



LIVING FREE & EQUAL

WHAT STATES ARE DOING TO TACKLE VIOLENCE
AND DISCRIMINATION AGAINST LESBIAN, GAY,
BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE



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TRANSGENDER AND INTERSEX PEOPLE



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FOREWORD

FOREWORD

In recent years, awareness has grown of the scope and scale of violence and discrimination directed at lesbian, gay, bi, trans (LGBT) and intersex people around the world – including killings, torture, arbitrary detention and widespread discrimination in access to health care, education, employment and housing.

United Nations, regional and national human rights bodies have identified critical gaps in the implementation of international standards to address these and related violations, and have issued a plethora of recommendations, including, among them, the repeal of discriminatory legislation and measures to protect LGBT and intersex people from discrimination, violence, torture and ill treatment, and safeguard rights to freedom of expression, association and peaceful assembly.

Increasingly, Governments are taking action – whether in the form of legislation and policy measures or through targeted social and education programmes. At the United Nations Human Rights Council, more than one hundred countries from all regions around the world have voluntarily committed to take measures to end violence and discrimination linked to sexual orientation and gender identity, based on recommendations generated during the first two cycles of the Universal Periodic Review.

Even so, there has been relatively little analysis at the international level of the practical steps that States have taken or are taking to implement United Nations recommendations in this field. In my report to the Human Rights Council in June 2015, I provided a brief overview of some notable positive developments in recent years, incorporating information received from States. It is clear that there is demand, to which this publication responds, for a more in-depth analysis of existing concrete practices, and of the remaining gaps and challenges.

The results of this study provide grounds for hope – showing us the myriad of ways that national and municipal authorities, courts, parliaments, and national and regional human rights institutions are meeting their responsibilities to address this critical human rights issue.

However, serious challenges remain. While many countries have taken encouraging steps, in most cases, these efforts have fallen short of the concerted strategy required to tackle violence and discrimination against LGBT and intersex people. Even in countries that have arguably recorded the most progress in respect of the rights of gay men and lesbians, there has been far less attention given to protecting the rights of trans people and only incipient attention to the rights of intersex people.

Our analysis also highlights the need for more data on the human rights situation of LGBT and intersex people, and for the systematic evaluation of the effectiveness of measures by States to address the abuses that they face.

I am confident that this publication will spark discussion and hope it will inspire renewed efforts and determination by States, national human rights institutions, civil society organizations, regional organizations and members of the United Nations family to join forces to end human rights violations on the basis of sexual orientation, gender identity and expression, and sex characteristics.



Zeid Ra'ad Al Hussein

United Nations High Commissioner for Human Rights

October 2016



EXECUTIVE SUMMARY

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In recent years, local and national authorities in countries around the world have adopted wide-ranging measures to address human rights violations against lesbian, gay, bi, trans (LGBT) and intersex people. The present study references more than 200 such initiatives introduced in 65 countries in every region of the world. While not comprehensive, the study provides an overview of policy trends, highlighting positive developments and drawing attention to areas that require further action.

KEY FINDINGS

- More than a hundred United Nations Member States from all regions have committed to addressing violence and discrimination on the basis of sexual orientation and gender identity.
- In addition to enacting new laws, some States have adopted comprehensive cross-Government action plans to: protect the rights of LGBT and intersex people; set up consultative bodies that include LGBT and intersex people; and partnered with civil society organizations to jointly tackle these challenges.
- In response to homophobic and transphobic violence, States have adopted an array of new laws to tackle hate crimes and hate speech, public leaders have spoken out, special prosecution teams have been set up, police officials have received relevant training, reporting helplines have been established, steps have been taken to tackle bullying in schools, and policies have been adopted to respect the rights of transgender people in detention.
- To protect LGBT and intersex people from unfair treatment, States have passed or amended anti-discrimination laws, and taken specific steps to curb discrimination in education, employment and health care and recognize and protect the rights of same-sex couples and their children.
- A handful of States legally recognize the gender identity of trans adults and children on the basis of self-identification through a simple administrative process without abusive requirements; one State guarantees the right to access gender affirming treatment, and a small number recognize non-binary gender identities.
- A few States have taken steps to curb abuse of LGBT and intersex children and adults in medical settings, including so-called “conversion” therapies and forced sterilization and treatment of transgender people, and have removed medical classifications that pathologize trans people.

- A few States have adopted measures to protect the rights of intersex people. Two have prohibited discrimination based on sex characteristics/intersex status, one of which has also banned medically unnecessary surgery on intersex children.
- Courts have upheld the rights of LGBT and intersex organizations to officially register and to hold public events and peaceful assemblies, and have awarded compensation to LGBT and intersex people for violations of their rights.
- Local authorities have often played a pioneering role – including by adopting anti-discrimination ordinances, combating hate crimes, training local officials and rolling out public education initiatives.



MORE THAN 100 COUNTRIES FROM ALL REGIONS HAVE ACCEPTED UN RECOMMENDATIONS AIMED AT TACKLING VIOLENCE AND DISCRIMINATION AGAINST LGBT AND INTERSEX PEOPLE.

GAPS AND CHALLENGES

- Criminalization, discriminatory attitudes, harassment by police, stigma, ill treatment in detention and medical settings, lack of protective legislation, absence of complaints mechanisms, lack of trust in law enforcement officials and awareness by judicial operators still result in impunity for perpetrators and make it difficult for victims of human rights violations to access effective remedies and support.
- Consensual same-sex relationships remain a crime in 73 countries, which exposes individuals to the risk of arrest, blackmail and extortion, and feeds stigma, discrimination and violence. While five States have decriminalized homosexuality since 2011, in several other States new discriminatory laws have been adopted or proposed, sanctions have been broadened and discriminatory restrictions placed on freedom of expression and association.
- Despite positive developments, most countries lack comprehensive policies to address human rights violations against LGBT and intersex people. Even where these are in place, most States do not collect relevant data to measure and evaluate their effectiveness
- Measures to address violence and discrimination faced by trans people lag far behind those adopted to address issues related to people who are lesbian, gay or bisexual. Critically, most States do not recognize trans people's gender identity; the majority of those that do continue to impose abusive preconditions that violate international human rights standards, national and international medical classifications continue to pathologize trans persons and identities.
- Despite serious human rights violations, efforts to protect the human rights of intersex people are only at an incipient stage, with only a handful of States having adopted protective measures to shield intersex people from violence, ill treatment and discrimination.
- Policies by and large fail to take into account the diversity and heterogeneity of LGBT and intersex people. Many of them face multiple and intersecting forms of discrimination because of their skin colour, ethnicity, gender, religion, age or migratory status or because they are living with a disability or in poverty.



INTRODUCTION

INTRODUCTION

The human rights situation of lesbian, gay, bisexual, transgender (LGBT) and intersex persons¹ remains a matter of grave concern worldwide, with continuing, serious and widespread violations perpetrated against individuals based on their sexual orientation, gender identity and sex characteristics. These violations, which are too often met with impunity, include killings, violent attacks, torture, arbitrary detention, denial of rights to assembly and expression, and discrimination in accessing health care, education, employment and housing.

In recent years, these and related violations have been receiving increased attention at the international level. The United Nations Human Rights Council, since 2011, has adopted three resolutions on human rights, sexual orientation and gender identity. In one of those resolutions, which was adopted in September 2014, the High Commissioner for Human Rights was requested to issue a report on related violence and discrimination “with a view to sharing good practices.”² The requested report, presented to the Council in June 2015, highlighted the many positive steps taken by Governments in all regions, but also noted the ongoing and pervasive violence, discrimination and abuse against LGBT and intersex people.³

Genuine efforts to protect human rights have a tendency to become lost against the backdrop of violence and discrimination. Such abuses will only abate when States adopt concerted and comprehensive measures to effectively prevent and address them, in line with their legal obligations under international human rights law and the recommendations that the United Nations has been making for more than twenty years on this subject. These recommendations were summarized in two reports of the High Commissioner to the Human Rights Council, and in the 2012 Office of the High Commissioner for Human Rights (OHCHR) publication *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law*.⁴

While regional, national and local context varies significantly, there is much to be learned from the efforts of different States to tackle violence and discrimination against LGBT and intersex persons to date. Identifying and reviewing existing efforts and looking at how they align with United

¹While this document refers to lesbian, gay, bisexual, transgender and intersex people, it is also relevant with regards to other people who face violence and discrimination on the basis of their actual or perceived sexual orientation, gender identity and sex characteristics, including those who may identify with other terms.

²United Nations Human Rights Council Resolution 27/32 on human rights, sexual orientation and gender identity, 2014.

³Report of the High Commissioner for Human Rights on discrimination and violence against individuals based on their sexual orientation and gender identity, A/HRC/29/23, 2015.

⁴OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* (New York: United Nations, 2012).

Nations recommendations and international legal standards can help other States, national human rights institutions (NHRIs), civil society organizations and other stakeholders to develop their own comprehensive strategies.

This study brings together many examples of concrete steps taken around the world to combat discrimination, violence and other forms of human rights violations against individuals based on sexual orientation, gender identity, gender expression and sex characteristics.⁵ It focuses predominantly on the actions of States, including national and local governments, parliaments, the judiciary and law enforcement agencies, as well as NHRIs.⁶ In gathering material, a variety of sources were consulted, including States, NHRIs, intergovernmental bodies and civil society organizations.

One of the gaps identified in this exercise is the failure to evaluate the impact of legal and policy measures on the human rights situation of LGBT and intersex persons. As a result, the study uses the terms “promising” or “positive” to refer to measures that aim to combat discrimination and violence against LGBT and intersex persons without making a judgement about the effectiveness of such measures in practice. A more detailed assessment of the impact of State measures in this field remains to be carried out, in collaboration with all stakeholders, including LGBT and intersex organizations.

The study also highlights some apparent gaps in which limited or no examples of State implementation of recommendations, and implementation challenges were found, including where practices may be falling short of international human rights standards.

The report highlights the different realities and human rights violations faced by lesbian, gay, bisexual, transgender and intersex people. Policies and measures designed to protect persons from discrimination on the basis of sexual orientation often are not very relevant to or have an impact on the human rights situation of transgender persons. Therefore, measures and policies that specifically address gender identity and gender expression are required to protect their rights. Similarly, for intersex persons, specific protection measures are required. These measures must address the violence and discrimination they encounter on the basis of their sex characteristics – and which are not addressed through policies relating to sexual orientation and gender identity.

The study shows that while many countries have taken at least some steps to tackle violence and discrimination on the basis of sexual orientation, measures to protect transgender persons have often lagged behind. Notably, only a very few countries have taken specific steps to address violations faced by intersex persons. Few policies are directed at the specific situation of bisexual persons.

⁵Member States, United Nations entities and civil society organizations use different terms to describe the ground of discrimination on the basis of which intersex persons face discrimination, including “sex characteristics” and “intersex status”. This document refers to “sex characteristics” except where “intersex status” is explicitly used by the Member States concerned.

⁶Civil society organizations are often at the forefront of efforts to prevent and address human rights violations against LGBT and intersex people. However, a survey of initiatives by civil society was beyond the scope of this exercise, which focused on States as the primary duty bearers under international human rights law.

Only a limited number of countries address the situation of LGBT and intersex persons who face multiple forms of discrimination based on, for example, age, gender, ethnic origin, migrant status, disability, religion and economic and other status – this also remains a significant gap.

An initial section of the study contains a discussion on the methodology used in the preparation of this publication. The following five sections relate to substantive human rights obligations and corresponding State responses: protecting persons from violence; preventing torture and ill treatment; prohibiting and combating discrimination; and ensuring respect for freedom of expression, association and peaceful assembly. Some policies and approaches encompass two or more of these obligations and are examined in a dedicated section on cross-cutting practices. In each case, State initiatives are illustrated through more detailed case studies. The concluding sections include recommendations to States and highlight how the United Nations can provide support.

This study is not a comprehensive account of State practice in every country: it provides at best a partial snapshot based on publically available information and responses to OHCHR's call for inputs. The aim of the study is to spark reflection and discussion about implementation of measures to address the myriad human rights violations to which LGBT and intersex people are subject – and to encourage efforts to evaluate and improve the effectiveness of these measures and their alignment with international human rights standards.

Much more needs to be done worldwide to combat violence, discrimination and other human rights abuses against LGBT and intersex persons. It is hoped that the recommendations and lessons learned identified in this report, together with other reports and guidance material produced by OHCHR,⁷ other bodies and multiple regional and national stakeholders on this subject will assist States and others as they seek to uphold, without discrimination, the fundamental human rights of everyone – lesbian, gay, bisexual, transgender and intersex people included.

⁷<http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx>



DEFINITIONS

DEFINITIONS⁸

GENDER IDENTITY

Gender identity reflects a deeply felt and experienced sense of one's own gender. Everyone has a gender identity, which is part of their overall identity. A person's gender identity is typically aligned with the sex assigned to them at birth. **Transgender** (sometimes shortened to "**trans**") is an umbrella term used to describe people with a wide range of identities – including transsexual people, cross-dressers (sometimes referred to as "transvestites"), people who identify as third gender, and others whose appearance and characteristics are perceived as gender atypical and whose sense of their own gender is different to the sex that they were assigned at birth. Trans women identify as women but were classified as males when they were born. Trans men identify as men but were classified female when they were born. Some transgender people seek surgery or take hormones to bring their body into alignment with their gender identity; others do not. Gender identity is distinct from sexual orientation and sex characteristics. **Cisgender** is a term used to describe people whose sense of their own gender is aligned with the sex that they were assigned at birth.

INTERSEX /SEX CHARACTERISTICS

Intersex people are born with physical or biological **sex characteristics** including sexual anatomy, reproductive organs, hormonal patterns and/or chromosomal patterns that do not fit the typical definitions of male or female. These characteristics may be apparent at birth or emerge later in life, often at puberty. Intersex persons may have any sexual orientation and gender identity.

SEXUAL ORIENTATION

Sexual orientation refers to a person's physical, romantic and/or emotional attraction towards other people. Everyone has a sexual orientation, which is part of their identity. **Gay** men and **lesbian** women are attracted to individuals of the same sex as themselves. **Heterosexual** people are attracted to individuals of a different sex from themselves. **Bisexual** (sometimes shortened to "bi") people may be attracted to individuals of the same or different sex. Sexual orientation is distinct from gender identity and sex characteristics.

⁸Adapted from the United Nations Free & Equal campaign "Frequently Asked Questions" and "Intersex" factsheets (see annex I).

Sexual orientation, gender identity and sex characteristics are not the same thing. They are each distinct and independent aspects of a person. It is important to **respect people's choice of terms, names and pronouns** to refer to themselves.

While this publication predominantly uses the terms lesbian, gay, bisexual, transgender and intersex, many of the practices, gaps and challenges highlighted in the document are also relevant to addressing violence and discrimination on the basis of sexual orientation, gender identity and sex characteristics against **people who identify with other terms**.

While lesbian, gay, bisexual, transgender and intersex people face different challenges, what they share in common is that they are often targeted for human rights violations because they are perceived to fall outside of rigid binary sex and gender norms. This is why this publication addresses their situation together.

Lesbian, gay, bisexual, trans and intersex people are a diverse population that not only must contend with human rights violations on the basis of their sexual orientation, gender identity and/or sex characteristics, but also face violence and discrimination based on skin colour, ethnic origin, sex, gender, disability, age, migratory status, family status, nationality, religion, health status, income level, and on other grounds. This important fact is critical in the elaboration of public policies that take into account and can address the intersectional nature of violence and discrimination on multiple grounds.



METHODOLOGY

METHODOLOGY

In December 2014, a *note verbale* was sent to States soliciting information for the preparation of a report of the High Commissioner for Human Rights requested by the United Nations Human Rights Council in its resolution 27/32. Twenty-eight Governments submitted responses that included references to measures adopted to address violence and discrimination against LGBT and intersex persons. Many of those responses were referred to in the subsequent report published by the High Commissioner in May 2015.⁹ These responses were also used in the preparation of this publication.

In addition, desk-based research was carried out along with outreach and consultations with a wide range of stakeholders, including States, United Nations partners, regional and international organizations, national human rights institutions and civil society organizations, to identify further examples of measures, and to identify gaps and challenges in implementing them. This report is not, however, a comprehensive survey of examples of State practice.

Examples of measures are included on the basis of available information. References are listed in annex II. Inclusion does not imply endorsement by the United Nations nor that they necessarily constitute “good practice”. Areas in which an absence of measures were identified have been flagged as gaps. Areas in which available information indicates that measures are not effective and/or do not align with United Nations recommendations are flagged as challenges and concerns.

Based on a review of the submissions and the examples identified through research, the report makes a series of recommendations. These recommendations were made by integrating elements of some of the promising practices identified in each thematic area, adapted in some cases to address gaps, challenges and concerns.

One of the recommendations of this report is for information to be systematically gathered and assessed, in consultation with LGBT and intersex people, on the impact and effectiveness of measures to combat the violence and discrimination they face, with a view to informing further public policy development in this area.

⁹Responses to the *note verbale* are available from: www.ohchr.org/EN/Issues/Discrimination/Pages/SOGIHRC29Replies.aspx

01



PROTECTING PEOPLE FROM VIOLENCE

1.1 STATE OBLIGATION¹⁰

The United Nations and other human rights mechanisms have documented hate-motivated violence against LGBT and intersex people committed by police officers and other State officials, as well as by private individuals, organized groups, extremist organizations and other non-State actors. Failure by State authorities to investigate and punish such violence – whether caused by State or non-State actors – is a breach of the State’s obligation to protect everyone’s right to life, liberty and security of person, as guaranteed by article 3 of the Universal Declaration of Human Rights and articles 6 and 9 of the International Covenant on Civil and Political Rights. Violent acts that may constitute torture and ill treatment, including those that take place in detention settings and in medical facilities, are discussed in the next chapter.

1.2 LEADERSHIP, STRATEGIC APPROACH AND PARTICIPATION

To challenge hate-based violence, the attitudes underlying such acts must be confronted. **Statements made by officials and leaders condemning violence** based on sexual orientation, gender identity and sex characteristics can serve as a starting point for this (see section 6.7). However, while welcome, such statements by themselves, if not accompanied by complementing measures, do little to stem the flow of violence experienced by LGBT and intersex people around the world. Combating such violence requires **multifaceted responses**, grounded in a **national human rights-based strategy** that engages a range of actors. Such a strategy should incorporate a framework for **monitoring and preventing violence**, adopting appropriate **legislation** that facilitates effective **criminal law** responses, including **prompt investigation** of the acts and **prosecution of alleged perpetrators**, and ensuring that victims receive **support and remedy**. Unfortunately, in many countries, these elements are absent; not only is there no such strategy, there is a lack of leadership in condemning and addressing violence. In some countries, the situation is worse; public leaders incite violence through hate speech, while criminalization of LGBT people tacitly encourages violence and deters victims from seeking justice.¹¹

¹⁰For further guidance on international human rights standards and United Nations recommendations relating to violence against LGBT and intersex persons, please see: Report of the High Commissioner for Human Rights on discrimination and violence against individuals based their sexual orientation and gender identity, A/HRC/29/23, 2015; and OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* (New York: United Nations, 2012).

¹¹See A/HRC/29/23.

Lesbian, gay, bisexual, transgender and intersex people and the organizations representing them should participate in the development and oversight of anti-violence strategies. This is important to ensure the appropriateness of such strategies and to **maintain trust** with affected populations. The involvement of civil society in the development of a national task team on gender and sexual orientation-based violence in South Africa¹² and a comprehensive hate crime prevention strategy addressing homophobic and transphobic hate crimes in the United Kingdom of Great Britain and Northern Ireland are noteworthy in this regard. It is critical that strategies give particular **attention to the different specific groups that are targeted for violence**, including those that face **multiple forms of discrimination**. For example, one objective of the national strategy in South Africa is to address the pattern of sexual violence and murder targeting black lesbian women.

Actions to investigate and prosecute violence on the basis of sexual orientation and gender identity can also be **integrated in national human rights action plans**, as is the case in the Plurinational State of Bolivia. Often, such plans do not do this even though specific patterns of violence have been documented against groups, such as transgender women, gender non-conforming youth, and LGBT and intersex people from economically marginalized communities. No specific State-led initiatives to address violence against transgender men and intersex people were identified through the research, indicating a gap.

1.3 PUBLIC AWARENESS-RAISING CAMPAIGNS

The ultimate goal of an anti-hate crime strategy should be prevention. **Public information messages on the unacceptability of hate crimes** can serve as an important foundation for building a strong prevention strategy. In Brazil, for example, a public information campaign entitled “Brazil without Homophobia” was launched to raise awareness of homophobic violence and discrimination in the general public. The campaign has increased the capacity of institutions working in this area through the facilitation of regional meetings and workshops on the issue, which have involved State authorities and civil society representatives. **Combating misinformation, myths and stereotypes about gender roles, sexual orientation, gender identity and expression and sex characteristics** is key to dispelling many of the prejudices faced by LGBT and intersex people. Ensuring that the general public has access to **accurate information** helps to bring discriminatory abuse into the public domain and into perspective as a serious human rights issue. In Belgium, the government of the Flanders region has published a series of brochures that raise awareness of the issues faced by lesbian, gay, bisexual and transgender people. The information is directed at both LGBT people and the broader public, highlighting key issues using a format and

¹²References for country examples can be found in annex II.

vocabulary designed to be understandable by a wide audience. However, in many countries where a pattern of targeted violence is prevalent, there is an absence of State-supported public information efforts to raise awareness and combat hate crime and hate speech.

Public displays of solidarity with LGBT and intersex people can act as a strong signal of support, putting the spotlight on discrimination and **promoting a no-tolerance approach to hate-motivated violence and abuse**. In Thailand, a number of schools and universities participated in the “School Rainbow” campaign, which sought to raise public awareness of bullying and violence against young LGBT people. More than 2,000 students and staff drew rainbows around the grounds of education institutions, schools and other gathering points to demonstrate that these spaces promote diversity and are safe from homophobia and transphobia.

It is critical to ensure that public information campaigns reach both **urban and rural** areas and are **designed for the local context and disseminated in local languages** through **relevant means of communication** that reach as large a target audience as possible. **Measuring the impact of public information efforts** by tracking the evolution of attitudes and beliefs in response to campaigns and policy changes is important in order to assess their effectiveness.

Public campaigns also need to address the **full range and diversity of LGBT and intersex persons**, particularly groups that may face specific patterns of violence. Among the few examples identified of **State initiatives specifically targeting transphobia** were in Mexico, where the Government of the Federal District launched a campaign in 2014 to combat transphobia in **collaboration with civil society organizations**, and in the United Kingdom, where civil society efforts to raise awareness and **tackle underreporting of transphobic hate crime** received **support from police forces and local authorities** in Wales. **State support to civil society initiatives** can be critical to increase the impact and sustainability of such efforts. Only a handful of **public awareness-raising activities directed at violence and ill treatment against intersex persons** were identified at the local level (see section 6.10), indicating a clear gap.

1.4 TRAINING FOR LAW ENFORCEMENT PERSONNEL

To effectively address and prevent violence and abuse against LGBT and intersex people, a system of law enforcement that incorporates **respect for human rights** and awareness of the range of issues faced by LGBT and intersex persons is needed. Furthermore, victims of violence or abuse are unlikely to come forward to report a crime unless the police are seen as a source of protection and not of additional persecution or trauma.

The United Nations and regional human rights mechanisms have repeatedly documented accounts of law enforcement officials engaging in the following towards LGBT and intersex persons: using

disrespectful language; humiliating treatment; secondary victimization; retaliation; verbal and physical abuse; directly participating or being complicit in human rights violations; failing to conduct an investigation; refusing to register complaints; and protecting alleged perpetrators. All of this, combined with criminalization and other discriminatory legislation leads to further challenges, such as mistrust in law enforcement officials and underreporting, requiring training initiatives to be part of a broader set of actions to tackle violence and specific measures to **build confidence and establish accountability measures**.

Promoting **acceptance and understanding** of LGBT and intersex issues among law enforcement personnel through **targeted training programmes** is central to developing a relationship between them and the LGBT and intersex people who require their protection. In Denmark, members of the police force and civil society were invited to participate in hate crime awareness training as part of a European-Union-funded project, 'Tracing and Tackling Hate Crimes against LGBT Persons'. This project, together with other national initiatives, fed into the development of a national **hate crime toolkit** and **training manual** for police officers developed by ILGA-Europe.¹³ These training tools espouse a **human rights approach to hate crime based on sexual orientation and gender identity**. The toolkit includes **police guidelines for handling such hate crimes and working with victims** in a sensitive and professional manner.

In acknowledging the crucial role of law enforcement professionals in preventing hate crime, many States, including Bosnia and Herzegovina and Montenegro, have developed targeted awareness-raising programmes for police forces. Effective training programmes can equip law enforcement personnel with the competencies required for addressing the particular needs of victims of abuse. The attainment of these skills accompanied by the implementation of appropriate policies and accountability mechanisms will likely better equip police and other law enforcement officials to assume a protective role and help tackle discrimination and hate-motivated violence.

In Belgium, the police force has **set up a transgender working group, collaborated with transgender organizations** and with the Federal Institute for Gender Equality and offered training to police officers on **respecting the rights of trans persons**, including in **filing complaints** and **conducting police searches**.

Limited or no information was found on efforts to **measure the effectiveness of training measures**, indicating a potentially serious gap.

¹³Richard Poláček and Joël Le Dérof, ILGA-Europe toolkit for training police officers on tackling LGBTI-phobic crime, October 2011. Available from: <http://www.ilga-europe.org/resources/ilga-europe-reports-and-other-materials/ilga-europe-toolkit-training-police-officers>.

1.5 MEASURES TO PROTECT DETAINEES FROM VIOLENCE

Specific preventive measures are needed to ensure the protection of LGBT and intersex detainees from violence. Research on LGBT detainees has highlighted that they are especially susceptible to humiliation, abuse, rape and other forms of sexual and physical violence at the hands of other inmates and prison staff. In that regard, the United Nations and other torture prevention mechanisms have documented horrific incidents and made specific recommendations to prevent them.¹⁴ Measures to address such violence are discussed in the next chapter.

1.6 MEASURES TO ADDRESS EDUCATION SECTOR VIOLENCE AND BULLYING¹⁵

The United Nations Educational, Scientific and Cultural Organization (UNESCO) has highlighted that homophobic and transphobic violence against students on the basis of their actual or perceived sexual orientation and gender identity is a worldwide phenomenon with a significant and long-term impact on education, employment, health and well-being.¹⁶ Addressing this problem requires: the **systematic monitoring of violence** in educational settings, including homophobic and transphobic violence; establishing **comprehensive national and school policies to prevent and address such violence**; ensuring that **curricula and learning materials are inclusive**; providing **training and support to teachers and other staff**; ensuring **safe and inclusive school environments**; providing **access to objective, accurate information** on sexual orientation, gender identity/expression and sex characteristics; and **evaluating the effectiveness and impact of measures** to address violence and bullying against LGBT and intersex students.

¹⁴See High Commissioner's report to the Human Rights Council on discrimination and violence against individuals based on their sexual orientation and gender identity (May 2015) -A/HRC/29/23; High Commissioner's report to the Human Rights Council on violence and discrimination based on sexual orientation and gender identity (December 2011) -A/HRC/19/41.

See also UNODC, *Handbook on Prisoners with Special Needs*, Criminal Justice Handbook Series (United Nations publication, Sales No. E.09.IV.4), chap. 5; Jean-Jacques Gautier Symposium, Addressing situations of vulnerability of LGBT persons in detention, Association for the Prevention of Torture outcome report, 2015; Association for the Prevention of Torture and Penal Reform International, *LGBTI persons deprived of their liberty: a framework for preventive monitoring* (London; Penal Reform International, 2015).

¹⁵See also section 4.5 on discrimination in education.

