

United Nations Human Rights Council

Agenda Item: Combating violence and discrimination against LGBT+ individuals



STUDY GUIDE

Under-Secretary General: Tuna Ögüt
Academic Assistant: Duygu Çınar

HASMUN



Letter from the Secretary-General

Esteemed Participants and Guests,

It is my greatest pleasure to welcome you all to the fourth edition of the Kadir Has University Model United Nations Conference on behalf of the Kadir Has University Model United Nations Club, Organization Team and the Secretariat. My name is Polat Yamaner, I am a junior student at Kadir Has University, Law Faculty; and I serve you as the Secretary-General of this conference. Having witnessed the last two years of the Conference as a proud participant and an academic team member, I can faithfully state that, HASMUN will, once again, host a formidable experience for you to enhance your skills on different perspectives of the global course of events.

Simulations coursing from historical events to the futuristic concepts, the committees of this year's HASMUN will be met under the theme "*Human Rights: From Respect of the States to the Approbation of the Imperative*". Being one of the few Model UN conferences with a certain theme; this year, we hope to enhance the viewpoint of all the participants, on the fundamental rights and freedoms and human dignity, and its close relation with the international relations, the way of diplomacy, the law, the understanding of security and certainly humanism and humanitarianism. The Secretariat of HASMUN 2017 had created such committees to actualize our hope, and enabled its participants to have a word from the angles of both international and national institutions. I would like to express my gratitude for their intensive work to all Under-Secretaries-General and Academic Assistants who have expanded their efforts much more than me. Without their contribution to the Conference, the very formation of a Model UN conference would not be even possible.

Apart from the exacting and differentiating dimension of the Academia, as one of the Conferences distinguished for its organizational success, I would to thank to the Director-General of the Conference Mr. Alihan Eyübođlu and his Deputy Ms. Gizem Eşsizođlu for constituting the organizational basis of the conference with their high-level knowledge and skills that they have presented. Lastly, I would like to thank to the Deputy-Secretary General of the Conference, Mr. Kerem Karaçay for not leaving me alone and enduring all of my anxieties.

Finally, as always, please do not hesitate to contact us with any questions or concerns. The entire staff of HASMUN 2017 and I are committed to create a dynamic and enhancing experience for high-school and university students from all around the world.

Sincerely,

Polat Yamaner
Secretary-General of Kadir Has University Model United Nations Conference 2017

Letter from the Under-Secretary-General

Dear distinguished participants,

It is a great pleasure to be welcoming you with a committee that has a long history for the protection and promotion of human rights. I am honored to be opening up the matter of LGBT+ rights, for discussion. In a time when the problems of LGBT+ individuals and how to solve them are finally being discussed around the world, it would be a disappointment to not to bring the question to the floor of a conference where many qualified and eager individuals will be participating to generate ideas on up to date issues.

It is of grave concern that international society has remained almost entirely silent until now, against something so openly in violation of international human rights norms. It is intolerable to discriminate and offend people based on who they are, who they love, and how they define their sexuality. The international society's and state authorities' reluctance on taking required actions in order to prevent such discrimination and violence is also a breach of the international human rights law. Not objecting is to comply. Taking the responsibility to govern or represent the people who you cannot protect nor understand is an atrocity. If we do not oppose the oppression and discrimination, we also will be responsible. It is deeply worrying that so big a mistake has not been corrected for so long and it is of utmost urgency that we have this matter open for discussion.

I found the motive force to do my part in the struggle for LGBT+ rights when I read about Hande Kader and Muhammed Wisam Sankari. Regardless of how hard the struggle for the LGBT+ rights has been, I am faithful that we can face the facts and cooperate in order to work towards a better society. I am faithful because when I talk with people on this matter, I not only see the disapproval for the many mistakes we face today, but also the will to change them, fix them. I believe in the civil society's power to defend and uphold the rights of each other.

So here I am, doing my part for a society in which people can embrace, love, and respect each other for who they are.

Tuna Ogut

Under Secretary-General Responsible for HASMUN'17 United Nations Human Rights Council

Table of Contents

- I. Introduction to United Nations Human Rights Council
- II. Violence and discrimination against individuals based on their sexual orientation and gender identity
 - A. Homicide
 - B. Torture and ill-treatment
 - C. Other types of violence
 - D. Discrimination
- III. Reasons leading to the problem
 - A. Homophobia and hate
 - B. State discrimination
 - C. State negligence
 - D. Discrimination from the public
- IV. Applicable international standards and obligations
 - A. Legislative measures
 - B. Responsibilities of regional and international groups and organizations
 - C. Support, reparations, and remedies for victims of sexual exploitation
 - D. Sustaining the results
- V. Conclusion and recommendations

I. Introduction to United Nations Human Rights Council

The Human Rights Council is an inter-governmental body that functions within the United Nations system which has long strived to solve the problems related to the violations of human rights. The Council superseded the United Nations Commission on Human Rights on March 15, 2006, with the adoption of resolution 60/251 by the General Assembly. The Human Rights Council has 47 Member States which are elected by the General Assembly, and these Member States that are holding seats in the council are responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and make recommendations on them. The council also plays a great role in the fight against all forms of discrimination.

The United Nations Human Rights Council is responsible for the promotion and monitoring of human rights worldwide through the establishment of Special Procedures. Special Procedures are experts or a group of experts that advise and work on human rights issues. In order to maintain their impartiality, these experts are not UN staff, and they work in accordance with their personal capabilities and are not paid a salary; furthermore, they do not represent their country of citizenship. This system of Special Procedures is an essential element of the United Nations human rights mechanism and covers all civil, political, cultural, economic, and social human rights. As of September 30, 2016, there are 43 thematic and 14 country mandates.

One of the major components of the Human Rights Council is the Universal Periodic Review. It is a unique process in which all human rights records of all 193 UN Member States are reviewed in a periodic manner. It consolidates the idea of equal treatment for every country and provides the countries the opportunity to declare what measures they have taken to improve the human rights in their countries. The UPR was established at the same time as the Human Rights Council, by the UN General Assembly in resolution 60/251. The reviews are conducted by 47 members of the UPR Working Group, and this group consists of the 47 members of the Human Rights Council.

The Human Rights Council's work is intended to be inclusive of every human rights issue and open to engagement and review, even though the polarization and self-repetition among members have been an obstacle, criticized by many, which has led to the missed opportunities to have genuine debates.

The agenda item has been selected in order to draw attention to the stigmatization of debates on sexual orientation and gender identity specifically in our environment.

This study guide will approach the case from the standing point of the *Office of the United Nations High Commissioner for Human Rights (OHCHR)*, except stated otherwise, therefore the member state-specific research has to be done by each delegate themselves so that they will be able to interpret accordingly.

This study guide will refer to gender and sexual minorities as LGBT+. This abbreviation is intended to represent any individual identifying as lesbian, gay, bisexual, transgender, intersex, asexual, questioning, or any other non-heterosexual or non-cisgender orientation. The authors comprehend that such abbreviation may not be considered as an umbrella term by every individual and does not imply, in any way, that it is. During delegates' research; even though the abbreviation *LGBT* will most likely yield most of the relevant information, the abbreviations *LGB*, *LGBTI*, *LGBTQ*, and *LGBTIQ* are also commonly used in different sources delegates are expected to come across.

II. Violence and discrimination against individuals based on their sexual orientation and gender identity

In this section, types of violence and discrimination LGBT+ people commonly face are examined. The reasons leading to these problems and how they shall be resolved will be further examined in the following sections.

II. A. Homicide

Conscious targeting of LGBT+ individuals is especially a matter of concern since it is committed by offenders with a biased motivation. Therefore, such cases fall into the category of hate crimes.¹ It is a further matter of concern that a significant percentage of homicides targeting LGBT+ individuals are committed by people they are acquainted with; including family members, neighbors, colleagues, and friends, which demonstrates the heights of stigma around and hatred on LGBT+ individuals. The perpetrator being a person the victim is acquainted with often points to the case falling under murder with malice aforethought.

II. B. Torture and ill-treatment

A very comprehensive definition of torture is provided by the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*:

“(...) the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”²

¹Federal Bureau of Investigation, 'Hate Crimes' (Federal Bureau of Investigation, 2017) <<https://www.fbi.gov/investigate/civil-rights/hate-crimes>> accessed 7 April 2017.

² UN General Assembly, 'Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment' (1984).

The convention mandates every signatory to take measures in prevention of this practice. However, various reports have shown torture and ill-treatment against individuals based on their sexual orientation and gender identity to be a common practice.³ The form of aforementioned cases of torture and ill-treatment include arrest, arbitrary detention, being subject to solitary confinement, beating, harassment, physical abuse, rape and other forms of sexual assault, forced feminization, conversion therapy, anal examinations, sterilization, gender reassignment, and unnecessary medical interventions. It is of great concern that these cases also include offenses against minors.

The fact that torture has an organized nature and is perpetrated by official capacity, weights the priority of it amongst other types of violence and discrimination. Though the situation creates grave concern even when our comprehension is as far as it is now, it is understood that the participation of state officials in these offenses increases the risk of cases going unreported. Only a few states publish reliable statistics on violence and discrimination. Further improving the information gathering capabilities of international organizations and experts; such as the *Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*; is essential to develop our comprehension of the situation, since their work covers all states irrespective of their ratification of conventions.

II. C. Other types of violence

According to the survey of European Agency for Fundamental Rights, dating 2013 and including the participation of 93,079 LGBT+ individuals: 26% of all respondents were victims of attacks and have faced threats of violence in the past five years.⁴

II. C. 1. Physical violence

Organization of American States has found that from January 2013 to March 2014, 594 people were killed and 176 people were seriously injured in the Americas from attacks based on

³ United Nations High Commissioner for Human Rights, ' A/HRC/29/23. Discrimination And Violence Against Individuals Based On Their Sexual Orientation And Gender Identity. Report Of The Office Of The United Nations High Commissioner For Human Rights' (2015)

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A_HRC_29_23_en.doc>.

⁴ European Union Agency for Fundamental Rights, 'European Union Lesbian, Gay, Bisexual And Transgender Survey, Results At A Glance' (2013) <http://fra.europa.eu/sites/default/files/eu-lgbt-survey-results-at-a-glance_en.pdf>.

their sexual orientation and gender identity. Though, the actual number is estimated to be even higher due to the fact that most of the member states do not collect reliable data for these crimes.⁵

Instead of statistics, case examples will be provided in order to give further insight to the severity of the problem worldwide:

- On June 12, 2016, a gay nightclub, Pulse, in Orlando, U.S.A. was subject to mass murder. Omar Mateen entered the nightclub with a rifle and a pistol. The perpetrator then proceeded to shoot people for 3 hours in a hostage situation before being stopped. There were 49 people dead and 53 injured. The attack was hate motivated towards LGBT+ people, and the perpetrator claimed allegiance to ISIS.⁶
- On September 10, 2016, Eugene Grosh was assaulted in the bathroom of a local bar in Saskatoon, Canada by a bar patron for being gay. He has suffered a concussion, severe bruising, and cuts to his head and face. He has reported experiencing similar incidents before as well.⁷
- On September 2, 2016, Lila Hadway, a drag artist also known as Parker Perry was assaulted as she was leaving a Pride fundraiser in Olympia, U.S.A, with her wife Angela, and one of their friends. The attack left her with a concussion, broken teeth, loss of visions, and lacerations to her face. Her friend, who wanted to remain anonymous, was also hit repeatedly in the face. Hadway and her wife are well known in the drag community due to their donations to LGBT+ non-profits. It is reported that the attack has taken place less than a month after the local police canceled night patrols.⁸

⁵ Inter-American Commission on Human Rights (IACHR), 'Press Release 153/14 - An Overview Of A Registry Documenting Acts Of Violence Between January 1, 2013 And March 31, 2014' (2014) <<https://www.oas.org/en/iachr/lgtbi/docs/Annex-Registry-Violence-LGBTI.pdf>>.

