

Human rights of older LGBT persons

Joint Statement by the United Nations Independent Expert on the Enjoyment of all Human Rights by Older Persons, the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

27 October 2023

Following the commemoration of the International Day on Older Persons on October 1st, the United Nations Independent Experts on the enjoyment of all human rights by older persons and on protection against violence and discrimination based on sexual orientation and gender identity, and the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health jointly exhort UN Member States to design, pass and implement all measures necessary to address violence and discrimination that disproportionately impact the enjoyment of human rights by older persons who are lesbian, gay, bisexual, trans or otherwise gender-diverse (LGBT).

The United Nations experts wish to highlight the alarming situations faced by many LGBT older persons.

Older persons of diverse sexual orientations and gender identities face specific human rights challenges. They lead their lives against the backdrop of negative societal stereotypes and assumptions about their physical and mental health, their sexuality and sex life, their ability to contribute to society, and their worth to their families and communities. When persons find themselves at the intersection of older age and being LGBT, they face a compounded situation that leads to an increased risk of heightened discrimination, social exclusion, and violence.

As any person ages, health needs develop and change. There are specific health considerations for LGBT older persons who, due to experiences of compounded discrimination and stigma throughout their lives, may face increased mental health concerns. This can lead to increased rates of depression, anxiety, dementia, and other mental health conditions in older life, often compounded by social isolation and loneliness if they live in a social environment that is not accepting.

Memory loss and confusion associated with dementia can also impact an older LGBT person in differentiated ways. For example, an individual may experience confusion related to their

sexual orientation or gender identity, which can be especially distressing for LGBT older adults who have carried out often-complex processes of self-acceptance, disclosure and living out their identity.

Comprehensive evidence of the health challenges faced by older LGBT persons has yet to be obtained. Such information should be gathered and will be crucial in the formulation of better public policy in the future. At the same time, current health challenges must be addressed, including those in relation to which knowledge is hindered by gendered societal assumptions. These include, for example, menopausal and gynecological care for older lesbians and trans men, differentiated health concerns for black gay men, and prostate enlargement and prostate cancer for trans women.

Like all older persons, older LGBT persons have sexual and reproductive health needs. Receiving information, support and care for individual health needs may be made significantly more difficult due to the stigma and silence around sexual and reproductive health, especially when compounded by societal or individual stereotypes around a person's age. Seeking help for common sexual and reproductive health challenges for older persons such as perimenopausal syndrome, erectile dysfunction, lowered libido, vaginal dryness, painful intercourse, and sexual dysfunction, can be a particular challenge if older LGBT persons live in a community that is not respectful of their needs. As a person ages, sustained sexual activity also means that remains risks for sexually transmitted infections and Human Immunodeficiency Virus (HIV) infection amongst the older population.

In terms of care and support in older life, some older LGBT persons living in care institutions or being provided care and support by their families report anxiety over losing their identity and facing stigma if they reveal their sexual orientation or gender identity. Families and institutional care are often hetero- and cis-normative spaces and older LGBT persons may be at risk of more extreme experiences of discrimination and abuse as they experience patriarchal and gendered assumptions. Staff in care institutions may not be trained or sensitive to the specific healthcare needs of older LGBT persons and the experts are concerned about reports of violence and abuse in all forms of care and support settings.

Faith-based organizations and individuals, such as employees of religious institutions and volunteers from local churches, mosques, and temples, are important service providers for older persons in many societies, if indeed not the primary providers. At the same time, they do not always fully embrace LGBT persons and they often condemn the lives they lead, which may result to refusal of provision of services under a logic of conscientious objection. There is no justification in international law for the discrimination in the provision of services to persons on the basis of either their age or their sexual orientation or their gender identity and, in particular, national, and regional particularities or historical, cultural, and religious backgrounds cannot be invoked by States as an excuse not to comply with their obligation to promote and protect all human rights and fundamental freedoms. The experts encourage all those providing services to older LGBT persons to rather adopt an affirming approach and adapt their ways of working to ensure that these people may live in dignity, in environments that are safe and adaptable to personal needs. We remind States and other stakeholders that

