

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

**ASPIRE Guidelines  
on COVID-19 response and recovery free from violence and discrimination  
based on sexual orientation and gender identity**

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based on sexual orientation and gender identity**

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**Introduction**

The COVID-19 pandemic is a global challenge that has exacerbated the inequalities prevalent in all regions of the world. The UN General Assembly has acknowledged that “the poorest and most vulnerable are the hardest hit by the pandemic”<sup>1</sup> and there is a need “for all relevant stakeholders to work together at the national, regional and global levels to ensure that no one is left behind.”<sup>2</sup> The UN Secretary-General has noted that “COVID-19 crisis has exacerbated the vulnerability of the least protected in society. It is highlighting deep economic and social inequalities and inadequate health and social protection systems that require urgent attention as part of the public health response. Women and men, children, youth and older persons, refugees and migrants, the poor, people with disabilities, persons in detention, minorities, LGBTI people, among others, are all being affected differently. We have an obligation to ensure everyone is protected and included in the response to this crisis.”<sup>3</sup>

Persons, communities and populations who are victims of violence and discrimination on the basis of sexual orientation and gender identity are part of those that come to this struggle bearing a legacy that condemns a significant proportion of them to exclusion and poverty. To this respect, States have an obligation to take measures to prevent and, as relevant, to mitigate the impact of the crisis. The UN Committee on Economic, Social and Cultural Rights has advised that “if States do not act within a human rights framework, there exists a clear risk that the measures taken might violate economic, social and cultural rights and increase the suffering of the most marginalized groups.”<sup>4</sup>

Since the onset of the pandemic, the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (IE SOGI) has been monitoring the ways in which the pandemic is affecting persons of diverse sexual orientations and gender identities. As part of this process, he carried out a consultation and research process between March and May 2020, convening three virtual Town Hall meetings on 30 April and 1 May 2020, and participating in over half a dozen virtual consultations and meetings gathering activists,

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<sup>1</sup> A/RES/74/270, preamble.

<sup>2</sup> *Ibid.*

<sup>3</sup> António Guterres, “[COVID-19 and Human Rights: We are all in this together](#)”, 23 April 2020.

<sup>4</sup> UN Committee on Economic, Social and Cultural Rights, “[Statement on the coronavirus disease \(COVID-19\) pandemic and economic, social and cultural rights](#)”, 17 April 2020 (E/C.12/2020/1, para. 2). *See also* UN Human Rights Committee, “[Statement on derogations from the Covenant in connection with the COVID-19 pandemic](#)”, 30 April 2020 (CCPR/C/128/2).

human rights defenders, civil society leaders, government officials and scholars: in total, over 500 individuals from more than 75 countries contributed anecdotal evidence and perspectives on the implications of the pandemic on lesbian, gay, bisexual, trans and gender diverse (LGBT) persons.

In addition, the IE SOGI reviewed over 80 reports, documents and essays published in the period 1 March – 31 May 2020 on the specific impact of COVID-19 on LGBT persons, as well as reports of human rights violations submitted to the mandate under the communication procedure, and the globality of the work carried out by the United Nations Special Procedures.<sup>5</sup>

The framework that has been identified through this process is clear: in order to be efficient and effective, measures must be taken within a human rights-based approach through a framework of human rights principles of equality and non-discrimination, participation, indivisibility, empowerment and accountability; further, measures must be necessary to combat the public health crisis posed by the pandemic, and be reasonable and proportionate. Emergency powers granted to address the pandemic should not be abused and must be lifted as soon as they are no longer necessary and comply with relevant notification and derogation procedures established in the respective treaties to which States are parties.<sup>6</sup>

Most importantly, all measures must respect the inherent dignity of all people.<sup>7</sup>

Through this process, the IE SOGI has learned of State response measures that intentionally or unintentionally discriminate against LGBT persons. In particular, LGBT persons and communities have, as a rule, not been part of the formulation of pandemic response or mitigation policies, and in many cases are facing discrimination or disproportionate impact stemming from them. On 17 May 2020, 96 United Nations and international human rights experts issued a historic statement in which they concluded that:

