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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protection against violence and discrimination based on sexual orientation and gender identity

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, submitted in accordance with Human Rights Council resolution 41/18.

* [A/74/50](#).



Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Summary

In the present report, the Independent Expert examines how discriminatory laws and sociocultural norms continue to marginalize and exclude lesbian, gay, bisexual, trans and gender-diverse persons from education, health care, housing, employment and occupation, and other sectors. In addition, the Independent Expert looks at the inclusion and access to these rights through the lens of intersectionality and analyses compounded discrimination, which leads to exclusion and marginalization. He then discusses the ways in which an inclusive society and effective State measures enable people to enjoy protection from violence and discrimination and highlights the unique role of leaders in different fields, all of which will allow the cycle of exclusion to be broken and have a positive impact on the misconceptions, fears and prejudices that fuel violence and discrimination.

I. Introduction

1. The present report contains the final underpinnings of the conceptual framework created in 2017 by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity for the execution of the mandate of Human Rights Council resolution 32/2, in the understanding that “an inclusive society enables people to enjoy protection from violence and discrimination, and leaders in the social, cultural, political and other fields can have an important role in communicating, motivating and fostering that inclusiveness” (A/HRC/35/36, para. 60).

2. The Independent Expert has aligned his work with global and regional initiatives undertaken by human rights and development organizations in the field of social inclusion. These approaches coincide in identifying similar key areas of concern for their work: education, health, housing, economic well-being, political participation, and personal security and freedom from violence. These will be the object of the mandate holder’s considerations, with the exception of the last topic, as extensive guidance on that subject has been issued in previous reports.

3. The mandate holder is guided by two principles. The first is dialogue. For the preparation of the present report the mandate holder sought input from a wide range of stakeholders: he called for written submissions on 6 May 2019 and as a result some 50 submissions were received from Member States, civil society organizations, national human rights institutions, academics and an agency of the United Nations.¹ In addition, a public consultation was held in Geneva on 25 June 2019. Despite all measures of outreach, certain regions of the world remain underrepresented in terms of input for the mandate holder’s work, as can be seen in the respective statistics.² The Independent Expert has committed his best efforts to remedying this gap through desk research.

4. The second guiding principle is intersectionality. Adequate analysis of the causes and consequences of violence and discrimination requires an intersectional lens, as they are experienced in ways that are compounded by factors such as ethnicity/race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital and/or maternal status, age, urban/rural location, health status, disability and property ownership. No particular identity will ever encapsulate the entire complexity of the lived human experience, but each one of them can nonetheless serve as a point of entry, a prism through which the mandate holder may attempt to describe the infinite richness of human aspirations and experiences, and the depths of misery to which some persons are sunk by violence and discrimination. In turn, this will hopefully allow for the texture of these lived experiences to be made visible and, as a consequence, addressable.

II. Sector analysis

A. Education

5. LGBT pupils and the children of LGBT parents face abuse in educational settings, including teasing, name-calling, intimidation, physical violence, social

¹ With the exception of those whose authors requested confidentiality, submissions will be published on www.ohchr.org/EN/Issues/SexualOrientationGender/Pages/SocioCulturalEconomicInclusion.aspx.

² See www.ohchr.org/Documents/Issues/SexualOrientation/Report_SCE_GA_EN.docx.

isolation, cyberbullying, physical and sexual assault, and death threats,³ all in a manner disproportional to that affecting the general population.⁴ These abuses occur in classrooms, playgrounds and social areas, toilets and changing rooms, on the way to and from school and online.⁵ Such abuse will in turn affect participation in cultural and sport activities.⁶

6. The response of schools is often poor, by intent or by negligence: policymakers, administrative personnel and teachers are ill-equipped to address bullying and discrimination, and are often fearful that parents and social groups will attack them if they advocate for the inclusion of concerns connected to violence and discrimination in internal policies, or sex education components in the curricula. As a consequence, systems flatly fail to address or adequately represent these issues. Some States have, for instance, banned discussion on sexual orientation and gender identity at school, and prohibited the distribution of connected information to children and/or the wearing of symbols of support for LGBTI people (see [A/69/335](#)).⁷ Negative portrayals and/or the invisibility of sexual and gender diversity in educational materials enable exclusion, as such things can contribute to feelings of isolation and low self-esteem for LGBT students and foster discriminatory attitudes among peers.

7. Trans and gender non-conforming students can face humiliation through gendered uniforms, and abuse with regard to accessing sex-segregated toilets and changing rooms⁸ and participating in sports activities.

8. The adoption of comprehensive sexuality education that is inclusive of sexual and gender diversity can significantly reduce physical and psychological health risks for LGBT and gender-diverse youth, including with regard to sexual and reproductive health,⁹ and in addition help them avoid secondary effects such as substance abuse, mistrust of health services and self-medication.

9. Even if they are discriminated against in childhood, the most marginalized LGBT persons can fill the gap and aim at a better life with appropriate programmes, and to this end targeted vocational trainings and ongoing professional education settings are equally important. The mandate holder has been greatly encouraged by examples of good practice. For example, in Argentina, a school aimed mainly at trans persons, the first of its kind worldwide, was created, and in Costa Rica, trans persons are actively included in technical training provided by the National Learning Institute.¹⁰

³ United Nations Educational, Scientific and Cultural Organization (UNESCO), *Good Policy and Practice in HIV and Health Education: Booklet 8 – Education Sector Responses to Homophobic Bullying* (Paris, 2012); Paulo Sérgio Pinheiro, *World Report on Violence against Children* (Geneva, United Nations, 2006); Inter-American Commission on Human Rights (IACHR), *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.1, Doc. 36, 2015; Committee on the Rights of the Child, general comment No. 20 (2016), para. 33.

⁴ Submissions: PROMSEX; United Kingdom of Great Britain and Northern Ireland.

⁵ UNESCO, “Out in the open: education sector responses to violence based on sexual orientation or gender identity/expression”, 2016.

⁶ International Labour Organization (ILO), “Gender identity and sexual orientation: promoting rights, diversity and equality in the world of work – results of the ILO’s PRIDE project”. See also submission: Netherlands Institute for Human Rights.

⁷ See also CAN 4/2018 at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24216> and KAZ 5/2018 at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24175>.

⁸ UNESCO, “Out in the open”.

⁹ Submission: CHOICE for Youth and Sexuality.

¹⁰ Submission: Daniella Solano Morales.

B. Employment

10. Discrimination and abuse based on sexual orientation, gender identity and gender expression takes place in all regions, in all stages of the employment cycle (hiring, advancement, training, compensation and termination), and in the implementation of benefits throughout (CCPR/C/89/D/1361/2005, paras. 7.2–7.3). LGBT workers widely reported being unfairly denied training and job advancement opportunities, as well as promotions.¹¹ For example, a recent study in the United States of America revealed that, when compared to their heterosexual peers, young gay males earned, on average, 11.7 per cent less, while the wages of young bisexual males were, on average, 12.4 per cent lower.¹² Those more visible in being perceived as transgressing gender norms face the highest rates of exclusion and harassment.

11. As a result, many LGBT people are forced to conceal their sexual orientation and gender identity, which can lead to considerable anxiety and loss of productivity.¹³ In most States, national laws do not provide adequate protection.¹⁴ In the absence of such laws, employers may be able to fire or refuse to hire or promote people simply because they are perceived to be LGBT or gender diverse (see A/HRC/19/41).

12. The manner in which human resources departments collect data, including by requiring information on partner and family status, can enable discrimination and can translate to discrimination related to benefits and policies, or to policies that do not meaningfully include a diverse workforce, including with regard to providing health insurance, pension contributions, parental leave and other benefits on an equal basis with cisgender and heterosexual co-workers.¹⁵ In addition, it is rare that health benefits cover gender-affirming care, even in the presence of evidence that any costs would be offset by increased productivity, psychological benefits and improved mental and physical health.¹⁶

13. The military appears to be one of the sectors in which systematic State exclusion manifests itself more markedly, as a result of gendered expectations “determined by a male-dominated...culture where typical male stereotypes are mostly valued”,¹⁷ and the mandate holder has, inter alia, concerned himself with instances of arrests, interrogations, detentions and prosecutions of soldiers and military personnel perceived to be gay under the Military Criminal Act of the Republic of Korea.¹⁸ The European Organisation of Military Associations and Trade Unions, however,

¹¹ ILO, “Une étude sur la discrimination au travail pour motifs d’orientation sexuelle et d’identité de genre en France”, PRIDE at work working paper, No. 2 (Geneva, 2016).

