



OUTRIGHT
ACTION INTERNATIONAL

Ageism and Age Discrimination

Submission to United Nations Independent Expert on the Human Rights of Older Persons

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Introduction

OutRight Action International is an ECOSOC accredited civil society organization working at the international, regional and national levels to research, document, defend, and advance human rights for lesbian, gay, bisexual, transgender and intersex (hereinafter, “LGBTI”)¹ people. This submission is a response to the United Nations Independent Expert on the Human Rights of Older Persons’ call for inputs for a thematic report to examine and raise awareness of the prevalence of ageism and age discrimination.

Through this submission, we aim to highlight some of the particular struggles of LGBTI elders, a group that has largely remained invisible. There is a dire need to include LGBTI older persons and their rights in the multilateral agenda; to combat both the stigma surrounding LGBTI populations and older persons; and to hold governments accountable for the historical social injustices carried out against the community. To inform our recommendations, we summarize the legislation and policies existing in the Philippines, Nepal, and Singapore that protect or impede the rights of LGBTI older persons, as well as the lived experiences of LGBTI older persons within the region.

Older Persons and Ageism

The United Nations defines older persons as those who are over 60 years of age². However, different families, communities, and nations may consider other sociocultural factors in defining old age, such as physical appearance, family status, age-related health conditions, and economic contribution. Such traits are often perceived negatively, as someone of old age may have physical or mental impediments that lead to assumptions that they are somehow lacking due to their age. This prejudice is known as

¹ OutRight Action International uses the acronym LGBTI to denote the lesbian, gay, bisexual, transgender, queer and intersex community. We believe this acronym is inclusive of a broad range of people across our community. It is not exhaustive, nor is it universally accepted or used.

² United Nations High Commissioner for Refugees, *Older Persons*, available at: <https://emergency.unhcr.org/entry/43935/older-persons>

ageism and age discrimination, which creates barriers for all persons to fulfill their rights to be free and equal because everyone expects to age.

Currently most parts of the world are experiencing lower birth rates and extended life expectancies, paving the way for an older population that makes up an increasingly larger share of the total population³. With this in mind and recognizing the unique effects of age discrimination, various international political instruments in recent decades have brought attention to older persons and the need to protect their rights. International advocacy on the rights of older persons gained force in 1982 with the Vienna International Plan of Action on Ageing, which was adopted at the First World Assembly on Ageing⁴. The 2002 Political Declaration and the Madrid International Plan of Action on Ageing further reinvigorated the political consensus on ageing, where member states called for the elimination of “age discrimination, (...) neglect, abuse, and violence”⁵.

Despite the various political instruments and declarations that have been dedicated to older persons, there are still few International Human Rights Conventions that explicitly state the rights of older persons. A notable example is the International Convention on the Rights of All Migrant Workers and Members of Their Families, which is one of a few conventions that broadly prohibits discrimination on the basis of age⁶:

States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

³ United Nations Principles for Older Persons, adopted by the UN General Assembly (Resolution 46/91), 16 December 1991

⁴ Report of the Secretary-General, Follow-up to the Second World Assembly on Ageing, 22 July 2011, A/66/173, para. 17

⁵ Political Declaration and the Madrid International Plan of Action on Ageing, 8-12 April 2002, art. 5

⁶ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Adopted by General Assembly resolution 45/158 on 18 December 1990, art. 7

Similarly, the Convention on the Rights of Persons with Disabilities has provisions mentioning disabled older persons with regard to their right to health⁷, adequate standard of living and social protection⁸, and access to justice⁹.

Commitments to protect the rights of older persons also exist within regional mechanisms. Notably, in 2015, the Inter-American Convention on Protecting the Human Rights of Older Persons was adopted at the General Assembly of the Organization of American States. The Convention extensively outlines the rights of older persons to safety and a life free of violence, to receive long-term care, to health, to housing, and to accessibility and personal mobility¹⁰.

The Council of Europe has similarly recognized the rights of older persons. In 2014, Recommendation CM/Rec(2014)2 of the Committee of Ministers to member States was adopted, which focuses particularly on the rights of older persons to autonomy and participation, protection from violence and abuse, and social protection and employment¹¹.

