

HUMAN RIGHTS OF LGBTIQ WOMEN IN UKRAINE

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This publication provides an overview of the UN and national human rights instruments on the rights of LGBTIQ women and a summary of the situation with respect to the LGBTIQ women's rights in Ukraine. While the entire LGBTIQ community faces discrimination, violence, social exclusion and marginalization this brochure focuses specifically on LGBTIQ women following the recommendations outlined in the Concluding observations on the eighth periodic report of Ukraine on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women.

The publication aims to support the civil society activists advocating for the integration of LGBTIQ rights into Ukrainian legislation and policies.

UN Women is the UN organization dedicated to gender equality and the empowerment of women. A global champion for women and girls, UN Women was established to accelerate progress on meeting their needs worldwide. UN Women supports UN Member States as they set global standards for achieving gender equality and works with governments and civil society to design laws, policies, programmes and services needed to implement these standards. It stands behind women's equal participation in all aspects of life, focusing on five priority areas: increasing women's leadership and participation; ending violence against women; engaging women in all aspects of peace and security processes; enhancing women's economic empowerment; and making gender equality central to national development planning and budgeting. UN Women also coordinates and promotes the UN system's work in advancing gender equality.

As a rights-based organization, UN Women understands that assumptions of gender roles and stereotypes are underpinned by patriarchal social norms and reinforced through every day acts that punish non-hetero-normative gender identity and sexuality.

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Insight NGO is a Ukrainian non-governmental organization, the core values of which comprise equality, freedom, inclusion and diversity for all social groups. The organization is involved in human rights and awareness-raising activities and provides assistance and support to LGBTIQ people. The organization brings together lesbian, gay, bisexual, transgender and queer people who share the organization's mission and views and strive for a truly democratic and tolerant society.

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HUMAN RIGHTS
OF LESBIAN, BISEXUAL,
TRANSGENDER, INTERSEX AND
QUEER WOMEN IN UKRAINE

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ABBREVIATIONS

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CEDAW COs	Concluding observations by the CEDAW Committee
ILO	International Labor Organization
Insight	Non-governmental organization Insight
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex and Queer Umbrella term for people of homosexual, bisexual and non-heterosexual orientation, transgender and non-binary persons, and intersex persons
NGO	Non-governmental organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
SDG	Sustainable Development Goals
SOGIESC	acronym for Sexual Orientation, Gender Identity and Expression, and Sex Characteristics
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV and AIDS
UNDP	United Nations Development Program
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHRC	United Nations Human Rights Council
UNICEF	United Nations Children’s Fund
UNODC	United Nations Office on Drug and Crime
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
WFP	World Food Programme
WHO	World Health Organization

INTRODUCTION

In recent years, Ukraine has seen an increased public awareness of violence and discrimination against lesbian, gay, bisexual, transgender and queer people (LGBTIQ) and a rising demand to respect human rights free from limitations on any grounds. The rights of people of a different sexual orientation, gender identity and/or gender expression and sex characteristics (SOGIESC) are treated as a political issue rather than a legal one, while also often manipulated into debasing the value and meaning of human rights. Such approaches may erroneously consider human rights as granted by the State with public consent, rather than universal, inherent rights of every person. Extensive government efforts are required in order to prevent and eliminate violence and discrimination, and make sure that victims of crime or discrimination have access to justice. The United Nations has developed its guidelines that lay down the actions for the governments and the other actors to enforce human rights.

The UN regulatory framework defines a broad range of human rights and focuses on the governments' responsibility for their enforcement. The member states submit periodic reports on their implementation of the ratified international instruments, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), effective since 1981. In 2017 when Ukraine submitted its eighth periodic report on CEDAW implementation, several non-governmental organizations, including Insight, submitted 14 alternative reports covering, among others, the situation of lesbians, bisexual women, transgender people and intersex people in Ukraine. The alternative report on rights of LGBTIQ women was presented at the 66th session of the UN Committee on the Elimination of All Forms of Discrimination against Women¹ (CEDAW Committee). The CEDAW Committee took some of the recommendations into consideration and included them in the Concluding observations on the

eighth periodic report of Ukraine on the implementation of the CEDAW.²

TO ENSURE PROPER IMPLEMENTATION OF THE CEDAW, THE COMMITTEE'S CONCLUDING OBSERVATIONS, AND THE OTHER INTERNATIONAL HUMAN RIGHTS INSTRUMENTS, IT IS IMPORTANT TO UNDERSTAND THAT THE HUMAN RIGHTS CONCEPT IS INTERSECTIONAL.

This means that a structural approach is required to understanding the concept, which particularly implies the need to understand and acknowledge the overlap of different identities and multiple discrimination against different groups of persons. For example, when talking about women's rights in general, one has to understand that women can be different and belong to various ethnic, national, or age groups, have different sexual orientations, gender identities, have disabilities,

¹ Concluding observations on the eighth periodic report of Ukraine provided by the Committee on the Elimination of Discrimination against Women, 66 session (13 February 2017 – 3 March 2017). Available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1071&Lang=en

² A/RES/34/180. Convention on the Elimination of All Forms of Discrimination against Women (18 December 1979): <http://www.un-documents.net/a34r180.htm>

etc. Therefore, women's needs and problems can vary depending on the group. Thus, the needs of a lesbian from a Roma ethnic group can be vastly different from the needs of a middle-class heterosexual woman living in a big city. Generally, women face systemic gender-based discrimination and violence. If heteropatriarchy and subordination of women to men never existed, there would never be sexism, gender-based violence, domestic and sexual violence, etc.

When you realize that women as a group had fought for their rights, including the right to vote, the right to own and inherit property, the right to education, etc. for centuries, it becomes clear that being a woman as well as, for example, a lesbian leads to multiple discrimination when a person can be discriminated against on several grounds at once. Of special concern is the continuing exclusion of women facing multiple discrimination from decision-making and reform,

recovery and peacebuilding processes. The groups that usually remain socially excluded and marginalized represent, to varying degrees, women living below the poverty line, women with disabilities, rural women, young women, older women, ethnic minorities, especially Roma, internally displaced women, LGBTIQ³ women, etc.

"All people have an equal right to live free from violence, persecution, discrimination and stigma. International human rights law establishes legal obligations on States to ensure that every person, without distinction, can enjoy these rights. While welcoming increasing efforts in many countries to protect the rights of LGBTI people, we remain seriously concerned that around the world, millions of LGBTI individuals, those perceived as LGBTI and their families face widespread human rights violations. This is cause for alarm – and action."

The joint statement by 12 UN entities (ILO, OHCHR, UNAIDS Secretariat, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN Women, WFP and WHO) calling on States to act urgently to end violence and discrimination against LGBTI adults, adolescents and children, 29 September 2015⁴

³ LGBTIQ – lesbian, gay, bisexual, transgender, queer and intersex people.