¹² Joseph Sabia, “Sexual orientation and wages in young adulthood: new evidence from Add Health”, *Industrial and Labor Relations Review*, vol. 67, No. 1 (2014), cited in submission: CHOICE for Youth and Sexuality.

¹³ ILO, “Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Costa Rica”, PRIDE at work working paper, No. 1 (Geneva, 2016); *ibid.*, “A study on discrimination at work on the basis of sexual orientation and gender identity in Indonesia”, PRIDE at work working paper, No. 3 (Geneva, 2016).

¹⁴ International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA): Lucas Ramon Mendos, “State-sponsored homophobia 2019”, 13th ed (Geneva, March 2019).

¹⁵ ILO, “A study on discrimination at work on the basis of sexual orientation and gender identity in Thailand”, PRIDE at work working paper, No. 3 (Geneva, 2015); *ibid.*, “A study on discrimination at work on the basis of sexual orientation and gender identity in South Africa”, PRIDE at work working paper, No. 4 (Geneva, 2016). See also submission: Asia Pacific Alliance for Sexual and Reproductive Health and Rights.

¹⁶ M. V. Lee Badgett and others, “The business impact of LGBT-supportive sexual orientation and gender identity policies”, Williams Institute (May 2013).

¹⁷ Submission: European Organisation of Military Associations and Trade Unions (EUROMIL).

¹⁸ See KOR/2/2017. Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23282>.

conveyed to the mandate holder that “LGBTI inclusion is thus not only considered as a matter of human rights, justice and equality, but also as a strategic opportunity to increase operational effectiveness”.¹⁹

C. Housing

14. LGBT persons may face discrimination in access to housing as a result of unfair treatment by public and private landlords, estate agencies and credit providers.²⁰ LGBT individuals and same-sex couples may be denied leases and mortgages and be harassed by neighbours and evicted from their homes (see [A/HRC/29/23](#)). A survey in Sri Lanka revealed that 24 per cent of LGBT respondents had been unable to rent housing or had been forced to change their domiciles; a recent study in Angola determined that 23 per cent of trans women had been homeless in the preceding 12 months²¹; and a situational sampling in Slovenia showed discriminatory treatment of same-sex couples in 9.7 per cent of the surveyed cases.²²

15. Exclusionary processes lead to a disproportionate representation of LGBT people, as well as their dependents and children, within the homeless population: in the very few countries where the correlation of data is possible, data suggest that LGBT persons are represented in homeless populations at twice the rate of their presence in the general population.²³

16. In most countries there are no shelters specifically for LGBT persons²⁴ and it is reported that they are more likely to be turned away from shelters serving the general population ([A/HRC/31/54](#), para. 44),²⁵ or are compelled to conceal their sexuality or gender identity when accessing services.²⁶ The Independent Expert is encouraged by information about the creation of dedicated shelters in a handful of countries, among them Albania,²⁷ and during a visit to a facility in Ukraine he was deeply moved by the testimony of residents about how that space saved their lives.

17. Homelessness can result in further exclusion, criminalization and stigma; without a fixed address it can be difficult or impossible to gain access to employment, to get a bank account, to receive mail and to register with health providers. Some legal systems have resorted to criminalizing homelessness by declaring that living permanently on the street is illegal,²⁸ which exacerbates possible conflicts between homeless LGBT persons and the law. Homeless individuals are more likely to need public toilets and sanitation facilities. If those facilities do not offer sufficient privacy, those who appear gender non-conforming are at increased risk of facing harassment and violence when trying to attend to their most basic human needs.

18. The Independent Expert concurs with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, that the best practice of “housing first” programmes is persuasive when demonstrating that successful housing strategies are those that address not only housing need, but also the structural causes underlying

¹⁹ Submission: EUROMIL.

²⁰ Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), para. 11.

²¹ Submission: ILGA World.

²² Submissions: ILGA World; Advocate of the Principle of Equality of Slovenia.

²³ Submissions: New Zealand Human Rights Commission; Australia.

²⁴ Submissions: Daniella Solano Morales; Right Here, Right Now (Nepal); XY Spectrum; Transvanilla; Advocate of the Principle of Equality of Slovenia; Protector of Citizens of Serbia.

²⁵ See also submission: New Zealand Human Rights Commission.

²⁶ Submission: Australia.

²⁷ Submission: Albania.

²⁸ Submission: Transvanilla.

that need (A/HRC/37/53, para. 34). Within this context, it is clear that stigma and discrimination play a role, but so do the absence of adequate legislation protecting against discrimination and the lack of relationship recognition, which has a negative impact on the realization of the right to housing for LGBT individuals.

D. Health

19. Several studies have shown health disparities in the LGBT population. Research shows higher rates of breast and cervical cancer and HIV infection and of mental health concerns, such as anxiety, depression, self-harm and suicide. The criminalization and pathologization of LGBT people (A/HRC/35/21, paras. 48 and 58) have had a deep impact on public policy, legislation and jurisprudence, penetrating all realms of State action in all regions of the world and permeating the collective conscience (A/73/152, para. 14), and have created barriers which render health services unavailable, inaccessible or unacceptable.

20. The negative health impact of laws criminalizing homosexuality has been widely acknowledged, particularly in efforts to prevent the spread of HIV. It can deter some of those most at risk of infection from coming forward for testing and treatment out of fear of being deemed a criminal. The African Commission on Human and Peoples' Rights has pointed out that punitive legal environments, combined with stigma, discrimination and high levels of violence, placed gay men and other men who have sex with men at high risk of HIV infection because they were driven underground out of fear of prosecution and other negative consequences.²⁹

21. Homosexuality was removed from the International Classification of Diseases in 1990 and trans identities from the chapter on mental disorders in May 2019. Despite this, some countries continue to classify homosexuality as an illness and in almost all countries trans persons are treated as if they were by definition sick or disordered (A/HRC/35/21, paras. 48 and 58). Earlier in 2019, the Independent Expert and the Special Rapporteur on the right to health called on States to review their medical classifications and adopt strong proactive measures, including education and sensitization campaigns, to eliminate the social stigma associated with gender diversity.³⁰

22. Evidence shows that acquiring physical sex characteristics congruent with experienced gender identity generally improves health, well-being and quality of life. Conversely, not being able to live according to one's self-identified gender is likely to be a source of distress, exacerbating other forms of ill health.³¹ However, treatment is difficult to access, and even where available it is often prohibitively expensive. Even in environments that generally have adequate resources, the asymmetries in the situation of trans persons is painfully obvious.³² In the absence of public health provisions, trans people are forced into unsafe alternative measures to change their bodies to match their gender identity. In many countries, this includes the unregulated use of hormones and the dangerous practice of injecting silicone or industrial oil by non-medical providers.³³

23. The treatment of same-sex attraction and trans identities as pathologies that can be "cured" contributes to the practice of involuntary institutionalization (see

²⁹ African Commission on Human and Peoples' Rights, "HIV, the law and human rights in the African human rights system", December 2016, para. 51.

³⁰ See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24663&LangID=E.

³¹ World Health Organization (WHO), *Sexual health, human rights and the law* (Geneva, 2015).

³² Submission: New Zealand Human Rights Commission.

³³ United Nations Development Programme, "Transgender health and human rights", discussion paper, December 2013.