LGBTI Older Persons

The challenges faced by older persons may be further exacerbated due to discrimination and marginalization due to their sexual orientation, gender identity and gender expression. Of the international stakeholders that outline the rights of older persons, there are few that acknowledge this particular intersection. Many, if not all, of these frameworks merely list the two groups in isolation, among other groups in open non-discrimination clauses, such as the one in the previous section from the International Convention on the Rights of All Migrant Workers and Members of Their Families¹². However, there is some acknowledgement in recent years of the compounded experiences of LGBTI older persons. One such example is General Recommendation No. 27 by the Committee on the Elimination of Discrimination against Women, which states that:

The discrimination experienced by older women is often multidimensional, with the age factor compounding other forms of discrimination based on

⁷ Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006, art. 25(b)

⁸ Ibid, art. 28(b)

⁹ Ibid, art. 13

¹⁰ Organization of American States, Inter-American Convention on Protecting the Human Rights of Older Persons, June 15 2015

¹¹ Recommendation CM/Rec(2014)2 of the Committee of Ministers to member States on the promotion of human rights of older persons, 19 February 2014

¹² International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Adopted by General Assembly resolution 45/158 on 18 December 1990, art. 7

gender, ethnic origin, disability, poverty levels, *sexual orientation and gender identity*, migrant status, marital and family status, literacy and other grounds. Older women who are members of minority, ethnic or indigenous groups, internally displaced or stateless often experience a disproportionate degree of discrimination¹³.

Various United Nations Independent Experts have mentioned the experiences of LGBTI older persons and the need to protect their rights. A joint statement on the International Day against Homophobia, Transphobia and Biphobia in 2020 highlighted the experiences of LGBTI persons during COVID-19, noting that the inequality and discrimination experienced by LGBTI persons are “compounded by disability, age, ethnicity/race, sex...”. It also discusses the domestic situation of LGBTI elders during the pandemic:

While contributing to the fight against the pandemic by staying at home, LGBT children, youths and elders are forced to endure prolonged exposure to unaccepting family members, which exacerbates rates of domestic violence and physical and emotional abuse, as well as damage to mental health.¹⁴

The lack of explicit acknowledgment of this intersection is reflective of the lack of general awareness towards LGBTI older persons. As such, most research and data pertaining to the elderly LGBTI population have been primarily published by civil society organizations who specifically advocate for this group. In 2010, the LGBT Movement Advancement Project (MAP) and Services & Advocacy for GLBT Elders (SAGE) published an extensive report on the challenges and outcomes of LGBTI elders¹⁵. These challenges include but are not limited to the effects of social stigma and prejudice; the reliance on informal families of choice, particularly when the government largely defined family based on marriage or biological kin; and the unequal treatment under laws, programs, and services that create extra barriers to fulfilling human rights.

It is worth noting that SAGE’s research focused on the experiences of LGBTI elders in the United States, so the findings above are by no means extensive or fully reflective of all LGBTI elders around the globe. However, the Independent Expert on Sexual

¹³ United Nations Committee on the Elimination of Discrimination against Women, General recommendation No. 27 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 2010, art. 13

¹⁴ UN Independent Experts, Joint Statement on COVID-19: The suffering and resilience of LGBT persons must be visible and inform the actions of States, 17 May 2020, available at:

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=25884>

¹⁵ Services & Advocacy for Gay, Lesbian, Bisexual & Transgender Elders (SAGE) and Movement Advancement Project (MAP), *Improving the Lives of LGBT Older Adults*, March 2010.

Orientation and Gender Identity has reported similar experiences of LGBTI elders internationally:

While research suggests that, in certain contexts, up to 40 per cent of lesbian, gay and bisexual persons live alone, older LGBT and gender-diverse persons are even more likely to live alone and to experience social isolation and frequently report poorer physical health outcomes. They are reportedly less likely than their peers to reach out to health and ageing services providers, such as senior or meal centres, because of fear of discrimination and harassment, or because of costs that are prohibitive. Family rejection and limitations in the recognition of certain forms of families, and limited access to assisted reproduction techniques, mean that often older LGBT and gender-diverse people are more likely to rely on chosen family for caregiving support. These factors combined can leave older LGBT and gender-diverse people in precarious situations with regard to housing security and can increase the likelihood of the need for formalized social care¹⁶.