⁶ Ralph Ellis, '49 Killed In Florida Nightclub Terror Attack' (CNN, 2017) <<http://edition.cnn.com/2016/06/12/us/orlando-nightclub-shooting/>> accessed 12 February 2017.

⁷ Jason Warick, 'The Hate Still Exists': Saskatoon Man Says He Was Beaten For Being Gay' (Saskatoon StarPhoenix, 2017) <<http://thestarphoenix.com/news/crime/the-hate-still-exists-saskatoon-man-says-he-was-beaten-for-being-gay>> accessed 12 February 2017.

⁸ Jennifer Sullivan, 'Performer Known As "Drag King" Attacked After Benefit In Olympia' (KOMO News, 2017) <<http://komonews.com/news/local/drag-king-says-she-was-attacked-near-olympia-tavern-sunday>> accessed 12 February 2017.

- On October 10, 2010, Serbia Gay Pride march was attacked with petrol bombs and stones injuring 40 police officers protecting the pride march. 60 people were arrested with the suspect to have participation in the assault. Other pride marches have been attacked in Serbia before, and several marches were canceled by authorities due to security reasons.⁹
- On October 13, 2015, Diana Sacayan, an activist for LGBT+ rights and the first transgender person to be recognized as a woman by Argentina, was found dead in her apartment in Buenos Aires. It was reported that she was tied to her bed and stabbed repeatedly.^{10 11}
- In July 2015, a man was assaulted for being gay on a bus in Genoa, Italy, leaving him with cerebral hemorrhage. Even after he re-emerged from the coma, he could not speak nor eat. An attempted murder investigation has started against the perpetrators. The police also charged the bus driver with aiding and abetting since he had failed to intervene during the attack.¹²
- On September 25, 2009, Ian Baynham was assaulted and killed by Joel Alexander and Ruby Thomas solely because he was holding hands with another man in London, United Kingdom. He was attacked in Trafalgar Square, severely beaten and died in the hospital 18 days later. The perpetrators were jailed for manslaughter.^{13 14}
- In August 2016, Hande Kader, a transgender sex worker, was found dead in Istanbul. She had been lost for a week when she was found, and her body was burnt and mutilated to the point that her identity was not recognizable except for her prosthetics. She was an active

⁹ 'Serbia Gay Pride March Attacked With Bombs, Stones' (CNN, 2010)

<<http://edition.cnn.com/2010/WORLD/europe/10/10/serbia.gay.violence/>> accessed 12 February 2017.

¹⁰ 'Argentina Transgender Killings Spark Outcry' (BBC News, 2015) <<http://www.bbc.com/news/world-latin-america-34538052>> accessed 12 February 2017.

¹¹ 'Argentina Must Investigate Horrific Wave Of Attacks Against Trans Activists' (Amnesty International, 2015) <<https://www.amnesty.org/en/latest/news/2015/10/argentina-must-investigate-horrific-wave-of-attacks-against-trans-activists/>> accessed 12 February 2017.

¹² 'Men Savagely Attacked On Bus For 'Being Gay' (The Local, 2017) <<https://www.thelocal.it/20150804/police-hunt-gang-over-savage-homophobic-bus-attack>> accessed 12 February 2017.

¹³ 'Teenage Girl And Friend Go On Trial For 'Kicking Gay Man To Death In Trafalgar Square' (Daily Mail, 2010) <<http://www.dailymail.co.uk/news/article-1332381/Teenage-girl-trial-killing-Ian-Baynham-homophobic-attack.html>> accessed 12 February 2017.

¹⁴ 'Pair Jailed For Trafalgar Square Homophobic Killing' (BBC News, 2011) <<http://www.bbc.com/news/uk-england-london-12283937>> accessed 12 February 2017.

participant in the 2015 protest against the banning of Istanbul Pride and had been confronted by police force.¹⁵

- On July 25, 2016, Muhammed Wisam Sankari, a gay Syrian refugee in Istanbul, Turkey, who have been missing for the past two days, was found dead. He was beheaded and mutilated beyond recognition. Sankari was threatened several times before and was kidnapped and raped previously. He had managed to escape being murdered, but his reporting to the police went neglected. Sankari was known to be feeling unsafe in Turkey and was trying to seek asylum from European states.¹⁶
- On April 25, 2016, Xulhaz Mannan and Tanay Mojumdar, LGBT+ activists who were openly gay, were brutally murdered in Mannan's apartment in a stabbing attack in Bangladesh. Mannan was the editor of Roopbaan, the only LGBT+ magazine in Bangladesh, and was also an employee of the U.S.A. embassy in Dhaka. Mojumdar was also a prominent figure in the fight for LGBT+ rights.¹⁷
- In May 2012, Fathullo F. (not his real name), agreed to meet with another gay man, in Kyrgyzstan, but when he arrived, he was handcuffed by police officers and brought to a police station where he was beaten and forced into writing a confession which also included the contact information of his family, employer, and other gay men. The officers threatened to initiate a criminal case against him and requested money.¹⁸
- In Bishkek, Kyrgyzstan, Demetra D. reported that he was sexually assaulted by the police forces in four different incidents from 2004 to 2011. He was raped by the police officers and other detainees.¹⁹
- Many of the people interviewed by the Human Rights Watch for the report about police violence against gay and bisexual men in Kyrgyzstan, dated January 28, 2014, reported having faced ill-treatment while in police detention including beatings, rape, group rape,

¹⁵ 'Hande Kader: Outcry In Turkey Over Transgender Woman's Murder' (BBC News, 2016)

<<http://www.bbc.com/news/world-europe-37143879>> accessed 12 February 2017.

¹⁶ Yıldız Tar, 'Syrian Gay Refugee Killed In Istanbul | Kaos GL News Portal' (Kaos GL, 2016)

<<http://kaosgl.org/page.php?id=22071>> accessed 12 February 2017.

¹⁷ 'Bangladesh LGBT Editor Hacked To Death' (BBC News, 2016) <<http://www.bbc.com/news/world-asia-36128729>> accessed 12 February 2017.

¹⁸ 'Kyrgyzstan: Police Abuse, Extortion Of Gay Men' (Human Rights Watch, 2014)

<<https://www.hrw.org/news/2014/01/28/kyrgyzstan-police-abuse-extortion-gay-men>> accessed 12 February 2017.

¹⁹ Ibid.

penetration with foreign objects, unwanted touching during search, and being forced to undress in front of the police. In some of the cases, the ill-treatment has reached the level of torture. The victims were threatened with disclosure of their sexual orientation to their families, employers, school administrations. Such disclosure is known to lead to grave consequences from the society in Kyrgyzstan.²⁰

- On August 4, 2016, Ugandan police undertook a raid to an LGBT+ Pride Celebration and brutally assaulted the participants. The assembling individuals were locked inside the venue and were beaten, humiliated, photographed, got their private property confiscated, sexually assaulted, and threatened with exposing their identities.²¹

The case examples in this section were selected from up to date cases to underline the contemporary validity of the problems. It was intended to have diverse cases from different countries. Therefore, it does not mean that other countries do not have similar cases, nor does it mean the mentioned countries have the most severe of the cases. Physical violence against individuals based on their sexual orientation and gender identity; such as homicide, beating, kidnapping, sexual assault, and sex trafficking is still a serious problem in every state. LGBT+ individuals are more vulnerable to physical violence since their status as a vulnerable group exposes them to many risks.

Sexual assaults are an important part of the problem. A significant number of LGBT+ individuals face sexual assaults several times. The state attention to such cases is low due to neglecting policies and dismissive behavior of state officials. In most of the cases, the act of sexual assault comes from the motivation of socially oppressing the victim, in order to silence and punish them. In several cases, the way the victim dressed or acted at the time of the incident, or solely the fact that they are LGBT+ is being considered a mitigating factor and results in reduced charges or a lesser sentence. It is very concerning that the existence of hate crimes in these cases is missed out by courts. One of such cases is that of Kemal Ördek. According to Bianet, Mr. Ördek, an LGBT+ and sex workers' rights activist, was assaulted, raped, and had his property stolen at his home by two perpetrators. He was being forced into going to the bank in

²⁰ "They Said We Deserved This" (Human Rights Watch, 2014) <<https://www.hrw.org/report/2014/01/28/they-said-we-deserved/police-violence-against-gay-and-bisexual-men-kyrgyzstan>> accessed 12 February 2017.

²¹ 'Uganda: Police Attack LGBTI Pride Event' (Human Rights Watch, 2016)

<<https://www.hrw.org/news/2016/08/05/uganda-police-attack-lgbti-pride-event>> accessed 12 February 2017.

order to withdraw his money when he approached a nearby police patrol car for protection. The police officers acted with bias based on Mr. Ördek's sexual orientation, and he was taken to the police station with the same vehicle as the perpetrators. He received rape and death threats from the perpetrators on the way to the police station while the officers did not intervene and continued to have a conversation with the perpetrators, affirming them of their behavior. Perpetrators prevailed their threats in the police station as well, confidently stating that they would receive no punishment and they know his address, receiving no apparent intervention from the officers. One of the officers insulted Mr. Ördek, using discriminatory slurs, while another attempted to have Mr. Ördek drop any official complaints. The officers also tried to intervene in Mr. Ördek's official complaint, as well as denying the fact that he was sexually assaulted. Mr. Ördek received a medical report proving his claims and also stated that the reports written by the police officials regarding the events were also biased and refused to sign them. The attorney has released the perpetrators without having them appear in court. Perpetrators prevailed to call Mr. Ördek via his cell phone to harass and threaten him. It is only after Mr. Ördek's complaints had attorney general involved that the perpetrators were prosecuted.²²

LGBT+ individuals also face sex trafficking. They become more vulnerable to be a victim of sex trafficking in places where non-comforting sexual orientations are criminalized, or their rights are not recognized or ignored in practice. LGBT+ individuals' alienation from the society makes them more exposed to being targeted by traffickers. The criminalization of sex work also contributes to the problem of sex trafficking since the practice is being pushed to the underground, which makes regulating harder.²³

II. C. 2. Psychological violence

LGBT+ individuals also face severe psychological violence. Even though threats and coercion are seen as tools for facilitating physical abuse by perpetrators, they are also a type of violence on their own. Threats are a very common problem, usually aiming to oppress individuals based their sexual orientation and gender identity, and resulting in traumas and

²² Çiçek Tahaoğlu, 'LGBTİ Aktivistine Evinde Saldırı: "Nasıl Serbest Kalırız, Sen Düşün"' (Bianet - Bağımsız İletişim Ağı, 2015) <<http://bianet.org/bianet/lgbti/165878-lgbti-aktivistine-evinde-saldiri-nasil-serbest-kaliriz-sen-dusun>> accessed 12 February 2017.