COVID-19, and the measures taken to address it, exacerbate inequalities and discrimination. The existence of criminalization laws, for example, makes LGBT persons more vulnerable to police abuse and arbitrary arrest and detention in the context of movement restrictions and curfews. While contributing to the fight against the pandemic by staying at home, LGBT children, youths and elders are forced to endure prolonged exposure to unaccepting family members, which exacerbates rates of domestic violence and physical and emotional abuse, as well as damage to mental health. In many jurisdictions, LGBT persons, particularly those most impoverished or without proper documentation, rely overwhelmingly on informal economies made impossible by COVID-19 restrictions. The socio-economic consequences of the pandemic and the loss of income might also increase the vulnerabilities of LGBT persons to human trafficking and sexual exploitation. The reallocation of health resources has also created or exacerbated shortages of antiretrovirals for those living with HIV, while also impacting the ability of trans men and women to receive hormonal therapy or gender-affirming care. Gender-based curfew laws and policies have reportedly condemned gender-diverse persons to permanent seclusion while making trans individuals targets for humiliation and violence when going out.<sup>8</sup>

The IE SOGI is aware of the global nature of the damage inflicted by the pandemic. At the same time, the crafting of efficient and effective solutions is connected to evidence-based understanding of the reasons why certain persons, communities or populations are at a disadvantage when facing its fallout and the impact of response or recovery measures taken by the State. Through the lens of established international human rights frameworks, the IE SOGI issues these guidelines, based on six fundamental actions identified as good practice in the design, implementation and the evaluation of measures of pandemic response and recovery:

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<sup>5</sup> The collected work of UN Special Procedures is available [here](#).

<sup>6</sup> UN Human Rights Committee, *supra* note 4.

<sup>7</sup> UN Committee on Economic, Social and Cultural Rights, *supra* note 4, para. 4.

<sup>8</sup> UN human rights experts, “COVID-19: the suffering and resilience of LGBT persons must be visible and inform the actions of States”, 20 April 2020.

Acknowledgement  
Support  
Protection  
Indirect discrimination avoidance  
Representation  
Evidence-gathering

**I. Acknowledge that LGBT persons are everywhere  
(and that they are hard-hit by the pandemic)**

Every human person in the world has a sexual orientation and a gender identity. Gender and sexually diverse persons, including those identifying as LGBT, are present in every region and every country in the world. While denying the existence of LGBT persons in any society is a violation of their human rights in all times, it is a particularly shocking form of negligence in times of the pandemic, when the understanding of the lives of all affected persons is the key to effective and efficient responses.

LGBT persons hold many identifies and face intersecting factors that create a continuum of violence and a dynamic of disempowerment. For example, LGBT persons:

- a. are disproportionately affected by poverty,<sup>9</sup> and therefore have fewer resources to face unemployment or discontinued economic activities;<sup>10</sup>
- b. tend to be precarious workers in the “gig economy” or the informal sector, including sex work,<sup>11</sup> which creates precarious economies of daily survival and barriers to access of State support and hinders access to healthcare and medical coverage;<sup>12</sup>
- c. are often victims of discrimination in access to housing and may live in crowded quarters<sup>13</sup> where social distancing is almost impossible or have to pay significantly higher rent prices;<sup>14</sup>
- d. are older persons who frequently report poorer physical health outcomes and are more likely to live alone and to experience social isolation which has a direct impact on their health and well-being<sup>15</sup> and their ability to get the care and support they need;<sup>16</sup>
- e. are young persons who experience particular disadvantages connected, among other, with economic dependence and reliance on family and community networks<sup>17</sup> and are at higher

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<sup>9</sup> See Special Rapporteur on extreme poverty and human rights, [A/72/502](#), para. 6. See also Lee Badgett *et al.*, “[The Relationship between LGBT Inclusion and Economic Development: Macro-Level Evidence](#)”, August 2019.