[A/HRC/41/33](#)) and forced treatments, such as so-called conversion therapies³⁴ – often imposed on people without their consent and in some instances found to constitute torture – leading to successful legal challenges and bans in several countries (see [A/HRC/29/23](#)). Such practices are deeply harmful and may cause severe pain and suffering and lead to depression, anxiety and suicidal ideation.³⁵

24. Discrimination by health workers is widespread and can manifest in refusals to make medical appointments or treat LGBT people, providing treatment with gross disrespect or violations of medical privacy.³⁶ A recent survey in the United Kingdom of Great Britain and Northern Ireland shows that two in five trans respondents had a negative experience when accessing health services.³⁷ Discriminatory attitudes of health-care providers can deter individuals from seeking services³⁸ and can make LGBT people reluctant to share personal and medical information, jeopardizing their overall health and access to health services: in Argentina, 5 in 10 trans persons surveyed had reportedly stopped attending their health centres because they felt discriminated against.³⁹

25. Very few medical education curricula, health standards and professional training programmes have incorporated a comprehensive approach to LGBT health care.⁴⁰ Health-care providers may therefore have an inadequate understanding of specific health needs and hold inappropriate assumptions about the causes of health conditions faced by people of diverse sexualities and genders.

26. Lack of legal recognition of relationships restricts the inclusion of significant individuals in family treatment or decision-making roles. The Committee on Economic, Social and Cultural Rights has called on States to ensure that individuals in same-sex unions are entitled to equal enjoyment of their economic, social and cultural rights (see [E/C.12/ITA/CO/5](#)), which includes the consultation and inclusion of same-sex partners in health-related decision-making or recognition by health insurance companies.

E. Religion

27. The mandate holder is aware of the powerful role of organized religion in the dynamics of social inclusion or exclusion. There is abundant information about the dissemination of expressions that constitute hate speech by representatives of churches and faith-based groups, and incitement often leads to actions that infringe on other rights, including the right to personal integrity. The Independent Expert had the opportunity, for example, to remark on the role played by clergymen in violent actions against LGBT and gender-diverse persons in Georgia (see [A/HRC/41/45/Add.1](#)), and is aware that incitement and actual violence is enabled or carried out by religious leaders or agents in many ways. In some contexts it is religion that is used as an explanation for the imposition of penalties that include the death penalty for homosexuality.

28. But alienation from organized religion also has an impact on the ability of the individual to seek happiness through spirituality. The mandate holder has received

³⁴ Submission: New Zealand Human Rights Commission.

³⁵ Christy Mallory, Taylor N. T. Brown and Kerith J. Conron, “Conversion therapy and LGBT youth”, Williams Institute (January 2018), cited in [A/HRC/38/43](#).

³⁶ WHO, *Sexual health, human rights and the law*, p. 23. See also submission: Canadian HIV/AIDS Legal Network, p. 2.

³⁷ Submission: United Kingdom.

³⁸ Pan American Health Organization and WHO, resolution CD52.R6.

³⁹ Submission: Ombudsman of the Nation of Argentina.

⁴⁰ WHO, *Sexual health, human rights and the law*.

information about the harm felt by many LGBT persons as a result of exclusion from pursuing spirituality within institutionalized religion. In the words of Reverend Brent Hawkes, of the Metropolitan Community Church of Toronto:

Many of us who are LGBTQI are forced to choose between our sexuality and our spirituality ... so we go back and forth in this challenge ... Faith communities, at their best, teach comfort and challenge. They teach comfort to care for each other, be with each other, support each other; and they challenge you to be more open, more loving and more active. And I missed both the comfort and the challenge.

F. Public spaces

29. Social integration relates to the ability of LGBT persons to access and express themselves freely in public space.⁴¹ Violence and discrimination appear more frequently – and more viciously – in these spaces, as a sanction of a person’s actions to publicly express certain sexual orientations and gender identities perceived by the agent of violence and discrimination to be transgressive: in Peru, police officers have allegedly expelled same-sex couples from public spaces or required them not to show affection under the justification that such actions would be inappropriate in front of children.⁴²

30. Traits perceived as offensive may include some over which the person has little or no control, such as voice intonations or mannerisms. Expressions even extend to the most involuntary of settings, as is the case of the aggression suffered by children raised in families regarded as “non-traditional”.⁴³

31. While limitations to public space appear to exist at all times and in all places, they manifest in particular with regard to the ability of LGBT persons to freely assemble through marches, such as those held to commemorate the International Day against Homophobia, Transphobia and Biphobia, or pride marches, obstacles to which are reported in vast regions of the world.⁴⁴ Not raising obstacles to the rights to freedom of assembly and expression, and ensuring particular vigilance and prevention with regard to hate crimes during pride marches, are among the fundamental obligations of States in that respect.⁴⁵

32. The need of LGBT persons to access sanitation services in a safe manner has led to deeply divisive and stigmatizing public debates on objectively innocuous issues, such as access to gender-neutral bathrooms in public spaces, education and work settings, in a process already described by the Special Rapporteur on the human right to safe drinking water and sanitation (see [A/HRC/33/49](#)).

⁴¹ International Commission of Jurists (ICJ), “Living with dignity: sexual orientation and gender-based human rights violations in housing, work, and public spaces in India” (Geneva, June 2019); ICJ response to the questionnaire of the Special Rapporteur in the field of cultural rights, submitted on 20 May 2019 (used with permission from the authors).

⁴² Submission: PROMSEX.

⁴³ Submission: Child Rights International Network.

⁴⁴ The submission of the Eastern European Coalition for LGBT+ Equality makes reference to repression in the Russian Federation, Belarus and Azerbaijan, and the mandate holder received extensive information in relation to events in Georgia, as seen in the report of the mandate holder’s country visit, [A/HRC/41/45/Add.1](#).

⁴⁵ See, for example, the submission of the Belgian National Equality Body and National Human Rights Institution.

G. Political and public discourse

33. In no other field do respect or stigma manifest themselves more clearly than in the political arena. All over the world, in instances too frequent to cite, political campaigns, referendums, policy and parliamentary debates and public manifestations outside courthouses reveal social prejudice and misconceptions about the nature and moral character of LGBT persons.⁴⁶ Bosnia and Herzegovina noted that the lack of condemnation of such actions by public figures also shapes the perception of the general public on these issues.⁴⁷ Incitement to violence, hatred,⁴⁸ exclusion and discrimination are also aided by representations in media and cultural channels and lead to increased psychological distress for LGBT persons.⁴⁹ For example, a submission remarked that Jamaican dancehall music, a popular musical genre that often speaks of beating and shooting gay men, appears to play a role in promoting anti-gay violence.⁵⁰

H. Backlash

34. The rise of ultraconservative and ultranationalist groups reclaiming “identities” at the expense of sexual and gender minorities has challenged advances and prevented the development of laws and policies inclusive of LGBT people in several countries. In recent years, these groups have developed discourses that undermine rights related to gender and sexuality and have built new strategic alliances and increased their advocacy efforts in international spaces in the hope that progress already made will be rolled back. Such discourse encourages the perception of LGBT people as “others”. Such discourse promotes exclusion and increases hate crimes.

35. Anti-rights narratives must be countered forcefully by political, religious and traditional leaders, by business sectors and by the media. Public condemnation of hate speech strengthens alliances with minority groups and sends a strong signal that such discourse and behaviour are not tolerated in any given society.⁵¹

III. Some examples of intersectionality

36. In the present section, the Independent Expert provides glimpses that emerge when looking at his mandate through the prism of some identities. By definition the list of identities is non-exhaustive, and the descriptions provided therein are only a fragment of a full account.

A. Women who are lesbian, bisexual, trans and gender diverse

37. Misogyny, patriarchy and gender inequalities, combined with the premise that the human existence is determined by a male/female binary system based on sex assigned at birth, are at the root of violence and discrimination against women with diverse sexual orientations and gender identities. This system often relies for its implementation on an association between acceptance of these premises and the notion of good citizenry. During his country visit to Ukraine, for example, the Independent Expert learned that LBT women were deemed unpatriotic by extreme

⁴⁶ Submission: Slovak National Centre for Human Rights.

⁴⁷ Submission: Bosnia and Herzegovina.

⁴⁸ Submission: Protector of Citizens of Serbia.

⁴⁹ Submission: Australian Human Rights Commission.

⁵⁰ Submission: Canadian HIV/AIDS Legal Network.

⁵¹ Submission: Advocate of the Principle of Equality of Slovenia.

right-wing groups because they defied societal expectations for reproduction and motherhood ([A/HRC/41/33](#), para. 37).