²³ 'LGBT Rights Organizations Join Amnesty International In Call To Decriminalize Sex Work' (Lambda Legal, 2015) <http://www.lambdalegal.org/blog/20150820_decriminalize-sex-work> accessed 12 February 2017.

alienation from society. As seen in most of the cases listed under the section *IV.C.1 Physical violence*, threats also lead to more serious types of violence if left ignored.

Many LGBT+ individuals, and especially minors, face coercive and unnecessary medical treatment. The belief that sexual orientation can be changed through psychiatric and physiologic therapy is obsolete, and practicing medical treatment on individuals without their consent is unlawful. Especially intersex individuals face this type of violence commonly. The intersex children who have had a set of their genitals removed to “fix” their sex, face serious psychological identity problems later in adulthood. Intersex children shall not be coerced into “selecting” their sex. Removal of a set of genitals due to it being underdeveloped is also obsolete and can lead to problems in case of a sex reassignment surgery later in adulthood. Since the foreskin removed from the penis during circumcision can be critical for the reconstruction of the vulva in the case of a sex reassignment surgery, problems similar to the aforementioned situation can also arise from the practice of circumcision as well. Therefore, genital mutilation of children shall be prevented. Coercive medical treatment against intersex individuals is also a common problem in professional sports. Intersex people are coerced into having surgeries of sterilization and clitoridectomies in order to be able to compete in sports. Sex verification practices are being used to justify such coercion.

The practice of arbitrary deprivation of liberty is also very concerning. In several states, LGBT+ individuals are coerced into going under psychiatric incarceration and are held in facilities against their will. Also, LGBT+ individuals’ passports are being canceled by some state parties in order to prevent them from leaving the country. Some non-state parties withhold, usually with the motivation of forcing the victim into human trafficking and forced sex work. Several states also cancel the passports of LGBT+ individuals in order to prevent them from leaving the country, which also is a form of arbitrary deprivation of liberty and is in violation of Article 9 of International Bill of Human Rights.

II. D. Discrimination

II. D. 1. Health services

The healthcare services provided to the LGBT+ community is inadequate due to the lack of state prevention against the discriminatory practices of healthcare institutions and their

personnel. As a result, LGBT+ individuals are often times rejected service and don't have access to treatments that cater to their specific health needs.²⁴ Particularly intersex children and transgender persons suffer from mistreatment. In many cases, an unnecessary surgery and treatment is performed on intersex babies in an attempt to force their psychical appearance to align with binary sex stereotypes.²⁵ Discriminatory practices against transgender persons are not uncommon and many professionals lack relevant knowledge to treat such patients, hence making it harder for transgender persons to receive adequate healthcare.²⁶ LGBT+ inpatients that are admitted to hospitals, mental health facilities or retirement homes, fear discrimination based on their sexual orientation and gender identity. In some cases they are not admitted to these institutions at all.²⁷

The negative stigma around STDs (Sexually Transmitted Diseases), particularly HIV/AIDS, is one of the reasons that cause difficulty in treating such diseases. This negative stigma also shows correlation with homophobic behavior. In countries where homosexuality is criminalized, the prevention of the spread of the disease is hindered, and patients find it hard to receive treatment.

II. D. 2. Social security

There have been positive developments regarding same-sex couples and social security. Prior to the U.S Supreme Court legalizing same-sex marriage, receiving social security benefits was difficult for these couples, since their marriage might be recognized in their resident state but not nationwide. After this ruling, same-sex couples are able to receive the same benefits as opposite-sex couples such as spousal benefits, retirement planning, and spousal disability benefits. Their children can also benefit: they will be able to receive economic support when their parents can no longer provide to them due to old age, disability or death. Although these developments are a step in the right direction, they are still not common practice.²⁸ In many

²⁴ UNHRC, [A/HRC/29/23], p.14

²⁵ UNHRC, [A/HRC/29/23], p.15

²⁶ UNHRC, [A/HRC/29/23], p.15

²⁷ D. Gesensway, "Caring for the LGBT community" ,

http://www.todayshospitalist.com/index.php?b=articles_read&cnt=1921 ,2014, (accessed 5 October 2016)

²⁸ M. Bowden and K. Bell "Social Security benefits and same-sex marriage" ,

<http://www.bankrate.com/finance/retirement/social-security-benefits-same-sex-marriage-1.aspx> ,2015,(accessed 5 October 2016)

states, same-sex couples are not legally allowed to marry, yet alone receive social security benefits.

II. D. 3. Access to public facilities

Transgender persons using public facilities such as restrooms and changing cabinets is still met with prejudice. This issue had come to light once again when several states started to pass bills that ban transgender persons from using public facilities that match their gender identity; some even criminalize it.²⁹ In Florida, a House committee passed a bill on March 4, 2015, that would make it a misdemeanor for anyone to knowingly enter a bathroom that didn't match the sex on their driver's license or passport.³⁰ Even in states which have no such laws, transgender persons are still discriminated against and are victims of hate crimes. They also receive a negative reaction from women who claim to feel unsafe having a transgender woman in the same public restroom as them.

II. D. 4. Treatment under custody

Members of the LGBT+ community are extremely vulnerable in prisons and endure abuse both from officials and other prisoners. There have been cases when lesbian women were forced to accept sexual advances from the personnel, threatened of being placed in male prison cells when they refused. The female prisoners who were viewed as "masculine" were subject to ill-treatment, which includes both psychological and psychical abuse, and forced feminization.³¹ Particularly transgender women are extremely vulnerable in these conditions since they are accommodated according to the gender assigned at their birth, while their identified gender is completely disregarded. There have been multiple reported and unreported cases of such abuse against transgender women. In one case, a transgender woman was allegedly raped more than 80 times while in detention.³² Some prisons allocate LGBT+ individuals to particular cells or blocks

²⁹ J. Bendery and M. Signorile "Everything You Need To Know About The Wave Of 100+ Anti-LGBT Bills Pending In States", http://www.huffingtonpost.com/entry/lgbt-state-bills-discrimination_us_570ff4f2e4b0060ccda2a7a9 , 2016 (accessed 5 October 2016),

³⁰ K. Steinmetz, "States Battle Over Bathroom Access for Transgender People", <http://time.com/3734714/transgender-bathroom-bills-lgbt-discrimination/> , 2015, (accessed 5 October 2016)

³¹ UNHRC, [A/HRC/29/23], p.11

³² UNHRC, [A/HRC/29/23], p.11

but these are not common practices, and LGBT+ people are still left extremely vulnerable while being held in custody or detention.

II. D. 5. Education

One of the reasons of negative stigma and prejudices against LGBT+ persons is the lack of proper sex education given to students. LGBT+ persons fail to receive the sex education that caters to their needs since the information given is limited and selected; furthermore, it sometimes contains stereotypes against LGBT+ persons. The aforementioned reasons contribute to the alienation and discrimination of the LGBT+ community within schools.³³

The transgender community faces further challenges in schools since in some cases they are not allowed to restrooms and changing rooms of their identified gender, which once again came to light when Atherton High School in Louisville adopted a policy with a student voting that allowed students to use sex-segregated schools facilities like bathrooms in accordance with their identified gender, resulting in a negative reaction from the parents, who, then tried to repeal the measure.³⁴ Status of restrooms in educational facilities is especially relevant and critical since the wrong handling of this issue is one of the creators of discrimination in early ages.

II. D. 6. Work

Lack of legal protection and prejudices against LGBT+ persons encourage workplace discrimination and harassment. The majority of the LGBT+ community, particularly transgender persons, find it difficult to get hired in the first place. Many of these transgender individuals are left with only the option to do sex work in order to provide for their basic needs since they cannot get any other employment. LGBT+ persons also face challenges in forming unions and associations due to the discriminatory policies in state legislation. It is estimated that 40 percent of lesbians, gays, and bisexuals in the United Kingdom experienced harassment and discrimination at work because of their sexual orientation. The same statistics for transgender employees is significantly higher, with 97 percent. Even qualified and talented LGBT+ employees often leave their jobs since they feel unwelcomed, research shows that 10 percent of

³³ UNHRC, [A/HRC/29/23], p.15

³⁴ K.Steinmetz, “States Battle Over Bathroom Access for Transgender People”, <http://time.com/3734714/transgender-bathroom-bills-lgbt-discrimination/> , 2015, (accessed 5 October 2016)

LGBT+ employees left their jobs because of this reason. Studies across Europe have indicated that approximately 20 percent of individuals who identify as being LGBT+ experienced discrimination in job interviews.³⁵ Also, in the case of UK, 34% of lesbian, gay, bisexual and transgender people choose not to disclose their sexuality at work.³⁶ In some cases in addition to this ill treatment, they are also underpaid.

II. D. 7. Sex work

II. D. 7. a. Criminalization

Even though Amnesty International's recommendation on a policy that would decriminalize sex work created controversy among the public, the intention of this policy is to allow the sex workers, particularly the LGBT+ sex workers, to overcome the obstacles that prevent them from leaving sex work or forced them into sex work in the first place, while reducing the public stigma against sex workers. Self-determination of sex workers and the difference between sex work and human trafficking with intentions for forced sex work shall be recognized. Though, it shall also be acknowledged that many LGBT+ persons resort to sex work since they do not have access to income generating activities. Decriminalization would also allow these workers to avoid brutality and ill treatment from officials. The World Health Organization also states in one of its studies related to HIV and transgender people: "Sex work is a significant source of income for many transgender women around the world, given their exclusion from other means of income generation. In settings where sex work is illegal, transgender sex workers often bear the brunt of police brutality and, when complaints against police brutality are lodged, they are often ignored."³⁷

II. D. 7. b. Work related risks

³⁵ K. Baksh, "Workplace Discrimination: The LGBT Workforce" , http://www.huffingtonpost.com/kurina-baksh/workplace-discrimination-_b_10606030.html , 2016, (accessed 5 October 2016)

³⁶ B. Qvist, "Challenges for LGBT people in the workplace and how to overcome them" <https://www.theguardian.com/sustainable-business/lgbt-employees-discrimination-in-the-workplace-talkpoint> , 2014 , (accessed 5 October 2016)

³⁷ Z. Ford, "How LGBT People Would Benefit From The Decriminalization Of Sex Work", <https://thinkprogress.org/how-lgbt-people-would-benefit-from-the-decriminalization-of-sex-work-fbb53b44a103#psk4fduh8> , 2015, (accessed 5 October 2016)

Many LGBT+ persons that participate in sex work are at high risk of getting sexually transmitted diseases (STDs). In low- and middle-income countries, 12 percent of the sex workers carry HIV. However, the percentages differ between regions and countries. In four countries, HIV is 50 times more common than in the general population. Also, a study conducted in 16 countries in sub-Saharan Africa showed that 37 percent of sex workers suffer from HIV. In Nigeria and Ghana, HIV prevalence among sex workers is eight times higher than for the rest of the population.³⁸

LGBT+ sex workers, especially transgender persons, are also extremely vulnerable to physical abuse and are often victims of hate crimes.

II. D. 7. c. Access to health services

Many LGBT+ sex workers fear stigma and discrimination when trying to access healthcare and other social and legal services. They regularly report their difficult experiences with public health care providers. Poor interpersonal communication and even insults from health care providers together with wrong diagnoses are some of the problems they confront on a daily basis.³⁹ Such circumstances lead many sex workers to practice self-diagnosis and self-treatment, which puts them at significant risk because of the nature of their work and their vulnerability to STDs, which is the reason why cooperation with sex workers is crucial and urgent.