⁴ United Nations, Joint UN statement on Ending Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender and Intersex People. Available at: https://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF

HUMAN SEXUALITY. COMPONENTS OF SEXUALITY

RESEARCHERS AND SCIENTISTS DISTINGUISH FIVE CORE COMPONENTS OF SEXUALITY:

1. Biological sex, sex characteristics
2. Gender identity and expression
3. Gender social role
4. Sexual orientation
5. Sexual identity.

Human sexuality is a central aspect of being human throughout life and encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviours, practices, roles, and relationships. While sexuality can include all of these dimensions, not all of them are always experienced or expressed. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, ethical, legal, historical, religious, and spiritual factors.⁵

In fact, sexuality is an inherent need, and at the same time, a bodily function, just like breathing or hunger. Sexuality is inherent in all people without exception, although manifestations and components of sexuality can be different and vary from person to person.

It should be understood that an individual's sexuality can be totally autonomous and unrelated to other

aspects of life and cannot be strictly linked to social and religious norms. As such, sexuality is complex in nature and involves biological and social factors.

Biological sex is a set of characteristics including sex chromosomes, sex hormones, sex cells, external and internal sex organs, and secondary sex characteristics. Gender identity is a sense of belonging to a certain gender. Gender is a social construct which does not necessarily fall in line with biological sex and is not related to sexual orientation.

A gender social role is a type of social behavior influenced by the cultural norms of a given society which usually determines what is considered normal 'male' and 'female' behavior.

Sexual orientation is emotional, romantic and/or physical attraction toward persons of the opposite sex (i.e. heterosexuality), own sex (i.e. homosexuality), or both sexes (i.e. bisexuality). Since 1993, WHO has been distinguishing three basic types of sexual orientation, i.e., heterosexuality,

⁵ This working definition was developed through a consultative process with international experts beginning with the Technical Consultation on Sexual Health in January 2002. Source: Sexual health and its linkages to reproductive health: an operational approach, page 3. Available at: <https://apps.who.int/iris/bitstream/handle/10665/258738/9789241512886-eng.pdf;jsessionid=CECBFOA03AF54E5A2CF379214B764CB4?sequence=1>

⁶ WHO, Proposed declassification of disease categories related to sexual orientation in the International Statistical Classification of Diseases and Related Health Problems (ICD-11). Available at: <https://www.who.int/bulletin/volumes/92/9/14-135541/en/>

homosexuality and bisexuality. None of the commonly known sexual orientations is considered a mental disorder.⁶

Sexual orientation is not related to a person's sexual preferences, i.e., fantasies, desires and fetishes, which can be fulfilled through corresponding sexual behavior.

Sexual identity is one's sense of self as a person of certain sexual orientation. A person's sexual identity is shaped by multiple factors, even though some researchers and non-professionals are painstakingly searching for certain 'factors' contributing to sexual identity. Sexual identity is not equivalent to a person's sexual orientation and does not necessarily have to be in line with it.

If a person feels comfortable with another person of any sex and if that makes them both happy and satisfied, then that is what actually signifies a person's natural sexual fulfillment. Analyzing the myths and false assumptions, as well as researching and understanding various models of sexual response all contribute to everyone's sexual fulfillment.

⁶ WHO, Proposed declassification of disease categories related to sexual orientation in the International Statistical Classification of Diseases and Related Health Problems (ICD-11). Available at: <https://www.who.int/bulletin/volumes/92/9/14-135541/en/>

⁷ Athena Nguyen, Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons (UN Women, 2017), page 17. Available at: <http://asiapacific.unwomen.org/en/digital-library/publications/2016/05/promoting-and-protecting-the-rights-of-lgbti>

EXPRESSION OF THE RIGHTS OF LGBTIQ WOMEN AS A RADICAL CHALLENGE TO THE HETEROPATRIARCHY

Transgender, intersex, and masculine or androgynous women (of any sexual orientation) demonstrate the great fluidity of gender, and destabilise the heteronormative and binary gender system of the masculine man and feminine woman. The women's movement has long argued that gender is different to sex, and that gender is a social construction which, within a patriarchal society, has often been to the disadvantage of the female sex. Traits associated with femininity have often been embedded with less value than traits associated with masculinity. Despite the social construction of gender, 'masculinity' and 'femininity' have been naturalised to appear as innate expressions of the male and female sex, respectively, rather than recognised as learnt and internalised modes of being and behaviours that are socially constructed.

The radical and destabilising impact of transgender, intersex and 'masculine-seeming' women is that they denaturalise gender and reproduce gender expression upon the supposedly wrong body, thus breaking the link between the masculine-man and feminine-woman and demonstrating the performative and learnt nature of gender. Furthermore, the coexistence and interplay of both masculine and feminine traits within the same individual challenges the mutually exclusive and binary nature of the way that gender has been constructed and the idea that gender expression is inherent, stemming from one's biological sex, defined at birth, and unchanging.

Hence, if the women's movement aims to break women free from the confinements of feminine gender roles and expectations, then advocating for the rights of transgender, intersex, lesbians, bisexual and queer women to express their gender freely without discrimination is both a radical challenge to the heteropatriarchy and a necessary step in the movement towards liberation.

Promoting and Protecting the Rights of Lesbians, Bisexual Women, Transgender and Intersex Persons, UN Women, OutRight

HUMAN RIGHTS OF LGBTIQ PEOPLE⁸

⁸ Olena Shevchenko, Y. Frank. ABC of LGBT Rights. Information manual. (NGO Insight, 2014).
Available at: <https://www.insight-ukraine.org/uploads/files/ukr-final-textw.pdf>

LGBTIQ is an umbrella term for the community of lesbian, homosexual, bisexual, non-heterosexual, transgender, non-binary, intersex and queer people. The rights of LGBTIQ people are the same as human rights. There is not a single right that is inherent to a heterosexual person but not a homosexual person, and vice versa. The difference lies in the ability to enjoy those rights freely and fully. The inequality of opportunities and access can manifest themselves at different levels, i.e., legal restrictions and social practices.

Legal restrictions are laws that do not provide for or explicitly restrict the equality of opportunities for LGBTIQ and non-LGBTIQ people, such as marriage and adoption rights.

Social practices are prejudices toward LGBTIQ people which limit their enjoyment of their rights, such as, for example, rejecting a job candidate for being gay.

Here is how prejudices work, ultimately leading to limitations. Grow-

ing up, a person is surrounded by information that “lesbianism is perversion.” Later on, that person may avoid or harass another person who looks like or is a lesbian because “everybody knows that lesbians are not normal.” Then, that person may act violently because “lesbians are molesters,” or refuse to provide assistance to a lesbian, such as medical assistance, or deny employment, because “lesbians are not normal.” These are the social stereotypes and prejudices that often lead to imposition of legal restrictions on LGBTIQ people.