¹⁶See UNESCO, Education sector responses to violence based on Sexual Orientation and Gender Identity/Expression (2016) <https://en.unesco.org/themes/homophobic-and-transphobic-violence-education>



In the Philippines, **explicit references to bullying on the basis of sexual orientation and gender identity** are included in the Implementing Rules and Regulations for the Anti-Bullying Act. In New Zealand, the Ministry of Education has issued a comprehensive guide for sexuality that **requires school anti-bullying procedures to address bullying related to sexual orientation and gender identity/expression**. In Colombia, the Department of Education of the Bogota District conducted a **survey on homophobic bullying** in secondary schools. In the United Kingdom, schools have a **legal obligation to prevent all forms of bullying**, including homophobic and transphobic bullying. The Government of the United Kingdom has carried out a **review of the effectiveness of different approaches** to tackling homophobic, biphobic and transphobic bullying among school-age children and young people, highlighting specific approaches that had proved effective at preventing such bullying. One of the findings was the scarcity of work on transphobic bullying and the absence of specific work on biphobic bullying. Ireland has established an **anti-bullying working group** that highlights LGBT youth as a particularly vulnerable group.

The findings of the global survey conducted by UNESCO indicate that very few countries have education sector policies that address homophobic and transphobic violence, staff generally do not have the necessary training nor support to prevent and respond to such violence, and in countries that

have systems in place to address and prevent bullying generally, such systems are often ill-equipped to deal with homophobic and transphobic violence. Few States collect data on the phenomenon and fewer still have evaluated existing policies to assess their effectiveness. In addition, based on the research for this report, there is, in general, lack of information on State initiatives to tackle bullying of intersex people in the education sector.

1.7 HATE CRIME AND HATE SPEECH LAWS

States should include sexual orientation, gender identity, gender expression and sex characteristics as **protected characteristics in laws against hate crime and hate speech/incitement to hatred or violence**.

Malta has **legislation** in place related to **hate crime** that includes, **among other grounds**, sexual orientation, gender identity and expression, and sex characteristics. It is the first country to **incorporate sex characteristics** as an aggravating factor in relation to hate crime, which also makes it the first country to protect intersex persons in this way. It also provides more complete protection of the rights of transgender persons through the **inclusion of gender expression**. Albania, Belgium, Chile, Honduras, the Plurinational State of Bolivia, the United States and the United Kingdom have adopted legislation that includes **both sexual orientation and gender identity** under protected criteria and that considers hate based on such motives an aggravating factor in criminal sentencing. Thirty-nine States include sexual orientation as an aggravating factor in criminal sentencing, and thirty-four States have enacted legislation on incitement to hatred based on sexual orientation.¹⁷

In some jurisdictions, where not specifically delineated in legislation, case law can also establish a basis for prosecuting cases of hate crime against LGBT and intersex persons. In Mexico, the Supreme Court has determined that **homophobic expressions may constitute discriminatory statements**, even if they are intended jokingly on the basis that they can be used to encourage, promote, and justify intolerance against gay people.

While there is variation across countries, it is important that **definitions in laws be comprehensive and include all relevant criminal acts**. For instance, sexual orientation hate crime is defined in legislation of the United Kingdom as, “any criminal offence which is perceived, by the victim or any other person, to be motivated (wholly or partially) by a hostility or prejudice based on a person’s sexual orientation or perceived sexual orientation.” The United Kingdom identifies a crime

¹⁷See ILGA: Carroll, A., State Sponsored Homophobia 2016: A world survey of sexual orientation laws: criminalisation, protection and recognition (Geneva; ILGA, May 2016). Available from: http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf.

to be a transgender hate crime if, “the victim, or any other person, perceives that it was motivated (wholly or partially) by hostility to a transgender person, or where such hostility was demonstrated before, during or after an offence was committed”. Under the legislative framework of the United Kingdom, as also commonly found elsewhere, the “hate” element of a crime is categorized as an **aggravating factor taken into account at the sentencing of the convicted person**.

Reported challenges include difficulties with regard to demonstrating that the hateful element meets the required legal threshold in the prosecution of hate crime and hate speech cases (more generally, and specifically in relation to sexual orientation and gender identity). Experiences reported by some countries suggest that while conviction rates may be low, the existence of laws and prosecution efforts can have a broader societal and deterrent impact. Nevertheless, such difficulties can also lead to a mutually reinforcing cycle of lack of reporting and a perception that laws are not effectively enforced.

1.8 INVESTIGATION AND PROSECUTION

Whichever the legal framework, and regardless of whether it includes specific hate crime or hate speech laws that include sexual orientation, gender identity and sex characteristics, it is critical to ensure that criminal legislation relating to violence and incitement to violence is **diligently applied** in instances of attacks against LGBT and intersex persons and human rights defenders working on the protection of their human rights.

In Brazil, Honduras and Mexico, **specific teams or units** have been established with the specific task of ensuring that homophobic and transphobic hate crimes are investigated and prosecuted to the full extent of the law, and **law enforcement officials have been trained** accordingly. In Ireland, **trained liaison officers** have been assigned to handle crimes or complaints related to homophobia and transphobia. In South Africa, the Government has established a **multi-stakeholder task team** that includes law enforcement authorities and civil society organizations to **monitor the investigation and prosecution of hate crimes** based on sexual orientation and gender identity, with a mandate to **facilitate the resolution of open and unresolved cases** (see also section 1.12).

In the United States, the state of California prevents **defendants from alleging that a victim’s sexual orientation or gender identity or expression was a so-called “provocation” that would diminish their penal responsibility for attacking or killing an LGBT person** (a tactic sometimes referred to as a so-called “gay panic” or “trans panic” defence in the media). It is critical that officials receive training to enable them to **properly classify** hate crimes. Training should also cover **appropriate and respectful ways to interview** victims and witnesses, conduct investigations and undertake prosecutions. In countries where violence occurs

at the hands of the police themselves, and there is an atmosphere of mistrust of law enforcement officials, **accountability measures**, including the **investigation and prosecution of alleged perpetrators**, combined with dedicated units can **rebuild public faith** in the police as a protection institution. It is also important to ensure that LGBT and intersex people and organizations are **aware** of the existence of dedicated units and complaints mechanisms. Obstacles to investigation and prosecution include discriminatory laws that criminalize LGBT persons, act as barriers to reporting, and may contribute to incidents of secondary victimization, whereby victims of violence are subjected to harassment, humiliation, abuse or arrest when trying to report attacks and seek protection from the police.

1.9 RECORDING AND REPORTING VIOLENCE, HATE CRIMES AND HATE SPEECH

States should **encourage reporting** of such violence, including through **confidence-boosting measures** with relevant communities. They should also establish **effective systems to record and publish disaggregated statistics** on hate-motivated acts of violence and compile **data on prosecutions, convictions and sentences**, with **statistics disaggregated by sexual orientation, gender identity and sex characteristics and other relevant characteristics**, including other forms of discrimination, such as age, gender, race, migrant status and religious belief. **National human rights institutions should closely monitor and assess patterns of hate crime and hate speech** against LGBT and intersex people.

Despite the importance of this information, most States do not collate such data. A growing number are collecting data related to violence based on sexual orientation, but only a small number are doing it on violence based on gender identity. No instances were identified of States collecting data on violence against intersex people.

Recognizing that many incidents of violence go unreported, some governments have supported initiatives to increase awareness and reporting of hate crimes. The government of Quebec, in Canada, for example, has provided support to the non-profit organization *Gai Écoute* to establish a **registry of homophobic acts**. People in Quebec can report such acts confidentially and **receive information and assistance**. In Sweden, the Stockholm County Police has disseminated **information leaflets** targeted at LGBT people, with **definitions** of hate crime, that identify sources of assistance in the event of homophobic and transphobic hate crime. It also provides LGBT-specific information on its website dedicated to **raising awareness of hate crime**.

Population surveys with the objective to generate a picture of the experiences of violence against LGBT and intersex people should be undertaken to track the effectiveness and reach of strategies

aimed at combating such violence. In response to a string of incidents of violence targeting LGBT individuals in Belgium, the Policy Research Centre on Equal Opportunities was tasked with **surveying LGBT experiences of violence**. The project entailed conducting a series of surveys and research on homophobic and transphobic violence. The results of the project have been used to inform the development of **information manuals and guidelines for members of the LGBT community**. State-sponsored efforts, such as these, can generate a wealth of knowledge crucial to assisting policymakers in developing better and more targeted prevention and awareness initiatives. Unfortunately, such initiatives are rare, and no State-sponsored survey on violence against intersex people was identified.

The general lack of national data on violence against LGBT and intersex persons, including hate crime, has prompted some **regional organizations** to raise awareness of the issue and the preventative measures that need to be taken up. The African Commission on Human and Peoples' Rights adopted a resolution in 2014 in which it condemned violence against persons on the basis of their sexual orientation or gender identity and called on States to prevent and address such acts¹⁸. According to a recent report conducted by the Organization for Security and Cooperation in Europe (OSCE), 20 member States in the OSCE region collect data on hate crimes against LGBT people within the context of their broader hate crime reporting,¹⁹ of which only ten have a specific category for crimes committed against transgender people.²⁰ The Rapporteur on the rights of LGBT and intersex persons of the Inter American Commission on Human Rights (IACHR) acknowledged the dearth of information coming from member States, compiled a registry of violence against LGBT and intersex people in the Americas, and issued a dedicated report.²¹ While not exhaustive, the information collected highlights pervasive violence against LGBT people in the region, particularly against gay men and young trans women. The Commission noted that the exercise did not produce any data on instances of violence against intersex persons. This is because such violence, including unnecessary medical interventions to "normalize" intersex bodies, is the result of State-approved medical protocols not reported in the media or denounced by families and is shrouded in secrecy and stigma, highlighting both a gap in reporting and a challenge in the collection of information on violence against intersex persons. IACHR has called on States to establish **national data collection mechanisms** and **effective response strategies** to deal with violence against LGBT and intersex persons.

¹⁸African Commission on Human and Peoples' Rights, Resolution 275, 55th Ordinary Session, 2014.

¹⁹The States are: Andorra; Belgium; Canada; Croatia; Cyprus; Denmark; Finland; France; Germany; Iceland; Ireland; Latvia; Liechtenstein; Lithuania; Netherlands; Norway; Serbia; Sweden; United Kingdom; and United States. For more details see: OSCE, Hate crimes in the OSCE region: incidents and responses: annual report for 2012 (Warsaw, 2012). Available from http://tandis.odihr.pl/hcr2012/pdf/Hate_Crime_Report_full_version.pdf.

²⁰The States are: Belgium; Canada; Finland; Germany; Latvia; Norway; Portugal; Serbia; Sweden; and United Kingdom. For more details, see: OSCE, Hate crimes in the OSCE region: incidents and responses: annual report for 2012 (Warsaw, 2012). Available from http://tandis.odihr.pl/hcr2012/pdf/Hate_Crime_Report_full_version.pdf.

²¹IACHR, "Report on violence against lesbian, gay, bisexual, trans and intersex persons in the Americas", Press release, November 12, 2015. Available from www.oas.org/en/iachr/media_center/PReleases/2015/143.asp; and IACHR, An overview of violence against LGBTI Persons – A registry documenting acts of violence between January 1, 2013 and March 31, 2014 (Washington D.C., 17 December 2014). Available from www.oas.org/en/iachr/igtbi/docs/Annex-Registry-Violence-LGBTI.pdf.

1.10 PROTECTION AND REDRESS FOR VICTIMS OF HATE CRIME

Where hate crimes based on sexual orientation, gender identity or sex characteristics occur, victims should have access to redress and support, including, referral to **legal support, specialist medical, psychological and other services** and **shelters and safe houses**, as necessary. The European Commission has funded a report that highlights **good practices** by governmental and non-governmental organizations in helping victims of crimes to access such support, which also identifies the multiple barriers to accessing justice for LGBT victims of crime.²² It points out that **support is mostly provided by civil society organizations**, and emphasizes the **importance of State support to such initiatives**.



²²Sigita Rukšenaite, Handbook on the protection of LGBT people: Good practices in helping victims, Equal Jus Project, 2011. Available from www.lgl.lt/en/files/Handbook-on-the-protection-of-LGBT-people-ENG-Internet1.pdf.

1.11 ASYLUM FOR THOSE FLEEING PERSECUTION

At least 73 countries criminalize consensual same-sex acts between adults, with some even maintaining the death penalty.²³ Many countries also criminalize transgender persons on the basis of their gender expression. Such legislation encourages violence against LGBT people, even in States where criminalizing legislation is not actively enforced. As a result of such legislation, as well as violence, rape and other forms of sexual violence, harassment, forced marriage, forced medical treatment and other forms of abuse in medical settings, many LGBT and intersex people are fleeing their home country in search of refuge abroad.

Asylum laws and policies should recognize persecution on account of one's sexual orientation, gender identity, gender expression or sex characteristics as a valid basis for an asylum claim and LGBT and intersex refugees should be **treated with respect**. The United Nations High Commissioner for Refugees (UNHCR) has published **detailed guidance** on the issue, setting out the **standards** by which States should apply their national **refugee status determination procedures** to asylum seekers fleeing persecution on such grounds.²⁴

Lesbian, gay, bisexual, transgender and intersex asylum seekers face particular difficulties throughout the refugee status determination process. Among the challenges are intrusive, humiliating and inappropriate requirements in establishing credibility of their claim or "proving" sexual orientation, gender identity or sex characteristics, cultural or personal bias on the part of the decision maker, or improper application of principles of refugee law, such as the internal flight alternative, which suggests that an asylum seeker can seek protection in another location within their country of origin. LGBT and intersex asylum seekers also face particular safety risks in refugee camps and centres. The UNHCR guidelines address these issues, calling on States to incorporate LGBT and intersex-sensitive measures into their asylum determination practice, including the provision of **sensitivity training** for those involved in the decision-making process, and **guidelines on assessment procedures** to ensure that claims are reviewed in an **objective and sensitive manner**, unhindered by stereotyping and cultural bias.²⁵

Several States have incorporated the grounds of sexual orientation, gender identity, or both into their **domestic asylum legislation**. Malta has included both sexual orientation and gender identity as distinct grounds. Germany, South Africa, and Sweden have included sexual orientation-related persecution in their national legislation as a ground for asylum.

²³See section 3 of this report for the discussion on criminalization.

²⁴UNHCR, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 23 October 2012, HCR/GIP/12/01, Available from www.refworld.org/docid/50348afc2.html

²⁵Ibid. para. 60

In some States, the particular issues associated with asylum claims based on sexual orientation and gender identity have been outlined in **dedicated policy documents or guidelines**, with a view to ensuring the effective assessment of such claims by asylum officials. The Immigration and Refugee Board guidelines of Canada on procedures with respect to vulnerable persons, includes in **its criteria for vulnerable persons** “victims of persecution based on sexual orientation and gender identity”. The Border Agency of the United Kingdom has produced an **online library** of guidance documents for groups seeking asylum on various grounds, including detailed information on how claims based on sexual orientation and gender identity are dealt with in the asylum process. The Swedish Migration Board has produced an **information sheet** explaining the right of a person to seek international protection from persecution based on sexual orientation or gender identity. Such guidance, when provided at the crucial early stages of the refugee status determination process, can have a significant impact on an asylum seeker’s articulation of their refugee claim and ultimately on whether they are granted protection from violence and human rights abuse.

1.12 CASE STUDIES

SOUTH AFRICA: NATIONAL TASK TEAM ON GENDER AND SEXUAL ORIENTATION-BASED VIOLENCE

The post-apartheid Constitution of South Africa was one of the first in the world to outlaw discrimination based on sexual orientation. South Africa was the fifth country in the world to legalize marriage for same-sex couples and also one of the first countries to prohibit discrimination, harassment and hate speech against intersex people by incorporating intersex within the definition of sex in anti-discrimination legislation. However, as in other countries, recognition of rights and protection for LGBT and intersex people in legislation does not equate to the realization of those entitlements in practice. With increased reports of so-called “corrective rape” and murder of black lesbian women and other LGBT persons in different parts of the country, there was an acknowledged need for a strategic framework that would bridge law and practice.

In 2011, the South African Minister of Justice and Constitutional Development established the **National Task Team (NTT)** to spearhead the **National Intervention Strategy** to address sexual orientation and gender-based violence. Guided by the provisions of the country’s Constitution, which guarantees equality and freedom from discrimination based on sexual orientation, gender, sex and other grounds, the **NTT engages with government bodies, key institutions and civil society organizations** that work on LGBT and intersex issues.

Since the inception of the NTT, efforts have been made to **increase cooperation** between the

Ministry of Justice and Constitutional Development and other government departments, such as the Department of Health, the Department of Higher Education, the Department of Travel and Tourism and the Department of Home Affairs. In addition, the formation of **Provincial Task Teams** has helped to enhance the work of the NTT at the local level and provided support to and increased the participation and representation of civil society in the work of the Task Team. The NTT also **monitors open and unresolved cases of violence and murder of LGBT persons** and dedicates resources to ensure that the investigations and prosecutions of such cases can take place. Since the creation of the NTT, there has been a significant reduction in the number of pending cases. The NTT is responsible for various other activities, such as the production of a **public service announcement on television** that **featured the Minister of Justice** and a **community radio drama** that promoted the protection of equality, dignity and freedom under the South African Constitution of persons regardless of their sexual orientation or gender identity. The audience for the two broadcasts reached close to 30 million people across radio and television.

BRAZIL: DIAL 100 HOTLINE FOR REPORTING VIOLENCE AGAINST LGBT PEOPLE

Dial 100 is a 24-hour **hotline service** provided by the Brazilian Human Rights Secretariat (SDH) for members of the public to report instances of violence, discrimination and other human rights violations. In 2011, the service established a **specific hotline module** for reporting violence and discrimination against LGBT people. In 2012, SDH received 3,084 reports of violence against LGBT people and more than 9,900 reports of general rights violations related to the LGBT population – an increase compared with previous years. Reported violations predominantly related to gay men and lesbians, with the report highlighting the invisibility of the trans population in violence statistics – a significant challenge, particularly in the light of the pattern of killings of trans women in Brazil documented by civil society organizations.²⁶

During the 2014 Sao Paulo Gay Pride Parade, use of the hotline to report human rights violations was **encouraged by the President of Brazil**. This type of initiative provides an **alternative, visible and accessible platform** for members of the LGBT population, who may be reluctant to reveal their identity or engage directly with law enforcement officers, to obtain information and report homophobic or transphobic crimes.

²⁶See, for example, Trans Murder Monitoring Project, Available from www.transrespect.org/en/research/trans-murder-monitoring/

UNITED KINGDOM: COLLEGE OF POLICING – HATE CRIME OPERATIONAL GUIDANCE MANUAL

In 2014, the College of Policing of the United Kingdom released a set of **guidelines for police officers** responding to incidences of hate crime. The guidelines were intended to improve the overall quality of police responses and reduce underreporting by building public confidence in the capacity of the police force to respond to homophobic and transphobic hate crimes. The guidance covers **legislation and case studies** that reflect recent developments in law, policy and practice in the realm of hate crimes, including those committed against LGBT persons. Recognizing the need for a tailored approach to each individual case, the guidelines outline five key strands of hate crimes that are routinely monitored, crimes based on disability, race, religion, sexual orientation and gender identity. The guidelines include **subsections dedicated to both sexual orientation and gender identity**, in which **key terms** are explained, **common issues are** discussed and suggestions are made to ensure good practices are carried out by responding police officers. The manual was produced in **consultation** with a range of stakeholders, including **civil society organizations** and the **victims of hate crimes** themselves, with the objective to build trust between the police and the population groups targeted by hate crime.

02



PREVENTING TORTURE AND CRUEL, INHUMAN AND DEGRADING TREATMENT

2.1 STATE OBLIGATION²⁷

States have an obligation under international law to protect everyone from torture and other cruel, inhuman or degrading treatment. This includes the obligation to prohibit torture and other forms of ill treatment and to provide redress for such acts. Failure to investigate and bring to justice perpetrators of torture is in itself a breach of international human rights law. These rights are guaranteed by article 5 of the Universal Declaration of Human Rights, article 7 of the International Covenant on Civil and Political Rights and article 2 of the Convention against Torture.

2.2 VULNERABILITY OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX DETAINEES

The risk of torture or cruel, inhuman or degrading treatment of LGBT and intersex people is of particular concern in detention in prison, as well as in police, administrative, immigration and other detention settings.²⁸ The United Nations Office of Drugs and Crime (UNODC), in its *Handbook on Prisoners with special needs*, cites LGBT prisoners as being a particularly vulnerable group, whose specific situation and needs receive little attention in spite of reports of the discrimination, humiliation, sexual abuse, rape and other forms of violence, torture and ill treatment that they face.²⁹ International human rights standards oblige States to ensure that all prisoners receive protection and effective facilitation of their social integration. To this end, UNODC recommends that prison authorities and social welfare services develop and implement **comprehensive management policies and strategies** to help staff carry out their duties effectively and ensure that LGBT prisoners have unhindered access to their rights. A joint report of the Association for the Prevention of Torture and Penal Reform International (APT/PRI) identified eight risk factors and situations for human rights abuse of LGBT persons in detention: arrest and police custody; interrogations; allocation of transgender detainees; body searches; violence among detainees; isolation and solitary confinement as a protective measure; and discrimination in accessing services and benefits.³⁰

²⁷For further guidance on international human rights standards and United Nations recommendations pertaining to preventing torture and other cruel, inhuman or degrading treatment against LGBT and intersex persons, please see the following: Report of the High Commissioner for Human Rights on discrimination and violence against individuals based on their sexual orientation and gender identity, A/HRC/29/23, 2015; and OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* (New York: United Nations, 2012).

²⁸Report of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, January 2016; United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Ninth Annual Report, CAT/C/57/4, Section V, March 2016.

²⁹UNODC, *Handbook on Prisoners with Special Needs*, Criminal Justice Handbook Series (United Nations publication, Sales No. E.09.IV.4)

³⁰See Jean-Jacques Gautier Symposium, Addressing situations of vulnerability of LGBT persons in detention, Association for the Prevention of Torture outcome report, 2015. Available from www.apt.ch/content/files_res/reportjig-symposium-2015-en.pdf;

The establishment of effective systems to avoid abuses in these contexts is particularly important. The United States Justice Department, in its **national standards for the prevention of abuse** in prisons, calls for the “unique vulnerabilities of lesbian, gay, bisexual, transgender, intersex and gender nonconforming inmates” to be addressed in **training and screening methods**. When deciding whether to place a transgender or intersex inmate in a male or female facility, the United States national standards require that prison authorities decide on a **case-by-case basis**, taking into account the prisoner’s **gender self-identification** rather than their “genital status”. In at least one United States prison facility, a **separate housing unit** for transgender women prisoners has been established in order to address the disproportionate levels of violence that they faced when housed with the general prison population. Previously, the only alternative was protective custody, which essentially amounted to solitary confinement, in breach of international human rights standards. It is important to **carefully monitor** such initiatives in order to assess their impact on the full range of human rights of affected prisoners and to ensure that the individual is **not subject to further marginalization or restrictions on other activities** due to isolation from the general prison population. **Complaints mechanisms** should be safe for LGBT and intersex detainees to use. **measures should be adopted to protect prisoners from retaliation** and prison authorities should ensure effective **investigation and prosecution of abuses by staff and other inmates** to counter impunity.

Despite the increase in attention given to the situation of LGBT persons in detention, there is no clear guidance on appropriate and non-discriminatory measures required to effectively protect them from violence in detention settings without placing them in *de facto* isolation or restricting their participation in activities and access to services. A further gap is research and guidance on addressing the situation of intersex people in detention.

2.3 SPECIAL MEASURES TO PROTECT TRANSGENDER DETAINEES

The revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) specify that the identity and self-perceived gender of prisoners should be respected.³¹ Failure to address the human rights situation and needs of a transgender prisoner may constitute cruel, inhuman or degrading treatment.³² In this regard, the Ministry of Justice of the United Kingdom had released

Association for the Prevention of Torture and Penal Reform International, *LGBTI persons deprived of their liberty: a framework for preventive monitoring* (London; Penal Reform International, 2015).

³¹General Assembly resolution 70/175 on the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 17 December 2015.

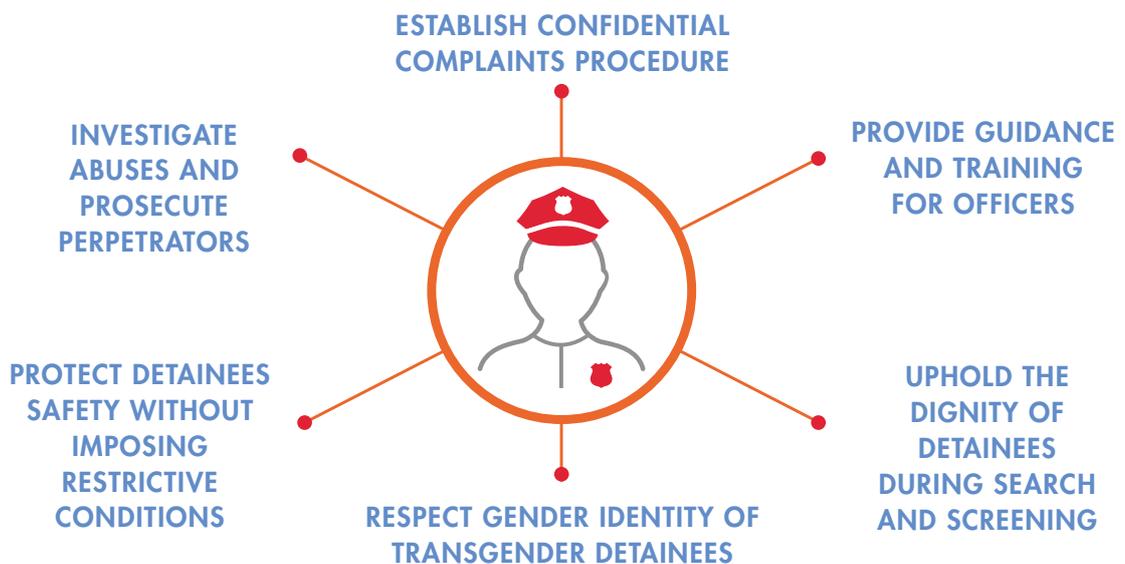
³²Report of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, January 2016.

guidelines setting out the rights of transgender prisoners, including with regard to clothing, guidance for prison staff and procedures for respect of their individual gender identification and expression. Following concerns raised, the initial guidelines are currently under review. It is critical that policies in relation to transgender detainees ensure that **recognition of gender identity is in line with human rights standards**, and that policies are not discriminatory on the basis of gender identity or gender expression. There should be **no abusive requirements**, such as forced treatment or surgery, divorce or sterilization, to obtain such recognition (see section 6.1). A gap noted in the preparation of the present report concerns reliance on legal gender status, rather than self-identified gender, as the basis for recognizing a detainee's gender identity. This exposes transgender detainees who have not obtained legal recognition of their identity to a range of violations and safety and security risks, highlighting the need for treatment of transgender detainees to be based on **self-identification** instead, even when legal recognition has not (yet) been obtained. This is particularly though not exclusively the case when legal recognition requires lengthy, humiliating or abusive judicial, administrative or medical processes that in and of themselves breach human rights standards.

The particular vulnerability of transgender prisoners has been acknowledged in **domestic courts**, with some offering **remedial measures** in cases in which prison conditions were considered to be especially severe. For instance, the Supreme Court of Israel reduced the sentence of a convicted transgender person from fifteen to ten months while acknowledging particularly harsh prison conditions for trans prisoners. The United States District Court of Massachusetts found that to deny a transgender prisoner serving a life sentence without parole a request for **gender reassignment surgery** constituted the subjection of that person to "unnecessary and wanton infliction of pain", in violation of the "right to be free of cruel and unusual punishment."

Cook County Jail, one of the largest prisons in the United States, has established a **gender identity committee** pursuant to its Prison Rape Elimination Policy, which meets periodically to review plans for each transgender prisoner on a **case-by-case** basis, including the allocation of accommodation according to a detainee's self-identified gender.