II. D. 8. Housing

LGBT+ individuals face discriminatory behavior by private and public landlords while in search for accommodation. They are quite frequently rejected from accommodating in the first place, and in some cases, same-sex couples are denied leases and evicted from public housing.⁴⁰ They are also negatively perceived by their neighbors and face discrimination. Many young people have to leave their homes as a result of being rejected by their family due to their sexual

³⁸ S. Farnsworth, “Why LGBT and Sex Worker Rights Go Hand-In-Hand”, http://www.huffingtonpost.com/stephanie-farnsworth/why-lgbt-and-sex-worker-rights-go-hand-in-hand_b_9367888.html , 2016, (accessed on 5 October 2016)

³⁹ UNAIDS, “Sex workers advocate for access to health care and legal services”, <http://www.unaids.org/en/resources/presscentre/featurestories/2012/march/20120312sexwork> , 2012, (accessed on 5 October 2016)

⁴⁰ UNHRC, [A/HRC/29/23], p.16

orientation or gender identity. Many of these young people end up homeless. A recent survey in the United States showed that 40 percent of the homeless youth identifies as LGBT+, family rejection being the main cause for their state.⁴¹ LGBT+ persons are frequently rejected from homeless shelters as well, especially religious and non-state funded ones. One shelter in Kansas City, Missouri even released a public statement saying that they will not be serving same-sex couples and inhabitants have to dress according to their gender assigned at birth.⁴² LGBT+ persons endure discrimination in school dormitories as well. Some universities offer LGBT+ housing, like the University of Birmingham. Some view these developments as positive, but some argue that further awareness should be created, instead of separating the LGBT+ persons from other students.⁴³

II. D. 9. Marriage and other types of legally recognized unions

Currently, same-sex marriage is allowed in 21 countries whereas homosexuality is criminalized in 76. In some countries other legally recognized forms of unions exist such as civil union, domestic partnership, civil partnership, and registered partnership. Sometimes these statuses are offered to both opposite-sex and same-sex couples as an alternative to marriage; whereas in some countries, they are only provided to same-sex couples, instead of marriage. With these other forms of legal unions, couples can benefit from marriage-like rights, but those rights are not as comprehensive. Marriage and civil unions differ according to the laws of the country but some of the most common benefits that are exclusive to marriage include: hospital visitation during an illness, the option of filing a joint tax return to reduce a tax burden, access to family health coverage, provision of residency and family unification for partners from another country, and bereavement leave and inheritance rights if a partner dies. Married couples also have access to protections if the relationship ends, such as child custody, spousal or child support, and an equitable division of property.⁴⁴

⁴¹ UNHRC, [A/HRC/29/23], p.16

⁴² S. Bixby, “This Homeless Shelter's Disturbing Policy Reveals the Problem With Faith-Based Charities”, <https://mic.com/articles/104530/this-homeless-shelter-s-disturbing-policy-shows-the-problem-with-faith-based-charities#.xKPFupnE7> , 2014 ((accessed 5 October 2016)

⁴³ S. Griffiths and J. Henry , “Gay students call for separate flats at universities”, <http://www.thetimes.co.uk/article/032a55c6-1a05-11e6-915f-1df2fa9ee02f> , 2016, (accessed 5 October 2016)

⁴⁴ “Should Gay Marriage Be Legal?” <http://gaymarriage.procon.org/> , (accessed on 7 October 2016)

In addition to that, the legal bans against same-sex marriages encourage the negative stigma towards these couples, further discriminating and alienating them from the general public.

II. D. 10. Same-sex couples, their children and adoption

In 25 countries same-sex couples are allowed to have joint adoption and custody of children. It is also legal in all 50 states in the USA. As of this last decade, an estimated 6 to 14 million children have a gay or lesbian parent. Also, between 8 and 10 million children are being raised in gay and lesbian households.⁴⁵ However, this does not mean that same-sex couples do not face challenges while adopting. Social workers may have reservations on whether a same-sex couple will be able to raise a child properly. Some even call it a child's "natural right" to be raised by heterosexual parents. There is currently no research that proves that being raised in an LGBT+ household has any negative effect on a child's mental health and their school performances are not known to be affected.⁴⁶

Same-sex couples and transgender persons sometimes seek child adoption through surrogacy. They encounter some legal issues with this method since they have to sign a "surrogacy agreement" with the surrogate mother. This agreement exists to establish the legal basis for the adoption and custody of the baby after its birth and protect the parties' rights. When same-sex couples and transgender persons go through the aforementioned procedure, they might find it hard to find a surrogate mother who will agree to have the child raised in their household.⁴⁷

II. D. 11. Legal recognition of transgender individuals

Transgender persons are still not eligible to obtain the legal recognition of their identified gender in many countries. In some of these countries, however, they have to face inhumane precondition to obtain this legal status.

II. D. 11. a. Sterilization

⁴⁵ "Adoption and Same-Sex Couples: Basics", <http://family.findlaw.com/adoption/adoption-and-same-sex-couples-basics.html> , 2016, (accessed on 7 October 2016)

⁴⁶ "Adoption and Same-Sex Couples: Basics", <http://family.findlaw.com/adoption/adoption-and-same-sex-couples-basics.html> , 2016, (accessed on 7 October 2016)

⁴⁷ "Surrogacy Laws and Legal Considerations", <http://www.hrc.org/resources/surrogacy-laws-and-legal-considerations> , 2016, (accessed on 7 October 2016)

Forced sterilization has been around for decades as a measure to strictly control the growth of the population and other extreme practices. Many countries require transgender persons to prove their sterilization, in order for them to obtain legal recognition. Sometimes countries request “sex reassignment surgery” instead of “proof of sterilization”. In some cases “sex reassignment surgery” also compromises their ability to reproduce.⁴⁸ The practice of sterilization is outdated but remains widespread. The aforementioned procedures are irrelevant to one’s gender identity and are inhumane practices.

II. D. 11. b. Forced medical treatment

Transgender persons who wish to obtain the legal status of their preferred gender are also required to undergo coercive psychiatric treatments and hormone therapies. For instance, transgender persons in Ukraine who wish to be legally recognized must be subjected to a mandatory in-patient psychiatric evaluation lasting up to 45 days to confirm or reject a diagnosis of “transsexualism”; coerced sterilization; numerous medical tests and a humiliating in-person evaluation by a government commission to further confirm the diagnosis of “transsexualism” and authorize the change in legal documents.⁴⁹ These procedures are extremely degrading and dehumanizing to transgender persons.

II. D. 11. c. Divorce

In some countries, transgender persons are required to divorce from their partners in order to complete their legal transition. For example an Australian couple, Janet and Penny, who have been married for 30 years. Penny lived as Peter for the first 12 years of their marriage. Since same-sex marriages are not legal in Australia Penny would have to divorce her wife in order to change her gender on her birth certificate. Multiple couples are victims of such laws.⁵⁰

⁴⁸ S.Vale, “Forced and Coerced Sterilization: The Nightmare of Transgender and Intersex Individuals”, 2016, (accessed on 7 October 2016)

⁴⁹ N. Ghoshal and K. Knight, “Rights in Transition”, <https://www.hrw.org/world-report/2016/rights-in-transition>, 2011, (accessed on 7 October 2016)

⁵⁰ E.Crane, “Couple who have been married for four decades may be forced to divorce because Australia's marriage laws won't recognise that husband is transgender”, <http://www.dailymail.co.uk/news/article-3508964/Couple-married-four-decades-forced-divorce-Australia-s-marriage-laws-won-t-recognise-husband-transgender.html>, 2016, (accessed on 7 October 2016)

Legislations about the divorce of same-sex couples are complicated in countries or states where same-sex marriage is not legal in the first place. Same-sex couples cannot file for divorce where same-sex marriages are not legal with the exception of 2 places; Israel and Aruba (only for citizens of Netherlands),⁵¹ which makes it difficult for couples that were able to get married in one place and moved to another one where their marriage is not recognized. Furthermore, even though a state provides the legal basis for a divorce, some of them require a level of residency by at least one of the partners.⁵²

II. D. 12. Privacy

A government's refusal to recognize people in the gender with which they identify can amount to a violation of the right to privacy.⁵³ These breaches to the right to privacy are still common, especially in the form of laws that prevent transgender persons from using public facilities that align with their identified gender. Such bills are commonly referred as "bathroom bills". North Carolina was the first state to pass such bill, and it has since influenced other states as well. Tennessee was one of them and in addition to a "bathroom bill", it also introduced a bill that enables mental health professionals to refuse to treat LGBT+ individuals.⁵⁴ Several states in the USA have introduced laws that legitimize discriminatory behavior towards LGBT+ persons under the name of religious freedom. One such case was in Mississippi when a bill passed allowed business to refuse to serve same-sex couples if they oppose them based on religious grounds.⁵⁵ While these bills have caused controversy, they still had the support of the masses.

II. D. 13. Asylum

As stated above, in 76 countries homosexuality is illegal, and in some, it might even be punished by death. These have caused an increase of LGBT+ asylum seekers who feel unsafe in

⁵¹ FindLaw, "Same-Sex Divorce: What You Need to Know", <http://family.findlaw.com/marriage/same-sex-divorce-what-you-need-to-know.html> , n.d. , (accessed on 30 January 2017)

⁵² Ibid

⁵³ N. Ghoshal and K. Knight , "Rights in Transition", <https://www.hrw.org/world-report/2016/rights-in-transition> , 2011, (accessed on 7 October 2016)

⁵⁴ J. Bendery and M. Signorile, "Everything You Need To Know About The Wave Of 100+ Anti-LGBT Bills Pending In States", http://www.huffingtonpost.com/entry/lgbt-state-bills-discrimination_us_570ff4f2e4b0060ccda2a7a9 , 2016, (accessed 29 January 2017)

⁵⁵ R. Crilly, "What's behind the wave of anti-LGBT laws sweeping across the USA?", <http://www.telegraph.co.uk/news/2016/04/06/whats-behind-the-wave-of-anti-lgbt-laws-sweeping-across-the-usa/> , 2016, (accessed on 29 January 2017)

their country of origin. LGBT+ Asylum seekers originate from multiple places, the majority of them coming from Africa (in which only South Africa has legalized same-sex marriage and homosexuality is outlawed in 34 states) and the Middle East. Seeking sanctuary and asylum has enabled LGBT+ persons to fulfill their basic human rights, the most crucial one being the right to live. However, asylum seeking is not an easy process for the LGBT+ people. In the past, they were sometimes not even offered that status based on the argument that they could have just hide their sexuality and be discreet.⁵⁶ Even now they are often denied an “asylum-seeker” status because the officials are not convinced by their sexuality.⁵⁷ More recently a man from Ghana and one from Uganda were refused as asylum-seekers based on the aforementioned reasons.⁵⁸ Similarly, a Ugandan woman’s application, who was a victim of “corrective rape”, was refused because she hadn’t had a partner for five years during her stay in the UK.⁵⁹ Asylum-seekers also face challenges while they are being held detained. The time they spend in detention varies from 3 days to 18 months.⁶⁰ Some asylum seekers also have to endure bullying and abuse from both the staff and other detainees in these detention centers. Furthermore, their access to legal and health services is limited.⁶¹

