

Submission to the Special Rapporteur on Human Rights Defenders

The challenges faced by women and LGBTIQ human rights defenders working in conflict, post-conflict or crisis-affected settings

I. Introduction

Outright International is dedicated to working with partners around the globe to strengthen the capacity of the LGBTIQ human rights movement, document and amplify human rights violations against LGBTIQ people, and advocate for inclusion and equality. We are deeply engaged with partners in several areas affected by conflict, including Ukraine, Afghanistan, and Myanmar.

Outright is pleased to deliver this input in response to the call for submissions by the Special Rapporteur on human rights defenders on the subject of “the challenges faced by woman human rights defenders working in conflict, post-conflict or crisis-affected settings.” This submission focuses on the experience of LGBTIQ human rights defenders (HRDs). As the call for submission rightly notes, advocacy “related to sexual orientation and gender identity are part of achieving gender equality.”

II. International Legal Standards

International human rights law standards are applicable to all without distinction.¹ Each individual is entitled to their human rights without discrimination, including on the basis of sexual orientation, gender identity and expression, or sex characteristics (SOGIESC).² The right to be free from violence and discrimination based on SOGIESC stems from the Universal Declaration of Human Rights’s (UDHR) core tenant that all human beings are born free and equal in dignity and in rights, and are entitled to their rights and freedoms without distinction of any kind,³ including distinctions made on the basis of sexual orientation and gender identity.⁴

The *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (hereinafter “*Declaration on Human Rights Defenders*” or “*Declaration*”), passed by consensus in the United Nations General Assembly, instructs: “everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.”⁵ Intrinsic to the promotion and protection of human rights is respect for the fundamental freedoms of association and assembly.⁶ The *Declaration* identifies further rights for human rights defenders, including the rights to seek and receive information about human rights and fundamental freedoms,⁷ to

¹ *United Nations Declaration on Human Rights* (hereinafter “UDHR”) (1948) at preamble, arts. 1-2; World Conference on Human Rights in Vienna, *Vienna Declaration and Programme of Action* (hereinafter “Vienna Declaration”) (1993) at art. 5.

² UDHR (1948) at preamble, arts. 1, 7.

³ UDHR at arts. 1-2.

⁴ UNGA, *Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2 (15 July 2016).

⁵ UNGA, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, A/RES/53/144 (8 March 1999) at art. 1.

⁶ *Id.* at art. 5.

⁷ *Id.* at art. 6.

hold and express opinions on the observance of human rights,⁸ and to benefit from effective remedies when human rights are violated.⁹

In commentary to the *Declaration on Human Rights Defenders*, the Special Rapporteur on Human Rights Defenders recommended that States make greater efforts to protect human rights defenders working to uphold LGBTIQ rights.¹⁰ Likewise, the UN Secretary General has noted that defenders of the rights of LGBTI people are targeted for their activism as well as for their SOGIESC¹¹ and urged Member States and regional organizations to provide support for women's human rights defenders and those who face gender persecution.¹²

States must respect, protect, and fulfil their human rights obligations.¹³ As such, States have a responsibility to refrain from violating human rights¹⁴ and to take necessary measures to ensure the protection of everyone, individually and in association with others, against violence, retaliation, or discrimination as a consequence of their defence of human rights and on the basis of their sexual orientation, gender identity or expression, or sex characteristics.¹⁵

III. Threats to LGBTIQ Human Rights Defenders in Conflict

Lesbian, gay, bisexual, transgender, intersex, and queer people (LGBTIQ), like other people who are already marginalised, face greater risk in times of war and other crises.¹⁶

In some cases, LGBTIQ people are targeted during conflict simply because LGBTIQ-rights opponents take advantage of social instability. But often LGBTIQ people become special targets of combatants, who may seek to gain support among local populations by claiming to uphold "traditional values." In some cases, such as when ISIS controlled large portions of Syria and Iraq, the executions of people accused of homosexuality are widely publicized for propaganda purposes.¹⁷ In those environments, LGBTIQ HRDs are especially at risk.

Outright has documented how in many contexts marked by conflict, such as Yemen, Afghanistan, Ethiopia, and Sudan, the criminalization of same-sex intimacy and the intense social stigma against LGBTIQ people, fostered by governments, makes it impossible for LGBTIQ organizations to legally register and almost impossible for them to operate with any degree of openness, which means that LGBTIQ HRDs cannot access many forms of funding and struggle to safely provide support to other LGBTIQ people affected by conflict.¹⁸

In conflicts such as Ukraine and Myanmar, where factions supporting democratic regimes committed to human rights frameworks are fighting anti-democratic forces, LGBTIQ HRDs may be doubly at risk because of their links with broader pro-democracy movements. It may serve the purposes of armed groups to target LGBTIQ HRDs, because their sexual orientation or gender identity can be weaponized in an effort to more broadly discredit civil society.