HOW TO PREVENT ABUSE AGAINST LGBT AND INTERSEX PEOPLE IN DETENTION



2.4 PRISON SEARCH PROCEDURES FOR TRANSGENDER DETAINEES

Transgender detainees are particularly vulnerable to violations of their rights to dignity and physical and psychological integrity in the context of searches in detention. Policies should be **in line with human rights standards**; this includes **recognition of gender identity**, **removal of abusive requirements** for recognition, **respect for gender expression** and ensuring that treatment is based on **self-identification**. Several national authorities have adopted measures pertaining to searching transgender detainees that aim to respect gender identity and expression. While these are improvements, all of the examples received still fall short of applicable human rights standards.

The inspector general of places of detention in France has issued **guidance** that, “as soon as the [sex reassignment] treatment has started, searches should be conducted with **particular caution** in order to **guarantee that the dignity of the person** is respected. Whenever the irreversibility of the gender reassignment process has been medically established by a multidisciplinary team assigned to the person concerned, searches should be undertaken in conditions preserving the dignity of the

detainee as well as the staff, by officers of the same sex as the reassigned sex, **without waiting for a change of civil status**. Such searches should be undertaken by officers made **sensitive** to the issue by the prison's management." While a positive step for transgender detainees who undergo affirmative treatment, including those who have not changed their civil status, the policy should not have requirements of surgery or other medical treatment: **all transgender detainees**, regardless of whether they undergo surgery, should benefit from such policy on the basis of **self-identification**.

In South Africa, the police service of Cape Town, **in partnership with a local civil society organization**, has developed **standard operating procedures** to ensure the safety of transgender persons who are in conflict with the law. One aspect of the procedures is related to searches and establishes that, "if a trans-person is carrying an identity document that reflects his/her gender then that transgender person can demand to be searched by a police [officer] of the same gender, regardless of lack of genital surgery.". While a positive step, it is critical for all transgender detainees to be able to request searches by an officer of the same gender, regardless of gender markers on official documents, particularly in cases in which there are onerous requirements for such legal recognition.

The Correctional Service of Canada has issued a directive on the searching of prisoners that includes a **protocol on searches** of transgender people, with the possibility of the prisoner choosing between a male or female searching officer or a combination of both **depending on the part of the body** to be searched. While a positive step, the policy is predicated on a medical diagnosis of gender dysphoria – all transgender detainees should be able to make such requests pertaining to searches on the basis of self-identification without requirements linked to medical diagnosis, surgery or treatment.

Even though some States have taken positive steps to protect the rights of transgender detainees during searches, further improvements are needed to ensure that policies and practices are in line with human rights standards. Good practice would include basing decisions on search procedures of transgender detainees on the **self-identified gender** of the detainee in order to respect the **dignity and integrity** of all trans detainees, and **without requirements linked to legal recognition gender markers on official documentation or medical diagnosis, surgery or treatment**.

2.5 SEGREGATION OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX DETAINEES

With regard to the concern that LGBT and intersex inmates (in particular transgender detainees) face a heightened risk of human rights abuses from fellow prisoners, it is sometimes suggested that segregation may be an appropriate countermeasure. To the extent that segregation leads to isolation, caution must be exercised to ensure that the practice does not cause further stress and suffering for the affected prisoner. The Special Rapporteur on torture has stated that States must ensure that “protective measures **do not involve the imposition of more restrictive conditions** on lesbian, gay, bisexual, transgender and intersex persons than on other detainees”.³³ Given the “harmful long-term consequences of isolation, in particular where it is prolonged or indefinite, the use of solitary confinement is only justified in **exceptional circumstances, for the shortest possible time and with adequate procedural safeguards**”.³⁴

Although the rationale of segregating detainees in situations of vulnerability for protective purposes can be legitimate, it should be instituted only **in agreement with the detainees** concerned, with a **clear procedure**, and **not lead to further stigmatization**, nor **limit access to services, facilities and education**.

Some States have adopted measures in relation to segregation of transgender detainees, though some of them fall short of international standards. For example, the French inspector general of places of detention has issued **guidance** that, “throughout the medical treatment, the penitentiary administration should ensure that the **physical integrity** of the person is protected, which **should not mean that the person is necessarily placed in solitary confinement**, and that the person should **not be subjected to pressure or bullying** of any kind and of any person in relation to his/her project [of gender affirmative surgery or treatment]. As soon as the person concerned asks for placement in an individual cell, this should be granted”. While a positive step, it is critical that **all transgender detainees** be able to access tailored protection measures based on self-identification **without requirements of medical diagnosis, surgery or treatment, or of official documents reflecting the self-identified gender**.

³³Ibid.

³⁴Jean-Jacques Gautier Symposium, Addressing situations of vulnerability of LGBT persons in detention, Association for the Prevention of Torture outcome report, 2015. Available from www.apt.ch/content/files_res/report-jig-symposium-2015-en.pdf

2.6 COMPLAINTS MECHANISMS

Lesbian, gay, bisexual, transgender and intersex detainees should have access to **effective and safe complaints mechanisms** for reporting alleged acts of torture, cruel, inhuman or degrading treatment. In Nepal, for example, the National Human Rights Commission, in cases of alleged torture or ill treatment, has the **authority to visit prisons and detention centres, and make recommendations**. The Commission has indicated that monitoring detention facilities is a priority and that it has received complaints from LGBT prisoners through a **dedicated focal point**, who has intervened on behalf of prisoners on several occasions.

As highlighted by the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, **national preventive mechanisms** established in line with the Optional Protocol to the Convention against Torture also have a critical role to play in **monitoring the situation** of LGBT and intersex people in detention through **questionnaires**, monitoring **visits**, **issuing guidance** and dialogue with civil society organizations and authorities.³⁵

2.7 TRAINING OF OFFICIALS IN DETENTION SETTINGS

With regard to the aspects related to the operation of penal and other detention facilities, it is important that prison staff, police officers and other relevant personnel in detention settings receive **dedicated training** on the protection and care of LGBT and intersex detainees to prevent ill treatment and effectively address it should it occur.

Ecuador and Montenegro, among other countries, give such training programmes. Notably, the training materials for the Ecuadorian National Police Human Rights Training Course explain the rights of LGBT prisoners and that gender identity and sexual orientation are fundamental aspects of human dignity to be respected. **NHRIs** also have a role to play in this regard; the National Human Rights Commission of Nepal, for example, has extended **sensitivity training** to police and prison staff. Notable gaps include the absence of guidelines and training on protecting the rights of intersex people in detention, despite documented concerns.³⁶

³⁵United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Ninth Annual Report, CAT/C/57/4, Section V, March 2016. See also Jean-Jacques Gautier Symposium, Addressing situations of vulnerability of LGBT persons in detention, Association for the Prevention of Torture outcome report, 2015. Available from www.apt.ch/content/files_res/report-jjg-symposium-2015-en.pdf.

³⁶See for example *Richard Muasya v. the Hon. Attorney General*, High Court of Kenya (2 December 2010).

2.8 PREVENTING TORTURE AND ILL TREATMENT IN MEDICAL SETTINGS

In medical settings, the prohibition of torture, cruel, inhuman or degrading treatment entails banning some practices carried out by State and non-State actors, such as harmful and unethical so-called “therapies” intended to change sexual orientation, forced anal or genital examinations, forced or otherwise involuntary sterilization of transgender and intersex people, and medically unnecessary surgery and other treatment performed on intersex children without informed consent.

The Gender Identity, Gender Expression and Sex Characteristics Act adopted by Malta in 2015 is the first **law** that protects the rights of intersex minors to **bodily integrity** and **physical autonomy** by **prohibiting surgery and treatment to which they cannot provide informed consent**, particularly medical interventions driven by social factors. **Parliaments, courts, bioethics bodies and ministries** in other countries have all elaborated important guidance with regard to **the regulation of treatment of intersex children**. An Australian **Senate inquiry** report has called for the **deferral of all unnecessary medical procedures on intersex minors** until they are of an age where they can make their own decisions, based on **fully informed consent**. Jurisprudence of the **Constitutional Court** of Colombia requires that the consent of children be obtained before any such medical interventions are undertaken. The National Advisory **Commission on Biomedical Ethics** of Switzerland has released an opinion that addresses the situation of intersex people and makes **recommendations for best medical and legal practices** in such cases, including ensuring that **no one is subjected to irreversible surgery or treatment** without their consent. The opinion has been referred to by both the Committee against Torture and the Committee on the Rights of the Child in recommendations extended to Switzerland. In December 2015, the Ministry of Health of Chile issued an **administrative instruction ordering a halt to so-called “normalizing” treatments**, including irreversible genital surgeries on intersex children, based on, for example, recommendations of the United Nations Committee on the Rights of Child and civil society organizations in Chile. A Court in Germany has **awarded damages** to an intersex person whose reproductive organs were removed by a surgeon without consent or prior notification.

States should **remove requirements of medical diagnosis or intervention** as a prerequisite to legal recognition of gender identity and should not pressure, force or coerce transgender persons to undergo medical procedures. Argentina is the first State to pass a gender recognition law based on **self-identification** without any such requirement of diagnosis or intervention. Minors in Argentina **are also permitted, through a legal representative, to access legal recognition of their self-identified gender**. Examples of other laws based on **self-identification** include more recent ones passed in Denmark, Malta and Ireland (see also sections 6.1 and 6.13). In Germany, courts have struck down requirements of mandatory surgery and sterilization as incompatible

with the constitutionally protected rights to self-determination and private life. Trans victims of such procedures should have **access to remedy**. The Government of Sweden has proposed a law to pay **economic compensation** to trans people who were forced to undergo sterilization as a result of former legislation that required sterilization as a condition of legal gender recognition.

Some States have taken steps to **prohibit the practice of** so-called “conversion therapy” through **legislation** and **public policies**. The Governments of China, Ecuador and the United States, for example, have taken action to **close centres** that illegally carry out this unethical and harmful practice and to provide **remedy** for victims.

LGBT AND INTERSEX PEOPLE SHOULD NEVER BE FORCED OR COERCED TO UNDERGO MEDICAL PROCEDURES.

STATES SHOULD:



While the medically worthless practice of forced anal and genital examinations has been repeatedly condemned by United Nations and other human rights mechanisms as contravening the prohibition of torture and ill treatment, it, nevertheless, continues to be carried out by authorities in a number of countries, as part of criminal proceedings against persons being pursued for allegedly engaging in consensual same-sex conduct.³⁷ Not only should consensual same-sex conduct be decriminalized (see section 3), the practice of anal and genital examinations should be **banned**, with **perpetrators being prosecuted**, and victims provided with **remedy and support**. **National medical associations** have **condemned this practice**, including the one in Lebanon.

Unfortunately, positive developments in this area can be seen in only a minority of countries. Very few countries protect the physical integrity of intersex children, and statutes of limitation have made it difficult for intersex people to claim remedy for violations of their physical integrity. A majority of countries that have procedures in place for the recognition of the gender identity of transgender people still have abusive requirements, such as divorce, sterilization or forced treatment/surgery, in violation of human rights standards. Pathologizing language and medical diagnostic categories, including those used for obtaining funding for or accessing gender affirming treatment also contribute to the persistence of approaches based on medical diagnosis and surgery/treatment rather than self-identification (see also section 4.7).

2.9 PREVENTING TORTURE AND ILL TREATMENT IN THE CONTEXT OF ASYLUM

Care must be taken in the context of refugee status determination proceedings to ensure that LGBT and intersex victims of torture and other forms of persecution have unhindered access to international protection procedures, and are not subjected to further perpetration of cruel, inhuman or degrading treatment at the hands of asylum officials. The UNHCR Guidelines on International Protection, states that so-called “testing” of the applicant’s sexual orientation is an infringement of basic human rights and must not be undertaken – a position affirmed in jurisprudence.³⁸ While voluntarily provided evidence may corroborate a personal narrative, this cannot be a requirement for recognition.³⁹

In establishing the credibility of a refugee’s account of persecution based on their sexual orientation or gender identity, several States have **put the emphasis on self-identification**. In Italy, for

³⁷See for example, Human Rights Watch, Forced anal examinations in homosexuality prosecutions, 2016. Available from https://www.hrw.org/sites/default/files/report_pdf/globalgbianalexams0716web.pdf.

³⁸UNHCR, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 23 October 2012, HCR/GIP/12/01, Available from www.refworld.org/docid/50348afc2.html.

³⁹Ibid.

example, “current” gender identity or sexual orientation is considered relevant in the asylum context. Court cases have **established credibility based on the applicant’s testimony alone, without need for external evidence**. Asylum guidance issued by the United Kingdom Home Office states that in refugee status, determination of LGBT and intersex asylum seekers, “[f]or the purposes of the interview, any such [self-identification] constitutes the starting point in the process and the point from which assessment of the facts and circumstances will be made.”

2.10 CASE STUDIES

MALTA: GENDER IDENTITY, GENDER EXPRESSION AND SEX CHARACTERISTICS ACT

In April 2015, Malta adopted the Gender Identity, Gender Expression and Sex Characteristics Act, which establishes the right to a quick, transparent and accessible procedure for the recognition of a person’s gender identity based on self-identification. The new procedure moves away from restrictive, pathologizing medical interpretations of gender identity and, instead, defines gender identity as a person’s internal and individual experience of gender. It is based solely on self-determination, as opposed to requiring psychiatric diagnostic and medical intervention, which is the case in most other countries, thereby allowing the individual to live their gender identity and have their dignity, privacy and physical integrity respected. For persons under the age of 18, parents or legal guardians can apply for legal gender recognition, taking into consideration the child’s best interests and with a requirement to consider the child’s views.

The Act also recognises and protects the right to bodily integrity and physical autonomy of children, particularly with regard to their sex characteristics. It prohibits sex assignment treatment and related surgery on minors that can be deferred until the person can decide if they want such treatment. It also bans medical interventions driven by social factors without the consent of the child, further elaborating safeguards to govern the application of this right. The Act is the first legislation to actively regulate such surgery and protect the rights of intersex children.

The Act further prohibits discrimination on the basis of gender identity, gender expression and sex characteristics, and adds these three grounds as aggravating factors in hate crime and hate speech legislation. It establishes the right to access tailored counselling, support and medical treatment pertaining to sex and gender, and mandates the review of current medical protocols in line with the Act, medical best practice and human rights standards.

CANADA: THE POLICY OF ONTARIO FOR THE ADMISSION, CLASSIFICATION AND PLACEMENT OF TRANS INMATES

Recognizing that placing a trans woman in a male prison facility would drastically increase the likelihood of her experiencing discrimination, violence and abuse, the Ministry of Community Safety and Correctional Services of Ontario has introduced a policy to address the particular vulnerabilities of trans inmates. The development of the policy was the result of a consultative process involving government staff, including LGBT staff and human rights experts, the Ontario Human Rights Commission, civil society representatives and stakeholders in the justice sector. Comprehensive training programmes were given to staff to familiarize them with the changes and to make them aware of the broader issues faced by the trans community, prior to the implementation of the policy in March 2015.

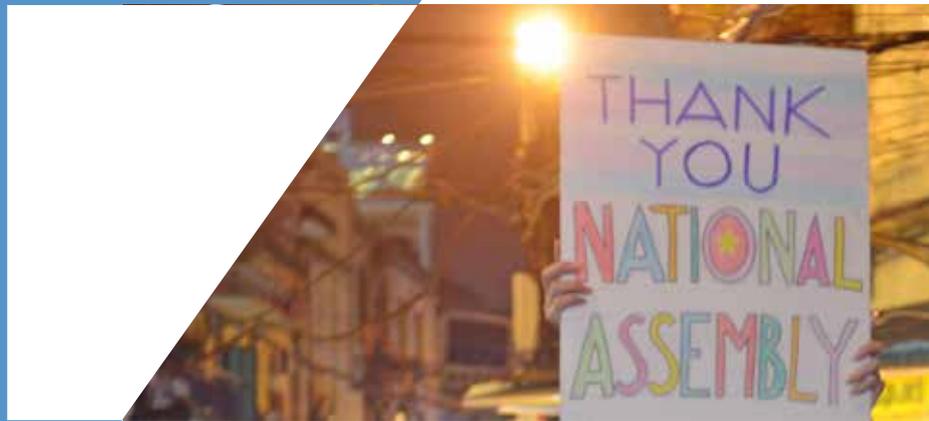
As part of the policy, a range of changes, including, most significantly, that determination of placement in a prison facility is based on the person's self-identified gender regardless of whether they have undergone gender-reassignment surgery was introduced. The policy also ensures that the principle of self-identification is applied in other aspects of the prison system, including integration (preventing segregation and isolation of particularly vulnerable inmates), searching (allowing for searches to be conducted by an officer of the inmate's preferred gender) and identification (addressing inmates by their preferred name and gender pronoun).

NEPAL: NEPALESE NATIONAL HUMAN RIGHTS COMMISSION MONITORING OF DETENTION FACILITIES AND PRISONS

The National Human Rights Commission (NHRC) of Nepal was granted the status of a constitutional body by the Interim Constitution of Nepal in 2007 and mandated with protecting and promoting the human rights of all Nepalese people, specifically including LGBT and intersex people. In carrying out its responsibilities, the NHRC can freely monitor alleged human rights abuses and conduct independent investigations upon receipt of complaints from an individual or a third party, such as a non-governmental organizations on behalf of a victim. As part of its investigation, the Commission can visit any prison, detention centre, or government institution and make recommendations for conditions to be brought in line with international human rights standards.

In this capacity, the NHRC has identified a number of human rights violations experienced by LGBT people in police custody and detention, including cases of LGBT individuals arrested on allegations of being involved in sex work. The Commission has received complaints relating to illegal detention, discrimination and ill treatment amounting to torture at the hands of staff who run detention facilities. A response to one such complaint on behalf of a LGBT victim prompted the Commission to issue an order to the Nepal Police to investigate and prosecute security personnel involved in a serious case of torture, inhuman and degrading treatment.

03



REPEALING DISCRIMINATORY LAWS

3.1 STATE OBLIGATION⁴⁰

Laws that criminalize consensual, same-sex relationships or expression of gender identity and other such discriminatory laws give rise to a number of separate but interrelated human rights violations. Such laws violate an individual's right to be free from discrimination, which is enshrined in article 2 of the Universal Declaration of Human Rights and core international human rights treaties, and the rights to be protected against unreasonable interference with regard to privacy and arbitrary detention, protected by articles 12 and 9 of the Universal Declaration and articles 17 and 9 of the International Covenant on Civil and Political Rights. Furthermore, laws that impose the death penalty for sexual conduct violate the right to life, as guaranteed by article 3 of the Universal Declaration and article 6 of the International Covenant on Civil and Political Rights. Such laws, even if they are not enforced, breach State obligations under international human rights law.

3.2 PATHWAYS TO DECRIMINALIZATION

Globally, there is a trend towards decriminalization of consensual same-sex relationships, which has intensified since the findings of the European Court of Human Rights in the case of *Dudgeon v. the United Kingdom* in 1982.⁴¹ Since then, and as of mid-2016, 47 countries have taken steps to decriminalize same-sex relationships between consenting adults. Of these, at least 22 had done so as part of a **broader review of their penal codes**, 12 had **specifically repealed criminalizing legislation**, and ten had brought about the change as a result of the **findings of a judicial body**.⁴² Nevertheless, as of mid-2016, 73 States continue to criminalize same-sex conduct between consenting adults,⁴³ with at least 44 countries continuing to criminalize same-sex conduct between women.⁴⁴ Some of the most recent countries to undertake decriminalization in this area are Mozambique, Nauru, Palau, Sao Tome and Principe and Seychelles, all of which

⁴⁰For further guidance on international human rights standards and United Nations recommendations relating to repealing laws that discriminate on the basis of sexual orientation and gender identity, please see Report of the High Commissioner for Human Rights on discrimination and violence against individuals based their sexual orientation and gender identity, A/HRC/29/23, 2015 and OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* (New York: United Nations, 2012), chapter 3.

⁴¹Achim Hildebrandt, "Routes to decriminalization: a comparative analysis of the legalization of same-sex acts", *Sexualities*, vol. 17, Jan. 2004, pp. 230-253.

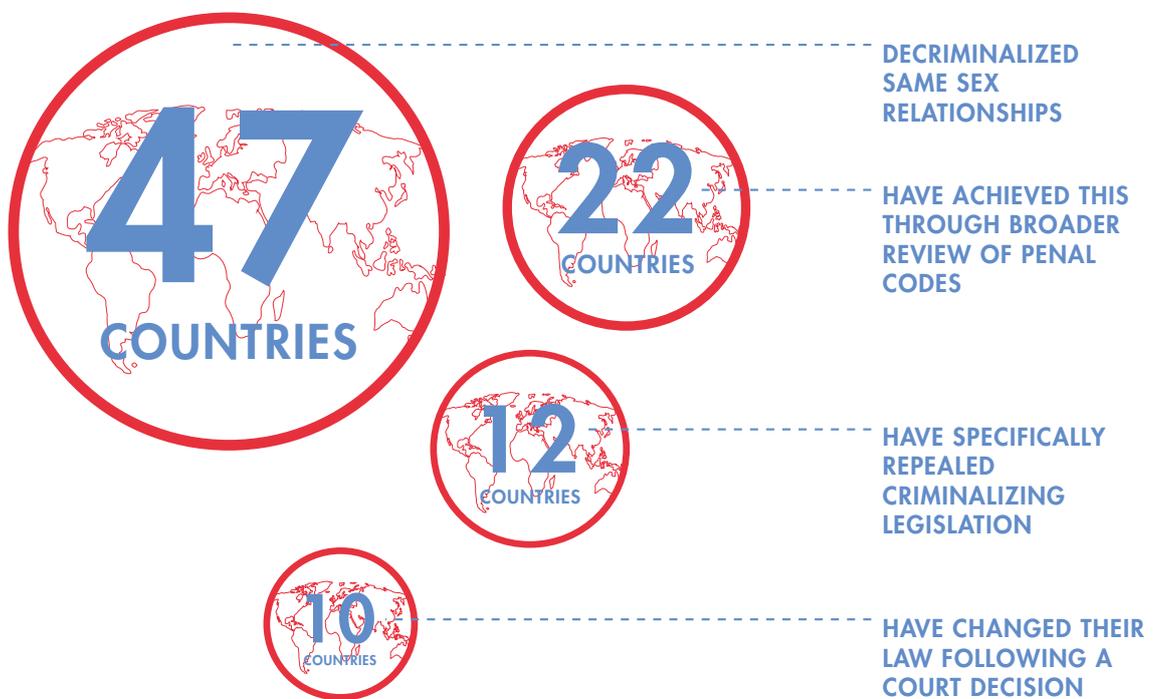
⁴²*Ibid.*, adjusted in light of more recent data

⁴³ILGA: Carroll, A., *State Sponsored Homophobia 2016: A world survey of sexual orientation laws: criminalisation, protection and recognition* (Geneva; ILGA, May 2016). Available from: http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf

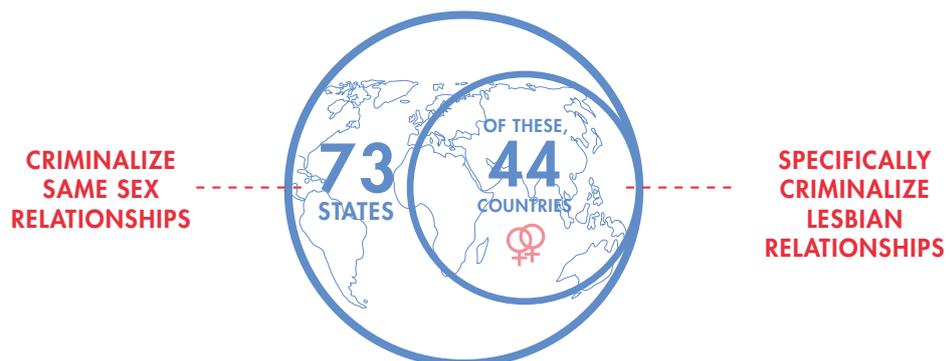
⁴⁴Human Dignity Trust, *Breaking the silence: criminalisation of lesbians and bisexual women and its impacts*, May 2016. Available from http://www.humandignitytrust.org/uploaded/Library/Other_Material/Breaking_the_Silence-Criminalisation_of_LB_Women_and_its_Impacts-FINAL.pdf.

have revised their penal codes following recommendations received during the Universal Periodic Review (UPR) of the United Nations Human Rights Council.

SINCE 1982...



TODAY...



In many cases, legislation does not make explicit reference to same-sex relations, but, instead, contains vague references to so-called “acts against the order of nature” or “vices against nature”. Such terms may be open to multiple interpretations, making it important that States **address any legal ambiguity and related uncertainty through an explicit review and repeal of discriminatory provisions in order to remove consensual same-sex activity from the ambit of the law**. Mozambique adopted a new Penal Code in 2014 that **removed colonial-era provisions** of the former penal code that prohibited so-called “vices against nature”. Similarly, the penal code of Sao Tome and Principe, adopted in 2012, contains no provision for criminalization, dropping former references to “acts against nature” in the former colonial-era penal code.



STATES SHOULD REPEAL:

SO-CALLED
“CROSS-DRESSING”
LAWS AND OTHER
LAWS THAT CRIMINALIZE
THE APPEARANCE
OF TRANS PEOPLE

LAWS THAT CRIMINALIZE
SAME SEX RELATIONSHIPS,
WHICH ARE OFTEN USED
TO PROSECUTE TRANS
PEOPLE REGARDLESS
OF THEIR SEXUAL
ORIENTATION

SO-CALLED “PUBLIC
SCANDAL”, “MORALITY”
AND “DEBAUCHERY” LAWS
AND OTHER VAGUE LAWS
USED TO HARASS AND
DISCRIMINATE AGAINST
TRANS PEOPLE

Transgender people also face criminalization on the basis of their gender identity or expression. At least eight countries criminalize so-called “cross-dressing”. In many more countries, transgender people also face arrest and prosecution on the basis of other, often vaguely defined laws.⁴⁵ **All such provisions should be repealed.** Samoa removed provisions on “impersonation of a female” – used to arrest and fine transgender persons including the fa’afafine – when it revised its penal code in 2013. A 2014 Court of Appeal decision in Malaysia found a prohibition on cross-dressing in Negeri Sembilan to be unconstitutional, though this judgment was subsequently voided by the Federal Court in 2015 on procedural grounds, requiring new proceedings.

Vague provisions used to criminalize people on the basis of their sexual orientation and gender identity have also been **challenged in court**. In a 2014 case, a judge in Lebanon ruled that a legal provision that penalizes so-called “unnatural” relations could not be applied to same-sex relations because these are not unnatural. The judgment also affirmed a person’s right to have their gender identity recognized based on that person’s self-perception.

Some States have sought to argue, including when responding to recommendations to repeal such laws by United Nations human rights bodies and within the framework of the UPR, that although the law may criminalize same-sex relationships, relevant provisions are not enforced. Nevertheless, as the United Nations Human Rights Committee already stated in 1994, **non-enforcement of a law does not equate to decriminalization, and still violates human rights**. The mere existence of such a law, even if unenforced, can instill a chilling effect in the group being targeted, restricting other rights, such as freedom of expression or association. Even in States that have a policy of non-enforcement of such legislation, arrests and harassment by law enforcement officials have still been documented, as well as high levels of blackmail and extortion. In order to meet their obligations under international human rights law, States must implement formal decriminalization.⁴⁶

States can also make the review and repeal/amendment of discriminatory laws a matter of **public policy**. In Nepal, for example, an objective of the **national human rights action plan** is to identify and amend such discriminatory laws.

Significant challenges remain: the pace of change has slowed with regard to decriminalization, and new laws are being proposed and adopted in a number of countries that would: create criminal sanctions for same-sex relations where they did not exist before; increase penalties of existing laws; or broaden their application to also criminalize the work of civil society organizations and human rights defenders working to protect the rights of LGBT persons. Several countries have expanded discriminatory provisions of their criminal codes to encompass sexual conduct between women. Laws that criminalize transgender people on the basis of their gender expression remain in place in several

⁴⁵Criminalisation and prosecution of trans people, *Trans Respect versus Transphobia*, Transgender Europe (2016). Available from <http://transrespect.org/>.