II. D. 14. Violence and discrimination against LGBT+ children

II. D. 14. a. Harassment

Children who identify as LGBT+ are extremely vulnerable to both physical and psychological abuse by their peers and personnel in schools. This affects their school performance badly and can cause long-lasting effects on their mental health. The prejudice against these children prevents them from coming to terms with their identity, and the

⁵⁶ D. Singer, “How do you prove you are gay? A culture of disbelief is traumatising asylum seekers” , <https://www.theguardian.com/commentisfree/2015/nov/24/gay-asylum-seekers-sexuality-home-office> , 2015, (accessed 30 January 2017)

⁵⁷ D. Singer, “How do you prove you are gay? A culture of disbelief is traumatising asylum seekers” , <https://www.theguardian.com/commentisfree/2015/nov/24/gay-asylum-seekers-sexuality-home-office> , 2015, (accessed 30 January 2017)

⁵⁸ T. Batchelor, ““Guilty until proven innocent”: the trial of LGBT asylum seekers detained in the UK” , <http://www.newstatesman.com/world/2015/03/guilty-until-proven-innocent-trial-lgbt-asylum-seekers-detained-uk> , 2015, (accessed on 30 January 2017)

⁵⁹ Ibid

⁶⁰ Chaka L. Bachmann, “No Safe Refuge- Experiences of LGBT asylum seekers in detention”, n.d., p.7

⁶¹ Ibid

harassment can cause them to feeling isolated and depressed. In some incidents, children don't receive help, and the harassment is not prevented by their teachers and schools officials. There have been cases which these aforementioned reasons lead to suicide.⁶²

II. D. 14. b. Bullying

The statistics on bullying cannot be disregarded. Several surveys conducted by Gay, Lesbian & Straight Education Network (GLSEN) showed that: 82% of LGBT youth had problems during the previous year with bullying about sexual orientation, 64% felt unsafe at school due to sexual orientation, 44% felt unsafe at school due to gender identification, 32% did not go to school for at least one day because of feeling unsafe, 44% experienced physical harassment, 22% experienced stronger violence, 61% never reported the attacks. Of those that did report the attacks, 31% per cent said the school made no effort to respond. Also, 42% of them have been subject to cyberbullying.⁶³

One of the major factors contributing to bullying is the lack of a comprehensive sex education. Children shall be taught the differences between sexual orientation and gender identification on a much broader scale. These can help break social prejudices and stereotypes.

II. D. 14. c. Lack of access to health information and services

LGBT+ children, at most times, cannot benefit from traditional sex education (which mostly caters to opposite-sex couples) and fail to receive the information specific to their needs. They also often need psychological supervision due to the difficulties they face because of their gender identity or sexual orientation. Some health disparities of LGBT+ individuals are linked to the social stigma and discrimination they face, which results in high rates of psychiatric disorders, substance abuse, and suicide. In fact, LGBT youth are 2 to 3 times more likely to attempt suicide.⁶⁴ The LGBT+ community is also more prone to STDs, particularly homosexual men, due to not having access to adequate health information and services.⁶⁵ More health

⁶² UNHRC, [A/HRC/29/23], p.15

⁶³ "LGBT Bullying Statistics", <https://nobullying.com/lgbt-bullying-statistics/> , 2016, (accessed on 8 October 2016)

⁶⁴ "Lesbian, Gay, Bisexual, and Transgender Health" , <https://www.healthypeople.gov/2020/topics-objectives/topic/lesbian-gay-bisexual-and-transgender-health> , 2016, (accessed on 8 October 2016)

⁶⁵ Ibid

professionals shall be educated about the special needs of LGBT+ individuals in order to address these health disparities properly.⁶⁶

II. D. 14. d. Coercive medical treatment

Children that are born in unaccepting environments are often subject to unethical psychological therapies that are believed to be able to “cure” their homosexuality, despite the fact that it is not listed as a mental disorder. Particularly intersex children have to go through procedures and therapies that they are not able to consent to because of their age, even though intersex characteristics have no negative effects on the children’s health. Performing procedures to modify a minor’s sex characteristics in order to make them socially or religiously more acceptable is still common practice. Even to this day, many doctors conduct these surgeries which have side effects that include painful scarring, reduced sexual sensitivity, torn genital tissue, removal of natural hormones, and possible sterilization, as well as the risk of assigning children a gender they don’t feel comfortable with.⁶⁷ In fact, some of these children that were subject to intersex medical intervention have to endure gender dysphoria.

III. Reasons leading to the problem

III. A. Homophobia and hate

Persons who identify themselves as LGBT+ have always been subject to negative attitudes and prejudices. The wide range of discriminatory behavior against them can be classified as homophobia: “irrational fear of, aversion to, or discrimination against homosexuality or homosexuals.”⁶⁸ The notion of homophobia is particularly misleading when it is used to justify psychical abuse and hate crimes against LGBT+ persons. FBI defines hate crime as: “a traditional offense like murder, arson, or vandalism with an added element of bias, a criminal offense against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.”⁶⁹ The LGBT+

⁶⁶ Ibid

⁶⁷ C. Greenfield, “Should We ‘Fix’ Intersex Children?”, <http://www.theatlantic.com/health/archive/2014/07/should-we-fix-intersex-children/373536/> , 2014, (accessed on 8 October 2016)

⁶⁸ Merriam-Webster, ‘Homophobia’, <http://www.merriam-webster.com/dictionary/homophobia> , (accessed on 17 October 2016)

⁶⁹ Federal Bureau of Investigation, ‘Hate crimes’, <https://www.fbi.gov/investigate/civil-rights/hate-crimes> , (accessed on 17 October 2016)

community is one of the most vulnerable groups to be subject to hate crimes. The hate crimes against them have been on the rise since some of the homophobic behavior is being encouraged by either the state or religious groups. According to FBI's hate crimes statistics of 2014, out of the 6,418 single bias incidents, 18.6 percent were motivated by a sexual-orientation bias.⁷⁰ This bias against LGBT+ persons shall not be used as a justification for the judicial system, and the perpetrator shall be held fully liable, while the bias shall be considered an aggravating circumstance. In his annual report, the Commissioner for Human Rights of the Council of Europe noted that hate crimes against lesbian, gay, bisexual, transgender and intersex (LGBTI) people shall not be tolerated, and recommended that bias motive be taken into account as an aggravating circumstance in these crimes.⁷¹ The notion of considering homophobia as an aggravating circumstance when prosecuting these hate crimes have been put into practice. For instance, in 10 European Union Member States (Belgium, Denmark, Spain, France, Netherlands, Portugal, Romania, Finland, Sweden, and UK), homophobia and transphobia is considered as aggravating factors. Furthermore, in six European Union Member States (Czech Republic, Germany, Latvia, Malta, Austria, and Slovakia), the general notion of hate crime is recognized in law, therefore making it possible for homophobia and transphobia to be considered as an aggravating circumstance.⁷²

III. B. State discrimination

III. B. 1. Discriminatory laws

According to the Report of the United Nations High Commissioner for Human Rights, A/HRC/19/41, seventy-six states still keep laws that are either directly discriminatory against LGBTI+ individuals or are used to discriminate against them in practice. Such discriminatory laws are in breach of international human rights law since even the existence of such laws, independent from whether they are enforced or not, are in violation of the right to non-discrimination and privacy. These so-called "sodomy laws" are prohibiting sexual activity or intimacy between certain individuals and expression of certain gender identities. Many of the

⁷⁰ https://www.fbi.gov/news/stories/latest-hate-crime-statistics-available_2015, (accessed on 17 October 2016)

⁷¹ "Bias against LGBT people ", <http://hatecrime.osce.org/what-hate-crime/bias-against-lgbt-people> , (accessed on 19 October 2016)

⁷² European Union Agency for Fundamental Rights, "Hate Speech and Hate Crimes against LGBT Persons", 2009, p.2

states retaining these laws try to justify the nature of them by terms not properly defined and vague such as “morality” and “debauchery”⁷³ (The number of states has dropped to 72 as of August 2016). According to the Interim report of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions; Criminalization of matters of sexual orientation and gender identity makes the related individuals more vulnerable to persecution by vigilante groups, violence, murder, threats, and police abuse including the spoliation of evidence.⁷⁴ Such criminalization also obstructs the work of human rights defenders working to protect the rights of LGBTI+ individuals, making them prone to receive threats and be subjected to violence, as well as making their proceedings practically impossible.

A matter of grave concern is the applicable death penalties against individuals based on their sexual orientation and gender identity, which is in violation of article 6 of the International Covenant on Civil and Political Rights.⁷⁵ In at least five countries, all of which are Islamic states, non-heterosexual relations are punishable by death. Though, not all of these states practically enforce the penalty. Several other states are also known to practice death penalty based on sexual orientation and gender identity even though it is not in their legal code, justifying the action with Sharia.

Many states also oppress the discussion of matters regarding sexual orientation and gender identity under the excuse of anti-propaganda laws. Such laws often use the vaguely worded arguments of protecting the minors, traditional values, family structure of the country, and the public morals; in order to restrict the rights of expression and assembly.

III. B. 2. Discriminatory state practices

In many occasions, publications of LGBT+ individuals and advocacy groups have been oppressed and seized, media coverages have been censored, Pride Marches have been denied protection or permits, the offices of advocacy groups have been seized and had their private

⁷³ Office of the United Nations High Commissioner for Human Rights, 'A/HRC/19/41. Discriminatory Laws And Practices And Acts Of Violence Against Individuals Based On Their Sexual Orientation And Gender Identity' (2011) <http://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf>.

⁷⁴ UN Special Rapporteur on extrajudicial, summary or arbitrary executions, 'A/57/138. Extrajudicial, Summary Or Arbitrary Executions' (2011) <[https://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/461/95/PDF/N0246195.pdf](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/461/95/PDF/N0246195.pdf?OpenElement)>.

⁷⁵ UN General Assembly, 'International Covenant On Civil And Political Rights' (1966).

property confiscated, peaceful assemblies have been attacked by state or non-state actors, public acts of affection or expression have been subject to intervention and harassment, cross-dressing have been restricted and punished, and non-governmental organizations have been banned from receiving funding.⁷⁶

Such practices are not only discriminatory and in violation of rights to privacy, expression, and assembly; but also put the subjects of these practices at the risk of violence, further discrimination from the public, and persecution by vigilante groups such as the religious extremists, paramilitary groups, and extreme nationalists. These practices are also in violation of rights to information of the related individuals and the general public.

III. C. State negligence

Gathering information and requesting legal action to be taken against crimes committed against LGBT+ individuals are difficult since most of the states do not properly monitor, document, and report the cases. Perpetrators of crimes committed with bias due to the victims' sexual orientation and gender identity, most of the time do not receive the right punishment or are not brought to justice at all. It is a great vulnerability that state officials do not act with due diligence in these cases since a state's indifference or inaction perverts the course of justice, considered a de facto permission, and encourages further crimes. The contributory negligence of states often takes the form of ineffective police action, failure to register cases, loss of documents, inappropriate classification of acts, and investigations guided by stereotypes and prejudices.

