by SOGIECE proponents, especially under recent efforts to “reframe” the way in which they present their “services”.<sup>71</sup> Furthermore, when the American Psychological Association set out to produce its 2009 literature review on SOCE, organisations that adopt a “disorder model” of homosexuality or advocate a religious view of homosexuality as “sinful” or “immoral” wanted the APA “to clearly declare that consumers have the right to choose SOCE”.<sup>72</sup>

This section will explore the legal arguments surrounding the well-established right of patient autonomy—which can also be framed as the right to “personal self-determination”—and how consent can be regulated or restricted with regard to “conversion therapies”.

The bans currently in force prohibit different groups of people—professionals or non-professionals—from offering or providing “conversion therapies”. Such prohibition has the necessary effect of impeding a “patient’s”/ “client’s” consent to any treatment with an *a priori* goal to “make” a person heterosexual, to deter a person from transitioning, to force a trans person to de-transition, or to align a person’s gender expression to stereotypical binary notions of masculinity and femininity.

In this section, several legal approaches to restricting SOGIECE on adults are assessed. The analysis is divided in two subsections: the first looks at the implications of legally preventing *professionals* from offering “conversion therapies” and in the second, the possibilities of restricting *non-professionals* will be explored.

<sup>66</sup> Human Rights Committee, General Comment No. 22 on Article 18 (Freedom of Thought, Conscience or Religion), CCPR/C/21/Rev.1/Add.4, 30 July 1993, para. 3.

<sup>67</sup> “Homosexuality and Hope: The Statement of the Catholic Medical Association”, *Linacre Quarterly* Vol. 68 No. 2 (2001), 131, 132. Parliament of Queensland, *Health Legislation Amendment Bill 2019: Submission No. 079 by Christian Schools Australia (CSA) Adventist Schools Australia (ASA) Associated Christian Schools (ACS) Australian Association of Christian Schools (AACS)* (2019), 6.

<sup>68</sup> United States Court of Appeals for the Third Circuit, *King et al. v. Christie et al.*, 11 September 2014, 61; United State District Court for the Middle District of Florida, *Vazzo et al. v. City of Tampa (Verified complaint for declaratory, preliminary and permanent injunctive relief, and damages)*, 4 December 2017, para. 145, 146; “Oregon Gov. to Sign Law Banning Sexual Orientation Change Therapy for Gay Minors; Christian Ministries Say Law Will Have Negative Impact on ‘Religious Liberties’”, *Christian Post Reporter*, 11 May 2015.

<sup>69</sup> *Pickup v. Brown* (12-17681), D.C. No. 2:12-CV-02497-KJM-EFB, 26.

<sup>70</sup> See section 1.3 and 2.2 in Chapter 7 of this report.

<sup>71</sup> For more information on the “human rights”-based discourse adopted by SOGIECE proponents, see Section 8 in Chapter 2.

<sup>72</sup> American Psychological Association (APA), *Report of the American Psychological Association Task Force: Appropriate Therapeutic Responses To Sexual Orientation* (2009), 12.

### 7.1. SOGIECE provided by professionals

Where the restriction to provide SOGIECE is applicable to professionals, the focus is set on the *obligation* of health practitioners to provide adequate treatment. Conversely, under this premise, consenting adults *do not* have a right to demand or request harmful treatment from a professional. This is the current legal situation in Argentina, Brazil, Ecuador,<sup>73</sup> Malta, some regions in Spain, and Uruguay. In Fiji, Nauru and Samoa, this only applies with regard to sexual orientation change efforts (SOCE). The laws in force in these countries (or regions) confer normative force to two key principles:

- a) the primary mandate to “do no harm” in the performance of professional service, and;
- b) the depathologisation of sexual and gender diversity.

Both aspects operate interdependently in their support of this legal restriction. The normative enforcement of the principle to “do no harm” is warranted by the evidence of severe suffering that SOGIECE survivors experience as a consequence of these “practices”. This is complemented by the fact that depathologisation is enshrined in the law, in line with the principle of equality and non-discrimination (in this case non-discrimination based on SOGIE). Under this principle, States have an obligation to repeal discriminatory laws and, at the same time, an equally important obligation to enact legislation prohibiting discriminatory practices, as it is clearly the case of treating lesbian, gay, bisexual, trans, queer and gender diverse people as “mentally ill”. When States allow this discriminatory practice to be perpetuated, they fail to comply with their obligations under international human rights law.

SOGIECE proponents argue that by barring professionals from engaging in these practices, the patients’ right to receive assistance from therapist of their choosing and their possibility of determining their own therapeutic goals are completely abrogated. This, they affirm, would deprive individuals of the crucial mental health care they need, especially in cases where religious people experience severe mental suffering as a consequence of the perceived incompatibility

between their religious values and their sexual or gender identity. In fact, it has been stated that asking people to “get rid of their religion” is tantamount to what SOGIECE practitioners actually do (in their case with sexual orientation or gender identity). Internal conflicts of this kind are not a minor issue for a lot of people, particularly for those who embrace their faith or religion as a central aspect of their identity.

The response to this argument stresses that restrictions on “conversion therapies” limit a *very specific type* of therapy: one with the *a priori* goals described above and based on the assumption that sexual and gender diversity is a mental disorder or is based on inaccurate harmful stereotypes. By no means do these bans restrict access to mental health care across the board. On the contrary, they prevent professionals from engaging in practices that have been proved to be ineffective and harmful. Several laws have tackled this critique by including explicit exceptions to the definition of what constitutes “conversion therapy”.<sup>74</sup> This ensures that patients enduring any kind of internal conflict related to their lived experience of sexual orientation, gender identity or gender expression—motivated by their religious beliefs or not—can access supportive care. Professional associations of mental health practitioners have elaborated on how to approach this kind of support.<sup>75</sup> Additionally, for guidance purposes, model legislation proposals have analysed how these exceptions could be effectively framed.<sup>76</sup>

In the United States, adults are legally entitled to request—and *professionals* allowed to perform—SOGIECE. This means that as soon as a child comes of age, they will be able to legally consent—and mental health practitioners will be allowed to legally provide—any kind therapy, including “conversion therapies”. As analysed below, a possible explanation for this is that, in these jurisdictions, broad SOGIECE bans would not withstand constitutional challenges based on several of the rights described above.

### 7.2. SOGIECE provided by non-professionals

As it relates to imposing a restriction onto the right of adults to consent to SOGIECE offered by a *non-*

<sup>73</sup> In Ecuador, it only applies to therapies offered in rehabilitation clinics. For more information see Section 1.2 of Chapter 7.

<sup>74</sup> These exceptions usually leave outside of the scope of the ban any therapy aimed at providing acceptance, support and understanding to the person, or facilitate the person’s gender transition, or the person’s coping, social support or identity exploration and development, among others. Bans in North America and in Malta include such provisions.

<sup>75</sup> See: American Psychological Association (APA), *Report of the American Psychological Association Task Force: Appropriate Therapeutic Responses To Sexual Orientation* (2009).

<sup>76</sup> Florence Ashley, *Model Law – Prohibiting Conversion Practices* (2019). Available at SSRN.

*professional*, different arguments—in favour and against—can be explored. The legal regulation of this form of “conversion therapy” has attracted special attention because there is strong indication that most providers of SOGIECE across the world are *not* professionals, but religious leaders, priests or laypeople in general. Therefore, they fall outside of the scope of rules and regulations that affect those who perform their practices under a license or under the supervision of professional regulatory bodies.

Before exploring the hard, technical legal arguments regarding consent, a preliminary note on the *context* in which consent tends to be given—even in the case of adults—deserves our attention. In fact, research that has looked into the motivations of those who seek “conversion therapies” found that the most common reasons included fear, stress, and anxiety surrounding the illegitimacy of sexual and gender diversity within the individual’s religious faith or community, family pressure to conform to culturally accepted standards of gender and sexuality, and internalisation of the values and attitudes that characterise sexual and gender diversity negatively and as “something to avoid”.<sup>77</sup> The need to escape the rejection and hostility that many people have suffered (or fear suffering) and, conversely, the need to feel accepted within a community with specific values and views about these issues has also been included among the reasons that motivate people to seek SOGIECE.

The speech given by American gay activist Charles Silverstein at the 1972 annual convention of the Association for Advancement of Behavior Therapy captures this in an eloquent way that remains valid even today:

To suggest that a person comes voluntarily to change his sexual orientation is to ignore the powerful environmental stress, oppression if you will, that has been telling him for years that he should change. To grow up in a family where the word “homosexual” was whispered, to play in a playground and hear the words “faggot” and “queer”, to go to church and hear of “sin” and then to

college and hear of “illness”, and finally to the counseling center that promises to “cure”, is hardly to create an environment of freedom and voluntary choice. [...] What brings them into the counseling center is guilt, shame, and the loneliness that comes from their secret. If you really wish to help them freely choose, I suggest you first desensitize them to their guilt. Allow them to dissolve the shame about their desires and actions and to feel comfortable with their sexuality. After that, let them choose, but not before.<sup>78</sup>

A holistic discussion about the legal regulation of the right to consent to SOGIECE should take note of these factual considerations. This certainly does not mean that the only possible answer resides in enacting bans invalidating consent for SOGIECE across the board. However, debates that fail to take this context into account may risk dealing with the issue in a way that is divorced from reality. In this vein, even if such considerations are not considered robust enough to warrant legal restrictions, they could, for instance, provide the basis for enhanced public policies regulating informed consent, among other possible measures.

### 7.3. Legal approaches to regulating consent to SOGIECE provided by non-professionals

The following is just a brief overview of the many legal arguments that could possibly be brought into a discussion on a legal approach to restrict (or not) adult consent to SOGIECE provided by non-professionals.

The arguments have been divided into three main categories but other ways of naming, classifying or justifying these arguments are also possible. For the sake of clarity, only the main heads of argument are presented. Other considerations not included here could also be relevant for further discussions and the ones developed below could be elaborated in greater detail.

<sup>77</sup> See, among others: American Psychological Association (APA), *Report of the American Psychological Association Task Force: Appropriate Therapeutic Responses To Sexual Orientation* (2009), 46; Vinay Chandran and Arvind Narrain, “Religion and Sexual Orientation: Reconciling Faith with Same-sex Love” in Arvind Narrain and Vinay Chandran (eds), *Nothing to fix: Medicalisation of Sexual Orientation and Gender Identity* (Los Angeles: SAGE, 2016), 285. For a definition of the notion of *internalised prejudice* see: Gregory M. Herek, “Beyond “Homophobia”: Thinking About Sexual Prejudice and Stigma in the Twenty-First Century” *Sexuality Research & Social Policy* 1, No 2 (2004), 19; Jonathan Sacks, ““Pray away the gay?” An analysis of the legality of conversion therapy by homophobic religious organizations”, *Rutgers Journal of Law and Religion*, Vol. 13 (2011), 84.

<sup>78</sup> Charles Silverstein, “Behavior modification and the gay community”. Paper presented at the annual convention of the Association for Advancement of Behavior Therapy, New York City, October 1972 (as cited by Gerald Davison, “Homosexuality, The Ethical Challenge” *Journal of Consulting and Clinical Psychology* 44, No. 2 (1976), 160).

### 7.3.1. *The law should not allow for adult consent*

A bold approach to the issue may warrant a full ban on all forms of SOGIECE performed on minors and adults alike. Several lines of thought may justify this approach:

- ▶ The rights-based argumentation hinging on the principle of equality and non-discrimination used to restrict “conversion therapies” provided by professionals should also apply to non-professionals. Even though mental health professionals have a special obligation to refrain from pathologising sexual and gender diversity, this discriminatory practice can be perpetrated by professionals and by non-professionals alike. In this line, if the State wishes to combat pathologisation in a consistent way, it should not limit its regulatory powers to professionals only. In any case, the evidence of harm produced by SOGIECE relied on for the ban imposed on professional conduct is also present when non-professionals act as providers.
- ▶ Affirmative action to revert decades of state-sponsored pathologisation of sexual and gender diversity warrants robust measures aimed at eradicating the practice. Legal bans leaving adults unprotected from non-professionals fail to encompass the largest group of people targeted by these pseudo-scientific practices.<sup>79</sup>
- ▶ State responsibility derived from the effects of protracted promotion or tolerance of pathologisation needs to be properly acknowledged and reparations need to be set in place. Non-repetition of human rights violations derived from SOGIECE require a clear stance against these “therapies”. Restrictions that do not encompass non-professionals fall short of this specific obligation under international legal standards of reparations.

Broad bans of this kind have been enacted in several regions in Spain, where non-professionals are being held accountable for engaging in

SOGIECE with adults,<sup>80</sup> and in the Canadian city of Edmonton.<sup>81</sup>

Additionally, the restriction in force in the Canadian city of Vancouver also applies to adults when it is provided *for a fee* (the fact that “conversion therapies” are fraudulent practice was specifically mentioned as a supporting argument to enlarge the scope of the ban from protecting minors only to protect adults as well).<sup>82</sup>

### 7.3.2. *The law should ‘keep an eye’ on adult consent*

An intermediate approach suggests that SOGIECE should be a practice to which adults, *in principle*, should have the capacity to consent, but explicitly prohibited—and therefore consent discarded as a valid defence—when non-professionals perform them on “vulnerable adults”. In this line, the following arguments could be brought forward:

- ▶ The fact that adults may be deemed “vulnerable” by a set of broad conditions (not limited to mental health impairment) would open the door to consider issues related to the situation in which adults “consent” to SOGIECE such as a state of dependency from people who might be exerting pressure on them (such as people in positions of authority, leadership or trust), the total lack of unbiased information on SOGIE issues, or the psychological state of the person requiring SOGIECE. These elements, which go beyond the technical reasons under which consent can regularly be deemed invalid, would allow for the law to effectively acknowledge and take into account the contextual considerations on how many adults end up seeking these “therapies”.<sup>83</sup>
- ▶ The key aspect of this approach resides in how “vulnerability” is defined under the law. The principle of legal certainty requires that the law establishes clear conditions as to how consent could be deemed invalid and to what extent a retrospective claim could be brought against a provider based on such ulterior invalidation.

<sup>79</sup> Indication that adults are largely targeted by SOGIECE can be found in numerous sources. Among recent ones, an exploratory study carried out by OutRight Action International (sample was not randomised) found that among their respondents, 63.1% were above 18 years of age. See: Amie Bishop, *Harmful treatment: The global reach of so-called conversion therapy* (New York: OutRight Action International, 2019), 42.

<sup>80</sup> For more information see Section 2.2 in Chapter 7.

<sup>81</sup> *The City of Edmonton Bylaw 19061: Prohibited Businesses Bylaw* (2019)

<sup>82</sup> Video recording of the discussions: “Standing Committee on City Finance and Services” *City Council of Vancouver (website)*, 6 June 2018.

<sup>83</sup> See, among others: Alliance Arc-en-ciel de Québec: Alex Saulnier, *Qui veut guérir l’homosexualité ? Les pratiques de réorientation sexuelle au Québec* (2018), 18.

- ▶ One of the possible advantages of this approach is that it manages to encompass adults under the ban in a way that does not fully invalidate consent, thereby avoiding the possible legal hurdles (and constitutional lawsuits) that a more drastic measure could entail. It also sends a message that protections against SOGIECE are not limited by the legal fictions related to the coming of age, and the “instant maturity” that the law presumes after a certain age.

This approach has been adopted by law in force in Malta.<sup>84</sup> The Bill being currently discussed in Germany would also follow this approach.<sup>85</sup>

In 2019, the District of Columbia amended the ban that had been enacted in 2014 (that applied only to minors) to include adults placed under a conservatorship or guardianship. However, the spirit of this law was not to contemplate situations in which adults may be pressured to undergo SOGIECE, but rather to prevent an individual whose medical decisions are made by a guardian or conservator from being subject to ‘conversion therapy’ against their will<sup>86</sup> (as in the case of a parent with a minor).

### 7.3.3. *The law should not impair adult consent*

Under this approach, a legal restriction to the right of adults to consent to SOGIECE provided by non-professionals would not be feasible. Among the possible arguments for this approach are the following:

- ▶ From a constitutional law perspective—especially considering the nature of the rights that are implicated in SOGIECE (such as freedom of speech, freedom of conscience and religion, self-determination, autonomy)—such a broad restriction would not withstand strict scrutiny before the courts. A complete ban would not appear to be a proportional restriction.
- ▶ If SOGIECE is considered harmful or even “potentially” harmful, engaging in such “therapy” would be a decision protected by the right to privacy, among others. In the same way that the State does not impose full bans on other harmful behaviour or practices, however regrettable it may appear to many, engaging in

SOGIECE should be left for every person to decide.

- ▶ Besides the technical legal arguments, evidentiary concerns could also be raised. The difficulties in proving some forms of “conversion therapy” would provide further support to arguments challenging the ban based on. This could be the case, for instance, with the right to freedom of religion, as the defining line between “giving advice” or “sharing views” based on religious beliefs and engaging in a *sustained effort* to change a person’s SOGIE could be particularly difficult to establish in practice.
- ▶ From a strategic standpoint, enacting overbroad restrictions—especially in countries or jurisdictions with legal frameworks that have proved to be resistant to the restriction of certain rights in the past—may generate backlash. Regressive caselaw appears to be a major risk in countries where the judiciary is not supportive of claims based on principles of international human rights law or where magistrates are hostile to or unaware of SOGIE issues. This, again, evinces how important the local circumstances and possibilities need to inform any strategy that aims to generate legal change.

This appears to be the approach adopted by jurisdictions in North America, both in Canadian provinces and states in the United States of America.

Nevertheless, it is important to keep in mind that following this approach when thinking of a possible legal ban does not necessarily mean that the State should adopt a totally carefree attitude towards SOGIECE performed on adults. In other words, the difficulties—or the inconvenience—of enacting a comprehensive ban *by means of a law* should not prevent the State from taking other policy steps to discourage the practice. As explained in Chapter 6, complementary measures such as developing enhanced informed consent requirements, listing SOGIECE as a deceptive practice under anti-fraud legislation; prohibiting the use of public funds or facilities for SOGIECE purposes or related events; revoking charitable status to organisations that engage in SOGIECE; and launching awareness campaigns against these practices are only a few of the many protective measures that a State can adopt to effectively tackle the issue.

<sup>84</sup> For more information see Section 1.3 in Chapter 7.

<sup>85</sup> For more information see Section 5.5 in Chapter 7.

<sup>86</sup> Lou Chibbaro Jr., “Bowser signs conversion therapy ban for adults with disabilities” *Washington Blade*, 24 January 2019.



## CHAPTER 6

## STRATEGIES TO RESTRICT SOGIECE

Survivors, legal scholars, activists and policy makers may differ in their ideas on how put an end, restrict, or discourage “conversion therapies”. However, there seems to exist consensus around the idea that the problem cannot be tackled but with a multi-faceted strategy.

Legislation restricting or banning SOGIECE clearly appears as one of the key elements of such strategy, but it is certainly not the only one. Among those who embrace the idea that legal bans are necessary, there is disagreement on the breath, scope and reach of such legislation, or the nature of the penalties imposed to perpetrators. Some even consider that legislation is not even the most pressing or relevant measure a State could take to tackle the issue.

Raising awareness and educating about the harms and risks of SOGIECE is also seen as one of the other key elements.

These differences in approach may be based on knowledge of local realities, prevalence of certain forms of SOGIECE and the opportunities that existing resources may create.

Without attempting to establish a hierarchy in any of the elements included below or ruling out others that further discussions could produce, the following is a list of tools that could be set in place to implement a multi-faceted strategy to sensibly reduce the chances or prevent more people from suffer the harms caused by SOGIECE.

### 1. Legal bans or restrictions on the provision of SOGIECE

Enacting laws that ban or otherwise restrict the provision of so-called “conversion therapies” has

become one of the most debated issues among SOGIECE survivors, scholars, activists and policy makers. The laws currently in force vary greatly in their approach, evincing that there are multiple ways in which a ban or a legal restriction can actually be set in place.

Besides looking at the laws that are already in place and the judicial decisions resulting from litigation, model laws can be a good resource that can serve as a guide for advocates and policy makers. Among them are the annotated model law drafted by transfeminist activist Florence Ashley in 2019<sup>1</sup> and the one drafted by the National Center for Lesbian Rights (NCLR) and the Human Rights Campaign (HRC) in 2015.<sup>2</sup>

#### 1.1. Are legal restrictions necessary?

In 2019, a bill to ban conversion therapies on minors was considered “unnecessary” by the Swiss Federal Council.<sup>3</sup> The main argument was that existing criminal laws *already* protected children from abuse and that parents can be brought to justice if they fail to comply with their duty to assist and educate their children. Additionally, the Council stated that the different codes of ethics issued by different professional regulatory bodies require their members “to exercise their activity with care and professional conscience, to respect the limits of their skills and the rights of their clients”.<sup>4</sup> In the public consultation carried out by the Parliament of Queensland (Australia) in 2019 as part of the legislative participatory process to discuss a legal ban on “conversion therapies”, this argument was also raised by Christian organisations.<sup>5</sup>

In theory, there could be legal avenues to bring a claim under existing criminal or civil laws against

<sup>1</sup> Florence Ashley, *Model Law – Prohibiting Conversion Practices* (2019). Available at SSRN.

<sup>2</sup> “NCLR and HRC Release Sample Legislation to End Conversion Therapy on LGBTQ Youth”, *National Center for Lesbian Rights*, 20 October 2015.

<sup>3</sup> Motion 19.3840: “Interdiction de “guérir” les mineurs homosexuels”. Introduced by Rosmarie Quadranti. 21 June 2019.

<sup>4</sup> *Avis du Conseil Federal*, 4 September 2019.

<sup>5</sup> Parliament of Queensland, *Health Legislation Amendment Bill 2019: Submission No. 079 by Christian Schools Australia (CSA) Adventist Schools Australia (ASA) Associated Christian Schools (ACS) Australian Association of Christian Schools (AACCS)* (2019), 2. The argument is presented in the following way: “Even if evidence emerges to suggest that such practices are ongoing, existing regulation of

providers of “conversion therapy” if a victim can frame their case and provide strong evidence to prove the harm—either mental or physical—suffered as a consequence of the “therapy”. This may be feasible when brutal force, physical violence or any kind of criminal activity have been part of the methods used by the provider. Acts of torture, physical abuse, false imprisonment and inhumane treatment fall under existing criminal law provisions, regardless of the motivation of the perpetrator and can be prosecuted accordingly.

However, bringing a claim against a SOGIECE provider under existing laws in cases where no “evident” physical violence or extreme mistreatment has taken place tends to be considerably difficult and could even be almost impossible in practice for several reasons.

- ▶ In this scenario, survivors are left with the laborious task of building up a case and producing legal arguments to show that the suffering they have experienced meets the varying thresholds that local courts may establish in order to prove harm.
- ▶ The challenge of reaching such threshold is coupled by the inexistence of caselaw and the uncertainty of having to rely only on interpretations of what “professional conscience”, “exercise with care”, or “abuse” (or any other local terminology) may mean in each particular case, as well as by the likelihood that local courts may have never heard cases in which these terms were construed with regard to SOGIE issues and may be reluctant to grant protection.
- ▶ Providing evidence as such can oftentimes be challenge in and of itself, as many therapy settings are one-on-one settings without witnesses or other forms of documentation (in this regard, undercover investigations have proved to be one of the few ways of exposing SOGIECE providers).<sup>6</sup>
- ▶ Even more, producing all the necessary factual and legal arguments to convince a court that there is actually a case to be heard requires SOGIECE survivors to rely on legal aid services which may not always be available or financially

accessible, or may not be trained in legal SOGIE issues.

These difficulties, among many others not listed here, can easily act as a deterrent and dramatically reduce the chances for survivors to bring claims and seek redress, as they risk going through a tolling judicial process with little chances of success.

When criminal activity takes place in the context of SOGIECE, criminal codes will certainly provide the legal basis for prosecution. A law that explicitly outlaws the provision of SOGIECE (criminal or otherwise) allows survivors to rely on provisions of law that offer a clearer legal basis in their attempt to access justice and seek redress.

Interestingly, in 2018, Taiwan adopted a legal measure that explicitly refers to a set of existing laws that could be the legal basis to prosecute SOGIECE practitioners. The Ministry of Health and Welfare issued a formal response to a complaint submitted by civil society organisations stating that if any institution or individual conducts “sexual orientation conversion therapy”, the therapy content and facts should be reviewed to determine whether the involved party is in violation of the Protection of Children and Youths Welfare and Rights Act or Article 304 of the Criminal Code concerning “causing another by violence or threats to do a thing which he has no obligation to do or preventing another from doing a thing that he has the right to do”, and hence, may be punished accordingly”.<sup>7</sup> Measures like these one—which can provide legal certainty on the application of existing laws to SOGIECE—could be adopted by governmental agencies while formal laws are being discussed.

Finally, the Christian groups cited above also presented a more “factual” argument on how these laws appear to be “unnecessary” in the following terms: “Whether there is a need for new legislation to address these practices is, however, questionable as there is no evidence that they remain in use within Australia”.<sup>8</sup> Numerous sources—many of them referenced in this report—show exactly the opposite, including in Australia. Moreover, a basic common-sense response to this argument is that the mere fact that there is so much opposition to the bans that are being discussed

medical and health services would seem to provide an appropriate mechanism to deal with these practices if they are occurring and not subject to existing criminal law”.

<sup>6</sup> For a list of examples of such investigations carried out in different countries around the world see Section 10 in Chapter 2.

<sup>7</sup> Ministry of Health and Welfare (Department of Medical Affairs), “Responses to the complaint submitted by civil organizations concerning “conversion therapy”, Yi-Zih No. 1071660970, 22 February 2018.

<sup>8</sup> Parliament of Queensland, *Health Legislation Amendment Bill 2019: Submission No. 079 by Christian Schools Australia (CSA) Adventist Schools Australia (ASA) Associated Christian Schools (ACS) Australian Association of Christian Schools (AACS)* (2019), 2.



shows that there is a multiplicity of actors who wish to and actually engage in these practices.

### *Do international bodies support legal bans?*

Yes, in recent years, several international bodies have explicitly called for the enactment of laws to prohibit or outlaw “conversion therapies”.

It bears mentioning that not all of them offered specific standards on appropriate ways to legally restrict SOGIECE. Many of them issued strong recommendations to enact these bans when dealing with coerced or otherwise brutal techniques.

- ▶ The Committee against Torture has called for the prohibition of the practice of so-called “conversion therapy”, and other forced, involuntary or otherwise coercive or abusive treatments, as a response to the situation denounced in China, where victims had been “treated” with electroshock therapy.<sup>9</sup>
- ▶ The Committee on the Rights with People with Disabilities explicitly required information from Poland on whether the State had the intention of prohibiting so-called “conversion therapies”<sup>10</sup> and eventually recommended to “put an end to the use of ‘conversion therapy.’”<sup>11</sup>
- ▶ The Committee on the Elimination of Discrimination against Women (CEDAW) called on Ecuador to ensure the implementation of the legislation that prohibits practices of “de-homosexualization”<sup>12</sup> thereby endorsing the ban.
- ▶ The Independent Expert on protection against violence and discrimination based on sexual

orientation and gender identity (IE-SOGI) has called upon states to ban so-called “conversion therapy”<sup>13</sup> and has noted the positive trends towards its prohibition by administrative, parliamentary and judicial initiatives.<sup>14</sup>

- ▶ In 2018, the European Parliament (the legislative body of the European Union) welcomed initiatives prohibiting LGBTI “conversion therapies” and banning the pathologisation of trans identities and urged all Member States to adopt similar measures that respect and uphold the right to gender identity and gender expression.<sup>15</sup>
- ▶ In the Americas, the Inter-American Commission on Human Rights (IACHR) has called for the prohibition of “conversion therapies”<sup>16</sup> and has welcomed laws enacted to this end by several jurisdictions in the Americas.<sup>17</sup>

### **1.2. Criminal or non-criminal laws?**

Local organisations, in conversation with policy makers and State officials in general, may favour criminal laws imposing penalties which may include imprisonment or heavy fines for practitioners. Criminalising these “practices” can send a strong message about the gravity of subjecting people, especially children, to SOGIECE and provide legal certainty about the serious consequences of a violation.

Enacting laws to criminalise the provision of “conversion therapies” (or certain aspects of it) is not an obstacle to the enactment of civil or administrative laws that may restrict these practices in other ways, such as imposing disciplinary procedures by licensing boards, revocation of professional licences, prohibition of

<sup>9</sup> Committee against Torture, *Concluding observations on the fifth periodic report of China*, CAT/C/CHN/CO/5, 3 February 2016, para. 56(a).

<sup>10</sup> Committee on the Rights of Persons with Disabilities, *List of issues in relation to the initial report of Poland*, CRPD/C/POL/Q/1, 25 April 2018, para. 10.

<sup>11</sup> Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Poland*, CRPD/C/POL/CO/1, 29 October 2018, para. 31.

<sup>12</sup> Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined eighth and ninth periodic reports of Ecuador*, CEDAW/C/ECU/CO/8-9, 11 March 2015, para. 19.

<sup>13</sup> *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/38/43, 11 May 2018, para. 100.

<sup>14</sup> *Id.*, para. 85.

<sup>15</sup> European Parliament, *Situation of fundamental rights in the EU in 2016 European Parliament resolution of 1 March 2018 on the situation of fundamental rights in the EU in 2016 (2017/2125(INI))*, para. 65.

<sup>16</sup> IACHR, *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas* (2018), Recommendation (8)(a); IACHR, Press Release No. 61/17: “Embrace Diversity and Protect Trans and Gender Diverse Children and Adolescents International Day against Homophobia, Transphobia and Biphobia - 17 May, 16 May 2017; Press Release 153/18: “IACHR Welcomes Change by WHO to Stop Regarding Gender Identity as a Disorder, 18 July 2018.

<sup>17</sup> IACHR, Press Release No. 28/17: “IACHR Hails Regional Progress on Human Rights of LGBTI People in the Americas”, 10 March 2017; (2018), para. 221; *Annual Report 2017, Chapter IV* (2017), para. 149;

the use of public funds or health coverage for SOGIECE purposes, etc. Both types of laws could be set in place to deal with different aspects of this phenomenon. Discussions on the legal character of these measures will vary greatly under different legal frameworks.

