

## Ending Conversion Therapy in Scotland

### Written Evidence to the Equalities, Human Rights and Civil Justice Committee of the Scottish Parliament, August 2021

#### Q1. What are your views on the action called for in the petition?

Amnesty International Scotland (AI Scotland), the Human Rights Consortium Scotland (HRCS) and JustRight Scotland (JRS) strongly support the principles of petition PE1817, to urge the Scottish Government to ban the provision or promotion of LGBTI+ “conversion therapy” in Scotland.

“Conversion therapy” as defined by the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, is an umbrella term used to describe interventions which have in common the belief that a person's sexual orientation or gender identity can and should be changed.<sup>1</sup> “Conversion therapy” currently happens in a multitude of countries in all regions of the world and is practiced in the private and public sphere by public mental health-care providers, faith-based organisations, traditional healers and State agents.

The UN Declaration of Human Rights states that people are born free and equal in dignity and rights, without distinction of any kind. International human rights law recognises sexual orientation and gender identity as a fundamental part of our personal integrity. **“Conversion therapy” therefore is not a neutral practice but is founded on the belief that being LGBTI+ is wrong and requires correction. On that basis it is a form of violence or discrimination committed against individuals because of their sexual orientation or gender identity and a violation the legal human rights framework.**

International human rights law therefore prohibits the practice of “conversion therapy” on the basis of the right to non-discrimination<sup>2</sup>, health<sup>3</sup>, prohibition of torture<sup>4</sup>, the rights of the child<sup>5</sup> and the positive rights to bodily autonomy and free expression.<sup>6</sup> The below is not intended as an exhaustive list of UN and human rights mechanisms which establish “conversion therapy” practices as a violation of the legal rights framework.

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<sup>1</sup> The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; ‘Report on Conversion Therapy,’ May 2020:

<https://www.ohchr.org/EN/Issues/SexualOrientationGender/Pages/ReportOnConversiontherapy.aspx>

<sup>2</sup> Art 14, Human Rights Act (HRA)

<sup>3</sup> Art 12, ICESCR

<sup>4</sup> Art 3, HRA

<sup>5</sup> UNCRC

<sup>6</sup> Human Rights Council, “Practices of so-called ‘conversion therapy’: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

<https://undocs.org/A/HRC/44/53> page 14 onwards.

In 2020 the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity called for a global ban on “conversion therapy”, stating:

All practices attempting conversion are inherently humiliating, demeaning and discriminatory. The combined effects of feeling powerless and extreme humiliation generate profound feelings of shame, guilt, self-disgust, and worthlessness, which can result in a damaged self-concept and enduring personality changes. The injury caused by practices of “conversion therapy” begins with the notion that an individual is sick, diseased, and abnormal due to their sexual orientation or gender identity and must therefore be treated. This starts a process of victimization.<sup>7</sup>

## **Non-discrimination and Equal Protection against Violence**

Equality and non-discrimination are at the core of all human rights treaties. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights prohibit discrimination on a list of grounds. Practices which intervene on the basis that a person’s sexual orientation or gender identity should be changed are inherently discriminatory as established by The Human Rights Committee<sup>8</sup>.and the Committee on the Elimination of Discrimination against Women.<sup>9</sup>

The over-arching principle of non-discrimination in the realisation of our legal rights, and equal protection for all people against violence or discrimination is also embedded in our UK domestic legal framework for the protection of our rights: the Human Rights Act 1998 and the Equality Act 2010.

## **Right to Health**

Article 12 of ICESCR sets out the right of every person to enjoy the highest attainable standard of physical and mental health. The Committee on Economic, Social and Cultural Rights also specifies the right to freedom from non-consensual medical treatment<sup>10</sup> and establishes that any effort to treat LGBTI+ people as psychiatric patients on the basis of their sexual orientation or gender identity violates the right to reproductive and sexual health.<sup>11</sup> In 2018, the Committee expressed concerns about the integrity of lesbian, gay, bisexual, trans or gender-diverse persons who were reportedly subjected to practices of “conversion therapy” in Poland.<sup>12</sup> The Special Rapporteur on the Rights to Physical and Mental health has also cited the psychological pain and suffering inflicted by practices of “conversion therapy” are deep and associated risk of suicide.<sup>13</sup>

## **Prohibition of Torture and Ill Treatment**

Article 3 of the ECHR (freedom from torture and inhuman or degrading treatment) is an absolute right enshrined in UK law. Trispiotis and Purhouse (2021) argue that “conversion