The Experiences of LGBTI Older Persons in Asia

OutRight has received compiled information by partners on the ground on the experiences of LGBTI older persons in three Asian countries: Singapore, Nepal, and the Philippines. This section highlights the laws, policies, and social contexts in these countries that impact the LGBTI elder population.

Singapore

In 2017, Singapore's elder population made up 10% of the entire population, and it is anticipated that the proportion will increase to 50% by 2050. Despite an ageing population, the Singaporean government has historically provided limited social welfare benefits for older persons. The most comprehensive plan targeting older persons was enacted by the Ministry of Health in 2015, which included initiatives on health and wellness, housing, transportation, social inclusion, and more. None of these benefits explicitly mention LGBTI elders.

¹⁶ Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, *Violence and discrimination based on sexual orientation and gender identity during the coronavirus disease (COVID-19) pandemic*, submitted to the 75th session of the General Assembly, A/75/258, 28 July 2020, para. 12.

However, Singapore does have explicit laws banning homosexual acts¹⁷. Although these laws are not actively enforced, it is estimated that 55% of Singaporeans still support the ban, indicating that a majority of residents are intolerant towards the LGBTI population.

In general, the struggles that LGBTI elders face stem from discrimination and lack of strong mechanisms to enforce legal rights. For instance, all Singaporeans have a right to housing, and the government has a comprehensive public housing system that guarantees everyone a home. However, partner organizations of OutRight have mentioned that LGBTI elders often have to go “back in the closet” because nursing homes generally do not tolerate same-sex relationships. To this end, recent policies provide assistance for older persons to live close to their family and community through priority schemes. LGBTI elders may benefit from this policy, however, a lot of the times, the discrimination against them happens within the family scope.

Nepal

In Nepal, any person above the age of 65 may register to receive a monthly pension¹⁸. According to OutRight’s partner organizations, older persons who lack family networks rely on this allowance for basic requirements like food, healthcare, and shelter. LGBTI elders are also entitled to the same benefits, but due to social stigma and discrimination surrounding the LGBTI identity, are much more likely to be financially insecure and homeless despite this social safety net.

The Nepali Constitution recognizes the rights of LGBTI persons and recent revisions further include provisions such as their right to citizenship, equality, and social justice¹⁹. A 2007 Supreme Court Decision ordered the government to protect and defend the equal rights of LGBTI as natural persons and eliminate discriminatory laws²⁰. The Nepali government also issues citizenship to people whose gender is not male or female by designating an “others” category²¹. However, these seemingly progressive commitments lack implementation and do not reflect the general attitudes towards LGBTI people.

There is widespread intolerance and violence towards LGBTI persons, which includes harassment, sexual assault, and exclusion from family and society. Violence typically occurs once the person’s sexual orientation or gender identity is known or perceived, which has led to the LGBTI community becoming largely invisible and vulnerable.

¹⁷ Singaporean Penal Code, originally enacted in 1971, revised in 230 November 2008, sec. 377A

¹⁸ The Kathmandu Post, *Citizens can now claim elderly allowance at 65*, available at <https://kathmandupost.com/national/2018/01/25/citizens-can-now-claim-elderly-allowance-at-65>

¹⁹ Nepali Constitution, enacted in 2008 and subsequently revised in 2015, art. 18, 42.

²⁰ Sunil Babu Pant v. The Government of Nepal, Nepal Supreme Court, June 1 2007.

²¹ Nepali Constitution, enacted in 2008 and subsequently revised in 2015, art. 12.

Further, it seems that there are gaps in the laws protecting LGBTI persons that have negatively affected the older population. For instance, the government does not legally recognize marriage equality, which prohibits older LGBTI persons from registering the children they adopt. As a result, the child does not have legal documents like citizenship and state licenses, and the family at large does not have the same legal protections.