38. LBT and other women who challenge this system are more likely to be excluded from opportunities of economic empowerment and subjected to the most heinous forms of violence, including forcible impregnation, attacks with acid and domestic violence. They are also disproportionately targeted for social control and are at heightened risk of encountering the criminal justice system ([A/HRC/41/33](#), para. 34). LBT women are also at risk of being subjected to “conversion therapies” or to being forced, coerced or involuntarily committed to “treatment” in psychiatric institutions, specialized camps, homes or places of worship in an attempt to change their sexual orientation ([A/HRC/41/33](#), para. 35).

39. In health-care settings, LBT women are often discriminated against, mistreated and misdiagnosed by medical providers, which deters them from seeking health services or carrying through with treatment ([A/HRC/32/44](#), para. 58). Systemic discrimination also limits access to sexual and reproductive health care, and the mandate holder is concerned about LBT women who are denied autonomy with regard to whether they choose to bear children in contexts in which rape and forced marriage are practiced.

40. LB women have good reasons to fear disclosing their sexual orientation to their practitioners owing to stigma.⁵² Inappropriate questioning by health professionals is reported to be common,⁵³ and programmes related to sexual and reproductive health and rights that were receiving global health assistance from the United States have been affected by the so-called global gag rule, which has had a negative impact on access to health services by LGBT populations ([A/HRC/41/45/Add.2](#), para. 61).

41. Combined with gender-based discrimination against women, where women face a pay gap and hold the burden of unpaid care work, lesbian women facing discrimination on the basis of sexual orientation and gender identity are often even worse off.⁵⁴ Pay gaps translate to smaller contributions to pension schemes and therefore to increased poverty in retirement.⁵⁵

B. Young persons

42. LGBT youth experience particular disadvantages connected, inter alia, with economic dependence and reliance on family and community networks. These dynamics become crucial when young persons who are underage and have not come out to their families are required to obtain parental consent to access advice to address discrimination.⁵⁶ The mandate holder has received abundant information that close relatives attempt to force LGBT youth to conceal or change their behaviour or sexual desire, including forcing them to undergo “conversion therapies”.⁵⁷

43. Exposure to violence and discrimination in educational settings, including cyberbullying, results in feelings of unsafety, missed school days, a reduced sense of

⁵² See www.researchgate.net/publication/290479604_Access_to_health_services_by_lesbian_gay_bisexual_and_transgender_persons_systematic_literature_review.

⁵³ Alexis Hoffkling, Juno Obedin-Maliver and Jae Sevelius, “From erasure to opportunity: a qualitative study of the experiences of transgender men around pregnancy and recommendations for providers”, *BMC Pregnancy and Childbirth*, 2017, p. 332, cited in submission: ILGA, annex, p. 2.

⁵⁴ ILO, “France”, *Pride at work working paper*, No. 2; *ibid.*, “South Africa”, *Pride at work working paper*, No. 4.

⁵⁵ Submission: Association BaBe.

⁵⁶ Submission: Advocate of the Principle of Equality of Slovenia.

⁵⁷ Submission: ILGA World.

school belonging and reduced chances of academic success.⁵⁸ “Not one day passed without me being called names at school; at the end my parents just told me to quit – I was meant to help at home and then get married, anyway,” said a young Georgian lesbian to the Independent Expert (see [A/HRC/41/45/Add.1](#)).

44. Among the disparities reported are higher rates of drug abuse and high-risk sexual behaviour at an early age, and higher risks of depression and suicidal ideation and attempts, a trend that, when combined with negative past experiences with health-care professionals, discourages young persons from seeking mental health care.⁵⁹ A recent study carried out in the Netherlands reported that LGBT youth are 4.5 times more likely to commit suicide than others, and that the most important predictor for this elevated rate is negative reactions received at school on the basis of sexual orientation and gender identity.⁶⁰ Stigma and ignorance from youth health-care professionals appear to play a significant role, as many are unable to detect distress faced by LGBT youth and refer them to specialized services.⁶¹

45. LGBT youth are disproportionately affected by homelessness (see [A/70/270](#)),⁶² which results from religious and cultural intolerance that may include sexual and other violence, as well as socioeconomic deprivation (see [A/HRC/31/54](#)).⁶³ The National Human Rights Commission of India reported that abandonment of transgender children can start as early as 12 years of age,⁶⁴ and as a result of heightened vulnerability in the face of family rejection, it is reported that in some contexts LGBT youth account for as much as 40 per cent of the homeless population in the same age group.⁶⁵ Underage children and youth kicked out of their family homes are often not eligible for State benefits, which are received by their parents, leaving them with insufficient means to secure safe housing and exposing them to particular risks. When they are protected by State services, LGBT children and youth in shelter programmes risk finding themselves on the street once they reach legal age. A cycle ensues, with LGBT youth being disproportionately represented in foster care, begging and sex work, and more likely to be turned away from shelters.

C. Older persons

46. Research and data in the field of older persons is virtually non-existent. Nonetheless, the mandate holder has received information that suggests that they face social isolation and loneliness. Family rejection and limitations in the recognition of certain forms of families, and limited access to assisted reproduction techniques,⁶⁶ mean that often older LGBT people have minimal family support. These factors combined can leave older LGBT people in precarious situations when it comes to housing security and can increase the likelihood of the need for formalized social care; many are reported to be propelled back into the closet when moving to retirement settings.

⁵⁸ Submissions: PROMSEX; Belgian National Equality Body and National Human Rights Institution; New Zealand Human Rights Commission; Protector of Citizens of Serbia; Malta. See also UNESCO, *Education Sector Responses to Homophobic Bullying* and “Out in the open”, and IACHR, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*.

⁵⁹ Submission: Australian Human Rights Commission.

⁶⁰ E. M. Boss and H. Felten, “Handreiking LHBTI-emancipatie: feiten en cijfers op een rij”, cited in submission: CHOICE for Youth and Sexuality; submission: Australia.

⁶¹ “Handreiking LHBTI-emancipatie”, cited in submission: CHOICE for Youth and Sexuality.

⁶² See also submission: Australia.

⁶³ See also submission: Advocate of the Principle of Equality of Slovenia.

⁶⁴ Submission: National Human Rights Commission of India.

⁶⁵ Submission: Canadian HIV/AIDS Legal Network.

⁶⁶ Submission: New Zealand Human Rights Commission.

47. Housing and support services for older persons are often not seen as offering LGBT people safe, welcoming accommodation and support.⁶⁷ In Ireland, for example, a study found that many older LGBT people perceive nursing homes as unwelcoming or insensitive to their health-care needs.⁶⁸ Family and/or aged care staff may refuse to affirm the gender identity of older trans and gender-diverse persons and force them to live according to the gender assigned at birth.⁶⁹ Australia noted that some LGBT people may fear reliving past experiences when encountering discrimination in the aged care environment.⁷⁰

48. In addition, discrimination in employment can mean that LGBT individuals have contributed less to pension schemes and therefore have less income later in life. Individuals might not be eligible to the pension entitlements of same-sex partners, which could leave them unable to pay their rent or mortgage and lead to evictions. They might not be able to legally leave property to a surviving partner, and surviving partners might not be able to remain in public housing following a partner's death.

49. With regard to end-of-life considerations, which affect all persons, it is common for the mandate holder to receive information about partners not being consulted and not being given decision-making power. Survivor benefits, including pensions and social security payments, are negatively affected in the vast majority of countries in the world. In its submission, Ireland noted that older LGBT individuals are often fearful that their end-of-life and after-death wishes will not be respected by some family members, a situation that is exacerbated when States limit the legal recognition of certain family configurations. Members of the community describe additional challenges in bereavement, including a lack of acknowledgement of loss, legal complications and the exclusion of non-legally recognized family as part of the unit of care.⁷¹

D. Persons living with disabilities

50. LGTB persons living with disabilities often face intersectional discrimination, greater social exclusion and violence, isolation and barriers to, inter alia, education, housing, employment and health, in particular sexual and reproductive rights. A significant role is reportedly played by the exacerbation of the stigma of sexuality in the case of diverse orientations and identities: the term “second coming out”⁷² has been coined to describe the process of forced disclosure when interacting with any formal or informal sector. A submission from Ireland noted that owing to complex factors, including living arrangements, persons with disabilities can often be denied sexual expression,⁷³ which can be connected to a lack of privacy stemming from the accompaniment of support persons, who in many cases may be family members.