No person, regardless of sexual orientation, gender identity, or any other characteristics, must ever do anything out of the ordinary to deserve or enjoy human rights. This belief is based on a false assumption that a person’s worth is measured solely by his/her achievements. In turn, achievements only count if they are socially approved. Society must value every person regardless of his/her abilities or achievements.

An average person never questions his/her own rights and their universality, only ‘others.’ This is where the recent phenomenon of ‘special rights’ originates. Often, when talking about the fight for equal rights and opportunities of LGBTIQ, an opinion is voiced that LGBTIQ people allegedly demand some ‘special rights’ for themselves. This is why people, when they feel that their customary privileged position is being threatened, try to rationalize their resistance by arguing that others demand something ‘special.’ To give you an example, white people used the same arguments against people of color whom they did not believe to be their equals and opposed equality so that they could maintain their dominance.

THE LGBTIQ RIGHTS THAT ARE MOST OFTEN VIOLATED COMPRISE:

- The right to freedom of peaceful assembly.
- The right to freedom of speech and self-expression.

IN RECENT YEARS, THERE WAS NOT A SINGLE LGBTIQ RALLY IN UKRAINE THAT WAS NOT A TARGET OF ATTACKS BY ULTRA-RIGHTIST AND CONSERVATIVE ORGANIZATIONS.

- The right to respect of privacy and family life.

LGBTIQ PEOPLE IN UKRAINE HAVE NO LEGAL MEANS TO REGISTER MARRIAGE OR PARTNERSHIP. THERE ARE ALSO NO LEGAL MEANS TO OBTAIN CUSTODY THE WAY HETEROSEXUAL PEOPLE CAN.

- The right to work.
- The right to education.

LGBTIQ PEOPLE OFTEN BECOME SUBJECT TO DISCRIMINATION OR ARE FIRED BECAUSE OF THEIR SEXUAL ORIENTATION. LESBIAN, BISEXUAL AND TRANSGENDER WOMEN OFTEN BECOME VICTIMS OF SEXUAL HARASSMENT AT WORK.

- The right to a fair trial.

IN UKRAINE, HOMOPHOBIC AND TRANSPHOBIC HATE CRIMES ARE NOT INVESTIGATED BY LAW-ENFORCEMENT AGENCIES. AT BEST, THEY ARE CLASSIFIED AS MERE HOOLIGANISM.

- The right to health care.

There are no trained medical personnel in Ukraine capable of providing medical assistance and services to transgender, intersex and other LGBTIQ people.

L G B T i Q

LESBIAN

Refers to a woman who is attracted emotionally and/or sexually to people of the same sex/gender. A woman does not necessarily need to have had sexual experiences with other women in order to identify as being a lesbian.

GAY

Refers to a man who is attracted emotionally and/or sexually to people of the same sex/gender.

BISEXUAL

Refers to a person who relates affectionately and sexually with people of both sexes/genders. “Bi” is an abbreviated way of referring to bisexual people.

TRANSGENDER

Terminology used to describe people who transit between genders. Their gender identity transcends the conventional definitions of sexuality.

INTERSEX

Is the general term used to refer to a variety of conditions (genetic and/or somatic) a person is born with, having reproductive and sexual anatomy not in keeping with the typical definitions of female or male.

QUEER

Is an umbrella term for people who are not heterosexual and/or do not conform to gender norms.⁹

⁹ LGBT Communication Manual. (UNAIDS, GALE) Available at: http://data.unaids.org/pub/manual/2010/rgb0_communication_manual_20100301_en.pdf

SEXUAL
AND REPRODUCTIVE
HEALTH AND
RIGHTS

Sexual health should be understood as more than just the absence of disease, but also a state of somatic, emotional, intellectual and social well-being in terms of sexuality. Sexual health implies positive and respectful attitude towards sexuality and sexual relationships, the ability to have a safe and satisfying sex life, and the absence of coercion, discrimination and violence.

Sadly, LGBTIQ people will not feel good about their sexuality as long as homosexual and bisexual orientation and transgender identity are not considered normal in Ukraine. Accordingly, violence and discrimination accompany LGBTIQ people all the time.

Sexual rights include:¹⁰

- The right to sexual health, with the access to attainable sexual health services. Violated by compulsory treatment of homosexuality and transsexuality.
- The right to information about sexuality. Violated by institutionalized censorship, such as religious censorship and/or lack of available information about LGBTIQ.
- The right to sexuality education. Violated by inadequate and of poor-quality sexual education of children and youth.
- The right to bodily integrity. Violated by homophobic and transphobic violence and 'corrective' rape of lesbians.
- The right to choose a partner. In the case of LGBTIQ people, it is restricted through arranged and forced marriages and the absence of legal means to register their relationships.
- The right to decide when to start sex life. Complicated by the lack of sexuality education.
- The right to voluntary sexual and marital and family relationships. Violated by the absence of legal means to register relationships.
- The right to decide to conceive and give birth to a child. Violated by the lack of access of LGBTIQ people to reproductive technology.
- The right to sexual fulfillment and safe and satisfying sex life. Violated by violence and discrimination.

¹⁰ International Women's health Coalition. Sexual Rights Are Human Rights. Available at: <https://whc.org/articles/sexual-rights-human-rights/>

**VIOLENCE AGAINST
LGBTIQ PEOPLE**

TYPES AND DISTINGUISHING FEATURES

THE WORLD BANK STUDY CONDUCTED IN 2014 IN INDIA SHOWS THAT HOMOPHOBIA AND TRANSPHOBIA COULD BE COSTING INDIA BETWEEN US\$1.9 BILLION AND US\$30.8 BILLION YEARLY.¹¹

Discrimination against LGBTIQ people manifests itself in a lot of ways, ranging from the imposition of rigid gender roles to overt violence.

Violence against LGBTIQ people is directed at people who are, or are assumed to be, lesbian, gay, bisexual or transgender persons. It may also be directed at people whose gender identity is not in line with social norms and expectations, i.e. non-conforming 'feminine' men and 'masculine' women.

United Nations notes that homophobic and transphobic violence has been observed across the entire world, Ukraine being no exception.¹²

Violence happens in various places: in the streets, in public places, in schools, at the workplace, in private homes, as well as in prisons and police stations. It can be spontaneous or organized and committed by individuals or groups of people. The common feature of most LGBTIQ hate crimes is brutality and violence.

Violence based on sexual orientation and gender identity includes both psychological violence (aggressive, sustained psychological

intimidation) and physical violence (physical assault, torture, kidnapping and targeted killings). Other types include sexual violence, financial violence and bullying.

VIOLENCE IS CHARACTERISED BY:

- Advantage in strength (the stronger assaults the weaker)
- Damage (physical, emotional, financial, etc.)
- No way out of the situation
- Recurrence (the so-called 'circle of violence,' i.e. a repeated cycle of violence and abuse).