⁷⁶ See, for example, the concluding observations of the Human Rights Committee on the Russian Federation (CCPR/C/RUS/CO/6), para. 27, and Japan (CCPR/C/JPN/CO/5), para. 29; the concluding observations of the Committee on the Elimination of Discrimination against Women on Uganda (CEDAW/C/UGA/CO/7), paras. 43-44, and the Russian Federation (CEDAW/C/USR/CO/7), paras. 40-41; and Human Rights Committee general comment No. 34 (CCPR/C/GC/34), para. 12. See also A/HRC/4/25, para. 21; E/CN.4/2005/43, para. 63, E/CN.4/2006/118, para. 30, A/HRC/4/18/Add.2, para. 125, A/HRC/7/16, para. 39, A/HRC/10/7/Add.3, para. 50; E/CN.4/2003/58, para. 68, E/CN.4/2004/49, para. 38; and E/CN.4/2005/72/Add.1, paras. 232-234. See also A/HRC/25/74, RUS 3/2013.

III. C. 1. Ineffective police action

Lack of police patrol, especially around the premises of venues with known LGBT+ association puts the related individuals at risk of attacks especially at night or in regions with known public homophobic attributes. The most visible examples of these cases are the attacks targeting gay bars and clubs, LGBT+ advocacy groups' offices, news outlets publishing about LGBT+, LGBT+ events and fundraisers, protests in support of the LGBT+ community and rights, and Pride Marches.

III. C. 2. Failure to register cases

Homophobic crimes are often not registered by the police and other related state officials, especially in offenses committed against transgender sex workers because of the prevailing perception that such offense is inclusive to the work's nature. Also, properly registering the perpetrators is sometimes omitted by officials when the offense is perpetrated by a crowd, such as attacks on LGBT+ protests and marches. In addition to these, some of the cases go unregistered because of the unwillingness or hesitation of biased officers.

III. C. 3. Loss of documents

Not reporting or the loss of documents can also take place in case of a biased state official. It is a practice used to give a de facto permission for homophobic crimes or hide the facts and actual statistics from the international society.

III. C. 4. Inappropriate classification of acts

The fact that offenses perpetrated with a bias against an individual's sexual orientation and gender identity are hate crimes is most of the time neglected when classifying offenses, which results in a lighter punishment for the perpetrator. Inappropriate classification of acts also makes the collection of information and statistics about the conditions of LGBT+ people harder, hindering the progress on tackling homophobic crimes.

III. C. 5. Investigations guided by stereotypes and prejudices

During investigations related to crimes against individuals based on their sexual orientation and gender identity, it is often seen that the officials act with guided stereotypes and prejudices, which includes the perception that the victim being an LGBT+ individual is aggravating towards

the perpetrator and may have offended their feelings or traditional values. Such assumptions are loaded with heteronormativity and creates bias. Transgender sex workers are especially prone to become the target of such prejudices when the crime includes sexual offenses.

III. D. Discrimination from the public

III. D. 1. Legitimizing traditional value systems incompatible with international human rights

Traditional and cultural values are quite often used as a justification for discrimination against LGBT+ people. Same-sex couples and transgender persons sometimes face discrimination because their sexual orientations or gender identity is considered against “the human nature”. Even in legislative systems, these values are used as an undercover for legitimized discrimination. A resolution passed by UNHRC in September 2012, a resolution spearheaded by Russia, calls for “promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind.” It states that traditions and values cannot be invoked to contravene rights, while also calling for a survey of “best practices”—all in the name of “promoting and protecting human rights and upholding human dignity.”⁷⁷ Terms like human dignity and cultural values are vague since there are no universal standards which are upheld. Ban Ki Moon also consolidates this situation LGBT+ is under: “In all regions of the world, LGBT people suffer discrimination—at work, at home, at school, in all aspects of daily life.... No custom or tradition, no cultural values or religious beliefs, can justify depriving a human being of his or her rights.” .

III. D. 2. Religious agendas

Religious beliefs are used for justifying public discrimination regardless whether it is legal in the state or not. In some cases, LGBT+ persons are refused to be given service, including medical care, based on religion. For instance, restaurants refuse to serve LGBT+ persons; institutions such as wedding planning firms, photographers, catering agencies, etc. refuse to work for same-sex marriage weddings; and religiously affiliated schools expel or refuse to accept

⁷⁷ G. Reid, “The Trouble with Tradition” , <https://www.hrw.org/world-report/2013/country-chapters/africa> , 2013, (accessed on 19 October 2016)

LGBT+ persons.⁷⁸ Handling these cases is particularly difficult because the laws protecting freedom of speech and protecting religious rights (ones that aim to prevent religion based discrimination and provide freedom to practice their faith) are abused.

III. D. 3. Extreme nationalism

Some of the discrimination against LGBT+ persons are state-endorsed, hence creating a more nationalistic bias towards these individuals. For instance, in a country like South Korea that is mainly conservative, the ethnicity of the citizens is mostly homogenous (foreigners only make up 3,4 % of the population), and xenophobia is common: homosexuality is only considered as a foreign phenomenon.⁷⁹ In fact, some even consider homosexuality as a disease that only foreigners carry and transmit to Koreans.⁸⁰

IV. Applicable international standards and obligations

IV. A. Legislative measures

Regarding the good practices paving the way for the acquisition of total and sustainable results, maybe the greatest share of responsibility and influence falls onto the will of state parties, which is due to the legislative nature of their decisions and the influence they have on the individuals. Taking the right legislative measures is critical since providing a correct legal basis for the application of good practices is a foundation which the rest of the measures can be built upon. Such legislative measures include: legal recognition of non-cisgender individuals; a comprehensive anti-discrimination legislation; facilitation of appropriate legal action against offenses committed with a bias due to the victim's sexual orientation and gender identity; repealing the laws that are used to criminalize individuals based on their sexual orientation and gender identity; recognition of sex work; facilitation of freedom of expression, association, and

⁷⁸ American Civil Liberties Union, “End the Use of Religion to Discriminate”, <https://www.aclu.org/feature/end-use-religion-discriminate> , (accessed on 19 October 2016)

⁷⁹ K. Novak, (Nations, 1948)“The problem with being gay in South Korea”, <http://edition.cnn.com/2015/10/18/asia/south-korea-being-gay/> , 2015, (accessed on 19 October 2016)

⁸⁰ J. Lee, “Korean Etiquette, Behavior, and Habits: What are South Korea's views regarding homosexuality?”, <https://www.quora.com/Korean-Etiquette-Behavior-and-Habits-What-are-South-Koreas-views-regarding-homosexuality> , 2013, (accessed on 19 October 2016)

peaceful assembly; and providing asylum for individuals that seek relief from persecution due to their sexual orientation and gender identity.

IV. A. 1. Legal recognition

Legal recognition of non-cisgender individuals is the initial step forward in the struggle for LGBT+ rights. Recognizing LGBT+ individuals is expected from any civil society, and OHCHR welcomes the governments' actions in this direction. Legal recognition from state parties enhances the public opinion towards a more tolerant society respecting diversity, which is a fundamental part of the solution.

In this context, Member States shall facilitate the reissuing of relevant identity documents of transgender individuals in order to reflect their preferred gender and name. It is of utmost importance that the procedures required in such reissuing of identity documents not be in violation of other human rights of the related individual. Requirements such as medical examination, psychological treatment, gender reassignment surgery, divorce, excessive paperwork, etc. are obsolete and derogatory, and shall be avoided.

IV. A. 2. Anti-discrimination legislation

Protecting individuals from discrimination of any kind; the subject of bias be gender, race, social class, ethnicity, nationality, sexual orientation, religion or age; requires an attitude that does not compromise. Therefore, condoning any act of discrimination based on sexual orientation or gender identity endangers the whole foundations of the Universal Declaration of Human Rights, which affirms that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁸¹

As can be seen at explanations of vote on resolution 17/19 by Human Rights Council, it was evident that several States have a conservative understanding of the universality of human rights, according to which it is not self-evident that universality of human rights means that human rights also apply to all regardless of sexual orientation or gender identity. According to

⁸¹ UN General Assembly, 'Universal Declaration Of Human Rights' (1948).

Pakistan (speaking on behalf of the OIC) the resolution attempts to establish new rights by misinterpreting the Universal Declaration of Human Rights, and in doing so jeopardizes the entire international human rights framework. Echoing the point, Nigeria, claiming to speak on behalf of the African Group (despite the fact that the resolution was led by South Africa), stated that the resolution falls outside of international human rights principles.⁸²

The Office of the United Nations High Commissioner for Human Rights stands firm that universal human rights apply to all also regardless of sexual orientation and gender identity which is self-evident by the universality of the universal human rights. The aforementioned resolution does not attempt to establish new rights since LGBT+ rights are protected by Universal Declaration of Human Rights and subsequently agreed on international treaties. Therefore states are legally obliged to safeguard the human rights of LGBT+ individuals.

Member States shall enact a comprehensive anti-discrimination legislation and impose its operation. Such legislation shall clearly forbid discrimination based on sexual orientation and gender identity.

IV. A. 3. Facilitation of prohibition, investigation, and prosecution of violence and discrimination

Persistent impunity for discrimination and violence against individuals based on their sexual orientation and gender identity is certainly a matter of grave concern.

Member States shall, without delay, investigate all reported violence against individuals committed with a bias based on their actual or perceived sexual orientation and gender identity. Such investigation is a requirement regardless of the place of offense, whether public or private; or the offender, whether a State or non-State actor.

Member States shall also facilitate the proper reporting and documentation of such offenses. The practices composing such facilitation are effective police action against perpetrators, registration of cases, preventing the loss of documents, appropriate classification of acts, and preventing prejudices and stereotypes from guiding the investigations.

⁸² 'Human Rights Council Advisory Committee Discusses Mandated Study On Traditional Values' (International Service for Human Rights, 2011) <<http://www.ishr.ch/news/human-rights-council-advisory-committee-discusses-mandated-study-traditional-values>> accessed 21 March 2017.

It is seen in many cases that the perpetrators are given minor punishments or in some cases no punishment at all. It is of utmost importance that the perpetrators are prosecuted and punished. Also, proper legal grounds shall be facilitated for the consideration of offenses committed with bias based on the victim's actual or perceived sexual orientation or gender identity as hate crimes.

IV. A. 4. Repealing laws used to criminalize individuals based on their sexual orientation and gender identity

The laws, which were accounted for in *Chapter V. B. 1. Discriminatory Laws*, criminalizing individuals based on their sexual orientation and gender identity shall be repealed. Some laws that do not clearly subject LGBT+ individuals are also being used to criminalize non-cisgender individuals and relations due to the vague terms existing in such laws, such as “traditional values”, “family structure”, “obscenity”, “nontraditional sexual relations”, “protection of minors”, “corrupting youth” etc. Such laws shall also be repealed.

Giving legitimacy to value systems that are not compatible with norms of international human rights shall be avoided since traditions, cultural values, and religious beliefs come only secondary to human rights.

Repealing such discriminatory laws decreases the violence against LGBT+ individuals and LGBT+ suicide rates. The repealing of such laws also leads to the public opinion towards LGBT+ individuals to become more inclusive.

IV. A. 5. Status of sex work

The status of sex work, as accounted for in *Chapter IV. D. 7. Sex work*, is relevant to the protection of LGBT+ rights.

The key to handling the status of sex work is to understand that sex work, and human trafficking with the goal of forced sex work are different concepts, and recognition and respect towards sex work are necessary. Misunderstanding these concepts and assuming all sex work is being done under coercion underestimates the self-determination of sex workers and leads to problematic consequences since it deprives sex workers of receiving the social protections they require and makes it harder to punish and prevent human trafficking.