⁴⁶United Nations Human Rights Committee, *Toonen v. Australia*, Communication No. 488/1992, CCPR/C/50/D/488/1992.

countries. Other laws, including those related to discrimination, may also be discriminatory against people on the basis of sexual orientation and gender identity.

3.3 AGE OF CONSENT

Where decriminalization has been achieved, and as a matter of non-discrimination, it is important that States enact **an equal age of consent** for same-sex and different-sex conduct. More than a hundred countries around the world have put in place an equal age of consent. Nevertheless, several States and territories continue to have a discriminatory higher age of consent for same-sex sexual relations.⁴⁷

3.4 EXPUNGING PAST CONVICTIONS

Individuals who have been convicted on the basis of laws that were in violation of international human rights standards are entitled to appropriate forms of redress. The initiatives of the United Kingdom and of the Australian state of Victoria (see section 3.5) to expunge the criminal records of persons who had been found in violation of previous criminalization laws are noteworthy in this regard.

3.5 CASE STUDIES

MOZAMBIQUE: DECRIMINALIZING SAME-SEX RELATIONSHIPS

In 2015, Mozambique became the twenty-first country in Africa to decriminalize homosexuality in the post-colonial period. The previous criminal code included provisions dating from the colonial era allowing for “security measures” to be sanctioned against those who “habitually engage in vices against nature”. While not strictly referencing same-sex relations, the vague language echoed legal provisions in other countries used to criminalize lesbian, gay and bisexual people. In June 2015, the **new penal code** of Mozambique entered into effect. **The vague provisions** found

⁴⁷ILGA: Carroll, A., State Sponsored Homophobia 2016: A world survey of sexual orientation laws: criminalisation, protection and recognition (Geneva; ILGA, May 2016). Available from: http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf

in the previous penal code were dropped in the new code, ensuring that same-sex relations were clearly not criminalized. This connotes a significant step in a region where many countries continue to criminalize same-sex relations, and, in some cases, have recently adopted new discriminatory legislation that increases the scope of criminalization, as well as the associated penalties.

While decriminalization is not in and of itself sufficient to protect people from violence, discrimination and related violations, legal reform that entails removing discriminatory legislation sends a strong positive message and can lay the foundation for broader institutional changes and a shift in societal attitudes towards acceptance of LGBT people and respect for their rights.

SAMOA: DECRIMINALIZING SO-CALLED “CROSS-DRESSING”

In Samoa, the fa’afafine are people who are predominantly assigned as male at birth, express a range of gender expressions, including feminine ones, and are considered by many as a third gender. While the fa’afafine form an integral part of Samoan society and culture, the previous criminal code issued in 1961 included a discriminatory provision (58N) that specifically criminalized the so-called “impersonation of females” by males. In the context of reform of the criminal code – a process initiated in 2008 –, the **Samoa Law Reform Commission** held hearings and **received submissions** relating to this provision, including from the Samoa Fa’afafine Association. The Commission’s final report, which was submitted in 2010, **recommended the repeal of the provision**. This recommendation was taken up and the new penal code, adopted in 2013, no longer contains the provision.

AUSTRALIA: EXPUNGING HISTORICAL HOMOSEXUALITY CONVICTIONS

In Australia, homosexuality has been decriminalized nationwide since 1994 following the landmark complaint brought before the United Nations Human Rights Committee in *Toonen v. Australia*, which resulted in the repeal of the country’s last sodomy law in Tasmania. It is now also prohibited in the country to discriminate against someone on account of their sexual orientation. Even so, many men carry the burden of past convictions for consensual same-sex conduct. Having such a conviction on one’s record can have a detrimental impact on the ability to find a job and/or participate in volunteer work or in any activity that requires a criminal background check.

With the adoption of the *Sentencing Amendment (Historical Homosexual Convictions Expungement) Act 2014*, the state of Victoria became the first jurisdiction in Australia to **erase historical criminal convictions** from the criminal records of people convicted of engaging in consensual homosexual activity. The ruling in effect acknowledged that homosexuality should never have been criminalized at all. The passing of the bill also brought a number of amendments into effect, providing forms of **redress**

for those who might have been convicted of colonial-era crimes, such as the so-called “abominable crime of buggery” and “loitering for homosexual purposes”. The law also includes provisions for surviving family members or partners to make an application for expungement on behalf of someone who has died.

04



PROTECTING PEOPLE FROM DISCRIMINATION

4.1 STATE OBLIGATION⁴⁸

Everyone has the right to be free from discrimination, including on the basis of their sexual orientation, gender identity or expression, and sex characteristics. This right is protected by article 2 of the Universal Declaration of Human Rights as well as by the non-discrimination provisions of core international human rights treaties. In addition, article 7 of the Universal Declaration provides that all people are equal before the law and are entitled without discrimination to the equal protection of the law.

The previous chapter discussed State practices for reviewing and repealing laws that discriminate against individuals on the basis of their sexual orientation and gender identity. In addition to discriminatory laws, many other practices target LGBT and intersex persons in contravention of fundamental international human rights norms. These violations of civil, political, economic, social and cultural rights require States to take concerted action through law, policy and practice. Such discrimination is also closely intertwined with acts of violence, torture and ill treatment, and restrictions on freedom of expression, association and assembly that are discussed in other chapters of this report.

4.2 CONSTITUTIONAL AND LEGISLATIVE GUARANTEES

The **explicit inclusion in constitutional non-discrimination provisions of sexual orientation, gender identity, gender expression and sex characteristics** represents an important protective measure by enshrining protection in the basic law of a country and guiding other laws, public policies and the work of the authorities. The Constitution of Fiji is the only one to include sexual orientation, gender identity and gender expression as protected grounds. The Constitutions of the Plurinational State of Bolivia and Malta explicitly include both sexual orientation and gender identity as non-discrimination grounds, while the Constitutions of Ecuador and South Africa explicitly include sexual orientation. At present, no constitution explicitly includes sex characteristics as a prohibited ground of discrimination.

⁴⁸For further guidance on international human rights standards and United Nations recommendations pertaining to discrimination against LGBT and intersex persons, please see the following: Report of the High Commissioner for Human Rights on discrimination and violence against individuals based on their sexual orientation and gender identity, A/HRC/29/23, 2015; and OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* (New York: United Nations, 2012), chapter 4.

Short of constitutional protection, a **strong non-discrimination legal framework that prohibits discrimination** in all spheres of life can provide protection, particularly if it effectively addresses the key contexts in which discrimination is frequently experienced by LGBT and intersex people, such as education, health care, housing, civil administration, social services, employment, provision of goods and services, recognition of relationships and family law, immigration and inheritance. The legal framework should **explicitly include sexual orientation, gender identity, gender expression and sex characteristics among prohibited grounds of discrimination** and be applicable in both the public and private sectors.



Such legal frameworks must include effective measures to **investigate alleged discriminatory actions, redress for victims and effective accountability measures** for alleged perpetrators through criminal, civil and/or administrative sanctions, as appropriate.

Australia and Malta explicitly prohibit discrimination on grounds of sexual orientation, gender identity and sex characteristics (or intersex status, in the case of Australia) through **specific legislation**. The Maltese law also explicitly includes gender expression.⁴⁹ Legislation in both countries prohibits discrimination in employment and education. The Australian legislation also covers goods, services and facilities, housing, public administration and other areas.

⁴⁹See case study on Malta legislation in section 2.10.

In many cases, additional grounds of discrimination have been added through **legislative amendments**, expanding earlier anti-discrimination legislation, as is the case of Mexico, which added grounds related to gender expression. Similarly, **definitions of terms can be explicitly broadened** through legislative acts, as is the case in South Africa, which clarified that the term “sex” in its anti-discrimination legislation should be read to include intersex. **National courts** can also **interpret existing legislation to include other grounds**, such as is the case of Nepal, which found that sexual orientation and gender identity are grounds protected by the Constitution, and that third gender persons should have their gender identity officially recognized.

Courts have frequently been called upon to **interpret the scope of anti-discrimination legislation**, including as it relates to sexual orientation and gender identity. For example, in Germany, on the basis of a judicial finding, same-sex couples were recognized as being able to benefit from the same inheritance tax rules as different-sex couples, and in Hong Kong China unequal age of consent for sexual relations between men as opposed to between men and women was considered discriminatory.

Some **regional treaties**, such as a convention adopted by the Organization of American States, explicitly prohibit discrimination on grounds of sexual orientation, gender identity and expression.⁵⁰ Some **regional bodies**, such as the European Union, also prohibit discrimination on grounds of sexual orientation in the field of employment, which has led to a revision of national legislation in its member States.⁵¹

While many States prohibit discrimination on grounds of sexual orientation in employment, it is critical that the scope of anti-discrimination legislation includes **all spheres of life** and applies to **both public and private actors**. Where national legislation creates national bodies tasked with upholding non-discrimination legislation, such bodies should also have an **explicit mandate** to address discrimination based on sexual orientation, gender identity, gender expression and sex characteristics.

Some **subnational bodies**, including subnational entities in federated States, and **local authorities**, have adopted legislation or administrative acts that prohibit discrimination. For instance, in the Philippines, the Quezon City council has adopted a comprehensive ordinance prohibiting discrimination based on sexual orientation and gender identity and expression.

Progress in this area has been significant, yet it remains partial and uneven, and important gaps remain. To date, discrimination on the basis of sexual orientation in employment has been prohibited

⁵⁰Inter-American Convention against all Forms of Discrimination and Intolerance (A-69), 2013 (n.d.: has not yet entered into force, at the date of publication)

⁵¹European Union, Employment Equality Framework Directive 2000/78/EC

by 67 States.⁵² A smaller number of States have prohibited discrimination in other spheres, including the provision of goods and services. Some legislation fails to cover the private sector, mandate a national body or institution to receive and act on complaints or facilitate activities that promote human rights or educate the general public about it. The prohibition of discrimination on the basis of gender identity and expression lags significantly behind: only 20 States have explicitly included trans identities in national non-discrimination legal provisions.⁵³ To date, only three States, Australia, Malta and South Africa, have explicitly prohibited discrimination on the basis of sex characteristics, indicating important gaps.

4.3 ANTI-DISCRIMINATION ACTION PLANS AND STRATEGIES

The constitutional and legal frameworks underpinning anti-discrimination efforts throughout all sectors of society need to be complemented by robust **national programmes** that incorporate specific concrete measures to combat discrimination on the basis of sexual orientation, gender identity and expression, and sex characteristics, including monitoring the implementation of related recommendations of the United Nations and regional human rights bodies.

Examples include the 2010 national human rights action plan (NHRAP) of Brazil, which stipulates specific measures and objectives to address violence and discrimination based on sexual orientation and gender identity. The 2014 NHRAP of Nepal contains specific measures to review and amend discriminatory laws, awareness-raising programmes to combat negative myths and stereotypes, and measures to officially recognize the gender identity of third gender persons. The 2014 NHRAP of the Plurinational State of Bolivia, likewise, contains specific actions to investigate and prosecute acts of violence motivated on the basis of sexual orientation and gender identity, and take steps to recognize the gender identity of trans people. Also, the 2008 NHRAP of the Republic of Moldova includes measures for legislative reforms and training for law enforcement and judicial officials.

In addition to national human rights institutions (see section 6.4), other **State institutions** can play a key role in the implementation of non-discrimination strategies with regard to sexual

⁵²ILGA: Carroll, A., State Sponsored Homophobia 2016: A world survey of sexual orientation laws: criminalisation, protection and recognition (Geneva; ILGA, May 2016). Available from: http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf

⁵³Based on data from "Trans Respect versus Transphobia", Transgender Europe, 2016, available from: <http://transrespect.org/>, as well as additional research.

orientation and gender identity. For example, in Cuba, the National Centre for Sexual Education (CENESEX) leads numerous initiatives to combat discrimination on the basis of sexual orientation and gender identity.

Aside from incorporating relevant measures within national human rights action plans, States can also adopt **cross-Government strategies that specifically focus on the human rights of LGBT and intersex people** – an approach taken, for example, by the Governments of Montenegro, Norway, South Africa and the United Kingdom.

Non-discrimination regulations and policy frameworks may also be found at the **municipal level**, which can serve as a strong foundation from which to establish national policies (see section 6.10).

While the above examples signal progress, only a limited number of States have incorporated specific measures to address discrimination on the basis of sexual orientation, gender identity and expression and sex characteristics in their national human rights action plans, or adopted other specific plans or strategies for that purpose. Moreover, such plans frequently only address some of these grounds. In particular, only a limited number of such initiatives deal with the human rights of intersex people, address multiple forms of discrimination or have clear frameworks to monitor progress.

4.4 PREVENTION OF DISCRIMINATION IN EMPLOYMENT

The right to work is enshrined in article 6 of the International Covenant on Economic Social and Cultural Rights, providing that “everyone has the opportunity to gain his living by work which he freely chooses or accepts” and requiring States to “take appropriate steps to safeguard this right.” The United Nations Committee on Economic Social and Cultural Rights has clarified that the Covenant “prohibits discrimination in access to and maintenance of employment on grounds of ... sexual orientation”⁵⁴ and that States have an obligation to ensure that the principle of non-discrimination applies to the right to work for everyone, especially for “disadvantaged groups and individuals”.⁵⁵

⁵⁴Committee on Economic, Social and Cultural Rights, General Comment No. 18 (right to work), at para. 12(b)(1).

⁵⁵Ibid, para. 23.

The International Labour Organization has documented discrimination on the basis of gender identity and sexual orientation, as well as efforts by Governments to combat this discrimination, in a number of countries.⁵⁶



**PROHIBIT
DISCRIMINATION
IN EMPLOYMENT
REGARDING SEXUAL
ORIENTATION**



**PROHIBIT
DISCRIMINATION
BASED ON GENDER
IDENTITY/EXPRESSION**



**PROTECT INTERSEX
PEOPLE FROM
DISCRIMINATION**

States should **explicitly prohibit discrimination** based on sexual orientation, gender identity and expression and sex characteristics with regard to the right to work. Thus far, Sixty-seven States, in all regions, have prohibited discrimination with regard to sexual orientation.⁵⁷ Examples of how this has been carried out are: through **legislative amendments to existing legislation** governing employment to explicitly add the ground of sexual orientation, as in the case of Botswana and Samoa; or through integration in new legislation on discrimination, as in the case of Mauritius.

Only 20 States have explicitly banned discrimination on the basis of gender identity and/or expression.⁵⁸ An amended labour code in Ukraine prohibits employment discrimination on the basis of sexual orientation and gender identity. Malta prohibits discrimination on the basis of gender identity and gender reassignment through its Constitution and an explicit article in employment legislation. As mentioned above, Australia, Malta and South Africa are the only three countries that explicitly

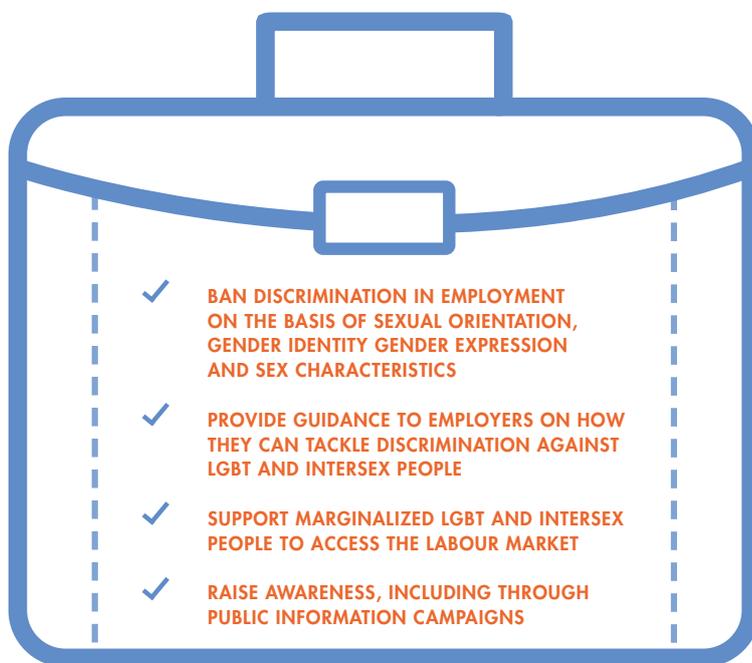
⁵⁶International Labour Organization, Gender identity and sexual orientation: promoting rights, diversity and equality in the world of work, results of the ILO's PRIDE Project, Briefing note, 16 May 2016. Available from http://www.ilo.org/gender/Informationresources/Publications/WCMS_481575/lang-en/index.htm.

⁵⁷ILGA: Carroll, A., State Sponsored Homophobia 2016: A world survey of sexual orientation laws: criminalisation, protection and recognition (Geneva; ILGA, May 2016). Available from: http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf.

⁵⁸Based on data from "Trans Respect versus Transphobia", Transgender Europe, 2016, available from: <http://transrespect.org/>, as well as additional research. The prohibition of discrimination on the basis of gender identity does not cover employment in all of these States.

prohibit discrimination on the grounds of sex characteristics (or intersex status). In some States, **subnational entities** have also passed specific legislation or adopted other measures to protect persons from discrimination in employment, such as in Quezon City (Philippines) with regard to sexual orientation and gender identity, or in Buenos Aires (Argentina) in relation to sexual orientation.

STATES SHOULD:



Legislative measures are not sufficient on their own to deal with employment discrimination: States must undertake other initiatives, including **awareness-raising** measures, **accountability measures** and measures to address the **root causes and the impact of discrimination**.

In New Zealand, the Ministry of Business, Innovation and Employment, in partnership with the New Zealand Human Rights Commission, **published a booklet on tackling discrimination** against transgender people in the workplace, offering **advice about legal and employment rights** and related workplace issues that transgender people may encounter.

In Uruguay, several measures have been undertaken to address employment discrimination and **improve labour insertion** for marginalized trans people, including a **specific call for trans candidates** for vacancies at the Ministry of Social Development and within the “Uruguay Trabaja” programme (see section 4.9).

Many gaps remain: while progress has been made in providing protection from discrimination on the basis of sexual orientation in employment, such legislation has only been adopted by a minority of States. Those States should extend protection to include the grounds of gender identity and expression and sex characteristics. Policies to tackle employment discrimination in practice, including its root causes, should also address employment discrimination against LGBT and intersex persons.

4.5 PREVENTION OF DISCRIMINATION IN EDUCATION

Actions to prevent discrimination in education are directly linked to actions required to address violence and bullying in schools and other education settings (see section 1.6).

The right to education and not to be subjected to discrimination in education is enshrined in articles 2 and 13 of the International Covenant on Economic Social and Cultural Rights. Nevertheless, students are frequently subjected to discrimination and violence on the basis of their actual or perceived sexual orientation, gender identity or expression or sex characteristics. Such abuse may be perpetrated by staff or other students and take place in and around schools, colleges and other educational establishments. States should address these practices with targeted anti-discrimination and anti-bullying laws and policies, as well as through concerted programmes aimed at combating discriminatory and prejudicial attitudes and inculcating values of diversity and acceptance.

Anti-discrimination laws and policies should cover the education sector and include the prohibition of discrimination on the basis of sexual orientation, gender identity/expression and sex characteristics. Comprehensive education sector anti-discrimination action plans should also explicitly address discrimination against LGBT and intersex people. In addition to legislation, it is important to tackle harmful stereotypes and attitudes through: the explicit inclusion of affirming messages about diversity and LGBT and intersex people in the national curriculum; the provision of adequate training to teachers and education sector staff; and monitoring levels of discrimination, including against LGBT and intersex students.⁵⁹

Taiwan Province of China has **adopted legislation to tackle gender stereotypes in school curricula** and **prohibit discrimination in the education sector on the basis of gender identity and sexual orientation**. In Namibia, the Life Skills Syllabus includes **learning and discussion about different sexualities**. Sweden has adopted an anti-discrimination law that **prohibits discrimination in the education sector** and other sectors

⁵⁹See also UNESCO, Education Sector Responses to Violence based on Sexual Orientation and Gender Identity/Expression (2016) <https://en.unesco.org/themes/homophobic-and-transphobic-violence-education>

on the basis of sexual orientation and gender identity. The law also **requires schools to adopt equal treatment plans** that include specific measures to promote equal rights and opportunities regardless of sexual orientation and to combat harassment based on sexual orientation. Malta has adopted a policy that **specifically addresses the situation of trans and intersex students** in schools, the only national education sector anti-discrimination policy identified through research for this report that addresses the situation of intersex students. In Australia, to attain some primary and secondary **teaching degrees, students must take a course that covers sexual orientation and gender identity/expression**. In the United States, the Department of Education has issued **guidelines to schools on respect for the gender identity of transgender students**, including in relation to **use of a student's self-identified gender, names and pronouns, privacy and access to restrooms and other sex-segregated activities and facilities consistent with a student's self-identified gender**.



STATES SHOULD:

-  **BAN DISCRIMINATION AGAINST LGBT AND INTERSEX STUDENTS**
-  **PUT IN PLACE EFFECTIVE ANTI-BULLYING POLICIES AND PROGRAMMES**
-  **INCLUDE INFORMATION ABOUT LGBT AND INTERSEX PEOPLE IN SCHOOL AND TEACHING CURRICULA**

The countries that have in place legislation that specifically addresses discrimination and violence in education on the basis of sexual orientation and gender identity constitute a small minority. Moreover, among such laws and policies in place, a significant number fail to specifically address discrimination on the basis of gender identity/expression. Only one country has adopted an education sector policy to address discrimination against intersex persons in education.

4.6 PREVENTION OF DISCRIMINATION IN ACCESS TO HEALTH CARE

Lesbian, gay, bisexual and transgender and intersex people face specific obstacles in accessing health-care services. This is especially the case for LGBT people in countries where legislation criminalizes same-sex relationships or punishes gender non-conformity or where trans people have no access to legal recognition of their gender identity. In most countries, high levels of stigma and discrimination exist in medical settings. This can result in denial of care, humiliating treatment and harassment by health personnel, and deter LGBT and intersex persons from accessing health services and seeking medical attention. Also, training is rarely given to health-care personnel on addressing the specific health needs of LGBT and intersex populations.

Article 12 (1) of the Covenant on Economic, Social and Cultural Rights enshrines “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” The Committee on Economic, Social and Cultural Rights has clarified that “other status” in the grounds for non-discrimination contained within article 2 of the Covenant includes both sexual orientation and gender identity.⁶⁰ States have an obligation to provide unhindered access to health services and facilities to people on a non-discriminatory basis, including LGBT and intersex people. This should be ensured through law, policy and education.

In Norway, a Government **action plan** on improving the quality of life among LGBT persons included a set of specific measures to **identify and clarify health needs** of LGBT persons, ensuring that **prevention and health programmes address the needs of LGBT populations**, and increasing **collaboration with LGBT civil society organizations** to that end.

In Argentina, a law that establishes the right of all persons to recognition of their gender identity also **guarantees the right of persons to access gender-affirming hormonal treatment and surgery** on the basis of **informed consent** through the **national public**

⁶⁰Committee on Economic, Social and Cultural Rights, General Comment No. 20, at para. 32.

health insurance system, without requiring judicial or administrative authorization (see also section 6.13).

In South Africa, the national strategy on **adolescent sexual and reproductive health and rights** explicitly aims to improve the **provision of health-care services without discrimination** on the basis sexual orientation and gender identity, including through **improving the skills of health-care providers** in this area.

Legislation adopted in Malta stipulates that **anyone seeking counselling, support or medical interventions** relating to their **sex** (including **intersex characteristics**) and **gender** be **provided with such support within the health-care system**, including **peer counselling**, for as long as necessary. The legislation places emphasis on **informed consent** and on not carrying out interventions that can be deferred if the person concerned cannot provide such consent. Furthermore, with regard to minors, the legislation also focuses on protecting the **rights of the child** and **giving weight to the views of the minor** and prohibits medical interventions driven by social factors without consent of the minor (see also section 2.8).

In the United Kingdom, public health authorities **collaborated with the national professional association of nurses** to develop **toolkits for nurses** on **preventing suicide among young trans, lesbian, gay and bisexual people**.

In the United States, legislation that establishes **federally run or assisted health insurance programmes** includes a section that **prohibits discrimination on the basis of gender identity**, as interpreted by the Government and the courts. The United States Department of Health has **collected data** on sexual orientation and health and issued a fact sheet that specifically addresses the **health of lesbian and bisexual women**. In Canada, a law on assisted human reproduction **prohibits discrimination** on the basis of sexual orientation.

Significant gaps, nevertheless, persist in addressing discrimination in health against LGBT and intersex persons, with most countries lacking specific strategies in this area. Even in countries with legislation in place, surveys of LGBT and intersex people still indicate disproportionately high levels of stigma, discrimination and even violence when accessing health services, less access to health insurance and lower health outcomes. With one exception, no measures were identified that specifically address the health needs of intersex people, highlighting another significant gap.

In addition to actions to prevent discrimination in health care, States must also act to prevent and address torture and ill treatment in medical settings (see section 2.8).

WITHIN HEALTHCARE, STATES SHOULD:

DISCRIMINATION AND STIGMA

BAN DISCRIMINATION
AND COMBAT STIGMA
AGAINST LGBT AND
INTERSEX PATIENTS



ENSURE THAT THE
SPECIFIC HEALTH NEEDS
OF LGBT AND INTERSEX
PEOPLE ARE ADDRESSED



GIVE RELEVANT
TRAINING &
GUIDANCE
TO CARE
PROFESSIONALS



REFORM
ARCHAIC
MEDICAL
CLASSIFICATIONS

ENSURE THAT ALL HEALTHCARE
IS PROVIDED WITH
THE PATIENT'S
INFORMED CONSENT



NOT TREAT LGBT AND
INTERSEX PEOPLE AS
DISEASED AND IN
NEED OF CURING

4.7 DEPATHOLOGIZATION – REVIEW AND REMOVAL OF PATHOLOGIZING MEDICAL CLASSIFICATIONS

Medical classifications that pathologize LGBT and intersex people, such as labelling them as ill or disordered on the basis of their sexual orientation, gender identity/expression and/or sex characteristics, is one of the root causes of violence, discrimination and stigma that they face. These outdated classifications wrongly treat being different as an illness. Legislation that criminalizes LGBT people and violence and traumatizing, humiliating ill treatment of LGBT and intersex people in medical and other settings has been repeatedly justified on the basis of such classifications. These classifications also result in widespread stigma and create significant barriers for LGBT and intersex people to access services that address their actual health needs. The United Nations and regional human rights mechanisms have called for an **end to the pathologization and forced or coercive treatment of LGBT persons, in particular transgender adults and children**, through medical classifications.⁶¹

In 1990, the World Health Organization (WHO) **removed homosexuality from the International Classification of Diseases** and it has also since stated that it is a natural and non-pathological variation of human sexuality.⁶² The Academy of Science of South Africa has published a report **addressing common myths** surrounding diversity in human sexuality.

Some limited steps to depathologize transgender gender identities and expression can be noted. The Parliament of Denmark has adopted a resolution that calls for **medical classification codes that pathologize transgender people to be removed and replaced by non-pathologizing codes**, while ensuring continued access to health-care services, by no later than 1 January 2017. In Finland, Norway and Sweden, national health authorities have carried out a partial **removal of pathologizing diagnostic codes relating to transgender identities from the domestic classification of diseases**, an important initial step towards removing all pathologizing and stigmatizing medical classifications. The European Parliament has adopted resolutions calling for the **depathologization of transgender identities and gender variance in childhood**.⁶³

While these represent positive developments, in almost all countries, trans and intersex persons, in

⁶¹Committee on Rights of the Child, United Nations Special Procedures, African Commission on Human and Peoples' Rights, Inter-American Commission on Human Rights, Council of Europe Commissioner for Human Rights, 12 May 2016. For more details, please refer to: "Pathologization – Being lesbian, gay, bisexual and/or trans is not an illness", 17 May 2016. Available from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19956&LangID=E>.

