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The right to the enjoyment of the highest attainable standard of physical and mental health of persons, communities and populations affected by discrimination and violence based on sexual orientation and gender identity in relation to the Sustainable Development Goals

Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz*, **

Summary

In the present report, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, examines the discriminatory and often violent barriers faced by lesbian, gay, bisexual, trans and gender-diverse and intersex persons that impede their full and equal enjoyment of the right to the highest attainable standard of physical and mental health. The report identifies structural drivers of exclusion and gives an overview of health-related violence and discrimination, bringing a sexual orientation and gender identity lens to the health-related commitments set out in the Sustainable Development Goals, with a particular focus on Goal 3, identifying obstacles and challenges to implementation and good practices. As the mid-point for the implementation of the Goals draws near, the report outlines six fundamental steps, based on the ASPIRE Guidelines on the coronavirus disease (COVID-19) pandemic response, aimed at making the pledge made in the 2030 Agenda for Sustainable Development to leave no one behind a reality for all.

Activities carried out during the period from 1 May 2021 to 30 April 2022 are included in an annex to the report.

* The present report was submitted after the deadline so as to include the most recent information.
** The annex to the report is circulated as received, in the language of submission only.

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I. Methodology and terminology

1. Inputs to the present report included 81 responses received from States, United Nations entities, national human rights institutions, civil society organizations, academic institutions and other stakeholders to a questionnaire sent in January 2022. Collectively, they reflect the views of 119 State and non-State entities in 143 Member States in all regions of the world. Other inputs include desk reviews facilitated by the academic home of the Independent Expert at the Human Rights Program of Harvard Law School and an online consultation held on 14 April 2022. The report also draws on the stock of knowledge built through previous thematic and country visit reports, communication procedures and dialogues under the mandate. The Independent Expert is indebted to all stakeholders for their contributions.

2. While many persons affected by discrimination and violence self-identify under the identities lesbian, gay, bisexual and trans and gender-diverse, those terms and the acronym, LGBT, do not exhaust the multitude of identities and orientations under which persons around the world self-identify. In the present report, when source data expressly refer to lesbian, gay, bisexual, trans and/or gender-diverse persons, the correlative acronyms are used; names of organizations, projects or publications cite denominations as they appear in the source.

3. Intersex persons are born with sex characteristics that do not fit typical definitions for male or female, including sexual anatomy, reproductive organs, hormonal patterns and/or chromosome patterns.[1] Human rights violations are perpetrated against them based, inter alia, on dominant societal sex and gender norms and the regulation of bodily autonomy. These commonalities form the basis of joint activism between human rights defenders working on sexual orientation and gender identity issues and on intersex issues. A sexual orientation and gender identity framework alone, however, does not adequately address all human rights concerns of intersex persons, for which rights of the child, disability rights and freedom from torture frameworks are also essential. Consequently, it is the policy of the Independent Expert not to extrapolate data and policy frameworks on LGBT persons to the intersex population without clear evidence and reasoning for supporting that inclusion.

II. Introduction

4. The right to "the highest attainable standard of physical and mental health",[2] first articulated in the constitution of the World Health Organization (WHO) in 1948, was incorporated into a legally binding State obligation in the International Covenant on Economic, Social and Cultural Rights (art. 12). That right, which has subsequently been included in another five core international human rights treaties[3] and in several regional treaties, conventions and charters,[4] is also enshrined in at least 115 national constitutions.[5]

5. As affirmed by the Committee on Economic, Social and Cultural Rights, the right to health must be ensured to all without discrimination based on prohibited grounds that has the

[1] See https://www.ohchr.org/en/sexual-orientation-and-gender-identity/intersex-people.

[2] World Health Organization (WHO), constitution of the World Health Organization, available at https://www.who.int/about/governance/constitution.

[3] Convention on the Elimination of All Forms of Discrimination against Women (art. 12); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (arts. 28, 43 and 45); International Convention on the Elimination of Racial Discrimination (art. 5); Convention on the Rights of the Child (art. 24); and Convention on the Rights of Persons with Disabilities (art. 25).

[4] African Charter on Human and Peoples' Rights; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador); European Social Charter; American Declaration on the Rights and Duties of Man; and European Convention for the Promotion of Human Rights and Fundamental Freedoms.

[5] See https://www.ohchr.org/Documents/Publications/Factsheet31.pdf.

intention or effect of nullifying or impairing its equal enjoyment or exercise.[6] It is well established that sexual orientation and gender identity are prohibited grounds of discrimination under international human rights law.[7] The right to health includes freedom to control one's health and body, including sexual and reproductive freedom, and freedom from non-consensual medical treatment and interference, as well as entitlements, including "the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health [and] a variety of facilities, goods, services and conditions".[8]

6. The principles of equality, non-discrimination and equity[9] in health, and the practices of exclusion that flout them, are also a central concern of the 2030 Agenda for Sustainable Development and the Sustainable Development Goals adopted by the General Assembly in 2015. Anchored in international human rights standards, the 2030 Agenda includes interrelated global Goals and time-bound targets aimed at spurring equitable and universal access to health for all (Goal 3), achieving gender equality, including by ensuring universal access to sexual and reproductive health and rights (Goal 5), and eliminating discrimination, reducing inequalities and promoting social, economic and political inclusion for all (Goals 10 and 16). The cornerstone of the 2030 Agenda is the pledge to leave no one behind and to see the Goals and targets met for all segments of society, reaching the furthest behind first.[10]

7. As the mid-point for the implementation of the 2030 Agenda draws near, the report uses commitments contained in the Goals as an entry point for analysing progress and obstacles in combating health-related discrimination and violence based on sexual orientation and gender identity. The report begins with an overview of the discriminatory, often violent barriers, and the structural drivers of exclusion faced by LGBT, as well as intersex persons, impeding their full and equal enjoyment of the right to health. The report brings a sexual orientation and gender identity lens to health-related commitments of the 2030 Agenda, with a particular focus on Goal 3, identifying obstacles and challenges to implementation, as well as good practices by States and civil society organizations. It concludes by outlining six steps, based on the ASPIRE Guidelines on COVID-19 response free from violence and discrimination based on sexual orientation and gender equality,[11] aimed at making the pledge in the 2030 Agenda to leave no one behind a reality for those facing discrimination and violence based on sexual orientation and gender identity – an imperative to achieve its overarching aim of realizing the human rights of all.

III. Structural drivers of health inequality

8. As noted in one submission: "To talk about health and the right to health is to talk about politics, about resistance, about the right to a decent life, and about the social context."[12] A substantial body of work in social epidemiology describes stigma as the co-occurrence of processes of labelling, stereotyping, othering, devaluing and excluding in the context of

[6] Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 18.

[7] A/HRC/47/27, paras. 12–35.

[8] Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000), paras. 8–9.

[9] WHO defines health equity as follows: "Equity is the absence of unfair, avoidable or remediable differences among groups of people, whether those groups are defined socially, economically, demographically, or geographically or by other dimensions of inequality (e.g., sex, gender, ethnicity, disability, or sexual orientation). Health is a fundamental human right. Health equity is achieved when everyone can attain their full potential for health and well-being." (see https://www.who.int/health-topics/health-equity#tab=tab_1).

[10] Ibid., paras. 4, 7, 14 and 26.

[11] Available at www.ohchr.org/Documents/Issues/SexualOrientation/SOGI-GuidelinesCOVID19_EN.docx.

[12] Submission by Caribe Afirmativo, p. 3; this submission and others cited in the present report can be accessed at https://www.ohchr.org/en/calls-for-input/2022/call-inputs-report-un-human-rights-council-realisation-right-persons-affected.

power exercised by hegemonic groups.[13] According to consistent findings by the mandate, these processes have the objective of instrumentalizing LGBT lives to galvanize political constituencies, instil a fake sense of moral panic and perpetuate patriarchal, binary and hetero/cisnormative social models. The work to dismantle discrimination and violence based on sexual orientation and gender identity requires continued analysis of structural drivers of exclusion and, as in the present report, their relationship with health inequality.

Criminalization

9. Direct or indirect criminalization of same-sex intimacy and gender identity is a form of State-sponsored discrimination. In 69 countries, discriminatory laws criminalize private, consensual same-sex intimacy, exposing millions to the risk of arrest, prosecution and imprisonment – and, in at least five countries, the death penalty.[14] Criminal laws also discriminate explicitly or implicitly based on gender identity or expression: for example, in 10 countries in Asia, trans persons are criminalized, using so-called "cross-dressing", "impersonation" and "disguise" laws.[15] Criminal laws on abortion, sex-work and HIV transmission/non-disclosure also have discriminatory effects on women and LGBT persons.