51. As in other cases concerning LGTB persons, research is very scarce; however, some studies have made headway in identifying the health disparities for those living at this intersection.⁷⁴ Specific instances of discrimination are most pressing with regard to the denial of supports and the right to form relationships, and increased

⁶⁷ See www.cpa.org.uk/information/reviews/CPA-Rapid-Review-Diversity-in-Older-Age-LGBT.pdf.

⁶⁸ Submission: Ireland.

⁶⁹ Submission: Australia.

⁷⁰ Ibid.

⁷¹ Submission: Ireland.

⁷² NSW Gay and Lesbian Rights Lobby and City of Sydney, “Uncloseting discrimination: consultation report on the intersections of discrimination”, March 2012.

⁷³ Submission: Ireland.

⁷⁴ Kimberly Rutherford, John McIntyre, Andrea Daley and Lori Ross, “Development of expertise in mental health service provision for lesbian, gay, bisexual and transgender communities”, *Medical Education*, vol. 46, No. 9 (September 2012).

instances of forced medical interventions and treatments.⁷⁵ The New Zealand Human Rights Commission reported having met with a group of LGBT persons living with disabilities, and discussed the difficulties they experienced because of others' attitudes and assumptions about invisible disabilities, and the ways in which consent could be taken away from someone if they had a disability.⁷⁶

E. Asylum seekers, refugees, migrants and internally displaced persons

52. The structural vulnerability of LGBT persons may be compounded by their status as migrants, asylum seekers and refugees. As they flee discrimination and violence at home, they may be at particular risk of violence, abuse and exploitation at all stages of their journey and at the hands of immigration officers, traffickers and smugglers.

53. As a result, the strategy for survival often involves concealing their identities, not only to escape harassment and abuse but also to access food, livelihood provisions and shelter. The concealing of identity makes it even more challenging for aid providers to provide adequate support, including in the context of internal displacement,⁷⁷ and facilities put in place in an emergency or during displacement may not be suited for the needs of LGBT people or may be discriminatory,⁷⁸ which makes the assessment of individual protection needs in countries of transit and destination and the provision of adequate shelter and sanitation facilities, as well as access to permanent housing, particularly important.⁷⁹ Same-sex couples and their families risk being separated or being treated without due consideration in the delivery of service.

54. In addition, access to LGBT-sensitive health care and reproductive rights services becomes particularly challenging for LGBT people on the move, in all stages and at all times during their journeys. For instance, the interruption of hormone and other treatment associated with gender transition may be particularly harmful or lead to hazardous self-medication.

55. Stigma and discrimination strongly discourage migrants, internally displaced persons, asylum seekers, refugees and migrant workers from disclosing their sexual orientations and gender identities, which may raise particular obstacles for those wanting to present claims for asylum, particularly if the persecution against them was based on their sexual orientations and gender identities in the first place,⁸⁰ and LGBT migrants in an irregular situation may be even more vulnerable to harassment, violence and exploitation, as their migratory status may prevent them from seeking redress for the abuse and human rights violations they have endured.

56. Migration detention is particularly harmful, as LGBT migrants in detention for irregular entry and stay may be subjected to social isolation and physical and sexual violence. Those negative experiences may be compounded for trans persons, as they are often detained in wards that do not correspond to their self-identified gender or are kept in solitary confinement for an extended period of time.

⁷⁵ Statement by Silvia Quan, on behalf of the International Disability Alliance, at the twentieth session of the Committee on the Rights of Persons with Disabilities, 27 August 2018.

⁷⁶ Submission: New Zealand Human Rights Commission.

⁷⁷ See www.internal-displacement.org/sites/default/files/publications/documents/201902-gender-dimension.pdf.

⁷⁸ Submission: Office of the United Nations High Commissioner for Refugees (UNHCR).

⁷⁹ See www.ohchr.org/FR/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24764&LangID=F;A/HRC/29/34/Add.2.

⁸⁰ Submission: UNHCR.

57. Unaccompanied LGBT children face further threats to their immediate physical security, including barriers to accessing services compounded by a lack of knowledge regarding providers, a lack of access to safe shelter and distinct psychosocial needs compounded by their young age; in addition, they are at risk of being missed by identification procedures.⁸¹

58. In its submission, Spain highlighted the extreme vulnerability of trans sex workers, who are often also migrants who had to leave their countries and social circles behind, which exposes them to exclusion, poverty, substance abuse, violence and health-related issues.⁸² Research published by an Irish civil society organization has found that more than 50 per cent of LGBT migrants living in Ireland rated their mental health negatively, 54 per cent felt they were excluded from society and 40 per cent said they had experienced homophobic abuse.⁸³

F. Victims of humanitarian and natural disasters

59. Disasters and crises have differential impacts on the lives of LGBT persons. Pre-existing inequalities, discrimination and violence are exacerbated in humanitarian settings, putting those who are already most vulnerable at further risk (see [A/HRC/33/49](#)). Recognizing and addressing the root causes of these barriers is fundamental to making humanitarian response more effective and reaching the goal of leaving no one behind.

60. Sexual and reproductive health services are another essential aspect of humanitarian response that is currently neglected when it comes to LGBT people. Sexual and reproductive health care – rarely optimal in any event – is even more inaccessible or unsafe for LGBT communities, as heteronormative binary assumptions appear to be inbuilt into humanitarian response themselves: toilet and bathing facilities are organized according to traditional or binary gender definitions of male and female; relief distribution services do not accept or acknowledge diverse family structures; or identity cards don't recognize the identity of trans persons and make it impossible in practice to access humanitarian supplies in many situations.

IV. Dynamics of inclusion

61. Certain premises are cornerstones of successful measures of social inclusion. First, by their existence and like every human being on earth, persons who are LGBT make a significant contribution to the social fabric. Second, their aspiration to find happiness through the fulfilment of aspirations connected to the orientations and identities that are inherent to them is an expression of the exercise of their human rights. Third, the satisfaction of their human rights is also the key to unleashing the full potential of their contributions to society.

62. *A contrario sensu*, being compelled to negate or conceal sexual orientation and gender identity, and the legitimate desires and aspirations inextricably linked to them, holds no redeeming social value. Self-unawareness, self-hatred and lying should not be encouraged by any societal norm or forced on any person as the only way to avoid violence and discrimination. These dynamics appear more marked in regions in which negation is more common: a recent survey conducted by the online dating application Grindr among gay men in the Middle East and North Africa region revealed that 71 per cent of respondents concealed their sexual orientation from their families.

⁸¹ Ibid.

⁸² Submission: Spain.

⁸³ Submission: Ireland.

63. Across the world, State and non-State entities are designing and implementing creative strategies and frameworks to promote the social inclusion of LGBT people. This is a complex task that must take into account the multidimensional and intersectional nature of discrimination and violence. As the mandate holder is concerned with State responsibility, the measures identified are expressed in terms of legislation, public policy and access to justice.

A. Decriminalization and legal recognition of gender identity

64. Social inclusion requires dismantling and reforming the legal and policy frameworks that enshrine criminal persecution on the basis of sexual orientation and gender identity or expression or that negate the identity of the concerned person. The mandate holder has issued extensive guidance in this respect, which should be considered as an integral part of the present report (see [A/72/172](#) and [A/73/152](#)).

B. Anti-discrimination legislation

65. In the catalogue of social inclusion measures, a prime tool is anti-discrimination legislation in line with international human rights provisions.⁸⁴ Most countries have constitutions and legislation that contain prohibitions of discrimination on broad grounds, many include specific protections on the basis of sex/gender⁸⁵ and a handful extend explicit protections on the grounds of sexual orientation and gender identity.⁸⁶

66. The Employment Amendment Act (2010) of Botswana explicitly prohibits discrimination in the workplace on the basis of, inter alia, sexual orientation, while the Labour Code of Cabo Verde prohibits employers from requesting information about an employee's sexual life and imposes sanctions on those who discriminate on the basis of sexual orientation.⁸⁷ The Labour Code of Albania protects against discrimination on grounds of both sexual orientation and gender identity.