See also Council of Europe Commissioner for Human Rights, Human rights and intersex people, Issue paper, (Council of Europe Commissioner of Human Rights, September 2015) Available from [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH/IssuePaper\(2015\)11&language=lanEnglish&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH/IssuePaper(2015)11&language=lanEnglish&direct=true).

⁶²World Health Organization, ICD-10: International Statistical Classification of Diseases and Related Health Problems, 1990, Pan-American Health Organization, "Cures" for an Illness that does not exist", 2009.

⁶³European Parliament, Situation of fundamental rights in the EU, Resolution of 8 September 2015, paras. 84-86.

particular, face high levels of pathologization based on current medical classifications, including medical classifications contained in the International Classification of Diseases (ICD-10). As a result, transgender people face abusive requirements and other obstacles in accessing specific health services, including gender affirming treatment and surgery. Pathologizing and stigmatizing categories relating to intersex people are also linked to practices that may amount to torture or ill treatment (see section 2.8). Even though WHO removed homosexuality from the ICD many years ago, in many countries, national authorities continue to treat same-sex attraction as an illness. There have also been multiple cases documented of LGBT adults and children being forcibly subjected to harmful and unethical so-called “conversion therapies”, which may amount to torture or ill treatment.

Various stakeholders are involved in efforts to remove pathologizing and stigmatizing medical terms and terminology as part of the process of revision that will lead to a new International Classification of Diseases (ICD-11).

4.8 RECOGNITION OF RELATIONSHIPS

The United Nations and regional human rights bodies have expressed concern over discrimination against and the lack of legal protection extended to children of same-sex couples, and have urged States to **provide legal recognition to same-sex couples and their children** and ensure that same-sex couples are not discriminated against compared to different-sex couples in similar situations, including with regard to benefits, pensions, taxation and inheritance. Lack of official recognition of same-sex relationships and absence of legal prohibition on discrimination makes it possible for private actors, such as health-care providers and insurance companies, to treat same-sex partners unfairly.

Legal recognition may take various forms, ranging from civil unions and civil partnerships to marriage. It is up to the State to determine the form of recognition, but whatever form is chosen, there should be no difference in treatment between same sex and different sex couples. While States are not required under international law to recognize same-sex marriage, they are free to do so. Notably, when States have legally recognised same-sex marriage, it has been welcomed by various United Nations entities.⁶⁴ In States where civil unions are available to same sex couples in lieu of marriage, the benefits and entitlements associated with such unions should be equivalent to those associated with marriage. In jurisdictions where unmarried heterosexual couples are entitled to certain benefits, those same benefits should be extended to unmarried same-sex couples.

⁶⁴Report of the High Commissioner for Human Rights on discrimination and violence against individuals based on their sexual orientation and gender identity, A/HRC/29/23, 2015.

States should also **remove restrictions to the recognition of relationships for transgender persons**. They should, among other things, **officially recognize the gender identity of transgender persons without abusive requirements**, such as forced divorce (see section 6.1). Legislation and procedures regulating marriage and civil unions should also recognize the gender identity of transgender persons and not be based on the sex assigned a person at birth. In addition, there should be no restrictions on **parenting or adoption on the basis of a person's gender identity or expression**.

LEGAL RECOGNITION OF SAME-SEX MARRIAGE / CIVIL UNIONS:



Many States have extended marriage as well as civil unions to same-sex couples, and have also accorded equal rights to same-sex and different-sex unmarried couples. With regard to marriage, at the time of writing, 22 countries have **adopted measures providing for civil marriage between same-sex couples on an equal basis as different sex couples**, whether through **legislative action, judicial decision**, or a referendum. The countries are Argentina, Belgium, Brazil, Canada, Colombia, Denmark, Finland,⁶⁵ France, Iceland, Ireland, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden, the United Kingdom (with the exception of Northern Ireland), Uruguay and the United States. In many States, **subnational entities** at different levels have also adopted measures providing for marriage for same-sex couples through legislative action or judicial decisions, many of which were followed by national measures.

⁶⁵The relevant law in Finland is due to come into force in 2017.

The Netherlands was the first country to adopt marriage equality in 2001 through a **legislative act modifying the civil code**. In 2015, Ireland became the first country to amend its Constitution by **popular referendum** to provide for marriage of same-sex couples on terms of full equality with marriage between different-sex couples. Judicial authorities at the subnational and national/federal levels have also adopted decisions to provide for marriage between same-sex couples on the basis of **constitutional protections of equality, non-discrimination and human dignity**. This has been the case in, among others, Brazil, Colombia, Mexico, South Africa and the United States.

In Colombia, for example, the **Constitutional Court** has issued several judgments relating to the recognition of same-sex relationships and the rights of children in same-sex families, including the right of a same-sex partner to a **survivor's pension** in case of death of the other partner, recognition that **same-sex couples are families protected by the Constitution, striking down restrictions on adoption** by same-sex couples and **opening marriage to same-sex couples**. These judgments have been based on constitutional principles of respect for human dignity, the State's duty to protect all persons equally, the rights of the child, and the fundamental right to freely develop one's personality.

At the time of writing, at least 12 other States provide for official recognition of same-sex couples through **civil partnerships or unions with many of the rights associated with civil marriage**, though without offering marriage itself.⁶⁶

Several States have also adopted measures to remove discriminatory restrictions in relation to **parenting and adoption** by same-sex couples. Some States, such as Belgium, have further enacted legislation allowing **automatic recognition of parenthood** for a same-sex partner in relation to **the biological child of their partner**, on the basis of equality with different-sex couples, without going through adoption proceedings. In several instances in which legislation initially restricted parenting or adoption by same-sex couples, such as in Brazil and South Africa, **judicial decisions have struck down such restrictions**. Judicial authorities have also **condemned and ordered reparations** for discriminatory **treatment of same-sex couples in cases related to parenting rights**. An example of this is the case involving the Inter-American Court of Human Rights, the *Atala* case, which highlighted the issue of **judicial stereotyping** based, in that case, on the sexual orientation of the mother.⁶⁷ In Mexico the Supreme Court has issued **guidance to judges** to avoid such stereotypes and to guarantee constitutional rights, including in the consideration of cases relating to family life.

While there has been significant progress in the past decades, most countries still do not offer legal recognition of same-sex couples and protection for the rights of transgender persons in the context

⁶⁶Austria, Chile, Croatia, Cyprus, Ecuador, Estonia, Germany, Greece, Hungary, Liechtenstein, Malta, Switzerland.

⁶⁷Inter-American Court of Human Rights, *Atala Riffo y Niñas v. Chile* (2012).

of relationships and parenting. In some cases, countries continue to persecute LGBT people through discriminatory criminal laws (see section 3). LGBT people who benefit from such protection in their countries of nationality or residence frequently lose this protection when travelling to countries that do not provide such protections. This, in particular, places children in families headed by LGBT parents at risk of discrimination and other rights violations. Moreover, in several countries where same-sex relationships are recognized, there are discriminatory restrictions in relation to parenting or adoption on the basis of sexual orientation. Several countries also continue to place abusive requirements of divorce on trans persons as a condition for recognition of their gender identity. Harmful stereotypes with regard to the sexual orientation and gender identity/expression of LGBT people continue to motivate discriminatory administrative and legal decisions with regard to parenting in many countries.

4.9 CASE STUDIES

FIJI: CONSTITUTIONAL PROTECTIONS AGAINST DISCRIMINATION

The 2013 Constitution of Fiji is the first and currently the only constitution in the world that includes an explicit prohibition of discrimination on the basis of gender expression. It is also the only constitution in the Pacific region to explicitly prohibit discrimination on the basis of sexual orientation and gender identity. The Constitution consolidated prior legal advances in Fiji, including the decriminalization of consensual relations between adults of the same sex (2010) and the prohibition of discrimination on the basis of sexual orientation in the field of employment (2007). The Government of Fiji has acknowledged the need to also address discriminatory attitudes,⁶⁸ and has committed to take concrete measures to end discrimination and counter stigmatization of lesbian, gay, bisexual, transgender and intersex persons during the second cycle of the UPR in 2014. In 2015, the President of Fiji took part in the launch of the United Nations Pacific Free & Equal campaign, a regional campaign against homophobia and transphobia led by the Office of the United Nations High Commissioner for Human Rights (OHCHR) with support from other United Nations entities and civil society partners.

⁶⁸See, for example, statements during launch of the Pacific United Nations Free & Equal campaign in August 2015, OHCHR, "United Nations launches Pacific campaign against homophobia and transphobia", 6 August 2015. Available from, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16298&langID=E>

BRAZIL: BRAZIL WITHOUT HOMOPHOBIA PROGRAMME AND NATIONAL COUNCIL TO COMBAT DISCRIMINATION AND PROMOTE THE RIGHTS OF LGBT PEOPLE

The Government of Brazil initiated the Brazil without Homophobia programme in 2004.⁶⁹ It has since evolved into a funded department within the Ministry of Education that includes the Schools without Homophobia programme, which is currently being implemented by four civil society organizations. The latter programme focuses on organizing regional meetings involving state leaders and civil society representatives to collaborate on the overarching theme of combating discrimination against LGBT people in schools.

Other activities encapsulated within the Schools without Homophobia programme include qualitative research on homophobia (and transphobia) in the school environment conducted in state capitals within Brazil and the development of a training kit on homophobia for students and education professionals. These activities have led to the transformation of school curricula to include sexual and gender diversity training and capacity-building for academic staff to facilitate the implementation of inclusive policy and the provision of safe spaces in schools for LGBT students. The Ministry of Education has also provided a forum for teachers through the establishment of a national organization that focuses on the elimination of violence and discrimination against LGBT students in schools. These initiatives have actively encouraged the participation of young people and stakeholders in local, regional and national consultations.

Brazil has also established a national council on combatting discrimination and promoting the rights of LGBT persons. The council, which is comprised of representatives of the Federal Government and civil society organizations, formulates and monitors the implementation of public policies at the national level to combat homophobia and transphobia.

ALBANIA: LEGISLATIVE AND POLICY REFORMS TO COMBAT DISCRIMINATION AGAINST LGBT PERSONS

The Government and Parliament of Albania have taken a series of steps to put in place legal protections and policy measures to protect LGBT people from discrimination. Sexual orientation and gender identity were explicitly included as prohibited grounds in the 2010 Law on Protection from Discrimination, which has a broad coverage that includes employment, education, housing and health care and the provision of goods and services. The country also amended its Criminal Code in 2013, making it an aggravating circumstance to commit a criminal offence motivated on grounds

⁶⁹While the name of the programme only includes homophobia, the project also addresses transphobia, including violence and discrimination against transgender people.

of, among others, gender identity or sexual orientation, making discrimination by a public official on the basis of sexual orientation or gender identity a criminal offence, and penalizing incitement to hatred on the basis of sexual orientation.

State institutions charged with monitoring human rights, such as the People's Advocate and the Commissioner for Protection from Discrimination, have issued specific reports on patterns of violence and discrimination against LGBT people. They have made concrete recommendations to Parliament and to the Government for further legal and policy reforms, including on legal recognition of same-sex couples, recognition of the gender identity of transgender persons and access to health care. As a result of public reporting and advocacy by those State institutions, media reporting with regard to LGBT persons has improved. Both institutions have cooperated with LGBT human rights defenders and civil society organizations.

The Parliament of Albania adopted a resolution in May 2015 that called for the setting of a national action plan to protect the rights of LGBT persons in the country. In the resolution, the following are called for: legislative amendments to the labour code to protect LGBT people from discrimination as recommended by the People's Advocate; and training to teachers by the Ministry of Education. This resolution promotes the work of the People's Advocate to monitor the realization of the rights of LGBT people, and also encourages the Government to collaborate with civil society organizations to prevent discrimination against the LGBT community.

The Ministry of Social Welfare and Youth adopted an action plan for the period 2012-2014 on non-discrimination on the basis of sexual orientation and gender identity covering legal reform, sensitization of public officials and non-discrimination in employment. The Ministry has also collaborated with civil society organizations in defending the rights of LGBT persons to hold awareness-raising activities in schools to combat discrimination.

INDIA: SUPREME COURT RULING PROTECTING THE RIGHTS OF TRANSGENDER PERSONS

On 15 April 2014, the Supreme Court of India rendered its ground-breaking judgment in the case *National Legal Services Authority v. Union of India and others*, upholding the fundamental human rights of transgender persons, including protection from discrimination. The court affirmed that the prohibition of discrimination under the Constitution of India on the ground of sex also prohibits discrimination on the basis of gender identity. It held that denial of recognition of gender identity (see also section 6.1) breaches the constitutional rights to equal protection of the law and to dignity, and that the right to freedom of speech and expression enshrined in the constitution also includes the right to express one's self-identified gender, including through dress, words, action, behaviour or any other form. The judgment included explicit recognition of the gender identity of hijras and eunuchs as a third, non-binary gender (see also section 6.2).

The court directed the central and state governments to implement specific measures, including affirmative action and social welfare measures aimed at: prohibiting requirements of surgery or treatment in order to obtain legal recognition of one's gender identity; improving access to health-care services; and implementing measures to raise public awareness of the rights of transgender persons and to combat discrimination and stigma. Several steps have since been taken to implement the ruling. The Ministry of Social Justice and Empowerment has set up an interministerial committee to coordinate implementation of the recommendations of an expert committee report on issues relating to transgender persons, and the Ministry of Labour and Employment has taken measures to increase access to training for transgender persons. Some states have established quotas for transgender persons as part of housing policies and established state boards or policies to ensure equal access to education, health and employment for transgender persons. Several states and national authorities have updated relevant forms to recognize the gender identity of transgender persons.

UNITED KINGDOM: EQUALITY POLICY

The United Kingdom has a comprehensive anti-discrimination legislative framework grounded in the Equality Act, which prohibits discrimination and harassment on the basis of gender reassignment, marriage and civil partnership, sex and sexual orientation. Discrimination based on sex and sexual orientation is also barred in specific sectors, namely services and public functions, housing, employment, education, and associations. Furthermore, public bodies must show that they accommodate the needs of their LGBT service-users in the design and delivery of public services, such as education, policing and housing. To facilitate the implementation of anti-discrimination law in policy and practice, the Government has developed a range of comprehensive strategies and guidelines to clarify the legal basis for non-discrimination of LGBT people.

The country's national action plan, *Working for Lesbian, Gay, Bisexual and Transgender Equality: Moving Forward*, was released in 2011 to tackle discrimination and inequality faced by the LGBT community. It particularly focuses on the areas of health, education, employment, public services and societal attitudes. The plan makes numerous recommendations, including increased capacity-building and data collection within the National Health Service in respect of LGBT health issues, and increased engagement with transgender communities to identify specific health issues faced by this group. With regard to the transgender community, the Government of the United Kingdom published a national transgender equality action plan in 2011, the first of its kind at the national level, which outlines policy for countering discrimination and hate crimes targeting transgender people.

PHILIPPINES: QUEZON CITY ANTI-DISCRIMINATION ORDINANCE

Subnational and local governments have frequently played a pioneering role in countering discrimination based on sexual orientation and gender identity, often triggering positive developments at the national level (see also section 6.10).

The city council of Quezon, in the Philippines, passed an ordinance to prohibit discrimination based on sexual orientation or gender identity and expression in employment, education, delivery of goods or services, insurance and access to accommodation and establish fines for perpetrators of such discrimination. The ordinance was adopted in October 2014 after being passed unanimously by councillors. It further prohibits harassment and arbitrary detention on the basis of sexual orientation, gender identity and expression. The ordinance also establishes a series of affirmative measures and allocates funding for their implementation. These include dissemination of the ordinance to all public and private employers, the establishment of all-gender lavatories in Government agencies, specific measures in public health facilities to ensure equal and non-discriminatory access to health services for LGBT persons and training for public officials. It also mandates existing organizations that handle complaints about violence to also deal with complaints pertaining to violence based on sexual orientation, gender identity and expression. Finally, the council decided, through the same ordinance, to commemorate the International Day against Homophobia and Transphobia on 17 May and the Philippine Pride March (December).

URUGUAY: PUBLIC POLICY STRATEGY TO ADDRESS DISCRIMINATION AGAINST TRANS PERSONS

In Uruguay, the Ministry of Social Development has implemented a multi-step strategy to combat discrimination against trans persons. The strategy was developed following consultations with civil society organizations in 2010-2011 to identify key obstacles for trans people in realizing their human rights and related priorities for public policy. These included lack of access to existing social security schemes, obstacles in obtaining modification of name and gender on official documents, and discrimination in employment. On the basis of these consultations, the Ministry established the Consultative Council on Sexual Diversity, which also incorporates trans civil society organizations, to inform the design, implementation and monitoring of public policies in this area.

The Ministry has since undertaken a series of initial measures, including commissioning the Universidad de la Republica to conduct research on the situation of trans persons, training public officials of the Ministry on gender identity and expression, and modifying forms used by members of the public when accessing public services.

The Ministry expanded the social welfare programme Tarjeta Uruguay Social targeted at persons in situations of extreme socioeconomic vulnerability to specifically include trans people; close to 1,000 persons have participated in the programme since its establishment in 2012. To address the difficulties of trans persons to exercise their right under the Law on Gender Identity, the Ministry developed a programme in 2011 to support and guide trans individuals seeking to change their name and gender on official documents. A further measure in 2014 called for the explicit inclusion of trans people (together with other populations at higher risk of social vulnerability) in the programme Uruguay Trabaja, which provides work, training and a stipend for a period of nine months. These public policies have not only contributed to addressing some of the gaps identified, but have also raised greater awareness among the general population with regard to the protection and promotion of the human rights of transgender persons in Uruguay.

05



**RESPECTING FREEDOM OF
EXPRESSION, ASSOCIATION
AND PEACEFUL ASSEMBLY**

5.1 STATE OBLIGATION⁷⁰

Everyone has the right to freedom of expression, association and peaceful assembly, as guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights. Limitations on these rights must be compatible with international human rights law, including provisions on non-discrimination. Restrictions on these rights that are based on prohibited grounds of discrimination, including sexual orientation, gender identity, gender expression or sex characteristics, violate international human rights obligations of States.

5.2 PRINCIPLE OF RESPECT AND NON-INTERFERENCE

States have an obligation under international human rights law to respect the rights of LGBT and intersex people to freedom of expression, association and peaceful assembly, and to avoid any discriminatory measures that would interfere with the exercise of these rights.

States also have an obligation to proactively ensure the protection of these rights from interference by third parties, and to enable the conditions required for the effective realization of these rights by all persons, including LGBT and intersex persons, particularly in cases in which they may face stigmatization and marginalization.

5.3 REMOVING IMPEDIMENTS TO FREEDOM OF EXPRESSION

States have an obligation to remove legal or other impediments to the exercise of the right to freedom of expression. An area in which multiple such impediments exist is restrictions on gender expression and, in particular, the expression of the gender identity of transgender persons.

⁷⁰For further guidance on international human rights standards and United Nations recommendations pertaining to freedom of expression, peaceful assembly and association against LGBT and intersex persons, please see: Report of the High Commissioner for Human Rights on discrimination and violence against individuals based on their sexual orientation and gender identity, A/HRC/29/23, 2015; and OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* (New York: United Nations, 2012), chapter 5.

Samoa **reformed its penal code to remove discriminatory legal provisions** that criminalized so-called “impersonation of a female” (see also section 3.5). A decision taken by the Court of Appeal of Malaysia in 2014 initially **impugned a State law on prohibition on cross-dressing**, finding it to be unconstitutional, though this judgment was subsequently voided by the Federal Court in 2015 on procedural grounds, requiring new proceedings. The Supreme Court India, in a seminal judgment, ruled that the right of **freedom of expression includes a right to expression of one’s self-identified gender** and that “self-identified gender can be expressed through dress, words, actions or behaviour of any form” (see also section 4.9).

A court in Thailand **issued a restraining order** preventing a provincial regulation that would have restricted the wearing of clothes that express so-called “sexual deviance” from taking effect. The restraining order was made on the basis that such restrictions are **unlawful** and discriminate against transgender persons, limiting their ability to participate in public events. In the United States, courts have invoked **constitutional protection of freedom of expression** to uphold the right of a lesbian teenager to wear a tuxedo to a school social event.

Courts have also upheld the right to freedom of expression in cases related to speaking about human rights and sexual orientation. In Zambia, courts **dismissed all charges** against a human rights defender who while participating in a television programme spoke out in defence of the human rights of LGBT persons and was later charged with the criminal offence of “soliciting in a public place for immoral purposes”.

Some States have also **repealed discriminatory laws and rejected draft legislative proposals** that had attempted to establish discriminatory restrictions on the right to freedom of expression, including through so-called “anti-propaganda” laws. Such laws have been found to violate international human rights standards by the Venice Commission of the Council of Europe⁷¹ and the United Nations Human Rights Committee⁷², among others.

The Parliament of the Republic of Moldova, after having initially adopted a discriminatory amendment to the code of administrative offences that banned “the distribution of public information and/or committing acts aimed at the propagation of”, *inter alia*, “any other relations than those related to marriage or family in accordance with the Constitution and the Family Code”, repealed this later reference in a subsequent amendment the same year. The Parliaments of Armenia, Hungary and Ukraine initially considered, but ultimately **rejected** discriminatory legislative proposals that would

⁷¹Opinion 707/2012, Venice Commission, Council of Europe, Opinion on the issue of the prohibition of so-called “propaganda of homosexuality” in the light of recent legislation of some Member States of the Council of Europe, CDL-AD(2013)022, 18 June 2013. Available from [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)022-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)022-e)

⁷²United Nations Human Rights Committee, Communication No. 1932/2010, Irina Fedotova v. Russian Federation, United Nations Human Rights Committee, CCPR/C/106/D/1932/2010, 31 October 2012. Available from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/106/D/1932/2010

have violated the freedom of expression and other rights of LGBT persons in similar ways.⁷³

While there have been some positive developments, it is concerning that very limited progress has been made in removing discriminatory laws and regulations that criminalize or otherwise restrict the gender expression of transgender persons on the basis of their appearance and dress. Furthermore, a number of countries have adopted and continue to apply discriminatory restrictions to freedom of expression on the basis of sexual orientation and gender identity, including through so-called “anti-propaganda” laws, while proposals have been made in other countries for the adoption of laws with similar effects. In addition to these legal impediments, authorities regularly arbitrarily restrict the right to freedom of expression through regulations, direct censorship, or de-facto restrictions applied in an arbitrary and discriminatory manner on the basis of sexual orientation or gender identity.

5.4 FREEDOM OF PEACEFUL ASSEMBLY, PRIDE AND RELATED PUBLIC EVENTS

Peaceful marches and public gatherings, including those by LGBT and intersex people and others to advocate for the protection of their rights, offer an important opportunity for members of the community to exercise their fundamental right to freely express themselves and peacefully assemble. The State has a duty to uphold these rights and ensure that all peaceful assemblies, including marches, events and cultural manifestations are allowed to take place free from interference from either authorities or non-State actors.

A court in Lithuania intervened to **strike down restrictions** on such an event, **dismissing unsubstantiated arguments** by the municipality while emphasizing the importance of **protecting the right to peaceful assembly of minorities**. In some cases, **proactive measures** by the State are required to protect the exercise of the right to peaceful assembly when it is threatened by third parties. In Serbia, after such events were not permitted for several years on the basis of public safety concerns, they were allowed **to take place** in 2014 and 2015 and benefited from **measures by the police to protect participants from attacks**. It is also important to **combat impunity** for attacks against LGBT and intersex people exercising their right to peaceful assembly. In Ukraine, police **arrested persons who attacked** a march for equality by throwing stones and smoke bombs.

The **participation of public officials** in marches and assemblies in favour of the protection

⁷³ILGA: Carroll, A., State Sponsored Homophobia 2016: A world survey of sexual orientation laws: criminalisation, protection and recognition (Geneva; ILGA, May 2016), pp. 9, 18-19. Available from: http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf

of the rights of LGBT and intersex persons is an important step towards raising awareness of the importance of upholding this right for everyone without discrimination and positively changing public attitudes. In the Republic of Moldova and in Croatia, public officials participated in a Pride March, which required police protection as a result of violent attacks. In Turkey, the Mayor of Besiktas **gave a public speech** on the **Trans Day of Remembrance**, calling for an end to killings and hate crimes against transgender persons and emphasizing the need for renewed efforts and partnerships in combating the issue. In the Russian Federation, the Human Rights Ombudsman for St. Petersburg **participated** in events to raise awareness of discrimination on the basis of sexual orientation and gender identity and, when one event faced violent homophobic attacks, he **intervened with law enforcement authorities** to call for an investigation and prosecution of alleged perpetrators. In the United States, the Mayor of New York City **declined to participate** in the privately organized annual St. Patrick's Day Parade for several years because of restrictions on the open participation of LGBT groups.

There has been progress in several countries in the effective realization of the right to peaceful assembly by LGBT persons. At the same time, in a number of countries, pride marches, artistic and cultural events, workshops and other peaceful assemblies by LGBT persons continue to be prohibited and face discriminatory and arbitrary restrictions from public authorities. In the face of threats and violent attacks, reports persist of failure of law enforcement authorities to adopt appropriate measures to protect events and participants from attacks and arrest and prosecute alleged perpetrators of such attacks.

STATES SHOULD UPHOLD FREEDOMS OF EXPRESSION, ASSOCIATION AND PEACEFUL ASSEMBLY OF LGBT AND INTERSEX PEOPLE:



SAFEGUARD HUMAN RIGHTS DEFENDERS

LIFT RESTRICTIONS ON PRIDE MARCHES AND OTHER PEACEFUL GATHERINGS, AND PROTECT PARTICIPANTS FROM VIOLENT ATTACKS



REPEAL "ANTI-PROPAGANDA" LAWS AND LAWS AGAINST CROSS-DRESSING

REMOVE RESTRICTIONS TO REGISTRATION AND WORK OF CIVIL SOCIETY ORGANIZATIONS



5.5 REGISTRATION OF ORGANIZATIONS AND ASSOCIATIONS

The right to freedom of association includes a right to form and participate in organizations. The exercise of this right may be only subject to limited restrictions permitted under international human rights law and such restrictions cannot be based on prohibited grounds of discrimination. The judiciary has been critical in upholding and protecting this right when State authorities have refused to register or otherwise tried to restrict the functioning of organizations that advocate for the rights of LGBT persons.

In Botswana, the Court of Appeal upheld a High Court judgment that **declared unconstitutional the denial of registration** of a civil society organization advocating for the rights of lesbian, gay and bisexual persons, notwithstanding the criminalization of consensual same-sex conduct in the country. The Court emphasized that forming an association to peacefully advocate for changes in the law is a **protected exercise of fundamental rights**. The High Court of Kenya **ordered the State to register a transgender organization**, observing that “to discriminate persons and deny them freedom of association on the basis of gender or sex is clearly unconstitutional.” In a separate case, the Kenya High Court also upheld the right of gay and lesbian persons in Kenya to **form associations** and **struck down** as unconstitutional the refusal of the Non-governmental Organizations Co-ordination Board to register such an association.

Courts have also **stopped attempts to arbitrarily interfere** in the operation of associations. For example, courts in Turkey have **rejected attempts to close** organizations working to protect the rights of lesbian, gay and bi people. In Zimbabwe, the High Court **ordered the return of property** seized by police from the offices of the organization, Gays and Lesbians of Zimbabwe, on the basis that the seizure violated constitutional protections for the right to privacy. Another court also **dismissed, as unfounded, criminal charges** against the chairperson of that organization for running an unregistered organization. The Supreme Court of the Philippines **annulled the refusal by the electoral commission to register an LGBT organization** as a political party, rejecting alleged public morals and religious considerations and upholding the rights to freedom of expression and association and to equal protection of the law.

States have sometimes **reviewed and reversed initial refusals** to register LGBT organizations, as was the case in Mongolia, where an LGBT organization was subsequently allowed to register after being rejected initially based on alleged cultural and traditional considerations.