10. Such laws are contrary to the international human rights obligations of all States and undermine health outcomes. Where they exist, services tailored to those communities are suppressed[16] and LGBT persons are deterred from seeking generally available health services out of fear of being arrested and prosecuted.[17] Laws criminalizing same-sex intimacy deter LGBT persons from participating in HIV prevention programmes. During his country visit to Tunisia, the Independent Expert was informed that over half of lesbian, gay and bisexual persons, and three-quarters of trans persons, do not go to the doctor or undergo medical tests for fear of mockery, abuse by medical staff or legal action.[18]

11. In the 2015 report of the Secretary-General on the AIDS response, 60 per cent of countries reported administering laws, regulations or policies that presented obstacles to effective HIV prevention, treatment, care and support for people in key populations and high-risk groups.[19] Criminal laws have a particular impact on HIV prevention for persons living at the intersection of different identities or with increased exposure to risk of violence, such as LGBT persons in detention.[20]

Pathologization

12. Homosexuality was removed from the International Classification of Diseases in 1990 and trans identity was removed from its chapter on mental disorders in May 2019. Nevertheless, some countries continue to classify homosexuality as an illness and in almost all countries trans persons are treated as if they are sick or disordered. As concluded by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health in 2017, "mental health diagnoses have been misused to pathologize identities and other diversities" and "the pathologization of lesbian, gay, bisexual, transgender and intersex persons reduces their identities to diseases, which compounds stigma and discrimination".[21] The Independent Expert agrees with the Special Rapporteur and has called on States to address the damage created by such pathologization. Since 2019, the Independent Expert and the Special Rapporteur have called on States to

[13] Submission by Global Health Justice Partnership of Yale Law School and Yale School of Public Health, p. 3.
[14] A/HRC/35/36, para. 52.
[15] Submission by the APCOM Foundation, p. 3.
[16] A/HRC/14/20, para. 18.
[17] A/HRC/32/44, para. 58.
[18] See https://www.ohchr.org/en/press-releases/2021/06/preliminary-observations-visit-tunisia-independent-expert-protection-against?LangID=E&NewsID=27174.
[19] A/69/856, para. 52.
[20] See https://www.ohchr.org/en/press-releases/2021/06/preliminary-observations-visit-tunisia-independent-expert-protection-against?LangID=E&NewsID=27174.
[21] A/HRC/35/21, para. 48.

review their medical classifications and to adopt proactive measures, including education and sensitization campaigns, to eliminate associated stigma.[22]

13. Some States are considering measures that entrench pathologization. In 2021, the Independent Expert conveyed his concerns: to Guatemala about proposed legislation that sought to protect children from the "disorder" and "trauma" of trans-gender identity;[23] to Ghana about draft legislation that promotes practices of so-called "conversion therapy" by offering incentives to trans persons who "recant";[24] and to Poland, about the call of the Polish Episcopal Conference for the creation of so-called "clinics" purportedly offering services for people who want to "regain" their so-called "natural" sexual orientation.[25]

14. In 2020,[26] the mandate called for a world free of practices of so-called "conversion therapy" after concluding that they are a form of cruel, inhuman and degrading treatment or punishment under international human rights law. With regard to such practices, the Independent Expert welcomes the 2021 medical ban in Chile; the directives issued by the Madras High Court in India to prohibit them; as well as the issuance of laws seeking to end them in Germany in 2020, Canada and France in 2021, and New Zealand in 2022. Similar legislation is currently under review in several other States. Practices of conversion have also been banned at the local level in Australia, Mexico, Spain and the United States of America.

Stigmatization and negation

15. Negation is the position – still voiced with alarming frequency in intergovernmental debates on international human rights and sustainable development – that discrimination and violence based on sexual orientation and gender identity do not exist because there are no lesbian, gay, bisexual, trans or gender-diverse persons in a given context. Stigmatization and negation are deeply enmeshed with the criminalization and pathologization of sexual orientation and gender identity diversity, as well as the lack of related research, data and public health policy resources. These drivers not only fuel discrimination and violence based on sexual orientation and gender identity but are used to condone it, perpetuating the impunity and invisibility surrounding it.

16. Seeking to consign lesbian, gay, bisexual, trans and gender-diverse and intersex (LGBTI) persons to invisibility by writing them out of international agreements makes a mockery of the principles of equality and non-discrimination that are their cornerstone. It is also a form of gross negligence in relation to health: valuing the lives and inherent dignity of all persons is key to effective and equitable health strategies and responses.

17. Drivers of discrimination and violence based on sexual orientation and gender identity also include stigmatization entrenched in the patriarchal and cisnormative sociocultural construction of same-sex intimacy, gender non-conformity and sexual pleasure as morally transgressive. Sexuality and gender identity are deeply rooted aspects of human personality that go to the core of the right of every person to bodily and mental integrity, and to the highest attainable standard of physical and mental health.[27] Stigmatization of LGBT persons leads to their dehumanization, legitimizes discrimination and violence based on sexual orientation and gender identity and compounds the social and economic marginalization and exclusion of persons affected by it.

[22] Ibid., paras. 48 and 58.

[23] See GTM 10/2021: all communications cited may be accessed at https://spcommreports.ohchr.org/Tmsearch/TMDocuments.

[24] See GHA 3/2021.

[25] See OTH 89/2020 and OTH 88/2020.

[26] See A/HRC/44/53.

[27] The Global Advisory Board for Sexual Health and Wellbeing affirms that, "the experiences of human sexual pleasure are diverse, and sexual rights ensure that pleasure is a positive experience for all concerned and not obtained by violating other people's human rights and wellbeing" (see https://www.gab-shw.org/our-work/working-definition-of-sexual-pleasure/). Many studies document the link between sexuality, sexual pleasure and physical and mental health.

IV. Health-related discrimination and violence based on sexual orientation and gender identity

18. It has been noted that: "No person, no community, and no country are exempt from the interaction of the social, economic, and political factors that determine health and health care."[28] Evidence overwhelmingly suggests that sexual orientation and gender identity-based discrimination has far-reaching detrimental effects on the mental and physical health of LGBT persons.[29] The harms it inflicts include rape and other sexual and gender-based violence, forced sterilization, so-called "conversion therapies" and surgery without consent, increased risk of HIV/AIDS and sexually transmitted infections and stress/trauma-related depression and anxiety, leading to increased risk of suicide, drug and substance abuse and body dysmorphia and disordered eating.

19. Preventing these grave harms is part of human rights due diligence on the part of States. Such harms must be addressed through an intersectional lens that recognizes how factors such as race, class, gender, age and disability compound sexual orientation and gender identity discrimination in shaping health outcomes and inequalities. Some key manifestations of health-related discrimination and violence are outlined below.

Discrimination by health providers and systems

20. States have a duty to ensure that health systems and services are: available in sufficient quantity; accessible to all without discrimination; culturally acceptable, including for minority communities; and of good quality.[30] Submissions received from across the globe indicate that most States are falling woefully short on these obligations because of widespread health inequities stemming from pervasive and long-standing discrimination and violence based on sexual orientation and gender identity.

21. Reported instances of direct discrimination and ill-treatment by medical providers include refusal to make clinic appointments or treat patients, treatment of patients with gross disrespect or inferior care, violation of medical privacy, private shaming and public disparagement.[31] The Joint United Nations Programme on HIV/AIDS (UNAIDS) has reported that the percentage of transgender people who avoid seeking HIV testing due to stigma and discrimination ranges from 47 per cent to 73 per cent,[32] and surveys in sub-Saharan Africa found that between 10 per cent and 40 per cent of men who have sex with men delay or avoid health care due to fear of stigma.[33]

22. The attitudes of health-care providers make many LGBT persons reluctant to share personal and medical information:[34] in a survey in Peru, 59 per cent of respondents reported that the mental health providers were not properly trained to deal with LGBTI persons;[35] and in a 2017 survey at a highly ranked hospital in Changsha, China, 87 per cent of medical staff responded that they were opposed to same-sex sexual behaviours.[36]

23. One submission referred to reports that more than 18 per cent of over 1,000 cases of violence and discrimination in health-care settings in Mexico were against bisexual persons.[37] Studies have documented therapists reacting to patients coming out to them as bisexual by telling them they were "confused" and "had unresolved issues with [their] sexuality".[38] While

[28] K.H. Kenyon et al., "Deepening the relationship between human rights and the social determinants of health: a focus on indivisibility and power", *Health and Human Rights*, vol. 20, No. 2 (2018), pp. 1–10.

[29] See https://inequality.cornell.edu/news/research-portal-presents-link-between-discrimination-and-health-harms-lgbt-population.

[30] Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000), para. 12.

[31] See, for example, submission by HIV Legal Network, p. 4.

[32] See https://aidsinfo.unaids.org.

[33] Submission by UNAIDS, p. 3.

[34] See https://www.who.int/publications/i/item/9789241564984.

[35] Submission by Promsex, p. 6.

[36] See http://www.cnki.com.cn/Article/CJFDTotal-XYZL201710051.htm.