67. Similar concrete measures can be identified in the field of social security: the Mexican Social Security Institute issued an interpretation criterion that extends the benefits in cases of illness and maternity insurance to the spouse of the insured or pensioner, regardless of whether it is a marriage between persons of the same sex,⁸⁸ and in Sweden, LGBT persons and same-sex couples are entitled to equal social protection and benefits.⁸⁹

68. A number of countries, mostly across Western and Eastern Europe, but also from other regions (for example Fiji, the Bolivarian Republic of Venezuela and Quezon City in the Philippines) have passed non-discrimination laws that protect against housing discrimination on the basis of sexual orientation, and others, such as Hungary and the United Kingdom, also protect on the basis of gender identity in this sector.

⁸⁴ Universal Declaration of Human Rights, art. 7; International Covenant on Civil and Political Rights, art. 2, para. 3 (a), and art. 26; Human Rights Committee general comment No. 20 (1992); Committee against Torture general comment No. 2 (2007); General Assembly resolution [60/147](#); [A/72/172](#).

⁸⁵ Submissions: Indonesian National Commission on Violence against Women; Belgian National Equality Body and National Human Rights Institution.

⁸⁶ Submissions: Eastern European Coalition for LGBT+ Equality; Australia; Malta; Cuba; Advocate of the Principle of Equality of Slovenia.

⁸⁷ See www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_126760.pdf.

⁸⁸ Submission: Mexico.

⁸⁹ Submission: Sweden.

C. Political participation

69. The integration of LGBT persons within the social fabric must include measures to promote the observance of their right to take part in the government and to access public service, as enshrined in article 21 of the Universal Declaration of Human Rights. In its 2016 study on this topic, Peruvian organization PROMSEX described how inclusion in the conduct of public affairs expands the horizons of comprehension among social groups and prevents the reproduction of prejudice and stereotypes.⁹⁰ In some contexts in which data exists, the picture is encouraging: the United Kingdom reported that, as of June 2017, it had the highest number of parliamentarians in the world who identified themselves as gay, lesbian or bisexual, with 45 Members of Parliament across the political spectrum elected in June 2017.⁹¹

70. Other good practices relate to the creation of institutionalized processes: in developing legislation affecting LGBT people in Malta, the Government established an Advisory Council on LGBT Affairs, comprising local LGBT civil society representatives.⁹² The mandate holder is particularly impressed by his first-hand experience of the overarching and powerful impact of LGBT presidential commissioners and envoys. This model elevates the concerns of violence and discrimination on the basis of sexual orientation and gender identity to the highest levels of the domestic agenda, and simultaneously reflects on the international agenda of States. These best practices of Canada, Costa Rica and the United States are a significant source of inspiration.

71. Meaningful consultation can create an intersectional understanding of how to break poverty dynamics and enable sustainable development. At the global level, a major achievement has been the recent recognition of the LGBTI Stakeholder Group by the steering group of the major groups and other stakeholders of the high-level political forum coordination mechanism, which provides significant points of entry for the follow-up and review processes of the 2030 Agenda for Sustainable Development. At the local level, an example is given by Ecuador, which has taken efforts to ensure the thorough inclusion of LGBTI civil society in the development and implementation of its comprehensive public policy for LGBTI people for 2014–2017, including through meetings in different regions of the country.⁹³

72. LGBT representation need not be limited to community organizations. Comprehensive social and political inclusion should see the participation of LGBT health professionals, teachers, government representatives, members of parliament, police officers and union representatives, among others. For example, the Department for Education of the United Kingdom has established regional equality and diversity hubs that include and fund projects supporting and encouraging the visibility of LGBT teachers in the workplace and in the wider community,⁹⁴ and the New Zealand Council of Trade Unions has established an “Out@Work” Council to serve as a network for LGBT union members.⁹⁵

73. This level of participation can also be reflected in community and civic service performed by LGBT persons, a field of action that allows those who so choose to contribute actively to society. The National Human Rights Commission of India cites

⁹⁰ See <https://promsex.org/wp-content/uploads/2018/03/IgualdadParaConstruirDemocracia.pdf>.

⁹¹ Submission: United Kingdom.

⁹² Office of the United Nations High Commissioner for Human Rights, “Living free and equal: what States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people”, 2016; submission: Malta.

⁹³ Submission: Ecuador.

⁹⁴ Submission: United Kingdom.

⁹⁵ See www.union.org.nz/outatwork/.

the recruitment of trans persons as civic police volunteers to manage traffic in Delhi as a good practice.⁹⁶

D. Public policy

74. By definition, effective and efficient public policy is at the base of good governance that addresses violence and discrimination. A main feature of good policy is its holistic nature; for example, the Netherlands and the United Kingdom have adopted comprehensive national policy approaches consisting of anti-discrimination laws, action plans, inclusive national curricula, gender recognition, data collection, support systems, information and guidelines, and partnerships with non-governmental organizations,⁹⁷ and monitor progress through annual reviews. Efficient and effective monitoring and evaluation of public policies for the promotion of social inclusion are a fundamental component of these systems; one such system is the proposed “LGBTI Inclusion Index”, for which a catalogue of indicators is currently under development by the United Nations Development Programme.⁹⁸

75. A number of States have adopted policy frameworks and action plans to tackle discrimination and promote equality for LGBT persons from an intersectional perspective.⁹⁹ In Slovenia, the Ministry of Health runs a pilot project on the implementation of pre-exposure prophylaxis for men who have sex with men, and regularly finances non-governmental organization programmes that focus on HIV/STI testing for men who have sex with men and on consulting and peer support.¹⁰⁰ In Australia, the Government funded a programme to help health-care settings become more culturally responsive to the indigenous LGBTI community and supported specialist services for LGBTI young people and their families who are homeless or at risk of homelessness.¹⁰¹ In addition, the Australian Aged Care Diversity Framework designs and delivers care services for the aged and has developed an action plan in this context to target the particular barriers and challenges faced by older LGBTI people.¹⁰²

76. Affirmative measures have been adopted in the Argentinean province of Buenos Aires, where the legislature adopted a trans quota in workspaces,¹⁰³ and in Uruguay a pilot programme is under execution, with the aim of reintegrating trans persons into secondary education, including by covering the cost of materials and travel.¹⁰⁴

77. Given that many LGBT persons may not be ready to publicly disclose their sexual orientation and gender identity, telephone and online services are of fundamental importance. The mandate holder received information about the creation of hotlines or online services for counselling and denouncing violence in Albania,¹⁰⁵ Argentina,¹⁰⁶ Honduras¹⁰⁷ and Slovakia.¹⁰⁸

⁹⁶ Submission: National Human Rights Commission of India.

⁹⁷ Submissions: Netherlands; CHOICE for Youth and Sexuality.

⁹⁸ See www.undp.org/content/undp/en/home/librarypage/hiv-aids/lgbti-index.html.

⁹⁹ Submissions: Bosnia and Herzegovina; Ireland; Malta; Netherlands; United Kingdom.

¹⁰⁰ Submission: Advocate of the Principle of Equality of Slovenia.

¹⁰¹ Submission: Australia.

¹⁰² Ibid.

¹⁰³ Submission: Ombudsman of the Nation of Argentina.

¹⁰⁴ Submission: Uruguay.

¹⁰⁵ Submission: Albania.

¹⁰⁶ Submission: Ombudsman of the Nation of Argentina.

¹⁰⁷ Submission: Honduras.

¹⁰⁸ Submission: Slovak National Centre for Human Rights.

E. Awareness-raising and sensitization

78. Public awareness and sensitization campaigns are at the base of enthusiastic public response. For example, between 2015 and 2017 the Ministry of Labour, Family, Social Affairs and Equal Opportunities of Slovenia, together with the non-governmental organization Legebitra and the Faculty of Arts at the University of Ljubljana, implemented the project entitled “Dare to Care about Equality” aimed at improving social attitudes towards LGBTIQ+ persons.¹⁰⁹ The training and sensitization of public officials, including teachers, health professionals, law enforcement officers and all actors from the chain of justice, also plays a crucial role in dismantling deeply rooted stigmas and stereotypes attached to diverse sexual orientations and gender identities.¹¹⁰

79. Recognizing the need to promote social and cultural change, the Office of the United Nations High Commissioner for Human Rights (OHCHR) launched the Free & Equal campaign in 2013 (www.unfe.org). The campaign aims to enhance equality and counter discrimination by engaging the entire United Nations system in public advocacy for LGBTI equality. The campaign has reached hundreds of millions of people through social and traditional media, and has also worked with United Nations country teams and local partners in more than 35 countries around the world to organize national-level spin-off campaigns and events that are tailored to local contexts.