While the above are positive examples, there are numerous instances in which organizations working on the protection of the rights of LGBT persons are being denied legal registration, members of such organizations face harassment, attacks and arrests are made by the authorities, attacks on human rights defenders and organizations working on these issues are not being investigated and alleged perpetrators are not being prosecuted by authorities. Moreover, LGBT organizations and human rights defenders are also particularly affected by a broader trend observed in many countries of shrinking civil society space, with extensive and wide-ranging restrictions on the registration and operations of civil society organizations working on human rights issues.

5.6 CASE STUDIES

BOTSWANA – THE CASE OF LEGABIBO

The High Court and the Court of Appeal in Botswana found the denial of registration of the civil society organization Lesbians, Gays and Bisexuals of Botswana (LEGABIBO) to be unconstitutional. The courts emphasized that “it is not a crime to be attracted to one’s own sex”, that homosexuality in itself is not a crime, and that “advocacy for legislative reforms to decriminalize homosexuality is lawful.” The Court of Appeal found that the refusal to allow LEGABIBO to register was illegal and violated the rights of lesbian, gay and bisexual people to freedom of assembly and association protected by the Botswana Constitution.

In this decision, the courts drew a distinction between engaging in consensual same-sex sexual relationships, which are arguably criminalized under sections of the penal code, and protecting the rights of LGBT persons and advocating for legislative changes, which are protected under relevant sections of the Constitution.

PHILIPPINES - THE CASE OF ANG LADLAD

Ang Ladlad is a Philippine LGBT political organization, founded in 2003 with the aim to promote equal rights for members of the LGBT community. Although the electoral system in the Philippines reserves a number of seats in Congress for special groups, the Commission on Elections (COMELEC) had denied the organization’s application for accreditation twice. The first refusal occurred in 2007 because of an alleged lack of regional membership. Ang Ladlad was refused again in 2009 on the alleged grounds that the group’s definition of LGBT “makes it crystal clear that the petitioner tolerates immorality which offends religious beliefs.”

Ang Ladlad rejected the arguments of COMELEC for refusal and brought a complaint to the Supreme Court in 2010. Addressing the connection between the rights to freedom of association, expression and public participation, the Supreme Court decided in favour of Ang Ladlad, stating that moral disapproval alone is insufficient to deny a group their right to participate in political affairs and “[t]he denial of Ang Ladlad’s registration on purely moral grounds amounts more to a statement of dislike and disapproval of homosexuals, rather than a tool to further any substantial public interest.” The Court found that the refusal violated constitutional guarantees of equal protection of the law and freedom of expression and association.

06



CROSS-CUTTING ISSUES AND PRACTICES

The previous five chapters have explored State practices, gaps and challenges in relation to specific substantive rights. Several human rights violations against LGBT and intersex people transcend the specific thematic areas identified in those chapters. Furthermore, certain systemic actions by State entities and national human rights institutions are necessary to address a broad range of human rights violations against LGBT and intersex persons, such as legal recognition of gender identity, and the identification, monitoring and recording of practices that span the range of human rights abuses that are perpetrated against LGBT and intersex people. This chapter explores some of these cross-cutting issues and practices.⁷⁴

6.1 LEGAL RECOGNITION OF GENDER IDENTITY WITHOUT ABUSIVE REQUIREMENTS

Legal recognition of the gender identity of trans persons on the basis of human rights norms and without abusive preconditions is critical to the protection of all of the human rights of trans persons, including protection from violence, torture and ill treatment and discrimination, rights to health, education, employment, housing and access to social security, and freedom of expression, peaceful assembly and association.

Argentina adopted a pioneering **law that enshrines the right of all individuals to recognition of their gender identity**, and to **respect of their identity by others**. The law establishes a **simple administrative process** for modification of name and sex markers on official documents through the Civil Registry, **without any abusive requirements of medical diagnosis, medical treatment, sterilization and divorce**. It **also guarantees this right for children**, with relevant safeguards. The law further guarantees access to hormone treatment and surgery based on free and informed consent, through the public health system (see also section 6.13).

Malta has also adopted a law on legal gender recognition based on a simple administrative process and without abusive requirements. The law also allows minors, through their legal guardian, to access the process through a civil court. Denmark, Ireland and Norway have adopted similar laws guaranteeing the right to legal recognition of gender identity (albeit with restrictions

⁷⁴For further guidance on international human rights standards and United Nations recommendations pertaining to the rights of LGBT and intersex persons, please see: Report of the High Commissioner for Human Rights on discrimination and violence against individuals based on their sexual orientation and gender identity, A/HRC/29/23, 2015; and OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* (New York: United Nations, 2012),

based on age). In Ireland, a publically funded university partnered with trans and other civil society organizations to hold a **forum for young trans persons** to discuss the legal, social and political issues that affect their human rights.

**TRANSGENDER PEOPLE SHOULD HAVE
ACCESS TO LEGAL RECOGNITION
OF THEIR GENDER IDENTITY.**

THE PROCESS SHOULD:



**BE BASED ON SELF-
IDENTIFICATION**

**ALLOW FOR RECOGNITION
OF NON-BINARY IDENTITIES**

**BE A SIMPLE ADMINISTRATIVE
PROCESS**

**GIVE MINORS ACCESS TO RECOGNITION
OF THEIR GENDER IDENTITY**

**NOT REQUIRE APPLICANTS TO PRESENT
MEDICAL CERTIFICATION, UNDERGO
SURGERY, STERILIZATION
OR DIVORCE**

Pending the adoption of legislation, Governments can take specific intermediate steps on legal gender recognition. In Colombia, the Government has **issued a decree** that allows people to modify their sex marker in the Civil Registry on the basis of a simple sworn declaration. **Local authorities and other subnational entities** can also take steps in the absence of progress at the national level. In Mexico, the government of the Federal District of Mexico City has adopted a decree on legal gender recognition based on a simple administrative declaration.

Courts can play a critical role in upholding the right to legal recognition of gender identity. The Supreme Court of India rendered a seminal **judgment that held that denial of recognition of gender identity breaches constitutional guarantees of equal protection of the law and of dignity** (see section 4.9).

Safe and non-discriminatory access of transgender persons to public bathrooms is an important element related to recognition of their gender identity – with evidence of transgender persons facing exclusion, denial of access, verbal harassment, physical abuse and even arrest when using bathrooms.⁷⁵ The United States Departments of Education and Justice have issued **guidance to schools to ensure that they provide transgender students access to restrooms consistent with their gender identity**, regardless of the sex registered in official records.

Despite these important developments, the vast majority of countries either have no access to legal recognition of gender identity for trans people, or have abusive requirements that violate human rights standards, including forced or coerced sterilization, treatment, surgery, medical diagnosis and divorce. Children may be denied access to such recognition through arbitrary age and other disproportionate restrictions that may not respect international human rights standards.

Moreover, while such laws are critical, the rights of trans people should be respected, including the right to respect for their gender identity, regardless of whether they have exercised their right to legal recognition of this identity. This is particularly important in contexts in which legal recognition has onerous requirements, excludes certain persons, such as minors, or is difficult to access, such as for a person in detention.

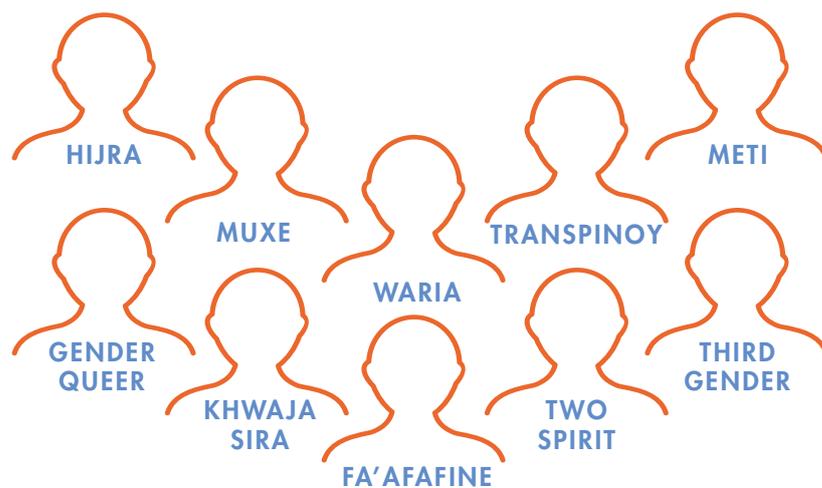
⁷⁵Report of the Special Rapporteur on the human right to safe drinking water and sanitation on stigma and the realization of the human rights to water and sanitation (A/HRC/21/42), 2 July 2012.

6.2 RECOGNIZING AND PROTECTING THE RIGHTS OF NON-BINARY PEOPLE

States have a duty to protect, respect and fulfil the human rights of all persons regardless of their gender identity, including those who have non-binary gender identities, such as gender identities that are neither “man” nor “woman”. Around the world, a significant number of people identify with a wide diversity of non-binary gender identities, including hijra, third gender, khwaja sira, two-spirit, fa’afafine, genderqueer, transpinoy, muxe, waria and meti.

Courts have played a key role in the recognition and protection of the rights of non-binary people. The Supreme Court of India has **explicitly recognized** non-binary gender identities, including hijra and eunuch, in its important judgment on the rights of transgender persons (see section 4.9).

STATES SHOULD LEGALLY RECOGNISE AND PROTECT THE RIGHTS OF THOSE WITH NON-BINARY GENDER IDENTITIES, INCLUDING:



In Nepal, the Supreme Court ruled in 2007 that the Government should **recognize third gender categories based on self-identification by individuals**. Since then, the Government has included a third gender option on its 2011 **census form, citizenship certificates and passports**. The **National Human Rights Commission** of Nepal has likewise amended its **complaints forms** to recognise non-binary gender identities.

In Pakistan, the Supreme Court has issued orders to authorities to **recognize the gender identity of eunuchs on registration forms**, take steps to **protect them from police harassment**, ensure their **access to education and employment, protect their right to inheritance** and ensure that they are entered into electoral voting lists.

Governments can also take steps to recognize and protect the rights of third gender persons. In 2013, the Cabinet of the Government of Bangladesh **issued a decision** to formally recognize the gender identity of hijras and ensure their access to education and other rights. In New Zealand, the Government allows individuals request an "X" designation on the gender marker on passports by signing a **simple statutory declaration**. In Denmark, people also have the possibility to obtain an "X" designation on passports.

While the identity and rights of people with non-binary gender identities are starting to be recognized and protected in a few States, in the majority of countries, people with non-binary identities have no such possibility and are denied their right to legal recognition of their gender identity. Several States legally recognize the gender identity of trans women and men, but do not legally recognize non-binary identities. Even in States that have taken initial steps to recognize non-binary identities, shortcomings exist in adopting policies to support this, and implementation of related court and Government decisions have remained slow or have only been partially carried out. All in all, the majority of non-binary people do not have effective access to recognition of their gender identity and continue to face widespread discrimination and harassment.

6.3 ADDRESSING THE SITUATION OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE WHO FACE MULTIPLE AND INTERSECTING FORMS OF DISCRIMINATION

Laws and policies too often treat LGBT and intersex people as a homogenous group and fail to address the situation of subpopulations facing specific challenges, including trans men, trans women, intersex people, bisexual people, non-binary people (see section 6.2) and lesbians.

Almost none of the laws and policies surveyed for this publication addressed the specific situation of these populations.

Particularly high levels of human rights violations have also been documented against LGBT and intersex people who face multiple and intersecting forms of discrimination, including those from minority communities, faith communities, people with disabilities, migrants, refugees, people living in poverty and sex workers, including women transgender sex workers. Generic policies to address violence and discrimination may not reach these populations.

LGBT AND INTERSEX PEOPLE FREQUENTLY FACE MULTIPLE AND INTERSECTING FORMS OF DISCRIMINATION



It is, therefore, critical that State policies and practices aimed at addressing violence and discrimination **take into account** the diversity and heterogeneity of the LGBT and intersex population and the **multiple and intersecting forms of discrimination** that affect a significant number of LGBT and intersex people. In cases in which surveys or data indicate that specific groups may be particularly marginalized and/or may not be reached by existing policies, **targeted outreach and policies** are required to ensure that the most marginalized LGBT and intersex people are not left behind.

In South Africa, the National Intervention Strategy for Lesbian, Gay, Bisexual, Transgender and Intersex Sector **specifically addresses the situation of black lesbian women** who have been the target of so-called “corrective” rape, and **builds on data** that indicate that **working class and poor black LGBT and intersex people living in townships** are subjected to higher levels of violent homophobic and transphobic crimes and have limited access to justice and redress for these violations.

In Scotland (United Kingdom), the government’s Equality Unit **funded a project and research on the specific situation of bisexual people** and their access to public services, while the

Equality and Human Rights Commission funded **research on the situation of minority ethnic LGBT persons**. The Equality Network has published a research report on the **situation and access to services of LGBT persons with disabilities**, and has a dedicated resource page on the **inclusion of people with intersectional identities**. Government officials and senior politicians have also **issued statements of public support** to events that raise awareness and visibility of LGBT persons with minority and intersectional identities, such as UK Black Pride, which seeks to increase visibility and advocate for the rights and well-being of black people who identify as LGBT.

The Government of the United States has adopted **specific policies to address barriers and obstacles** preventing transgender people, and especially **transgender women of colour**, from accessing HIV-prevention services and health services for people living with HIV.

Policies that assume that LGBT and intersex people are a homogeneous population and policies relating to the rights of LGBT and intersex people that are designed and operate in isolation from policies to combat other grounds of discrimination fail to address the many obstacles to the realization of the human rights of the most vulnerable and marginalized LGBT and intersex people. Policies should reflect and address the diversity and heterogeneity of the population, particularly those most at risk of human rights violations, and be integrated and connected with other policies to combat discrimination and violence and protect human rights. While civil society organizations are increasingly documenting and addressing this reality, only a few examples of State policies to protect the rights of these populations were identified, highlighting a significant gap.

6.4 THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS AND OTHER RELEVANT NATIONAL BODIES

National human rights institutions play a critical role in promoting and protecting the human rights of all persons, in line with the Paris Principles, which were adopted by the General Assembly on 20 December 1993.⁷⁶ This includes combating all forms of human rights violations on the basis of sexual orientation, gender identity and expression, and sex characteristics. NHRIs can contribute to raising awareness, documenting and investigating instances and patterns of violence, ensuring remedy for victims, and advocating for the repeal of discriminatory laws and the adoption of policy measures to deal with human rights violations more systematically.

⁷⁶General Assembly resolution 48/134, annex.

The Human Rights Commission of Sierra Leone, in its 2010 and 2011 reports, **documented patterns of violence and hate speech** against individuals based on their sexual orientation, and **called on the Government to protect people** against such attacks and discrimination. The Human Rights Commission of Mongolia **dedicated a chapter to the situation of LGBT persons** in its 2013 report.

The national human rights institutions of Kenya and Uganda have made several **recommendations to protect the rights of LGBT people**, including **calling for the decriminalization of consensual same-sex relationships**, in spite of staunch resistance by the authorities and other stakeholders. The Uganda Human Rights Commission also **advocated against the adoption** of the Anti-Homosexuality Bill when it was under consideration, **highlighting the conflicts between the proposed legislation and both the Constitution and the State's international human rights obligations**.

The Asia-Pacific Forum of National Human Rights Institutions has published a manual that provides guidance to NHRIs on the rights of LGBT and intersex people and highlights multiple examples of action by NHRIs in the region, such as **education and awareness raising, monitoring, handling complaints, intervening in and monitoring court cases, advocacy and holding inquiries**.⁷⁷

In the UPR of the United Nations Human Rights Council, NHRIs play a special role in the proceedings. They highlight patterns of human rights violations on the basis of sexual orientation, gender identity and expression and sex characteristics and make related recommendations. The Human Rights Commission of Bangladesh **submitted a report to the UPR** calling on the authorities to act to protect sexual minorities, transgender and intersex persons from discrimination.

As well as performing regulatory functions, some national bodies intervene to provide guidance on aspects of equality and non-discrimination law, the application of which would otherwise be unclear. For instance the Finnish Ombudsman for Equality has **issued guidance on the implementation of gender equality legislation with regard to transgender and intersex persons**.

National human rights institutions have also engaged in judicial proceedings to address discriminatory practices. For example, the Philippines Commission on Human Rights **intervened by way of an amicus curiae brief in court proceedings** in the Ang Ladlad case; the court ultimately struck down an administrative determination that a LGBT political party could not run candidates for election (see section 5.6). The Kenya National Commission on Human Rights submitted an *amicus curiae* brief to the High Court on a case pertaining to the human rights of intersex persons. In the United Kingdom,

⁷⁷Chris Sidoti, *Promoting and Protecting Human Rights in Relation to Sexual Orientation, Gender Identity and Sex Characteristics: A Manual for National Human Rights Institutions*, (Asia Pacific Forum of National Human Rights Institutions and UNDP, June 2016).

the Northern Ireland Human Rights Commission successfully took **judicial review proceedings** to overturn a ban on unmarried couples, including same-sex couples, from being considered as adoptive parents.

National human rights institutions can play an important role in raising awareness and building the capacity of national authorities to respect the rights of LGBT and intersex persons. The Human Rights Commission of Mongolia, in collaboration with LGBT civil society organizations, **translated the Yogyakarta Principles into the national language**, conducted **training for police and law enforcement agencies** and **urged the Government to implement the recommendations of United Nations human rights mechanisms** on the rights of LGBT persons.

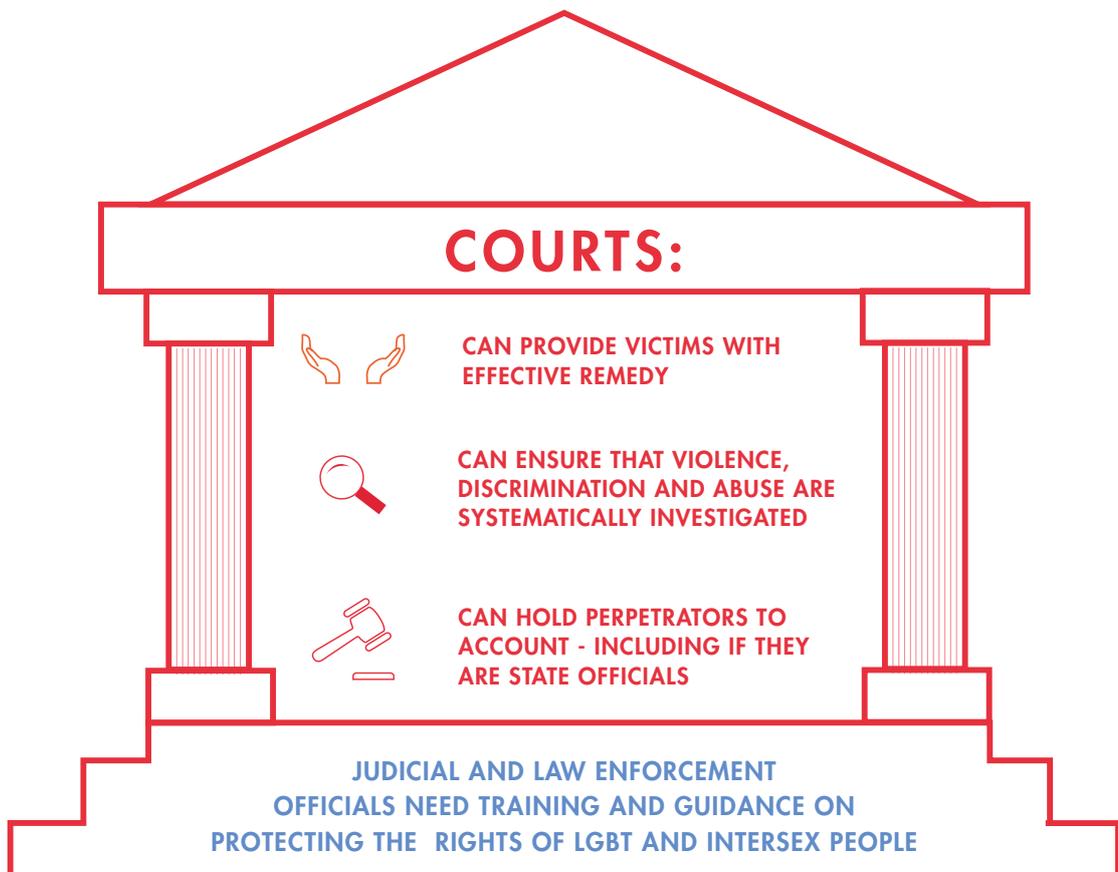
To effectively combat discrimination, State and other relevant authorities need to gather and review relevant disaggregated data. The Irish Equality Authority, the Equality Commission for Northern Ireland, the Malta Human Rights Commission and other such bodies have **collected disaggregated data, undertaken related research**, documented patterns of discrimination against LGBT people and made recommendations to policy makers to address such patterns.

National human rights institutions can also play an important role in giving greater visibility to the situation of LGBT and intersex people. The New Zealand Human Rights Commission **held a public inquiry** into discrimination faced by transgender people and a **round-table series** on human rights issues faced by intersex people that **brought together intersex people, health professionals, academics and government agencies** to discuss ways to better protect the human rights of intersex people.

The body of work by NHRIs and other national entities with human rights mandates in all regions to address human rights violations against LGBT people is encouraging. However, there are few examples in which NHRIs have substantively addressed the human rights situation of intersex persons, indicating a gap. In many countries where discriminatory laws are used to criminalize LGBT people, NHRIs have stayed silent instead of actively seeking a review of such laws. They have also not effectively documented and addressed violence and discrimination on the basis of sexual orientation, gender identity and expression.

6.5 THE ROLE OF THE JUDICIAL SYSTEM

The judiciary has a fundamental role in the protection of the rights of LGBT and intersex people, which includes the following: **interpreting and upholding fundamental human rights standards** enshrined in national and international human rights law; **reviewing national legislation** that may conflict with such standards; **reviewing the legality of specific acts and policies of State authorities**; ensuring **access to justice**; and providing **effective remedy to victims** of human rights violations; and **ensuring accountability for alleged perpetrators** of such violations.



Many positive examples of courts upholding the fundamental rights of LGBT and intersex persons are cited in almost all sections of this report. These examples are related to the following: hate crime and incitement to hatred (section 1.7); protecting the rights of trans detainees (section 2.3); condemning and preventing surgeries on intersex children; closing illegal so-called “conversion therapy” centres and condemning forced sterilization and forced surgery of trans people (section 2.8); upholding the rights of LGBT refugees (section 2.9); striking down laws that criminalize consensual same-sex relations and cross-dressing (section 3.2); integrating sexual orientation, gender identity and sex characteristics within the scope of anti-discrimination legislation through judicial interpretation (section 4.2); mandating the legal recognition of same-sex relations, upholding the rights of same-sex partners and striking down restrictions on adoption by same-sex couples (section 4.8); condemning the judicial stereotyping of LGBT people (section 4.8); upholding the rights of transgender people to legal recognition of their gender identity (sections 4.9 and 6.1); upholding the right to freedom of expression of LGBT people (section 5.3); protecting the right of LGBT people to freedom of peaceful assembly, including striking down restrictions on pride marches (section 5.4); protecting the rights of LGBT people to freedom of association and to participation, to register and operate associations, and protecting them from arbitrary interference in the exercise of these rights (sections 5.5 and 5.6); and protecting the rights of non-binary people (section 6.2). Important guidance has also been elaborated by the Supreme Court of Mexico to advise judges in the adjudication of cases involving sexual orientation and gender identity, and to combat harmful stereotypes and misconceptions (section 6.13).

Nevertheless, despite the many important judicial decisions that address and remedy human rights violations based on sexual orientation, gender identity and expression, and intersex status, many LGBT and intersex people still encounter high barriers in accessing courts and obtaining remedy for such abuses. Also, there are many instances of courts not taking into account international human rights norms in their decisions on related cases.

6.6 THE ROLE OF PARLIAMENTS

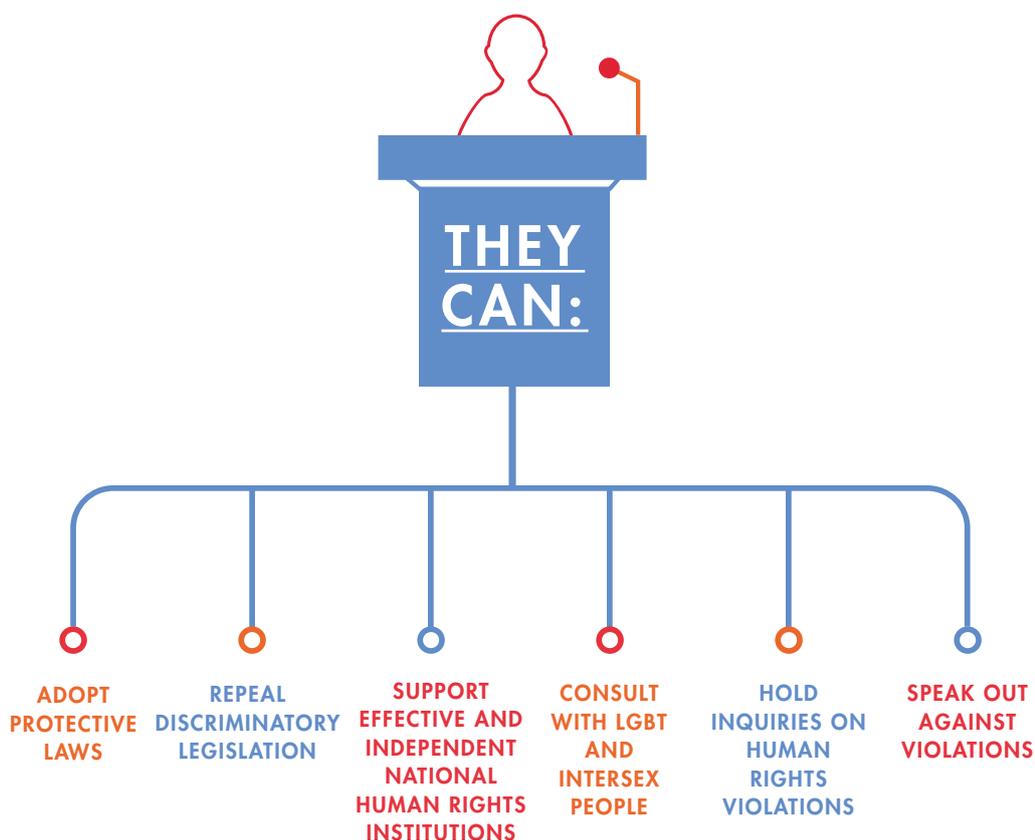
Parliamentarians have an essential role to play in combating violence and discrimination against LGBT and intersex people. The United Nations Development Programme (UNDP) and Parliamentarians for Global Action have published a handbook that contains specific recommendations. This publication can be used by parliamentarians to advance the human rights and inclusion of LGBT and intersex people, and contains multiple examples of relevant positive practices.⁷⁸

⁷⁸UNDP and Parliamentarians for Global Action, *Advancing the Human Rights and Inclusion of LGBTI People: A Handbook for Parliamentarians*, 2016.

Parliaments have been instrumental in **repealing discriminatory laws**, including legislation criminalizing consensual same-sex relationships. More than 70 per cent of the countries that have reformed such laws since 1982, did this through parliaments, which have also played a role in repealing legislation criminalizing people on the basis of gender expression (see section 3.2). (Parliaments also have a key role in **rejecting draft discriminatory laws**, such as so-called “anti-propaganda” laws that aim to restrict freedoms of expression, association and peaceful assembly in relation to sexual orientation and/or gender identity (section 5.3).

Parliamentarians often play a leading role in promoting **adoption of protective laws**. Constitutional protections against discrimination in Fiji (see section 4.2), the protection of the physical integrity and sex characteristics of intersex children in Malta (section 2.10), the protection of the rights of all persons to recognition of their gender identity in Argentina (section 6.13), and recognition of same-sex relationships in many countries around the world (section 4.8) are among the many examples of protective laws proposed, debated, and adopted by parliaments.