[37] Submission by AMICUS, p. 2.

[38] See https://www.mind.org.uk/media-a/4688/stand-bi-me.pdf, p. 8.

data collection has not been adequately resourced, research suggests that lesbian and bisexual women are less likely to have regular cervical and breast cancer screenings and more likely to develop breast cancer as compared with heterosexual women.[39] A similar situation may pertain to trans men.

Sexual and gender-based violence

24. Of all the manifestations of discrimination and violence based on sexual orientation and gender identity, gender-based violence is perhaps the most devastating in its impact on physical and mental integrity and health. In some settings, lesbian women are exposed to killing, rape and other forms of torture and cruel, inhuman and degrading practices.[40] In a South African study conducted among 591 women who have sex with women, one-third reported having experienced sexual violence.[41] Research has revealed an association between high levels of violence against women and increased risk of HIV infection, risks of unwanted pregnancies and underage pregnancies.[42] Rights to sexual and reproductive health for many adolescent lesbian or bisexual girls are also compromised in other ways, including rape, coercion into unwanted sex or marriage and unequal power relations that make it difficult to refuse sex or insist on safe-sex practices.[43] The health-care needs of lesbian and bisexual women and trans men, such as screening for cervical cancer, termination of pregnancy and contraception, are often refused by service providers, [44] as are other measures of gynaecological[45] or andrological care, fertility treatments, medical procreation techniques and transition-related medical services.[46]

25. While a lack of disaggregated records by national authorities makes it difficult to determine the extent of discrimination and violence based on sexual orientation and gender identity against trans people on a country-by-country basis, the Trans-Murder Monitoring project has documented 4,042 murders in 66 countries between 2008 and 2021.[47]

26. Intersex infants, children and adolescents are often subjected to surgeries aimed at modifying the appearance of their genitals[48] in interventions which amount, in the view of the mandate, to gender-based violence and torture or cruel, inhuman and degrading treatment.[49] The well-documented consequences of these interventions[50] include permanent infertility/sterilization, incontinence, loss of sexual function and sensation and interventions tantamount to rape.[51] The Committee on the Rights of the Child,[52] the Committee against Torture and the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment have expressed concern over these surgeries,[53] qualified by the

[39] C. Curmi et al., "Barriers to cervical cancer screening experienced by lesbian women: a qualitative study", *Journal of Clinical Nursing*, vol. 25 (2016), pp. 3643–3651; see also https://www.hopkinsmedicine.org/health/wellness-and-prevention/lesbian-and-bisexual-womens-health-issues.

[40] A/HRC/32/44, para. 58; A/HRC/29/23 para. 26; and https://www.hrw.org/news/2022/04/29/inadequate-kenyan-police-response-brutal-killing-non-binary-lesbian.

[41] A. Muller, "Health for all? sexual orientation, gender identity, and the implementation of the right to access to health care in South Africa", *Health and Human Rights Journal*, 2016.

[42] A/69/856, para. 47.

[43] A/HRC/32/32, para. 84.

[44] A/HRC/32/44, para. 58.

[45] Submission by Nyasa Rainbow Alliance, p. 5.

[46] See https://www.hrw.org/news/2018/07/23/us-lgbt-people-face-healthcare-barriers.

[47] See https://transrespect.org/en/map/trans-murder-monitoring/.

[48] Submission by Campaign for Change, p. 3.

[49] See Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans, and Intersex Persons in the Americas* (OAS/Ser.L/V/II.rev.1), 2015.

[50] See https://www.ohchr.org/sites/default/files/Documents/Issues/Discrimination/LGBT/BackgroundNoteHumanRightsViolationsagainstIntersexPeople.pdf, pp. 8–31.

[51] Submissions by ILGA World, p. 7, and InterAct, pp. 3–5.

[52] CRC/C/NPL/CO/3-5, paras. 38, 41–42.

[53] CAT/C/DEU/CO/5, para. 20; A/HRC/22/53, para. 77; A/HRC/19/41, para. 57; and A/HRC/50/28, para. 18.

Special Rapporteur as genital mutilation.[54] The mandate concurs with the Special Rapporteur and concludes that States must ban all medically unnecessary surgeries on intersex infants and children.[55] Germany, Malta and Portugal have already passed bans,[56] as has the government of the State of Tamil Nadu in India,[57] after an Indian court ruled that the "consent of the parent cannot be considered as the consent of the child".[58] The European Parliament has strongly condemned such surgery and encouraged Member States to adopt legislation protecting the bodily integrity of intersex people "as soon as possible".[59]

Denial of legal recognition of gender identity and of gender-affirming health care

27. People's lived experiences of their gender often defy stereotypical gender norms and imposed binaries, and evidence shows that acquiring gender characteristics congruent with the self-identified gender identity generally improves health, well-being and quality of life. Conversely, not being able to live according to one's self-identified gender identity is likely to exacerbate other forms of ill health and erode dignity. Yet gender diversity continues to be repressed in the name of culture, religion and tradition.

28. One of the forms this takes is that the vast majority of trans and gender-diverse persons around the world do not have access to legal recognition of their gender identity.[60] As mentioned in one submission, "[e]very aspect of a trans and gender-diverse person's social life … depends on the ability to show a valid identity card or documentation that aligns with gender identity and expression".[61]

29. Gender-based violence and discrimination impacts trans and gender-diverse persons who face cruel, inhuman and degrading treatment and possibly torture, in the form of requirements for gender recognition that include genital and other forms of mutilation. In his 2018 country visit to Georgia, the Independent Expert observed that a majority of the trans men he interviewed were missing their middle finger and was subsequently shocked to learn that a medical authority entitled to certify a person as being a "true" trans person had demanded that the finger be amputated to create a prosthetic penis as part of the requirements for legal recognition. A survey in the United States found that, among nearly 5,000 respondents, "transgender or gender non-conforming respondents reported experiencing the highest rates of discrimination and barriers to care".[62]

30. Other barriers to health care arise from financial limitations. Gender-affirming surgeries, reparative surgeries and ongoing treatment for trans people and people with intersex variations may be unaffordable for those who seek them; for example, health insurance providers have denied reimbursement for surgical placement of breast implants for trans women.[63] Gender-affirming health-care services for trans persons are often expensive and unsubsidized, meaning that they may be forced to obtain hormones of dubious quality through the black market or resort to crude methods without proper supervision, leading to serious health problems.[64] The Committee on the Elimination of Discrimination against Women has called on States to ensure that the costs for gender affirming interventions are reimbursed.[65]

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[54] A/HRC/50/28, para. 59.
[55] Ibid.
[56] See https://pinkadvocate.com/2021/04/06/loopholes-feared-in-new-german-laws-against-forced-intersex-surgery/.
[57] See https://www.hrw.org/news/2019/08/29/indian-state-bans-unnecessary-surgery-intersex-children.
[58] See https://www.hrw.org/news/2019/04/29/indian-court-decides-favor-informed-consent-rights-intersex-people.
[59] European Parliament resolution of 14 February 2019 on the rights of intersex people (2018/2878(RSP)).
[60] Submission by Women's Legal Centre, p. 5.
[61] Submission by Caribbean NGO Coalition, p. 1.
[62] S. Davis and N. Berlinger, "Moral progress in the public safety net: access for transgender and LGB patients", *Hastings Center Report*, vol. 44, No. 5 (2014), S45–S47.
[63] CEDAW/C/NLD/CO/5, paras. 46–47.
[64] See https://apps.who.int/iris/bitstream/handle/10665/175556/9789241564984_eng.pdf, p. 25.
[65] CEDAW/C/CHE/CO/4-5, para. 39 (d).

Restrictions on human rights defenders and health advocacy organizations working in the area of sexual orientation and gender identity

31. The mandate is concerned by legal and political obstacles faced by human rights defenders and civil society organizations working to realize the right to health of LGBTI people and communities.[66] In at least 41 States, laws and regulations limit the ability of civil society organizations working on sexual orientation and gender identity-related issues to legally register.[67] Harassment, intimidation, persecution and violence are also perpetrated against human rights defenders and health rights advocates in other ways, and the mandate communicates with States in all regions about allegations of harassment and persecution. In 2021 alone, concerns were conveyed to Belarus,[68] Ghana,[69] Honduras,[70] Kazakhstan,[71] Kyrgyzstan,[72] Nicaragua,[73] Pakistan,[74] Poland,[75] Tunisia,[76] Saudi Arabia[77] and Uzbekistan.[78]

32. In at least 31 countries so-called "propaganda laws" restrict open discussion about LGBT health-related and other topics.[79] In a study in the Russian Federation, where people who disseminate LGBT health information among minors are fined under "gay propaganda" legislation, 72 per cent of LGBT survey respondents reported having experienced discrimination after coming out to a doctor, including: total refusal of essential care; medical personnel refusing physical contact; the use of excessive precautions; and being blamed for an HIV-positive status and a "sinful lifestyle". Over half agreed that the attitudes of health-care providers had worsened since the "propaganda" legislation had been passed; 42 per cent said that they would likely discontinue using medical services.[80]

Lack of appropriate and non-discriminatory health information and education

33. Many submissions contained references to legislation that has created obstacles to the provision of comprehensive sexual health and gender education[81] and others provided evidence of bias and discrimination in educational curricula or sexual health information programmes. For example, in a youth survey in the United States, 83 per cent of respondents reported not having received comprehensive sexuality education at their current or previous academic institutions.[82] To this must be added censorship of the online content of websites and community groups in relation to sexual orientation and gender identity issues, including obstacles to accessing information on safe sex and other health issues.