In Ecuador, both administrative regulations and criminal laws that explicitly deal with “conversion therapies” are in place. In Canada, several provinces have enacted non-criminal laws which would co-exist with a federal criminal law, if the federal bill is eventually enacted.

### *Criminal law: aggravating circumstances*

When SOGIECE involve criminal activity, existing criminal laws serve as the legal basis for prosecution.

Criminal provisions that explicitly criminalise hate crimes or aggravate penalties for crimes motivated by the victim’s sexual orientation, gender identity or expression, could also provide the legal basis to prosecute perpetrators of criminal acts carried out with the intention of changing a persons’ SO/GIE. The fact that the criminal conduct was carried out ultimately motivated by the need to change the person’s SO/GIE would provide the grounds for the application of these provisions.

Going one step further, one UN Member State (Ecuador) has enacted a criminal provision containing a specific aggravating circumstance for the crime of torture when such criminal acts are committed with the intention of modifying a person’s sexual orientation or gender identity. This provision was introduced in 2014 as a response to the discovery of numerous “dehomosexualisation clinics” in which people, mostly young lesbians, were interned and tortured with the intention of “making them heterosexual”.

Even if hate crimes legislation contemplating SOGIE is already in place, aggravating crimes based on this very specific motivation is not redundant. In many countries with codified law, criminal provisions tend to be interpreted restrictively based on constitutional due process guarantees and procedural safeguards which allow for very limited interpretation, construction or analogy. Even considering the usual difficulties of proving animus in hate crimes, restrictive courts could refuse the aggravation of penalties based on hate

crime provisions in cases of SOGIECE involving criminal acts.

### **1.3. Who should be prevented from engaging in SOGIECE?**

One of the most heated debates surrounding the legal approach to bans on “conversion therapy” resides in the scope of these laws with regard to those who are legally prevented from providing SOGIECE.

As it was developed in the first chapter, SOGIECE may be provided by medical doctors, mental health practitioners, counsellors, nurses, religious or spiritual leaders, non-professional coaches and lay people in general. The legal character of the activities carried out by this very diverse group of providers varies greatly, especially if their acting under a professional licence that allows them to legally offer their services.

One of the main aspects of a legal restriction on “conversion therapies” has to do with the type of provider it affects. The regulation of professional activity has proved to be an effective way of tackling the issue as those who are licenced by the State to offer professional services are subject to strict legal regulations that are meant to protect patients/clients. Conversely, providers who engage in SOGIECE without a professional licence are not affected by those regulations and, under some legal frameworks, their activities can be more difficult to regulate, although not impossible.

There appears to be a clear consensus on the need to prevent mental health practitioners from providing “conversion therapies”. This is clearly reflected in the fact that all bans currently in force across the world include them in one way or another. Many laws even have specific definitions or list which professionals are affected.

Several jurisdictions have enacted bans that also affect non-professionals and several others are considering similar bills. Malta, for example, outlaws SOGIECE when provided by *any person* on minors or vulnerable adults.<sup>18</sup> In Spain, several regions have enacted bans that affect non-professionals as well.<sup>19</sup> In other jurisdictions, non-professionals are affected when they are in a position of trust with regard to a minor<sup>20</sup> or when

<sup>18</sup> See Section 1.3 in Chapter 7.

<sup>19</sup> See Section 2.2 in Chapter 7.

<sup>20</sup> See Section 2.1.2 in Chapter 7.

they provide “conversion therapies” commercially (in exchange for money).<sup>21</sup>

In certain cases, prohibitions affect “health providers”. There has been some debate as to how this term could be eventually interpreted by courts, as many non-licensed professionals (or even non-professionals) could also fall under the scope of such term.

One of the most controversial aspects of the legal regulation of SOGIECE has to do with provisions that may affect religious leaders or organisations. As developed in Chapter 2, in many countries, religious counselling with SOGIECE purposes—and other ancillary methods used by these groups—is the most prevalent form of “conversion therapy”. Therefore, it has been argued that the majority of bans in force (which do not target religious leaders and groups) are incapable of effectively tackling the problem.

The arguments brought forward by religious groups revolve around their right to freely exercise their religion, which would include disseminating their disapproval of any form of sexual and gender diversity. When children are involved, parental rights are also invoked. These arguments are analysed in Section 4 of Chapter 5.

As of February 2020, restrictions in force in Brazil and the United States of America do not affect religious leaders and groups. Indirect bans currently in force in Argentina, Uruguay, Samoa, Nauru and Fiji do not affect religious groups either. However, bans in force in several regions in Spain, Malta (when performed on minors or vulnerable adults) and Ecuador (when performed in a rehabilitation establishment) prohibit religious leaders, ministers or organisations from providing SOGIECE. In Nova Scotia (Canada), if a priest or religious leader is in a position of authority or trust with regard to a minor, they could also fall under the scope of the ban.

#### 1.4. Who should be protected from SOGIECE?

Mirroring the debates on who should be prevented from *providing* “conversion therapies” is the debate

on who should be protected from them. These discussions usually revolve around the issue of vulnerability of children and adults, the possibility of “freely” consenting to these practices and the right to patient autonomy. Legal arguments regarding this specific aspect are discussed in Section 7 of Chapter 5.

In several jurisdictions, adults are also protected from SOGIECE. This is the case in several regions in Spain; in Argentina, Brazil, Uruguay, Samoa, Fiji and Nauru (when performed by a professional<sup>22</sup>); in Ecuador (when performed in a rehabilitation clinic), in Malta (when performed by a professional or on a “vulnerable” adult) and the Canadian cities of Vancouver and Edmonton.<sup>23</sup>

Of particular interest is the definition of “vulnerable” person included in the Maltese law. Under Section 2, subsections (a) and (b) include minors and people suffering from mental disorders. But under subsection (c) a vulnerable person is also one that is

considered by the competent court to be particularly at risk when taking into account the person’s age, maturity, health, mental disability, other conditions including any situation of dependence, the psychological state and, or emotional state of that person.<sup>24</sup>

This ingenuous provision leaves the door open for an adult to seek redress when the context under which they received the “therapy” was one in which their possibilities of “freely” consenting were curtailed or somehow affected.

Also relevant to these discussions, a federal bill under discussion in Mexico would establish aggravated penalties to those who force a disabled person, an elderly person, persons deprived of liberty or, in general, individuals who for any reason could not resist or consent.<sup>25</sup>

#### 1.5. How should SOGIECE be defined?

Most laws restricting SOGIECE have clauses that specifically define the conducts that are outlawed

<sup>21</sup> See Section 3 in Chapter 6.

<sup>22</sup> As explained in Section 3.1 of Chapter 7, the laws in force in the Pacific refer only to “sexual orientation” and do not include gender identity or expression.

<sup>23</sup> See Section 2.1.5 in Chapter 7.

<sup>24</sup> *The Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act* (an act to prohibit “conversion therapy”, as a deceptive and harmful act or interventions against a person’s sexual orientation, gender identity and, or gender expression, and to affirm such characteristics), Section 2.

<sup>25</sup> *Parliamentary Gazette No. 27* (Tome II), 8 August 2018, page 514 (electronic version can be accessed here). See also: “Bulletin No. 5678” *Mexican Chamber of Deputies (website)*, 18 August 2018. A similar bill was introduced in the Senate.

in each case. Model legislation and comparative law can be of great use for advocates.

Among the many considerations that should be taken into account, it is crucial that definitions be inclusive of “conversion” practices specifically targeted at trans and gender diverse people. The first bans historically adopted focused exclusively on sexual orientation. In the case of Brazil, for instance, that gap was filled in 2018 with a ban specifically protecting trans people and *travestis*.

Another crucial element usually included within the definition are clauses aimed at ensuring that supportive therapies are not affected by the ban. As it has been pointed out, “as they take steps to end such practices, legislators and practitioners must be careful not to encroach on effective therapy options for young people who are exploring the complex matters of gender and sexuality.”<sup>26</sup> This can be achieved by clearly defining or listing practices that are not SOGICE.

## 2. Legal regulation of health care professions

Another possibility that a few jurisdictions have followed consists in the enactment of laws that regulate health care professions which include specific clauses that prohibit any diagnosis exclusively based on a person’s sexual orientation or gender identity. Such laws have been enacted in Argentina and Uruguay, in Latin America, and in Samoa, Fiji and Nauru, in the Pacific. These laws do not refer to “conversion therapies” explicitly, but they prevent health professionals, particularly psychiatrists, from legally engaging in their provision.<sup>27</sup>

Many of the bans in force in North America amend the provisions of laws regulating health professions. These laws also provide for disciplinary procedures by which violators can be admonished or have their licenses revoked.

In order to effectively implement these provisions, States will need to make sure health professionals

receive the adequate training to understand the implications of this prohibition. In other words, these provisions could be used as the legal basis for advocacy efforts aimed at incorporating issues of sexual and gender diversity in higher education, especially in the field of medicine, mental health, social work and other related professions. In this line, in response to grave concern about abusive “conversion therapies”, the Committee against Torture has specifically recommended that health professionals should receive training on respecting the human rights of lesbian, gay, bisexual, transgender and intersex persons, including their rights to autonomy and physical and psychological integrity.<sup>28</sup>

## 3. Anti-fraud or consumer rights legislation

Based on the fact that “conversion therapies” have been largely proved to be ineffective, the offer of these pseudo-scientific practices could be listed among fraudulent practices in anti-fraud or consumer rights legislation. At least two states – Illinois<sup>29</sup> and Connecticut<sup>30</sup>—have thus far included a provision to this end in their ban against SOGIECE. Also in the United States, a bill introduced in the federal Congress in 2019 would make the provision and advertising of “conversion therapies” a deceptive practice under the Federal Trade Commission Act.<sup>31</sup>

In 2018, the Canadian city of Vancouver enacted a by-law that prohibits “charging a fee for any services that seek to change sexual orientation or gender identity of any person”.<sup>32</sup> The fact that “conversion therapies” are fraudulent practice was specifically mentioned as a supporting argument to enlarge the scope of the ban from protecting minors only to protect adults as well.<sup>33</sup>

Even if “conversion therapies” were not explicitly listed on anti-fraud provision, they could nevertheless be denounced as deceptive

<sup>26</sup> Kyle Knight, “The right therapy for LGBT youth”, *Human Rights Watch (website)*, 4 May 2015.

<sup>27</sup> As explained in Section 3.1 in Chapter 7, the laws in force in the Pacific refer only to “sexual orientation” and do not include gender identity or expression.

<sup>28</sup> Committee against Torture, *Concluding observations on the fifth periodic report of China*, CAT/C/CHN/CO/5, 3 February 2016, para 56(b).

<sup>29</sup> Public Act 099-0411. HB0217 Enrolled LRB-099-04356 HAF 24383(b).

<sup>30</sup> Public Act No. 17-5 (2017), Section 3.

<sup>31</sup> “H.R.3570 - Therapeutic Fraud Prevention Act of 2019” 116th Congress (2019-2020). See also: Dominic Holden, “Democrats are taking another shot at protecting LGBT kids from so-called cures” *BuzzFeed News*. 25 April 2017

<sup>32</sup> *A By-law to Amend Business Prohibition By-law No. 5156 Regarding Conversion Therapy* (2018), Section 2.

<sup>33</sup> Video recording of the discussions: “Standing Committee on City Finance and Services” *City Council of Vancouver (website)*, 6 June 2018.

practices.<sup>34</sup> Thus far, at least one judicial decision in the United States of America has ruled that the services provided by an organisation engaging in SOCE violated the local anti-fraud law, namely the New Jersey Consumer Fraud Act.<sup>35</sup> In this case, participants paid an average of USD 7,105 and spent an average of 487.20 hours on unsuccessful efforts to change their sexual orientation.<sup>36</sup>

#### 4. Anti-discrimination law

The explicit inclusion of SOGIECE as an act of discrimination against lesbian, gay, bisexual, trans and gender diverse people could also serve a legal tool to outlaw so-called “conversion therapies”.

For instance, a bill introduced in May 2019 in the Chilean Chamber of Deputies would, among other things, amend the anti-discrimination law (Law 20,069) to explicitly list any acts by parents or legal guardians aimed at changing a child’s sexual orientation or gender identity as an “act of arbitrary discrimination” and would allow any person to file a complaint in favour of the child who is being subjected to such discriminatory acts.<sup>37</sup>

Notably, a study carried out in Canada (the Canadian Sex Now survey) found that SOGIECE exposure was prevalent even in provinces with robust legal protections for sexual and gender minorities. This suggests that legal protections against discrimination that do not mention “conversion therapies” explicitly have not had the effect of offering protection against SOGIECE.<sup>38</sup>

#### 5. Child protection law

Legislation establishing measures for the protection of children can also be taken into

account when considering legal measures to restrict SOGICE.

For example, a federal bill under consideration in Mexico would establish the possibility for parents or guardians to lose parental rights or guardianship if they force their underage children to undergo SOGIECE.<sup>39</sup>

In Chile, a bill introduced in 2019 would establish that any acts by parents or legal guardians aimed at changing a child’s sexual orientation or gender identity constitute acts of intrafamilial violence and would legally entail a situation of “imminent risk” for the child.<sup>40</sup>

#### 6. Health insurance legislation and policies

Several jurisdictions have prohibited “conversion therapies” from being considered “insured health services”. Consequently, costs of SOGIECE cannot be reimbursed by insurance companies. This withdrawal of support honours the fact that these harmful practices cannot be considered health services and, hence, that the State or private insurance will not provide financial support for them.

- ▶ In the Netherlands, although there is no legal ban on “conversion therapies”, these practices were removed from the basic health insurance package by the Ministry of Health in 2012.<sup>41</sup>
- ▶ In Canada, Ontario<sup>42</sup> Nova Scotia<sup>43</sup> and Prince Edward Island<sup>44</sup> have established that any services that seek to change the sexual orientation or gender identity of a person are not insured services.

<sup>34</sup> “Ending ‘Gay Conversion’ for Good” *The New York Times*, 12 February 2014.

<sup>35</sup> See Section 4.1.3 in Chapter 7: *Ferguson et al. v. JONAH*.

<sup>36</sup> Annesa Flentje, Nicholas C. Heck and Bryan N. Cochran, “Sexual Reorientation Therapy Interventions: Perspectives of Ex-Ex-Gay Individuals” *Journal of Gay & Lesbian Mental Health* 17 No. 3 (2013), 275.

<sup>37</sup> Boletín N° 12660-18, Proyecto de Ley: Modifica la ley N° 20.066, que Establece ley de violencia intrafamiliar, y la ley N° 20.609, que Establece medidas contra la discriminación, para sancionar los actos ejecutados en el ámbito familiar o educacional destinados a modificar la orientación sexual y la identidad o expresión de género de niños, niñas y adolescentes (2019), Article 2.

<sup>38</sup> Travis Salway, *Protecting Canadian sexual and gender minorities from harmful sexual orientation and gender identity change efforts* (2019), 5.

<sup>39</sup> *Parliamentary Gazette No. 27* (Tome II), 8 August 2018, page 514 (electronic version can be accessed here). See also: “Bulletin No. 5678” *Mexican Chamber of Deputies (website)*, 18 August 2018. A similar bill was introduced in the Senate.

<sup>40</sup> Boletín N° 12660-18, Proyecto de Ley: Modifica la ley N° 20.066, que Establece ley de violencia intrafamiliar, y la ley N° 20.609, que Establece medidas contra la discriminación, para sancionar los actos ejecutados en el ámbito familiar o educacional destinados a modificar la orientación sexual y la identidad o expresión de género de los niños, niñas y adolescentes (2019).

<sup>41</sup> “Einde vergoeding Different-therapie lijkt in zicht” *COC Netherland (website)*, 3 May 2012

<sup>42</sup> “Affirming Sexual Orientation and Gender Identity Act” (2015).

<sup>43</sup> *Sexual Orientation and Gender Identity Protection Act* (as assented to by the Lieutenant Governor - October 11, 2018), article 4.

<sup>44</sup> *Id.*, Section 3 (amending the *Hospital and Diagnostic Services Insurance Act*).

- ▶ In the United States, a federal bill that would ban the use of Medicaid funding for “conversion therapy” was introduced in 2019.<sup>45</sup>

## 7. Advertising and referrals

Outlawing the advertising of SOGIECE and/or the act of referring a person to “conversion therapies” is a measure that several jurisdictions have taken. Preventing referrals serve as a way of preventing providers encompassed by a ban to refer people to those who are not. Restrictions on advertising tackle the social dimension of the existence of SOGIECE.

In Brazil, professionals affected by the ban cannot reinforce social prejudices by speaking or participating in public pronouncements in the mass media.<sup>46</sup> Under the bans in force in Europe, advertising SOGIECE is prohibited both for professionals and non-professionals. In the United State of America, when restrictions of this kind are included in bans, they only affect licenced professionals.<sup>47</sup> Many of the bills currently under consideration include provisions to specifically prohibit advertising, referrals or both.<sup>48</sup>

As an alternative, it has been suggested that advertising of conversion therapy “should be regulated in the same manner as that of cigarettes and alcohol”.<sup>49</sup>

## 8. Public policy

Public policy measures to restrict or discourage the offer or provision of SOGIECE should be especially considered as part of any multi-faceted strategy. These measures are of great value where, for various reasons, legal bans or restrictions do not appear to be possible or convenient.

The UN Special Rapporteur on the Right to Health has indicated that harmful practices such as “conversion therapy” for lesbian, gay, bisexual, transgender and intersex persons require “positive, protective action from the State”.<sup>50</sup> This needs to

be part of a larger strategy to facilitate, provide and promote conditions in which mental health and well-being can be realised. In this line, the Special Rapporteur added that fulfilling the right to mental health requires

public mental health interventions that can protect populations from key risk factors for poor mental health. It requires action outside of the health sector in homes, schools, workplaces and communities. It also includes facilitating the best possible start to life for children through evidence-based family support, supportive parenting interventions and early childhood education. [...] States should also formulate national policies aimed at reducing or eliminating the toxicity of the physical and psychosocial environment.<sup>51</sup>

The following are a few examples of different ways in which States can become actively involved in restricting SOGIECE by means of public policy.

### 8.1. Enforcement agencies

The existence of a governmental agency in charge of implementing legal measures against SOGIECE is another key element of an effective strategy. This role can be fulfilled by an existing body—as it is usually the case of the Ministry of Health or the Ministry of Justice in several jurisdictions—or by an agency specially created for this purpose. Where bans affect licensed professionals only, supervisory and discipline powers are usually given to licensing bodies.

Supervision and enforcement of existing legal restrictions is crucial to ensure that the practice of SOGIECE is effectively tackled and that violators are held accountable. Several international human rights bodies have emphasised the need to supervise and enforce legal restrictions enacted against “conversion therapies” and to adequately investigate and prosecute perpetrators, including the Human Rights Committee,<sup>52</sup> the Committee on

<sup>45</sup> “H.R.1981 - Prohibition of Medicaid Funding for Conversion Therapy Act”, 116th Congress (2019-2020)

<sup>46</sup> Federal Council of Psychology, Resolution No. 1/99 (1999), article 4.

<sup>47</sup> See Chapter 7 below.

<sup>48</sup> More information on bills under consideration prohibiting advertising and referrals can be found in section 5 in Chapter 7.

<sup>49</sup> Aditus Foundation, *Policy Paper I: Prohibition of Sexual Orientation, Gender Identity/Expression Conversion Therapy* (2015), 7.

<sup>50</sup> *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/HRC/41/34, 12 April 2019, para. 19.

<sup>51</sup> *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/HRC/41/34, 12 April 2019, 20.

<sup>52</sup> Human Rights Committee, *Concluding observations on the sixth periodic report of Ecuador*, CCPR/C/ECU/CO/6, 11 August 2016, para 12.

the Elimination of Discrimination against Women,<sup>53</sup> and the Committee against Torture.<sup>54</sup> For its part, the Inter-American Commission on Human Rights has urged OAS Member States to adequately monitor the activity of professionals who offer “therapies” to “modify” or “cure” sexual orientation and gender identity.<sup>55</sup>

Enforcement agencies can also play a role in carrying out awareness raising campaigns to inform the general public and in assisting victims and survivors when filing complaints. Ensuring that appropriate assistance is offered to victims and survivors should also be a priority (see below). The development of guidelines for this purpose could also help disseminate best practices.

It has been stressed that regulatory bodies should create “easily accessible mechanisms for the public to register complaints about them” and when members do not have expert knowledge about “conversion therapies” they should seek out expert consultation when managing complaints about them. Appropriate guidelines should also explain how to sanction violators.<sup>56</sup>

As an example of a newly created entity to take up a specific role in implementation, in the state of Hawaii, United States of America, the law that enacted a ban on “conversion therapy” established the “Sexual Orientation Counseling Task Force” to address the concerns of minors seeking counselling on sexual orientation, gender identity, gender expressions, and related behaviours.<sup>57</sup>

## 8.2. Access to justice

States should ensure that SOGIECE victims and survivors have proper and timely access to justice. Court personnel and other relevant actors should be adequately trained on SOGIE issues and, more specifically, how to deal with a case regarding SOGIECE.

Instances of enforcement, even in jurisdictions where legal restrictions are already in place, appear to be the exception. In effect, concerns about impunity and failure to prosecute perpetrators of SOGIECE have been raised by UN Treaty Bodies.<sup>58</sup> Undertaking investigations of abusive “treatments” of lesbian, gay, bisexual, transgender and intersex persons is among the recommendations issued by the UN Committee against Torture when responding to SOGIECE concerns.<sup>59</sup> Ensuring access to adequate redress and compensation has also been included among the priorities in the assistance of victims.<sup>60</sup>

## 8.3. Survivor support

One of the main priorities when victims or survivors come forward is to ensure that they receive the necessary support they may require.

While the focus on prevention is of utmost importance, governmental authorities should not overlook the need to attend to the needs of those who are enduring the consequences of having gone through SOGIECE, especially minors and vulnerable adults who may have been forced or coerced to undergo SOGIECE by close relatives or community leaders they trusted. In effect, due to the fact that perpetrators are commonly family members, medical and legal professionals and agents of the state, there is often a reluctance of victims to come forward and report to the authorities. This is worsened by the fact that many victims are forced to sign written ‘consent’ forms for these practices which creates their perception that they are powerless and unable to obtain justice.<sup>61</sup>

Enforcement agencies should work in close collaboration with networks of survivors where they exist and with civil society organisations working on these issues. In some countries, these networks or organisations are mobilising in different

<sup>53</sup> Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined eighth and ninth periodic reports of Ecuador*, CEDAW/C/ECU/CO/8-9, 11 March 2015, para. 19.

<sup>54</sup> Committee against Torture, *Concluding observations on the fifth periodic report of China*, CAT/C/CHN/CO/5, 3 February 2016, para 56(c).

<sup>55</sup> IACHR, *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas* (2018), Recommendation (8)(a).

<sup>56</sup> Jack Drescher et al., “The Growing Regulation of Conversion Therapy” *Journal of Medical Regulation* 102, No. 12 (2016), 10.

<sup>57</sup> *Id.*, Section 2.

<sup>58</sup> Human Rights Committee, *Concluding observations on the sixth periodic report of Ecuador*, CCPR/C/ECU/CO/6, 11 August 2016, para 11.

<sup>59</sup> Committee against Torture, *Concluding observations on the fifth periodic report of China*, CAT/C/CHN/CO/5, 3 February 2016, para 56(c).

<sup>60</sup> *Ibid.*

<sup>61</sup> ILGA World and RSFL, *Submission to the Office of the United Nations High Commissioner for Human Rights (OHCHR): The Sustainable Development Goals and Health* (2018), 6.

ways and producing helpful resources. To cite one example, in Australia, a network of SOGICE survivors have issued statements and produced guidelines to for communicators working with survivors (see below).<sup>62</sup>

#### 8.4. Official Statements against SOGIECE

Official statements condemning “conversion therapies” issued by governmental agencies or public officials can be particularly useful in many regards: they can contribute to set the direction in which the State will work on this subject, they can raise awareness about the existence and harms of these “therapies” in the general public and they can help set a precedent with governmental authorities for further action towards more substantial progress.

These statements can vary greatly in their format and content, but they generally consist of non-binding declarations with a clear message of disapproval of SOGIECE. In some cases, they may cast light on the position of government on the issue or may even indicate a specific course of action to be followed.

In jurisdictions where there are no legal measures in place, these statements can be a valuable first step towards the enactment of legal restrictions. In this line, the UN Human Rights Committee has recommended that States should clearly and officially state that no form of social stigmatization of, or discrimination against, persons based on their sexual orientation or gender identity, will be tolerated, including “the propagation of so-called ‘conversion therapies.’”<sup>63</sup>

In section 6 of Chapter 7 of this report, a non-exhaustive list of recent statements of this kind is presented.

#### 8.5. Withdrawing official support to SOGIECE

In many cases, States continue to openly promote and support SOGIECE. However, even if not

engaging in direct sponsorship, many States still fund or provide indirect support to SOGIECE organisations or groups. To cite only a few examples:

- ▶ In 2006, the Ministry of Community, Youth and Sports of Singapore was reported as having offered a \$100,000 grant to “Liberty League”, a local organisation led by an “ex-transgender” Christian that offered “conversion therapy”.<sup>64</sup>
- ▶ In 2011, the Hong Kong government’s Social Welfare Department hired a religious organization advocating “conversion therapy” to teach workshops to social workers.<sup>65</sup>
- ▶ More recently, in South Korea, the buildings of the National Assembly and the National Human Rights Commission were authorised to be venue for an event to advocate for SOGIECE.<sup>66</sup> The UN Human Rights Committee expressed concern about this and recommended Korea to avoid giving such official support.<sup>67</sup>
- ▶ On a more symbolic level, it has been reported that during a gala hosted by the Polish Ministry of Development, an award was given to a Lublin-based group called “Odwaga” (“Courage”) for their “spiritual and therapeutic help to the people with unwanted sexual inclinations”.<sup>68</sup>

As a matter of consistency with their human rights obligations, States should refrain from sponsoring, promoting, advocating, funding or supporting activities or organisations offering SOGIECE. Enforcement agencies referenced above should also have the mandate to ensure that the State is not involved or does not offer support of any kind to SOGIECE at any of its levels. Among the measures that can be cited as examples of good practice in this regard are the following:

- ▶ In the state of New York, in the United States of America, local laws regulating mental health services were amended in 2016 to prohibit the

<sup>62</sup> For more information, see: “SOGICE Survivor Statement” (website). See also: @SOCEsurvivors (Twitter/Facebook).

<sup>63</sup> Human Rights Committee, *Concluding observations on the fourth report of the Republic of Korea*, CCPR/C/KOR/CO/4, para. 15.

<sup>64</sup> “Ex-gay group Liberty League gets \$100,000 grant from National Volunteer & Philanthropy Centre” *Homosexuality in Singapore (YouTube Channel)*, 27 June 2011

<sup>65</sup> “‘Fixing’ Homosexuality in Hong Kong” *Asia Sentinel*, 1 July 2011.

<sup>66</sup> Human Rights Committee, *Concluding observations on the fourth periodic report of the Republic of Korea*, CCPR/C/KOR/CO/4, 3 December 2015, para 14(c).

<sup>67</sup> Human Rights Committee, *Concluding observations on the fourth periodic report of the Republic of Korea*, CCPR/C/KOR/CO/4, paras. 15.

<sup>68</sup> Makary Gołosz, “Meanwhile in Poland – controversial award gala in Ministry of Development” *Medium*, Mar 30 March 2017.



provision of “conversion therapies” in public facilities.<sup>69</sup>

- ▶ In Puerto Rico, the offer (either direct or indirect) of “conversion therapies” prevents the granting of economic incentives for activities, services and investments in the scientific, hospital or medical field.<sup>70</sup> Additionally, a certification stating that “conversion therapies” will not be provided in the facilities is a requirement for the concession or renewal of a license to operate a health facility (either public or private).<sup>71</sup>
- ▶ Restrictions on the use of public funds for SOGIECE purposes has been restricted in several states in the United States of America, including Maine,<sup>72</sup> Maryland,<sup>73</sup> Rhode Island,<sup>74</sup> Connecticut,<sup>75</sup> and in the Canadian province of Nova Scotia.<sup>76</sup>
- ▶ Revoking charitable status or withdrawing tax exemptions to organisations providing SOGIECE are also among the possible measures that States can adopt to discourage these practices.

### 8.6. Awareness raising

The importance of raising awareness on SOGIECE cannot be underestimated. In light of the proliferation of ideas that degrade or reject any form of sexual and gender diversity, States should ensure that scientific, unbiased information is disseminated, especially when protections on freedom of speech allow hostile groups to disseminate hateful or discriminatory ideas that may validate or promote SOGIECE.

In numerous countries, non-prejudiced information on sexual and gender diversity is extremely limited and very little information is available to counter prejudice and stereotypes. The State should take a leading role in filling that gap and ensure that unbiased, scientific and age-appropriate information on sexual and gender diversity is

widely disseminated. In this regard, raising awareness on SOGIECE should be considered as an essential element of a larger campaign to raise awareness on sexual and gender diversity more generally.

Educating the general public on the ineffectiveness and harmful nature of all forms of “conversion therapies” serves as an invaluable preventive measure. States could support and complement efforts driven by civil society organisations in this regard. Several organisations across the world have launched national and local campaigns.

### 8.7. Education

In keeping with their obligation to eradicate discriminatory practices such as pathologisation of sexual and gender diversity, States need to ensure that mental health practitioners are adequately trained and have access to unbiased, science-based information on these issues. This training needs to be included in higher education curricula, especially in institutions that educate mental health practitioners and other related professions.

The UN Committee against Torture has stressed this by recommending that health professionals and public officials receive training on respecting the human rights of lesbian, gay, bisexual, transgender and intersex persons, including their rights to autonomy and physical and psychological integrity.<sup>77</sup> This recommendation was issued in response to worrying information brought to the attention of the Committee on how China’s mental health educational and information materials still commonly describe homosexuality as a “perversion”.<sup>78</sup> In fact, in 2014, researchers from the Guangzhou branch of the Gay and Lesbian Campus Association in China (GLAC) assessed 90 college textbooks to find that approximately 40% of them identified homosexuality an illness, and over 50% indicated that homosexuals should undergo “conversion therapy” in order to “become heterosexual”.<sup>79</sup>

<sup>69</sup> For more information see Section 2.3.16 in Chapter 7 of this report.