PARLIAMENTARIANS PLAY A CRITICAL ROLE



Parliaments further have a key role in **ensuring the participation of and consultation with LGBT and intersex people and organizations** in the consideration of all matters that affect their rights. Members of parliament have also **publically spoken out against violations** (section 6.7) and **held inquiries to examine patterns of human rights violations** (such as the Australian Senate inquiry on the sterilization of intersex children, section 2.8). They also have a key role in the following: exercising oversight to **review draft legislation against international human rights standards; evaluating the effectiveness of public policy measures** relating to human rights, including the rights of LGBT and intersex people; **creating and supporting independent and effective national human rights institutions**; and **supporting engagement with regional and United Nations human rights bodies**.

While these are positive examples, there are also many examples of parliaments adopting discriminatory laws, including laws that criminalize or increase penalties for consensual same-sex relationships or restrict freedom of expression, association and peaceful assembly. Also, many parliamentarians have been known to use abusive and discriminatory language or engage in hate speech directed at LGBT people. In many countries parliaments have ignored the specific violence and discrimination faced by LGBT and intersex people and have failed to adopt laws to protect them from such abuses, or create or support institutions that can do so. Where parliaments have taken positive steps, it has often been in relation to sexual orientation and the rights of lesbian, gay and bisexual people; fewer parliaments have taken initiatives to protect the rights of transgender people, including legal recognition of their gender identity (see section 6.1), and, to date, only three parliaments have taken steps to protect the rights of intersex people.

6.7 POLITICAL LEADERSHIP AND MESSAGING

A starting point for the development of a respectful society that welcomes and protects its LGBT and intersex members is the delivery of strong messages of support and public engagement on the part of political leaders.

Public officials and political leaders in the Bahamas, Belize, Cuba, Myanmar and many other countries have **condemned violence and discrimination** based on sexual orientation. In Jamaica, the Minister for Justice **publicly condemned** the killing of a trans teenager and the Minister for Youth and Culture **highlighted the particular vulnerability of young LGBT people** to homelessness and the need for targeted interventions to provide shelter and protection. In Ecuador, the President **met with community leaders** to discuss the human rights situations of LGBT persons in the country, an event that he highlighted in his weekly address at the time as an important step towards combating discrimination. Members of Parliament of Bangladesh, India and Mongolia have also made **public commitments to legislate** to address discrimination faced by

LGBT persons. In South Africa, Judge Edwin Cameron of the Constitutional Court and Archbishop Desmond Tutu launched the United Nations Free & Equal **public education campaign to combat homophobia and transphobia**, together with the High Commissioner for Human Rights. The campaign has provided a platform for prominent political leaders to voice their support for LGBT equality, including among them, the President of Fiji, the Vice-President of Colombia, the former President of Botswana and Government ministers from countries around the world.

6.8 CONSULTATION AND CIVIL SOCIETY INCLUSION

In keeping with the human rights principle of participation, it is critical that authorities consult and partner with LGBT and intersex people and civil society organizations on all initiatives and policymaking processes that affect the rights of LGBT and intersex people. Cooperation among State entities and LGBT and intersex organizations can take many forms, including the co-convening of awareness-raising events and advocacy campaigns, funding relevant projects and organizations, training public officials, establishing effective forums for consultation and ensuring that LGBT and intersex people are included in decision-making bodies and in the design, development, implementation and monitoring of public policies.

The “School Rainbow” campaign in Thailand, which aims to raise awareness of homophobic and transphobic bullying, **engaged young people in schools** in Bangkok. It was **designed and implemented in partnership with regional authorities, LGBT organizations**, school management, teachers and young people themselves.

The Government of Malta established a **consultative council composed of representatives of civil society organizations** who work on the rights of LGBT and intersex persons to **advise the Government** on issues affecting LGBT and intersex people and **recommend measures** to advance their rights.

To **design and oversee the implementation of a national strategy to address gender and sexual orientation-based violence against** LGBT and intersex people, the Government of South Africa has **established a national body composed of civil society organizations, Government departments, and independent State institutions** with mandates on human rights and gender equality (see also section 1.12).

While many such good examples of collaboration can be cited, there are also numerous instances in which authorities and legislators have not adequately consulted with LGBT and intersex civil society organizations, resulting in public policies and legal reforms that, among other things, are not well targeted, fail to reach intended beneficiaries, do not have the support of the community and result

in unintended negative impacts. It is critical when engaging civil society stakeholders to ensure that the participants reflect the diversity of the LGBT and intersex population (see also section 6.3).



THIS ENSURES THAT POLICIES AND LAWS:



ADDRESS PRIORITY CONCERNS



HAVE COMMUNITY SUPPORT



REACH INTENDED BENEFICIARIES



MINIMIZE THE RISK OF NEGATIVE CONSEQUENCES

6.9 CROSS-CUTTING ACTION PLANS

Policies to address the human rights of LGBT and intersex persons must be coordinated with broader national human rights policies, as generalized patterns of human rights violations also affect LGBT and intersex persons – in some cases in disproportionate ways. A number of States, such as Australia, Mexico and New Zealand, have **integrated actions to support the human rights of LGBT and intersex persons in their national human rights plans of action**. South Africa has also addressed the situation of LGBT and intersex people within its **national action plan to combat racism, racial discrimination, xenophobia and related intolerance**.

Other States have developed **specific action plans** dedicated to tackling some of the distinct human rights challenges faced by LGBT and intersex people. In Norway, for example, the Ministry of Children and Equality has released a **national action plan to improve the quality of life of LGBT persons** that includes **detailed policy measures** relating to research, education, child and family policy, recreation and sports, civil society, working life, immigration, national minorities, health-care services and the law and international relations. The plan also addresses intersectional identities and multiple forms of discrimination. In the United Kingdom, the Government has published a national action plan to advance equality for LGBT persons and a **specific plan on advancing transgender equality**, with recommendations for improvement and good practices in such areas as health, education, employment, public services and societal attitudes.

6.10 LOCAL INITIATIVES

In many countries, local governments have been at the forefront of establishing and implementing measures to protect LGBT and intersex people from discrimination, particularly in the absence of national legislation. The implementation of such measures within the scope of the mandate of local authorities can demonstrate in concrete terms that such measures can be adopted and that they have a positive impact in countering discrimination. Notably, these types of measures have often been followed up by national measures.

Quezon City council (Philippines) has **adopted an ordinance prohibiting discrimination** based on sexual orientation or gender identity and expression (see also section 4.9). In Mexico, the Human Rights Commission of Mexico City **organized a forum on Intersex Awareness Day** to raise awareness about human rights violations against intersex children and adults and make recommendations to address these violations. In Germany, the Berlin Senate has **passed a resolution** to combat homophobia and transphobia and the Berlin State Office for Equal Treatment and against Discrimination has implemented a series of actions, including, among them,

training for school and welfare officials, awareness-raising activities, combating hate crimes, CSO representation on public bodies and the creation of a multi-stakeholder round table. In Buenos Aires (Argentina), a **training course on the human rights of intersex people** has been included as part of a gender and human rights training programme for judicial officials. In the Russian Federation, the Human Rights Ombudsman for St. Petersburg has **documented violence and discrimination** based on sexual orientation and gender identity and presented **recommendations** to city authorities on this topic. In Brazil, the municipality of Sao Paulo partnered with OHCHR and other United Nations organizations to launch the national “ONU Livres & Iguais” **awareness-raising campaign** with the Brazilian United Nations Equality Champion Daniela Mercury. The campaign reached millions of people on the city’s buses, trains and during the annual Pride Parade. In Malta, the Government participated in the global OHCHR-led United Nations Free & Equal campaign for equal rights and fair treatment for LGBT and intersex people by painting several crosswalks in rainbow colours.

The Rainbow Cities network **links more than twenty cities** in Europe and beyond that have taken measures to protect the rights of LGBT and intersex people, facilitating the **sharing of experience, good practices and lessons learned** in the implementation of such policies.⁷⁹

6.11 REGIONAL INSTITUTIONS AND INITIATIVES

Regional institutions and initiatives play an essential role in engaging States and other stakeholders in combating violence and discrimination on the basis of sexual orientation, gender identity and expression and sex characteristics.

The Inter-American Commission on Human Rights (IACHR), an autonomous organ of the Organization of American States (OAS) has a **dedicated unit and a Rapporteur on the rights of LGBTI people**. The Rapporteurship **monitors and raises awareness of human rights violations** against LGBT and intersex persons, prepares **thematic reports** on the issue, provides **specialized technical assistance** to OAS member States and political organs, processes **individual petitions and requests for precautionary measures** on alleged human rights violations, and **carries out analysis and develops standards** relating to human rights, sexual orientation, gender identity, gender expression and bodily diversity. The IACHR recently published a report on violence perpetrated against LGBT and intersex persons in the Americas based on analysis of data collected over the initial years of the mandate.⁸⁰ The Inter-American Court on Human Rights has also played

⁷⁹Movisie Netherland Centre for Social Development, the Rainbow Cities Network, “International Cities form Rainbow Cities Network”, 16 July 2016. Available from <https://www.movisie.com/news/international-cities-form-rainbow-cities-network>

⁸⁰See Inter-American Commission on Human Rights, Rapporteurship on the Rights of LGBTI Persons. Available from, <http://www.oas.org/en/iachr/lgtbi/>

an important role in **the protection of human rights and access to remedy** for victims of violence and discrimination based on sexual orientation and gender identity that were denied redress at the national level.

The African Commission on Human and Peoples' Rights has increasingly addressed the issue of violence and other human rights violations based on sexual orientation and gender identity, including through its **regular dialogue with State parties**, the work of its **working groups and special rapporteurs**, the **development of new instruments and guidance tools**, and **thematic statements**, as well as through a ground-breaking **resolution** adopted in 2014 in which such violence and related violations were condemned and States were called upon to prevent and investigate such attacks, protect human rights defenders and enact appropriate laws to prohibit and punish this violence.⁸¹ The African Commission further **hosted an unprecedented dialogue** held together with the Inter-American Commission and United Nations human rights experts on this issue.⁸²

Council of Europe institutions have adopted a range of measures to combat violence and discrimination against LGBT and intersex persons, including **recommendations made by the Committee of Ministers in 2010** on measures to combat discrimination on the grounds of sexual orientation and gender identity,⁸³ and the **resolution of the Parliamentary Assembly** adopted in 2015 on discrimination against transgender people in Europe.⁸⁴ Also, in 2015, the Council of Europe Commissioner for Human Rights issued a ground-breaking **report on the human rights of intersex people**.⁸⁵ The Secretariat of the Council of Europe has also established a Sexual Orientation and Gender Identity Unit, which provides **technical support** to member States through, for example **capacity-building** and **awareness-raising activities**, carried out in **partnership with LGBT and intersex civil society organizations**.⁸⁶ The European Court of Human Rights has also built an important body of **jurisprudence** on human rights, sexual orientation⁸⁷ and gender identity.⁸⁸ Other Council of Europe institutions that have addressed violence

⁸¹African Commission on Human and Peoples' Rights, Resolution 275 on protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity, Adopted at the 55th Ordinary Session of the African Commission on Human and Peoples' Rights in Luanda, Angola, 28 April to 12 May 2014.

⁸²OHCHR, "Experts unite to end human rights violations based on sexual orientation and gender identity", 7 April 2016. Available from www.ohchr.org/EN/NewsEvents/Pages/UnitedtoendviolenceLGBTI.aspx.

⁸³Council of Europe Committee of Ministers, Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, 31 March 2010.

⁸⁴Council of Europe Parliamentary Assembly, Resolution 2048 (2015) on discrimination against transgender people in Europe, 22 April 2015.

⁸⁵Council of Europe Commissioner for Human Rights, Human rights and intersex people, Issue paper, (Council of Europe Commissioner of Human Rights, September 2015) Available from [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH/IssuePaper\(2015\)1&Language=lanEnglish&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH/IssuePaper(2015)1&Language=lanEnglish&direct=true).

⁸⁶Council of Europe Sexual Orientation and Gender Identity Unit, <http://www.coe.int/en/web/sogi>.

⁸⁷For example, see European Court of Human Rights, "Factsheet – sexual orientation issues", July 2016. Available from www.echr.coe.int/Documents/FS_Sexual_orientation_ENG.pdf.

⁸⁸For example, see European Court of Human Rights, "Factsheet – gender identity issues", April 2016. Available from www.echr.coe.int/Documents/FS_Gender_identity_ENG.pdf.

and discrimination against LGBT and intersex persons include the Youth Department, the European Commission against Racism and Intolerance, and the Congress of Local and Regional Authorities of the Council of Europe.

National human rights institutions can also play a vital role in facilitating regional debate and reflection among stakeholders on human rights violations based on sexual orientation and gender identity. The South African Human Rights Commission has **convened a regional seminar for NHRIs, regional and national institutions, civil society organizations and human rights defenders** from across the African continent to come up with practical solutions on ending violence and discrimination against persons based on sexual orientation and gender identity and expression.

The Asia-Pacific Forum of National Human Rights Institutions has also carried out a range of activities, including initiatives to **support dialogue** among its member organizations and build their capacity. It has also organized **regional meetings**, adopted a **regional road map** on the role of NHRIs in promoting and protecting human rights pertaining to sexual orientation and gender identity, and **published a manual to guide the work** of NHRIs in combating human rights violations faced by LGBT and intersex people.⁸⁹

The Council of the European Union has issued binding directives **prohibiting employment-related discrimination** on the basis of sexual orientation, and on minimum rights of victims of crimes. It has **published a list of actions** that it plans to implement to advance equality for LGBT and intersex persons, provided **funding for activities undertaken by national authorities and civil society organizations**, conducted **surveys** on the situation of LGBT persons and on public attitudes, implemented awareness-raising activities, and facilitated the **exchange of good practices between member States** on public policy pertaining to combating discrimination on the grounds of sexual orientation and gender identity.⁹⁰

6.12 DATA COLLECTION, MEASUREMENT AND MONITORING

In order to design, implement, monitor the effectiveness and evaluate public policies to combat violence, discrimination and other human rights violations, it is critical to obtain adequate information, including qualitative and quantitative disaggregated data, and relevant human rights indicators.⁹¹

⁸⁹Chris Sidoti, *Promoting and Protecting Human Rights in Relation to Sexual Orientation, Gender Identity and Sex Characteristics: A Manual for National Human Rights Institutions*, (Asia Pacific Forum of National Human Rights Institutions and UNDP, June 2016).

⁹⁰European Commission, "Sexual Orientation and Gender Identity – LGBTI policies, EU action". Available from http://ec.europa.eu/justice/discrimination/orientation/eu-action/index_en.htm.

⁹¹OHCHR, "Human rights Indicators". Available from www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx.

UNDP and the World Bank have highlighted the importance of data to inform public policy to protect the human rights of LGBT and intersex people and increase their inclusion in development.⁹²



This is particularly relevant for combating hate crime (see also section 1.9). The Inter-American Commission on Human Rights has **collected data** and published **a detailed analysis of patterns of violence** perpetrated against LGBT and intersex persons in the Americas, including the **root causes** of such violence.⁹³ In the context of the UNESCO project to address education sector violence, **data on homophobic and transphobic bullying** were collected and analysed **from 94 countries and territories**.⁹⁴

⁹²UNDP and World Bank, Investing in a research revolution for LGBTI inclusion, Working paper (forthcoming) UNDP, Measuring LGBTI inclusion: increasing access to data and building the evidence base, Discussion paper (2016).

⁹³OAS, "IACHR publishes report on violence against lesbian, gay, bisexual, trans, and intersex persons", 7 December 2015. Available from www.oas.org/en/iachr/media_center/PReleases/2015/143.asp.

⁹⁴See UNESCO, Education Sector Responses to Violence based on Sexual Orientation and Gender Identity/Expression (2016) <https://en.unesco.org/themes/homophobic-and-transphobic-violence-education>

The European Union Agency for Fundamental Rights has undertaken a ground-breaking **survey of experiences of violence and discrimination** of more than 93,000 LGBT persons within the European Union. This is the largest survey of its kind to date and has informed public policy at the national and regional level.⁹⁵ The European Commission also **measures public attitudes** towards LGBT people through the Eurobarometer survey.⁹⁶

In the United Kingdom, a survey conducted by the Department of Health **of more than two million people** in England highlighted that lesbian, gay and bisexual people suffer poorer health outcomes and worse experiences with health professionals than heterosexual people, highlighting the need for policies to better target the health needs of this population.

National Human Rights Institutions have also carried out research and collected disaggregated data on patterns of discrimination against LGBT persons (see section 6.4).

Scholars and academic institutions have an important role to play in the generation of **quantitative and qualitative research, data collection and analysis** on the human rights situation of LGBT and intersex persons. In Australia, the University of New England has supported **unprecedented research on the situation of people with intersex variations**, including their demographics and experiences with regard to health, education, employment, social support, relationships, parenting, and representation in the media – the first such study worldwide.

6.13 CASE STUDIES

ARGENTINA – GENDER IDENTITY LAW

In 2012, Argentina adopted pioneering legislation, which established the **right of all persons to recognition of their gender identity, personal development**, in line with their own gender identity, and **to be treated by others, in line with their gender identity**. It establishes a **simple and free administrative process** through the Civil Registry to correct gender markers, names and photos on identity documents and in public records when they are not aligned with a person's self-identified gender identity. The law specifically **prohibits any requirements with regards to surgery, treatment or psychological or medical treatment** to obtain such

⁹⁵European Union Fundamental Rights Agency, European Union lesbian, gay, bisexual and transgender survey: results at a glance (Luxembourg: European Union, May 2013). Available from <http://fra.europa.eu/en/publication/2013/eu-lgbt-survey-europe-an-union-lesbian-gay-bisexual-and-transgender-survey-results>.

⁹⁶European Commission, Special Eurobarometer 437, "Discrimination in the EU in 2015", October 2015. Available from <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2077>.

recognition. It also enshrines the right to be treated with dignity, and stipulates that all public and private actors must respect a person's gender identity, including their self-identified name, regardless of whether this aligns with the information on their national identity document.

The law stipulates that no existing rights or obligations are to be affected by such changes, including those relating to family law, such as adoption, and also establishes measures to protect the privacy of the individuals concerned.

The law also establishes the **right of all adults to access, should they wish to, partial or comprehensive hormonal treatment and surgery** to adjust their bodies, in line with their gender identity, as part of their right to comprehensive health, and on the basis of their informed consent. No-one is required to undergo such procedures in order to obtain recognition of their gender identity. The law also explicitly **rejects a link between surgery and hormonal treatment**, so that individuals may access, should they wish to, hormonal treatment only. Such procedures are mandated to be **included in the basic national public health insurance scheme**.

The law establishes the **right for minors to have their gender identity legally recognized** through their legal representative, on the basis of the **express consent of the minor**, taking into account the **evolving capacities and best interests of the child**, in line with the provisions of the Convention on the Rights of the Child. Minors have the right to **support from a specialized lawyer** throughout this process. The law further establishes that minors may access, on the same basis, medical treatment, with courts tasked with reviewing requests for surgeries on minors, **in line with national and international standards on the protection of the rights of the child**.

KENYA – KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

The Kenya National Commission on Human Rights published a **report on sexual and reproductive health rights**, which reflects the results of a national inquiry on the subject. The report contains a **chapter dedicated to sexual minorities. The chapter includes subsections on lesbian, gay, bisexual, transgender and intersex persons**. These subsections shed light on the different contexts in which LGBT and intersex people face discrimination, stigma and violence. The report **recommends the repeal** of discriminatory laws that criminalize diverse sexual orientations and gender identities.

The Commission has also engaged in other related activities, such as preparing and submitting an **amicus curiae brief** in a case involving an intersex person that advocated for better protection for the rights of intersex persons. In submissions to the UPR, the Commission has called on the Government to adopt legislation that prohibits discrimination on the basis of sexual orientation and gender identity, and to repeal laws that criminalize consensual relations between adults of the same sex.

MEXICO – PROTOCOL FOR JUDICIAL ACTORS ON SEXUAL ORIENTATION AND GENDER IDENTITY

A common issue faced by LGBT and intersex people is that discriminatory practices hinder their access to justice. Among these practices: are lack of priority assigned to cases based on sexual orientation, gender identity or sex characteristics; reluctance to open a line of inquiry into a case that fully takes into account possible discriminatory or hate-crime elements; and prejudice on the part of law enforcement officers or state officials. In some States, the justice system is plagued by misconceptions about LGBT and intersex people that are often directly linked to the above-mentioned issues.

In 2014, the Supreme Court of Mexico **issued a protocol** that offers **clarification and guiding principles** to judges and other judicial officials for the adjudication of cases involving sexual orientation and gender identity, and to some extent also bodily diversity. The protocol, while not legally binding, is a strong affirmation from the highest level of the judiciary of the legal protection available to LGBT and intersex people. It **identifies common harmful stereotypes and misconceptions**, which may hinder access to justice in various sectors, including gender identity recognition, family life and relationships, employment, the criminal system, health, education, deprivation of liberty, and freedom of expression and association. The protocol provides the judiciary with a set of tools to effectively resolve cases involving issues of sexual orientation and gender identity, equipping judges with the competencies necessary to identify and eliminate stereotypes and social misconceptions from the decision-making process and ensure access to justice to LGBT and intersex persons, free from discrimination.

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS SURVEY

In acknowledgement of the lack of comparable data on the respect, protection and fulfilment of the fundamental rights of LGBT people in the European Union, the European Agency for Fundamental Rights undertook a **major research project** in 2012 that aimed to provide some clarity and address knowledge gaps. An **online survey, which documented the experiences of 93,079 LGBT people**, revealed the patterns of discrimination, violence and harassment LGBT persons routinely face in employment, education, health care, housing and other areas on account of their sexual orientation or gender identity. A quarter of all respondents had been attacked or threatened with violence in the previous five years. The findings, published in 2014 (including a

document focusing specifically on the situation of transgender persons), also identified concerns pertaining to reporting violence to law enforcement authorities.⁹⁷ The findings have **fed into the development of European Union and national policies.**

MALTA: CONSULTATIVE BODY ON THE RIGHTS OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE

In 2013, the Minister for Social Dialogue and Consumer Affairs of Malta **established the Advisory Council on LGBT Affairs**, an **independent consultative body** tasked with extending advice on Government matters relating to the rights of LGBT people. In particular, the Council was charged with **drafting and reviewing legislation** that impacts on the LGBT community in Malta. It provided advice **on a bill** to amend the Civil Code to enable any person who has undergone gender reassignment surgery to marry a person of another sex and was also involved in the **drafting** of the Civil Unions Act, adopted in 2014, which allows for same-sex civil unions. A key feature of the Council is that it is **comprised of representatives of local civil society organizations** that work specifically on the rights of LGBT and intersex persons, which facilitates the engagement of key stakeholders in the policymaking process, ensuring that **those most affected are able to input into policy development.**

MONTENEGRO: STRATEGY FOR IMPROVING THE QUALITY OF LIFE OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER PERSONS

The Government of Montenegro established an **Anti-Discrimination Council** in 2012, which is tasked with combating all forms discrimination and promoting national non-discrimination policies. The Council has addressed the rights of LGBT people and in 2013, it drafted the **“Strategy for improving the quality of life of LGBT persons”**, which was adopted for the period 2013 to 2018. The drafting of the strategy involved **consultations with LGBT people** in order **to identify priority issues** to be addressed. The strategy focuses particularly on problems in the contexts of education, societal attitudes, law enforcement, health care, media, sports, the economy and tourism.

⁹⁷European Agency for Fundamental Rights, EU LGBT survey - European Union lesbian, gay, bisexual and transgender survey: main results, October 2014. Available from http://fra.europa.eu/sites/default/files/fra-eu-lgbt-survey-main-results_tk3113640enc_1.pdf. European Agency for Fundamental Rights, Being trans in the EU - comparative analysis of the EU LGBT survey data, December 2014. Available from <http://fra.europa.eu/en/publication/2014/being-trans-eu-comparative-analysis-eu-lgbt-survey-data>.



CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS AND RECOMMENDATIONS

The examples of State practice identified in this report results in five broad conclusions.

First, a growing number of States, national human rights institutions, local authorities and other stakeholders in all regions are taking steps to implement their obligations and responsibilities under international human rights law to address violence, discrimination and related human rights violations against LGBT and intersex people. Such initiatives are highly varied, with States taking different approaches that are adapted to their context.

Second, while progress is clearly significant, and is evident in all regions in recent years, it is patchy and uneven. There have been an increasing number of initiatives aimed at addressing human rights violations on the basis of sexual orientation, even though many challenges remain in this area. There are fewer initiatives to protect transgender people from human rights violations. Only a handful of States have initiated steps to address human rights violations against intersex people. States that have not already done so should, therefore, take more concerted steps to tackle violence and discrimination against transgender and intersex people, while continuing to address human rights violations against lesbian, gay and bisexual people.

Third, challenges and gaps are also apparent in several areas. This includes: the limited number of countries establishing protective measures to combat **hate crime** and **hate speech** on the basis of sexual orientation, gender identity and sex characteristics; the **slow pace of legal reform in relation to repealing discriminatory laws**; and the **broadening or adopting of new discriminatory legislation by a number of countries**. Other concerns include **the prevalence of abusive requirements for recognition of the gender identity of transgender persons**, the **situation of trans persons in detention**, the limited number of initiatives to combat ill treatment of LGBT and intersex persons in **medical settings**, and the continued **pathologization** in some countries of same-sex attraction, transgender identities and intersex bodies.

Fourth, data on the effectiveness and impact of State initiatives in this area are scant, and does not generally allow for an evaluation of individual “good practice”. This suggests that States should place greater emphasis, in partnership with LGBT and intersex organizations, on monitoring the impact and effectiveness of measures being taken to combat violence and discrimination. This is particularly relevant in the context of ensuring that LGBT and intersex persons benefit and are included in efforts to achieve the Sustainable Development Goals, which are centred around the commitment to “leave no one behind”.

Finally, drawing on the analysis of examples of State practices identified in this report, **several general elements of good practice, as well as approaches to address identified gaps and challenges, have emerged with regard to State implementation of its obligations** under international human rights law to combat violence and discrimination against LGBT and intersex persons. The following recommendations are based on these elements, and should be read together with recommendations to States and other stakeholders made by United Nations human rights mechanisms and other entities.⁹⁸

A. ADOPTING PROTECTIVE LAWS

- **Prohibit discrimination against LGBT and intersex persons:** States should put in place or amend existing anti-discrimination legislation to ensure that discrimination on the basis of actual or perceived sexual orientation, gender identity and expression and sex characteristics is legally prohibited in all contexts, including in education, employment, health care, housing, social protection, criminal justice, and in asylum and detention settings. Legislation should cover actions by both State officials and private actors.
- **Hate crime and hate speech legislation:** States should enact legislation that prohibits incitement of hatred and violence on the grounds of sexual orientation, gender identity or expression and sex characteristics, and hate crime laws that treat discrimination on these grounds as aggravating factors for purposes of sentencing.
- **Legal recognition of gender identity:** States should provide a straightforward administrative process to officially recognize the self-identified gender identity and name of transgender persons through a simple declaration without such requirements as medical certification or diagnosis, surgery or medical treatment, divorce or sterilization. This process should include the ability to obtain new official documents reflecting self-identified gender, first name, gender marker and appearance. State officials should receive training on respectful, non-discriminatory treatment of transgender persons – even in cases in which they have not obtained legal recognition of their gender identity, particularly when accessing public services, in contact with law enforcement officials, and in detention. Legislation should allow for recognition of non-binary gender identities. Minors should have access to recognition of their gender identity. Safeguards for minors should not be discriminatory or disproportionate, and should respect the rights enshrined in the Convention on the Rights of the Child.

⁹⁸See, among others the 2011 and 2015 reports of the High Commissioner to the Human Rights Council and other documents listed in annex I.

- **Legal recognition of same-sex couples and their children:** States should ensure legal recognition and protection of same-sex couples and their children. They should also ensure that they are not discriminated against by public and private actors in relation to benefits and entitlements traditionally accorded to different sex couples and their children, including in the context of taxation, pension, inheritance, custody, health care, insurance, child support and parental leave.