80. Campaigns will be more successful when serious messages are propagated in memorable, often light-hearted or upbeat packages. In New Zealand, the non-governmental organization Rainbow YOUTH created a national advertising campaign under the slogan “If it’s not Gay, it’s not gay!” to discourage the pejorative use of that word.¹¹¹ With its power to change hearts and minds, the insertion of concerns relating to violence and discrimination based on sexual orientation and gender identity into the cultural agenda at national, regional and local levels can have an extraordinary impact on people’s perceptions.

81. Positive, humane and real representations of LGBT persons are increasingly portrayed in film, television and other media. Dozens of annual film festivals are devoted to LGBT issues and concerns, and powerful voices have emerged as members of the community and allies among well-known personalities in all realms of cultural life, including the ubiquitous images provided by entertainment and social media.

F. Access to justice

82. One of the great challenges of justice sector institutions is overcoming the deeply rooted distrust in LGBT communities and populations stemming from decades of abuse and arbitrary actions. A recent survey showed that two in five respondents experienced an incident because they were LGBT in the year preceding the survey; 90 per cent said they did not report it, because “it happens all the time”.¹¹² It is remarkable that even in settings that are making strides to promote access to justice, discrimination still keeps a hold. The Protector of Citizens of Serbia reported, for example, that LGBT persons have been excluded from the law on free legal assistance – in contrast to the explicit inclusion of other populations and groups.¹¹³

¹⁰⁹ Submission: Advocate of the Principle of Equality of Slovenia.

¹¹⁰ Submissions: Bosnia and Herzegovina; Ecuador.

¹¹¹ Submission: New Zealand Human Rights Commission.

¹¹² Submission: United Kingdom.

¹¹³ Submission: Protector of Citizens of Serbia.

83. In situations where sexual orientation and gender identity are not explicitly protected grounds,¹¹⁴ LGBT workers often have little recourse to seek redress for workplace harassment and discrimination. Where protections do exist, investigations face burdens of proof for discrimination, witnesses are unwilling or afraid to speak out and support LGBT co-workers¹¹⁵ or workers might not know of such protections or might fear negative repercussions should they use them.¹¹⁶ A recent survey showed that of the 68 per cent of LGBT people who reported being sexually harassed at work, two thirds did not report it to their employer.¹¹⁷

84. A great number of good practices can be identified when it concerns access to justice and the socioeconomic and cultural inclusion of LGBT persons. The jurisprudence of regional human rights courts includes significant precedent in relation to discrimination based on sexual orientation and gender identity,¹¹⁸ and handling discrimination complaints is usually one of the functions of national human rights institutions.¹¹⁹

G. Partnerships

85. Partnerships play a vital role in successful inclusion. In few other sectors is the contribution of civil society as clear as in settings where the provision of health services is not yet fully covered by the State. Partnerships in the global fight against HIV/AIDS provide abundant examples of good and best practices.¹²⁰ Additional examples are guides and manuals created by LGBT communities themselves. The mandate holder finds, for example, that the *Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities in Asia and the Pacific*, by the Asia Pacific Transgender Network, is a comprehensive, accessible reference document to guide professionals and policymakers.

86. The mandate holder has witnessed first-hand the extraordinary power that comes from uniting under the objective to defend human rights and promote measures of inclusion. In Argentina, for example, the Federation of Lesbians, Gays, Bisexuals and Trans and the Defensor del Pueblo (Ombudsman) created the first LGBT Defender Office in Latin America,¹²¹ and in New Zealand the Professional Association for Transgender Health Aotearoa (PATHA) was created to provide education, networking and opportunities for collaboration to any persons working professionally to advance the health of trans persons.¹²²

87. In its submission, CHOICE for Youth and Sexuality noted that “a Gender and Sexuality Alliance (GSA) at school, supportive school staff, inclusive curricula and comprehensive anti-bullying or anti-harassment policies make significant positive

¹¹⁴ E/C.12/PER/CO/2-4; CCPR/C/KHM/CO/2; ILO, “Costa Rica”, PRIDE at work working paper, No. 1.

¹¹⁵ ILO, “Costa Rica”, PRIDE at work working paper, No. 1; *ibid.*, “France”, Pride at work working paper, No. 2.

¹¹⁶ ILO, “Costa Rica”, PRIDE at work working paper, No. 1; *ibid.*, “France”, Pride at work working paper, No. 2; *ibid.*, “South Africa”, Pride at work working paper, No. 4.

¹¹⁷ See www.tuc.org.uk/sites/default/files/LGBT_Sexual_Harassment_Report_0.pdf.

¹¹⁸ See www.echr.coe.int/Documents/FS_Sexual_orientation_ENG.pdf; www.echr.coe.int/Documents/FS_Gender_identity_ENG.pdf; Inter-American Court of Human Rights, *Atala Riffo and Daughters v. Chile*, Case No. 12.502, 2012, paras. 111 and 271.

¹¹⁹ Submissions: National Human Rights Commission of Nigeria; Australian Human Rights Commission; Advocate of the Principle of Equality of Slovenia; Slovak National Centre for Human Rights; National Human Rights Commission of India; New Zealand Human Rights Commission; Protector of Citizens of Serbia.

¹²⁰ Submission: National Human Rights Commission of Nigeria.

¹²¹ Submission: Ombudsman of the Nation of Argentina.

¹²² Submission: New Zealand Human Rights Commission.

contributions to the lives of LGBT students ... Having a GSA at school was connected to lower incidences of bullying, which can result in greater school safety for LGBT students”,¹²³ and meaningful inclusion of LGBT people in education can have a broad, positive impact.

88. Traditional, community and religious leaders can reflect and shape the culture in which religion is embedded. By taking an affirmative and exemplary attitude, embracing diversity and inclusiveness, they may have a positive impact on the attitude of their community members. For example, an LGBT-friendly mosque has been founded in Cape Town and offers support to Muslims who are marginalized on the basis of their sexual orientations and gender identities. The mandate holder has also actively engaged with the Global Interfaith Network, a community of people of faith that convenes, documents best practices, develops resources and creates strategies for the decriminalization of LGBTI identities and, most importantly, actively operates under the conviction that no religion in its true form promotes or condones violence and discrimination against LGTB or gender-diverse persons.

89. The mandate holder finds that programmes aiming at inclusion in sport are of exceptional value. In Australia, for example, “Pride in Sport” is an inclusion programme designed to assist sporting organizations and clubs with the inclusion of LGBT employees, players, coaches, volunteers and spectators.¹²⁴ In Malta, the “Rainbow Laces” campaign was launched in collaboration with the Malta Football Association to address homophobia in sport,¹²⁵ and the most recent Annual Conference of the Federation of Irish Sport focused on inclusion and diversity.¹²⁶

90. Businesses also have good practices with regard to supporting inclusion, having understood that inclusion leads to the full potential of their employees’ qualities. At the global level, OHCHR launched the standards of conduct for business when tackling discrimination against LGBTI persons in 2017, and a plethora of regional and local initiatives are under way: for example, the Slovak National Centre for Human Rights cites the LGBTI Business Forum, which gathers business leaders who promote diversity and inclusion and serves as a platform for exchanging good practices and methodologies when addressing discrimination in the workplace.¹²⁷

91. Small-scale activities are globally recognized as activities that are closest to the people and help improve the livelihoods of local people most directly, with incentives for grass-roots development. There are key experiences in Argentina. For example, the mandate holder visited a small-scale project – a hairdressing salon in La Plata – that helps trans women, including migrant workers, find a livelihood. Laudably, one of the non-governmental organization leaders allows the group of trans women to use a part of her home as a beauty salon, thus enabling the women to enjoy a sense of security and income (see [A/HRC/38/43/Add.1](#)).

92. Public events during which diversity in sexual orientations, gender identities and gender expressions is valued and celebrated, such as pride marches,¹²⁸ send strong signals of inclusiveness and are an opportunity for allies to show support.¹²⁹ Flying rainbow flags in public buildings during commemorative or celebration days, for example, is an action with great reported redeeming value.