<sup>70</sup> Orden Ejecutiva OE-2019-016: *Para prohibir terapias de conversión o reparativas para cambiar la orientación sexual o de identidad de género de menores de edad*, 27 de marzo de 2019, Section 4.

<sup>71</sup> *Id.*, Section 2.

<sup>72</sup> H.P.755-L.D. 1025, *An Act to Prohibit the Provision of Conversion Therapy to Minors by Certain Licensed Professionals* (2019), Section 3.

<sup>73</sup> Senate Bill 1028, Section 3.

<sup>74</sup> Rhode Island General Laws, Title 23: Chapter 23-94 - Prevention of Conversion Therapy for Children, Section 23(94)(4).

<sup>75</sup> Public Act No. 17-5 (2017), Section 3.

<sup>76</sup> *Sexual Orientation and Gender Identity Protection Act* (as assented to by the Lieutenant Governor - October 11, 2018), article 5.

<sup>77</sup> Committee against Torture, *Concluding observations on the fifth periodic report of China*, CAT/C/CHN/CO/5, 3 February 2016, para 56(b).

<sup>78</sup> China LBT Rights Initiative, “Discrimination Faced By Lesbian, Bisexual and Transgender Women in China” (2014), 2.

<sup>79</sup> UNDP and China Women’s University, “Legal Gender Recognition in China: A Legal and Policy Review”, 2018.

## 8.8. Dialogue with religious institutions

One of the most challenging aspects of many forms of current SOGIECE is that the ideas on which they are based are usually religious beliefs condemning or disapproving any form of sexual or gender diversity. Religious groups and institutions tend to claim that it is their right to hold and promote the views of their choosing and, in recent years, have become the most prominent proponents of “conversion therapies”.

Regardless of the legal arguments that could be brought to the discussion, while many believe that imposing a ban on religious activities may not be the most strategic move, others emphasise that the harm produced by SOGIECE offered in the name of religion are equally harmful.

Depending on local contexts and conditions, some favour the idea of engaging in constructive dialogue with religious groups and organisations who still advocate for SOGIECE. The fact that an increasing number of religious organisations and institutions are starting to denounce “conversion therapies”<sup>80</sup> lends support for initiatives of this kind.

## 9. The role of NHRIs and other domestic human rights bodies

National Human Rights Institutions (NHRIs) are state-mandated bodies, independent of government, with a broad constitutional or legal mandate to protect and promote human rights at the national level. In their unique position with a legal mandate to promote and protect human rights domestically in an independent manner, these institutions can make a sizeable contribution to the restriction of SOGIECE.

Among the duties under the responsibility of these institutions is the production of reports on the situation of human rights in each country which are regularly submitted to the various UN Human Rights mechanisms. Encouraging these entities to look into the violations of human rights suffered by SOGIECE survivors can be a significant step to raise awareness and even advocate for legal reform. The

following is a list of only a few examples illustrating different ways in which human rights institutions have been involved in

- ▶ In 2019, the Queensland Human Rights Commission expressed support for legislative reform to prevent health practitioners from engaging in practices that seek to change or suppress sexual orientation or gender identity.<sup>81</sup>
- ▶ In Mexico, the governmental councils against discrimination—both at the national level and in Mexico City—have issued clear position statements against so-called “conversion therapies”. Furthermore, the National Council has gathered the support of several other governmental agencies and public institutions, as well as professional organisations, in a recent statement against “efforts to correct sexual orientation and gender identity (locally referred to as “ECOSIG”).<sup>82</sup> In 2020 the United Nations Office on Drugs and Crime, the Council to Prevent and Eliminate Discrimination in Mexico City, the School of Psychology of the National Autonomous University of Mexico and Yaaj (a local civil society organisation) produced a valuable report entitled “Nothing to Cure: Reference guide for mental health professionals in the fight against SOGIECE”.<sup>83</sup>
- ▶ In 2018 the Hong Kong Equal Opportunities Commission (EOC) has called for legislation banning discrimination against LGBT people in a report that includes references to “conversion therapies”.<sup>84</sup>
- ▶ In Peru, the Office of the Ombudsperson expressed concern and repudiated the existence of organisations offering SOGIECE based on religious ideas promoting prejudice, stigma and discriminatory ideas. The Office notified the College of Psychologists of Peru, the Medical College of Peru, the Public Ministry and the Municipalities so that, according to their competences, they could investigate and punish those who unduly exercise the profession and discriminate against LGBTI people.<sup>85</sup>

<sup>80</sup> See Section 3 in Chapter 3.

<sup>81</sup> Parliament of Queensland, *Health Legislation Amendment Bill 2019 Submission No. 016 by the Queensland Human Rights Commission* (2019)

<sup>82</sup> For more information on these statements see Section 6.9 in Chapter 7.

<sup>83</sup> UNODC, COPRED, Colectivo de Estudios de Género del Sistema de Universidad Abierta y Educación a Distancia Iztacala de la Facultad de Psicología (Universidad Nacional Autónoma de México) y Yaaj, *Transformando tu vida, A.C., Nada que Curar: Guía de referencia para profesionales de la salud mental en el combate a los ECOSIG* (2020).

<sup>84</sup> “In Hong Kong, gay people prescribed prayers and no sex as a ‘cure’” *Reuters*, 31 May 2018.

<sup>85</sup> Defensoría del Pueblo (Peru), “Press Release No. 247/OCII/DP/2019: “Terapias de re conversión” constituyen actos de tortura contra las personas LGBTI”, 13 August 2019.

- ▶ The New Zealand Human Rights Commission has made submissions to IE SOGI including specific information on SOGIECE.<sup>86</sup>

## 10. The role of the media

The media can play a key role in a strategy to counter the prevalence of SOGIECE.

As developed in Section 10 of Chapter 2, journalistic investigations that have gone undercover to penetrate the often opaque field in which SOGIECE practitioners operate, have contributed to shed light on the underground existence of therapists and groups, especially when they deny engaging in “conversion therapies” or “rebrand” their services in deceptive ways.

When dealing with SOGIECE survivors, it is crucial that the media engages with them in an ethical and respectful way. In Australia, several SOGIECE survivors have worked with The Brave Network and Equal Voices to produce an ethical framework for engaging with survivors that acknowledges their humanity and the entirety of their lived experience. These guidelines present a way forward for communicators to accurately and responsibly represent SOGIECE survivors in the media and in public policy.<sup>87</sup>

## 11. The role of Professional Associations

As explained in Section 2 of Chapter 3, professional associations have played a crucial role in the growing consensus against SOGIECE around the world. Therefore, they need to be part of any multifaceted strategy against these practices.

In several jurisdictions, by virtue of local regulations, associations are given regulatory powers over the conduct of their members, they can contribute to restrict these practices by dictating internal rules against SOGIECE. Even if such powers are not delegated, associations can discourage professionals from engaging in these practices by revoking membership to the

association, which could affect reputation and prevent access to benefits.

For instance, the Israel Medical Association bars its members from performing “conversion therapy”. A complaint filed to the association’s Ethics Committee could result in sanctions ranging from a simple reprimand to revoking membership in the organization.<sup>88</sup>

Furthermore, public statements reinforcing the position of the association against SOGIECE can be an invaluable contribution to discussions and debates. For instance, in 2015, the American Psychological Association expressed strong support for President Obama’s call for “a society that accepts young people in their gender and sexual development, rather than rejecting them, labelling them as bad, or suggesting that they should change”.<sup>89</sup>

Active participation in the process of drafting legal measures to restrict SOGIECE is also a valuable contribution that associations can make. As an example, the German Medical Association was involved and formally submitted its views on the bill currently being debated in Germany.<sup>90</sup>

<sup>86</sup> New Zealand Human Rights Commission, Submission on socio-cultural exclusion for the Independent Expert’s report to the 74th General Assembly (2019).

<sup>87</sup> Brave Network Melbourne et al., *Ethical Guidelines for Engaging with Survivors of SOCE: A Deeper Look at the Conversion Therapy/Ex-gay Movement* (2018).

<sup>88</sup> Rotem Elizera, “Israel Medical Association bars its members from performing conversion therapy” *Ynet News*, 1 August 2019.

<sup>89</sup> “American Psychological Association Applauds President Obama’s Call to End Use of Therapies Intended to Change Sexual Orientation” *American Psychological Association (website)*, 9 April 2015.

<sup>90</sup> Federal Medical Association, *Statement on the draft bill for a law on protection against treatments to change or suppress sexual orientation or self-perceived gender identity (Sexual Orientation and Gender Identity Protection Law)* (2019).



## CHAPTER 7

## LAWS RESTRICTING SOGIECE

Numerous countries have adopted legal measures to restrict SOGIECE. Several of them have done so by means of national or sub-national laws. Many others are currently considering enacting such legal restrictions.

In this chapter we first explore the legal bans currently in force in at least 11 countries. Relevant case law produced thus far in 3 countries is also analysed. Finally, we also explore a non-exhaustive list of bills currently under discussion and a compilation of statements and official positions adopted by high-ranking state officials or governmental bodies. It is expected that these lists will grow considerably in the upcoming years.

### 1. Nationwide legal restrictions in force

As of December 2019, only three (3) UN Member States have enacted nationwide laws that restrict the administration of “conversion therapies”, namely Brazil, Ecuador and Malta.<sup>1</sup>

Far from having chosen similar paths, each of these three States opted for very different approaches to regulate this issue. In fact, the laws in force in each of these countries vary greatly with regard to their scope, the legal character of the restriction, the penalties imposed and the extent to which they limit their reach to specific types of providers and recipients.

#### 1.1. Brazil (1999)

Brazil was the first UN Member State to enact a nationwide legal restriction of “conversion therapy”. This was done by means of a resolution

issued by the Federal Council of Psychology (known for its acronym in Portuguese as “CFP”). Under Federal Law No. 5,766<sup>2</sup> and Executive Order No. 79,822,<sup>3</sup> the CFP is an autonomous public body within the orbit of the Ministry of Labour with the power to regulate the professional activity of licenced psychologists in the country.<sup>4</sup>

In 1999, the Council issued Resolution No. 1/99 which prohibits the “pathologisation of homoerotic behaviours and practices” and orders all licenced psychologists to “refrain from coercive or unsolicited treatment to homosexuals”.<sup>5</sup> The resolution additionally establishes that “psychologists will not collaborate with events and services that propose treatment and cure for homosexuality”<sup>6</sup> and “will not speak or participate in public pronouncements in the mass media to reinforce existing social prejudices towards homosexuals as having any psychic disorder.”<sup>7</sup>

For several years this pioneering resolution was the only existing legal instrument restricting the provision of sexual orientation change efforts (SOCE) in the world. Prior to the adoption of this resolution, several professional associations in several countries had already condemned and proscribed these practices,<sup>8</sup> but the legal status of the Brazilian CFP and its delegated powers to regulate professional activity made Resolution No. 1/99 the first legally binding instrument to restrict “conversion therapies”.

With regard to its scope, the resolution is only applicable to licenced psychologists, so it does not reach any other professionals or any other person willing to offer “conversion therapies”. As there is no limitation regarding possible recipients,

<sup>1</sup> ILGA World: Lucas Ramon Mendos, *State-Sponsored Homophobia 2019: Global Legislation Overview Update* (Geneva; ILGA, December 2019), 131.

<sup>2</sup> Federal Law No 5,766. “Cria o Conselho Federal e os Conselhos Regionais de Psicologia e dá outras providências”. 20 December 1971.

<sup>3</sup> Decreto N° 79.822. “Regulamenta a Lei n° 5.766, de 20 de dezembro de 1971, que criou o Conselho Federal e os Conselhos Regionais de Psicologia e dá outras providências”. 17 June 1977.

<sup>4</sup> These powers are established under article 6 of Federal Law No 5,766 (cited above).

<sup>5</sup> Federal Council of Psychology, Resolution No. 1/99 (1999), article 3.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Id.*, article 4

<sup>8</sup> See Annex 1 of this report.

psychologists are barred from offering them to *minors* or *consenting adults* alike.

Additionally, the prohibition on speaking or participating in public pronouncements in the mass media to reinforce social prejudices towards homosexuals tackles the social impact of the advertisement and promotion of conversion therapies.

The resolution issued in 1999 referred only to “sexual orientation”, without including gender identity or expression. However, this void was filled in 2018 with the issuance of Resolution 1/18.<sup>9</sup> Based on the most current scientific and legal production and in line with the Code of Professional Ethics, Resolution No. 01/2018 cites *de Yogyakarta Principles*, includes specific definitions of gender expression and gender identity and officially declares that “gender expressions and identities are possibilities of human existence, which should not be understood as psychopathologies, mental disorders, deviations or inadequacies.”<sup>10</sup>

The preambular paragraphs also state that “cisnormativity” refers to the social rule that reduces the division of people only to men and women, with social roles established as natural, postulates heterosexuality as the only sexual orientation and considers conjugality only between cisgender men and women.

The resolution bars psychologists from performing any action that favours the pathologisation of transsexual and *travesti* people<sup>11</sup> and from proposing, carrying out or collaborating with private, public, institutional, community or promotional events or services aimed at conversion, reversal, readjustment or reorientation therapy of gender identity of transgender and *travesti* people.<sup>12</sup>

Furthermore, the resolution requires that psychologists, in their professional practice:

- ▶ act according to the ethical principles of the profession, contributing their knowledge to a reflection aimed at the elimination of transphobia and prejudice towards transgender and *travesti* people;

- ▶ refrain from any action that favours discrimination or prejudice against transgender and *travesti* people;
- ▶ refrain from tolerating or ignoring discrimination of transgender and *travesti* people;
- ▶ refrain from using psychological tools or techniques to create, maintain or reinforce prejudices, stigmas, stereotypes or discrimination against transgender and *travesti* people;
- ▶ refrain from collaborating with events or services that contribute to the development of discriminatory institutional cultures in relation to transgender and *travesti* people;
- ▶ refrain from participating in pronouncements, including in the media and the Internet, that legitimize or reinforce prejudice towards transgender and *travesti* people.

### 1.1.1. Judicial challenges

The first CFP resolution faced resistance from the moment it was issued in 1999, especially from the Organisation of Christian Psychologists and Psychiatrists (locally known as CPPC - Corpo de Psicólogos e Psiquiatras Cristãos) known for their pathologizing views on “healing homosexuality”.<sup>13</sup>

In one of the rare instances of enforcement, in 2009, the CFP punished Rozângela Alves Justino, a Christian psychologist, with public censure. Since then, Justino has led several lawsuits at the local and federal level in repeated attempts to have Resolution 1/99 repealed or partially invalidated. Additionally, as she continued to offer “conversion therapies”, the CFP finally revoked her license in 2017. Later on, Justino became an adviser for MP Sóstenes Cavalcante in the Federal Chamber of Deputies.<sup>14</sup> As a result of an *actio popularis* filed by Justino in the Federal District in 2017, two conflicting judicial decisions were issued by a federal judge, questioning the interpretation of the

<sup>9</sup> Federal Council of Psychology, Resolution No. 1/18 (2018).

<sup>10</sup> *Ibid.*

<sup>11</sup> The term “travesti” refers to a specific trans identity in Latin America and should not be understood as the equivalent of the English pejorative term “transvestite”.

<sup>12</sup> Federal Council of Psychology, Resolution No. 1/18 (2018), Sections 7 and 8.

<sup>13</sup> Sandra Elena Sposito, “Psicologia, Sexualidade e Religião: Ligações Perigosas” *Revista de Psicologia da UNESP* 11, No. 1 (2012), 102.

<sup>14</sup> Ruben Berta, George Marques, “Autora da ação da “cura gay” tem cargo em gabinete de deputado evangélico”, 19 September 2017.

ban and opening the door for psychologists to offer confidential “sexual reorientation”.<sup>15</sup>

In 2019, a member of the Supreme Federal Tribunal (STF) issued an interim decision to suspend the effects of the lower federal magistrate, thereby reinstating the ban in full force.<sup>16</sup> In January 2020, the Supreme Federal Tribunal (STF) put a definite end to the judicial attempts to repeal the ban before Brazilian federal courts. The decision focused mainly on procedural issues regarding legal standing and the viability of the appeal, so no substantive elements were actually discussed in the decision.<sup>17</sup>

### 1.1.2. Legislative attempts to repeal or limit the restriction

Several legislative attempts to repeal Resolution No. 1/99 were introduced by conservative MPs at the federal level, at least since 2009.<sup>18</sup> None of these attempts were successful.

- ▶ The first one, introduced in 2009, was Bill No. 1640/09,<sup>19</sup> which sought to eliminate paragraphs 3 and 4 of Resolution No. 1/1999. Substantive arguments challenging the resolution revolved around the idea that the ban infringes the professional’s right to work and the patient’s “right to adequate guidance”. A more procedural argument refers to the fact that the CFP had allegedly incurred in “abuse of regulatory power”. This bill was archived in 2012.
- ▶ In 2011, Bill No. 234/11 was introduced in the lower Chamber of the Federal Congress,<sup>20</sup> again with the aim to repeal articles 3 and 4 of the resolution. Although it gained momentum—and the endorsement of the chamber’s Commission on Human Rights<sup>21</sup>— the initiative was finally abandoned in 2013.

- ▶ In 2016, Bill No. 539/16 was introduced in the chamber and archived in January 2019, only to be reinstated a month later.<sup>22</sup>

At the local level, other initiatives tried to undermine the resolution by enacting legislation with opposite aims. In 2003, Deputy Pastor Edino Fonseca (PSC) introduced Bill 717/2003 to the Legislative Assembly of the State of Rio de Janeiro proposing to create a state-run support program for people who want to “leave homosexuality”.<sup>23</sup>

## 1.2. Ecuador (2012 / 2014)

The ban on “conversion therapies” in Ecuador is formed by two different provisions of very different legal character. On the one hand, an administrative Ministerial Agreement prohibits “conversion therapies” in specific institutions, and, on the other hand, the Penal Code establishes aggravating circumstances for the crime of torture when it is perpetrated with the aim of changing the gender identity or the sexual orientation of the victim.

### 1.2.1. Ministerial Agreement No. 767/12

The first legal instrument imposing a ban on “conversion therapies” came as a response to the proliferation of so-called “*dehomosexualization* clinics” in the country. In 2011, the Ministry of Public Health found that numerous rehabilitation centres were housing people who had been forcibly interned—oftentimes with the complicity of family members—to be “cured” or treated for their same-sex attraction.<sup>24</sup>

In May 2012, the Ministry of Public Health issued Ministerial Agreement No. 767<sup>25</sup> which regulates

<sup>15</sup> Felipe Betim, “‘Cura gay’: o que de fato disse o juiz que causou uma onda de indignação”, *El País*, 20 September 2017; Mateus Rodrigues and Raquel Morais “Juiz federal do DF altera decisão que liberou ‘cura gay’ e reafirma normas do Conselho de Psicologia”, *G1*, 15 December 2017,

<sup>16</sup> Victor Farias, “Ministra do STF suspende decisão que permitia terapia da ‘cura gay’”, *O Globo*, 24 April 2019.

<sup>17</sup> Supremo Tribunal Federal, *Processo No. 31.818* (2020).

<sup>18</sup> For an in-depth analysis of the parliamentary debates, see: Maria Clara Brito da Gama “Cura Gay? Debates parlamentares sobre a (des)patologização da homossexualidade” *Revista Latinoamericana Sexualidad, Salud y Sociedad* 31 (2019), 9

<sup>19</sup> PDC 1640/2009, “Susta a aplicação do parágrafo único do Art. 3º e o Art. 4º, da Resolução do Conselho Federal de Psicologia No. 1/99 de 23 de Março de 1999, que estabelece normas de atuação para os psicólogos em relação à questão da orientação sexual”.

<sup>20</sup> Projeto de Decreto Legislativo PDC 234/11: Susta a aplicação do parágrafo único do Art. 3º e o Art. 4º, da Resolução do Conselho Federal de Psicologia nº 1/99 de 23 de Março de 1999, que estabelece normas de atuação para os psicólogos em relação à questão da orientação sexual.

<sup>21</sup> “Proposta sobre ‘cura gay’ é aprovada em comissão presidida por Feliciano”, *Folha do Sao Paulo*, 18 June 2013.

<sup>22</sup> Projeto de Decreto Legislativo PDC 539/2016: Susta os efeitos da Resolução No. 01, 22 de março de 1999, editada pelo CFP.

<sup>23</sup> CLAM, “Projeto contra homossexualidade mobiliza entidades”, 9 December 2004.

<sup>24</sup> Inter-American Commission on Human Rights (IACHR), *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1 Doc. 36, para. 203.

<sup>25</sup> Ministerio de Salud Pública (Ecuador), *Acuerdo Ministerial No. 767* (2012).

rehabilitation centres for people with addictions to psychoactive substances. Section 20(a) of the Agreement prohibits "conversion therapies" in rehabilitation institutions in the following terms:

**Article 20. Prohibitions.** For the admission, treatment and internment of persons with problems of addiction or dependence on psychoactive support, and, generally, in their operation, rehabilitation centres and their personnel will not:

(a) Offer, practice or recommend treatments or therapies that have as purpose the infringement of human rights, in particular the right to free development of the personality, gender identity, sexual orientation (such as "dehomosexualization"), personal liberty, integrity, non-discrimination, health and life, any other type of practices that reinforce or endorse gender-based violence against children and adolescents.

The interesting aspect of this norm is that it prohibits SOGIECE in any rehabilitation centre, regardless of whether it is administered on an adult or a minor and regardless of whether the provider is a professional or not. However, as there is no other complementary law or regulation in force in the country, any SOGIECE provider who is not in any way connected to a rehabilitation centre would not be affected by this prohibition.<sup>26</sup>

The way in which the phenomena of clinics unfolded in Ecuador explains why the focus was set on these institutions and, even though it may be adequate for the local context—and valuable as a first step to tackle the problem—the Ministerial Agreement is far from being an optimal solution to the larger problem of "conversion therapies".

### 1.2.2. *Aggravating circumstances in the Penal Code*

In the 2014 amendment of the Ecuadorian Penal Code, an aggravating circumstance was added to

the crime of torture: when the crime is committed with the intention of modifying a persons' sexual orientation or gender identity, the penalty is increased.<sup>27</sup>

This legal response is yet another reflection of the local context, given that most of the cases of "conversion therapy" that came to light, at least since 2008, involved heinous acts of torture and mistreatment.<sup>28</sup> Such amendment was an ingenious addition to the existing legal framework as it allows the courts to aggravate penalties for acts that are already punishable by law, as it is the case of torture. Therefore, when providers of "conversion therapies" resort to the use of brutal violence, under this provision their crimes are punished both for the violence itself and for inflicting such harm with the purpose of modifying a person's sexual orientation or gender identity.

However, the scope of this provision is extremely narrow as it only targets providers who are found guilty of the crime of torture. Although many of the cases that came to light in Ecuador involved inhumane treatment and even torture, "conversion therapies" do not always reach the required thresholds of legal definitions of torture or inhumane treatment, so numerous cases will not be affected by this provision.<sup>29</sup>

### 1.3. Malta (2016)

In 2016, Malta became the first European country to ban "conversion therapy"<sup>30</sup> when the Maltese legislature approved a bill that became the most comprehensive ban enacted until then and the first nationwide law specifically thought, drafted and approved with a comprehensive approach to prohibit and prevent these practices.<sup>31</sup>

The law broadly defines "conversion practices" as any *treatment, practice or sustained effort* that aims to change, repress and, or eliminate a person's sexual orientation, gender identity and, or gender expression, and establishes several exceptions to safeguard affirming and supportive therapies. This approach to defining SOGIECE reflects the broad scope of the law. Additionally, the term "sustained" to qualify the efforts that fall under the definition

<sup>26</sup> A provision in force in the state of New York, in the United States of America, operates in a similar way. See Section 2.3.16 below.

<sup>27</sup> *Comprehensive Organic Penal Code*, Article 151(3).

<sup>28</sup> See Section 7 in Chapter 2.

<sup>29</sup> See Section 1 in Chapter 5 for legal arguments on the application of the legal definition of torture and inhumane treatment to "conversion therapies" under the standards set by UN Treaty Bodies and Special Procedures.

<sup>30</sup> "Gay conversion therapy is now illegal". *Times of Malta*, 5 December 2016.

<sup>31</sup> *The Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act*. Act No. LV of 2016. *An Act to affirm that all persons have a sexual orientation, a gender identity and a gender expression, and that no particular combination of these three characteristics constitutes a disorder, disease, illness, deficiency, disability and, or shortcoming; and to prohibit conversion practices as a deceptive and harmful act or interventions against a person's sexual orientation, gender identity and, or gender expression* (9 December 2016).



may serve as a way to prevent the argument that any expression of disapproval or an occasional, isolated attempt may be automatically prosecuted.<sup>32</sup>

### 1.3.1. Restrictions for non-professionals

One of the most salient aspects of the Maltese ban is that it prohibits the performance of "conversion therapy" both by professionals and by non-professionals, a step that no other ban had explicitly taken before.<sup>33</sup>

Under article 3(a), *any person* (professional or not) is prohibited from:

- i. performing conversion therapies on vulnerable people;
- ii. performing forced conversion therapy; or
- iii. advertising conversion therapies.

In other words, under Maltese law, the qualification of the provider is totally irrelevant when "conversion therapy" is performed on vulnerable people or if consent is lacking.

Additionally, the prohibition of advertising tackles the social dimension of the issue.

Furthermore, the law defines "vulnerable people" as including:

- a) minors under 16 years of age,
- b) people suffering from a mental disorder and
- c) people deemed so by a court taking into account their personal circumstances.<sup>34</sup>

This ingenuous provision leaves the door open for an adult to seek redress when the context under which they received the "therapy" was one in which their possibilities of "freely" consenting were curtailed or somehow affected. In particular, this provision could be of use in cases of adults who are

still dependent on family support and may be easily coerced into SOGIECE.

### 1.3.2. Restrictions for professionals

Under article 3(b), *professionals* are barred from offering and/or performing "conversion practices" on *any person*—irrespective of whether compensation is received in exchange—and are also barred from making a referral to any other person to perform conversion practices on any person.

The scope of this provision is larger than its Brazilian equivalent, given that under the Brazilian ban only *psychologists* are encompassed by the law. Under the Maltese law the term "professional" refers to a person who is in possession of an official qualification or a warrant to practise as a counsellor, educator, family therapist, medical practitioner, nurse, pathologist, psychiatrist, psychologist, psychotherapist, social worker, or youth worker.

A position paper submitted by the *Aditus* foundation endorsed a ban focusing only on minors and vulnerable adults and added that: "the State should not give itself the authority to interfere in free and informed decisions taken by adults, including on issues that the State might be uncomfortable with."<sup>35</sup>

At the time the bill was under debate, the Catholic Church also issued a position paper in which it qualified the proposed ban as a "draconian restriction"<sup>36</sup> and warned that if the law was approved "it would affirm the superior status of homosexuality over heterosexuality."<sup>37</sup> Additionally, while associating the causes of diverse sexual orientations or gender identities with childhood abuse and trauma,<sup>38</sup> the main legal argument against the ban revolved around the idea that the law prevents members of health and social work professions from freely exercising their profession.<sup>39</sup> The right to freedom of religion is only mentioned *in passim* when the document affirms

<sup>32</sup> In other jurisdictions, arguments based on the right to freedom of expression, conscience and religion challenged bans on "conversion therapy" even stretching the argument to the point of saying that these laws "ban the Bible". See section 5 in Chapter 5 of this report.

<sup>33</sup> Technically, the aggravating circumstance established in the Ecuadorian Penal Code in 2014 could be applied to a non-professional found guilty of torture.

<sup>34</sup> Article 2(c) of the law reads: "vulnerable person" refers to any person: (a) under the age of sixteen years; or (b) suffering from a mental disorder; or (c) considered by the competent court to be particularly at risk when taking into account the person's age, maturity, health, mental disability, other conditions including any situation of dependence, the psychological state and, or emotional state of that person.

<sup>35</sup> *Aditus Foundation, Policy Paper I: Prohibition of Sexual Orientation, Gender Identity/Expression Conversion Therapy* (2015), p. 4.

<sup>36</sup> The Church in Malta, *The Bill on Conversion Therapy: A Position Paper* (2016), para. 12.

<sup>37</sup> *Id.*, para. 9.

<sup>38</sup> *Id.*, para. 10.

<sup>39</sup> *Id.*, para. 11.

that “a homosexual person who seeks help from a therapist or a mentor because he or she wants to live a chaste life in accordance with his or her religious values (or vows) would be putting the latter in a position of risk of breaking the law”.<sup>40</sup> Under this light, the Church concluded that the underlying philosophy of the law “promotes discrimination rather than inclusion” and disrespect for personal autonomy to exercise one’s own lawful rights rather than the defence of human dignity.<sup>41</sup>

## 2. Sub-national restrictions (regions, states and provinces)

As of January 2020, sub-national jurisdictions in three UN Member States have enacted restrictions on SOGIECE: Canada, Spain and the United States of America.

### 2.1. Canada

Three Canadian provinces—Ontario, Nova Scotia and Prince Edward Island— have enacted bans on “conversion therapy”. Additionally, the province of Manitoba has issued an official position statement against these practices.<sup>42</sup>

As of early January 2020, the cities of Vancouver and Edmonton have also passed local bylaws restricting SOGIECE. Several other jurisdictions within Canada were discussing bill to ban “conversion therapy” at the time of writing, including St. Albert and Calgary, among others.

#### 2.1.1. Ontario (2015)

The ban on so-called “conversion therapies” currently in force in Ontario was the first legal ban enacted in Canada. The *Affirming Sexual Orientation and Gender Identity Act* (Bill 77), which received royal assent in June 2015, amends the *Health Insurance Act* to prohibit “conversion therapies” from being considered “insured services”.<sup>43</sup> It also added Section 29.1 to the *Regulated Health Professions Act* (1991) to prevent any person from

providing “any treatment that seeks to change the sexual orientation or gender identity” of a person under 18 years of age “in the course of providing health care services”.<sup>44</sup> The law did not include an exhaustive list of providers falling under the scope of the ban (*i.e.* who are considered to be providing “health care services”).