<sup>10</sup> Equal Rights Coalition Civil Society Organisations Working Group on COVID-19, “[Report 1: Global Impacts of COVID-19 on LGBTI Communities](#)”, p. 5, 20 April 2020; Human Rights Campaign, “[The Lives & Livelihoods of Many on the LGBTQ Community are at Risk Amidst COVID-19 Crisis](#)”, Human Rights Campaign Foundation, 3 March 2020; Edge Effect, “[Impacts of COVID-19 on LGBTIQ+ people](#)”, Briefing Note, 2020.

<sup>11</sup> IE SOGI, [A/74/181](#); Lee Badgett *et al.*, *supra* note 9.

<sup>12</sup> Thomson Reuters Foundation, “[“Who is going to stand up for us?” A trans sex worker in Uganda on life under lockdown](#)”, Openly, 14 April 2020. See also ILGA LAC, “[PRONUNCIAMIENTO DE ILGALAC ANTE LA PANDEMIA DE CORONAVIRUS Y SUS EFECTOS EN NUESTRA REGIÓN](#)”, 20 March 2020.

<sup>13</sup> IE SOGI, *supra* note 11, paras. 14 -18; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to nondiscrimination in this context, [A/HRC/43/43](#), para. 44.

<sup>14</sup> Suryasarathi Bhattacharya, “[Coronavirus Outbreak: Trans community’s lives come to standstill, but hope presents itself through welfare initiatives](#)”, FirstPost, 19 April 2020; Kyle Knight, Human Rights Watch, “[Bangladesh Should Support Hijra, Trans Under Covid-19](#)”, 8 May 2020.

<sup>15</sup> IE SOGI, *supra* note 11, paras. 45-49; Angela Houghton, “[Maintaining Dignity: A Survey of LGBT Adults Age 45 and Older](#)”, AARP Research, March 2018.

<sup>16</sup> Movement Advancement Project and SAGE, “[Understanding Issues Facing LGBT Older Adults](#)”, 2017; The Human Rights Campaign and SAGE, “[COVID-19 & LGBTQ Older People](#)”, April 2020.

<sup>17</sup> IE SOGI, *supra* note 11, paras. 42-45, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to nondiscrimination in this context, [A/HRC/31/54](#), para. 44.

risk of domestic violence during a time of lockdown and quarantines due to forced cohabitation with unsupportive family members;<sup>18</sup>

- f. are migrants often excluded from social protection measures adopted by States and particularly vulnerable to xenophobia and related intolerance,<sup>19</sup> refugees living in high-density informal settlements where physical distancing is challenging,<sup>20</sup> asylum seekers and displaced persons in a world in which most countries have closed their borders and many have suspended asylum rights;<sup>21</sup> and
- g. are persons living with HIV/AIDS deeply affected by stock-outs and unavailability of medical services<sup>22</sup> or by limitations in paying transport costs to health centres.<sup>23</sup> When they are not on antiretroviral therapy and not virally suppressed may have a compromised immune system, which may place them at higher risk of morbidity and mortality.<sup>24</sup>

*States must recognize the existence of all LGBT persons under their jurisdiction and address the multiple and intersecting forms of discrimination affecting them and the compounded negative impact of the pandemic upon the enjoyment of their rights, and adopt measures to incorporate their concerns and challenges into the design, implementation and evaluation of the measures of pandemic response and recovery.*

## **II. Support the work of LGBT civil society and human rights defenders (and learn from their significant achievements)**

In its 2017-2018 Global Resources Report, a resource covering 15 donor governments and multilateral agencies and 800 private foundations, NGO intermediaries and corporations, the Global Philanthropy Project documented a total of \$560 million in cooperation activities for the two-year period. The project concluded that in 2017–2018, global LGBTI foundation funding made up less than 31 cents out of every \$100 of overall global foundation funding, or 0.31%. In the same two years, global LGBTI funding from donor governments again made up less than 4 cents out of every \$100 of international development efforts and assistance, or 0.04%.<sup>25</sup> In the great majority of countries in the world the extraordinary challenges raised by the violence and discrimination based on sexual orientation and gender identity are addressed by civil society with these limited resources, without any contribution by the State.