regarding the provision of care and support, United Nations treaty monitoring bodies and numerous Special Procedures have emphasized that States cannot permit conscience-based refusals of such care to infringe on the rights of all persons. Where States choose to enable conscience-based refusals, international law obliges States to ensure an adequate number and dispersion of willing providers, limit conscientious objection claims to individuals (as opposed to institutions) establish effective referral systems for willing providers; prohibit refusals in emergency circumstances, and establish systems to monitor compliance with all of these requirements.

If the aging process might result in reduced mental or physical capacity or there is a requirement for end-of-life care and support, LGBT older persons face exacerbated risk to violence and discrimination. While this is perhaps more clearly the case in the countries that maintain criminalization of certain sexual orientations or gender identities in violation of international human rights law, risk may also occur in settings in which LGBT families or relationships are not protected by law under standards similar to others. Due to challenges sometimes faced in the family structures recognized by law, LGBT persons may choose to have care provided by persons who they choose as family: a life partner, other members of the LGBT community, or friends. Persons providing care and support, if they are LGBT and/or older persons themselves, may face similar societal challenges as the person for whom they provide care.

In cases that same-sex or diverse families are not recognized by law, LGBT family members often are not consulted by the family or institution recognized legally, and they may even be denied physical access to their loved one. These are particularly cruel violations to physical and mental integrity, and they come at times in which the older person is in a particularly vulnerable situation. These forms of discrimination can even be experienced post-death, where the surviving family of an LGBT person may be denied access to funeral planning, survivor benefits and inheritance. This can be a particular source of distress for those in the final stages of life, looking for certainty for their loved ones.

This lack of social, civil, and legal recognition might also lead to higher risk of economic insecurity and living in poverty for older LGBT persons. Indeed, they are more likely to struggle to afford their basic needs, such as housing and food due to a lifetime of discrimination and lack of equality under the law in employment, accessing housing, social security, and opportunities to build savings. LGBT older persons facing other intersectional forms of discrimination such as gender, race, ethnicity, or disability are even more likely to live in poverty.

We therefore call on States and other stakeholders to:

1. recognize structural ageism as a significant and pressing concern that needs to be addressed in data collection and public policy design;

2. recognize the common intersections that face older persons and persons of diverse sexual orientations and gender identities and develop appropriate joint and intersecting law and policy responses;
3. enact and enforce comprehensive anti-discrimination legislation that explicitly includes age, sexual orientation, and gender identity as protected characteristics;
4. develop public awareness programs to combat stigma, stereotypes, and prejudice based on both aging and sexual orientation and gender identity, highlighting the joint challenges that are faced by these communities and populations and including awareness-raising of the fact that inequalities are exacerbated in later life;
5. ensure that public services, facilities, and information on sexual orientation and gender identity are fully accessible to older persons, including access to legal remedy at local, national, regional, and international levels;
6. establish support services for survivors of violence, with a specific focus on older persons who are LGBT, to ensure they receive the necessary care and assistance;
7. train healthcare providers, care and support providers including caregivers and care home staff, law enforcement personnel and social workers to recognize and respond effectively to instances of violence and discrimination against LGBT persons and to provide dignified care respectful of autonomy;
8. collect, in accordance with international standards, disaggregated data on older persons, sexual orientation, and gender identity to better understand the intersectional challenges faced by these individuals and to inform evidence-based policies; and
9. consult with organizations that work on the rights of older persons and those of LGBT persons to ensure their meaningful participation in the development and implementation of policies and programs.

Today the Independent Experts call on all persons to set stereotypes and prejudice aside and to engage with older LGTB persons on the basis of the deep respect that is promised by the Universal Declaration of Human Rights: that all persons are born, and enjoy throughout all their life, freedom and equality in dignity and rights.

Geneva, 27 October 2023