34. The adoption of comprehensive and sexual orientation and gender identity-inclusive sexuality education can significantly reduce physical and psychological health risks for LGBT and gender-diverse youth, including with regard to sexual and reproductive health, and help them to avoid secondary effects, such as substance abuse, mistrust of health services and self-medication.[83] As noted by the Secretary-General, unequal access to education,

[66] Submission by Impact Iran, p. 4.
[67] See https://www.unaids.org/sites/default/files/media_asset/JC2322_BackgroundCurrentLandscapeCriminalisationHIV_en.pdf; see also submission by Outright Action International, p. 3.
[68] See BLR 10/2021 and BLR 1/2021.
[69] See GHA 2/2021.
[70] See HND 6/2021.
[71] See KAZ 4/2021.
[72] See KGZ 2/2021.
[73] See NIC 3/2021.
[74] See PAK 1/2021.
[75] See POL 6/2021 and POL 3/2021.
[76] See TUN 9/2021, TUN 4/2021 and TUN 3/2021.
[77] See SAU 2/2021.
[78] See UZB 3/2021.
[79] See https://ilga.org/downloads/ILGA_World_State_Sponsored_Homophobia_report_global_legislation_overview_update_December_2020.pdf.
[80] O. Kucheryavenko et al., "Cost of indulgence: rise in violence and suicides among LGBT youth in Russia", *Health and Human Rights Journal*, December 2013.
[81] See submissions by Euroregional Center for Public Initiatives, p. 3, and Human Rights Watch, p. 3.
[82] Submission by United Nations Association Pride Affinity Group, p. 3.
[83] A/74/181, para. 8.

including comprehensive sexuality and HIV education, also increases women's vulnerability to HIV transmission.[84]

V. Sexual orientation, gender identity and the Sustainable Development Goals

35. "There are 17 Sustainable Development Goals all based on a single, guiding principle: to leave no one behind. We will only realize this vision if we reach all people regardless of their sexual orientation or gender identity."[85]The 2030 Agenda has galvanized action by the international community to further equitable access to the right to health. The Goals include comprehensive, time-bound and universally applicable commitments, anchored in international human rights obligations, to be met by 2030. The 17 Goals are closely interrelated and are pursued in tandem.

36. Goal 3 seeks to ensure healthy lives and promote well-being for all at all ages. Other Goals include complementary commitments to tackle health inequalities and the discrimination underpinning them. Goal 5, on achieving gender equality, pledges to ensure universal access to sexual and reproductive health and reproductive rights and to end all forms of discrimination and violence against women and girls. Under Goal 10, States are committed to reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices. Goal 16, on just and inclusive societies, also pledges to promote and enforce non-discrimination through laws and policies and to ensure legal identity and equal access to justice for all. Goal 17, on means of implementation, seeks to enable monitoring and accountability through a significant increase in the availability of disaggregated data.

37. The pledge to leave no one behind, which lies at the foundation of the 2030 Agenda and the Goals, must be operationalized, in line with human rights principles of substantive equality and non-discrimination. The pledge also demands clear understanding of the lived experience of persons, communities and populations historically subjected to discrimination and violence, including discrimination based on sexual orientation and gender identity. The following paragraphs illustrate a number of relevant health-related commitments.

Infectious diseases

39. Goal 3, target 3.3, aims to end the epidemics of AIDS, tuberculosis, malaria and neglected tropical diseases and to combat hepatitis, water-borne diseases and other communicable diseases. One indicator associated with this target is the number of new HIV infections per 1,000 uninfected population, by sex, age and key populations.

40. While substantial progress has been made in reducing HIV infections and AIDS-related deaths overall,[86] it is estimated that annual infections have increased by 25 per cent for men who have sex with men since 2010, accounting, in 2020, for 23 per cent of new infections globally.[87] HIV also continues to have a disproportionate impact on women and girls, who, in 2019, accounted for 48 per cent of new infections worldwide and 59 per cent in sub-Saharan Africa. In 2020 AIDS-related illnesses remained the leading cause of death among women of reproductive age globally.[88] Trans women accounted for 2 per cent of new infections globally and research in countries such as South Africa suggests that HIV prevalence among women who have sex with women is also disproportionately high.[89] In

[84] A/69/856, para. 45.

[85] See https://www.un.org/sg/en/content/sg/statement/2015-09-29/secretary-generals-remarks-high-level-lgbt-core-group-event-leaving.

[86] Submission by UNAIDS, p. 1; see also E/2019/68, p. 9.

[87] See https://www.unaids.org/sites/default/files/media_asset/2020_global-aids-report_en.pdf, pp. 46 and 48–49.

[88] See https://www.unaids.org/sites/default/files/media_asset/2020_women-adolescent-girls-and-hiv_en.pdf.

[89] Submission by Centre for Human Rights of the University of Pretoria, p. 2.

some submissions, it was noted that there is a very high proportion of new infections among young people from key populations.[90]

Mental health

41. Target 3.4 of the Sustainable Development Goals, aims to promote mental health and well-being and sets an indicator for the reduction of the number of deaths attributed annually to suicide, per 100,000.[91] The pervasive discrimination and violence LGBTI people face, whether from family and community members or public officials, has a profoundly detrimental impact on their mental health and well-being. States have a duty to "create and sustain enabling environments that incorporate a rights-based approach to mental health, promoting a life of dignity and well-being for all people, including LGBTI people, throughout their lifetimes".[92]

42. Reports from West Africa, Europe and the Asia-Pacific all conclude that LGBT persons evidence a higher risk for suicide, often correlated with having survived physical or sexual violence.[93] Similar findings from Latin America indicate that a quarter of young LGBTI persons report having attempted suicide at some stage. A study in Chile revealed that the adolescent suicide rate is five times higher within that population, while a survey of young LGBT persons in Mexico during the pandemic found that a quarter had had suicidal thoughts and 8 per cent had attempted suicide.[94] Studies in Europe and the United States have found high rates of attempted suicide among intersex people, linked to the particular mental health challenges they face as a result of discrimination, often compounded by racism and ableism.[95]

43. Reports received by the Independent Expert covered a broader range of mental health issues beyond suicide. For example, findings suggest that older adults affected by discrimination and violence based on sexual orientation and gender identity face higher levels of psychological distress compared to older adults in general, compounded by multiple barriers to accessing equitable, culturally appropriate mental health and ageing services,[96] as well as a lack of emotional support from family or community members.[97] Similarly, a survey of trans men and non-binary people in Argentina found that almost half of respondents reported serious mental health issues, including depression, anxiety and post-traumatic stress disorder.[98]

Substance abuse

44. Goal 3, target 3.5, aims to strengthen the prevention and treatment of substance abuse, including narcotic drug and alcohol abuse. An indicator associated with this target is coverage of treatment interventions for substance use disorders.