These challenges are now exacerbated by the situation created by the pandemic. In its activity of information gathering, the mandate received information about many organizations that saw their sources of income significantly reduced or suspended practically overnight, and many others that since then have great worries about their prospects for future financing.

There is abundant evidence that perseverance and resilience are known to be traits of LGBT movements<sup>26</sup> and the IE SOGI has been made aware of different initiatives undertaken by civil

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<sup>18</sup> OHCHR, [“COVID-19 and the Human Rights of LGBTI People”](#), 17 April 2020; PEPFAR, USAID and EpiC, [“Strategic Consideration for Mitigating the Impact of COVID-19 on Key- Population-Focused HIV Programs”](#), p. 2, 7 April 2020; Ben Hunte, [“Coronavirus: ‘I’m stuck in isolation with my homophobic parents’”](#), BBC News, 26 March 2020.

<sup>19</sup> António Guterres, *supra* note 3, p. 11; Equal Rights Coalition Civil Society Organisations Working Group on COVID-19, *supra* note 10, p. 6.

<sup>20</sup> António Guterres, *supra* note 3, p. 8; Erasing 76 Crimes, [“Kenyan police break up LGBT+ refugees’ protest”](#), 30 April 2020.

<sup>21</sup> António Guterres, *supra* note 3, p. 11; Equal Rights Coalition Civil Society Organisations Working Group on COVID-19, *supra* note 10, p.6; Rainbow Railroad, [“The Impact of COVID-19 on Displaced LGBTIQI Persons”](#), p. 23, June 2020.

<sup>22</sup> APCOM, [“COVID-19 and its effects on diverse SOGIESC communities, HIV services and Key Populations”](#).

<sup>23</sup> Nita Bhalla & Oscar Lopez, [“No medicine, no food: Coronavirus restrictions amplify health risks to LGBT+ people with HIV”](#), Reuters, 20 May 2020.

<sup>24</sup> PEPFAR *et al.*, *supra* note 18.

<sup>25</sup> Global Philanthropy Project and Funders for LGBTQ Issues, [“2017-2018 Global Resources Report: Government and Philanthropic Support for Lesbian, Gay, Bisexual, Transgender, and Intersex Communities”](#), p.20, May 2020.

<sup>26</sup> OutRight Action International, [“Vulnerability Amplified: The Impact of COVID-19 on LGBTIQ People”](#), p. 60, 7 May 2020.

society organizations, even under these grave difficulties, to address the consequences of the pandemic in their communities. These include a wide range of activities such as the formulation and provision of information on the progress of the pandemic and the measures required to face it; the gathering and distribution of food packages, hygiene products and in some cases medical supplies;<sup>27</sup> and multiple initiatives of legal, psychological and psychosocial support.

There is in the world a nuanced fabric made of persons and entities, the collective action of which guarantees mutual support, solidarity and the protection of all; this fabric is made of individual activists and civil society and allies, including churches and businesses that work for social inclusion, as donor entities that work with civil society. In this context, several global NGOs have committed significant efforts to creating and managing emergency funds that have provided lifelines to local organizations that, in many cases, saw their income stop overnight.<sup>28</sup> The mandate is convinced that this work protected LGBT movements from what would otherwise have been an immediate and catastrophic collapse, and provides tangible evidence of the vital contribution of the organizations that work as the pivotal points of these networks, in close contact with all stakeholders including the international community and the United Nations. Rapid response mechanisms must be supported as long as the need for them remains as a consequence of the pandemic.

At the same time, rapid response funds that are indispensable measures during the crisis cannot be considered as substitutes for strategic support to civil society and to the sustained, medium- and long-term work of human rights defenders on the ground. As time passes and the anomalies created by the pandemic continue, and it becomes evident that significant parts of them will become an integral part of what has been called “the new normal,” the needs to reconceptualise the design and management structures of cooperation activities, continuity and outcome mapping of global and regional work, continued support to base organisations (and, in particular, to their capacity of strategic planning and execution), equal access to financing for all, and continued democratisation of the international cooperation activities, remain indispensable components in the human rights agenda.