Member States shall decriminalize sex work and associated activities. Decriminalization reduces the public stigma against sex workers and sex work. Decriminalization also makes regulation possible and prevents the industry from going underground which makes the conditions of the sex workers better. Regulations not only make trafficking and coercion harder but also allows sex workers to negotiate on their own terms with other parties involved. Decriminalization also helps the fight against HIV/AIDS and other sexually transmitted disease and allows sex workers' access to the health care services. Ill-treatment of sex workers, police brutality, and victimization from hate crimes are also prevented with the decriminalization of sex work.

In addition to decriminalization, sex work shall also be legalized, and sex workers shall be given all the social benefits that other professions are given. Such social benefits include access to health care system, protection from exploitation, and voluntary ceasing involving in sex work.

It is critical that sex workers are given the required conditions in order to be able to cease to work in the industry if they choose to do so. States shall provide such conditions that allow sex workers to start working in other professions without being subject to public stigmatization, prejudice, or discrimination while also being protected from any risks related to ceasing to work in the sex industry such as intimidation, extortion, harassment, and the violation of the right to travel.

Preventing exploitation and allowing access to aforementioned social benefits requires agencies and unions of sex workers to be recognized. Therefore, states shall recognize such agencies and unions, while also aiding and respecting their work.

IV. A. 6. Facilitation of freedom of expression, association, and peaceful assembly

States shall prepare the required social and legal framework in the facilitation of freedom of expression, association, and peaceful assembly. This includes the freedoms such as the LGBT+ individuals' right to being open and public about their sexual orientation and gender identity, express themselves with the way they dress, hold public or private meetings, pride walks, fundraisers, work in news outlets, the news outlets' right to publish and distribute media

on the subject of LGBT+ individuals and LGBT+ in general, founding institutions, publicly communicating themselves, etc.

IV. A. 7. Asylum

States shall recognize that actual or perceived sexual orientation and gender identity and association with LGBT+ community may be just reason to seek asylum in another state in order to escape discrimination and violence and the potential of thereof. In many states being an LGBT+ individual or being related to or conceived to be related to the LGBT+ community leads into victimization. States shall acknowledge applications of asylum with such arguments as legitimate and handle the application process appropriate to the asylum seekers demands. States shall also acknowledge that the needs of an asylum seeker with an argument relating to their actual or perceived sexual orientation and gender identity may need additional protections. States shall not violate the human rights, especially the right to privacy, during asylum application processes and the following time frame.

IV. B. Responsibilities of regional and international groups and organizations

IV. B. 1. Role of United Nations

United Nations have been active in combatting discrimination and violence against individuals based on their sexual orientation and gender identity with its multiple organs. On 29 September 2015, twelve United Nations bodies (ILO, OHCHR, UNAIDS Secretariat, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN Women, WFP, and WHO) released a joint statement that called for the end violence and discrimination against the LGBT+ community.⁸³ The statement called upon the States and stakeholders to implement more measures to protect the LGBT+ persons from violence, torture, and ill-treatment. Furthermore, the statement called upon the States to repeal their discriminatory and protect individuals from discrimination.⁸⁴

As can be seen in the programmatic overview prepared by Office of the United Nations High Commissioner for Human Rights (OHCHR): The Human Right Council (HRC) resolutions

⁸³ OHCHR, “The Role of the United Nations in Combatting Discrimination and Violence against Individuals Based on Sexual Orientation and Gender Identity” , 2015, p.1

⁸⁴ Ibid.

17/19 (2012) and 27/32 (2015) requested the first two official UN reports on violence and discrimination based on sexual orientation and gender identity (A/HRC/19/41 and A/HRC/29/23). These reports were presented by OHCHR. OHCHR also organized the first UN meeting on the human rights of intersex people in September 2015, in order to address the human rights violations intersex people endure. OHCHR also supports informal inter-governmental processes and helps the gathering of regional meetings that address discrimination and violence based on sexual orientation and gender identity (such as “Oslo Conference on Human Rights, Sexual Orientation and Gender Identity in 2013). OHCHR also publishes guidance and training materials such as but not limited to reports, research papers and trainers’ manuals that address this issue. OHCHR has taken an active role in the UN Free & Equal Campaign (a global public awareness campaign that was launched by the High Commissioner in 2013) as well. The campaign is aiming to raise awareness about the violation of the rights of LGBT+ persons. It utilizes social media and cooperates with multiple celebrities in order to spread its message.⁸⁵

The aforementioned programmatic overview continues as: United Nations Development Programme (UNDP) is a UN entity that is in close cooperation with OHCHR with its work in LGBT+ rights. UNDP has been trying to ensure the right of LGBT+ persons by addressing it in its Sustainable Development agendas. UNDP also provides policy advice to governments and regional organizations in order to decrease inequality. United Nations Populations Fund (UNFPA) has been working in countries where LGBT+ people do not have access to adequate reproductive and sexual health information and services due to institutional and cultural barriers. UNFPA also aims to reduce the stigma against sex-workers and tries to stop the spread of STDs like HIV in cooperation with UNAIDS. Another UN body dealing with LGBT+ rights is United Nations High Commissioner for Refugees (UNHCR), with an emphasis on LGBT+ individuals seeking refugee or asylum seeker status. UNHCR published “Guidelines on International Protection No. 9” in 2012 in order to provide a legal interpretative guidance to governments and other decision-making authorities regarding people seeking refugee status due to a well-founded fear of persecution on the basis of sexual orientation and gender identity. It also published guidelines for staff dealing with LGBT+ refugees or IDPs (Internally Displaced Persons) in order

⁸⁵ Ibid.

to prevent discrimination and violence.⁸⁶ Violation of right of LGBT+ Youth and Children is addressed by United Nations Children’s Fund (UNICEF). UNICEF works with governments in order to ensure a safe environment for LGBT+ youth and children, and enables them to reach their full potential without facing discrimination.⁸⁷ United Nations Educational, Scientific and Cultural Organization (UNESCO) has also been dealing with this issue with an emphasis on the prevention of homophobic and transphobic violence and bullying in education institutions.⁸⁸

Human Right Council’s Advisory Committee has been a crucial component for HRC in dealing with LGBT+ community. Advisory Committee cannot adopt resolutions, however; it provides the council with expertise, studies and research-based advice on the subject matter.⁸⁹ The Complaint Procedure has also been aiding HRC in its work by enabling individuals, groups, or non-governmental organizations to submit confidential complaints that help HRC address consistent patterns of violations of human rights and violations.⁹⁰ Another component that is significant for the work of HRC is its “Universal Periodic Review”. It enables HRC to monitor the developments regarding human rights in all 193 members of United Nations by a periodic review. Universal Periodic Review also gives HRC the opportunity to promote and protect human rights as well as address human rights violations efficiently.⁹¹

IV. B. 2. Regional organizations

Regional LGBT rights organizations are beneficial when addressing LGBT+ rights violations in certain territories. There multiple such organizations throughout the world and each of them are concerned with promoting equal rights for LGBT+ citizens. Often these organizations concentrate on a specific issue regarding LGBT+ rights, such as but not limited to

⁸⁶ Ibid.

⁸⁷ UNICEF “Eliminating Discrimination against Children and Parents based on Sexual Orientation and/or Gender Identity”, 2014, p.3

⁸⁸ OHCHR, “The Role of the United Nations in Combatting Discrimination and Violence against Individuals Based on Sexual Orientation and Gender Identity” , 2015, p.11

⁸⁹ OHCHR, “Human Rights Council Advisory Committee”,
<http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/AboutAC.aspx> , Accessed 12 February 2017

⁹⁰ OHCHR, “Human Rights Council Complaint Procedure”,
<http://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx>
Accessed 12 February 2016

⁹¹ OHCHR, “Basic facts about the UPR”, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx> ,
Accessed 12 February 2017

transgender equality, recognition of same-sex marriage, and preventing discrimination, violence, and challenges faced by the LGBT+ youth.⁹² This specialization enables these organizations to address multiple aspects regarding LGBT+ right in a more efficient manner. The consistency of the work conducted by these organizations had a positive influence on national regulations and paved the way for further such organizations. When Rainbow House was first tried to be registered as an NGO in Russia in 2006, it was rejected since it was promoting a “non-traditional” sexual orientation and if the organization were to fulfill its goals; society’s social values would be disrupted as well as sovereignty and territorial integrity of the Russian Federation, since its population would decrease as a result.⁹³ Since then the organization is in a legal battle with the authorities to pursue their right to freedom of association. Despite the fact that they are yet to be registered officially, their work enabled an openly LGBT organization to be officially registered in Saint Petersburg.⁹⁴ Another example of a positive influence on government regulations is a Moldovan LGBT organization GenderDoc-M, which lobbied for sexual orientation and gender identity were included in the anti-discrimination law that was being prepared between 2007 and 2008.⁹⁵

IV. B. 3. National human rights institutions

National human rights institutions can be described as a bridge between national governments and civil society, which is particularly prominent in countries that have criminalized homosexuality and promote discrimination. In such cases, national human rights institutions are the only advocates for the civil society regarding LGBT+ rights. Often their work is limited due to restrictive government regulations and negative stigma against the LGBT+ community.⁹⁶ Despite these challenges national human rights institutions can lobby for anti-discriminatory laws, address the complaints filed by LGBT+ people and provide them with legal assistance. These institutions also monitor the policies of the governments in regards to human

⁹² EQUALDEX, “LGBT Organizations”, <http://www.equaldex.com/organizations>

⁹³ Aengus Carroll, “Make It Work: Six steps to effective LGBT human rights Advocacy”, October 2010, p.38

⁹⁴ Ibid.

⁹⁵ Aengus Carroll, “Make It Work: Six steps to effective LGBT human rights Advocacy”, October 2010, p.47

⁹⁶ Ging Cristobal, “National Human Rights Institutions – A Bridge for LGBT Rights in Asia and Pacific”, 26 March 2015, <https://www.outrightinternational.org/content/national-human-rights-institutions-%E2%80%93-bridge-lgbt-rights-asia-and-pacific>

rights and aim to prevent disobediences to international treaties.⁹⁷ In its annual report to the Malaysian government, the national human rights institution of Malaysia (SUHAKAM) stated that human rights should also be inclusive of LGBT+ rights and violations of those rights should be regarded in the same manner as any other human rights violations. SUHAKAM continued to include this in its reports even though it faced considerable opposition from the government and other Islamic leaders.⁹⁸ Two national human rights institutions from Thailand, The National Human Rights Commission of Thailand (NHRCT) and Sexual Diversity Network of Thailand, drafted a bill in 2011 that aims to provide marriage equality to LGBT+ couples and purposed it to the Parliament.⁹⁹

IV. B. 4. Civil society

Civil Society plays a crucial role in the implementation of the rights of the LGBT+ community since it is the basis of all social movements. A social movement can be defined as a collective challenge by people that have the same purpose and try to impose a political or social change in the society. Often civil society actors have a positive influence on the implementation of human rights and the social movements conducted by these actors have a considerable impact on both national and international regulations.¹⁰⁰ They achieve this by calling upon governments, international organizations, and NGOs. Furthermore, in recent years, they have been utilizing social media platforms to raise awareness and gain support in regards to the rights of LGBT+ people. In addition to this, the Individual Petition Mechanism of United Nations allows individuals to file complaints and enables the governments to be held accountable in case of a human rights violation.¹⁰¹ However, in some cases, the progress of the civil society is restricted due to authoritarian or oppressive governments. Organizations and movements that are led by LGBT+ individuals face restrictions on their operations, funding, assembly and the public expression on a regular basis.¹⁰² Democratic environments enable LGBT+ rights activists to

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Star Observer, “Commission for marriage rights”, 13 September 2011,

<http://www.starobserver.com.au/news/thailand-commission-for-marriage-rights/61366>

¹⁰⁰ Rebecca Cordell, “Defining moments in LGBT history and civil society activism”, February 12, 2015,

<http://www.iapss.org/wp/2015/02/12/defining-moments-in-lgbt-history-and-civil-society-activism/>

¹⁰¹ Ibid.