45. Evidence suggests that persons who identify as LGBT or otherwise suffer from discrimination and violence based on sexual orientation and gender identity are at increased risk for substance use, linked to the mental health pressures resulting from societal

[90] Submission by APCOM Foundation, p. 2.
[91] Global SDG Indicator Platform, indicator 3.4.2.
[92] See A/HRC/41/34.
[93] Y. Kugbe and S. Akpokli, *Breaking labyrinths: An insight into our lived experiences*, Creative Commons, the Netherlands, 2020, pp. 70 and 73; C. Björkenstam, G. Andersson et al., "Suicide in married couples in Sweden: Is the risk greater in same-sex couples?", *European Journal of Epidemiology*, vol. 31, No. 7, (2016), pp. 685–690; see also submissions of EuroCentralAsian Lesbian Community, p. 6, and the Asia Pacific Transgender Network, p. 2.
[94] Submissions by Sergio Urrego Foundation, p. 1; ILGA World, p. 4; and Yaaj Mexico, p. 3.
[95] A. Rosenwohl-Mack et al., "A national study on the physical and mental health of intersex adults in the U.S.", *PLoS ONE*, vol. 15, No.10 (2020); H. Falhammar et al., "Health status in 1040 adults with disorders of sex development (DSD): a European multicenter study", *Endocrine Connections*, vol. 7, No. 3 (2018), pp. 466–478.
[96] C.P. Hoy-Ellis et al., "Innovative approaches address aging and mental health needs in LGBTQ communities: generations", *Journal of the American Society on Aging*, vol. 40, No. 2 (2016), pp. 56–62.
[97] See https://www.lgbtmap.org/file/invisible-majority.pdf.
[98] Submission by ILGA World, p. 5.

discrimination.[99] For example, a survey in Australia showed that LGBT persons are 1.5 times more likely to exceed lifetime risk guidelines on drinking alcohol than heterosexual persons,[100] and in the United States, studies suggest that bisexual and lesbian women have higher rates of smoking, cocaine use and alcohol abuse.[101]

Sexual and reproductive health

46. Goal 3, target 3.7, aims to ensure universal access to sexual and reproductive health-care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes. It is complemented by Goal 5, target 5.6, which clarifies that such access should be ensured in accordance with the Programme of Action adopted at the International Conference on Population and Development in 1994 and the Beijing Platform for Action adopted in 1995, including the outcome documents of their review conferences. These instruments assert the right of women to have control over and decide freely on matters of sexuality and reproduction, free of discrimination, coercion and violence, and the need for State policies and programmes to recognize the diversity of family structures.[102]

47. Indicators for tracking progress on Goals 3 and 5 include the adolescent birth rate; the proportion of women aged 15–49 who make their own informed decisions regarding sexual relations, contraceptive use and reproductive health care; and the number of countries with laws and regulations that guarantee full and equal access to women and men aged 15 and older to sexual and reproductive health care, information and education.

48. The Independent Expert has gathered abundant evidence of the many ways in which lesbian, bisexual, trans and gender non-confirming women are deprived of their sexual and reproductive rights due to discrimination and violence, including: targeted rape, motivated by their real or perceived sexual orientation, gender identity or expression; denial of access to sexual and reproductive health services and facilities due to the requirement that they be accompanied by a male partner or relative; and exclusion from sexual and reproductive health strategies targeted solely at heterosexual, cisgender women and aimed, in some cases, at deliberately stigmatizing other sexual orientations or gender identities.[103]

49. A number of submissions highlighted recent struggles around access to abortion in different national contexts and their implications for the rights of women and all those facing discrimination and violence based on sexual orientation and gender identity.[104] In line with the long-standing commitments under the International Conference on Population and Development and Beijing processes and the jurisprudence of numerous human rights bodies, the Independent Expert considers that the ability to freely decide on the termination of pregnancy and to access abortion-related services that are safe, legally available and accessible to all without discrimination are a fundamental element of sexual and reproductive health and rights, without which the Goals on health and gender equality cannot be achieved.

50. Forced sterilization is another pervasive denial of reproductive rights that has been used worldwide as a form of punishment and regulation against indigenous and other marginalized women. Sterilization also remains a requirement to legal gender recognition in many countries, imposing on trans and gender-diverse persons the choice between the legal

[99] B.A. Feinstein and C. Dyar, "Bisexuality, minority stress, and health", *Current Sexual Health Reports*, vol. 9, No. 1 (2017), pp. 42–49; WHO, *Brief sexuality-related communication: recommendations for a public health approach*, Geneva, 2015.

[100] See https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/priority-populations/people-identifying-as-lesbian-gay-bisexual-transgender-intersex-or-queer.

[101] See https://www.hopkinsmedicine.org/health/wellness-and-prevention/lesbian-and-bisexual-womens-health-issues.

[102] See https://www.unfpa.org/publications/international-conference-population-and-development-programme-action; and https://www.unwomen.org/en/digital-library/publications/2015/01/beijing-declaration.

[103] See submissions by Amicus, Derechos Humanos; Centro de Recursos Educativos para Adultos and partners; EuroCentralAsia Lesbian* Community; ILGA World; Outright Action International; Promsex; and Red de Litigantes LGBTI de las Americas.

[104] Submission by Centro de Recursos Educativos para Adultos and partners, p. 7.

recognition of their gender or preserving their capacity to have children.[105] Although United Nations and regional human rights bodies have affirmed that States must abolish compulsory sterilization or surgery for those seeking legal gender recognition,[106] submissions made reference to sterilization requirements in Japan,[107] Singapore[108] and 13 member States of the Council of Europe.[109] Intersex persons are also subjected to sterilization. Several United Nations and international human rights bodies and agencies have noted that reproductive organ surgeries and procedures commonly conducted on intersex persons, often without their consent, may result in the termination of all or some of their reproductive capacity.[110]

51. LGBT persons are increasingly considering their fertility options as reproductive techniques grow. Laws governing sperm donation, egg donation and surrogacy vary. Some countries ban surrogacy altogether while others have moved to restrict it.[111] Access to reproductive health technologies, such as in-vitro fertilization, where available to LGBT prospective parents, can be prohibitively expensive.[112] Protection of the family cannot be premised on an understanding that values some families less than others or continues to deny the diversity of family forms celebrated at the International Conference on Population and Development almost three decades ago.[113] As stated by the High Commissioner, "the consensus regarding the role of families in sustainable development is grounded in a number of common elements, including the need to recognize the diverse and changing forms of the family institution, in accordance with the different social, cultural and economic characteristics of every society".[114]

52. As outlined earlier, many submissions referred to the widespread lack of sexuality-related information and education that is inclusive of and tailored to the needs and rights of LGBT persons, including young people. Others, however, highlighted good practices at the national and international levels. For example, in Sweden, school curricula integrate "sexuality, consent and relationships" as core components of good quality comprehensive sexuality education.[115] The United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and the United Nations Educational, Scientific and Cultural Organization have issued a publication, entitled International technical guidance on sexuality education, to assist education, health and other relevant authorities in the design and implementation of school-based and out-of-school comprehensive sexuality education programmes and materials, inclusive of LGBTIQ+ persons.[116]

Universal health coverage

53. Goal 3, target 3.8, on achieving universal health coverage by 2030, is perhaps the most overarching and potentially transformative health-related commitment of the Goals. Universal health coverage means that all people and communities have access to the full spectrum of quality health services across the life course – from promotion to prevention, treatment, rehabilitation and palliative care – without being exposed to financial hardship.[117] The inclusion of universal health coverage in the Goals is an opportunity to advance a comprehensive, inclusive and rights-centred approach to health, focusing on strengthening

[105] See https://ilga.org/downloads/ILGA_World_Trans_Legal_Mapping_Report_2019_EN.pdf.

[106] CEDAW/C/BEL/CO/7, para. 45; CAT/C/CHN-HKG/CO/5, para. 29 (a); A/HRC/22/53, para. 88; CEDAW/C/CHE/CO/4-5, para. 39 (d); European Court of Human Rights, *X and Y v. Romania*, Application Nos. 2145/16 and 20607/16, Judgment, 19 January 2021; see also P. Dunne, "Transgender sterilization requirements in Europe", *Medical Law Review*, vol. 25, No. 4 (2017), p. 554.

[107] Submission by Asia-Pacific Transgender Network, p. 3.

[108] Ibid.

[109] Submissions by CoE, p. 4, and the Eastern European Coalition for LGBT+ Equality, p. 4.

[110] See https://www.unaids.org/sites/default/files/media_asset/201405_sterilization_en.pdf.

[111] See https://www.bbc.com/news/world-28679020.

[112] See D. Chen et al., "Factors affecting fertility decision-making among transgender adolescents and young adults", *LGBT Health* (2019), pp. 107–115.

[113] A/74/181, paras. 46 and 60; A/75/258, para. 63; and A/76/152, paras. 22, 26 and 33.

[114] A/HRC/31/37, para. 76.

[115] Submission by Sweden, p. 4.

[116] Submission by UN-Women, p. 3.

[117] See https://www.who.int/data/gho/data/major-themes/universal-health-coverage-major.

health systems and tackling the structural factors that undermine them. Such factors include a widespread decline in health spending because of austerity measures worldwide, and growing deregulation, privatization and commodification of health care as a result of the dominant neoliberal economic policy trends of recent decades.[118]

54. The trends have contributed to the social and economic exclusion of LGBTI people, fuelling inequality and discrimination in their access to the highest attainable standard of health, as well as to other economic, social and cultural rights.[119] The coronavirus disease (COVID-19) pandemic has exacerbated health inequalities and other forms of socioeconomic exclusion faced by persons on grounds of sexual orientation and gender identity.[120] It has also galvanized awareness of the need to invest in robust, comprehensive and equitable public health systems as a global public health imperative, making quality health care and services available, accessible and acceptable to all, as human rights standards require. The commitment in the Goals to universal health coverage is a vehicle for turning this awareness into action. Universal health care has now become a major goal for health reform in many countries, and a key focus of international cooperation and assistance efforts. However, making health coverage truly universal will demand a resolute fiscal commitment to ensuring the maximum available resources to progressively realize the right to health for all, as well as a clear political commitment to dismantling the economic, social, cultural and environmental barriers to the full inclusion of LGBTI persons in health systems and strategies.