*State cooperation agencies, as well as other donor agencies and entities, should commit to increasing the resources aimed at enhancing enjoyment of rights by LGBT persons, communities and populations through the promotion of equity and gender, racial and economic justice. Careful consideration must be given to the impact of reduction in funding in the long-term sustainability of the extraordinary system of early warning, mutual support, protection and advocacy that has been created over half a century of the modern movement(s) for the human rights of LGBT persons. Further, donors that have not yet done so should urgently consider introducing relevant changes in current cooperation contracts, awarding no-cost extensions, enabling resource reassignment across budget lines, supporting the enhancement of security and self-care protocols and simplifying administrative procedures, including grant flexibilities and COVID-19 response mechanisms that protect essential services, rights-based approaches, inclusive and transparent dialogue with communities and prioritizing safety and security.*

### **III. Protect LGBT persons from violence and discrimination in the pandemic context (and prosecute perpetrators)**

The increased vulnerability of LGBT persons in emergency situations is well documented.<sup>29</sup> As established by the mandate, “[p]re-existing inequalities, discrimination and violence are

<sup>27</sup> OutRight Action International, *supra* note 26.

<sup>28</sup> The Commonwealth Equality Network & the Kaleidoscope Trust, “[LGBTI+ in the Commonwealth in the COVID-19 era](#)”; OutRight Action International, *supra* note 26, p. 7 and [Outright Emergency Fund](#); ASEAN SOGIE CAUCUS, “[Call to donors and funders operating in Southeast Asia: Mobilize Rainbow Resilience](#)”; [Frontline AIDS’ Emergency Response Grants](#).

<sup>29</sup> The Indian Ocean tsunami (2004), the plight of the *warias* (a traditional trans-feminine “third gender” category in Indonesian culture) after the 2010 eruption of Mt. Merapi in Indonesia, the Haitian earthquake (2010), and Tropical Cyclone Winston (2016), among others, have shown how side-lining of LGBTIQ individuals occurs before, during, and after emergencies. OutRight Action International, *supra* note 25, p. 14.

exacerbated in humanitarian settings, putting those who are already most vulnerable at further risk”.<sup>30</sup> All emergency measures must be adopted within the legal framework that demands that they be lawful, necessary and proportionate to the aim sought; they also must not deploy direct or indirect discriminatory impact, and be limited in time.<sup>31</sup> When governments enact public policies to fight the pandemic, they must consider how these policies will affect the lives and livelihoods of LGBT persons.

The evaluation as to whether a measure is necessary and proportionate, as well as the possible discriminatory impact, is assessed with due attention to the context in which it is adopted. In every community, that means bearing in mind the realities and needs of persons historically subjected to discrimination. For example, in terms of health disparities, gay men and trans women comprise a significant proportion of those living with HIV-induced, compromised immune systems when they are not on antiretroviral therapy and not virally suppressed and therefore run a higher risk of developing severe symptoms of COVID-19. This is exacerbated by the stress the pandemic has put on the medical supply industry, which has resulted in shortages of antiretrovirals for those living with HIV/AIDS in many parts of the world. At the same time, criminalization laws will make it far less likely that LGBT persons will be willing to go to the government to seek help or aid when they are sick. Since criminalization is State-sanctioned discrimination and violence, the barriers created by it in access to services must be addressed as a responsibility of the State.

Gender-based curfews - which dictate which days persons of a specific gender can go outside for shopping - have condemned gender-diverse persons to permanent seclusion, while making trans individuals being targeted for humiliation and violence when they go out.<sup>32</sup>

Careful consideration must be given to how persons having worked in the informal sector, and in areas such as sex work, are afforded access to social protection schemes often excluding sex workers. There is a critical need for governments, and in particular health and social care providers to work with affected communities.<sup>33</sup> In all circumstances, support to persons that in non-pandemic time operated in the informal sector ought to be easily accessible for all sex workers including migrants with illegal or uncertain residency status and homelessness.