⁸ *Id.* at arts. 6-7.

⁹ *Id.* at art. 9.

¹⁰ Special Rapporteur on Human Rights Defenders, *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (July 2011) at p. 20, available at <https://www.ohchr.org/sites/default/files/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>

¹¹ UN Security Council, *Women and Peace and Security: Report of the Secretary General*, S/2022/740 (5 Oct. 2022) at ¶11.

¹² *Id.* at ¶105(a).

¹³ Vienna Declaration at art. 1.

¹⁴ *Id.*

¹⁵ *Declaration on Human Rights Defenders* at art. 12.

¹⁶ Outright International, *LGBTQ Lives in Conflict and Crisis*, February 2023, <https://outrightinternational.org/our-work/human-rights-research/lgbtq-lives-conflict-and-crisis> accessed May 18, 2023.

¹⁷ *Ibid.*

¹⁸ Outright International, *The Global State of LGBTIQ Organizing: The Right to Register and the Freedom to Operate*, 2023, forthcoming.

Transgender women and other gender non-conforming people are often especially at risk of physical and sexual violence. This is partly because they are more likely to be identified at checkpoints and in other interactions with combatants, as well as because of prevailing cultural attitudes in many places that stigmatise trans people.

These are some examples documented by Outright International and its partners of the challenges facing LGBTIQ human rights defenders in conflict, post-conflict or crisis-affected settings:

Ukraine

From the moment Russia launched its full-scale invasion of Ukraine on February 24, 2022, Russian President Vladimir Putin and his allies identified suppressing LGBTIQ human rights as a central justification for war.

In a speech announcing the invasion, Putin claimed war was a necessary response to Western countries seeking to “utterly destroy us” by destroying “our traditional values and force on us their false values ... that are directly leading to degradation and degeneration, because they are contrary to human nature.”¹⁹ He doubled-down on this rhetoric in September 2022, accusing western governments of “outright Satanism” during a ceremony marking Russia’s illegal annexation of Ukrainian territories. “Do we really want, here, in our country, in Russia, instead of 'mum' and 'dad', to have 'parent No. 1', 'parent No. 2', 'No. 3'? Have they gone completely insane? Do we really want ... it drilled into children in our schools ... that there are supposedly genders besides women and men?”²⁰ While there is still extremely limited information on the practices of Russian forces occupying Ukrainian territory, such remarks clearly encourage violence against Ukrainian LGBTIQ HRDs.

Olexei Poluhin, a 22-year-old gay activist who was in the city of Kherson when it was occupied in March 2022, told Outright that he was detained by Russian forces for 64 days and repeatedly beaten by Russian officials demanding to know the whereabouts of several other LGBTIQ activists.²¹ Russian soldiers also broke into and robbed the Kherson offices of the LGBTIQ rights group Insha shortly after Poluhin was detained.²²

The Ukrainian LGBTIQ human rights organization Nash Svit documented 31 cases of human rights violations on the basis of sexual orientation or gender identity by Russian forces in 2022, including one case of “murder,” 17 cases of “torture or inhuman treatment,” and ten cases of “sexual violence.”²³

LGBTIQ human rights defenders have been targeted for abuse in government-controlled areas as well. During the first week of fighting, a far-right group with an old conflict with Nash Svit twice raided the group’s headquarters, which was also home to two gay couples. The first time the group accused them of working with the Russians and took them to the police, who beat them and threatened to put them in a cell with “real criminals” who would rape them. The far-right group returned after the men were released, beating one of the couples and robbing them.²⁴ In another case, Olena Shevchenko, director of the feminist queer organization Insight, was tear-gassed on a Lviv street while delivering humanitarian aid in April 2022. Shevchenko

¹⁹ Vladimir Putin, *Address by the President of the Russian Federation*, February 24, 2022, <http://en.kremlin.ru/events/president/news/67843> accessed May 18, 2023.

²⁰ *Extracts from Putin's speech at annexation ceremony*, Reuters, September 30, 2022, <https://www.reuters.com/world/extracts-putins-speech-annexation-ceremony-2022-09-30/> accessed May 17, 2023.

²¹ Outright International interview with Olexei Poluhin, January 2023.

²² Interview with Insha executive director Marina Usmanova, May 2022.

²³ Nash Svit, *The Battle for Freedom: LGBTQ Situation in Ukraine in 2022*, February 2023.

²⁴ Interview with Andriy Kravchuck, December 2, 2022.

did not know the identity of her assailant, but it appeared to be a targeted attack; the attacker addressed her by name before spraying her.²⁵

Afghanistan

Outright has interviewed more than 60 LGBTIQ people who experienced the Taliban's return to power in August 2021 and reported many cases of physical violence, rape, detention, and other informs of abuse and inhumane treatment.