Gender equality

55. Discrimination and violence based on sexual orientation and gender identity cannot be effectively tackled without eradicating gender inequality. Goal 5 seeks to address the structural inequalities women face in the legal, political, social and economic spheres, which manifest in myriad ways, including: limits to women's political participation and leadership; pervasive gender-based violence; child, early and forced marriage; unpaid labour and disproportionate care burdens; education disparities; and unequal access to economic resources such as land, property and inheritance. Research on gender-based frameworks conducted by specialized United Nations bodies and the mandate reveals that these contextual realities shape the ability of lesbian, bisexual, trans and other gender non-conforming women to fully exercise their right to health and to decide freely on issues related to sexuality, gender expression and bodily autonomy.[121] This will continue to be a cross-cutting concern for the thematic agenda of the mandate.

Discriminatory laws and non-discrimination guarantees

56. Under Goal 10, States committed to reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices. Under Goal 16, States pledged to "promote and enforce non-discriminatory laws and policies for sustainable development" as a step towards more just and inclusive societies. These commitments are of potentially huge significance for combating discrimination and violence based on sexual orientation and gender identity.

57. The Independent Expert is concerned about the widespread persistence of criminal laws that overtly discriminate against people on grounds of sexual orientation and gender identity, rendering their very identities illegal. In 2021, along with nine other special procedures, he voiced concern to the Ghanaian authorities at draft legislation criminalizing a sweeping range of so-called "LGBTQI activities" including consensual sex, marriage and public expressions of affection, as well as forming associations, producing educational

[118] L. Forman, "The evolution of the right to health in the shadow of COVID-19", *Health and Human Rights Journal*, 2020.

[119] See A/74/181.

[120] See A/75/258.

[121] See UN-Women, *Turning Promises into Action: Gender Equality in the 2030 Agenda for Sustainable Development* (2018); see also https://www.unwomen.org/en/digital-library/publications/2021/09/progress-on-the-sustainable-development-goals-the-gender-snapshot-2021; and A/HRC/47/27.

materials or carrying out advocacy. The draft legislation also promotes conversion therapy and unnecessary medical interventions on intersex children. Such measures of State-sponsored discrimination and violence are not only in breach of international human rights law, they run counter to the worldwide trend towards the adoption of laws and policies aimed at ensuring protection from sexual orientation and gender identity discrimination and violence. A notable recent example at the international level is the Global strategy on HIV, hepatitis and sexually transmitted diseases for 2022–2030 adopted by WHO.[122]

58. Constitutional guarantees against sexual orientation and gender identity discrimination, such as those adopted in Bolivia (Plurinational State of), Ecuador, Fiji, Malta and South Africa, are a fundamental part of the toolbox available to States to address discrimination and violence based on sexual orientation and gender identity at the national level. Other countries, such as Australia and Thailand, have issued general laws on non-discrimination covering sexual orientation and gender identity, while many, including Australia, Colombia, Costa Rica, Georgia, Mexico and Portugal, have included prohibition of sexual orientation and gender identity discrimination in health or other sectoral strategies.

59. Legal recognition of gender identity based on self-identification is of fundamental importance, and some Member States, including Argentina, Denmark, Ireland and Malta, have implemented it through specific legislation. In Argentina, a study found that after the law was introduced, the percentage of survey participants who reported experiencing discrimination based on gender identity dropped from 80 per cent to 30 per cent.[123]

VI. Progress and challenges in tackling discrimination and violence based on sexual orientation and gender identity through the Sustainable Development Goals

> "At the core of LGBTI advocacy is the capability to define and express one's own identity. In the development framework, this capability is not just an individual freedom, it is a powerful step to creating a future where all LGBTI people can live a life of their choosing."[124]

60. Issues of discrimination and violence based on sexual orientation and gender identity were brought to the attention of Member States during the civil society consultation process on the 2030 Agenda and referenced in key preparatory documents.[125] Although no explicit references to sexual orientation and gender identity nor LGBTI were made in the final text nor included in the indicators or metrics for monitoring progress in its implementation, the mandate believes that the Goals cannot be achieved if those experiencing discrimination and violence based on sexual orientation and gender identity continue to be left behind.

61. The mandate therefore welcomes increasing efforts by States to include discrimination and violence based on sexual orientation and gender identity in their national implementation plans, as well as the steadfast work of civil society organizations in bringing a sexual orientation and gender identity lens to the monitoring and implementation of the Goals at the national, regional and global levels. Nevertheless, the mandate has observed three key challenges that need to be overcome if Agenda 2030 is to live up to its inclusive promise.

Inadequate coverage of sexual orientation and gender identity issues in the implementation and tracking of the Sustainable Development Goals

62. A review of voluntary national reviews synthesis reports from 2016–2021 indicates increasing albeit uneven attention to issues of discrimination and violence based on sexual orientation and gender identity in national reports and plans. In 2017 and 2018, Australia and

[122] See https://cdn.who.int/media/docs/default-source/hq-hiv-hepatitis-and-stis-library/full-final-who-ghss-hiv-vh-sti_1-june2022.pdf?sfvrsn=7c074b36_9.
[123] Submission by UNAIDS, p. 3.
[124] See https://www.rfsl.se/wp-content/uploads/2019/04/FINAL_FORALL_RFSL_2019.pdf.
[125] See A/69/700.

Chile made specific reference to LGBTI persons in their voluntary national reviews: the former explaining difficulties faced in data collection and disaggregation; the later reporting on informing of programmes oriented towards lesbian, gay, bisexual, trans and queer persons (LGBTI) persons. Canada reported that it had designated an official to work with the LGBTQ community and address discrimination against them. Ireland reported that it had developed a LGBTI+ National Youth Strategy. The 2020 and 2021 syntheses of voluntary national reports include sections dedicated to progress in relation to LGBT persons, with examples of community-based drop-in centres established by civil society organizations (Malawi, 2020) and the role of LGBT civil society groups (Estonia and Seychelles, 2020). Bhutan, Denmark, the Dominican Republic, Norway, Sweden and Thailand also provided specific information on sexual orientation and gender identity in their voluntary national reviews in 2021.

63. Nevertheless, many submissions noted that strategies designed to implement the Goals at national level lack references to sexual orientation and gender identity, and national entities in charge of monitoring progress on the Goals usually do not include information about LGBTI persons, a shortcoming that is reflected in voluntary national reviews. Moreover, LGBTI human rights defenders and organizations encounter significant barriers to participation in the monitoring processes, often encountering little support, if not active persecution, from their Governments.

Restrictions on human rights defenders and barriers to participation in processes related to the Sustainable Development Goals

64. As affirmed by both the Independent Expert and the Special Rapporteur on the situation of human rights defenders, human rights defenders working on sexual orientation and gender identity issues and defenders of sexual and reproductive rights are among the most widely targeted individuals in many parts of the world.[126] As outlined above, the threats they face, from prosecution under "propaganda laws" or laws criminalizing their identities, to hate speech and physical attacks, often have a crushing effect on the access to the health information and services LGBTI persons need. They also impede the participation of LGBT communities and organizations in the monitoring and implementation of the 2030 Agenda. Goal 16 includes commitments aimed at creating an enabling environment for human rights defenders to carry out their work. In fulfilling their commitments, States must not only refrain from such attacks, but create a conducive legal and institutional environment in which LGBTI and intersex rights defenders and their organizations can carry out their work without fear or arbitrary restriction.

65. Enabling the central role of civil society organizations (including health providers both serving and led by LGBTI persons) in supplementing State action in the field of health requires resources. Yet LGBT organizations cannot always rely on domestic State funding or philanthropy, and in some environments are impeded from doing so. International health cooperation and assistance can be critical in supporting LGBT organizations and communities. Both donor and recipient States should refrain from imposing arbitrary conditions or limitations on international funding. During his country visit to Mozambique, the Independent Expert found that several organizations had to close facilities serving LGBT persons due to a policy of the United States known as a "global gag rule", which cuts funding to organizations offering abortion-related services and information.

66. Meaningful participation of LGBT communities and organizations in the process through which the 2030 Agenda is monitored and implemented was a constant demand made in most submissions received. Involvement must be meaningful and effective: some submissions referred to purely performative consultation processes that did not open real spaces for incidence. Policymakers must also adopt measures that build trust between LGBT communities and State agents in order to overcome the distrust created by historical State-sponsored or acquiesced violence.