Attacks against people over their sexual orientation, gender identity and expression, and sex characteristics are often driven by the desire to punish them for presumably ignoring gender norms, and such attacks are considered to be a form of gender-based violence. You do not have to be a lesbian, gay, bisexual, transgender or queer person to warrant an attack, as being merely perceived as a homosexual or having a transgender identity is enough to put you at risk of violence.

¹¹ A case study of India: The Economic cost of Homophobia. Available at: <https://www.worldbank.org/content/dam/Worldbank/document/SAR/economic-costs-homophobia-lgbt-exclusion-india.pdf>

¹² Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. Available at: <https://www.ohchr.org/en/issues/sexualorientationgender/pages/index.aspx>

DISCRIMINATION AND
VIOLENCE AGAINST
LBTIQ WOMEN

Women are subjected to violence and discrimination because patriarchal culture sexually objectifies women and treats them as incapable of being men's equals. According to patriarchal culture, and patriarchy in general, it is normal for a heterosexual white man to maintain a traditional family and handle important social issues. In this culture, women are contrasted to men as being weak, emotional, and submissive. Women's subordination to men is at the core of patriarchy.¹³ The main grounds over which LGBTIQ people are subjected to violence and discrimination are sexual orientation and gender identity which are different from the 'norm,' i.e. heterosexuality. Both women's rights activism and LGBTIQ equality activism fight against patriarchy, so both these movements can be viewed through the prism of the gender equality movement.¹⁴

What makes discrimination of LGBTIQ women different from discrimination of LGBTIQ people in general is that they are subjected to multiple discrimination.¹⁵ Multiple discrimination means discriminating a person on multiple grounds. For example,

discrimination of LGBTIQ women is exacerbated by intersecting factors (i.e. intersectionality) that affect women differently or to different degrees than men and other women. The grounds for intersecting or multiple discrimination may include ethnicity/race, indigenous or minority status, color, social and economic status and/or caste, language, religion or beliefs, political beliefs, ethnic background, marital and/or maternal status, age, urban / rural residence, health status, disability, property, sexual orientation, gender identity, and intersex status.

For example, a gay man may not face sexism and misogyny like women do. A lesbian is identified with several vulnerable groups at once as a woman and a LGBTI person. A transgender woman may become a victim of violence as both a transgender person and a woman. When talking about discrimination, we mean direct actions aimed to limit access or rights of certain groups or individuals. Such limitations are influenced by social stereotypes and prejudices. A lesbian may be fired or rejected from a job

WHAT IS MULTIPLE DISCRIMINATION

Discrimination against women, based on gender stereotypes, stigma, harmful and patriarchal cultural norms and gender-based violence, has an adverse impact on the ability of women to gain access to justice on an equal basis with men. These intersecting factors make it more difficult for women from those groups to gain access to justice.

CEDAW General Recommendation No. 33 on women's access to justice¹⁶

¹³ https://www.researchgate.net/publication/254081111_Feminism_and_Violence_The_Hegemonic_Second_Wave's_Encounter_with_Rape_and_Domestic_Abuse_in_USA_1970-1985

¹⁴ <https://thoughteconomics.com/are-women-suffering-the-greatest-injustice-of-the-twentieth-century/>

¹⁵ General Recommendations #1-37 of the Committee on the Elimination of Discrimination Against Women (UN Women, 2018), page 209. Available at: <http://eca.unwomen.org/en/digital-library/publications/2018/03/cedaw-general-recommendations---ukraine>.

¹⁶ Ibid.

because of her sexual orientation and underpaid because she is female.

Among many forms of discrimination, violence, including sexual violence and harassment, are most common and require special attention. Every day, LGBTIQ women may face psychological violence, both in their families and in the public domain. It is hard to imagine living a normal life under constant scrutiny when you never predict the reaction of the people around you once they find out about your sexual orientation and/or gender identity, and what implications that may have. Mundane activities such as going to the movies or a restaurant can result in psychological or physical violence.

Many lesbian women have been victims of sexual violence and rape because of their sexual orientation based on the social stereotype that a lesbian is a woman who has never 'had a real man.' A frequent form of sexual violence is the so-called 'corrective,' or 'punitive' rape, in which men rape women assumed to be lesbian on the pretext of trying to 'cure' their victims' lesbianism. Of-

ten, LGBTIQ women refuse to report violence to law enforcement agencies out of fear of being traumatized again, this time by law enforcement officers.

Lesbian and bisexual women often become victims of violence and threats of child separation by their male ex-partners when their sexual orientation gets exposed.

Transgender women most often face violence and discrimination because of their abnormal physical appearance during the course of hormone therapy. It is difficult for transgender women to find jobs as their appearance does not correspond to the sex indicated in the documents. Moreover, LGBTIQ women are all too often subjected to discrimination, unequal treatment and violence by health care providers who refuse to provide quality services due to homophobia, transphobia, or lack of knowledge skills and capacities. Transgender women sex workers and prisoners are at an especially high risk of fatal or extremely brutal violence.

There is a great multitude of problems and obstacles, both legal and social, faced by LGBTIQ women.

LAW:

1. The absence of legal protection against discrimination on the basis of SOGIESC.
2. The absence of legal means to enter into a marriage or partnership.
3. The absence of legal means to adopt a partner's child.
4. The absence of legislation providing protection against homophobic and transphobic hate crime.
5. Limited access to reproductive technology.
6. The absence of protection against domestic and sexual violence.
7. The absence of the right not to be compelled to testify in proceedings against a partner.
8. Access to inheritance and joint ownership rights.
9. Access to quality medical services and assistance.
10. Access to justice in relation to the absence of legal protection against violence and discrimination.
11. Hate speech against LGBTIQ women and sexism.

UN STANDARDS
FOR PROTECTION
OF THE RIGHTS OF
LBTIQ WOMEN

The Universal Declaration of Human Rights,¹⁸ the International Covenant on Civil and Political Rights,¹⁹ and the International Covenant on Economic, Social and Cultural Rights²⁰ identify prohibited grounds for discrimination but the list is not exhaustive.

The CEDAW refers to sexual orientation as a prohibited ground for discrimination in several General Recommendations No. 25, 28, 33, 35, 37. The Committee on the Elimination of Discrimination against Women has multiple times stressed in interpretative tools of the Convention such as the General Recommendations and

monitoring mechanisms such as Concluding Observations issued to States parties that all forms of discrimination, including intersecting discrimination and discrimination on the basis of SOGIESC, are linked together.