¹²³ “Handreiking LHBTI-emancipatie”, cited in submission: CHOICE for Youth and Sexuality.

¹²⁴ Submissions: Australian Human Rights Commission; Australia.

¹²⁵ Submission: Malta.

¹²⁶ Submissions: Ireland; United Kingdom.

¹²⁷ Submission: Slovak National Centre for Human Rights.

¹²⁸ Submission: Bosnia and Herzegovina.

¹²⁹ Submission: Malta.

V. Conclusions and recommendations

93. Violence and discrimination on the basis of sexual orientation and gender identity are perpetrated in a wide variety of public and private settings against LGBT persons by family members, friends, faith-based community members, community members, police officers, members of the justice sector, landlords and co-workers, among others. They negatively affect access to health care, education, housing and employment by LGBT persons.

94. Throughout the cycle of reports issued under the aegis of Human Rights Council resolution 32/2, the mandate holder has sought to describe the dynamics that interact within the problem of violence and discrimination based on sexual orientation and gender identity, and the work to eradicate it, by furthering thematic research on focus areas that have been described as underpinnings: anti-discrimination measures, depathologization, decriminalization and social inclusion are some of those dimensions. All of them interact through actions and reactions and have an impact on the situation of LGTB and gender-diverse persons, including on their full integration into the social fabric. Full social inclusion, for example, is impossible to conceive of in environments that criminalize sexual orientation or gender identity. For this reason, all findings and recommendations issued in other reports of the mandate holder are equally relevant to the work of promoting social inclusion.

95. In its most ample conception, social inclusion requires urgent measures to dismantle the systems of repression that enforce the idea that diversity in sexual orientation and gender identity is somehow harmful to society, that LGBT persons are somehow disordered or that their identities are criminal. Urgent responses are required from State actors, including national human rights institutions and non-State actors such as civil society, faith-based communities, the media, workers' organizations and the private sector. Without them, the international community will not only fail to comply with its international human rights law obligations but will also not be able to deliver on its pledge not to leave anyone behind in the implementation of the Sustainable Development Goals.

96. All measures adopted by the State must recognize the intersectional nature of discrimination and exclusion and include pragmatic and concrete ways in which multidimensional analysis and action can address their root causes, as well as concrete ways in which different populations, communities and peoples can participate in consultations for decision-making processes. The present report has made reference to some of those populations in an effort to provide visibility to historically underrepresented populations; however, all efforts carried out by the State should take into account factors such as ethnicity/race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital and/or maternal status, age, urban/rural location, health status, disability and property ownership.

97. Measures adopted by the State must carefully assess the potential of prevailing systems of classification of identities and data, such as LGBT, as well as other systems – particularly ancestral and indigenous systems and systems that have not yet benefited from mainstream recognition. In creating narratives and solutions for social integration, States must carefully weigh the pros and cons of adopting particular systems of classification, and adopt measures to balance their limitations, particularly when the populations concerned do not recognize themselves within them or challenge the system's validity to capture their lived experiences.

98. States must acknowledge the reality that discrimination and violence have historically been enabled by legislative provisions, among other things. A systematic approach to eradicating their remnants requires an exercise of law review and reform to ensure conformity with international human rights law that should include:

(a) The definite dismantling of all legislation that criminalizes sexual orientation and gender identity, as well as legislation that, without explicitly criminalizing it, has that effect in practice;

(b) The adoption of legislation enshrining anti-discrimination measures with explicit reference to sexual orientation and gender identity;

(c) The adoption of necessary provisions in legislation that guides the State's regulation of sectors or public services or executive actions, including – but not limited to – health, education, employment, social security, civil registries, property, justice and political participation.

99. Public policy should enable good governance by:

(a) Designing, implementing and monitoring the progress of overarching programmes and plans to provide a systematic approach to the social inclusion of LGBT and gender-diverse persons, including the mainstreaming of LGBT issues across wider programmes, such as health, education, employment, housing, poverty reduction, food security and access to justice;

(b) Ensuring the effective participation of the affected communities, peoples and populations in decision-making processes within the design, implementation and monitoring of overarching programmes for social inclusion. Community-based approaches should be considered as best practice and implemented whenever possible and relevant;

(c) Ensuring that national human rights institutions have the powers and resources necessary to effectively contribute to the process of social inclusion throughout the whole range of their functions and services;

(d) Promoting safe and enabling environments for civil society and human rights defenders, including appropriate funding for civil society programmes and projects.

100. In the particular case of housing, a sector in relation to which the mandate holder has not issued guidance before, specific measures recommended to States include:

(a) Ensuring that legal protections from discrimination are effectively enforced in the housing sector, and recognizing housing status as prohibited grounds for discrimination;

(b) Ensuring accountability for actors who violate the right to adequate housing as a result of discrimination on the basis of sexual orientation and gender identity;

(c) Ensuring that housing and shelter for women take into account the needs of women who may be particularly disadvantaged or at risk of violence, such as LBT women, including those who may be sex workers. Special protection and provision should be made for LGBT migrants who face a lack of access to shelter protection in camps;

(d) Adopting policies, guidelines and training programmes to ensure that shelters and housing programmes are inclusive of LGBT people and do not reproduce patterns of discrimination;

(e) Recognizing that LGBT youth are disproportionately represented among the homeless population in programmes aiming to lift people out of homelessness;

(f) Ensuring, overall, that the sector provides access to shelters and long-term housing solutions for LGBT people facing homelessness, including LGBT children, particularly as a result of violence and socioeconomic exclusion, including shelters specifically catering to young persons.

101. Particular measures will need to be adopted in all sectors of State service, including – but not limited – to education, health, employment and social security. Among them:

(a) A review of policies implemented in all sectors, including medical classifications, school curricula and sector protocol and procedures, so as to ensure that they adequately reflect the principles of equality and non-discrimination and that they are inclusive of LGBT people;

(b) Measures of sensitization and the training of State agents and service personnel, including health providers, social workers, teachers, justice sector officers and administrative officers in all sectors, among others;

(c) The provision of institutions with the guidance and the means to send to their staff and their users the unequivocal message that persons of diverse sexualities and genders are welcome, while abusive behaviours are not;

(d) A system ensuring proper investigation and sanctions of instances of exclusion, harassment and particular phenomena such as bullying;

(e) A review and, as relevant, an update of gender-based policies on the use of public space, and of policies guiding access to segregated spaces such as sanitation facilities and locker rooms.

102. Access to justice and the provision of effective remedies for discrimination and violence on the basis of sexual orientation and gender identity must be understood to be an integral part of the work to eradicate violence and discrimination, but it is also necessary to ensure full access to the full range of rights and entitlements that all persons, including LGBT and gender-diverse persons, have in a particular context and in conformity with international human rights law.

103 States should consider measures to formalize the conduit of concerns related to violence and discrimination based on sexual orientation and gender identity. Among some possible measures for consideration:

(a) Assigning an existing State institution, or creating a new one, such as a commissioner or envoy, with the task of coordinating and overseeing cross-cutting concerns deriving from violence and discrimination based on sexual orientation and gender identity;

(b) Adopting particular measures of commemoration and celebration of human diversity, including observing international days of remembrance, supporting pride marches and including visibility of diversity in sexual orientation and gender identity in cultural and education programmes, festivals and events;

(c) Considering measures to rectify past wrongs deriving from pathologization, criminalization or any other stigmatizing processes against LGBT and gender-diverse persons.

104. States should nurture the creation and functioning of partnerships with and between non-State actors, including civil society organizations operating in every sector, businesses and associations and entities working in every field of society, including – but not limited to – sport, culture and social and community service.

105. States should adopt decisive action when religious authorities, leaders or agents infringe on the rights of LGBT persons through violence and discrimination, including hate speech. At the same time, nurturing active dialogue with organized religion and faith-based groups, and among those groups and LGBT organizations, has proven to be a significant accelerator for social inclusion: the promotion of spaces for dialogue, mutual understanding and acknowledgement has proven, time and time again, a winning formula for the acceleration of social inclusion, the creation of pluralistic societies and the strengthening of the social fabric.