The law specifies that “treatment that seeks to change sexual orientation or gender identity” does not include services that provide acceptance, support or understanding of a person or the facilitation of a person’s coping, social support or identity exploration or development; and sex-reassignment surgery or any services related to sex-reassignment surgery.<sup>45</sup>

The law further allows for minors to consent “if they are capable and effectively consent to the provision of the treatment”.<sup>46</sup> However, a substitute decision-maker may not give consent on a person’s behalf (what prevents parental consent from being taken as a substitute).<sup>47</sup>

#### 2.1.2. Nova Scotia (2018)

In 2018, the Assembly of Nova Scotia approved the *Sexual Orientation and Gender Identity Protection Act*, explicitly indicating that the purpose of the act is to protect Nova Scotia youth from damaging efforts to change their sexual orientation or gender identity.<sup>48</sup> Nova Scotia thus became the second Canadian province to enact a legal ban on “conversion therapies”.

With regard to the scope of the ban, the law innovates in adding a specific provision that affects non-professionals *in positions of trust or authority*.<sup>49</sup> This clause allows for the inclusion of non-professionals (when their position of trust or authority can be proved) and may include religious leaders, life coaches, or non-professional counsellors. Therefore, the universe of providers affected by this ban is composed by “members of a regulated health profession”<sup>50</sup> and by *any person in*

<sup>40</sup> *Id.*, para. 8.

<sup>41</sup> The Church in Malta, *The Bill on Conversion Therapy: A Position Paper* (2016), para. 13.

<sup>42</sup> See section below “Statements by Governmental Agencies”.

<sup>43</sup> *Affirming Sexual Orientation and Gender Identity Act* (2015), Section 1.

<sup>44</sup> *Id.*, Section 2 (adding Section 29.1(1) to the *Regulated Health Professions Act*).

<sup>45</sup> *Ibid.* (adding Section 29.1(2) to the *Regulated Health Professions Act*).

<sup>46</sup> *Ibid.* (adding Section 29.1(3) to the *Regulated Health Professions Act*).

<sup>47</sup> *Ibid.* (adding Section 29.1(4) to the *Regulated Health Professions Act*).

<sup>48</sup> *Sexual Orientation and Gender Identity Protection Act* (as assented to by the Lieutenant Governor - October 11, 2018).

<sup>49</sup> *Id.*, Section 7(1).

<sup>50</sup> *Id.*, Section 6(1) (under Section 3(e), members of a “regulated health profession” are defined as members of a health profession regulated by any of the organizations listed in the *Schedule to the Regulated Health Profession Network Act*).

a position of trust or authority towards a young person under the age of 19 years.

The protected population is limited to children below the age of 19, with the possibility of consent from the age of 16.<sup>51</sup> Such consent cannot be given by any other person, including parents, guardians, substitute decision-makers or representatives.<sup>52</sup>

As the ban in Ontario, the law also establishes that SOGICE provided by professionals are not insured services.<sup>53</sup> Additionally, the Nova Scotia ban includes a prohibition of any expenditure of provincial public funds to cover the costs of any effort with the objective to change a person's sexual orientation or gender identity. Such use of funds is explicitly declared unlawful.<sup>54</sup>

### 2.1.3. Prince Edward Island (2019)

The *Sexual Orientation and Gender Identity Protection in Health Care Act* (Bill No. 24 of 2019) amended several laws in force in the province.<sup>55</sup> The overall legal effect of the amendments means that under the legal framework of the Province of Edward Island:

- ▶ minors under 16 years of age and incapable people cannot consent to “conversion therapy” nor is a substitute decision-maker authorized to make a decision on behalf of them;<sup>56</sup>
- ▶ “conversion therapy” is not a basic health service (no costs are covered),<sup>57</sup> and it is not an insured service.<sup>58</sup>
- ▶ any person practising medicine, any registrant or any professional psychology corporation practicing psychology is barred from providing “conversion therapy” to a person under the age of 18.<sup>59</sup>

<sup>51</sup> *Id.*, Sections 6(2) and 7(2).

<sup>52</sup> *Id.*, Sections 6(3) and 7(3).

<sup>53</sup> *Id.*, Section 4.

<sup>54</sup> *Id.*, Section 5.

<sup>55</sup> *Sexual Orientation and Gender Identity Protection in Health Care Act* (2019).

<sup>56</sup> *Id.*, Section 1 (amending the *Consent to Treatment and Health Care Directives Act*) and Section 5 (amending the *Mental Health Act*).

<sup>57</sup> *Id.*, Section 2 (amending the *Health Services Payment Act*).

<sup>58</sup> *Id.*, Section 3 (amending the *Hospital and Diagnostic Services Insurance Act*).

<sup>59</sup> *Id.*, Section 4 (amending the *Medical Act*) and Section 6 (amending the *Psychologists Act*).

<sup>60</sup> *A By-law to Amend Business Prohibition By-law No. 5156 Regarding Conversion Therapy* (2018), Section 2.

<sup>61</sup> *Id.*, Section 3.

<sup>62</sup> Video recording of the discussions: “Standing Committee on City Finance and Services” *City Council of Vancouver (website)*, 6 June 2018. See also: Craig Takeuchi “Vancouver becomes first Canadian city to ban anti-LGBT conversion therapy” *Straight*, 6 June 2018.

<sup>63</sup> *The City of Edmonton Bylaw 19061: Prohibited Businesses Bylaw* (2019), Schedule A - Prohibited Businesses.

<sup>64</sup> *Id.*, Section 2(2)(a).

### 2.1.4. City of Vancouver (2018)

In 2018, Vancouver became the first city in Canada to enact a local ban on SOGIECE. The by-law approved by the City Council prohibits “charging a fee for any services that seek to change the sexual orientation or gender identity of any person”<sup>60</sup> and contains an explicit exception for therapy that provides acceptance, support and understanding.<sup>61</sup> The city used regulatory powers regarding prohibited business to ban the practice.

The original motion limited the ban to minors only, but during the debates, arguments were presented to amend the proposal so that it protected adults as well. The fact that “conversion therapies” are fraudulent practice was specifically mentioned as a supporting argument to enlarge the scope of the ban.<sup>62</sup>

### 2.1.5. City of Edmonton (2019)

In December 2019, the City of Edmonton approved a bylaw that prohibits “any business” from offering or providing of counselling or behaviour modification techniques, administration or prescription of medication, or any other purported treatment, service, or tactic used for the objective of changing a person's sexual orientation, gender identity, gender expression, or gender preference, or eliminating or reducing sexual attraction or sexual behaviour between persons of the same sex.<sup>63</sup>

Even though the term “business” may appear to refer to entities engaging in SOGIECE for profit, the definition of the term is much broader and it encompasses (i) a commercial, merchandising, or industrial activity or undertaking, (ii) a profession, trade, occupation, calling, or employment, or (iii) an activity providing goods or services.<sup>64</sup> In effect, MacEwan University associate professor Kristopher Wells, who advised the City Council on

the bylaw, explained that this is the most comprehensive bylaw in Canada

What makes this bylaw so powerful is that it captures all forms of “conversion therapy”, whether they are medical, spiritual, or religious. Council has sent a strong and powerful message that conversion therapy has no place in our community and will be punished by the full extent of the law.<sup>65</sup>

A person found guilty of an offence under this bylaw is liable to a fine of an amount not less than \$10,000.<sup>66</sup>

## 2.2. Spain

Spain has not enacted a national ban, but several regions and autonomous communities have enacted SOGIEC omnibus protection laws that include specific provisions on “conversion therapies”.

As of October 2019, Madrid, Murcia, Andalusia, Aragón and Valencia have enacted local bans. With the exception of Murcia, all bans appear to be similar in terms of scope (which tends to be quite broad), the type and severity of penalties, and the prohibition of promotion of “conversion therapies”.

Indeed, the bans in force in Madrid, Andalusia, Aragon and Valencia—together with the one enacted in the Canadian city of Edmonton—are the most encompassing bans enacted thus far, as they apply to *any intervention* with the aim of changing a person’s SOGIE (including religious counselling) without qualifying providers or recipients. In other words, they ban the provision of these practices by *any person on any person*.

### 2.2.1. Community of Madrid (2016)

Several provisions in the local comprehensive LGBTI protection law refer to “conversion therapies”. Under article 3 of the law they are defined as

“all medical, psychiatric, psychological, religious or any other interventions that seek to change the sexual orientation or gender identity of a person”.<sup>67</sup>

Most notably, this broad definition explicitly includes attempts to change SOGI based on religion, something that most bans tend to avoid because of the possible collision with the rights to freedom of speech, conscience and religion.

Article 7(2) establishes a specific prohibition in the public health system: “aversive therapies or any other procedure that involves an attempt to convert, cancel or suppress sexual orientation or self-perceived gender identity will not be practiced in the Public Sanitary System of Madrid”.<sup>68</sup>

In terms of age limitations for recipients—as there is none—health care service providers (under article 7) and any other provider (under article 3) are barred from providing “conversion therapies” either to minors or adults.

The law also prohibits the advertising and promotion of “conversion therapies” and both the promotion and the provision are considered “very serious” administrative infractions under the law, without prejudice to criminal liability.<sup>69</sup>

#### Enforcement of the ban

The ban in Madrid appears to be one of the most widely and effectively enforced bans thus far. Since the entry into force of the law, at least 18 cases have been decided, with the imposition of fines ranging from 200 to 1,800 euros.<sup>70</sup>

<sup>65</sup> Jeff Labine, “Edmonton approves bylaw to officially ban conversion therapy” *Edmonton Journal*, 10 December 2019. See also: Allison Bench and Kirby Bourne, “Edmonton city council moves to ban conversion therapy” *Global News*, 10 December 2019 (recorded interview with professor Kristopher Wells embedded in article).

<sup>66</sup> *The City of Edmonton Bylaw 19061: Prohibited Businesses Bylaw* (2019), Article 8.

<sup>67</sup> Ley No. 3/2016, de 22 de julio, *Protección Integral contra LGTBIfobia y la Discriminación por Razón de Orientación e Identidad Sexual en la Comunidad de Madrid*, article 3(o).

<sup>68</sup> *Id.*, article 7(2). Text in Spanish: 2. En el Sistema Sanitario Público de la Comunidad de Madrid no se usarán terapias aversivas o cualquier otro procedimiento que suponga un intento de conversión, anulación o supresión de la orientación sexual o de la identidad de género autopercebida [...].

<sup>69</sup> *Id.*, article 70(4)(c). Under article 72(3), “very serious infractions” are punished with a fine of 20,001 to 45,000 euros and in addition one or more of the following accessory penalties may be imposed: (a) Prohibition of access to any type of public assistance from the Community of Madrid for a period of up to three years; (b) Temporary disqualification for a period of up to three years to be responsible for centers or services dedicated to the provision of public services; (c) Prohibition of contracting with the Administration, its autonomous bodies or public entities for a period of up to three years.

<sup>70</sup> “20.000 euros de multa a una mujer por ofrecer terapias contra la homosexualidad en Internet” *El País*, 18 September 2019.

Soon after the law was enacted, Arcópoli, a local LGBT association, brought a complaint for engaging in SOGIECE against a “life coach”—Elena Lorenzo—before the Ministry of Social Policies, Families, Equality and Birth.<sup>71</sup>

In March 2019, the General Technical Secretariat resolved that the facts could constitute a “very serious administrative infraction”, as per Article 70(4)(c) of Law 3/2016 and, after a process that lasted a total of three years, the Council eventually imposed a fine of 20,001 euros.<sup>72</sup> Lorenzo was able to collect the money to pay the fine in less than a week through an online crowdfunding campaign<sup>73</sup> and, soon after, she went on to launch a “course” called “Road to Heterosexuality”,<sup>74</sup> this time presented as “a process of personal growth aimed at people with homosexual feelings”.<sup>75</sup>

In reaction to the imposition of the fine, the Secretary General of the Spanish Episcopal Conference of Madrid expressed support for Lorenzo and denounced the ban enacted in Madrid stating that it was a “tricky” law that prevented “members of the LGBT community from seeking help when they viewed their orientation as an internal conflict”.<sup>76</sup> Before the sanction was actually imposed on Lorenzo, the Spanish Association of Christian Lawyers announced that it would bring a claim before the Spanish Constitutional Court against the ban.<sup>77</sup>

In April 2019, an undercover investigation found that the bishopric of Alcalá de Henares, a city within the Community of Madrid, was offering “conversion” courses and counselling to people with “unwanted same-sex attraction”.<sup>78</sup> Based on

the journalistic report, several organisations reported the bishopric to the local authorities. Pedro Rollán, vice-president and spokesperson of the Government of the Community of Madrid stated that they would look into the matter and, if the allegations were eventually proven, sanctions would be imposed.<sup>79</sup> The attendance of several minors was also reported, some as young as 13.<sup>80</sup>

An official statement issued by the local city government announced that the mayor had formally requested support to the president of the Community of Madrid to ensure compliance with the laws and regulations in force, including Law No. 3/2016. The municipal government rejected the courses and pseudo-therapies taught in the city and condemned them as an inadmissible lack of respect towards LGBT people.<sup>81</sup>

For its part, the bishopric, issued a statement defended Reig Pla, the current bishop, and claimed that the news about the courses were “fake news”.<sup>82</sup> Unsurprisingly, denial of accusations after undercover investigations has been a marked tendency in several cases around the world, especially by religious authorities.<sup>83</sup> The bishopric added that it would not renounce to offer “company” to people “who freely request it” and that such pastoral and spiritual accompaniment was always done “in the light of the Word of God and the Magisterium of the Catholic Church”.<sup>84</sup>

### 2.2.2. Community of Andalusia (2017)

The law enacted in Andalusia contains a similar ban to that in force in Madrid and follows the same broad definition of “conversion therapy” that

<sup>71</sup> “Arcópoli denuncia una “clínica de curación” de la homosexualidad”, *Nueva Tribuna España*, 29 August 2016.

<sup>72</sup> “La Comunidad de Madrid multa con 20.001 euros a la ‘coach’ que ofrecía terapias reversivas en Internet”, *eldiario.es*, 17 September 2019; “20.000 euros de multa a una mujer por ofrecer terapias contra la homosexualidad en Internet” *El País*, 18 September 2019.

<sup>73</sup> Nicolás de Cárdenas, “Pagan euro a euro la multa LGTBI a Elena Lorenzo que continúa batallando en los tribunales” *Actuali*, 28 October 2019.

<sup>74</sup> “Elena Lorenzo lanza un curso online de «camino a la heterosexualidad» desde la homosexualidad” *Hispanidad*, 15 January 2020; “Camino a la Heterosexualidad: Un caso de Elena Lorenzo”, *Camino a la Heterosexualidad* (Website). Accessed 1 February 2020.

<sup>75</sup> For more information see Section XX in Chapter 2 of this report.

<sup>76</sup> “La ley LGTB es anticonstitucional y la sanción a Elena Lorenzo nos preocupa”, *Info Vaticana*, 26 September 2019. The validity of arguments like these are discussed in Section 7 of Chapter 5 of this report.

<sup>77</sup> “Abogados Cristianos llevará ante el Constitucional la ley LGTBI aprobada por el PP en la Comunidad de Madrid”, *Asociación Española de Abogados Cristiano*, 23 May 2019; “Abogados Cristianos lleva al Constitucional la Ley LGTB de Madrid y sale en defensa de Elena Lorenzo”, *Religión en Libertad*, 23 May 2019.

<sup>78</sup> “El obispado de Alcalá celebra cursos ilegales y clandestinos para ‘curar’ la homosexualidad”, *eldiario.es*, 1 April 2019.

<sup>79</sup> “La Comunidad de Madrid investigará los cursos para “curar” la homosexualidad que el Obispado de Alcalá niega impartir”, *RTVE*, 2 April 2019.

<sup>80</sup> “El obispado de Alcalá también hace terapias homófobas con menores: ‘Si hubiera seguido allí, me habría suicidado’” *El Diario.es*, 2 April 2019.

<sup>81</sup> “Comunicado de Prensa” *Alcalá de Henares* (website), 2 April 2019.

<sup>82</sup> “Comunicado: ‘Otras Noticias Falsas’”, *Obispado de Alcalá De Henares* (website), 2 April 2019.

<sup>83</sup> For more cases of undercover investigations on groups offering “conversion therapies” see Section 10 in Chapter 2 of this report.

<sup>84</sup> “Comunicado: ‘Otras Noticias Falsas’”, *Obispado de Alcalá De Henares* (website), 2 April 2019.

includes “all medical, psychiatric, psychological, religious or any other interventions that seek to change the sexual orientation or gender identity of a person”.<sup>85</sup>

The broad scope is further confirmed by article 6, which states that “no person may be pressured, coerced or forced to hide, suppress or deny their sexual orientation and gender identity, as well as undergo hormonal, surgical, psychiatric or any other type of treatment in order to modify their identity or sexual orientation”.<sup>86</sup> Another subsection reiterates that: “Aversive therapies or any other procedure that involves an attempt at conversion, annulment or suppression of sexual orientation or self-perceived gender identity will not be used”.<sup>87</sup>

Further, the absence of qualification of providers or recipients means that the ban is applicable to *any person on any person*.

Additionally, the law prohibits the advertising and promotion of “conversion therapies” and both the promotion and the provision are considered “very serious” administrative infraction under the law, without prejudice to criminal liability.<sup>88</sup>

### 2.2.3. Community of Valencia (2018)

In 2018, a comprehensive LGBTI law was approved by the legislative body of Valencia (*les corts*).<sup>89</sup> Under this law the practice of “methods, programs and therapies of aversion, conversion or counterconditioning aimed at modifying a person’s sexual orientation, gender identity or gender expression” is prohibited.<sup>90</sup> Again, under this law there is no qualification of providers or receivers,

so it applies to *any person* in the Community of Valencia.

As it is the case in other regions, the law also prohibits the advertising and promotion of “conversion therapies” and both the promotion and the provision are considered “very serious” administrative infraction under the law, without prejudice to criminal liability.<sup>91</sup>

Previously, in 2017, the Community of Valencia had approved a comprehensive law for the protection of the right to gender identity and gender expression.<sup>92</sup> This law imposed a ban on any “practice of aversion, conversion or counterconditioning therapies aimed at modifying the gender identity or expression of trans persons”.<sup>93</sup> As there is no qualification of providers or recipients, this ban can be said to apply to all settings and even on consenting adults.

### 2.2.4. Community of Aragon (2018)

The ban in force in Aragon, enacted in 2018, largely follows the ban in force in the Community of Madrid and Andalusia, including its definition of “conversion therapies” with an explicit reference to religious SOGI change efforts.<sup>94</sup>

Although the sections on public health make an *in passim* reference to aversion therapies,<sup>95</sup> the provision imposing the ban is found under the penalties title and, like in Madrid, the promotion and provision of conversion therapies are considered “very serious” administrative infractions under the law.<sup>96</sup>

The broad definition and the lack of qualifications for providers and recipients means that the ban is

<sup>85</sup> *Ley No. 8/2017*, de 28 de diciembre, *para garantizar los derechos, la igualdad de trato y no discriminación de las personas LGBTI y sus familiares en Andalucía*, article 3(o).

<sup>86</sup> *Id.*, article 6(1).

<sup>87</sup> *Id.*, article 6(2).

<sup>88</sup> *Id.*, article 62(e).

<sup>89</sup> *Ley No. 23/2018*, de 29 de noviembre, *de igualdad de las personas LGBTI*.

<sup>90</sup> *Id.*, article 7.

<sup>91</sup> *Ley No. 3/2016*, de 22 de julio, *Protección Integral contra LGTBIfobia y la Discriminación por Razón de Orientación e Identidad Sexual en la Comunidad de Madrid*, article 70(4)(c). Under article 72(3), “very serious infractions” are punished with a fine of 20,001 to 45,000 euros and in addition one or more of the following accessory penalties may be imposed: (a) Prohibition of access to any type of public assistance from the Community of Madrid for a period of up to three years; (b) Temporary disqualification for a period of up to three years to be responsible for centers or services dedicated to the provision of public services; (c) Prohibition of contracting with the Administration, its autonomous bodies or public entities for a period of up to three years.

<sup>92</sup> *Ley No. 8/2017*, de 7 de abril, *de la Generalitat, integral del reconocimiento del derecho a la identidad y a la expresión de género en la Comunitat Valenciana*.

<sup>93</sup> *Id.*, article 6.

<sup>94</sup> *Ley No. 18/2018*, de 20 de diciembre, *de igualdad y protección integral contra la discriminación por razón de orientación sexual, expresión e identidad de género en la Comunidad Autónoma de Aragón*, article 4(o).

<sup>95</sup> *Id.*, article 11(2)(c).

<sup>96</sup> *Id.*, article 49(4)(c).

applicable to *any person* providing "conversion therapies" to *any person*.

As it was the case in Valencia, in 2017, Aragon had approved a law on Identity and Expression of Gender and Social Equality. This law contains a provision that imposes a ban on "conversion therapies" in the health services of the Community of Aragon.<sup>97</sup>

### 2.2.5. Region of Murcia (2016)

In Murcia, the ban on "conversion therapies" is found in the omnibus law on social equality for LGBTI people enacted in 2016.<sup>98</sup> However, the two provisions related to "conversion therapies" only refer to gender identity, making it the only ban that does not, at least explicitly, cover sexual orientation.

A specific provision on adequate and supportive psychological treatment for trans patients complements the prohibition.<sup>99</sup> Additionally, the ban applies only to the public health services of the Autonomous Community of the Region of Murcia,<sup>100</sup> so anyone outside the health system is not encompassed as a provider.

## 2.3. United States of America

As of January 2020, nineteen (19) states, the District of Columbia and Puerto Rico have enacted bans against "conversion therapy". Most of the laws in force share common elements such as similarities in the definition of what constitutes "conversion therapy" and specific clauses stating that supportive or affirming counselling is not reached by the ban.

Most notably, several laws in force refer to "sexual orientation change efforts" (SOCE) as an *umbrella term* that is then expressly defined as including efforts aimed at modifying a person's gender

identity or gender expression. Therefore, even if the title or the name of the laws refer only to "sexual orientation", their scope goes beyond that characteristic.

Thus far, all state laws restricting the provision of "conversion therapy" have a relatively limited scope of application as they target *licensed professionals* (as providers) and *minors* (as recipients) only, with the exception of Washington DC that also protects adults under a conservatorship or guardianship.

With a few notable exceptions, the provision of conversion therapies by non-professionals is not, thus far, restricted in any state.<sup>101</sup> Notably, clergy, religious leaders and anyone not holding a state-issued license are not encompassed by the bans and, therefore, remain free to provide SOGIECE. Furthermore, as soon as a person comes of age, they can freely consent to "conversion therapies", even from licensed professionals.

In line with the stringent standards required to restrict freedom of speech, no law imposes an outright ban on advertising or promotion of "conversion therapies". Only a handful states prevent licensed professionals *exclusively* from promoting this practice or referring *minors* to them.

As of January 2020, several states and other jurisdictions have introduced bills which attempt to impose similar bans.<sup>102</sup>

### Judicial challenges

Even though the bans in force in the United States of America are comparatively quite narrow in scope, several laws have been challenged before local courts. This has been the case at least in California,<sup>103</sup> New Jersey,<sup>104</sup> Maryland,<sup>105</sup> and Illinois,<sup>106</sup> and the cities of New York,<sup>107</sup> Boca Raton<sup>108</sup> and Tampa (Florida).<sup>109</sup>

<sup>97</sup> Ley No. 4/2018, de 19 de abril, de Identidad y Expresión de Género e Igualdad Social y no Discriminación de la Comunidad Autónoma de Aragón, artículo 4(4).

<sup>98</sup> Ley No. 8/2016, de 27 de mayo, Igualdad social de lesbianas, gays, bisexuales, transexuales, transgénero e intersexuales, y de políticas públicas contra la discriminación por orientación sexual e identidad de género en la Comunidad Autónoma de la Región de Murcia.

<sup>99</sup> *Id.*, article 14(3).

<sup>100</sup> *Id.*, article 8(3).

<sup>101</sup> For instance, the law in force in the states of Illinois and Connecticut encompass a larger universe of providers as they include among providers any person who practices or administers "conversion therapy" commercially. See more information below.

<sup>102</sup> See: "BornPerfect: Laws & Legislation by State," National Center for Lesbian Rights (NCLR).

<sup>103</sup> *Pickup et al. v. Brown et al. and Welch et al. v. Brown et al.* (see below).

<sup>104</sup> *King v. Christie*, 981 F. Supp. 2d 296.

<sup>105</sup> *Doyle v. Hogan*, No. 1:19-cv-00190.

<sup>106</sup> *Pastors Protecting Youth v. Madigan*, 237 F. Supp. 3d 746 (N.D. Ill. 2017).

<sup>107</sup> *David Schwartz v. The City of New York and Lorelei Salas*, Case No.: 1:19-CV-463.

<sup>108</sup> *Otto v. City of Boca Raton, Florida*, No. 9:18-cv-80771.

<sup>109</sup> *Vazzo v. City of Tampa, Florida*, No. 8:17-cv-02896 (see below).

### 2.3.1. California (2012)

The first state in the USA to approve a ban on "conversion therapy" was California. Bill SB-1172 amended the California Business and Professions Code to establish that "under no circumstances shall a mental health provider engage in sexual orientation change efforts with a patient under 18 years of age".<sup>110</sup> Any attempt to carry out such efforts constitutes "unprofessional conduct" subject to discipline by the relevant licensing entity.<sup>111</sup> The law defined "mental health provider" as including psychiatrists, psychologists, psychological assistants, interns, or trainees, marriage and family therapists, clinical social workers, and clinical counsellors. Therefore, the universe of providers was limited to those who fall under this definition, excluding non-professional counsellors, members of the clergy and religious organisations.

However, the law was challenged before local courts even before it went into effect. Two simultaneous lawsuits were initiated: *David Pickup* (who appeared as plaintiff with Christopher Rosick, Joseph Nicolosi, Robert Vazzo, NARTH,<sup>112</sup> the American Association of Christian Counselors and others), and *Donald Welch*, an evangelical minister and licensed family therapist, questioned the ban.

Even though the district court in *Pickup v. Brown* denied the requested interim measure to delay the entry into force of the law, such measure was actually granted by the judge hearing *Welch v. Brown*. Upon appeal to the Ninth Circuit of the Court of Appeals, both cases were consolidated.<sup>113</sup> The Court eventually ruled in favour of the ban and allowed the law to come into effect in August 2013. Even though the plaintiffs appealed before the Supreme Court, the case was dismissed (*certiorari* denied) in June 2014.<sup>114</sup>

In 2018, a bill that would have designated paid "conversion therapy" as a "fraudulent business practice" under the state's consumer protection law<sup>115</sup> was considered by the local legislature. It

would have enlarged the scope of the ban to include SOGIECE performed commercially on both minors and adults. However, the bill was withdrawn after strong pushback from conservative religious groups,<sup>116</sup> who argued that the broad language used in the bill infringed on their right to provide "therapy" to adults who come to them looking to change their sexual orientation. Although the bill would have only applied to cases where "conversion therapy" was being sold as a "service", and not to counselling provided free-of-charge, faith leaders reportedly pushed the narrative that the bill "could even be used to ban the Bible or other printed materials".<sup>117</sup>

### 2.3.2. New Jersey (2013)

Soon after the first ban was approved in California, the New Jersey General Assembly approved Bill AB-3371.<sup>118</sup> The law prohibits the provision of "sexual orientation change efforts" to a person under 18 by any person licensed to provide professional counselling in New Jersey, including psychiatrists, psychologists, social workers, marriage and family therapists, certified psychoanalysts, or a person who performs counselling as part of the person's professional training for any of these professions.

This ban was unsuccessfully challenged before local courts by proponents of "conversion therapies", among them Tara King, Ronald Newman, the American Association of Christian Counsellors, and NARTH. In fact, these two organisations had participated in the unsuccessful challenge to the ban in California (and insisted again in New Jersey).<sup>119</sup>

### 2.3.3. District of Columbia (2014 and 2019)

The *Conversion Therapy for Minors Prohibition Amendment Act* of 2014 (D.C. Act 20-530) amends the *Mental Health Service Delivery Reform Act* (2001) to ban "sexual orientation change efforts"

<sup>110</sup> California Business and Professions Code, §865-1 (as amended by Section 2 of SB-1172: Sexual orientation change efforts, 2012).

<sup>111</sup> Id., §865-2.

<sup>112</sup> For more information on National Association for Research and Therapy of Homosexuality (NARTH) see Section 8 in Chapter 2 and Section 2 in Chapter 1.

<sup>113</sup> *Pickup v. Brown* (12-17681), D.C. No. 2:12-CV-02497-KJM-EFB.

<sup>114</sup> Andrew Chung, "U.S. top court rejects 'gay conversion' therapy ban challenge", *Reuters*, 1 May 2017.

<sup>115</sup> AB-2943 *Unlawful business practices: sexual orientation change efforts* (2017-2018)

<sup>116</sup> Alexei Koseff "Gay conversion therapy bill dropped by California lawmaker." *Sacramento Bee*. 31 August 2018

<sup>117</sup> Melanie Mason, "California legislator shelves bill to ban paid 'gay conversion therapy' for adults" *Los Angeles Times*. 31 August 2018.

<sup>118</sup> Assembly No. 3371, *An Act concerning the protection of minors from attempts to change sexual orientation and supplementing Title 45 of the Revised Statutes*. State of New Jersey 215<sup>th</sup> legislature. Approved P.L. 2013, c.150.

<sup>119</sup> For more information on the case see *King v. Christie* in Section 4.1.2 below.



(SOCE).<sup>120</sup> Under this statute, SOCE is defined as a “practice” by a licensed mental health provider that seeks to change a consumer’s sexual orientation, including efforts to change behaviours, gender identity or expression, or to reduce or eliminate sexual or romantic attractions or feelings toward a person of the same sex or gender.<sup>121</sup>

In terms of sanctions, the law in the District of Columbia establishes that a violation to the ban shall be considered a failure to conform to “acceptable conduct within the mental health profession” under the District of Columbia *Health Occupations Revision Act* of 1985.