¹⁰² Global Philanthropy Project, “The closing space for LGBT civil society in Kyrgyzstan, Indonesia, Kenya, and Hungary”, 2016, p.7

freely conduct their operations and enhance their influence on the political framework since civil society is able to hold free and fair elections, which enables people to vote for candidates that are advocates for LGBT+ rights.¹⁰³ Civil society played a crucial role when Argentina approved a same-sex marriage bill. Starting from the 1980s, gay rights activists had joint efforts to hold their military government accountable for the disappearance of thousands of people of the LGBT+ community during their rule, which was the basis for the formation of multiple Civil Society Organizations (CSOs) in Argentina, and the bill that passed was a result of their full integrations into the human rights movement.¹⁰⁴

IV. C. Support, reparations, and remedies for victims of sexual exploitation

States are one of the key actors in helping LGBT+ individual survivors of sexual exploitation. States need to provide reparations and remedies to such victims as well as create a supportive and inclusive environment. Law enforcement should take the reports of these victims seriously and be respectful and considerate of their individual needs. The same approach is also applicable to medical officials.¹⁰⁵ Lack of awareness by the officials on LGBT+ issues and needs could hinder the services provided since they either don't have the proper knowledge to address the specific needs of LGBT+ survivors or have a prejudice against LGBT+ individuals, which shall be solved by educating these officials in providing services to LGBT+ sexual exploitation survivors in a sensitive, non-judgmental manner.¹⁰⁶ States should also support LGBT+ and sexual assault crisis centers, ensure their smooth operation and provide resources. Victims also should be encouraged to seek help by these centers, which is particularly essential for survivors who live in rural areas; since there are fewer LGBT+ organizations and centers, they might require additional assistance.¹⁰⁷ Furthermore, states should ensure that the LGBT+ survivors would be subject to the same treatment as heterosexual survivors of sexual exploitation, which could also be achieved by eliminating discriminatory laws and preparing a comprehensive anti-

¹⁰³ Omar G. Encarnación, "Gay Rights: Why Democracy Matters", *Journal of Democracy*, July 2014, p.99

¹⁰⁴ *Ibid.*

¹⁰⁵ California Coalition Against Sexual Assault, "Supporting Lesbian, Gay, Bisexual and Transgender (LGBT) Survivors of Sexual Assault", 2010, p.4-10

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

discrimination legislation.¹⁰⁸ States, as well as other parties helping LGBT+ sexual assault survivors, might also refer the survivor to a legal advocate who is familiar with the relevant state laws and the LGBT+ survivors' legal rights.¹⁰⁹

IV. D. Sustaining the Results

IV. D. 1. Education

IV. D. 1. a. Schools

Adequate and inclusive sex education is a crucial component in achieving and maintaining good results in the protection of LGBT+ individuals against discrimination and violence. Sex education shall address the experiences, behaviors, and identities of the LGBT+ youth in order for them to stay safe and healthy.¹¹⁰ An inclusive sex education program provides the individuals with reliable information and enables them to understand their identity and sexual orientation.¹¹¹ The information provided shall be appropriate to the target persons as well as being medically accurate. Furthermore, such programs shall include positive examples of LGBT+ individuals and address same-sex relationships. These programs protect LGBT+ youth by educating them about STDs and decrease the negative stigma around them by dispelling myths and stereotypes.¹¹² Dispelling of the myths and stereotypes about LGBT+ individuals results in a decrease in homophobia by the general public, as well as decrease violence and discrimination against LGBT+ individuals based on their sexual orientation or gender identity, which also reduces homophobic bullying against LGBT+ individuals in schools.¹¹³

IV. D. 1. b. Public officials

In addition to proper sex education, the education of public officials that work in sectors such as but not limited to; education, law enforcement, and healthcare are also crucial, which

¹⁰⁸ UNAIDS, “Ending Violence and Discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex People”, 29 September 2015, http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2015/september/20150929_LGBTI

¹⁰⁹ California Coalition Against Sexual Assault, “Supporting Lesbian, Gay, Bisexual and Transgender (LGBT) Survivors of Sexual Assault”, 2010, p.4-10

¹¹⁰ HRC, “A Call to Action: LGBTQ Youth Need Inclusive Sex Education”, 2015, p.1-10

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Peter Gordon, “Sexuality Education and the Prevention of Sexual Violence”, 2009, p.175-185

will ensure that the rights of LGBT+ individuals are protected and promoted. Certain guidelines should be created for these officials in order to raise awareness about LGBT+ equality related policies since these officials might have prejudices towards LGBT+ individuals, which might hinder the implementation of laws.¹¹⁴

IV. D. 2. Campaigns

IV. D. 2. a. Empowerment of LGBT+ individuals

Campaigns that empower LGBT+ individuals will help establish the public status of those individuals and decrease marginalization and social exclusion. Recently, there have been positive developments in the rights of LGBT+ individuals such as but not limited to improvement of their social status, elimination of workplace discrimination (e.g. equal pay and benefits), increased access to public services (e.g. education and health care). These campaigns gave the LGBT+ individuals greater visibility and societies began to recognize their rights.¹¹⁵ The results can be sustained by the continuation of these campaigns.

IV. D. 2. b. Public condemnation of homophobia and related acts

Public condemnation of homophobia and related acts shall be the first political step to prevent such acts.¹¹⁶ Public condemnations might eventually influence the behavior of both national and international actors, as well as the public. One such public condemnation against homophobia was issued by the European Union. On 17 May 2010 (which was International Day against Homophobia) European Union representatives issued a joint statement condemning homophobia; stating that it is “an unacceptable violation of human dignity” and “incompatible with the founding values of the EU.”¹¹⁷ United Nations also plays a role in the public condemnations of homophobia. More recently a senior advisor of United Nations, Adama Dieng, condemned the homophobic hate crime in Orlando in which 49 people were murdered and 53

¹¹⁴ HRC, “A Call to Action: LGBTQ Youth Need Inclusive Sex Education”, 2015, p.1-10

¹¹⁵ Kenneth Roth, “LGBT: Moving Towards Equality”, 2015, p.64

¹¹⁶ Human Rights Watch, “License to Harm: Violence and Harassment against LGBT People and Activists in Russia”, 15 December 2014, <https://www.hrw.org/report/2014/12/15/license-harm/violence-and-harassment-against-lgbt-people-and-activists-russia>

¹¹⁷ European Commission, “Homophobia”, n.d, http://ec.europa.eu/justice/fundamental-rights/homophobia/index_en.htm

were left injured.¹¹⁸ Various United Nations bodies (Committee against Torture, the Special Rapporteur on torture and the Working Group on Arbitrary Detention) condemned the act of non-consensual anal examinations on men that were perceived to be homosexual. They stated that the practice is medically inaccurate and such practices could be viewed as torture and ill-treatment.¹¹⁹

IV. D. 3. Collecting statistics

Collecting adequate statistics and reliable information is crucial in dealing with LGBT+ rights violations since they enable the officials to address these issues as well as the prosecution of the persons responsible. However, a great percentage of acts of discrimination and violence against LGBT+ individuals still go unreported. One of the main reasons why LGBT+ individuals have hesitations reporting these cases is their fear of disclosing their sexual identity or gender orientation to public officials.¹²⁰ They sometimes also believe that even when they report the cases, appropriate actions will not be taken by the law enforcement. The proper action might not take place due to the fact that the legal procedures are not followed by the officials, or there are no official procedures in the first place.¹²¹ According to a report by the University of Leicester, around 35.000 cases of crimes against LGBT+ persons go unreported each year in the UK, and only 14 per cent of LGBT+ victims reported their most recent experience of a hate crime.¹²² In order for LGBT+ individuals to report hate crimes, a trust between the officials and the victims should be established, and there should be proper legislations addressing LGBT+ hate crimes. Improvement of LGBT+ hate crime laws could also improve data-collecting since some hate crimes against LGBT+ individuals are not recorded as such.¹²³

¹¹⁸ UN News Centre, “Condemning Orlando attack, senior UN Advisor gravely concerned by homophobia and islamophobia that followed”, 17 June 2016,

<http://www.un.org/apps/news/story.asp?NewsID=54262#.WOKk76Jm3IU>

¹¹⁹ A/HRC/19/41, p.13

¹²⁰ Geisha Kowlessar, “LGBT community reporting more cases of violence”, 13 February 2014,

<http://www.guardian.co.tt/news/2014-02-13/lgbt-community-reporting-more-cases-violence>

¹²¹ OSCE, “Preventing and Responding to Hate Crimes”, 2009, p.34-35

¹²² University of Leicester, Report finds most hate crimes against LGB and T victims go unreported”, 22 June 2015,

<http://www2.le.ac.uk/offices/press/press-releases/2015/june/report-finds-most-hate-crimes-against-lgb-and-t-victims-go-unreported>

¹²³ OSCE, “Preventing and Responding to Hate Crimes”, 2009, p.34-35

V. Conclusion and recommendations

The struggle for LGBT+ rights is not an easy road. Finding applicable solutions and having them applied takes a great comprehension of the matter and the subject parties. Each region, each culture may require different steps to take on the road for a better society, but it should not be forgotten that no tradition is more important than the human rights being protected and upheld. Therefore, the paths to take may differ from case to case but once we resolve them, where we arrive must be the same, a society in which we can coexist regardless of our sexual orientation and gender identity, a society in which everyone is respected no matter who they love or how they feel about their gender, a society in which no one is shamed for doing what they are free to do. Initiating such change requires a strong will to learn and teach.

We have to find ways to stop the hate and stigma against LGBT+ people, starting from our own environment. We have to object to the silencing and assimilation practiced by various oppressors. The oppressors do not only come in the form of states, groups, or institutions. It is the people in our everyday life. Most of the time, they also are not purely evil people with an agenda to oppress LGBT+ community. They are simply individuals complying with the norms of a culture of oppression. It is not easy to say that they were also victimized so that they would become as such, but we must see that it is very easy for people to fall into the errors of a system they have never questioned. We must question ourselves and have those we can reach question themselves as well. We must say no to discrimination, no matter who it comes from. The moment we tolerate bigotry just because we affiliate with the perpetrator on different matters, our whole cause comes to a standstill. Modes of objectification used by such oppressors rest on a system that has grown and spread for a very long time, and it may be overwhelming to oppose something so powerful and hard to identify. When we fall into such desperation, we must remember, that we were never promised an easy road, those before us did not have it easy either, but we can promise ourselves a better future.

I am hopeful for I see the change towards an LGBT+ inclusive society slow but steady. It is us, bringing respect and love to the table and not leaving until everyone has their share. Let us continue to do our part.