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<sup>7</sup> Ibid

<sup>8</sup> CCPR/C/KOR/CO/4, paras. 14–15. <https://undocs.org/CCPR/C/KOR/CO/4>

<sup>9</sup> CEDAW/C/MYS/Q/3-5, para. 21

<sup>10</sup> Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 8

<sup>11</sup> Committee on Economic, Social and Cultural Rights, general comment No. 22 (2016) on the right to sexual and reproductive health, para. 23

<sup>12</sup> CRPD/C/POL/CO/1, para. 30

<sup>13</sup> Special Rapporteur on the right to physical and mental health, <https://www.ohchr.org/en/issues/health/pages/srrighthealthindex.aspx>

therapy”, in all its different forms, spawns the specific kind of degradation that UK and international human rights law prohibit.<sup>14</sup> The Independent Expert concluded that practices of “conversion therapy” comprise treatment that is degrading, inhuman and cruel and called for suspected practices of “conversion therapy” to be promptly investigated and prosecuted. These conclusions are supported by United Nations entities and human rights mechanisms including the Committee on Economic, Social and Cultural Rights, general comment No. 22 which asserts that violation of the right to sexual and reproductive health can constitute cruel and inhuman treatment.<sup>15</sup> The Committee against Torture and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment have issued explicit reproaches against the treatments that are forced, involuntary or otherwise coercive or abusive.<sup>16</sup> The Committee on the Rights of the Child asserted the rights of all adolescents to freedom of expression and respect for their physical and psychological integrity, gender identity and emerging autonomy, and condemned the imposition of so-called “treatments” to try to change sexual orientation and forced surgeries or treatments on intersex adolescents.”<sup>17</sup>

## **Rights of the Child**

The Committee on the Rights of the Child has urged States to eliminate “conversion therapy” and cautioned that children and adolescents are especially vulnerable to the practice.<sup>18</sup> The Independent Expert concludes that the imposition of practices of “conversion therapy” on children runs counter to States’ obligation to protect them from violence, harmful practices and cruel, inhuman or degrading treatment, to respect the right of the child to identity, physical and psychological integrity, health and freedom of expression and to uphold the core principle of taking the best interests of the child as a primary consideration at all times.<sup>19</sup>

## **Right to freedom of conscience and religion and freedom of expression**

The international legal framework is robust and well established in effectively balancing rights. The Special Rapporteur on freedom of religion or belief has rejected any claim that religious beliefs can be invoked to justify violence or discrimination against people on the basis of their sexual orientation and gender identity and stated that “international human rights law is clear that the right to freedom of religion or belief does not limit the state’s obligation to protect the life, dignity, health and equality of LGBTI+ persons” and that “banning such discredited, ineffective, and unsafe practices that misguidedly try to change or suppress people’s sexual orientation and gender is not a violation of the right to freedom of religion or belief under international law.”<sup>20</sup>

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<sup>14</sup> Oxford Journal of Legal Studies 2021, Vol. 00, No. 0 pp. 1–29 doi:10.1093/ojls/gqab024

<sup>15</sup> Committee on Economic, Social and Cultural Rights, general comment No. 22:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4sIQ6QSmIBEDzFEovLCuW1a0Szab0oXTdImnsJZVQfQejF41Tob4CvljeTiAP6sGFQktiae1vlbbOAEkmaOwDOWsUe7N8TLm%2BP3HJPzxiHySkUoHMavD%2Fpyfcp3YlZg>

<sup>16</sup> A/74/148, para. 50; A/56/156, para. 24

<sup>17</sup> Committee on the Rights of the Child, general comment No. 20 (2016) on the implementation of the rights of the child during adolescence: <https://www.refworld.org/docid/589dad3d4.html>

<sup>18</sup> Committee on the Rights of the Child, general comment No. 20, para. 34.

<sup>19</sup> Committee on the Rights of the Child, general comment No. 13 (2011) on the right of the child to freedom from all forms of violence, para. 21; and general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, paras. 55 and 73.

<sup>20</sup> <https://www.itv.com/news/2021-04-15/exclusive-un-urges-government-to-ban-chilling-conversion-therapy>

The Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity recognises that “individuals may choose to engage with forms of support and counselling, some of which may be based on psychological, medical or religious approaches related to the exploration of identity...however, based on the overwhelming evidence, none of those approaches can claim “conversion” as an outcome, just as none can claim that diverse sexual orientation or gender identity is an illness or disorder requiring therapy.”<sup>21</sup>

## **Question 2. What action would you like to see the Scottish Government take, within the powers available to it?**

JRS work in Scotland to protect survivors of violence based on sexual orientation and gender identity here or abroad. Collectively we want to ensure that survivors in Scotland benefit both from legislation which sets out the clear protections required by international law and a package of support for survivors such as that being proposed by LGBTI+ organisations in Scotland.