B. REPEALING DISCRIMINATORY LAWS

- **Decriminalize consensual same-sex relationships:** States should repeal all legislation that criminalizes private, adult, consensual same-sex sexual conduct and other legislation used to criminalize individuals based on their actual or perceived sexual orientation.
- **Decriminalize transgender gender expression:** States should repeal all legislation that criminalizes transgender persons based on their gender identity or expression, including laws used to punish cross-dressing and so-called “imitation of the opposite sex” or that place other limitations on people’s right to express their gender identity through dress, speech or mannerisms, or that prevent access to gender-affirming medical treatment.
- **Repeal other discriminatory laws:** States should review and repeal other laws used to arrest, punish and harass persons on the basis of their sexual orientation, gender identity and expression, including by removing ambiguous, vague, undefined and unsound concepts, such as “crimes against nature”, “unnatural offences”, “offences against morality”, “debauchery”, “indecent acts” and “grave scandal”, that are applied in a discriminatory manner to LGBT persons.
- **Repeal so-called “anti-propaganda” laws:** States should repeal laws that impose discriminatory restrictions on freedom of expression, association and peaceful assembly on the basis of sexual orientation or gender identity, or that place restrictions on the publication of or access to information on the basis of references to LGBT persons or sexual orientation, gender identity or expression. This includes restrictions on the access of minors to age-appropriate information about sexual orientation and gender identity or expression.
- **Moratorium:** Pending review of discriminatory laws, States should order an immediate moratorium on the prosecution of LGBT persons on the basis of any such laws.

- **Legislative review:** Review and repeal of legislation may be carried out through specific laws enacted by the legislature, or through a review of criminal codes to bring them in line with State obligations under international human rights law and treaties that the State concerned has ratified.
- **Judicial review:** Review and repeal of legislation may take place through judicial review. Good practice includes courts examining the compatibility of the impugned provisions of the criminal code or other legislation with constitutional human rights safeguards and State obligations under ratified treaties and international human rights standards.
- **Criminal records:** The criminal records of individuals who have been convicted of offences on the basis of their actual or perceived sexual orientation or gender identity or expression should be expunged of such convictions. The suffering caused by the use of criminal law against LGBT persons in this manner should be acknowledged officially.

C. ADDRESSING DIVERSITY AND SPECIFIC POPULATIONS

- **Diversity and multiple and intersecting forms of discrimination:** Policies and programmes should recognize and address the diversity of LGBT and intersex people, including with regard to multiple and intersecting forms of discrimination based on such factors as sex, race, ethnicity, age, religion, poverty, migration, disability and health. Qualitative and quantitative research should be carried out to identify specific groups of people among the LGBT and intersex population that face higher levels or are more vulnerable to violence, discrimination and other human rights violations. The outcomes of such research should be used in formulating priorities for action.
- **Specific populations:** Within the framework of comprehensive strategies, specific sets of action are required to prevent and address the distinct human rights violations faced by different populations, including transgender persons, intersex persons, lesbian and bisexual women, gay and bisexual men, non-binary people.

D. STRATEGIC APPROACHES

- **Leadership:** Senior State officials and political, religious, cultural and other leaders should deliver consistent public messages supporting equal rights for LGBT and intersex persons, committing to combating the discrimination and violence that they face, and condemning acts of violence and discrimination when they occur.
- **Comprehensive approach, national action plans/strategies:** States should establish comprehensive action plans or strategies that set out measures to be implemented to ensure equal protection and fulfilment of the human rights of all LGBT and intersex persons. Such plans/strategies may be specific to the LGBT and intersex population or encompass a broader human rights or anti-discrimination strategy that fully integrates the LGBT and intersex population. Such plans should reflect recommendations made by United Nations human rights mechanisms and also include specific measures relating to transgender persons and intersex persons. Such plans should ensure coordination and integrate necessary measures by different State entities, including relevant line ministries, national, provincial and local authorities and national human rights institutions. Given the interconnected nature of human rights violations, such plans/strategies should address violence, torture and ill treatment and include measures to repeal discriminatory legislation, prohibit discrimination, combat discriminatory practices and protect the freedom of expression, association and peaceful assembly of LGBT and intersex persons.
- **Consultation with and support to LGBT and intersex people, community representatives and civil society organizations:** LGBT and intersex people, community representatives, civil society organizations and human rights defenders should be systematically supported, consulted and engaged as partners in the development, monitoring and implementation of strategies, laws, policies, programmes and campaigns that affect or relate to their rights. A good practice is the establishment of consultative bodies to guide and monitor such processes on a standing basis and/or in relation to specific legislative or policy initiatives. Participation in such bodies should reflect the diversity of the LGBT and intersex population.
- **Data, monitoring and evaluation:** States should collect data and monitor and evaluate the impact and effectiveness of laws, policies and programmes established to combat violence and discrimination faced by LGBT and intersex persons in a transparent manner, in close consultation and partnership with LGBT and intersex civil society organizations. Data should be disaggregated based on, sexual orientation, gender identity and sex characteristics and other relevant characteristics, including factors of multiple forms of discrimination. Results of monitoring and evaluation efforts should be available to the general public. States should

ensure the following: the data collection methodology should be in line with international human rights standards, including being based on informed consent, self-identification, confidential treatment of information and protection of the privacy and safety of participants.

- **Public education and campaigns:** States should develop anti-discrimination and awareness- raising campaigns relating to violence, discrimination and the range of human rights violations faced by LGBT and intersex persons, to sensitize the general public and public officials, to combat stigma, discriminatory attitudes and harmful stereotypes, and to promote the equal enjoyment of human rights by all persons, including LGBT and intersex persons. Such campaigns may be stand-alone campaigns, or be integrated in broader campaigns against discrimination on multiple grounds. Campaigns should raise awareness of protective legislation and mechanisms for reporting human rights violations and accessing remedy.
- **Role of the judiciary, accountability and remedy for violations:** State officials, including the judiciary and law enforcement officials, should ensure that human rights violations against LGBT and intersex persons are systematically investigated, alleged perpetrators are prosecuted and victims are provided with access to effective remedy, including when violations take place in detention and medical settings, and/or when abuses are committed by or with the complicity of State agents. Areas in which there are obstacles to obtaining effective remedy should be identified and steps should be taken to overcome them.
- **Role of parliamentarians:** Parliamentarians have a critical role to play in repealing discriminatory legislation, adopting protective laws, holding inquiries on human rights violations, consulting with LGBT and intersex people, speaking out against violations and supporting effective and independent NHRIs.
- **Role of national human rights institutions:** NHRIs should use the full extent of their mandates to investigate and report on individual and systematic human rights violations against LGBT and intersex people, apply their quasi-judicial powers to ensure accountability for perpetrators and effective remedy for victims, educate the general public about human rights and organize other activities to promote the human rights of LGBT and intersex people and combat the discriminatory attitudes and the human rights violations that they face.
- **Cooperation:** States, subnational entities and NHRIs should cooperate with peers to exchange experiences and good practices and support collective efforts to address violence and discrimination against LGBT and intersex persons, including through relevant intergovernmental bodies and collaboration with regional organizations and United Nations entities.

E. PROTECTING LGBT AND INTERSEX PERSONS FROM VIOLENCE

- **Investigation and prosecution:** States should ensure that allegations of violent acts and incitement to hatred and violence against individuals on the grounds of their sexual orientation, gender identity, gender expression or sex characteristics and against human rights defenders working on the protection of the rights of LGBT and intersex people are adequately investigated, alleged perpetrators prosecuted, and, in line with international human rights standards, if found culpable following due process, sentenced accordingly. Good practice includes establishing dedicated units or teams assigned to investigating and/or prosecuting hate crimes that also address hate crimes against LGBT and intersex persons.
- **Remedy:** States should ensure that LGBT and intersex victims of violence have access to effective remedy, legal aid, specialist medical and psychological attention and other support services.
- **Safety and protection measures:** States should ensure that safety and protection measures are available to LGBT and intersex victims of violence or those who face threats of violence. Shelters established for that purpose should also be safe and welcoming and provide discrimination-free spaces for LGBT and intersex people.
- **Training and guidance for judicial and law enforcement officials:** Judicial and law enforcement officials should receive training on human rights, including on respect for the rights of LGBT and intersex persons. Good practice includes the elaboration of guidance tools for police and judicial operators on investigating, prosecuting and judging cases of violence against LGBT and intersex persons, and on protection and respect for the rights of LGBT and intersex victims of violence.
- **Prohibit so-called “panic” defence:** Legislation should be reviewed and guidance provided to judicial officials to remove the possibility for the sexual orientation or gender identity or expression of the victim to be considered a so-called “provocation” that reduces responsibility of perpetrators in cases of hate crime against LGBT persons (see section 1.8).
- **Public education campaigns:** Specific public education campaigns should be established to raise awareness of violence and hate crime against LGBT and intersex persons, combat prejudice and discriminatory attitudes that drive such violence and publicize reporting, support and safety mechanisms (see also D).

- **Reporting mechanisms:** States should establish specific reporting mechanisms, including hotlines, online reporting tools, community reporting mechanisms, police diversity focal points and anonymous reporting tools to facilitate the reporting of allegations of acts of violence against LGBT and intersex people, address underreporting, and provide information on support and safety mechanisms to victims of violence.
- **Data on violence and hate crime:** Data should be collected on such violence and hate crimes, including disaggregation by sexual orientation, gender identity and sex characteristics, with data collection in line with human rights standards (see also D). Data collection should be carried out in collaboration with LGBT and intersex civil society organizations. One possible modality is to combine data from State-based reporting mechanisms with data collected through surveys on experiences of violence and hate crime conducted by civil society organizations. Data should also be collected on prosecutions and convictions of alleged perpetrators. It is important to analyse data with the objective to, for example, identify patterns of impunity as well as underreporting. The results of such data collection practices should be made available to the public. It should also be used to formulate policies to prevent such violence and provide support and redress to victims.
- **Bullying:** States should take measures to protect LGBT and intersex students, staff and teachers from bullying and harassment in schools by introducing curricula and teaching and learning resources that are inclusive of LGBT and intersex people, training for teachers and staff and mechanisms for victims of bullying to safely report any incidents and receive appropriate remedies (see section 1.6).
- **Asylum and refuge:** States must ensure that people fleeing persecution on grounds of their sexual orientation, gender identity or expression or sex characteristics are not returned to a place where their life or freedom would be threatened, asylum laws and policies should recognize that persecution on such grounds may be a valid basis for an asylum claim, intrusive, inappropriate questioning on asylum applicants' sexual histories, identity or bodies should be prohibited, and refugee and asylum personnel should receive adequate training.

F. PREVENTING TORTURE AND CRUEL, INHUMAN AND DEGRADING TREATMENT

- **Medical settings:** Medical personnel should receive training on how to ensure respect for the human rights of LGBT and intersex persons, including their dignity, autonomy and physical and psychological integrity.

- **Medical guidance, standards and classifications:** (see also G). Medical guidance and standards should be revised to ensure that being a lesbian, gay, bisexual, transgender or intersex person is not considered a pathology or a medical condition. Any requirement that LGBT and intersex people need to be treated, cured or suppressed on the basis of their sexual orientation, gender identity or expression, or sex characteristics should be prohibited and removed.
- **Detention settings:** Law enforcement and prison officials should establish clear policies and guidelines to protect LGBT and intersex people from violence and discrimination in detention settings, in line with international human rights law standards, including with regard to arrest and police custody, interrogations, allocation, searches, protection from inmate violence, isolation and solitary confinement as protective measures, and access to services and benefits.
- **Monitoring and prevention:** National Prevention Mechanisms and similar mechanisms should address the specific situation of LGBT and intersex detainees in their monitoring visits and prevention work, in line with recommendations of the United Nations Subcommittee on Prevention of Torture.
- **Complaints mechanisms:** Complaints mechanisms should be established that provide safe and confidential avenues for LGBT and intersex persons to report instances of abuse. This may include hotlines that, in addition to serving as formal complaints mechanisms, facilitate access of detainees to civil society organizations that are also able to register complaints and provide support.
- **Transgender detainees:** Allocation and treatment of transgender detainees should be made on the basis of the detainee's self-identified gender – not birth sex, gender markers on official documents, surgery, medical treatment or diagnostic. Decisions on allocation should be made on a case-by-case basis, in consultation with the detainee. Officials should use the name and pronouns preferred by the detainee. Transgender detainees should be free to express their self-identified gender, including through their choice of clothing. They should be able to choose the gender of officers carrying out any searches, including on specific body parts. Good practice includes establishing a specific care plan that encompasses all aspects of life in detention, including access to gender-affirming treatment and other health services related to the specific health needs of transgender detainees.
- **Segregation, isolation or solitary confinement:** Any segregation or isolation measures proposed as protective measures should only be applied with the free and informed consent of LGBT and intersex detainees. Such measures should only be taken as a last resort, in exceptional circumstances, for the shortest possible time, and with adequate safeguards. Such measures should not be punitive in intent or effect, nor should they reduce access to

services, education, social, sports, employment and other opportunities for detainees. Other measures should be explored to guarantee the safety of LGBT and intersex detainees without resorting to isolation or solitary confinement. The impact of such measures should be carefully and continuously monitored and evaluated, in consultation with LGBT and intersex detainees and relevant monitoring bodies and civil society organizations.

- **Training for prison and law enforcement officials:** Officials should receive training on implementing the range of measures required to protect the human rights and dignity of LGBT and intersex detainees.
- **Access to services:** LGBT and intersex detainees should have access to medical care adapted to their needs, counselling, education, employment and other services and opportunities, without discrimination.
- **Records:** Authorities should maintain and publish disaggregated statistics on arrests and detention of LGBT and intersex persons.
- **Asylum and refuge policy:** State authorities should prohibit inappropriate and intrusive questioning, including methods that require asylum applicants to “prove” their sexual orientation, gender identity or sex characteristics, and reform policies, in line with international human rights standards on refuge and asylum (see also section E).

G. PROTECTING PERSONS FROM DISCRIMINATION

- **Training and guidance for officials:** All public officials should receive training and guidance on non-discrimination standards pertaining to sexual orientation, gender identity and expression, and sex characteristics.
- **Complaints and reporting mechanisms:** States should establish complaints mechanisms for persons to be able to report allegations of discrimination, including those based on sexual orientation, gender identity or expression and sex characteristics.
- **Accountability:** States should ensure that perpetrators of discriminatory acts are held accountable for their actions, including through prosecution, as appropriate, and victims of discriminatory acts, including those based on sexual orientation, gender identity or expression and sex characteristics, should have access to effective remedy.
- **Data:** Disaggregated data should be collected and reported publically on incidents and patterns of discrimination based on sexual orientation, gender identity or expression and sex

characteristics, including through official complaints mechanisms and population surveys. Such data should inform State efforts to combat such discrimination by identifying areas requiring specific attention.

- **Health:** States should ensure that LGBT and intersex persons have equal access to health-care facilities, goods and services, including those that focus on sexual and reproductive health. Training should be provided to health workers on respecting the human rights of LGBT and intersex persons, including the rights to dignity, privacy, autonomy and physical and psychological integrity, and to increase awareness of the health needs of LGBT and intersex persons, including in the areas of sexual and reproductive health and rights, mental health, HIV prevention and treatment and trauma counselling. Good practice includes establishing health-care protocols to address the specific health needs of LGBT and intersex persons in line with international human rights standards. Access to health care should not be predicated on the use of stigmatizing or pathologizing diagnostic categories.
- **Medical classifications:** International and national medical classifications should be reformed to remove pathologizing and stigmatizing categories, particularly relating to transgender and intersex persons. National classifications that still pathologize same-sex attraction should be likewise reformed.
- **Education:** States should review their national curriculum to combat harmful stereotypes based on gender, sexual orientation, gender identity and expression and sex characteristics. The curriculum should enshrine the principle of non-discrimination and integrate human rights education. Non-discrimination campaigns and standards should be developed and applied within the context of education to combat discrimination and violence, including bullying, faced by children and youth on the basis of their actual or perceived sexual orientation, gender identity or expression or sex characteristics, or on the basis of gender non-conformity. Data on incidents of discrimination should be collected and reported. States should also ensure that children and youth receive comprehensive, age-appropriate sexuality education that includes information on sexual orientation, gender identity and expression and sex characteristics.
- **Housing:** States should ensure that everyone has access to adequate housing without discrimination on the basis of actual or perceived sexual orientation, gender identity or expression and sex characteristics and integrate this principle within housing policies and legislation governing the housing sector. States should combat discrimination on these factors in the housing sector and adopt measures to address the specific vulnerability of LGBT, intersex and gender non-conforming persons, particularly youth, to homelessness. This includes supporting effective protection mechanisms, ensuring safe and non-discriminatory spaces for such youth in shelters and addressing the underlying factors of this vulnerability, including violence and discrimination within family and community settings.

- **Employment:** States should ensure that LGBT and intersex persons are protected from discrimination in the workplace by amending, when necessary, relevant legislation governing both public and private sector employment. Good practice includes ensuring that public sector employers act as models in terms of prohibiting and combating such discrimination, including through relevant training for employees and the adoption of internal non-discrimination policies and initiatives, and working with private sector employers and civil society organizations to elaborate guidelines and initiatives to raise awareness and combat such discrimination. It is also important to establish specific guidelines for protecting transgender persons in the workplace, in the context of transition.
- **Social protection:** States should ensure that LGBT and intersex persons do not face discrimination in accessing social protection. Good practice includes specific initiatives to ensure access to social protection mechanisms relating to education, employment and social assistance for people in particularly marginalized situations, including LGBT and intersex persons in such situations.
- **Youth:** Special attention and care should be given to ensuring protection of the rights of lesbian, gay, bisexual, transgender and gender non-conforming and intersex children and youth and to addressing the range of abuses that they face, including bullying, homelessness, violence and discrimination at home, in schools and in medical settings. Trans youth should have access to recognition of their gender identity, in line with international human rights standards relating to the rights of the child (see also A).

H. PROTECTING FREEDOM OF EXPRESSION, ASSOCIATION AND PEACEFUL ASSEMBLY

- **No abusive restrictions:** States should not abuse notions of national security, public order, public health and morals to establish or apply discriminatory restrictions of the rights of LGBT and intersex persons to freedom of expression, peaceful assembly and association. The application of any restrictions should be strictly governed by international human rights law and the recommendations of United Nations human rights mechanisms, including the Human Rights Committee and the Special Rapporteurs on freedom of expression and peaceful assembly and association.

- **Freedom of expression:** States should actively uphold the right to freedom of expression without discrimination, including as it relates to public expression or opinion on issues relating to sexual orientation and gender identity. Restrictions to freedom of expression related to prohibiting incitement to violence or hatred against certain groups may be legitimate and proportionate under international human rights laws (see also A).
- **Freedom of association:** States should provide legal registration of LGBT and intersex organizations that request such registration, without discrimination. States should also refrain from interfering in the legitimate human rights work of such organizations. Good practice includes dialogue and partnerships between States and civil society organizations working on the protection of the rights of LGBT and intersex persons, and systematic consultations of civil society organizations pertaining to legislation and policies that affect the rights of LGBT and intersex persons (see also D). Courts have also played a particularly important role in upholding freedom of association for organizations working on the rights of LGBT and intersex persons and protecting them from arbitrary and discriminatory interference in their legitimate activities.
- **Freedom of peaceful assembly:** States should ensure that peaceful assemblies, including demonstrations and events relating to sexual orientation, gender identity and expression and sex characteristics, such as Pride events, are permitted to take place free from interference and aggression by either State authorities or non-State actors. Good practice in this regard includes collaborating closely with LGBT and intersex organizations in the planning and security for such events, particularly in situations in which there is accrued risk of violent attacks, and participation and the expression of support by senior public officials in such events. Training should be provided to law enforcement officials engaged in protecting such assemblies on respect for the human rights of LGBT and intersex persons.
- **Protect LGBT and intersex human rights defenders:** States should protect human rights defenders, including those working on issues relating to sexual orientation, gender identity, gender expression and sex characteristics, from violence and discrimination, and establish effective protection measures in situations in which they face threats on account of their human rights work. States should refrain from attacks or interference on the work of human rights defenders. Good practice includes public expressions of support for the work of human rights defenders, including those working in this thematic area.



UNITED NATIONS SUPPORT

UNITED NATIONS SUPPORT

In recent years, agencies operating across the United Nations system have increasingly integrated concern for the rights and welfare of LGBT and intersex people into their policy and programmatic work – including in the areas of health, education, employment, gender equality, sexual and reproductive health and rights, rule of law, detention, humanitarian assistance, development, HIV and AIDS, refuge and asylum, human rights and child rights.⁹⁹ United Nations agencies are actively engaging with Governments, legislatures, judiciaries, national human rights institutions and civil society with a view to strengthening the legal framework at the national level and building capacity to provide protection of marginalized and at-risk communities on the ground. The United Nations is also working to raise public awareness through the OHCHR-led Free & Equal initiative, a global multimedia campaign for LGBT and intersex equality.

On 29 September 2015, twelve United Nations entities: International Labour Organization; Office of the United Nations High Commissioner for Human Rights; Joint United Nations Programme on HIV/AIDS; United Nations Development Programme; United Nations Educational, Scientific and Cultural Organization; United Nations Population Fund; Office of the United Nations High Commissioner for Refugees; United Nations Children’s Fund; United Nations Office on Drugs and Crime; United Nations Entity for Gender Equality and the Empowerment of Women; World Food Programme; and World Health Organization, released an unprecedented joint statement calling for an end to violence and discrimination against lesbian, gay, bisexual, transgender and intersex people.

The statement is a powerful call to action to States to do more to protect LGBT and intersex people from violence, torture and ill treatment and discrimination and to repeal laws that discriminate against individuals based on sexual orientation and gender identity. It is also a reflection of the strength of commitment shared by United Nations agencies across the system. In the statement, the twelve entities commit themselves to supporting and assisting Member States and other stakeholders as they work to address key challenges outlined in the statement, including through constitutional, legislative and policy changes, strengthening of national institutions, and education, training and other initiatives to respect, protect, promote and fulfil the human rights of all LGBT and intersex people.

On 30 June 2016, the United Nations Human Rights Council created the mandate of an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. The Independent Expert, who was appointed by the Council in September 2016, is, among other duties, mandated to assess the implementation of existing international human rights instruments, identify best practices and gaps, engage in dialogue and work in cooperation with

⁹⁹OHCHR produces an annual summary of the work of United Nations system organizations on combatting discrimination and violence against individuals based on sexual orientation and gender identity. The latest summary is available from www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNSystem.aspx

States and other stakeholders, and conduct, facilitate and support the provision of advisory services, technical assistance, capacity-building and international cooperation in support of national efforts to combat violence and discrimination against persons on the basis of their sexual orientation or gender identity.

Further information on the work of the United Nations to combat violence and discrimination against LGBT and intersex people is available in annex I.



ANNEX I FURTHER READING

ANNEX I: FURTHER READING

OHCHR website on combating violence and discrimination based on sexual orientation and gender identity. Available from: www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx.

United Nations High Commissioner for Human Rights reports to the Human Rights Council on discrimination and violence against individuals based on their sexual orientation and gender identity, 2011 and 2015. Available from: <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNReports.aspx>.

United Nations Human Rights Council resolutions on human rights, sexual orientation and gender identity, 2011, 2014 and 2016. Available from: www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNResolutions.aspx.

OHCHR Expert Meeting on Ending Human Rights Violations against Intersex Persons and Factsheet on the Human Rights of Intersex Persons, September 2015. Available from: www.ohchr.org/EN/NewsEvents/Pages/Astepforwardforintersexvisibility.aspx and www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTFactSheets.aspx.

Joint United Nations statement on ending violence and discrimination against LGBT and intersex persons. September 2015. Available from: www.ohchr.org/EN/Issues/Discrimination/Pages/JointLGBTStatement.aspx.

The Role of the United Nations in Combatting Discrimination and Violence against Individuals Based on Sexual Orientation and Gender Identity - A Programmatic Overview of the work of United Nations entities, November 2015. Available from: www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNSystem.aspx.

Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Laws, 2012 (Update forthcoming, estimated release first half of 2017). Available from: <http://www.ohchr.org/EN/Issues/Discrimination/Pages/BornFreeEqualBooklet.aspx>

United Nations Free & Equal campaign. Available from: <https://www.unfe.org>.

United Nations Free & Equal campaign factsheets, Available from: <https://www.unfe.org/fact-sheets>



ANNEX II REFERENCES TO COUNTRY EXAMPLES

ANNEX II: FURTHER READING

Inclusion of examples does not imply that they constitute good practice nor that they are endorsed by the Office of the High Commissioner for Human Rights. Examples are included in the order in which they appear in the text. There may be several references to one country in the same section, which are listed under one entry, in the order in which they appear.

| | |
|--|---|
| 1 PROTECTING PEOPLE FROM VIOLENCE | |
| 1.2 Leadership, strategic approach and participation | |
| South Africa | National Intervention Strategy for Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Sector, www.gov.za/sites/www.gov.za/files/2014_doj_national_intervention_strategy_lgbti_sector.pdf |
| United Kingdom | Hate Crime Operational Guidance Manual, www.report-it.org.uk/files/hate_crime_operational_guidance.pdf |
| Plurinational State of Bolivia | Plan Nacional de Acción de Derechos Humanos 2014–2018 www.justicia.gob.bo/index.php/inicio/1199 |
| 1.3 Public awareness-raising campaigns | |
| Brazil | Brasil Sem Homofobia- Programa de Combate à Violência e à Discriminação contra GLTB e de Promoção da Cidadania Homossexual, www.adolescencia.org.br/upl/ckfinder/files/pdf/Brasil_sem_homofobia.pdf |
| Belgium | (Flanders) Brochures that raise awareness of the issues faced by lesbian, gay, bisexual and transgender people. www.gelijkekansen.be/Praktisch/Publicaties/Publicatiesholebi.aspx |
| Thailand | School Rainbow campaign, www.en.schoolrainbow.org/about/ |
| Mexico | Consejo para Prevenir y Eliminar la Discriminación de la Ciudad de México, "Transformando la CDMX", http://copred.cdmx.gob.mx/comunicacion-social-y-prensa/campanas-de-difusion/transformando-la-cdmx/ |
| United Kingdom | Wipe Out Transphobia, www.wipeouttransphobia.com/ |
| 1.4 Training for law enforcement personnel | |
| Denmark | DIHR: Tracing and Tackling Hate Crime against LGBT Persons, http://old.ilga-europe.org/home/issues/hate_crime_hate_speech/projects/dihr |
| Bosnia and Herzegovina | Sarajevo Open Centre, http://soc.ba/en/first-education-of-police-officers-on-the-protection-of-the-human-rights-of-LGBT-persons-in-bih/ |
| Montenegro | Ministry of the Interior and LGBT Forum Progres, "Police, Tolerance and Accepting Identities", 2013, www.mpa.gov.me/ResourceManager/FileDownload.aspx?rid=153602&rType=2&file=prirucnik_web.pdf |
| Belgium | Belgian Federal Police, Direction Générale de l'Appui et de la Gestion, Transgender Working Group, http://polsupport.be/AspxV02/Main/MainMenu.aspx?Menu=48410 |
| 1.6 Measures to address education sector violence and bullying | |
| Philippines | Philippines Department of Education, Implementing rules and regulations of republic act no. 10627, otherwise known as the Anti-Bullying Act of 2013, www.gov.ph/downloads/2013/12dec/20131213-IRR-RA-10627-BSA.pdf |
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“There have been many recent advances in the protection of the rights of lesbian, gay, bisexual, transgender and intersex people – including the introduction of new anti-discrimination and hate crime laws; legal recognition of same-sex relationships; protection of intersex children; and changes that make it easier for transgender people to have their gender identity legally recognized. Even so, LGBT and intersex people in all regions face continuing, pervasive, violent abuse, harassment and discrimination. Far more must be done to end this.”

UNITED NATIONS HIGH COMMISSIONER FOR
HUMAN RIGHTS ZEID RA'AD AL HUSSEIN