States should also consider putting in place emergency shelters for LGBT people in situations of homelessness or exclusion who are generally overrepresented in homeless populations due to exclusionary processes.<sup>34</sup> They should guarantee protection and possibly treatment; and suspend sanctions for those who can demonstrate that they cannot comply with stay-at-home directives due to material concerns, as in the case of guests of dormitories who cannot stay in the facilities during daylight hours.<sup>35</sup>

Finally, given that stay-at-home orders have confined many LGBT children and youths and elders to households that are unaccepting of their sexual orientations and gender identities, leading to unsafe home conditions and increased rates of domestic violence, physical and emotional abuse, as well as long-term damage to their mental health, systems of support and help (such as hotlines and police responses) must be enabled, inclusive to LGBT persons, and functioning at all times.

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<sup>30</sup> IE SOGI, *supra* note 11, para. 59.

<sup>31</sup> See UN Human Rights Committee, *supra* note 4; OHCHR, “[Emergency Measures and COVID-19](#)”, 27 April 2020. See also Equal Rights Coalition Civil Society Organisations Working Group on COVID-19, *supra* note 10, pp. 2-3; Southern Africa Litigation Centre (SALC), “[A Legal Overview of the Impact of COVID-19 on Justice and Rights in Southern Africa](#)”, SALC Policy Brief No. 1 of 2020, May 2020.

<sup>32</sup> Equal Rights Coalition Civil Society Organisations Working Group on COVID-19, *supra* note 10, p. 8. Cristian González Cabrera, Human Rights Watch, “[Panama’s Gender-Based Quarantine Ensnarers Trans Woman: Trans-Sensitive Police Protocol Needed to Prevent Harassment](#)”, 2 April 2020; BBC News, “[Coronavirus: Peru limits movement by gender to stem spread](#)”, 3 April 2020; Open Democracy, “[The Danger of Being Transgender in Latin America in Time of Quarantine](#)”, 21 April 2020; Ximena Izquierdo Ugaz, “[The Issue With the Gender-Based Curfew in Countries Like Peru, Panama & Colombia](#)”, Remezcla, 24 April 2020.

<sup>33</sup> Lucy Platt, *et al.*, “[Sex workers must not be forgotten in the COVID-19 response](#)”, The Lancet, 15 May 2020.

<sup>34</sup> IE SOGI, *supra* note 11, paras. 14-18.

<sup>35</sup> Certi Diritti, “[Coronavirus: nessuno resti indietro, compresi i sex worker. Appello a Parlamento e Governo](#)”.

Government measures to combat the pandemic must be limited to the protection of public health and not advance anti-LGBT agendas. Governments and political and religious leaders must not amplify the toxicity of COVID-19 with a mix of misinformation and hatred, and the boundaries between protected and hate speech need to be sternly observed and enforced by State authorities. In this vein, measures should be taken to address disinformation campaigns and hate speech via social media.<sup>36</sup>

Finally, governments must not use COVID-19 measures to target or prosecute persons based on their sexual orientation or gender identity. Using the pandemic to justify the introduction or passing of legislation limiting or withdrawing rights or postponing the coming into force of judicially mandated rights is a shocking way to use the health emergency to achieve political goals that have otherwise failed. All actions from the police and administrative officers, including enforcement of quarantine provisions, raids, demands for identification documents and enforcement of fines during curfews must not be discriminatory or arbitrary, and must not be an excuse to target LGBT persons or the enjoyment of their rights. In this connection, States will need to ensure that victims of human rights violations that have been perpetrated using COVID-19 as an excuse, or as a result of measures implemented to address the pandemic, will have access to redress, including non-repetition and reparations. This must, in turn, be accompanied by the respective actions to ensure accountability of State and non-State agents involved in the perpetration.