67. There have been positive developments regarding LGBT representation and participation at international level. For example, in 2019 a coalition of civil society

[126] See https://www.ohchr.org/en/statements/2022/03/defenders-human-rights-lgbt-persons-constantly-risk-warn-un-experts.

organizations working to advance the rights of LGBTI people was formalized as a stakeholder group under the United Nations structure for the engagement of civil society and other stakeholders in the monitoring and review of the 2030 Agenda, the recommendations of which are invaluable. International NGOs working against discrimination and violence based on sexual orientation and gender identity have played a leading role in facilitating participation by LGBT organizations in implementation and review processes related to the 2030 Agenda and the Goals. Several have authored guides on LGBT inclusion in the Goals, highlighting the specific challenges LGBTI people face and encouraging LGBTI civil society activists to submit their own "spotlight reports" alongside voluntary national reviews by States at the high-level political forum.[127] Nevertheless, submissions revealed that national consultations on the Goals with LGBT-led organizations and individuals are rare or non-existent. They also noted that opportunities for participation in global and national consultative processes are often skewed by asymmetries of power within LGBT communities.

68. Intergovernmental actors have made notable efforts to facilitate inclusion in processes related to the Goals. For example, the United Nations Development Programme (UNDP) partnered with the World Bank and civil society partners to develop an LGBTI inclusion index to measure development outcomes for LGBTI people aligned with the global indicator framework.[128] Similarly, the Global AIDS Strategy 2021–2026 was developed through a process that prioritized the participation of some 10,000 persons from 160 countries, including LGBTI individuals and other key populations, as a result of which it contains strong targets in relation to community-led and key population-led responses.[129]

Data and research gaps

69. Improving health outcomes for LGBTI persons and monitoring progress on the commitment to leave no one behind will require a radical transformation in how data and evidence of discrimination and violence based on sexual orientation and gender identity is gathered, analysed and acted on. As noted by the mandate, there is a dearth of accurate data regarding the scale, prevalence and nature of discrimination and violence based on sexual orientation and gender identity worldwide. The systematic collection, disaggregation and analysis of data allowing a comparison of population groups is a key step in assisting States to fulfil their duty to exercise due diligence in protecting those at risk of violence and discrimination, including measures to tackle the root causes.

70. The mandate notes with great interest the implementation of important initiatives in this area: in the United States, the National LGBTQ+ Women*s Community Survey collects data from the experiences of women who partner with other women;[130] in Mexico, the 2021 National Survey on Sexual and Gender Diversity includes specific data on access to health by LGBT persons; [131] in Australia, the National Drug Strategy Household Survey disaggregates data on the use of alcohol and other drugs by sexuality of people aged 14 and over.[132] Some countries are promoting research to allow public health decision makers and administrators to better serve LGBTI populations and further equity and inclusion. In Cuba, the National Centre of Sexual Education, created by the Ministry of Public Health, carries out LGBT-inclusive research, training, capacity-building and social communication. Some good-practice research efforts can also be found at the regional and global levels.[133] The European Commission has committed support for health research relevant to LGBTI persons

[127] See https://www.stonewall.org.uk/system/files/sdg-guide.pdf; https://outrightinternational.org/sites/default/files/UNCoreGroup.pdf; https://www.humanrights.dk/sites/humanrights.dk/files/media/document/Leveraging%20Human%20Rights_ENG_web.pdf; and https://impactglobal.org/wp-content/uploads/2021/03/How-to-Engage-With-the-2030-Agenda-on-LGBTI-Issues.pdf.

[128] See https://www.undp.org/publications/lgbti-index.

[129] See https://www.unaids.org/en/resources/documents/2021/2021-2026-global-AIDS-strategy.

[130] See https://www.lgbtqwomensurvey.org/.

[131] Submission by Mexico, p. 2.

[132] Submission by Australia, p. 2.

[133] Submission by Cuba, p. 4.

in its LGBTIQ Equality Strategy 2020–2025.[134] Furthermore, the Global Partnership for Action to Eliminate All Forms of HIV-Related Stigma and Discrimination aims to increase coordinated technical assistance and support for country efforts to end stigma and discrimination across six settings: health care; justice; education; workplace; humanitarian; and community.[135]

71. The Independent Expert is nevertheless aware of serious gaps in the evidence-base regarding health-related discrimination and violence based on sexual orientation and gender identity. For example, contemporary literature rarely addresses the health and well-being of older lesbian women. Similarly, there is a dearth of research on the right to health of trans men. In one submission it was noted that the lack of discussion on trans pregnancy services leads to stigma and prejudice for trans men who get pregnant, and a hearing before the Inter-American Commission on Human Rights revealed that severe violence in the health sector is among the most common types of violence suffered by trans men.

72. The Goals have spurred a globally concerted effort to improve the gathering of statistics at the national and global levels in areas related to health, inequality and exclusion. Such efforts must be more responsive to the huge statistical gaps rendering discrimination and violence based on sexual orientation and gender identity largely invisible, and therefore largely unaddressed. In contexts of criminalization and stigmatization, these efforts should also guard against the misuse of data for surveillance, harassment, entrapment, arrest and persecution of LGBT persons.

VII. Conclusions and recommendations

73. **The Sustainable Development Goals were the result of a process in which political considerations shaped the content of the Goals and the choice of metrics to monitor them. The evidence collected for the present report strongly suggests that neglecting to address the challenges created by discrimination and violence based on sexual orientation and gender identity could significantly compromise the achievement of the Goals, leading to a risk that a significant segment of society will continue to be left behind. Contributions also highlight the considerable efforts made by LGBTI and women's rights defenders, civil society organizations, intergovernmental agencies, national human rights institutions and numerous Member States worldwide to address this gap and to ensure that the implementation of the 2030 Agenda fulfils its inclusive promise.**

74. **While underlining the need to remedy the consequences of negation, the current mid-point in the implementation of the Goals presents a significant opportunity to address the consequences of discrimination and violence based on sexual orientation and gender identity in the realm of health, as well as in other areas of exclusion. Compliance with the obligations stemming from the right to the highest attainable standard of health, buttressed by four cross-cutting principles, non-discrimination, participation, representation, and accountability,[136] is the essence of the human rights-based approach that the mandate recommends. With due attention to the plethora of challenges existing in different contexts, this approach must also be implemented with due regard to the "do no harm" principle, intersectional approaches, self-identification, privacy, transparency and legality.**[137]

75. **The need to advance an inclusive, rights-based approach to health is all the more urgent in the wake of the COVID-19 pandemic, which has highlighted the discriminatory and inequitable impacts of regressive health and socioeconomic policies that do not meet the standards and principles outlined above.**[138] **The ASPIRE**

[134] Submission by the European Union, p. 2.
[135] Submission by UNAIDS, p. 7.
[136] See https://www.ohchr.org/sites/default/files/RGuide_HealthPolicyMakers.pdf.
[137] See A/HRC/35/36, para. 56; A/HRC/38/43, paras. 22–25 and 94; A/HRC/41/45, paras. 47–57, 63–67 and 80; A/74/181, para. 4; and A/HRC/47/27, paras. 23–28.
[138] See https://www.hhrjournal.org/2020/04/the-evolution-of-the-right-to-health-in-the-shadow-of-covid-19/#_ednref4.

Guidelines, issued by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity in June 2020 to guide the design, implementation and evaluation of rights-based and non-discriminatory COVID-19 pandemic response and recovery measures, contain six steps that frame a plan of action to fulfil the pledge to leave no one behind and to ensure healthy lives and promote well-being for all at all ages, regardless of sexual orientation or gender identity.[139] **This universal pledge made by States Members of the United Nations and endorsed by an unprecedented range of intergovernmental and non-governmental stakeholders, is an unmissable opportunity to put the ASPIRE Guidelines into practice as a tool for queering the Sustainable Development Goals and fulfilling their promise of "realizing the human rights of all".**

76. **In dynamizing efforts to fulfil their commitments made in the 2030 Agenda, the mandate holder recommends that Member States adopt the following measures:**

Acknowledgement

(a) **Acknowledge that ensuring healthy lives and promoting well-being for all and leaving no one behind will only be achieved if discrimination and violence based on sexual orientation and gender identity, as well as on sex characteristics, are addressed through actions conducive to their eradication;**

(b) **Explicitly recognize LGBTI persons as subjects of rights and agents of sustainable development in all future global, regional and national implementation plans related to the Goals;**

(c) **Acknowledge and act on the evidence that COVID-19 has had disproportionate impact on populations historically subjected to discrimination, including LGBT persons and their communities, as detailed in the report of the mandate on the matter;**[140]

(d) **Address issues concerning violence and discrimination based on sexual orientation and gender identity, as well as sex characteristics, under relevant items of the agenda of the high-level political forum in 2022, including in the thematic review of Goal 5, as well as in the agenda of future review forums and monitoring processes at the global, regional and national levels;**

Support

(e) **Refrain from attacks on civil society organizations led by and serving LGBTI persons, and immediately rescind any laws and policies placing arbitrary and discriminatory restrictions to their work; such organizations must be enabled to operate in a conducive legal, institutional and social environment, without fear or arbitrary restriction;**

(f) **Recognize advocates working on sexual orientation and gender identity issues as human rights defenders, guaranteeing them and their organizations the full range of protections outlined in the Declaration on Human Rights Defenders;**

(g) **States in a position to do so should prioritize support for LGBTI human rights defenders and organizations when providing international cooperation and assistance in the areas of health and human rights and affirm the value of their role and expertise through all relevant means; both donor and recipient States should avoid the imposition of arbitrary restrictions or limitations on such assistance;**

(h) **Recognize the impact of the COVID-19 pandemic on such organizations and ensure, within the scope of State functions, the adoption of all relevant measures to address the resulting consequences;**

[139] See https://www.ohchr.org/sites/default/files/IESOGIASPIREGuidelinesReport_v5_20200622.pdf.