In 2019, an amendment to the ban in force was approved and signed into law to enlarge its scope and include adults “under a conservatorship or guardianship”.<sup>122</sup>

#### 2.3.4. Oregon (2015)

The ban in force in Oregon establishes that a “mental health care or social health professional” may not practice “conversion therapy” on recipients under 18 years of age.<sup>123</sup> The law contains a more specific definition of “mental health care or social health professional” under the local statutes.<sup>124</sup>

Additionally, the law amends several laws relating to the regulation of specific professions such as psychologists, occupational therapists, certified sex offender therapists, regulated social workers, licensed professional counsellors and marriage and family therapists.

#### 2.3.5. Illinois (2015)

In Illinois, the *Youth Mental Health Protection Act* (2015)<sup>125</sup> contains a declaration by the General Assembly indicating that “being lesbian, gay, or bisexual is not a disease, disorder, illness, deficiency, or shortcoming”. It also compiles existing evidence and position statements against

“conversion therapy” issued by American professional associations and international organisations. Substantially, the law establishes that “under no circumstances shall a mental health provider engage in sexual orientation change efforts with a person under the age of 18”.<sup>126</sup>

The statute incorporates a specific section that regulates advertisement and misrepresentation. Section 25 reads as follows:

*Advertisement and sales; misrepresentation.*  
No person or entity may, in the conduct of any trade or commerce, use or employ any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact in advertising or otherwise offering conversion therapy services in a manner that represents homosexuality as a mental disease, disorder, or illness, with intent that others rely upon the concealment, suppression, or omission of such material fact. A violation of this Section constitutes an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act.<sup>127</sup>

This provision seemingly extended the scope of providers under the ban to *any person* who engaged in SOGIECE commercially. Consequently, a group of pastors challenged the ban seeking to obtain a court decision stating that that, even when religious leaders may receive some form of compensation, “religious counselling services” fall outside of the scope of the ban.<sup>128</sup> The District Court dismissed the case for “lack of standing” precisely because the pastors were not considered by the Court to be affected by the ban:

[...] It is clear that the Act's only penalties apply to mental health professionals or to those who deceptively advertise conversion therapy for commercial purposes. Plaintiffs fit neither mould. [T]o the extent the phrase “trade or

<sup>120</sup> D.C. ACT 20-530, *Conversion Therapy for Minors Prohibition Amendment Act* (2014).

<sup>121</sup> *Id.*, Section 2.

<sup>122</sup> D.C. Law 22-247, *Conversion Therapy for Consumers under a Conservatorship or Guardianship Amendment Act* (2018).

<sup>123</sup> House Bill 2307, *An act relating to efforts to change an individual's orientation; creating new provisions; amending ORS 675.070, 675.300, 675.336, 675.540 and 675.745; and declaring an emergency* (2015)

<sup>124</sup> The statute includes a list of professionals under the scope of the ban including: (i) licensed psychologists; (ii) psychologist associates; (iii) occupational therapists or occupational therapy assistants; (iv) regulated social workers; (v) licensed marriage and family therapists or licensed professional counselors; and (vi) individuals who provide counseling as part of an educational or training program necessary to practice any of the aforementioned professions.

<sup>125</sup> Public Act 099-0411, HB-0217 Enrolled LRB-099-04356 HAF 24383(b).

<sup>126</sup> *Id.*, Section 20.

<sup>127</sup> *Id.*, Section 25.

<sup>128</sup> *Pastors Protecting Youth v. Madigan*, 237 F. Supp. 3d 746 (N.D. Ill. 2017).

commerce" in the YMHPA is ambiguous, its legislative history resolves any doubt. The co-sponsors of the bill creating the Act expressly stated that it does not apply to religious counseling.<sup>129</sup>

### 2.3.6. Vermont (2016)

Since May 2016, the *Act relating to the prohibition of conversion therapy on minors* imposes a ban on "conversion therapies" provided by mental health care providers on minors.<sup>130</sup>

The Vermont ban also amends several statutes that regulate professional activity in the state, including that of physicians, psychologists, clinical social workers, clinical mental health counsellors, marriage and family therapists, psychoanalysts, and naturopathic physicians.

Under Section 1, the statute also includes several declarations. It is formally stated that "being lesbian, gay, bisexual, or transgender is part of the natural spectrum of human identity and is not a disease, disorder, illness, deficiency, or shortcoming", that Vermont has a "compelling interest" in protecting the physical and psychological well-being of children, including lesbian, gay, bisexual, and transgender youth, and in protecting its children against exposure to serious harms; and refers to the position of agencies and professional associations.

### 2.3.7. Connecticut (2017)

The ban enacted in Connecticut in 2017 prohibits the administration of "conversion therapy" to any person under 18 years of age. In terms of providers, under Section 2 the statute includes "health care providers".<sup>131</sup> Interestingly, Section 3(a) enlarges the scope of the ban in the following terms:

It shall be unlawful for any person who practices or administers conversion therapy to practice or administer such therapy while in the conduct of trade or commerce.<sup>132</sup>

This novel addition enlarges the scope of previous bans enacted in other states to include those who may offer such therapies to children for a fee. In effect, under Section 3 of the statute such conduct is considered an "unfair or deceptive trade practice" as per local statutes.<sup>133</sup> Based on existing caselaw from Illinois, the provision would not include religious counsellors.<sup>134</sup>

Furthermore, the clause that prevents the use of public funds for the purpose of practicing "conversion therapy"<sup>135</sup> also prohibits the use of such resources to refer a person to a health care provider or to any person engaged in trade or commerce for conversion therapy.

### 2.3.8. Nevada (2017)

Senate Bill No. 201 added three relatively brief subsections to Chapter 629 of the Nevada Revised Statutes. The first of these, prevents "psychotherapists" from providing "conversion therapy" to a person who is under 18 years of age, regardless of the willingness of the person or his or her parent or legal guardian to authorize such therapy.<sup>136</sup> This conduct is considered ground for disciplinary action by the licensing state board.

The statute contains a definition of "psychotherapist" that includes licensed psychiatrist and psychologists; homeopathic physicians, advanced practitioners of homeopathy or homeopathic assistants; social workers; registered nurses; marriage and licensed family therapists or clinical professional counsellors; and any person who provides counselling services as part of his or her training for any of these professions.

### 2.3.9. New Mexico (2017)

In New Mexico, the *Uniform Licensing Act*<sup>137</sup> was amended in 2017 by Senate Bill No. 121 to prevent any licensed professional from providing "conversion therapy" to any person under eighteen years of age.<sup>138</sup> The provision of such "therapy" is considered grounds for disciplinary action by a board in accordance with local legislation.<sup>139</sup>

<sup>129</sup> *Id.*, at 750.

<sup>130</sup> Act No. 138. *An act relating to the prohibition of conversion therapy on minors.*

<sup>131</sup> Public Act No. 17-5 (2017), Section 2.

<sup>132</sup> Public Act No. 17-5 (2017), Section 3(a).

<sup>133</sup> Public Act No. 17-5 (2017), Section 3.

<sup>134</sup> See Section on Illinois, above.

<sup>135</sup> Public Act No. 17-5 (2017), Section 4.

<sup>136</sup> Nevada Revised Statutes §629.600, Section 1.

<sup>137</sup> NM Stat § 61-1-3.3 (2017).

<sup>138</sup> New Mexico Senate Bill 121, Section 1.

Additionally, the bill amended several provisions regulating procedural aspects of disciplinary action for different professions. Senate Bill No. 121 was signed by the Governor on April 7, 2017.

### 2.3.10. Rhode Island (2017)

House Bill No. 5277, which amends Title 23 of the General Laws of Rhode Island "Health and Safety", entered into force on July 19, 2017.<sup>140</sup> The law contains several formal declarations, including that "being lesbian, gay, bisexual, or transgender is part of the natural spectrum of human identity and is not a disease, disorder, or illness", the official position of several professional associations on "conversion therapy" and reference to evidence of the harm produced by these practices. Section 1(16) explicitly states that the State of Rhode Island has a "compelling interest" in protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, and in protecting its minors against exposure to serious harms caused by conversion therapy.<sup>141</sup>

Rhode Island bars "licensed professionals" from advertising or engaging in "conversion therapy" efforts with or relating to a patient under the age of eighteen. Such practice is considered "unprofessional conduct" and is subject to discipline by the Health Department, which may include suspension and revocation of the professional's license. The term "licensed professional" is broadly defined to encompass any licensed medical, mental health or human service professional licensed including, but not limited to, psychologists, psychiatrists, social workers, nurses, mental health professionals, or human services professionals.

The Bill also requires the Health Department to promulgate rules and regulations to establish a clear distinction between "conversion therapy" and other types of medically or clinically recognized therapies and practices.

The amended legislation also prohibits the use of state funds or any funds belonging to a municipality, agency, or political subdivision of the state for the purpose of conducting "conversion therapy", referring a person for "conversion

therapy", health benefits coverage for "conversion therapy, or a grant or contract with any entity that conducts "conversion therapy" or refers individuals for "conversion therapy".<sup>142</sup>

### 2.3.11. Delaware (2018)

Bill No. 65, which took effect in July 2018, prohibited the administration of "conversion therapies" as well as referrals to a provider in another jurisdiction by amending Title 24 of the Delaware Code (on unprofessional conduct and inability to practice medicine). The bill makes such conduct "unprofessional" and a ground for discipline for individuals granted a certificate to practice medicine and other relevant professions (such as nurses, mental health and chemical dependency professionals, psychologists, clinical social work examiners).

Section 1 summarises the official position of several professional associations on the matter and declares that Delaware has a "compelling interest" in protecting the physical and psychological well-being of children, including lesbian, gay, bisexual, and transgender children, and in protecting its children against exposure to serious harms caused by "conversion therapy".

### 2.3.12. Hawaii (2018)

Senate Bill 270 was approved and signed into law on July 1, 2018, prohibiting persons who are licensed to provide professional counselling from engaging in, attempting to engage in, or advertising the offering of sexual orientation change efforts on minors.<sup>143</sup>

Interestingly, Section 2 of the bill established the "Sexual Orientation Counseling Task Force" to address the concerns of minors seeking counselling on sexual orientation, gender identity, gender expressions, and related behaviours.<sup>144</sup>

### 2.3.13. Maryland (2018)

On October 1, 2018, Senate Bill No. 1028 entered into force and amended the Code of Maryland

<sup>139</sup> *Ibid.*

<sup>140</sup> H 5277 (Substitute A), "Prevention of Conversion Therapy 6 for Children Act (2017).

<sup>141</sup> H 5277 (Substitute A), "Prevention of Conversion Therapy 6 for Children Act (2017), Section 1(16).

<sup>142</sup> 2017 Rhode Island General Laws, Title 23 - Health and Safety: Chapter 23-94 - Prevention of Conversion Therapy for Children, Section 23(94)(4).

<sup>143</sup> Senate Bill 270, *A bill for an act relating to minors* (2018).

<sup>144</sup> *Id.*, Section 2.

(Article – Health Occupations Section 1–212.1) to prohibit certain mental health or childcare practitioners from engaging in “conversion therapy” with minors.<sup>145</sup> Such conduct is considered “unprofessional” and subject to discipline by the relevant licensing or certifying board.

Additionally, Section 3 establishes that no state funds will be used for the purpose of conducting or referring an individual to receive “conversion therapy”, providing health coverage for “conversion therapy”; or providing a grant to or contracting with any entity that conducts or refers an individual to receive “conversion therapy”. Like in Rhode Island, the law requires the Department of Health to adopt certain regulations to fully implement the ban.

This law was challenged by Liberty Counsel, representing SOGIECE proponent Christopher Doyle, a licensed professional counsellor in Virginia and Maryland.<sup>146</sup> The case was dismissed, and plaintiff appealed to the Fourth Circuit Court of Appeals.<sup>147</sup>

#### 2.3.14. Washington (2018)

Bill No. 5722 was enacted on June 7, 2018 to restrict the practice of “conversion therapy” on minors. The legislation in force in the state of Washington appears to have expressly incorporated certain clauses that derive from the arguments heard by different US courts in previous years. In this regard, the first provision openly states that the legislature intends to regulate the “professional conduct of licensed health care providers.”<sup>148</sup> In *Pick Up and Welch*, this aspect proved to be crucial for the legislation in California to pass muster, as the Court of Appeals determined that professional conduct could be regulated and restricted in the interest of minors. “Conversion therapy” proponents had argued that these regulations restricted *free speech*—as opposed to *professional conduct*—and should have been repealed after being examined under strict scrutiny. Furthermore, the bill included a specific section that establishes that the act may not be construed to apply to:

- ▶ speech that does not constitute performing “conversion therapy” by licensed health care providers on patients under age eighteen;
- ▶ religious practices or counselling under the auspices of a religious denomination, church, or organization that do not constitute performing “conversion therapy” by licensed health care providers on patients under age eighteen; and
- ▶ non-licensed counsellors acting under the auspices of a religious denomination, church, or organization.

Like several laws in force in other states, the amended legislation in Washington establishes that the state has a “compelling interest” in protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, and in protecting its minors against exposure to serious harms caused by “conversion therapy”.<sup>149</sup>

#### 2.3.15. New Hampshire (2019)

House Bill No. 587-FN inserted a new chapter (332-L) in the New Hampshire RSA (Revised Statutes Annotated) entitled “Prohibiting Conversion Therapy on Minors”.<sup>150</sup> The bill took effect on January 1, 2019.

Under this law, any person who is licensed to provide professional counselling is barred from engaging in “conversion therapy” with a person under 18 years of age. This includes nurses, physicians, physician assistants, psychologists, clinical social workers, clinical mental health counsellors, marriage and family therapists, licensed alcohol and drug counsellors or any person who performs counselling as part of their professional training for any of these professions.

Uniquely among laws in force in other states, Subsection 3 of HB 587-FN establishes that “nothing in this chapter shall be construed to infringe on any constitutional right, including the free exercise of religion.”<sup>151</sup>

<sup>145</sup> Senate Bill 1028, Section 1.

<sup>146</sup> *Doyle v. Hogan*, No. 1:19-cv-00190.

<sup>147</sup> Michael Kunzelman, “Judge tosses lawsuit challenging Maryland conversion therapy ban” *The Baltimore Sun*, 23 September 2019.

<sup>148</sup> Senate Bill 5722, *An Act relating to restricting the practice of conversion 2 therapy; amending RCW 18.130.020 and 18.130.180; and creating a new section* (2018).

<sup>149</sup> Senate Bill 5722, *An Act relating to restricting the practice of conversion 2 therapy; amending RCW 18.130.020 and 18.130.180; and creating a new section* (2018).

<sup>150</sup> House Bill 587-FN (2018).

<sup>151</sup> *Ibid.*

### 2.3.16. New York (2019)

New York enacted Bill S 20146 on January 25, 2019. Under this law, it constitutes “professional misconduct” for a mental health professional to engage in sexual orientation change efforts upon any patient under the age of eighteen years.<sup>152</sup>

Amendments were made to the Education and the Public Health laws to incorporate specific provisions restricting “conversion therapies”. Like other laws of its kind in force in other states, Section 1 sets out the legislative intent and expressly declares that “being lesbian, gay, bisexual or transgender is not a disease, disorder, illness, deficiency, or shortcoming.”<sup>153</sup>

Besides the legal ban described above, in 2016 the state of New York had adopted complementary regulations to further restrict or discourage the provision of SOGIECE and enlarge the overall scope of the restriction.<sup>154</sup>

- ▶ *Insurance coverage ban on SOGIECE for minors.* The Department of Financial Services adopted an insurance regulation prohibiting insurers operating in the state to reimburse “conversion therapy” services provided to minors. The regulation also advises insurer to require health providers to certify that they will not provide conversion therapy to minors.<sup>155</sup>
- ▶ *Removal of SOGIECE from Medicaid coverage.* A Policy & Billing Guidance determined that Medicaid does not cover the costs of “conversion therapy”.<sup>156</sup> This applies regardless of age and is not limited to minors.<sup>157</sup>
- ▶ *Ban on provision of SOGIECE in state facilities.* The Office of Mental Health Regulations bar state facilities from providing services to minors that are intended to change the minor’s sexual orientation.<sup>158</sup>

### 2.3.17. Massachusetts (2019)

Bill H. 140, enacted on April 8, 2019, added a single section (s. 275) to Chapter 12 of the General Laws of Massachusetts to prevent “abusive practices to change sexual orientation and gender identity in minors.”<sup>159</sup> The term “health care provider” is defined by this section as including physicians, psychologists, social workers, nurses or allied mental health and human services professionals, including marriage and family therapists, rehabilitation counsellors, mental health counsellors or educational psychologists.<sup>160</sup>

Like in some other states, health care providers are also barred from advertising sexual orientation and gender identity change efforts with a patient who is less than 18 years of age.<sup>161</sup>

### 2.3.18. Colorado (2019)

In Colorado, House Bill No. 19-1129 amended several provisions of the Colorado Revised Statutes to prohibit mental health care providers from engaging in “conversion therapy” with a patient under eighteen years of age.<sup>162</sup>

The law took effect on September 1, 2019. Even though the title includes the term “mental health providers”, no such term appears in any of the amended statutes, whereas providers of SOCE are included in each of the provisions that amend specific statutes, among them any licensed physicians specializing in the practice of psychiatry, certified addiction counsellors and other license or certificate holders.

### 2.3.19. Maine (2019)

In effect since May 29, 2019, Bill 1025 amended several provisions under the Maine Revised Statutes to prohibit the provision of “conversion

<sup>152</sup> S 20146/A 576, An Act to amend the education law, in relation to prohibiting mental health professionals from engaging in sexual orientation change efforts with a patient under the age of eighteen years and expanding the definition of professional misconduct with respect to mental health professionals (2019).

<sup>153</sup> *Id.*, Section 1.

<sup>154</sup> “Governor Cuomo Announces Executive Actions Banning Coverage of Conversion Therapy” *New York State (Govt. website)*, 6 February 2016.

<sup>155</sup> New York Compiled Codes Rules and Regulations, Title 11, Section 52.16: Prohibited provisions and coverages.

<sup>156</sup> “Medicaid Update Article on Conversion Therapy: New York Medicaid Does Not Cover ‘Conversion Therapy’” *New York State (Govt. Site)*, 6 February 2016.

<sup>157</sup> Melissa Alexander, “Autonomy and Accountability: Why Informed Consent, Consumer Protection, and Defunding May Beat Conversion Therapy Bans” *University of Louisville Law Review* 55, No. 283 (2017), 292.

<sup>158</sup> New York Compiled Codes Rules and Regulations, Title 14, Section 527(8): Care and treatment; right to object.

<sup>159</sup> H. 140, *An act relative to abusive practices to change sexual orientation and gender identity in minors* (2019).

<sup>160</sup> *Id.*, Section 275(a).

<sup>161</sup> H. 140, *An act relative to abusive practices to change sexual orientation and gender identity in minors* (2019).

<sup>162</sup> House Bill No. 19-1129, *An act concerning prohibiting a mental health care provider from engaging in conversion therapy with a patient under eighteen years of age* (2019).

therapy” to minors by certain licensed professionals.<sup>163</sup> Then enactment of this law was the second attempt to restrict “conversion therapies” in Maine, as the first law of this kind, approved by the Legislature in 2018, was vetoed by the Governor.<sup>164</sup> Among the arguments presented against the norm was the contention that it would prevent parents from seeking religious counsellors for their children.<sup>165</sup>

The law in force in Maine also establishes that if there is evidence that an applicant for initial professional certification or renewal has advertised, offered or administered conversion therapy to a child, the applicant may be denied certification.<sup>166</sup> The use of public funds for conversion therapy on minors is also prohibited under this law.<sup>167</sup>

### 2.3.20. Puerto Rico (2019)

In 2019, Senate Bill No. 1000, was approved by the Senate to amend the “Puerto Rico Mental Health Law” and the “Law of Legislative Funds for Community Impact” in order to prohibit “conversion therapy” on minors. However, as the vote on the Bill was blocked at the House of Representatives, the ban was enacted by means of an Executive Order issued by the Governor.<sup>168</sup>

The Executive Order requires the Secretary of Health to require a certification stating that “conversion therapies” will not be provided in the facilities for the concession or renewal of a license to operate a health facility (either public or private).<sup>169</sup> Furthermore, the offer (either direct or indirect) of “conversion therapies” prevents the granting of economic incentives for activities, services and investments in the scientific, hospital or medical field.<sup>170</sup>

The Executive order also requires the establishment of disciplinary mechanisms to provide for the suspension or revocation of a

license or withdrawal of economic incentives in case of violations.<sup>171</sup>

Furthermore, the Examining Board of Psychologists and the Examining Board of Professional Counsellors, as regulators of the practice of psychology and advising a professional in Puerto Rico, are required to prohibit the offer of services of “conversion or reparative therapies” to change sexual orientation or identity of gender in minors.<sup>172</sup>

### 2.3.21. Utah (2020)

As this publication went to press, the Governor of Utah has reportedly signed an executive order banning “conversion therapy” in the state, after attempts to enact a bill had failed in the legislative.<sup>173</sup>

## 3. Non-explicit / indirect bans

### 3.1. Oceania

Three countries in Oceania, namely Fiji,<sup>174</sup> Nauru<sup>175</sup> and Samoa,<sup>176</sup> have enacted local laws that provide that a person cannot to be considered “mentally ill” because they express or refuse or fail to express a particular sexual preference or sexual orientation.

Even if these laws do not explicitly prohibit the practice of “conversion therapy”, they prevent health professionals from legally engaging in sexual orientation change efforts.

While there is no qualification of recipients—they can be adults or minors—these provisions do not encompass any provider working outside the mental health field. This is specially the case with religious or spiritual counselling, whose proponents tend to steer away from any characterization of sexual orientation as a mental illness and portray

<sup>163</sup> H.P. 755 - L.D. 1025, *An Act to Prohibit the Provision of Conversion Therapy to Minors by Certain Licensed Professionals* (2019).

<sup>164</sup> “In first, Maine governor vetoes ‘ex-gay’ conversion therapy ban”, *Washington Blade*, 6 July 2018.

<sup>165</sup> “Maine governor OKs ban on gay conversion therapy for minors”, *NBC News*, 29 May 2019.

<sup>166</sup> *Id.*, Section 2.

<sup>167</sup> *Id.*, Section 3.

<sup>168</sup> Orden Ejecutiva OE-2019-016: *Para prohibir terapias de conversión o reparativas para cambiar la orientación sexual o de identidad de género de menores de edad*, 27 de marzo de 2019.

<sup>169</sup> *Id.*, Section 2.

<sup>170</sup> *Id.*, Section 4.

<sup>171</sup> *Id.*, Section 5.

<sup>172</sup> *Id.*, Section 7.

<sup>173</sup> Devan Cole byline, “Utah bans conversion therapy for LGBTQ children” *CNN*, 22 January 2020.

<sup>174</sup> *Mental Health Decree 2010* (Decree No. 54 of 2010), Section 3(1)(d).

<sup>175</sup> *Mentally Disordered Persons Act* (as amended in 2016), Section 4A(1)(d).

<sup>176</sup> *Mental Health Act* (2007), Section 2.

themselves as mere “service providers” to people who wish to rid themselves of unwanted same-sex attraction.

### 3.2. Latin America

In Argentina<sup>177</sup> and Uruguay<sup>178</sup> laws regulating mental health establish that a person cannot be diagnosed on their mental health exclusively on the basis of their sexual orientation or gender identity. These laws do not ban “conversion therapies” explicitly, but they prevent practitioners from legally engaging in sexual orientation or gender identity change efforts.

The scope of these provisions is relatively similar to the ban in force in Brazil, encompassing both minors and adults. However, it can be argued that the fact that “conversion therapies” are not explicitly named diminishes the symbolic effect of the law as there is no clear message condemning these practices.

## 4. Caselaw

In this section some of the judicial decisions that have been issued in different countries are analysed. Thus far no final judicial decision has struck down a ban against “conversion therapy”.

In the United States of America, several cases are still pending before different courts and working their way up the appellate chain. It is expected that more decisions will be issued in the upcoming years.

### 4.1. United States

#### 4.1.1. *Pickup et al. v. Brown et al. and Welch et al. v. Brown et al.*

On September 2012, the Governor of California signed the first law in the United States of America prohibiting state-licensed health providers from engaging in “conversion therapy” with patients under 18 years of age. It was scheduled to come into effect on January 2013 but two lawsuits challenging the law were immediately filed in the

United States District Court for the Eastern District of California and assigned to two different judges. The two groups of plaintiffs asked the judges to issue a preliminary injunction to bar the enforcement of the law and to declare that the law is unconstitutional.

In *Welch et al. v. Brown et al.*, the preliminary injunction was granted, whereas in *Pickup et al. v. Brown et al.*, it was denied. The losing parties appealed. The United States Court of Appeals for the Ninth Circuit addressed both appeals.

#### Free speech arguments

Plaintiffs argued that the law infringes SOGIECE practitioners’ right to free speech.<sup>179</sup> However, the Court stated that the law regulates *conduct* (treatment comprising SOCE for children), not speech (discussions about treatment comprising SOGIECE, recommendations to obtain treatment comprising SOGIECE, and expressions of opinions about SOGIECE and homosexuality) and that any effect it may have on free speech is incidental.<sup>180</sup>

The court reasoned that, since prohibitions of conduct are not considered violations of free speech merely because they are carried out by means of language, psychotherapists are not entitled to special First Amendment protection because the mechanism used to deliver mental health treatment is the spoken word.<sup>181</sup>

The Court continued to explain that when a health provider is engaged in a public dialogue, their speech is robustly protected under the First Amendment, even when they advocate for a treatment that the medical establishment considers outside the mainstream or dangerous.<sup>182</sup> Within the confines of a professional relationship, which is formed to advance the welfare of clients, not to contribute to public debate, such protection is diminished by the state’s obligation and power to protect its citizens by regulating the professional conduct of licensed health practitioners.<sup>183</sup> In this sense, the Court determined that the state had a legitimate interest in preventing SOGIECE providers from administering therapies that are deemed harmful to the well-being of children.<sup>184</sup>

<sup>177</sup> *Law on Mental Health* (2010), Section 3(c) establishes that a person cannot be diagnosed on their mental health exclusively on the basis of their “sexual choice or identity”.

<sup>178</sup> *Mental Health Law* (2017), Article 4.

<sup>179</sup> US Court of Appeals for the Ninth Circuit, *Pickup et al. v. Brown et al. and Welch et al. v. Brown et al.*, 29 August 2013, 14, 15.

<sup>180</sup> *Id.*, 24, 25.

<sup>181</sup> *Id.*, 17, 19, 23-25.

<sup>182</sup> *Id.*, 20, 21.

<sup>183</sup> *Id.*, 21-23.

<sup>184</sup> *Id.*, 26, 28.

Plaintiffs claimed that the legislature acted “irrationally” upon banning SOGIECE for children because there is lack of scientifically credible proof of harm.<sup>185</sup> The Court, on the contrary, considered that the ample consensus among health organizations that “conversion therapy” is harmful and ineffective constituted a plausible reason for the legislature’s action.<sup>186</sup>

#### Parental rights arguments

Plaintiffs claimed that the law violates parents’ right to direct the upbringing of their children,<sup>187</sup> but the Court explained that parents do not have an absolute constitutional right to make decisions regarding the care, custody and control of their children.<sup>188</sup> Particularly, limitations are imposed when children’s physical or mental health is jeopardized.<sup>189</sup>

The Court also stated that if adult patients do not have a constitutionally protected right to obtain a particular type of treatment, or treatment from a particular provider that has been prohibited by the state based on a compelling interest, neither have they the fundamental right to choose specific treatment for their children that has reasonably been deemed harmful by the state.<sup>190</sup> All the more considering that the state has greater power over children than over adults.<sup>191</sup> Parents cannot compel the state to permit practitioners engage in harmful practices such as SOGIECE, therefore dictating the prevailing standard of care based on their own views.<sup>192</sup>

#### Freedom of association arguments

Plaintiffs contended that the law prevents health providers and clients from entering into and maintaining intimate human relationships with each other.<sup>193</sup> The Court responded that practitioners are free to provide therapeutic services as long as they do not engage in SOGIECE.<sup>194</sup>

Furthermore, it explained that the therapist-client bond, which lasts only as long as the patient is willing to pay the fee, is neither a personal relationship nor an expressive association deserving of constitutional protection.<sup>195</sup>

#### Final decision

In August 2013, the United States Court of Appeals for the Ninth Circuit reversed the order granting the preliminary injunction in *Welch et al. v. Brown et al.* and affirmed the denial of the preliminary injunction in *Pickup et al. v. Brown et al.* The law was held to be constitutional. Both groups of plaintiffs asked the Supreme Court of the United States to review the decision, but their petitions were declined on June 2014, sending the law into effect.

#### 4.1.2. *King et al. v. Christie et al.*

On August 2013, the Governor of New Jersey signed the second law in the United States prohibiting state-licensed health providers from engaging in SOGIECE with patients under 18 years of age. A lawsuit challenging the law was immediately brought before the United States District Court for the District of New Jersey.

Plaintiffs asked the judge to issue a preliminary injunction to bar the enforcement of the law, but since their request was denied they had to file a motion for summary judgement. Defendants then filed a cross-motion for summary judgement. Plaintiffs’ claims were rejected, and the law was held to be constitutional. The losing party appealed. The United States Court of Appeals for the Third Circuit addressed the appeal.

#### Free speech arguments

Both parties agreed that modern-day SOGIECE are locally administered wholly through verbal communication.<sup>196</sup> Plaintiffs claimed that the law thus infringes SOCE practitioners’ right to free

<sup>185</sup> *Id.*, 28.

<sup>186</sup> *Id.*, 27, 28.

<sup>187</sup> *Id.*, 33.

<sup>188</sup> *Id.*, 34.

<sup>189</sup> *Id.*, 34.

<sup>190</sup> *Id.*, 35.

<sup>191</sup> *Id.*, 35.

<sup>192</sup> *Id.*, 36.

<sup>193</sup> *Id.*, 28.

<sup>194</sup> *Id.*, 29.

<sup>195</sup> *Id.*, 30.