The targeting of LGBTIQ people appears to be growing increasingly systematic as the Taliban has consolidated power. Taliban courts have announced punishments meted out against individuals accused of homosexuality.²⁶

The Afghan penal code criminalized homosexuality even before the Taliban's return to power, and there were no LGBTIQ HRDs working openly in the country. One organization did work with LGBTIQ people under the previous regime, but it ceased this work after August 2021 for security reasons. There were also some health care organizations that provided services to LGBTIQ people — and employed trans women or gay men as outreach workers — but these have also largely shut down and some of their employees have been targeted by the Taliban.²⁷

Outright International documented one case of an LGBTIQ activist who was found dead outside a Taliban police station in January 2022. A medical exam commissioned by his family found evidence that he had been raped.²⁸

Rules limiting women's mobility in Afghanistan put all lesbian, bisexual, queer, transgender and intersex women at especially high risk of violence. The risk of violence from the Taliban appears to be greatest for transgender women, who must go out in public to work or shop, but are conspicuous to officials enforcing rules against women travelling without a close male relative. They are also most likely to be identified at checkpoints, where their identity documents — or even their voice — may out them as transgender. Many transgender women also earn their living dancing at weddings and other parties, events that are at times raided by Taliban forces. The extreme stigma and criminalization they face also makes them targets of sexual extortion and sexual assault.²⁹ In this context, it is virtually impossible for transgender women HRDs to meet, organize, and engage in civil space.

Cisgender lesbian, bisexual, queer and intersex women, whose mobility is generally extremely constrained by family members, have equally limited space to engage in society as human rights defenders, and face great risks in doing so.³⁰ A queer woman activist named Basira, who had turned her home into a de facto community center for LGBTQ people in Kabul before the Taliban's return to power, was only able to escape because a male friend agreed to marry her and act as the chaperone required by the Taliban's interpretation of Sharia law. But even in exile, her work as a HRD put her family in danger: a broadcaster broke a confidentiality agreement and outed her as a lesbian on Afghan radio. Her family was denounced in their mosque, her father was beaten, and her brother's shop was burned. They were forced to flee their city and are now seeking safe passage out of Afghanistan.³¹

²⁵ Frontline defenders, *Woman human rights defender Olena Shevchenko tear gassed in Lviv*, April 2022, <https://www.frontlinedefenders.org/en/case/woman-human-rights-defender-olena-shevchenko-tear-gassed-lviv> accessed May 17, 2023.

²⁶ Outright International, *A Mountain on My Shoulders: 18 Months of Taliban Persecution of LGBTIQ Afghans*, February 2023, <https://outrightinternational.org/Afghanistan-Report2023> accessed May 17, 2023.

²⁷ Ibid.

²⁸ Ibid.

²⁹ See “*Even If You Go to the Skies*” and “*A Mountain on My Shoulders*.”

³⁰ Ibid.

³¹ Outright International interview with Basira, July 2022.

Myanmar

Outright and a partner organization working in Myanmar have documented dozens of cases in which LGBTIQ people have been subjected to arrest, physical and sexual violence, and other forms of inhumane and degrading treatment by Myanmar's military regime since it seized power in a February 2021 coup.³² At least 93 LGBTIQ anti-coup protesters were killed, injured, arrested or detained by military forces in the first seven months of the coup. Among these, 12 LGBTIQ people (1 lesbian, 6 gay men, 1 bisexual, 3 trans women, and 1 trans man) were shot dead by riot police or military snipers, using lethal force to suppress civilians while protesting against the military regime, according to documentation by an LGBTIQ network³³ and confirmed by the National Unity Government opposing the military junta.³⁴ Fatality numbers are based on reports by friends and families of LGBTIQ people and collected by an LGBTIQ group inside Myanmar.³⁵

Between February and August 2021, Outright's partner organization directly documented 77 cases of arrest, detention, and custodial abuses against LGBTQ people, including sexual violence by military officials.³⁶ Transgender women and feminine men are most likely to be singled out for abuse, in part because they are less able to "pass" than other queer people. LGBTIQ activists are fearful of military forces arresting their family members, especially female family members, to coerce information about the locations of activists who are in hiding.³⁷ Called "proxy arrests and taking hostages"³⁸ by anti-coup activists inside Myanmar, these abductions have been denounced internationally.³⁹ The leaders of Outright's partners organization in Myanmar have gone into exile fearing targeting by the junta, and they are doing their best to continue their work in the country underground, including providing financial assistance for emergency shelter, food and transport to members of LGBTIQ communities who have to flee.