[140] See A/75/258.

Protection

(i) **Adopt all measures necessary for the consideration of constitutional or legal protection from violence and discrimination based on sexual orientation and gender identity, as well as sex characteristics, as detailed in the report of the mandate on the matter;**[141]

(j) **Repeal all legislation enabling, promoting or acquiescing to human rights violations perpetrated against LGBTI persons, as detailed in the present report;**

(k) **Repeal legislative, administrative and other measures enabling, promoting or acquiescing to pathologizing views of sexual orientation and gender identity, in line with the recommendations set out in the reports of the mandate;**[142]

(l) **Provide recognition of gender identity based on self-identification through all relevant means, as detailed in the report of the mandate;**[143]

(m) **Address violence and discrimination based on sexual orientation and gender identity, as well as on sex characteristics, in access to health through political, strategic and programmatic action;**

(n) **Training and sensitization for public officials, including, as a priority, those working in the health, security, justice and education sectors, in relation to violence and discrimination based on sexual orientation and gender identity, as well as on sex characteristics;**

Indirect discrimination

(o) **In furtherance of the principle of prevention, include adequate mechanisms in processes of the design and implementation of legislative, administrative or any other State measures impacting access to health, so that all available expertise about possible indirect discriminatory impact is part of the process and is given timely, serious and consequential consideration;**

(p) **In furtherance of the principle of reparation, ensure the availability of adequate mechanisms so that the actual indirect discriminatory impact of legislative, administrative or any other State measures can be identified and addressed in an efficient and efficacious manner, including all relevant considerations of non-repetition;**

Representation

(q) **Take direct action to include civil society organizations working to address violence and discrimination based on sexual orientation and gender identity, as well as sex characteristics, in the monitoring and review processes of the Goals at the national, regional and global levels;**

(r) **Recognize the legitimacy and indispensable nature of including civil society organizations led by and serving LGBTI persons and the communities they serve in the implementation and monitoring of all of the Goals, particularly in relation to the specific matters addressed in the present report;**

Evidence-based action

(s) **Explicitly adopt and follow a human rights-based approach in all evidence and data-gathering processes in relation to health inequalities and the Goals; the overriding human rights principle of "do no harm" should always be respected through necessary safeguards to prevent the misuse of such data; all activities must take into consideration the principles of self-determination, privacy and confidentiality, lawful use, participation, the right to information, transparency, accountability and**

[141] A/HRC/35/36.
[142] A/73/152 and A/HRC/44/53.
[143] A/73/152.

impartiality in the terms expressed in the report of the mandate on data[144] and other relevant human rights sources;

(t) **Design and implement comprehensive data-collection procedures to uniformly and accurately assess the type, prevalence, trends and patterns of violence and discrimination against LGBTI persons, both in general and in relation to the particular findings in the present report, regarding their access to the highest available standard of physical and mental health;**

(u) **Adopt data processes that enable disaggregation according to populations, communities and persons affected by discrimination and violence based on sexual orientation and gender identity, as well as by other relevant factors such as race, ethnicity, religion or belief, health status, age, class, caste and migration or economic status;**

(v) **Use all available data to inform the policies and legislative actions of States, with a view to preventing further acts of violence and discrimination and addressing gaps in terms of investigation, prosecution, remedies provided and sociocultural and economic inclusion;**

(w) **Include data and analysis relevant to violence and discrimination based on sexual orientation and gender identity in voluntary national reviews and relevant regional and global progress reports;**

(x) **Promote and support research activities to address the significant gaps in the evidence-base regarding health-related discrimination and violence based on sexual orientation and gender identity, with due regard to communities, populations and persons underrepresented in research.**

[144] A/HRC/41/41.

Annex

Activities 2021–2022

1. Violence and discrimination based on sexual orientation and gender identity are never justified and must be prevented, prosecuted and punished and, if relevant, be at the base of measures of reparation.

2. Since his last report to the Human Rights Council in 2021, and given the continued challenges created by the ongoing COVID-19 pandemic, which affects populations and communities around the world very differently, the Independent Expert made efforts to maintain his virtual presence while steadily retaking in-person activities. Many events and activities were organized under hybrid formats, allowing for the engagement of a wider range of stakeholders.

3. The Independent Expert organized seven virtual events in English or Spanish, including some with French or Portuguese interpretation, to increase the visibility of all areas of his work. Some of the events addressed topics in focus during the year, namely the Reports on Gender, while many others continued threads of work initiated previously, such as the impact of the COVID-19 pandemic on LGBT persons, practices of "conversion therapy", and social inclusion. These events brought together thousands of participants from all regions of the world. One of the new initiatives was the campaign "Diversity in Adversity", in partnership with the Mandate of the Special Rapporteur on the situation of human rights defenders. The launch of the initiative had a record attendance of more than 300 simultaneous live viewers.

4. In June and October 2021, the Independent Expert participated in hybrid interactive dialogues with the Human Rights Council and the General Assembly. Throughout the year, he also maintained virtual contact with representatives of United Nations entities, international organizations, civil society organizations and business leaders. At the regional level, activities were carried out with the OAS and its LGBTI Core Group, the IACHR, and the Council of Europe and European institutions. Dozens of bilateral exchanges with representatives of Member States were also held.

5. The gradual return of in-person activities allowed for the Independent Expert to resume the work programme contingent on travels. During the period, he undertook a country visit to Tunisia as well as promotional and advisory visits to Copenhagen, Honduras, El Salvador and Guatemala.

6. The work on practices of "conversion therapy" continued to provide an example of the manner in which the mandate hopes to add value to ongoing efforts at the domestic level. Since the publication of the mandate's report on the issue, several countries have introduced legislation to ban practices of conversion. The mandate was engaged with parliamentary commissions working on the issue in Canada and France, which have both concluded the process of adopting prohibitive legislation. Since May 2021, other countries have introduced administrative or professional directives against the practice, such as Chile and India, while New Zealand has criminalized attempts to change sexual orientation or gender identity of anyone under 18. Several other countries are still actively working on introducing bans, such as Denmark, Finland, Ireland and Norway.

7. Since May 2021, the Independent Expert attended official hearings with public agents from multiple States' legislative and executive branches to advise on legislation and policy in topics related to sexual orientation and gender identity. Some of the entities that were in dialogue with the Expert were the Parliament of Ghana, the House of Commons of the United Kingdom, the Ministry of Interior of Uruguay, the Ministry of Foreign Affairs of Costa Rica, and the Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe; among others.

8. At the invitation of United Nations leadership, OHCHR, the Office of the United Nations High Commissioner for Refugees (UNHCR), the Joint United Nations Programme on HIV/AIDS (UNAIDS), the United Nations Development Programme (UNDP), the World Bank and other multilateral development banks and the Commonwealth Secretariat (often in

partnership with Governments, Parliaments, academia, and civil society partners), the Independent Expert took part in 12 meetings and events covering key issues related to sexual orientation and gender identity.

9. Between 1 May 2021 and 30 April 2022, at the invitation of Member States, government representatives, academia, and CSOs, the Independent Expert participated in 41 panels and presentations during which he engaged with hundreds of stakeholders from all corners of the world.

10. During the reporting period, the Independent Expert gave more than 40 in-depth interviews for television, radio and print media. He also issued essays, video messages, and op-eds, and developed an active social media presence. Available data shows that the mandate has built an audience across different regions of the world. He also issued 16 individual or joint official press releases and media statements, including on the situation of forcibly displaced LGBT persons and one thematic statement on the connections between right to freedom of religion and belief and right to live free from violence and discrimination based on sexual orientation and gender identity, on the occasion of the 2021 International Day against Homophobia, Transphobia and Biphobia, which was joined by a group of over 100 United Nations and regional independent experts.

11. The Independent Expert sent 21 communications in which allegations of human rights violations in relation to sexual orientation and gender identity were raised with other Special Procedures and/or by which he sought to provide technical advice on legislation and policies.