In 2011, the UN Human Rights Council adopted the first in the string of the resolutions on sexual orientation and gender identity, Resolution 17/19.²⁴ That was an important step demonstrating the position of the UN. Another two resolutions on the subject were adopted in 2014 and 2016, respectively. Those were: Resolution 27/32, Human rights, sexual orientation and

According to Article 7 of the Universal Declaration of Human Rights,

“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”²¹

In its General Recommendation No. 28 on the core obligations of States parties, the CEDAW Committee noted, inter alia, that the discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as ethnicity, religion, health, status, age, sexual orientation, gender identity, etc.²²

In its Concluding observations on the eighth periodic report of Ukraine on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, the Committee recommended that the state of Ukraine provide the necessary protection against discrimination and violence against lesbian, bisexual and transgender women, in particular through the adoption of anti-discrimination legislation and the revision of the existing discriminatory laws that prohibit intersecting forms of discrimination.²³

¹⁸ United Nations, Universal Declaration of Human Rights. Article 7. Available at: http://zakon.rada.gov.ua/laws/show/995_015

¹⁹ United Nations, International Covenant on Civil and Political Rights. Available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

²⁰ United Nations, International Covenant on Economic, Social and Cultural Rights. Available at: <https://www.ohchr.org/EN/Professionalinterest/Pages/CESCR.aspx>

²¹ See 12.

²² CEDAW/C/GC/28. Committee on the Elimination of Discrimination against Women, General Recommendation No. 28 (on the core obligations of States parties under article 2), at para. 18. Available at: <https://www.refworld.org/docid/4d467ea72.html>.

²³ CEDAW/C/UKR/CO/8. Concluding observations on the eighth periodic report of Ukraine, Committee on the Elimination of Discrimination against Women (3 March 2017), Recommendation No. 45. Available at: <https://digitallibrary.un.org/record/1286284?ln=en>

²⁴ United Nations, Resolutions on Sexual Orientation and Gender Identity, Available at: <https://www.ohchr.org/en/issues/discrimination/pages/lgbtunresolutions.aspx>

gender identity, adopted 2 October 2014,²⁵ and Resolution 32/2, Protection against violence and discrimination based on sexual orientation and gender identity, adopted 30 June 2016.²⁶ Pursuant to Resolution 32/2, the UNHRC appointed an Independent Expert on Protection against Violence and Discrimination based on sexual orientation and gender identity²⁷ with the mandate, inter alia, to work in cooperation with States in order to foster the implementation of measures that contribute to the protection of all persons against violence and discrimination based on sexual orientation and gender identity. Such work may involve monitoring visits and cooperation with local non-governmental organizations.

One of the main principles of Sustainable Development Goals 2030,²⁸ Leaving No One Behind, reaffirms the importance of committing to the Universal Declaration of Human Rights,

in particular, stating that “All human beings are born free and equal in dignity and rights.” Discrimination and exclusion, in their multiple forms, are a significant, if not primary, obstacle to achieving the Goals 2030. The Sustainable Development Goals will be impossible to achieve unless LG-BTIQ, as well as other discriminated, socially excluded and marginalized groups, are fully included in relevant processes.

ALL HUMAN BEINGS
ARE BORN FREE AND
EQUAL IN DIGNITY AND
RIGHTS.

²⁵ A/HRC/RES/27/32. Resolution 27/32 Human rights, sexual orientation and gender identity. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/177/32/PDF/G1417732.pdf?OpenElement>

²⁶ A/HRC/RES/32/2. Resolution 32/2 Protection against violence and discrimination based on sexual orientation and gender identity. Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/RES/32/2

²⁷ Ibid.

²⁸ United Nations Ukraine, Sustainable Development Goals 2016-2030. Available at: <http://www.un.org.ua/ua/tsili-rozvytku-tysiacholitia/tsili-staloho-rozvytku>

DISCRIMINATION
AND HUMAN RIGHTS
VIOLATIONS IN
UKRAINE

Pursuant to the Constitution of Ukraine (Article 24),²⁹ Ukrainian citizens have equal rights and freedoms and are equal before the law, regardless of race, color, political, religious, or other beliefs, sex, ethnic or social background, financial standing, place of residence, language, or other characteristics.

In September 2009, the Law of Ukraine On the Principles of Prevention and Combating Discrimination in Ukraine³⁰ entered into force, defining discrimination and its forms.

The Law defines discrimination as a situation where the recognition, enforce-

ment, or enjoyment of the rights and freedoms of a person and/or a group of persons in any manner established by the Law are restricted based on their race, color, political, religious, or other beliefs, sex, age, disability, ethnic or social background, citizenship, marital status or financial standing, place of residence, language, or other characteristics that are, were, or may be real or assumed (hereinafter – particular characteristics), unless such restrictions serve a legitimate purpose in a manner that is appropriate and necessary.

SOGIESC discrimination is an unjustified and illegitimate restriction of the rights and freedoms of a person or group of

persons, that are otherwise enjoyed freely without restriction by other people, based on sexual orientation and/or gender identity.

A person who has been subject to discrimination based on religion or belief, disability, age, or sexual orientation should have adequate means of legal protection.³¹

The Law of Ukraine On the Principles of Prevention and Combating Discrimination in Ukraine distinguishes the following forms of discrimination: direct discrimination, indirect discrimination, incitement to discrimination, complicity in discrimination and derogation.

DIRECT DISCRIMINATION

Direct discrimination is a situation where, based on particular characteristics, a person and/or group of persons is treated less favorably than another person and/or group of persons in a similar situation unless such treatment serves a legitimate purpose in a manner that is appropriate and necessary. Direct discrimination happens when, based on a certain characteristic, a person is, was, or will be treated worse than others in a similar situation.³²

DIRECT DISCRIMINATION

Indirect discrimination is a situation where technically neutral legal provisions, assessment criteria, rules, requirements or practices, when enforced or applied, put a person and/or groups of persons, based on their particular characteristics, in a

²⁹ The Constitution of Ukraine, Available at: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/ed20140302>

³⁰ Ukraine, Law On the Principles of Prevention and Combating Discrimination in Ukraine, No. 5207-VI of 13 May 2014. , Available at: <http://zakon0.rada.gov.ua/laws/show/5207-17>

³¹ The Council of Europe Directive 2000/78/EC of 27/11/2000 establishing a general framework for equal treatment in employment and occupation, para.11. Available at: http://ecmi-epp.org/wp-content/uploads/2015/03/Council-2000_78_EC_UK.pdf

³² See 15.

INCITEMENT TO DISCRIMINATION

COMPLICITY IN DISCRIMINATION

DEROGATION

less advantageous position than other persons and/or groups of persons unless their enforcement or application serves a legitimate purpose in a manner that is appropriate and necessary.³³

Indirect discrimination happens when technically neutral legal provisions, assessment criteria, rules, requirements or practices, when enforced or applied, put a person, based on his/her particular characteristics, in a less advantageous position than other persons unless such provisions, criteria or practices serve a legitimate purpose in a manner that is appropriate and necessary.³³

Incitement to discrimination is issuing orders, instructions or calls to discriminate against a person and/or group of persons based on their particular characteristics.