As shown above, we believe that the international legal framework prohibits the practice of “conversion therapy” and therefore want to see the Scottish Government bring forward legislation aimed at achieving a comprehensive ban as far as possible within its competence.

We note that the UK Government intends to consult on its own proposals in September 2021. The Scottish Government has stated it will await details of the UK Government’s proposals, including in terms of whether they are likely to apply to Scotland and that: “if the proposed actions do not result in the banning of this discriminatory and harmful practice in Scotland, we will consider our next steps in banning conversion therapy, in so far as is possible within the powers of the Scottish Parliament.”

We call on the Scottish Government to:

- Ensure any policy and legislation puts LGBTI+ survivors of conversion therapy at the core of investigating and evaluating how to effectively ban harmful practices and provide suitable support for survivors.
- Publish a detailed policy position on how “conversion therapy” practices can be banned in Scotland, and draft comprehensive legislation which meets the international framework as far as is possible within its competence and meets the calls set out below
- Proceed with a consultation process and introduction of draft legislation
- Work with the UK Government where necessary to ensure any reserved areas are captured by UK wide legislation.
- Lobby the UK Government to ensure its legislation is brought forward in a timely manner; does not fall below standards set by the international framework, and meets our calls set out below

It is our view that successful legislation and accompanying guidance which meets the international legal rights framework, and related guidance and implementation, must:

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<sup>21</sup> <https://undocs.org/A/HRC/44/53> p.16

- Strongly affirm that LGBTI+ people are not ‘broken’ or ‘disordered’
- Ban practices in both formal (medical/psychology/counselling) and informal (including pastoral care and religious) settings, whether paid or unpaid
- Protect adults, children, and people with impaired agency, including prohibition of the removal of children from a jurisdiction for the purpose of conversion practices
- Target the false, misleading, and pseudoscientific fraudulent claims that drive conversion practices
- Focus on practitioners’ intent to facilitate change or suppression of a person’s orientation, gender identity or gender expression on the basis of pseudoscientific claims
- Prohibit advertising and promotion of paid or unpaid conversion practices, including promotion of false and misleading claims designed to generate demand
- Prohibit referrals from practitioners, whether in informal or formal contexts
- Provide counselling, rehabilitative support and redress for survivors, including for those who experienced conversion practices in another country
- Provide investigative powers to a suitably advised body or commission, with scope for investigations to be initiated internally or as a response to complaints by third parties, not just by survivors, using strategies that prevent re-traumatisation.

### **Question 3. Do you have suggestions on how the Committee can take forward its consideration of the petition? For example: who should it talk to? Who should it hear from?**

We would recommend the committee keep the petition open until the Scottish Government triggers a public consultation process with the intention of introducing its own legislation. This will be necessary for monitoring and accountability with regards to the Scottish Government’s manifesto commitment to take action to ban “conversion therapy.”

It is of course vital that LGBTI+ voices are heard during this inquiry, including from those who have experienced “conversion therapy” practices, whether in the UK or abroad. The inquiry must in its processes put LGBTI+ survivors of conversion therapy at the core of investigating and evaluating how to effectively ban harmful practices and ensure suitable support for survivors.

In gathering evidence from survivors the committee should consider taking advice on what special measures it might implement to allow anonymity and avoid re-traumatisation, including taking evidence in private.

The views of LGBTI+ advocacy and campaigning organisations based in Scotland should be called on to give evidence, as should legal experts and human rights organisations.

The Committee may also wish to hear from representatives from jurisdictions that have implemented legal bans on conversion therapy. The Australian State of Victoria’s Change or Suppression (Conversion) Practices Prohibition Act 2021<sup>22</sup> has been recognised as a world leading piece of legislation. Other states within Spain, Australia and the United States have issued bans. Germany has implemented a national ban and New Zealand and France are considering legislation.

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<sup>22</sup> Change or Suppression (Conversion) Practices Prohibition Act 2021, Victoria, Australia, <https://www.legislation.vic.gov.au/as-made/acts/change-or-suppression-conversion-practices-prohibition-act-2021>