Many LGBTIQ activists are involved in the civil disobedience movement opposing the military regime, and, in many cases, they appear to be initially targeted for their pro-democracy work rather than their sexual orientation or gender identity. Those who are arrested are charged under Section 505.⁴⁰ However, once arrested, many LGBTIQ activists have reported being targeted for

³² Outright International, *Updates On Implications of the Myanmar Crisis on LGBTIQ People A Situational Brief and Call to Action*, July 2021 <https://outrightinternational.org/sites/default/files/2022-09/OutRight%20Action%20International%20LGBTIQ%20Situational%20Briefing%20Paper%20Myanmar.pdf> accessed May 17, 2023; Interview with [name redacted], May 16, 2023.

³³ Ibid.

³⁴ Ministry of Human Rights and Ministry of Women, Youths and Children Affairs National Unity Government of Myanmar, *Situation Report of the LGBTIQs after the Military Coup in Myanmar*, June 2021, <https://mohr.nugmyanmar.org/wp-content/uploads/2021/06/LGBTIQ-Situation-June-30-2021-final.pdf> accessed May 17, 2023.

³⁵ Outright International, *Myanmar: Growing LGBTIQ Casualties in Anti-Military Protests*, September 27, 2021 (updated October 5, 2021).

³⁶ Interview with [name redacted], May 16, 2023.

³⁷ Outright International interview with [name redacted for security reasons], May 13, 2021. Information on file with Outright International.

³⁸ Outright International, confidential gender alert brief, May 2, 2021. Information on file with Outright.

³⁹ *Myanmar: UN expert says current international efforts failing, calls for change of course*, Retrieved September 22, 2021 from <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27515>

⁴⁰ Section 505 states: Whoever makes, publishes or circulates any statement, rumor or report (a) with intent to cause or is likely to cause any army, navy or air force personnel to mutiny or otherwise disregard or fail in their duties; (b) with intent to cause or is likely to cause fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offense against the State or against the public's tranquility; (c) with intent to incite or is likely to incite any class or community of persons to commit any offense against any other class or community. Punishment is imprisonment which may extend to two years and/or a fine. The military expanded Section 505 in 2021 to include participants or supporters of the Civil Disobedience Movement, supporters of political and community leaders who

physical and sexual violence as well as other forms of abuse by officials of the junta. Police in Myanmar have a history of using verbal, sexual and physical abuses against LGBTIQ people, especially transfeminine persons.⁴¹ In the current environment of police and military impunity, the danger of being arbitrarily arrested for participating in the Civil Disobedience Movement is tripled by threats of bullying, assault, even extortion for being LGBTIQ. Safe reporting of violations is difficult.

Outright's partner organization documented the case of one trans woman who was arrested by military personnel and sexually and physically assaulted during interrogation at the Station Commander's Office in Mingaladon. The interrogators stripped her naked, repeatedly raped her with alcohol bottles, beat her genitals with batons, clipped her nipples with paper clips, burned her nipples with lit cigarettes, and threatened to drown her in a water tank while forcing her to reveal her contacts. After the interrogation, they sent her to Shwe Pyi Thar Detention Center.^{42,43}

IV. Recommendations:

To UN Member States:

- Respect and protect the rights of LGBTIQ rights defenders in accordance with the Declaration on Human Rights Defenders, the Universal Declaration on Human Rights, and the Vienna Declaration and Program of Action. Provide specific and enhanced protection for human rights defenders working to uphold the rights of LGBTIQ people and other minorities.
- Adopt national laws on the protection of human rights defenders, including women and LGBTIQ rights defenders.
- Repeal repressive and discriminatory laws, such as the laws that criminalize same-sex relations, which create an ecosystem that enables discrimination and human rights violations against LGBTQ persons and human rights defenders.
- Ensure that LGBTIQ organizations can legally register and operate without harassment from the authorities.
- Adopt all measures necessary to eliminate the social stigma associated with sexual and gender diversity, including the development, implementation, and evaluation of an education and sensitization campaign to protect LGBTQ persons from all forms of discrimination and violence.

To United Nations Agencies:

- Ensure that entities involved in monitoring human rights violations, including UN human rights offices, commissions of inquiry, and peacekeeping missions, are mandated to liaise with and support LGBTIQ organizations and defenders.
- Conduct internal capacity-building, including through in-depth courses on sexual orientation, gender identity, and sex characteristics for personnel, including anyone involved in monitoring or responding to human rights violations, including in conflict-affected contexts. This is especially necessary for human rights officers, commissions of inquiry, and peacekeeping missions.

are anti-coup, and those who spread information about civil unrest and support the coup via social media and other communication. Under the expanded 505, individuals can receive three-year sentences..

⁴¹Colors Rainbow, "Facing 377: Discrimination and Human Rights Abuses Against Transgender, Gay and Bisexual Men in Myanmar," Retrieved March 1, 2021 from <https://equalitymyanmar.org/book/archives/2219>

⁴² Colors Rainbow, "3 LGBTQ Stories from Colors Rainbow," January 2022.

⁴³ Ibid.