Complicity in discrimination is any deliberate assistance in the commission of actions or omissions giving rise to discrimination.

Derogation is undesirable behavior toward a person and/or group of persons that aims to degrade or results in degrading them based on their particular characteristics, or puts that person or group of persons into a tense, hostile, offensive or humiliating environment.

This form of discrimination manifests itself in undesirable behavior toward a person and/or group of persons based on their particular characteristics or creates a hostile, humiliating, offensive, intimidating environment, etc.³⁴

³³ See 15.

³⁴ See 15.

Notably, the only reference to the prohibition of SOGI discrimination is in Art. 2-1 of the Labor Code of Ukraine³⁵ which prohibits any discrimination in employment, particularly violation of the principle of equal rights and opportunities, direct or indirect restriction of the rights of employees based on race, color, political, religious or other beliefs, sex, gender identity, sexual orientation, ethnic, social or foreign origin, age, health, disability, suspected or actual HIV infection, marital status and financial standing, family obligations, place of residence, membership of a trade union or other civic association, strike participation, pending or intended lawsuits lodged with courts or other agencies to restore their rights or assist other employees in restoring their rights, language or other characteristics unrelated to their work or working conditions.

In addition to the above regulations, discrimination is prohibited by the Law of Ukraine On Ensuring Equal Rights and Opportunities for Women and Men³⁶ and the Law of Ukraine On the Principles of Social Protection of Per-

sons with Disabilities in Ukraine,³⁷ but neither of them mentions sexual orientation or gender identity and gender expression.

In Ukraine, persons violating the legislation on prevention and combatting discrimination may be held civilly, administratively or criminally liable.

On 7 May 2014, the High Specialized Court of Ukraine for Civil and Criminal Cases issued a letter (No. 10-644/0/4-14) to appellate courts, explicitly prohibiting discrimination in employment on the basis of sexual orientation.³⁸ The Court stressed that, when considering cases of labor discrimination, it is important to take into consideration the existing anti-discrimination law, which prohibits discrimination on any basis.

Although the definition of multiple forms of discrimination are missing from the national legislation, some of the national policies include targeted measures to address the multiple forms of discrimination:

The National Action Plan on Implementation of the Concluding Observations on the eighth periodic report of Ukraine on Convention of Elimination of All Forms Discrimination Against Women until 2021:

To conduct gender analysis of the needs of different groups of internally displaced women and girls, including individuals subject to various forms of multiple discrimination (including widows, women and girls with disabilities, elderly women, Roma national minority women or women in the sexual minority), and develop proposals to regulate the identified needs.³⁹

³⁵ Ukraine, The Labor Code of Ukraine, Art. 2-1 Equal Labor Rights of Ukrainian Nationals. Available at: <http://zakon.rada.gov.ua/laws/show/ru/322-08>

³⁶ Ukraine, Law on Ensuring Equal Rights and Opportunities for Women and Men. Available at: <http://zakon3.rada.gov.ua/laws/show/2866-15>

³⁷ Ukraine, Law on the Principles of Social Protection of Persons with Disabilities in Ukraine. Available at: <http://zakon3.rada.gov.ua/laws/show/875-12>

³⁸ OHCHR, Report on the human rights situation in Ukraine, 15 June, 2014, para. 1. Available at: http://www.un.org.ua/images/stories/Report_15_June_2014_ua.pdf

³⁹ Ukraine, Decree of the Cabinet of Ministers # 634-p On approval of National Action Plan on Implementation of the Concluding observations to the 8th periodic report of Ukraine on Convention of Elimination of All Forms of Discrimination Against Women until 2021 as of 5 September 2018 Available at: <https://www.kmu.gov.ua/ua/npas/pro-go-planu-dij-z-vikonannya-rekomo-zhinok-do-vosmoyi-periodichnoyi-dopovidi-ukrayini-pro-vikonannya-konvencyi-pro-likvidaciyu-vsih-form-diskriminaciyi-shchodo-zhinok-na-period-do-2021-roku>

The most common grounds for discrimination in Ukraine include age (40 percent of respondents), disability (32 percent), sexual orientation (24 percent), health status (25 percent), and sex (25 percent). Also, one in five respondents believes that discrimination on the basis of political views and property status exists in Ukraine.

Ground	2016 survey, percent	2018 survey, percent
Age	37.4	39.7
Disability	32.7	38.1
Sexual orientation	21.6	24.9
Health status	20.3	24.8
Sex	20.4	22.0

The younger respondents more often cited discrimination on the basis of sexual orientation (31 percent vs. 24.9 percent of all the respondents). Compared to 2016, there has been an increase in the level of public support for restrictions of LGBTIQ rights.

Assessment of the permissibility of restrictions of LGBTIQ rights	2016 survey, percent	2018 survey, percent
No, the rights cannot be restricted	41.3	37.5
Can be restricted under certain conditions	27.3	26.3
Must be restricted unconditionally	18.9	20.6
Difficult to answer	12.5	15.6

Source: The Ukrainian National Human Rights Progress Study of 2016–2018.¹⁷

¹⁷ Human Rights, Evaluation of Developments (2016–2018), Results of the Second Sociological Study. (Democratic Initiatives Foundation, UNDP, Information Center on Human Rights, 2018). Available at: <https://dif.org.ua/uploads/pdf/19484532155c0fae449caba5.69437042.pdf>

WHAT ARE THE
LGBTIQ COMMUNITY
DEMANDS?

LGBTIQ people demand equality in law and practice:

Amending law by enshrining equal rights and removing direct and indirect prohibitions and restrictions. Example 1: replace the definition of marriage as a union between man and woman with that of a union between spouses. Example 2: amend the anti-discrimination law by prohibiting discrimination on the basis of sexual orientation and/or gender identity.

People often ask, why is the language “and other grounds” as used in the law not sufficient with reference to sexual orientation and gender identity? The answer is: when we are dealing with social bias, it is important that those grounds be expressly set out in the law, making people totally recognize their validity alongside the rest.

Protection against violence and discrimination by criminalizing homophobic and transphobic hate crimes.

Example: homophobic murder must be classified as murder motivated by hatred toward a group of people. It is not mere murder if a person was murdered for being gay, lesbian or transgender, and it would have never happened had that person not been LGBTIQ.

Equal treatment. This involves systematic efforts against prejudice against LGBTIQ, particularly educational and awareness-raising efforts focusing on LGBTIQ people in all areas of life, i.e., education, culture, employment, economy, healthcare, etc. The state must communicate to the public that homophobia and transphobia, like racism and anti-Semitism, are unacceptable in society.