LGBTI elders in Nepal also face issues in accessing health services. LGBTI patients of all ages are often fearful of going to hospitals because of mistreatment and inappropriate interrogation. As a result, as LGBTI people age, they achieve lower health outcomes as conditions are untreated or remain undiagnosed. Even when their health deteriorates, LGBTI elders often still refuse to seek treatment, indicating a severe incompetence in the health sector to cater to the needs of LGBTI people.

The civil society organization *Mitini Nepal* notes that their shelters comprise mostly of older LGBTI people who have no savings or social support. They also state that there is a lack of data documenting the experiences of LGBTI elders, making it difficult to push for advocacy strategic planning and to demand rights from the government.

Philippines

The Philippine Constitution states that “the family has the duty to care for its elderly members but the State may also do so through just programs of social security²²”. Throughout the years, benefits for older persons have been gradually expanding, spanning from discounts of various goods and services to government assistance in housing, healthcare, pensions, and more. Both the legal protections and the aforementioned benefits do not mention LGBTI people.

In recent years, there is a growing movement to adopt broad anti-discrimination laws that protect both the elder population and the LGBTI population. The Philippine Commission on Women has made passing anti-discrimination law protecting sexual orientation and gender identity a priority in their legislative agenda this year²³. Currently, a senator is pushing a Comprehensive Anti-Discrimination Bill that penalizes all forms of discrimination, which includes age and sexual orientation and gender identity. The bill also intends to adopt an intersectional approach in acknowledging people of multiple identities. Other anti-discrimination bills have also been proposed in the past, such as the

²² Philippine Constitution, enacted in 1987, art. XV sec. 4

²³ Philippine Commission on Women, Enacting an Anti-Discrimination Based on Sexual Orientation and Gender Identity Law, Policy Brief no. 11, available at <https://pcw.gov.ph/enacting-an-anti-discrimination-based-on-sexual-orientation-and-gender-identity-law/>

Sexual Orientation and Gender Identity and Expression Equality bill, but still with no success.

Momentum has also been building up in government to pass provisions that prevent elder abuse and provide services for said victims. A senator proposed the Anti-Senior Citizen Abuse Act in 2016, and two years later a House committee proposed similar legislation, however neither bill has passed.

It is worth noting that protections toward older *women* currently exist, most notably in the Magna Carta of Women:

The State shall protect women senior citizens from neglect, abandonment, domestic violence, abuse, exploitation, and discrimination. Towards this end, the State shall ensure special protective mechanisms and support services against violence, sexual abuse, exploitation, and discrimination of older women²⁴.

The Magna Carta of Women does not mention LGBTI older persons. However, the Commission of Women has passed rules and regulations pursuant to the Magna Carta of Women that contain a comprehensive acknowledgement of human rights. It states that “[a]ll individuals are equal as human beings by virtue of the inherent dignity of each human person. No one, therefore, should suffer discrimination on the basis of (...) gender, age, (...), sexual orientation,(...) or other status as established by human rights standards²⁵.”

Conclusions and Recommendations

As stated above, there is still very little data and information on the situation of LGBTI older persons around the globe. On the international and regional levels, there are some stakeholders that have addressed the rights of older persons in general, but few that recognize the particular intersection of ageing with sexual orientation and gender identity. The research done by OutRight and its partner organizations in Singapore, Nepal, and the Philippines highlights that LGBTI older persons are one of the most vulnerable to social isolation, financial insecurity, homelessness, and poor health outcomes. They are also one of the most invisible groups, largely ignored by national laws and policies and society at large.

Therefore, all international stakeholders should adopt the following actions:

²⁴ Philippine Republic Act no. 9710, sec. 33

²⁵ Implementing Rules and Regulations of Republic Act no. 9710, sec. 6

- Implement strategies to increase research and awareness of the lived experiences of LGBTI older persons internationally.
- Include the intersection of age and sexual orientation and gender identity in official data collection, when possible and safe.
- Assert the rights of LGBTI older persons in International Human Rights Law and decision-making organisms.
- Create and implement policies that address the specific challenges experienced by LGBTI older persons, with their full participation.
- Support civil society, particularly those that focus on aiding LGBTI older persons, through targeted and robust funding opportunities and capacity building training to ensure that LGBTI older persons are meaningfully included in advocacy work.