<sup>196</sup> US Court of Appeals for the Third Circuit, *King et al. v. Christie et al.*, 11 September 2014, pp. 17, 18.



speech.<sup>197</sup> Defendants contended that utterances become conduct when used as a vehicle for mental health treatment<sup>198</sup> and that therefore the law regulates conduct, not speech.<sup>199</sup>

Because in therapy speech is within the confines of a professional relationship, the Court reasoned that the level of constitutional protection it has is diminished.<sup>200</sup> The Court explained that the state has broad power to regulate the practice of professions (which necessarily includes professional speech) to protect the public against untrustworthy, incompetent or irresponsible practitioners.<sup>201</sup> All the more when mental health is at stake.<sup>202</sup> In this sense, the law directly advances the state's compelling interest in prohibiting a professional practice that poses serious health risks to children, who are a particularly vulnerable population.<sup>203</sup>

According to the Court, the fact that well-known and reputable professional organizations publicly condemn SOGIECE gives the legislature a valid reason to impose the ban.<sup>204</sup> Plaintiffs disputed the existence of conclusive scientific evidence regarding SOGIECE negative effects on children, but the Court declared that a legislature is not constitutionally required to reach that threshold when exercising its regulatory power, particularly when it is not too far a leap in logic to conclude that an underaged patient might suffer if repeatedly told by an authority figure that their sexual orientation—a fundamental aspect of their identity—is an undesirable condition.<sup>205</sup>

Plaintiffs also argued that the law's purpose could be accomplished in a less restrictive manner, i.e., by requiring that children give their informed consent before undergoing SOGIECE therapy.<sup>206</sup> The Court rejected the challenge indicating that such measure could not adequately ensure that children will not feel pressured to receive SOGIECE therapy by their

families and/or communities despite their fear of being harmed.<sup>207</sup>

### Freedom of religion arguments

Plaintiffs claimed that the law violates their free exercise of religion because it covertly targets their religion by prohibiting counseling that is generally religious in nature while permitting other forms of counseling not religiously motivated that are substantially comparable.<sup>208</sup> The Court stated that, unlike what happens with SOGIECE, there are no reasons to believe that those activities that were not given statutory coverage are harmful to children.<sup>209</sup>

The Court went on to say that freedom of religion is not absolute<sup>210</sup> and that if a law has the incidental effect of burdening a particular religious practice, it will withstand a free exercise of religion challenge provided that it is neutral, generally applicable and rationally related to a legitimate state interest.<sup>211</sup> In this case, it concluded that the law does not target religiously motivated conduct on its face or as applied in practice, that it prohibits health providers from engaging in SOGIECE with children regardless of whether the practitioner or the patient is motivated by religion or any other purpose and that the state has a compelling interest in protecting children against a practice deemed harmful.<sup>212</sup>

### Final decision

In September 2014, the United States Court of Appeals for the Third Circuit, despite disagreeing with parts of the District Court's analysis, affirmed its judgement upholding the law. Plaintiffs asked the Supreme Court of the United States to review the decision, but their petition was declined on May 2015.

<sup>197</sup> *Id.*, p. 12.

<sup>198</sup> *Id.*, p. 18.

<sup>199</sup> *Id.*, p. 17.

<sup>200</sup> *Id.*, p. 17, 37, 38.

<sup>201</sup> *Id.*, pp. 30, 37.

<sup>202</sup> *Id.*, p. 37.

<sup>203</sup> *Id.*, p. 51.

<sup>204</sup> *Id.*, pp. 52, 53.

<sup>205</sup> *Id.*, p. 54.

<sup>206</sup> *Id.*, p. 56.

<sup>207</sup> *Id.*, p. 56.

<sup>208</sup> *Id.*, p. 61.

<sup>209</sup> *Id.*, p. 63.

<sup>210</sup> *Id.*, p. 61.

<sup>211</sup> *Id.*, p. 61.

<sup>212</sup> *Id.*, pp. 61, 62.

#### 4.1.3. *Ferguson et al. v. JONAH (Jews Offering New Alternatives to Homosexuality/for Healing) et al.*

In November 2013, a lawsuit was brought against JONAH, a non-profit corporation dedicated to SOCE counselling, alleging that its business practices violated the New Jersey Consumer Fraud Act.

Plaintiffs argued that JONAH violated the New Jersey Consumer Fraud Act, which protects consumers from business practices such as misrepresentations, *i.e.*, false claims that induce them into buying a product or purchasing a service. They alleged that defendants, when selling their services, assured that homosexuality was a mental disorder and therefore it could be cured, and that their program was based on science, had a specific rate of success and worked in a precise time frame.<sup>213</sup> It was decided that scientific consensus on the non-pathological nature of homosexuality could not be defeated by a few opinions to the contrary expressed by JONAH.<sup>214</sup> It was also determined that sexual orientation cannot be changed through therapy.<sup>215</sup> Studies aimed at demonstrating the efficacy of "conversion therapy" reveal substantial deficiencies<sup>216</sup> and success stories are neither believable nor really successful.<sup>217</sup> Moreover, there is research showing that SOCE counseling is indeed harmful.<sup>218</sup>

In June 2015, after a three-week trial, a New Jersey jury unanimously found that JONAH fraudulently claimed to provide "services that could significantly reduce or eliminate same sex attraction".<sup>219</sup>

In December 2015, the New Jersey Superior Court granted a permanent injunction to cease JONAH's operations, dissolve the organization as a corporate

entity and liquidate its assets, and prevent defendants from engaging—directly or through referrals—in SOCE counseling, as well as from advertising or promoting SOCE counseling or SOCE counseling-related commerce in New Jersey or directed at New Jersey residents.<sup>220</sup>

In March 2018, plaintiffs filed a motion to enforce the decision, asserting that JONAH had continued operating under a new acronym: JIFGA (Jewish Institute for Global Awareness).<sup>221</sup> Defendants were found to have defied the Court's order.<sup>222</sup> Therefore, the Court ordered that JIFGA, the continuation of JONAH, be permanently enjoined.<sup>223</sup> Furthermore, the Court banned defendants from serving as directors or officers of or incorporating any tax-exempt entity incorporated in or having operations in New Jersey.<sup>224</sup> Monetary damages were also awarded to plaintiffs.<sup>225</sup>

## 4.2. China

### 4.2.1. *Peng v. Xinyu Piaoxiang Psychotherapy Centre*<sup>226</sup>

In August 2013, a 30-year-old man from Guangzhou, China, used Baidu (China's most popular search engine) to browse for providers of "conversion therapy" under pressure from his parents to eliminate his attraction to people of the same sex.<sup>227</sup> The search engine led him to an advertisement of the allegedly professional Xinyu Piaoxiang Psychotherapy Centre in the city of Chongqing. In February 2014, Peng travelled to the clinic, where he was subjected to hypnosis and aversion therapy. The methods involved sessions of painful electric shocks. After consulting with his lawyer, the plaintiff decided to sue both the Xinyu

<sup>213</sup> Dubrowski, P., "The Ferguson v. JONAH verdict and a path towards national cessation of gay-to-straight 'conversion therapy'", *Northwestern University Law Review* 110 (2015), 80.

<sup>214</sup> *Id.*, 83-86.

<sup>215</sup> *Id.*, 90.

<sup>216</sup> *Id.*, 87.

<sup>217</sup> *Id.*, 88-90.

<sup>218</sup> *Id.*, 87, 88.

<sup>219</sup> New Jersey Superior Court, *Ferguson et al. v. JONAH et al. (Memorandum of decision)*, 19 June 2019, 1, 2.

<sup>220</sup> *Id.*, 2.

<sup>221</sup> *Id.*, 3.

<sup>222</sup> *Id.*, 40.

<sup>223</sup> *Id.*, 40.

<sup>224</sup> *Id.*, 40.

<sup>225</sup> *Id.*, 43.

<sup>226</sup> Also reported as: Haidian District People's Court of Beijing (2014) Haimin Chuzi No. 16680 "P. and a consulting center infringement dispute case" / 北京市海淀区人民法院 (2014)海民初字第16680号 "彭某与某咨询中心等侵犯纠纷案" / "彭燕辉诉重庆心语飘香心理咨询中心等侵犯身体权、健康权和一般人格权纠纷案"

<sup>227</sup> "China China takes on landmark gay conversion case", *Al Jazeera*, 31 July 2014; Justin Caba, "Gay Conversion Therapy Lawsuit: Chinese Psych Clinic Performs Electric Shock Therapy On Patient To Reverse His Homosexuality", *Medical Daily*, 31 July 2014. "Victory for plaintiff in gay conversion case", *China Daily*, 19 December 2014.

Piaoxiang Center and Baidu, hoping to obtain a reasonable apology and compensation for the mental harm he suffered as a consequence of the “treatment”.<sup>228</sup>

On May 15, 2014, the Beijing Municipality Haidian District People’s Court accepted the case.<sup>229</sup> The three judges writing the decision confirmed that the clinic’s director and lead therapist did not have a valid license to perform either hypnosis or electroshock therapy. Furthermore, the judges explicitly acknowledged the fact that homosexuality is not an illness. However, they made no further conclusions about the legality of “conversion therapy” in China.

The decision did not determine that Xinyu Piaoxiang and Baidu’s actions had violated the plaintiff’s right to dignity and absolved the Baidu search engine from all charges. On the other hand, the decision recommended that Baidu stop sponsoring advertisements for “gay conversion therapy” keyword searches, which the technology company reportedly agreed to.

Finally, the court ordered Xinyu Piaoxiang to compensate the plaintiff with 3,500 yuan for economic losses, and to post an apology to him on its website’s homepage for 48 hours.<sup>230</sup> According to later investigations, the Xinyu Center is still practicing “conversion therapy”.<sup>231</sup>

The judgment was submitted by LGBT advocates to the UN Committee Against Torture.<sup>232</sup>

#### 4.2.2. *Yu X vs. No. 2 Zhumadian Hospital*<sup>233</sup>

In 2016, a 38-year-old man sued the No. 2 Zhumadian Hospital in the city of Zhumadian, Henan Province, after his wife and relatives forced him to undergo “conversion therapy treatment”.<sup>234</sup> After being diagnosed with “sexual preference

disorder”, the plaintiff spent 19 days locked up at the hospital’s premises and was forced to take medicine and receive injections.<sup>235</sup>

On 26 June 2017, the Yicheng District Court of Zhumadian ordered the psychiatric hospital to pay 5,000 yuan in compensation and to publish an apology in local newspapers within 10 days.<sup>236</sup> According to gay rights activists, this case was the first victory against a public psychiatric institution for compulsory therapy against a patient’s will.<sup>237</sup>

### 4.3. Costa Rica

Even though the case decided by the Supreme Court of Costa Rica did not deal with the case of a survivor or a legal ban on “conversion therapies”, it elaborated on the role of the State in endorsing views that, although protected by the right to freedom of expression, cannot be promoted by the government under the principle of equality and non-discrimination.

#### 4.3.1. *Decision No. 2013-3090*

In February 2013, the Fifth Central-American Congress of Bioethics was declared of “national and public interest” by the Costa Rican government. Doctor Jokin de Irala—the author of a book depicting homosexuality as a mental disorder that can be “therapeutically cured”—was one of its keynote speakers. A writ of *amparo* seeking to repeal the decree containing the declaration of “national and public interest” was filed with the Constitutional Chamber of the Supreme Court of Costa Rica.

<sup>228</sup> Jinghua Times, “中国首例电击治同性恋案宣判 心理中心赔偿3500元”, *Chinacourt.org*, 21 December 2014.

<sup>229</sup> Siodhbhra Parkin, “LGBT Rights-Focused Legal Advocacy in China: The Promise, and Limits, of Litigation”, *Fordham International Law Journal*, Volume 41, Issue 5, Article 7, 2018.

<sup>230</sup> Siodhbhra Parkin, “LGBT Rights-Focused Legal Advocacy in China: The Promise, and Limits, of Litigation”, *Fordham International Law Journal*, Volume 41, Issue 5, Article 7, 2018..

<sup>231</sup> Siodhbhra Parkin, “LGBT Rights-Focused Legal Advocacy in China: The Promise, and Limits, of Litigation”, *Fordham International Law Journal*, Volume 41, Issue 5, Article 7, 2018. Indeed, while the Xinyu Piaoxiang website does not explicitly list “homosexuality” among its areas of treatment, it features a section entitled “Sexual Consultation”, which includes treatments for “transvestism” and “fetishes”, among others.

<sup>232</sup> Siodhbhra Parkin, “LGBT Rights-Focused Legal Advocacy in China: The Promise, and Limits, of Litigation”, *Fordham International Law Journal*, Volume 41, Issue 5, Article 7, 2018..

<sup>233</sup> Also reported as: Civil Judgment of the People’s Court of Yicheng District, Zhumadian City, Henan Province, (2016) Yu 1702, Min Chu 4122 / 余某诉驻马店市精神病医院 / 河南省驻马店市驿城区区人民法院民事判决书 (2016) 豫1702民初4122号

<sup>234</sup> Tom Phillips, “Gay man sues Chinese psychiatric hospital over ‘sexuality correction’”, *The Guardian*, 14 June 2016; “Many LGBT people in China forced into illegal ‘conversion therapy’: groups”, *Reuters*, 21 November 2019.

<sup>235</sup> “Gay Chinese man wins legal battle over forced conversion therapy”, *BBC News*, 4 July 2017.

<sup>236</sup> “Gay Chinese man wins legal battle over forced conversion therapy”, *BBC News*, 4 July 2017.

<sup>237</sup> Jonathan Tchong, “China Court Rules Against Forced Conversion Therapy”, *Human Rights Watch*, 10 July 2017.

### Dignity, equality and non-discrimination arguments

Plaintiffs stated that the general consensus of medical opinion is that same-sex attraction is not a mental disorder and therefore it does not need to be “cured”,<sup>238</sup> adding that “conversion therapies” lack scientific basis and have actually been found harmful.<sup>239</sup> They argued that by declaring the Fifth Central-American Congress of Bioethics of national and public interest, the State endorsed a pathologizing view on homosexuality that promotes SOCE, thus reproducing socio-cultural behavior patterns that have discriminatory effects on LGBTI people.<sup>240</sup> The State contended that such action does not amount to an official government position on the topic.<sup>241</sup>

The Court explained that declaring of national and public interest (as well as sponsoring) an event where messages intrinsically linked to the stigmatization of LGBTI people are conveyed constitutes a violation of the principle of equality.<sup>242</sup>

### Free speech arguments

The plaintiff claimed that expressing pathologizing opinions about homosexuality that stir up hatred against LGBTI people does not constitute a legitimate exercise of the right to free speech.<sup>243</sup>

The government argued that by allowing that discourse and declaring the Fifth Central-American Congress of Bioethics of national and public interest, it provided practitioners with a space for dissertation and ethical and scientific scrutiny aimed at improving the provision of public health services.<sup>244</sup> The defendant also indicated that reviewing the content of Congress’ expositions would mean imposing prior censorship on speakers.<sup>245</sup>

The Court indicated that the American Convention on Human Rights subjects free speech to the principles of prior restraint and subsequent liability.<sup>246</sup> In this sense, Jokin de Irala was entitled to freely express his opinions at the Congress and its participants have the right to receive such information, even though his position on same-sex attraction has been controverted by the medical community.<sup>247</sup> The Court highlighted the importance of permitting views contrary to the majoritarian criterion be expressed and defended in the scientific field.<sup>248</sup>

### Final decision

In March 2013, the Constitutional Chamber of the Supreme Court of Costa Rica decided in favor of the plaintiff and the decree was quashed. The very next day, LGBTI organizations took part in a demonstration (called “the incurables concentration”) against the homophobic views held by the government, certain churches and the Fifth Central-American Congress of Bioethics.<sup>249</sup> People also marched requesting the removal of representative Justo Orozco, an Evangelical pastor known for his anti-LGBTI statements,<sup>250</sup> from the Presidency of the Human Rights Commission of Costa Rica’s Legislative Assembly.<sup>251</sup>

## 5. Bills and initiatives under consideration

### 5.1. Australia

#### 5.1.1. Queensland

In November 2018, the Minister for Health and Minister for Ambulance Services convened the “Ending Sexual Orientation Conversion Therapy Roundtable” to consider how to end “conversion therapy” in Queensland. The roundtable, attended by representatives of the community and government, concluded that the Government

<sup>238</sup> Supreme Court of Costa Rica (Constitutional Chamber), Sentence 3090, 6 March 2013, 2.

<sup>239</sup> *Id.*, 3, 4.

<sup>240</sup> *Id.*, 5, 6.

<sup>241</sup> *Id.*, 8.

<sup>242</sup> *Id.*, 14, 17.

<sup>243</sup> *Id.*, 6, 7.

<sup>244</sup> *Id.*, 9.

<sup>245</sup> *Id.*, 9.

<sup>246</sup> *Id.*, 9.

<sup>247</sup> *Id.*, 10, 12, 13.

<sup>248</sup> *Id.*, 14.

<sup>249</sup> “Event: Manifestación de Incurables”, *Personas, Sexualidades y Géneros (PSG) (Facebook Page)*. Retrieved 10 January 2020.

<sup>250</sup> “Costa Rica: el presidente de la Comisión de Derechos Humanos avergüenza a sus compatriotas con sus declaraciones homófobas”, *Dos Manzanas*, 4 March 2013.

<sup>251</sup> Eugenio Guerrero, “Renuncia de Justo Orozco de la Comisión de Derechos Humanos es el principal objetivo de la marcha de Los Incurables”, *crhoy.com*, 7 March 2013.

should consider legislation making it an offence for health practitioners to perform “conversion therapy”. The roundtable also recommended that consideration be given to protecting children, young people and vulnerable groups from these practices.<sup>252</sup> Additionally, a briefing was held by Queensland Health on 15 November 2019 at which attendees were invited to comment on a consultation draft of the Bill.<sup>253</sup>

In November 2019, the Health Legislation Amendment Bill 2019<sup>254</sup> was introduced in the Queensland Parliament. The law would, among other things, penalise “conversion therapy” with up to 18 months in jail. This new offence will apply to health service providers, which includes anyone who provides services for maintaining a person’s health or wellbeing. It captures registered health practitioners such as doctors, nurses and psychologists, and unregistered health practitioners such as counsellors, naturopaths and social workers. The bill is limited to health service providers because, as health professionals, they have ethical obligations not to engage in practices that are harmful and not evidence based.<sup>255</sup>

### 5.1.2. Victoria

In October 2019, a consultation was launched in Victoria in the process of building consensus on how to draft a ban on “conversion therapy”. Victorians were invited to take part in shaping the new laws with the release of a discussion paper through the Engage Victoria website. Consultations with a number of key stakeholders, including the government’s LGBTIQ taskforce, conversion practice survivor groups and religious groups will also take place. The government will then use the feedback and response to inform the shaping of the draft legislation.<sup>256</sup>

## 5.2. Canada

### 5.2.1. Federal level

A petition to ban “conversion therapy” nationally was presented to the House of Commons in January 2019.<sup>257</sup> As a result of this petition, Bill S-

260 was tabled in April and it is still under consideration. The bill intends to amend the Canadian Criminal Code by inserting a new section that would outlaw advertising “conversion therapy” as well as receiving financial or other material benefits knowing that they are obtained by or derived directly or indirectly from the provision of “conversion therapy” to a person under the age of eighteen.<sup>258</sup>

If enacted as is, this bill would prevent any person from advertising any form of “conversion therapy” for minors or adults. Additionally, it would also make it an offence for anyone to receive compensation (directly or indirectly) for the provision of “conversion therapies” to minors.

### 5.2.2. British Columbia

In May 2019, the Sexual Orientation and Gender Identity Protection Act (2019) was introduced in British Columbia. The law would prohibit the provision of “conversion therapy” to minors by health professionals, as a hospital service or professional service, and by persons in a position of trust or authority.

Additionally, the payment or reimbursement of the cost of conversion therapy provided as a hospital service or professional service, and the expenditure of public funds for the provision of conversion therapy will also be prohibited if the law is enacted.<sup>259</sup>

## 5.3. Chile

In May 2019, a bill was introduced in the Chilean Chamber of Deputies with the aim of amending the Law on Intrafamilial Violence (Law No. 20,066) and the Law establishing Measures against Discrimination (Law 20,069).

Amendments to the former would establish that any acts by parents or legal guardians aimed at changing a child’s sexual orientation or gender identity constitute acts of intrafamilial violence and would entail a situation of “imminent risk” for the child. Additionally, amendments to the latter would

<sup>252</sup> “Health Legislation Amendment Bill 2019: Explanatory Notes” *Parliament of Queensland (website)*. Retrieved 1 February 2020.

<sup>253</sup> For more information, see: Parliament of Queensland: Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, *Health Legislation Amendment Bill 2019: Report No. 32* (February 2020).

<sup>254</sup> Health Legislation Amendment Bill (2019).

<sup>255</sup> “Record Of Proceedings: First Session Of The Fifty-Sixth Parliament” *Parliament of Queensland (website)*, 28 November 2019.

<sup>256</sup> “Consultation Begins on LGBTIQ Conversion Therapy Ban” *Delivering for all Victorians*, 14 October 2019.

<sup>257</sup> “Petition e-1833 (Conversion therapy)” *Parliament of Canada (Website)*.

<sup>258</sup> Bill S-260, *An Act to amend the Criminal Code (conversion therapy)* (2019).

<sup>259</sup> Sexual Orientation and Gender Identity Protection Act (2019). See also: “Introducing a bill to end the practice of conversion therapy in British Columbia” *Andrew Weaver (website)*. Retrieved 1 February 2020.

explicitly list such acts by parents or legal guardians as “acts of arbitrary discrimination” and would allow any person to file a complaint in favour of the child who is being subjected to such discriminatory acts.<sup>260</sup>

#### 5.4. France

The Law Commission of the French National Assembly decided on July 10, 2019, to set up a mission on SOGIECE headed by two MPs who act as co-rapporteurs. The mission has established a set of priorities, amongst which is the introduction of bill to create a specific offense within the criminal code aimed at punishing “conversion therapy”, extend the aggravating circumstances that already exists for acts of violence against minors under 15 to 16-18 years old to cases in which they are subject to these “therapies” and legally frame attempts to change a person’s SOGIE as a form of sexual harassment.<sup>261</sup>

#### 5.5. Germany

Following a statement against “gay conversion therapy” by German Health Minister Jens Spahn, a commission of stakeholders, associations and experts from the field of medicine, psychology, social sciences and law was established in April 2019. The Commission was accompanied by the Magnus-Hirschfeld Federal Foundation (BMH). A scientific inventory on the planned ban on “conversion therapies” was published on 30 August 2019 in the form of a final report.

The bill under consideration<sup>262</sup> would prohibit so-called “conversion therapies” on minors, and on adults if their “consent” is based on a lack of will, for example because they are forced by coercion or by deception. This framing resembles the model adopted by Malta.

The prohibitions would also apply to any person. In the case of legal guardians, criminal liability is

limited to cases of gross violation of the duty of care or education.

#### 5.6. Ireland

A 2018 bill, which has received positive responses from the houses of Parliament, would outlaw SOGIECE with a broad scope<sup>263</sup> (similar in reach to the bans in force in Spain). The bill would also prohibit advertising “conversion therapy” and removing a person from the state for the purposes of “conversion therapy”. Professionals would also be barred from referring a person to other professionals and, or to any other person to perform “conversion therapy”.<sup>264</sup>

#### 5.7. Mexico

##### 5.7.1. Federal level

In 2018, a bill that would outlaw “conversion therapies” was introduced in the Federal House of Deputies.<sup>265</sup> The proposed legislation would insert a new section in the Penal Code (Article 149 *quater*) to make it a criminal offense to promote, offer, teach, apply, force, or induce to undergo treatment, therapy or any type of service that seeks to change a person’s sexual orientation or gender identity. The bill also establishes aggravated penalties for parents or guardian of persons under eighteen years of age, who force their children to undergo such treatments with the possibility of losing parental rights or guardianship. Additionally, aggravated penalties will apply to those who force a disabled person, an elderly person, persons deprived of liberty or, in general, individuals who for any reason could not resist or consent.<sup>266</sup>

The bill attempts add a specific penalty for licensed health professionals and any person related to the medical practice consisting of suspension in the professional exercise for three years and a fine. The penalty is also aggravated when the “therapy” is performed on any of the vulnerable groups listed in the provision cited above.<sup>267</sup>

<sup>260</sup> Boletín N° 12660-18, Proyecto de Ley: Modifica la ley N° 20.066, que Establece ley de violencia intrafamiliar, y la ley N° 20.609, que Establece medidas contra la discriminación, para sancionar los actos ejecutados en el ámbito familiar o educacional destinados a modificar la orientación sexual y la identidad o expresión de género de los niños, niñas y adolescentes (2019).

<sup>261</sup> «Mission d’information flash de la commission des lois sur les pratiques prétendant modifier l’orientation sexuelle ou l’identité de genre d’une personne» *Asemblée Nationale (webiste)*, December 2019.

<sup>262</sup> Gesetzentwurf der Bundesregierung: Entwurf eines Gesetzes zum Schutz vor Konversionsbehandlungen (2019).

<sup>263</sup> *Prohibition of conversion therapy bill* (2018).

<sup>264</sup> *Prohibition of conversion therapy bill* (2018).

<sup>265</sup> *Parliamentary Gazette No. 27* (Tome II), 8 August 2018, page 514 (electronic version can be accessed here). See also: “Bulletin No. 5678” *Mexican Chamber of Deputies (website)*, 18 August 2018. A similar bill was introduced in the Senate.

<sup>266</sup> *Id.*, Section 149 quater.

<sup>267</sup> *Id.*, Section 465 bis.

### 5.7.2. Mexico City

A bill introduced in September 2018 would amend Article 206 of the Penal Code of Mexico City to criminalise as “torture” any act of forcing a person to undergo any kind of practice with the aim of nullifying the free development of the victim’s personality, sexual orientation, gender identity and expression or to decrease their physical or mental ability, even if it does not cause physical pain or psychological distress.<sup>268</sup>

The bill would also prohibit any contract, treatment, therapy or service that aims to change, repress or eliminate personality and manifestations of gender identity and sexual orientation. Additionally, the bill would punish parents, legal guardians, relatives, health professionals or religious leaders who instigate, authorize or inflict physical or mental pain and “conversion therapies” on minors.<sup>269</sup>

### 5.7.3. State of Jalisco

In November 2019, a bill to punish “conversion therapy” with up to three years in prison was preliminary approved by a Commission of the State Congress of Jalisco in Mexico.<sup>270</sup> However, discussion of this bill was adjourned until January 2020 due to pressure from conservative groups.<sup>271</sup>

### 5.8. New Zealand

In October 2018, a bill to ban “conversion therapies” was introduced in the New Zealand Parliament. The bill creates an offence for any person who advertises, offers, or performs “conversion therapy” on another person. It also prohibits the removal of another person from New Zealand for the purposes of “conversion therapy” and imposes penalties on those who aid, abet, counsel, procure, or incite a person to commit any of the offenses specified in the bill.<sup>272</sup>

### 5.9. Poland

The bill, drafted by Nowoczesna (a liberal political party) and Campaign Against Homophobia, would ban the administration, promotion and advertising of “conversion therapy” as well as referring people to them. It is expected that the first reading of the bill will be held in the Polish parliament soon.<sup>273</sup>

### 5.10. Spain (national level)

In late 2019, it was announced that a national bill that would outlaw conversion therapies at the national level would be introduced in 2020.<sup>274</sup>

### 5.11. Taiwan (China)<sup>275</sup>

A bill to include “conversion therapy” as “prohibited treatment” defined in Article 28(4)(1) in the *Physicians Act* was submitted during the 10<sup>th</sup> General Assembly of the Social Welfare and Environmental Hygiene Committee in the 2<sup>nd</sup> session of the 9<sup>th</sup> legislators in the Legislative Yuan.

### 5.12. United Kingdom

A Bill entitled *Counsellors and Psychotherapists (Regulation) and Conversion Therapy (Bill 2017-19)* that would have outlawed “conversion therapy” was introduced in 2018, but it failed to complete its way through Parliament before the end of the session.

### 5.13. United States (federal level)

Two bills have been introduced in the National Congress. A bill introduced in 2019 would make the provision and advertising of “conversion therapies” a deceptive practice under the Federal Trade Commission Act.<sup>276</sup> Another federal bill that would ban the use of Medicaid funding for “conversion therapy” was also introduced in 2019.<sup>277</sup>

<sup>268</sup> Gaceta Parlamentaria (Congreso de la Ciudad de México), *Iniciativa con proyecto de decreto que reforma el artículo 206 bis del código penal de la Ciudad de México* (VI Legislatura / No. 08), 44.

<sup>269</sup> Gaceta Parlamentaria (Congreso de la Ciudad de México), *Iniciativa con proyecto de decreto que reforma el artículo 206 bis del código penal de la Ciudad de México* (VI Legislatura / No. 08), 44.

<sup>270</sup> Franco González, “Buscan que vayan a prisión a quienes brinden terapias de conversión”, *Milenio*, 27 November 2019.

<sup>271</sup> Rodrigo Rivas Uribe, “Protestan por reforma sobre terapias de conversión en Jalisco”, *Informador.mx*, 4 December 2019.

<sup>272</sup> *Prohibition of Conversion Therapy Bill* (2018).

<sup>273</sup> “Poland with the new act banning the use of conversion pseudotherapies on the LGBT people”, *Kampania Przeciw Homofobii (website)*. Retrieved 4 February 2020.

<sup>274</sup> “PSOE y Unidas Podemos prohíben las terapias para curar homosexualidad en su acuerdo de gobierno”, *Shangay*, 3 January 2020.

<sup>275</sup> For an explanation on the names of jurisdictions used in the report, please read the disclaimer on the Copyright page.

<sup>276</sup> “H.R.3570 - Therapeutic Fraud Prevention Act of 2019” 116th Congress (2019-2020). See also: Dominic Holden, “Democrats are taking another shot at protecting LGBT kids from so-called cures” *BuzzFeed News*. 25 April 2017.

<sup>277</sup> “H.R.1981 - Prohibition of Medicaid Funding for Conversion Therapy Act”, 116th Congress (2019-2020).

## 6. Official Statements by Governmental Bodies or Officials

### 6.1. Argentina

#### 6.1.1. City of Buenos Aires (2011)

The Legislature of the City of Buenos Aires unanimously adhered to the International Campaign “Cures that Kill” by the IDAHO Committee (International Day Against Homophobia and Transphobia) thereby declaring that “conversion therapies” are outlawed under the local antidiscrimination law.