Visibility and public presence. This means being present and visible in mass media, public events and rallies, and public discussions. Does this mean forcing something? To force something, you have to be in a position of dominance and be able to

force to a person to do what he or she does not want to do. You cannot force a sexual orientation or gender identity onto anyone as that is a personal sense of self, as is heterosexuality. LGBTIQ people are a minority in a heterosexual society and face resentment and violence toward them every day. To openly come out as LGBTIQ, a person has to overcome multiple difficulties that never go away. It would be a lie to say that this is ‘fashionable,’ or ‘infectious,’ or can be ‘forced’ onto anyone. If sexual orientation or gender identity could be forced onto a person, everyone would be heterosexual and cisgender (biological sex matching gender identity).

Social acceptance. Because of the prevailing homophobia and transphobia, LGBTIQ people often feel isolated or expelled, unable to live a fulfilling life. This stems from the existing negative stereotypes about LGBTIQ people and the lack of accurate information about homosexuality and transgender identity.

It is important to note, that the approach to equality of the larger LGBTIQ community, just like the larger women’s movement, cannot be treated as homogenous and having uniform needs. For instance, LGBTIQ women’s agenda can be significantly different from gay and bi-sexual men’s agenda in terms of priorities. LGBTIQ women’s declared priority objective as a group is to fight for their sexual and reproductive rights and combat sexual and reproductive violence, sexism and misogyny. Gay and bisexual men often tend to prioritize political and economic rights. In another example, it is important for women to fight for their adoption rights and against any anti-abortion initiatives, while the gay community’s agenda often is not directly related to such efforts.⁴⁰

⁴⁰ Joseph Nicholas DeFilippis, A Queer Liberation Movement? A Qualitative Content Analysis of Queer Liberation Organizations, Investigating Whether They are Building a Separate Social Movement. (Portland State University, 2015). Available at: https://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=3472&context=open_access_etds

RECOMMENDATIONS

The Concerns and Recommendations by the CEDAW Committee to Ukraine:

In its Concluding observations on the eighth periodic report of Ukraine the Committee expressed concerns about the discrimination against lesbian, bisexual and transgender women:⁴¹

Considering that, by ratifying CEDAW, Ukraine has committed to taking all necessary measures at national level to ensure full implementation of the rights, the CEDAW recommendations are binding for Ukraine.

One of the successful examples of the implementation of recommendations by UN Committee and cooperation with Ukrainian central executive agencies is an amended gender reassignment procedure.

Until 2016, the Ordinance of the Ministry of Health of Ukraine No. 60 of 03/02/2011⁴² was in force in Ukraine, governing the gender reassignment procedure. The Ordinance was explicitly violating human rights, and the procedure itself was long, complex, and discriminatory. For example, it was not accessible to transgender persons who had underage children, were married, did not have a steady job or place of residence, etc. In multiple cases, the examination commission deciding on permissibility of gender reassignment in each individual case demanded to complete sterilization, even though no such official requirement ever existed.

It was not until September 2016 when, following a string of lawsuits, CEDAW Committee's recommendations and continuous work with the Ministry of Health of Ukraine, the Standard clinical protocol on primary, secondary and tertiary care Gender Dyspho-

ria was developed,⁴³ followed in late 2016 by the ordinance⁴⁴ laying down the procedure for obtaining a medical certificate required for changing name and sex in official documents.

The new procedure is not perfect, and a great number of transgender persons have certain elements to complain about, but still it is an improvement over the previous one.

As of now, the gender reassignment procedure does not impose any restrictions on transgender persons who have children or are married. In fact, it does not impose any restrictions at all. The main requirement is to fulfill all medical prerequisites.

45. The Committee is concerned at reports of discrimination, harassment and hate speech, based on negative stereotypes, against lesbian, bisexual and transgender women and the lack of shelters for lesbian, bisexual and transgender women who are victims of violence. It is also concerned at the lack of information on health services and rights available to lesbian, bisexual and transgender women, as well as the lack of training of medical personnel with regard to their needs.

46. The Committee recommends that the State party provide the necessary protection against discrimination and violence against lesbian, bisexual and transgender women, in particular through the adoption of anti-discrimination legislation and the revision of the existing discriminatory laws that prohibit intersecting forms of discrimination, and provide access to shelter and assistance for lesbian, bisexual and transgender women who are victims of violence, as well as training to medical personnel and the police and law enforcement officials.

⁴¹ CEDAW/C/UKR/CO/8. The Concluding observations on the eighth periodic report of Ukraine. Committee on the Elimination of All Forms of Discrimination against Women (3 March, 2017): <https://digitallibrary.un.org/record/1286284?ln=en>

⁴² Ukraine, Order of the Ministry of Health No. 60 On the Improvement of the provision of medical services to the persons in the need of change (correction) of their sex characteristics as of 3 February 2011. Available at: <https://zakon.rada.gov.ua/laws/show/z0239-11>

⁴³ Ukraine, Order of the Ministry of Health No. 972 On developing the Standard clinical protocol on primary, secondary and tertiary care Gender Dysphoria as of 15 September 2016. Available at: http://mtd.dec.gov.ua/images/dodatki/2016_972_GenDysfor/2016_972_nakaz_GenDysfor.pdf

⁴⁴ Ukraine, Order of the Ministry of Health No. 1041 On examining medical/biological and social/psychological indications for gender reassignment and approval of standard medical record

Recommendations by LGBTIQ activists of Ukraine

To amend the Law of Ukraine On the Principles of Prevention and Combating Discrimination by introducing the concepts of sexual orientation and gender identity.

To revise the existing bylaws and regulations discriminating against the LGBTIQ community.

To criminalize homophobic and transphobic hate crimes.

To amend the Law of Ukraine On Combating Domestic and Sexual Violence by including provisions on sexual orientation and gender identity.

To adopt the law on LGBTIQ marriage and domestic partnerships.

To lift the ban on child adoption by transgender persons.

To establish shelters for victims of homophobia and transphobia.

To ensure unrestricted access of LGBTIQ women to reproductive technology.

To train medical personnel and doctors on the needs of LGBTIQ women.

To provide systematic training of doctors and medical personnel, as well as running awareness-raising campaigns and

providing information about homosexuality and transgender identity to the general public as part of the efforts against negative stereotypes, violence and discrimination.

To introduce human rights and tolerance course into the secondary school curriculum.

To design a course on Sexual and Reproductive Health and introduce it into the secondary school curriculum.

The UN Global Campaign against Homophobia and Transphobia Born Free and Equal⁴⁵ refers to Five Core Legal Obligations of States with Respect to Protecting the Human Rights of LGBTIQ Persons:

States should ensure:

1. Protect individuals from homophobic and transphobic violence
2. Prevent torture and cruel, inhuman and degrading treatment of LGBTIQ persons
3. Decriminalize homosexuality
4. Prohibit discrimination based on sexual orientation and gender identity
5. Respect freedom of expression, association, and peaceful assembly.

What actions the Ukrainian state can take

The recommendation to ensure protection against homo-

⁴⁵ Born Free and Equal. Sexual Orientation and Gender Identity in International Human Rights Law (United Nations, 2012). Available at: <https://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>

phobia and homophobic violence includes, inter alia, the recommendation to include sexual orientation and gender identity as protected characteristics to the criminal legislation on 'hate crimes.'

Ensure effective recording and collecting of statistical data on hate violence motivated by sexual orientation and gender identity bias.

Ensure effective investigation of such cases. Provide relevant training to law enforcement agencies and courts.

Adopt relevant laws identifying SOGIESC as prohibited grounds for discrimination. Particularly, ensure equal access to employment, healthcare, etc. Hold trainings addressing social stereotypes about LGBTIQ.⁴⁶

International organizations, such as ILGA Europe, make the

following recommendations to states with respect to protecting the rights of LGBTIQ people, particularly LBTIQ women:⁴⁷

- Implementing international human rights standards: endorsement of the Yogyakarta Principles at national level; the United Nations human rights system's recognition of gender identity.
- Enacting hate crime legislation.
- Adopting expeditious and transparent procedures for changing name and sex.
- Abolishing sterilization and other compulsory medical treatment.
- Making healthcare accessible.
- Dissociating marital status from the gender recognition process.
- Including gender identity in the scope of equality bodies.
- Providing training and raising awareness among parliamentarians, professionals and the general public.

⁴⁶ Insight, SHADOW REPORT on situation of lesbian, bisexual women, trans people and intersex people in Ukraine (2017). Available at: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/UKR/INT_CEDAW_NGO_UKR_26350_E.pdf

⁴⁷ Silvan Agius, Richard Köhler, Sophie Aujean, Julia Ehrh, Human Rights and Gender Identity: Best Practice Catalogue. (2011). Available at: https://www.ilga-europe.org/sites/default/files/Attachments/hr_and_gender_identity_best_practices_dec2011.pdf

GLOSSARY⁴⁸

⁴⁸ United Nations, Free and Equal. Definitions. Available at: <https://www.unfe.org/definitions/>

LGBT/LGBTIQ

LGBTI stands for “lesbian, gay, bisexual and transgender”; “LGBTIQ” for “lesbian, gay, bisexual, transgender, intersex and queer”. While these terms have increasing resonance, different cultures use different terms to describe people who have same-sex relationships or who exhibit non-binary gender identities (such as hijra, meti, lala, skesana, motsoalle, mithli, kuchu, kawein, travesty, mux², fa’afafine, fakaleiti, hamjensgara and two-spirit).

TRANSGENDER/TRANS

Transgender (sometimes shortened to “trans”) is an umbrella term used to describe a wide range of identities whose appearance and characteristics are perceived as gender atypical—including transsexual people, cross-dressers (sometimes referred to as “transvestites”), and people who identify as third gender. Transwomen identify as women but were classified as males when they were born, transmen identify as men but were classified female when they were born, while other trans people don’t identify with the gender-binary at all. Some transgender people seek surgery or take hormones to bring their body into alignment with their gender identity; others do not.

TRANSGENDER/TRANS

Intersex people are born with physical or biological sex characteristics, such as sexual anatomy, reproductive organs, hormonal patterns and/or chromosomal patterns, which do not fit the typical definitions of male or female. These characteristics may be apparent at birth or emerge later in life, often at puberty. Intersex people can have any sexual orientation and gender identity.

SEXUAL ORIENTATION

Sexual orientation refers to a person’s physical, romantic and/or emotional attraction towards other people. Everyone has a sexual orientation, which is part of their identity. Gay men and lesbians are attracted to individuals of the same sex as themselves. Heterosexual people are attracted to individuals of a different sex from themselves. Bisexual (sometimes shortened to “bi”) people may be attracted to individuals of the same or different sex. Sexual orientation is not related to gender identity and sex characteristics.

GENDER IDENTITY

Gender identity reflects a deeply felt and experienced sense of one’s own gender. Everyone has a gender identity, which is part of their overall identity. A person’s gender identity is typically aligned with the sex assigned to them at birth. Transgender (sometimes shortened to “trans”) is an umbrella term used to describe people with a wide range of identities – including transsexual people, cross-dressers (sometimes re-

ferred to as “transvestites”), people who identify as third gender, and others whose appearance and characteristics are seen as gender atypical and whose sense of their own gender is different to the sex that they were assigned at birth. Trans women identify as women but were classified as males when they were born. Trans men identify as men but were classified female when they were born. Cisgender is a term used to describe people whose sense of their own gender is aligned with the sex that they were assigned at birth. Gender identity is distinct from sexual orientation and sex characteristics.

GENDER EXPRESSION

Gender expression is the way in which we express our gender through actions and appearance. Gender expression can be any combination of masculine, feminine and androgynous. For a lot of people, their gender expression goes along with the ideas that our societies deem to be appropriate for their gender. For other people it does not. People whose gender expression does not fit into society’s norms and expectations, such as men perceived as ‘feminine’ and women perceived as ‘masculine’ often face harsh sanctions, including physical, sexual and psychological violence and bullying. A person’s gender expression is not always linked to the person’s biological sex, gender identity or sexual orientation.

HOMOPHOBIA

Homophobia is an irrational fear of, hatred or aversion towards lesbian, gay or bisexual people.

TRANSPHOBIA

Transphobia is an irrational fear, hatred or aversion towards transgender people.

BiPHOBIA

Biphobia is an irrational fear, hatred or aversion towards bisexual people.

CASE STUDIES

CASE STUDIES

1. A transgender woman wants to adopt a child but as a person diagnosed with 'transsexualism,' is subject to the adoption ban. A similar ban applies to people with certain diagnosed medical conditions and HIV-infected people.⁴⁹

2. A lesbian woman was physically assaulted over her sexual orientation while on vacation with her girlfriend. Two heterosexual families were staying next door. One night, one of the men started harassing the lesbian woman, asking her whether she had a husband or was a lesbian. After being told that she was indeed a lesbian, he started beating her. During the physical assault, the man kept throwing homophobic insults. The police classified the incident as mere hooliganism, ignoring the anti-LGBTIQ motivation. Pursuant to law, hate-motivated assault entails more severe liability.

3. A lesbian woman was a victim of sexual assault (rape) by her ex-husband after he found out that she was living as a couple with another woman. The police did not even register the crime arguing that the woman and her ex-husband were still officially married.

4. An ex-husband took the children away from a lesbian mother into his custody arguing that she was mentally ill (being a lesbian) and making much less money because her income level declined after several years on maternity leave. The court, taking into consideration that the husband was earning more money, and probably influenced by the judge's homophobia, ruled that a lesbian woman could not be a reliable caretaker.

⁴⁹ Ukraine, Order of the Ministry of Health No. 479 on Approval of the List of illnesses, due to which a person cannot be an adopter as of 20 August 2018. Available at: <https://zakon0.rada.gov.ua/laws/show/z1022-08>



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