### 6.2. Australia

#### 6.2.1. Federal level (2018)

In September 2018, the Australian Senate passed a motion seeking to ban “conversion therapies” across the country. Though not legally binding, the motion urges the federal government to pressure states to ban the practice.<sup>278</sup>

#### 6.2.2. Victoria (2018)

In Victoria, under the *Health Complaints Act*, the Health Complaints Commissioner has the power to investigate health providers. In May 2018 the Minister for Health, referred the matter of “conversion therapy” to the Commissioner for inquiry under section 103 of the Act. Based on her findings, the Commissioner recommended introducing legislation to prohibit “conversion therapy”, as well as support for survivors of “conversion therapy”, including resourcing for support services.<sup>279</sup>

#### 6.2.3. West Australia (2018)

In 2018, the Western Australia’s Health Minister restated his opposition to SOGIECE and asked people who come across professionals promoting counselling therapies to report them in the following terms:

Any public or private psychiatrist or psychologist practicing psychological practices that attempt to change sexual orientation may be in breach of their professional code of conduct and code of ethics and I strongly encourage the reporting of these breaches. Western Australians can report breaches to the *Health and Disability Complaints Office* or by contacting the complaints line.<sup>280</sup>

### 6.3. Austria (2018)

In 2018, the Austrian Chamber of Deputies unanimously passed a motion for a resolution calling for a ban on “conversion therapy” for minors. The motion requested the federal government to immediately submit a government proposal to the National Council.<sup>281</sup>

### 6.4. Canada

#### 6.4.1. Manitoba (2015)

The Ministry of Health of Manitoba (officially known as Ministry of Health, Seniors and Active Living) has issued an official position statement indicating that “conversion therapy” can have no place in the province’s public health-care system” and urging the province’s regional health authorities and health profession regulatory colleges to ensure that conversion therapy is not practiced in Manitoba’s health-care system.<sup>282</sup>

### 6.5. Chile (2016)

In 2016, in response to a request for information filed with the Ministry of Health by MOVILH, the Ministry stated that the practices known as “reparative therapies” or “reconversion” of homosexuality “represent a serious threat to the health and well-being of the people affected.”<sup>283</sup>

<sup>278</sup> “Matters of Public Importance: Gender and Sexual Orientation”, *Parliament of Australia (website)*, 11 September 2018.

<sup>279</sup> Health Complaints Commissioner (Victoria), *Report on The Inquiry into Conversion Therapy* (2019).

<sup>280</sup> “WA Health Minister voices his opposition to gay conversion therapies” *Out in Perth*, 3 Jul 2018.

<sup>281</sup> “Entschließungsantrag” *Parliament of Austria (website)*.

<sup>282</sup> “Position on Conversion Therapy”, *Ministry of Health, Seniors and Active Living of Manitoba (website)*, 2018.

<sup>283</sup> Ministry of Public Health (Chile), *Respuesta solicitud de acceso a la información pública*, Ref: Respuesta folio AO001T0000897, 17 February 2016.



### 6.6. Israel (2014)

In 2014, the Ministry of Health of Israel issued a statement against "sexual reorientation therapy".<sup>284</sup> The Minister of Health, Yael German, welcomed the adoption of a position paper regarding sexual reorientation therapy by the Israel Psychological Association, which specified that "the public should be warned of expected dangers to the public from such 'therapists'" and emphasized "that these therapies are ethically and professionally improper."<sup>285</sup> The Minister further indicated that such position statement constituted "yet another proof that sexual orientation is not something that in its nature can or should be changed" and that "sexual orientation is part of a person's identity, and does not require 'therapy' or 'reorientation'".<sup>286</sup>

The Minister further proposed a ban on "conversion therapy" performed on minors which was rejected by the legislature two years later, in 2016. Justifying the rejection of the bill, Housing Minister, Yoav Galant, stated that the bill did not point "to equivocal damage as a result of the conversion therapy, but only potential damage, which exists in any other psychological treatment as well" and that "the formulation of the bill would likely apply to every conversation with a minor."<sup>287</sup>

### 6.7. Taiwan (China)<sup>288</sup> (2018)

Although a bill has been introduced in the legislative Yuan (see above), the Ministry of Health and Welfare issued a formal response to a complaint submitted by civil society organizations concerning "conversion therapy" stating that If any institution or individual conducts "sexual orientation conversion therapy," the therapy content and facts should be reviewed to determine whether the involved party is in violation of the Protection of Children and Youths Welfare and Rights Act or Article 304 of the Criminal Code concerning "causing another by violence or threats to do a thing which he has no obligation to do or preventing another from doing a thing that he has the right to do," and hence, may be punished accordingly."<sup>289</sup>

### 6.8. United Kingdom (2017)

In 2017, a Memorandum of Understanding was signed by NHS England, NHS Scotland and other relevant stakeholders to commit to ending the practice of "conversion therapy".<sup>290</sup>

Moreover, in that same year the Department of Health officially replied to a petition entitled "Make offering Gay Conversion Therapy a criminal offence in the UK" in the following terms:

Gay conversion therapy is an attempt to use therapeutic approaches to change a person's sexual orientation. It is sometimes known as 'reparative' or 'gay cure' therapy. The Government fully recognise the importance of this issue and the adverse impact this treatment could have on lesbian, gay and bisexual (LGB) people.

There is no evidence that this sort of treatment is beneficial, and indeed it may well cause significant harm to some patients. It is incumbent on professionals working in the National Health Service to ensure that treatment and care, including therapy, is provided to every patient without any form of discrimination.

This Government is committed to tackling discrimination towards LGB people.

That is why we have already worked with the main registration and accreditation bodies for psychotherapy and counselling practitioners, including the UK Council for Psychotherapy (UKCP), to develop first a consensus statement and then a Memorandum of Understanding committing signatory organisations to a range of activities including training and awareness raising amongst their members in relation to this issue. This Government has already taken the necessary steps to prevent the practice of gay conversion therapy in the UK.<sup>291</sup>

<sup>284</sup> "The Ministry of Health Warns the Public Against Sexual Reorientation Therapy", *State of Israel: Ministry of Health (Webiste)*, 5 October 2014.

<sup>285</sup> A copy of the position paper (in Hebrew) can be found here.

<sup>286</sup> "The Ministry of Health Warns the Public Against Sexual Reorientation Therapy", *Ministry of Health of Israel*, 5 October 2014.

<sup>287</sup> Marissa Newman, 'Day after marking LGBT rights, Knesset nixes 5 gender equality bills', *The Times of Israel*, 24 February 2016.

<sup>288</sup> For an explanation on the names of jurisdictions used in the report, please read the disclaimer on the Copyright page.

<sup>289</sup> Ministry of Health and Welfare (Department of Medical Affairs), "Responses to the complaint submitted by civil organizations concerning "conversion therapy", Yi-Zih No. 1071660970, 22 February 2018.

<sup>290</sup> NHS England, NHS Scotland et al., *Memorandum of Understanding on Conversion Therapy in the UK* (November 2015), 2.

<sup>291</sup> "Petition: Make offering Gay Conversion Therapy a criminal offence in the UK" *Parliament of the United Kingdom*, 3 May 2017.

## 6.9. Mexico

### 6.9.1. Federal level (2017, 2018)

In 2017, the National Council for the Prevention of Discrimination (CONAPRED,) published a position statement stressing that SOGIECE infringe on the rights to the free development of personality, health, personal integrity and equality and non-discrimination, in addition to being factually and potentially harmful, ignoring sexual diversity and stigmatizing homosexuality and contributing to the persistence of homophobia.<sup>292</sup> In 2018, several governmental agencies and public institutions<sup>293</sup> as well as professional organisations<sup>294</sup> joined the Council in a similar statement against “efforts to correct sexual orientation and gender identity.”<sup>295</sup>

### 6.9.2. Mexico City (2015)

The Council for the Prevention and Elimination of Discrimination (COPRED) issued an advisory opinion in response to a conference organised by the American SOGIECE proponent Richard Cohen in that city. The Council stated that offering the possibility of “change” cannot be justified and stressed that such message promotes prejudice and stigma, increasing the vulnerability of LGBTI people.<sup>296</sup> It also indicated that such message of choice or “change based on the will” may cause pressure from third parties who consider such sexual preference unacceptable.<sup>297</sup>

## 6.10. Peru (2019)

In Peru, the Office of the Ombudsperson expressed concern and repudiated the existence of organisations offering SOGIECE based on religious ideas promoting prejudice, stigma and

discrimination. The Office notified the College of Psychologists of Peru, the Medical College of Peru, the Public Ministry and the Municipalities so that, according to their competences, they could investigate and punish those who unduly exercise the profession and discriminate against LGBTI people.<sup>298</sup>

## 6.11. United States of America (2015)

State-level bans on conversion therapy have gained widespread support after the suicide of Leelah Alcorn, a 17-year-old transgender youth who had been forced by her parents to undergo SOCE administered by a Christian therapist. In her suicide note Leelah wrote that her therapist had reinforced the notion that “being transgender was wrong”. A few days after her death became known, President Obama stated that his administration would support the efforts to ban the practice at the state level.<sup>299</sup>

## 6.12. European Parliament (EU) (2018)

In 2018, the European Parliament voted on an amendment to an annual report on the situation of fundamental rights in the EU referring for the first time to “conversion therapies”. The specific paragraph states that the European Parliament “welcomes initiatives prohibiting LGBTI conversion therapies and banning the pathologisation of trans identities and urges all Member States to adopt similar measures that respect and uphold the right to gender identity and gender expression.”<sup>300</sup>

<sup>292</sup> CONAPRED, *Pronunciamiento 01/2017*: las “terapias de conversión”, una forma de violencia y discriminación por motivos de orientación sexual e identidad de género (2017).

<sup>293</sup> Council to Prevent and Eliminate Discrimination in Mexico City (COPRED); School of Public Administration of the Federal District (EAP); Ministry of Health of Mexico City (SEDESA); Secretariat of Education of Mexico City (SEDEU); National Polytechnic Institute (IPN); National Pedagogical University (UPN).

<sup>294</sup> YAAJ Mexico A.C.; Association for Transgender Children; Mexican Society of Pediatric Endocrinology.

<sup>295</sup> CONAPRED, *Pronunciamiento 42/2018*: pronunciamiento en contra de los esfuerzos para corregir la orientación sexual e identidad de género (ECOSIG) (2018).

<sup>296</sup> Consejo para la Prevención y la Eliminación de la Discriminación, *Opinión Consultiva No. 1/2015: “Discriminación hacia personas LGBTTTI mediante terapias de conversión o reparativas que ofrecen ‘cura’ a la homosexualidad”* (2015); See also: “Presentación de la Opinión Consultiva 01/2015” COPRED CDMX YouTube Channel, 11 March 2015.

<sup>297</sup> Consejo para la Prevención y la Eliminación de la Discriminación, *Opinión Consultiva No. 1/2015: “Discriminación hacia personas LGBTTTI mediante terapias de conversión o reparativas que ofrecen ‘cura’ a la homosexualidad”* (2015); See also: “Presentación de la Opinión Consultiva 01/2015” COPRED CDMX YouTube Channel, 11 March 2015.

<sup>298</sup> Defensoría del Pueblo (Peru), “Press Release No. 247/OCII/DP/2019: “Terapias de reconversión” constituyen actos de tortura contra las personas LGBTI”, 13 August 2019.

<sup>299</sup> Michael D. Shear, “Obama Calls for End to ‘Conversion’ Therapies for Gay and Transgender Youth,” *The New York Times*, April 8, 2015. See also: V. Jarrett, “Official White House response to enact Leelah’s Law to ban all LGBTQ+ Conversion Therapy,” 2015.

<sup>300</sup> European Parliament, *Situation of fundamental rights in the EU in 2016 European Parliament resolution of 1 March 2018 on the situation of fundamental rights in the EU in 2016 (2017/2125(INI))*, para. 65.

## ANNEX 1

# POSITION STATEMENTS: PROFESSIONAL ASSOCIATIONS AGAINST SO(GIE)CE

## 1. International

### 1.1. World Psychiatric Association

There is no sound scientific evidence that innate sexual orientation can be changed. Furthermore, so-called treatments of homosexuality can create a setting in which prejudice and discrimination flourish, and they can be potentially harmful (Rao and Jacob, 2012). The provision of any intervention purporting to “treat” something that is not a disorder is wholly unethical. [...]

WPA considers same-sex attraction, orientation, and behaviour as normal variants of human sexuality. It recognises the multi-factorial causation of human sexuality, orientation, behaviour, and lifestyle. It acknowledges the lack of scientific efficacy of treatments that attempt to change sexual orientation and highlights the harm and adverse effects of such “therapies”.<sup>1</sup>

### 1.2. International Society of Psychiatric-Mental Health Nurses

There have been sound arguments against the practice of reparative or conversion therapies. It is clear that these treatment modalities raise numerous ethical concerns and challenge the code of ethics of medical, psychological, nursing, and social work disciplines. Therefore, ISPN strongly opposes reparative therapy [...].<sup>2</sup>

### 1.3. Pan American Health Organization: Regional Office of the World Health Organization

“Reparative” or “conversion therapies” have no medical indication and represent a severe threat to the health and human rights of the affected persons. They constitute unjustifiable practices that should be denounced and subject to adequate sanctions and penalties.<sup>3</sup>

### 1.4. World Medical Association

“[C]onversion” or “reparative” procedures, which claim to be able to convert homosexuality into asexual or heterosexual behaviour and give the impression that homosexuality is a disease. These methods have been rejected by many professional organisations due to a lack of evidence of their effectiveness. They have no medical indication and represent a serious threat to the health and human rights of those so treated. [...]

The WMA strongly asserts that homosexuality does not represent a disease, but rather a natural variation within the range of human sexuality. [...]

The WMA condemns so-called “conversion” or “reparative” methods. These constitute violations of human rights and are unjustifiable practices that should be denounced and subject to sanctions and penalties. It is unethical for physicians to participate during any step of such procedures.<sup>4</sup>

<sup>1</sup> World Psychiatric Association, “WPA Position Statement on Gender Identity and Same-Sex Orientation, Attraction, and Behaviours”, *World Psychiatry* (2016).

<sup>2</sup> International Society of Psychiatric-Mental Health Nurses, *Position Statement On Reparative Therapy* (2008).

<sup>3</sup> Pan American Health Organization (PAHO): Regional Office of the World Health Organization, “Cures” for an illness that does not exist: Purported therapies aimed at changing sexual orientation lack medical justification and are ethically unacceptable (2012).

<sup>4</sup> World Medical Association, *WMA Statement of Natural Variations of Human Sexuality* (2013).

## 2. National/regional level

### 2.1. Australia

#### 2.1.1. Australian College of Nurse Practitioners

The ACNP supports the prohibiting practice of conversion therapy by health practitioners.<sup>5</sup>

#### 2.1.2. Australian Medical Association

The AMA opposes the use of "reparative" or "conversion" therapy that is based upon the assumption that homosexuality is a mental disorder and that the patient should change his or her sexual orientation.<sup>6</sup>

#### 2.1.3. Australian Psychological Society

The APS strongly opposes any approach to psychological practice or research that treats lesbians, gay men, and bisexual people as disordered.

The APS also strongly opposes any approach to psychological practice or research that attempts to change an individual's sexual orientation.

There is no peer-reviewed empirical psychological research objectively documenting the ability to "change" an individual's sexual orientation.

Furthermore, there is no peer-reviewed empirical psychological research demonstrating that homosexuality or bisexuality constitutes a disorder.<sup>7</sup>

#### 2.1.4. Queensland Psychoanalytic Psychotherapy Association

We recognise and acknowledge that [conversion therapies] have had abusive and disastrous effects on gay and transgender people. [...] [T]he QPPA strongly condemns the use of these forms of "therapy".<sup>8</sup>

#### 2.1.5. Royal Australasian College of Physicians

Gay conversion therapy is unethical, harmful and not supported by medical evidence.<sup>9</sup>

#### 2.1.6. Royal Australian and New Zealand College of Psychiatrists (regional)

The RANZCP does not support the use of sexual orientation change efforts of any kind. There is no scientific evidence that sexual orientation can be changed. Sexual orientation change efforts risk causing significant harm to individuals.<sup>10</sup>

### 2.2. Austria

#### 2.2.1. Austrian Public Health Association

For reasons of health risk and ethics, all therapy procedures and advice aimed at correcting sexual orientation are rejected. Such "conversion therapies" are devoid of any scientific (theoretical and methodological) basis and can lead to mental disorders and illnesses (such as depression, anxiety disorders) and even self-harming behaviour and suicidal, especially in children and adolescents.<sup>11</sup>

<sup>5</sup> Australian College of Nurse Practitioners, *Response to Health Legislation Amendment Bill* (2019).

<sup>6</sup> Australian Medical Association, *Sexual Diversity and Gender Identity* (2002).

<sup>7</sup> Australian Psychological Society, *APS Position Statement on the use of psychological practices that attempt to change sexual orientation* (2015).

<sup>8</sup> Queensland Psychoanalytic Psychotherapy Association, *Submission regarding Conversion Therapies Health Legislation* (2020).

<sup>9</sup> Royal Australasian College of Physicians and Royal Australian and New Zealand College of Psychiatrists, *Doctors criticise gay conversion therapy remarks in marriage equality debate* (2017).

<sup>10</sup> Royal Australian and New Zealand College of Psychiatrists, *Sexual orientation change efforts: positions statement 60* (2019).

<sup>11</sup> Austrian Public Health Association, *Statement by the Austrian Society for Public Health: Groups of experts on "Sexual and gender diversity", "Public Mental Health" and "Child and Adolescent Health"* (2018).

### 2.2.2. *Austrian Society for Psychiatry, Psychotherapy and Psychosomatics*

The Board of the Austrian Society for Psychiatry, Psychotherapy and Psychosomatic Medicine [...] and the Federal Department of Psychiatry and Psychotherapeutic Medicine [...] strongly oppose views that consider homosexuality a sexual malformation or disease that can or should be corrected through medical intervention [...] and [...] therefore reject any type of procedure that aims at “correcting” people’s sexual orientation.<sup>12</sup>

### 2.4.2. *College of Psychologists of Quebec (regional)*

Homosexuality is not a mental disorder. [...] A person’s sexual orientation can, however, be the source of suffering or distress. It is in this context that psychologists can intervene. [...] [S]cientific and professional literature to date does not lead to the conclusion that interventions aimed at changing sexual orientation are effective. [...] Research has shown that interventions aimed at changing sexual orientation can have a significant negative impact.<sup>16</sup>

## 2.3. Brazil

### 2.3.1. *Federal Council of Psychology*

Psychologists will not collaborate with events and services that propose treatments and cures for homosexuality.<sup>13</sup> Psychologists, in the exercise of their professional practice, will not collaborate with events or services that contribute to the development of discriminatory institutional cultures in relation to transsexuals and *travestis*.<sup>14</sup>

## 2.4. Canada

### 2.4.1. *Canadian Psychological Association*

The Canadian Psychological Association opposes any therapy with the goal of repairing or converting an individual’s sexual orientation, regardless of age. [...] Scientific research does not support the efficacy of conversion or reparative therapy [...]. Conversion or reparative therapy can result in negative outcomes such as distress, anxiety, depression, negative self-image, a feeling of personal failure, difficulty sustaining relationships, and sexual dysfunction [...].<sup>15</sup>

### 2.4.3. *College of Alberta Psychologists (regional)*

6.3. A psychologist shall not, in the course of providing a professional service, provide any treatment, counselling, or behaviour modification technique with the objective of changing or modifying the sexual orientation, gender identity, or gender expression of an individual who:

6.3.1 is under 18 years of age, or

6.3.2 is 18 years of age or older and lacks the ability to:

6.3.2.1 understand the information that is relevant to a decision respecting consent to treatment, counselling, or a behaviour modification technique, and

6.3.2.2 appreciate the reasonably foreseeable consequences of the decision.

6.3.3 Despite any other law, no person is permitted to give consent on behalf of an individual described in sections 6.3.1 or 6.3.2 to the provision of any treatment, counselling, or behaviour modification technique referred to in section 6.3.<sup>17</sup>

<sup>12</sup> Austrian Society of Psychiatry, Psychotherapy and Psychosomatics, *Joint statement by the Austrian Society for Psychiatry, Psychotherapy and Psychosomatics and the Federal Department of Psychiatry and Psychotherapeutic Medicine on so-called conversion or “reparative” procedures in people with different sexual orientation* (2018).

<sup>13</sup> Federal Council of Psychology, *Resolution 1/99* (1999).

<sup>14</sup> Federal Council of Psychology, *Resolution No. 1/18* (2018).

<sup>15</sup> Canadian Psychological Association, *CPA Policy Statement on Conversion/Reparative Therapy for Sexual Orientation* (2015).

<sup>16</sup> College of Psychologists of Quebec, *Interventions aimed at changing sexual orientation* (2012).

<sup>17</sup> College of Alberta Psychologists, *Practice Guideline: Preventing and Addressing Sexual Abuse and Misconduct* (2019).

## 2.5. Chile

### 2.5.1. Chilean College of Psychologists

The Chilean College of Psychologists states that homosexuality is not a mental disorder and, therefore, rejects therapies aimed at changing a person's sexual orientation [...]. [...] Reparative therapies have not proved to be efficient. On the contrary, there is evidence of the damages caused in the field of mental health.<sup>18</sup>

## 2.6. Costa Rica

### 2.6.1. Professional Association of Psychologists

Homosexuality is not a disease [...] and therefore there is no cure or treatment. [...] [T]he supposed "healing" services for people with non-heterosexual sexual orientation lack medical justification and represent a serious threat to the health and well-being of those affected.<sup>19</sup>

## 2.7. Germany

### 2.7.1. German Medical Association

Psychiatric-psychotherapeutic treatment approaches should not focus on homosexuality as such, but on conflicts that arise with homosexuality in connection with religious, social and internalized norms. [...]

So-called "conversion" or "reparative" procedures, which claim to be able to convert homosexuality into asexual or heterosexual behaviour and give the impression that homosexuality is a disease, must be rejected.<sup>20</sup>

## 2.8. Hong Kong (China)

### 2.8.1. Hong Kong College of Psychiatrists

The Hong Kong College of Psychiatrists opines that homosexuality is not a psychiatric disorder. [...] There is, at present, no sound scientific and clinical evidence supporting the benefits of attempts to alter sexual orientation.<sup>21</sup>

### 2.8.2. Hong Kong Psychological Society

Psychologists understand that homosexuality and bisexuality are not mental illnesses. [...] Psychologists understand that efforts to change sexual orientation are not proven to be effective or harmless.<sup>22</sup>

## 2.9. India

### 2.9.1. Indian Psychiatric Society

The IPS recognizes same sex sexuality as a normal variant of human sexuality much like heterosexuality and bisexuality. There is no scientific evidence that sexual orientation can be altered by any treatment and that any such attempts may in fact lead to low self-esteem and stigmatization of the person.<sup>23</sup>

## 2.10. Ireland

### 2.10.1. Psychological Society of Ireland

[A] person's sexual orientation is not, and should not, be viewed as a mental health disorder that requires psychological intervention. There is clear and unequivocal empirical evidence that conversion therapy does not work, and significant evidence that it is also inherently harmful. →

<sup>18</sup> Chilean College of Psychologists, *Position of the Chilean College of Psychologists on reparative therapies* (2015).

<sup>19</sup> Professional College of Psychologists of Costa Rica, *Homosexuality is not a disease* (2018; previous 2013).

<sup>20</sup> German Medical Association, *Resolution on Conversion "or" reparative "procedure for homosexuality* (2014)

<sup>21</sup> Hong Kong College of Psychiatrists, *Position Statement of The Hong Kong College of Psychiatrists on Sexual Orientation* (2011).

<sup>22</sup> Hong Kong Psychological Society, *Position Paper for Psychologists Working with Lesbians, Gays, and Bisexual (LGB) Individuals* (2012).

<sup>23</sup> "Indian Psychiatric Society reiterates need for decriminalisation of homosexuality", *Orinam*, 9 July 2018.

The practice, or even endorsement, of conversion therapy gives legitimacy to the notion that one's sexual orientation is wrong and needs to be changed. It endorses societal prejudice and legitimises family rejection reactions to disclosure of sexual identity, which typically occurs during a vulnerable period of youth development.<sup>24</sup>

## 2.11. Israel

### 2.11.1. Israel Medical Association

### 2.11.2. Israel Psychiatric Association

### 2.11.3. Israeli Adolescent Medicine Society

### 2.11.4. Israel Pediatric Association

### 2.11.5. Israel Association of Family Physicians

### 2.11.6. Israel Child and Adolescent Psychiatric Association

A comprehensive review of studies and position papers from other organizations showed an agreement that there is no place for any treatment based on the assumption that homosexuality is a disease or a disorder that requires treatment. The treatments to change one's sexual orientation have been found to be ineffective and could cause mental damage, such as anxiety, depression and suicidal tendencies".<sup>25</sup>

## 2.12. Lebanon

### 2.12.1. Lebanese Psychiatric Society

Homosexuality *per se* implies no impairment in judgment, stability, reliability, or general social or vocational capabilities. →

In addition, all major professional mental health organizations have gone on record to affirm that homosexuality is not a mental disorder. [...] Therefore, homosexuality *per se* requires no treatment. [...] In fact, there is no published scientific evidence supporting the efficacy of "reparative therapy" as a treatment to change one's sexual orientation. More importantly, altering sexual orientation is not an appropriate goal of psychiatric treatment.<sup>26</sup>

## 2.13. New Zealand / Aotearoa <sup>27</sup>

### 2.13.1. Aotearoa New Zealand Association of Social Workers

The ANZASW wishes to communicate its strong opposition to the practice of so-called "gay conversion therapy", also known as "reparative therapy". [...] There is no evidence that this method changes the sexual orientation of its subject; rather it encourages the demonstrably false notion that non-heterosexual orientation is pathological, a "disorder" or "illness" that can be "cured," or that one's sexuality is a matter of choice. Such viewpoints have been thoroughly discredited and are unsupported by any mainstream peer-reviewed research.<sup>28</sup>

## 2.14. Norway

### 2.14.1. Norwegian Psychiatric Association

[H]omosexuality is no disorder or illness and can therefore not be subject to treatment. A "treatment" with the only aim of changing sexual orientation from homosexual to heterosexual must be regarded as ethical malpractice and has no place in the health system.<sup>29</sup>

<sup>24</sup> Psychological Society of Ireland, *Psychological Society of Ireland advises on Conversion Therapy* (2019).

<sup>25</sup> The Medical Association in Israel, The Israeli Association of Child and Adolescent Psychiatry, Israel Psychiatry Association, Family Physicians Association, The Health Promotion Society of the LGBT Community, The Israeli Society for Adolescent Medicine, Association of Pediatricians, *Treatments for changing identity and sexual orientation* (2019). "Israel Medical Association bars its members from performing conversion therapy", *Ynet News*, 1 August 2019.

<sup>26</sup> Lebanese Psychiatric Society, *Statement from the Lebanese Psychiatric Society* (2013).

<sup>27</sup> The position statements issued by the Royal Australasian College of Physicians and the Royal Australian and New Zealand College of Psychiatrists have been listed under "Australia" and have been omitted here to avoid repetition.

<sup>28</sup> Aotearoa New Zealand Association of Social Workers, *ANZASW Statement on the Practice of "Gay Conversion Therapy"* (2018).

<sup>29</sup> Kjær, R., "Look to Norway? Gay Issues and Mental Health Across the Atlantic" *Journal of Gay and Lesbian Psychotherapy* (2008).

## 2.15. Paraguay

### 2.15.1. Paraguayan Society of Studies on Human Sexuality

There is global scientific consensus between psychologists, psychiatrists and sexologists on homosexuality not being a mental or organic disorder of any kind. [...] We [...] condemn "conversion therapies" [...] because they ignore and deny the diverse nature of human sexuality [and] lack scientific basis.<sup>30</sup>

## 2.16. Philippines

### 2.16.1. Psychological Association of the Philippines

LGBT Filipinos often confront social pressures to hide, suppress or even change their identities and expressions as conditions for their social acceptance and enjoyment of rights. [...] [T]hese experiences can cause serious psychological distress [...].

[A]nti LGBT prejudice and discrimination tend to be based on [...] unfounded beliefs associating these gender expressions sexual orientations with psychopathology and maladjustment. [...]

The Psychological Association of the Philippines (PAP) aligns itself with the global initiatives to remove the stigma of mental illness that has long been associated with diverse sexualities and to promote the wellbeing of LGBT people.

Filipino psychologists should not discriminate against or demean persons based on actual or perceived [...] gender identity and sexual orientation. [...] [T]he PAP resolves to support efforts to: [...] eliminate all forms of prejudice and discrimination against LGBTs in teaching, research, psychological interventions, assessment and other psychological programs.<sup>31</sup>

## 2.17. Poland

### 2.17.1. Polish Sexology Society

Sexual orientation is not subject to reshaping in accordance with cultural and social expectations, it is not a matter of choice or fashion. [...] The promotion of therapies that aim at correcting, converting or repairing homosexual or bisexual orientation in the direction of solely heterosexual is incompatible with modern knowledge about human sexuality and may result in serious adverse psychological effects on the people undergoing such therapies.<sup>32</sup>

## 2.18. South Africa

### 2.18.1. Psychological Society of South Africa

Psychology professionals [must] [...] [s]upport best practice care in relation to sexually and gender diverse clients by [...] [c]autioining against interventions aimed at changing a person's sexual orientation or gender expression, such as "reparative" or conversion therapy [...].<sup>33</sup> There is no reliable evidence that sexual orientation is subject to redirection, "conversion" or any significant influence from efforts by psychological or other interventions. Research and clinical experience conclude that homosexual or bisexual orientations are naturally occurring minority variations of normal human sexuality.<sup>34</sup>

### 2.18.2. South African Society of Psychiatrists

SASOP endorses the stance of the American Psychiatric Association that homosexuality *per se* implies no impairment in judgement, stability, reliability, or general social, vocational capabilities or increased psychopathology. [...]

<sup>30</sup> Paraguayan Society of Studies on Human Sexuality, *Statement, August 8<sup>th</sup>, 2011* (2011).

<sup>31</sup> Psychological Association of the Philippines, "Statement of the Psychological Association of the Philippines on Non-Discrimination Based on Sexual Orientation, Gender Identity and Expression", *Philippines Journal of Psychology* (2011).

<sup>32</sup> Polish Sexology Society, *Stand of the Polish Sexology Society on the health of homosexual people* (2016).

<sup>33</sup> Psychological Society of South Africa, *Sexual and Gender Diversity Position Statement* (2013).

<sup>34</sup> Psychological Society of South Africa, *An Open Statement by the Psychological Society of South Africa's Sexuality and Gender Division: Debates in the Dutch Reformed Church re Sexual Orientation and Misrepresentation of Pedophilic Disorder as Comparable to Same-sex Sexual Orientation* (2018).



SASOP opposes any psychiatric treatment such as “reparative” or “conversion” therapy designed to change a person’s sexual orientation from homosexual to heterosexual and supports the opinion of the APA that “there is no scientific evidence that reparative or conversion therapy is effective in changing a person’s sexual orientation. There is, however, evidence that this type of therapy can be destructive.” In fact, reparative therapy runs the risk of harming patients by causing depression, anxiety, and self-destructive behavior.<sup>35</sup>

## 2.19. Spain

### 2.19.1. General Council of Psychology

[T]he General Council of Psychology of Spain would like to convey its total agreement with the position adopted by the American Psychological Association [...] declaring inadmissible that mental health professionals indicate, urge or make their patients believe it is possible to modify their sexual orientation in order to become heterosexual through therapeutic intervention or treatment. [...]

[F]ailed efforts to achieve this usually lead to anxiety problems, depression and suicide.<sup>36</sup>

## 2.20. Turkey

### 2.20.1. Turkish Psychological Association

Psychologists [shall not] use their knowledge as a tool for psychological pressure and [shall] avoid actions such as [...] forc[ing] clients into declaring, denying or changing their [...] sexual orientation [...]. Psychologists, if aware, [shall] try to prevent people from using their professional knowledge for [such] purposes.<sup>37</sup>

## 2.21. United Kingdom

In the United Kingdom a series of joint position statements, consensus statements and memorandums have been subscribed by multiple professional associations.

Below is a compilation of several of them. Even though many associations subscribed more than one, they are mentioned only once to avoid repetition.

### 2.21.1. British Association for Counselling and Psychotherapy

BACP opposes any psychological treatment such as “reparative” or “conversion” therapy which is based upon the assumption that homosexuality is a mental disorder or based on the premise that the client/patient should change his/her sexuality.<sup>38</sup>

### 2.21.2. British Psychoanalytical Council

### 2.21.3. British Psychological Society

### 2.21.4. National Counselling Society

### 2.21.5. Royal College of Psychiatrists

There is no good evidence [conversion therapy] works and we believe it has the potential to cause harm. Often these approaches are based on religious interpretations about sexuality rather than on a researched and informed understanding of sexual orientation. [...] The major therapy professional bodies in the UK have been united in speaking out against conversion therapy. This is because this particular approach is based on the assumption that homosexuality is a mental disorder or begins from the pre-conceived view that the client should change their sexual orientation. As homosexuality is not an illness, it is both logically and ethically flawed to offer any kind of treatment.<sup>39</sup>

<sup>35</sup> South African Society of Psychiatrists, *Position Statement on Homosexuality* (2015).

<sup>36</sup> General Council of Psychology of Spain, *Statement from the General Council of Psychology of Spain on conversion therapies* (2017).

<sup>37</sup> Turkish Psychological Association, *Ethics Code* (2004).

<sup>38</sup> British Association for Counselling & Psychotherapy, *Statement of ethical practice* (2012).

<sup>39</sup> British Association for Counselling and Psychotherapy and others, *Conversion Therapy: Consensus Statement* (2012).

- 2.21.6. *Association for Family Therapy*
- 2.21.7. *Association of Christian Counsellors*
- 2.21.8. *British Association of Behavioural and Cognitive Psychotherapies*
- 2.21.9. *British Association of Drama Therapists*
- 2.21.10. *College of Sex and Relationship Therapists*
- 2.21.11. *Psychotherapy and Counselling Union*
- 2.21.12. *Royal College of General Practitioners*
- 2.21.13. *UK Council for Psychotherapy*

[C]onversion therapy, whether in relation to sexual orientation or gender identity, is unethical and potentially harmful. [...] [N]either sexual orientation nor gender identity in themselves are indicators of a mental disorder.<sup>40</sup>

- 2.21.14. *National Association of School Psychologists*

Conversion therapy is damaging and dangerous for youth. [...] [It] has been shown to worsen internalized homophobia, interrupt healthy identity development, increase depression, anxiety, self-hatred, and self-destructive behaviors, and create mistrust of mental health professionals (Halpert, 2000).<sup>41</sup>

## 2.22. United States of America

Like in the United Kingdom, multiple professional associations have issued their own position statements and/or have subscribed joint statements. Others may have issued more than one declaration, either reiterating or adding further information or decisions.

To avoid repetition each association is mentioned only once. Readers are encouraged to check with the original sources for the full lists of subscribers in joint statements.

- 2.22.1. *American Academy of Child Adolescent Psychiatry*

The AACAP finds no evidence to support the application of any “therapeutic intervention” operating under the premise that a specific sexual orientation, gender identity, and/or gender expression is pathological. Furthermore, based on the scientific evidence, the AACAP asserts that such “conversion therapies” (or other interventions imposed with the intent of promoting a particular sexual orientation and/or gender as a preferred outcome) lack scientific credibility and clinical utility. Additionally, there is evidence that such interventions are harmful. As a result, “conversion therapies” should not be part of any behavioral health treatment of children and adolescents.<sup>42</sup>

- 2.22.2. *American Academy of Nursing*

The American Academy of Nursing strongly supports the position of the Pan American Health Organization (2012) and those of various other professional bodies [...] that same-sex sexual relationships between consenting adults are a form of healthy human sexual behavior. The Academy concludes that reparative therapies aimed at “curing” or changing same-sex orientation to heterosexual orientation are pseudo-scientific, ineffective, unethical, abusive and harmful practices that pose serious threats to the dignity, autonomy and human rights as well as to the physical and mental health of individuals exposed to them.<sup>43</sup>

- 2.22.3. *American Academy of Pediatrics*

Therapy directed specifically at changing sexual orientation is contraindicated, since it can provoke guilt and anxiety while having little or no potential for achieving changes in orientation.<sup>44</sup>

<sup>40</sup> British Association for Counselling and Psychotherapy and others, *Memorandum of Understanding on Conversion Therapy in the UK* (2019; previous 2015, revised 2017).

<sup>41</sup> National Association of School Psychologists, *Conversion Therapy Bans*.

<sup>42</sup> American Academy of Child Adolescent Psychiatry, *Conversion Therapy* (2018).

<sup>43</sup> American Academy of Nursing, *American Academy of Nursing position statement on reparative therapy* (2015).

<sup>44</sup> American Academy of Pediatrics, *Homosexuality and Adolescence* (1993).

- 2.22.4. *American Academy of Physician Assistants*
- 2.22.5. *American Counseling Association*
- 2.22.6. *American Federation of Teachers*
- 2.22.7. *American Medical Women’s Association*
- 2.22.8. *Child Welfare League of America*
- 2.22.9. *National Association of School Nurses*
- 2.22.10. *National Association of Secondary School Principals,*
- 2.22.11. *National Education Association,*
- 2.22.12. *School Social Work Association of America*

We, as national organizations representing millions of licensed medical and mental health care professionals, educators, and advocates, come together to express our professional and scientific consensus on the impropriety, inefficacy, and detriments of practices that seek to change a person’s sexual orientation or gender identity, commonly referred to as “conversion therapy.” We stand firmly together in support of legislative and policy efforts to curtail the unscientific and dangerous practice of sexual orientation and gender identity change efforts.<sup>45</sup>

2.22.13. *American Association for Marriage and Family Therapy*

[T]he association does not consider homosexuality a disorder that requires treatment, and as such, we see no basis for [reparative therapy]. AAMFT expects its members to practice based on the best research and clinical evidence available.<sup>46</sup>

2.22.14. *American Association of Sexuality Educators, Counselors and Therapists*

The American Association of Sexuality Educators, Counselors and Therapists (AASECT) takes the position that having a non-heterosexual sexual orientation, that being transgender and that being gender non-conforming, are not mental disorders. We oppose any “reparative” or conversion therapy that seeks to “change” or “fix” a person’s sexual orientation, gender identity or gender expression. AASECT does not believe that non-heterosexual sexual orientation or being transgender or gender non-conforming is something that needs to be “fixed” or “changed”.<sup>47</sup>

2.22.15. *American College of Physicians*

The College opposes the use of “conversion,” “reorientation,” or “reparative” therapy for the treatment of LGBTQ persons.<sup>48</sup>

2.22.16. *American Counseling Association*

The belief that same-sex attraction and behavior is abnormal and in need of treatment is in opposition to the position taken by national mental health organizations, including ACA. The ACA Governing Council passed a resolution in 1998 with respect to sexual orientation and mental health. This resolution specifically notes that ACA opposes portrayals of lesbian, gay and bisexual individuals as mentally ill due to their sexual orientation. [...] In 1999, the Governing Council adopted a statement “opposing the promotion of reparative therapy as a cure for individuals who are homosexual.”<sup>49</sup>

<sup>45</sup> American Academy of Physician Assistants and others, *Declaration on the Impropriety and Dangers of Sexual Orientation and Gender Identity Change Efforts* (2018).  
<sup>46</sup> American Association for Marriage and Family Therapy, *Positions on Couples and Families: Reparative/Conversion Therapy* (2009).  
<sup>47</sup> American Association of Sexuality Educators, Counselors and Therapists, *Position on Sexual Orientation and Reparative Therapy* (2017).  
<sup>48</sup> American College of Physicians, “Lesbian, Gay, Bisexual, and Transgender Health Disparities: Executive Summary of a Policy Position Paper From the American College of Physicians”, *Annals of Internal Medicine* (2015).  
<sup>49</sup> American Counseling Association, *Ethical Issues Related to Conversion or Reparative Therapy* (2013).

### 2.22.17. American Medical Association

AMA [...] opposes, the use of “reparative” or “conversion” therapy that is based upon the assumption that homosexuality per se is a mental disorder or based upon the a priori assumption that the patient should change his/her homosexual orientation.<sup>50</sup>

AMA will develop model state legislation and advocate for federal legislation to ban so-called reparative or conversion therapy for sexual orientation or gender identity. The support for legislative bans strengthens AMA’s long-standing opposition to this unscientific practice.<sup>51</sup>

### 2.22.18. American Osteopathic Association

Taking into consideration the strong evidence that sexual orientation change efforts negatively affect a person’s mental and physical well-being, the AOA affirms that individuals who don’t identify as heterosexual are not suffering from a disease or illness. [...] DO [Doctor of Osteopathic Medicine] participation in conversion therapy is considered unethical. The AOA also supports potential legislation, regulations or policies that oppose the practice of sexual orientation change efforts.<sup>52</sup>

### 2.22.19. American Psychiatric Association

In the wake of recent popular entertainment portrayals of conversion therapy, the American Psychiatric Association (APA) [...] reiterates its long-standing opposition to the practice. APA made clear with its 1998 position statement that “APA opposes any psychiatric treatment, such as “reparative” or “conversion” therapy, that is based on the assumption that homosexuality per se is a mental disorder or is based on the a priori assumption that the patient should change his or her homosexual orientation.”

APA further expanded on its position with a statement in 2013:

The American Psychiatric Association does not believe that same-sex orientation should or needs to be changed, and efforts to do so represent a significant risk of harm by subjecting individuals to forms of treatment which have not been scientifically validated and by undermining self-esteem when sexual orientation fails to change.

No credible evidence exists that any mental health intervention can reliably and safely change sexual orientation; nor, from a mental health perspective does sexual orientation need to be changed”.<sup>53</sup>

### 2.22.20. American Psychoanalytic Association

The American Psychoanalytic Association affirms the right of all people to their sexual orientation, gender identity and gender expression without interference or coercive interventions attempting to change sexual orientation, gender identity or gender expression.

As with any societal prejudice, bias against individuals based on actual or perceived sexual orientation, gender identity or gender expression negatively affects mental health, contributing to an enduring sense of stigma and pervasive self-criticism through the internalization of such prejudice.

Psychoanalytic technique does not encompass purposeful attempts to “convert”, “repair,” change or shift an individual’s sexual orientation, gender identity or gender expression.

Such directed efforts are against fundamental principles of psychoanalytic treatment and often result in substantial psychological pain by reinforcing damaging internalized attitudes.<sup>54</sup>

<sup>50</sup> American Medical Association, *LGBTQ change efforts (so-called “conversion therapy”)* (2019).

<sup>51</sup> American Medical Association, *AMA adopts new policies during first day of voting at Interim Meeting* (2019).

<sup>52</sup> American Osteopathic Association, *Resolution against LGBTQ conversion therapy passes* (2017).

<sup>53</sup> American Psychiatric Association, *APA Reiterates Strong Opposition to Conversion Therapy* (2018; previous 1998, expanded 2013).

<sup>54</sup> American Psychoanalytic Association, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression* (2012).

### 2.22.21. American Psychological Association

Therefore, be it resolved, that the American Psychological Association affirms that same-sex sexual and romantic attractions, feelings, and behaviors are normal and positive variations of human sexuality regardless of sexual orientation identity;

Be it further resolved, that the American Psychological Association reaffirms its position that homosexuality per se is not a mental disorder and opposes portrayals of sexual minority youths and adults as mentally ill due to their sexual orientation;

Be it further resolved, that the American Psychological Association concludes that there is insufficient evidence to support the use of psychological interventions to change sexual orientation;

Be it further resolved, that the American Psychological Association encourages mental health professionals to avoid misrepresenting the efficacy of sexual orientation change efforts by promoting or promising change in sexual orientation when providing assistance to individuals distressed by their own or others' sexual orientation.<sup>55</sup>

### 2.22.22. American School Counselor Association

It is not the school counselor's role to attempt to change a student's sexual orientation or gender identity. School counselors recognize the profound harm intrinsic to therapies alleging to change an individual's sexual orientation or gender identity [...] and advocate to protect LGBTQ students from this harm.<sup>56</sup>

### Just the Facts Coalition<sup>57</sup>

#### 2.22.23. American School Health Association

#### 2.22.24. National Association of Secondary School Principals

The most important fact about [conversion] therapies is that they are based on a view of homosexuality that has been rejected by all the major mental health professions. [...]

[T]he nation's leading professional medical, health, and mental health organizations do not support efforts to change young people's sexual orientation through therapy and have raised serious concerns about the potential harm from such efforts.<sup>58</sup>

#### 2.22.25. National Association of Social Workers

The National Association of Social Workers reaffirms its stance against therapies and treatments designed to change sexual orientation or gender identity and against referring clients to practitioners or programs that claim to do so.<sup>59</sup>

<sup>55</sup> American Psychological Association, *Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts* (2009).

<sup>56</sup> American School Counselor Association, *The School Counselor and LGBTQ Youth* (2016).

<sup>57</sup> Other associations subscribing this position statement (already listed above in other statements) include: American Academy of Pediatrics, American Association of School Administrators, American Counseling Association, American Federation of Teachers, American Psychological Association, American School Counselor Association, National Association of School Psychologists, National Education Association and School Social Work Association of America.

<sup>58</sup> Just the Facts Coalition, *Just the facts about sexual orientation and youth: A primer for principals, educators, and school personnel* (2008).

<sup>59</sup> National Association of Social Workers, *Sexual Orientation Change Efforts (SOCE) and Conversion Therapy with Lesbians, Gay Men, Bisexuals, and Transgender Persons* (2015). In 1992, the NASW National Committee on Lesbian and Gay Issues (NCLGI) issued a document focused on the negative and stigmatizing impact of the use of "transformational ministries" or "conversion or reparative therapies". In 2000 the National NASW Board of Directors passed a "motion to adopt" the Reparative and Conversion Therapies Position Statement. In 2015, the NASW National Committee on LGBT Issues (NCLGBTI) updated the position statement utilizing the umbrella term SOCE. The NASW National Committee on Lesbian, Gay, Bisexual, and Transgender Issues believes that SOCE can negatively affect one's mental health and cannot and will not change sexual orientation or gender identity. [...] [C]onversion therapy or SOCE are an infringement of the guiding principles inherent to social worker ethics and values; a position affirmed by the NASW policy statement on "Lesbian, Gay, and Bisexual Issues" (NASW 2014).



## ANNEX 2

# REPUDIATION OF SOGIECE BY FORMER PROMINENT PROPONENTS

## 1. Alan Chambers (USA - International)

“Exodus International” was the largest “ex-gay ministry” organization in the world until it shut down in 2013.<sup>1</sup> Alan Chambers, former president of Exodus International, claimed he was “one of tens of thousands of people” who successfully “changed their sexual orientation” during a debate on same-sex marriage at the University of California in April 2004. On that occasion he declared:

I hope that the Massachusetts Supreme Judicial Court will deny these 7 couples marriage licenses thus guarding this state, and quite possibly our entire nation, against frivolous lawsuits, which ultimately restrict our overall freedoms. These couples have every right to be together, but their behavioral, not genetic, choices should not be allowed to infringe on society as a whole.<sup>2</sup>

By 2012, however, he had retracted, declaring that “conversion therapy” was ineffective and harmful. He also apologised for the “pain” he had inflicted on so many people and stated:

I would say the majority, meaning 99.9% of them, have not experienced a change in their orientation or have gotten to a place where they could say that they could never be tempted, or are not tempted in some way or experience some level of same-sex attraction.<sup>3</sup>

From 2005 to early 2012, Exodus International’s website featured nearly 100 detailed testimonies of people who had allegedly been successful in

“leaving their homosexuality behind”. Later in 2012, when the website was updated, most of these testimonies were removed.<sup>4</sup> Exodus International was dissolved in 2013, but Exodus Global Alliance is still in full operation around the world.<sup>5</sup>

## 2. Gary Cooper and Michael Bussee (USA - International)

Two key figures in the original founding of Exodus International, Gary Cooper Michael and Bussee were both counsellors at ex-gay ministries in California, USA. They eventually left Exodus, affirmed their relationship publicly, divorced their wives for one another, and got married. Soon after, at an Ex-Gay Survivors conference, Bussee formally apologised for his significant part in the formation of Exodus International.<sup>6</sup>

Bussee now leads an organisation called “Former Ex-Gay Leaders Alliance” (FELA), which is mainly integrated by people who either founded or once led organisations or groups promoting “conversion therapy”.<sup>7</sup> In his statement of support of the “BornPerfect” campaign led by the National Center for Lesbian Rights, Bussee explained:

In the almost 40 years since I started Exodus International, I can honestly say that I have never met a gay person who became heterosexual through conversion therapy or ex-gay programs. Yes, some stayed celibate for a time. Some even married and said they were happy. But most of those marriages ended with very painful divorces.<sup>8</sup>

<sup>1</sup> “Exodus International to Shut Down”, *Exodus International (archived website)*, 19 June 2013.

<sup>2</sup> “Massachusetts Marriage Affirmation & Protection Amendment: Alan Chambers Testifies Before the Massachusetts Judiciary Committee”, *AlanChambers.org (archived website)*, 12 February 2004.

<sup>3</sup> Natasha Barsotti, “Ex-gay leader admits changing sexuality is unlikely”, *Daily Extra*, 18 January 2012.

<sup>4</sup> S. J. Creek, “‘Be Ye Transformed’: The Sexual Storytelling of Ex-gay Participants” *Sociological Focus* 45, No. 4 (2012), 307.

<sup>5</sup> For more information on Exodus Global Alliance see Chapter 2 of this report.

<sup>6</sup> Jay Chakraborty, “Exodus International”, *OutHistory.org (website)*, retrieved 18 February 2020.

<sup>7</sup> “Former Ex-Gay Leaders Alliance (FELA) Denounce GOP Platform Supporting Conversion Therapy”, *HuffPost*, 14 July 2016.

<sup>8</sup> “#BornPerfect – Michael Bussee”, *National Center for Lesbian Rights (website)*.

### 3. John Smid (USA - International)

Now known as an “ex-ex-gay” leader, John Smid was part of the Board of Directors for Exodus International for 11 years, as well as the Executive Director of ex-gay advocacy group “Love in Action” for 18 years.<sup>9</sup> Smid later apologized and said that he has “never met a man who experienced a change from homosexual to heterosexual.”

In a 2019 interview with 60 Minutes Australia, Smid described the methods utilised in the “conversion therapy” sessions that he attended for 22 years as similar to those in Alcoholics Anonymous, where group “accountability” is used to exert pressure on other participants to avoid “relapses”. Smid eventually concluded that internalised homophobia and self-deceit were the true root causes leading many participants to develop mental health issues such as alcoholism, drug-addiction, and suicidal tendencies.<sup>10</sup>

### 4. Anthony Venn-Brown (Australia)

A former Australian evangelist in the Assemblies of God, Anthony Venn-Brown is an advocate against “ex-gay” programmes in Australia, New Zealand and Asia.<sup>11</sup> He described his experience as a survivor of Australia's first “ex-gay” programme in his autobiography, *A Life of Unlearning - Coming out of the church, One Man's Struggle*.<sup>12</sup>

Venn-Brown is also a co-founder of “Freedom 2b”, a network offering support to LGBT people who are from Pentecostal, Charismatic and Evangelical backgrounds and have been displaced from the ex-gay movement.<sup>13</sup> In 2007, he compiled and coordinated the release of seven statements from Australian “ex-gay” leaders who publicly apologised for their past actions.<sup>14</sup>

### 5. John Evans (USA)

Co-founder of ex-gay advocacy group “Love in Action”, John Evans left the organization after his best friend Jack McIntyre committed suicide due to the despair brought about by his failed efforts of

conversion. Upon leaving, Evans reportedly worked to counter the harm caused by “conversion therapy” among young survivors of the Exodus programme.

### 6. Günter Baum (USA - Germany)

A member of the American organisation “Living Waters”, Günter Baum opened several “Living Waters” groups in Germany during the 1990s and founded “Wüstenstrom”, a local organisation which promoted “conversion therapy”. However, in the 2000s, he left the organisation and founded an organisation for Christians who accept their homosexuality or transsexuality.

### 7. Sergio Viula (Brazil)

Sergio Viula co-founded “Moses” (*Movimento pela Sexualidade Sã*, “Movement for Healthy Sexuality”) in 1997. This group sought to “evangelise” LGBTI people during Pride marches and preached in favour of “curing gayness”. Viula was married to a woman for 14 years and served as a Baptist pastor for nine years.

At age 34, he came out as gay, got divorced and maintained a relationship with a man for seven years, denouncing “conversion therapy” as “a hoax”. In a 2015 interview with Universo Online, Viula mentioned that in all of the years he served as a pastor, he never witnessed of a single case of successful conversion among those who partook in Moses; this was what prompted him to be honest with himself and embrace his sexuality.<sup>15</sup>

In 2013, Viula participated in a campaign against a bill that would have allowed psychiatrists in Brazil to treat homosexuality as a disease.<sup>16</sup>

### 8. David Matheson (USA)

David Matheson, a member of the Mormon community in Utah (USA), was the mastermind behind several methods used to this day in “conversion therapy” programmes such as “Journey

<sup>9</sup> “John Smid: ‘I've Never Seen an ‘Ex-Gay’ Success Story’”, *Truth Wins Out* (YouTube channel), 25 April 2019.

<sup>10</sup> “Former gay conversion therapist says practice does not work”, *60 Minutes Australia* (YouTube channel), 15 September 2019.

<sup>11</sup> Anthony Venn-Brown, “Ex-gay Away”. Gay News Network, 23 July 2012. “

<sup>12</sup> Anthony Venn-Brown, “A Life of Unlearning – One Mans Journey to Find the Truth”, *Ambassadors & Bridge Builders International*, 14 December 2005.

<sup>13</sup> “freedom2b” website. Retrieved 1 February 2020.

<sup>14</sup> Anthony Venn-Brown, “Australia Conversion Therapy Leaders Change Perspective”, *Ambassadors & Bridge Builders International*, 19 August 2007.

<sup>15</sup> Yannik D'Elboux, “Ex-pastor que pregava ‘cura gay’ é homossexual e diz: ‘é uma farsa’”, *Universo Online*, 14 January 2015.

<sup>16</sup> Matthew Jenkin, “Electric shocks, rape and submersion: ‘gay cures’ and the fight to end them”, *The Guardian*, 9 February 2016.



to Manhood”, a weekend retreat that several survivors have described as traumatic.<sup>17</sup> As recently as 2013, Matheson authored a book on how to deal with “unwanted homosexuality”. He was married to a woman for more than 30 years, and the couple had three children. However, in January 2019, at age 57, Matheson came out as gay and eventually dismissed his book as faulty.<sup>18</sup>

In a recent interview with Channel 4 News, Matheson stated his regret for perpetuating the idea that being gay is a pathology and “a detestable conduct in God’s eyes”. He also repudiated idea that therapy can and should be used to change people’s sexual orientation. Nevertheless, he also affirmed that he was not sure if he felt ready or knew how to answer whether, based on his testimony, “conversion therapy” is a pseudoscience or fraudulent.

Matheson’s criticism was dismissed as lukewarm by a survivor of “gay conversion therapy”, considering especially that a large number of people who follow Matheson’s methods in “conversion therapy” programmes around the world are harmed and traumatised to the point feeling suicidal even several years later.<sup>19</sup>

## 9. Peter Toscano (USA)

Peter Toscano is the founder of Beyond Ex-Gay, an online community for “ex-gay” survivors. Besides reading over 20 books on “conversion therapy”, he spent 17 years and over \$30,000 on ex-gay programmes (including “Love in Action”) in the United Kingdom, the United States, and South America, attempting to change his sexual orientation. As he explains, in 1990, he married a woman but, as his sexuality remained unchanged despite his attempts at conversion, his marriage had a catastrophic ending. Toscano’s discouragement and depression over this situation led him to developed severe psychological, physical, and spiritual problems, to the point of having serious suicidal thoughts.

In a 2009 interview with Pink News, Toscano reiterated that “gay reparative therapy” and “ex-gay ministries” caused him more harm than good and did not alter his sexual orientation in the least. He pointed to depression, addiction issues, low self-esteem, family problems, and unresolved abuse or

trauma, as factors that according to many churches, as well as society in general, stem from being gay. The internalisation of these messages would put tremendous pressure on LGBTI+ people, as was the case with Toscano himself, making them more propense to recruitment by “conversion therapy” programmes. “I ceded my brain over to our oppressors and let them give me the weapons and tools to go to war against myself”, he stated.<sup>20</sup>

## 10. John Paulk (USA)

Described by HuffPost as “the former poster child of the ‘ex-gay’ movement”, John Paulk is the former chairman of Exodus International and a former leader of “Love Won Out” (an “ex-gay” organization with “Focus on the Family”). A vocal supporter of “gay conversion” for over ten years, Paulk was married to Anne, a “former lesbian”, for two decades.

In 1999, the couple wrote a book called *Love Won Out: How God's Love Helped Two People Leave Homosexuality and Find Each Other*. The following year, however, Paulk was photographed at a gay bar in Washington, D.C.<sup>21</sup> In 2003, he left “Focus on the Family” and moved from Colorado to Oregon, where he was reportedly spotted at gay bars.

In April 2013, after a decade away from “ex-gay” advocacy, Paulk issued a statement declaring that “conversion therapy” had had no effect on his sexuality. “I do not believe that ‘reparative therapy’ changes sexual orientation; in fact, it does great harm to many people”, he affirmed. Paulk expressed great remorse and sorrow for the harm caused by his words and actions, and he announced his upcoming divorce of Anne, who also issued a statement of her own.<sup>22</sup>

## 11. McKrae Game (USA)

A licensed professional counsellor dealing with “unwanted same-sex attraction”, McKrae Game founded the faith-based “conversion therapy” organisation “Hope for Wholeness” (previously known as “Truth Ministry”) in South Carolina,

<sup>17</sup> Leah Sottile, “Every week in church, I’m going, ‘Can I come out?’”, *The California Sunday Magazine: The Escape Issue*, 3 October 2019.

<sup>18</sup> “‘Gay conversion therapist’ comes out: Exclusive interview”, *Channel 4 News (YouTube channel)*, 31 January 2019.

<sup>19</sup> “‘Gay conversion therapist’ comes out: Exclusive interview”, *Channel 4 News (YouTube channel)*, 31 January 2019.

<sup>20</sup> Omar Hassan, “Interview: Peterson Toscano speaks about his experiences with ex-gay therapy”, *PinkNews*, 20 April 2009.

<sup>21</sup> Zoë Schlanger and Elijah Wolfson, “Ex-Ex-Gay Pride”, *Newsweek*, 1 March 2014.

<sup>22</sup> Sunnive Brydum, “John Paulk Formally Renounces, Apologizes for Harmful ‘Ex-Gay’ Movement”, *The Advocate*, 24 April 2013.

United States.<sup>23</sup> He was dismissed from the organisation in 2017 and came out as gay in 2019, noting that he continued to be sexually attracted to men despite being married to a woman.

“Conversion therapy is not just a lie, but it’s very harmful”, he declared, admitting that his organization had harmed “generations of people”.<sup>24</sup> In a statement published in September 2019, Game explained that people “reported to attempt suicide because of me and these teachings and ideals”.<sup>25</sup>

<sup>23</sup> "Founder of LGBT "Conversion Therapy" Program Comes Out as Gay, Apologizes for Harmful Practice", *Democracy Now!*, 4 September 2019.

<sup>24</sup> Christian Post and Michael Gryboski, "Former Homosexual Counselor Christopher Doyle Says McKrae Game, Longtime Christian Conversion Therapy Practitioner, is Wrong to Renounce His Sexual Orientation Therapy Ministry", *Black Christian News Network One*, 5 September 2019.

<sup>25</sup> Rhuaridh Marr, "Conversion therapy leader comes out as gay, admits it's 'a lie' and 'very harmful'", *Metro Weekly*, 3 September 2019.