In this context, efficient and effective access to justice is a must. As noted by the UN Committee on Economic, Social and Cultural Rights,

[A]ccess to justice and to effective legal remedies is not a luxury, but an essential element to protect economic, social and cultural rights, especially those of the most vulnerable and marginalized groups. Thus, for example, it is essential that law enforcement officials respond to cases of domestic violence, that domestic violence hotlines are operational, and that effective access to justice and legal remedies is accessible to women and children who are subject to domestic violence.<sup>37</sup>

*Authorities must adopt measures of pandemic response within the international legal framework and consider how these policies will affect the lives and livelihoods of LGBT persons, and ensure the continued operation of systems of support and access to justice. In contexts in which criminalization of same-sex relations remains, the State must remedy all barriers created by it in access to services. States must adopt all measures to combat hate speech in the context of the pandemic and all measures necessary to remedy disinformation campaigns and hate speech via social media.*<sup>38</sup>

#### **IV. Indirect discrimination is a real and significant risk (and exacerbates stigmatization against LGBT persons)**

Legal norms prohibiting indirect discrimination are found in a variety of national laws, international treaties, and other human rights instruments. Indirect discrimination occurs when an apparently neutral provision or practice puts persons having a particular sexual orientation or gender identity at a disadvantage compared to others – unless the provision or practice has a legitimate aim, is necessary and appropriate.

COVID-19-related measures may raise significant risk of indirect discrimination. For example, testing and treatment must be available and accessible to all persons, a principle that has been affirmed by a great majority of Special Procedures mandate holders: “Everyone, without exception, has the right to life-saving interventions and this responsibility lies with the government. The scarcity of resources or the use of public or private insurance schemes should

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<sup>36</sup> See OHCHR, *supra* note 18; United Nations, [“The United Nations Guidance Note on Addressing and Countering COVID-19 related Hate Speech”](#), 11 May 2020.

<sup>37</sup> UN Committee on Economic, Social and Cultural Rights, *supra* note 4, para. 12.

<sup>38</sup> See OHCHR, *supra* note 18, United Nations, *supra* note 36.

never be a justification to discriminate against certain groups of patients [...] Everybody has the right to health,”<sup>39</sup> and the Equal Rights Coalition has determined that this “should include outreach to marginalised communities who may otherwise lack access to healthcare (e.g. those experiencing homelessness, sex workers, those in poverty).”<sup>40</sup>

Being able to afford and access medical care is essential to testing for COVID-19, as well as treating the symptoms of the disease. However, LGBT persons are more likely than their peers to lack health coverage or the monetary resources to visit a doctor, even when medically necessary. This can lead to avoidance of medical care even when medically necessary, and to severe economic hardship when medical care is ultimately assessed.<sup>41</sup> In addition, LGBT people regularly experience stigma and discrimination while seeking health services, leading to disparities in access, quality and availability of healthcare. Such discrimination, exacerbated by the risk of arrest or violence in criminalizing environments, elevate the health risks for LGBT people during the pandemic.<sup>42</sup>

Healthcare services such as treatment for HIV/AIDS, hormone replacement therapy and reproductive and sexual healthcare should be deemed life-saving treatments, as there is abundant evidence of their vital impact on good health and well-being. Particular emphasis should be given to the continuity of mental health services, and the implementation of systems to facilitate its provision online in conditions of quarantine or isolation.

In many instances, military, police, community or religious leaders will be recruited into the systems of food or hygienic product distribution. It is necessary that, as a requirement to carry out this function, such persons commit to non-discrimination on all grounds. Under the public health emergency, particular definitions cannot be used as an excuse to refuse delivery of family-based resources, and preconceptions about LGBT persons and their families must be absolutely absent in the delivery decisions. In case of communities or populations in which the distrust for the police is widespread, consideration must be given to the delivery of food or other resources through alternative means.

*For these and other reasons, international civil society organizations have been calling for States adhere to a standard of due diligence proactively: (1) identifying and assessing human rights impacts that the State may cause or contribute to through pandemic response or recovery measures; (2) integrating findings from impact assessments across relevant inter-agency processes and taking appropriate action according to its involvement in the impact; (3) tracking the effectiveness of measures and processes to address adverse human rights impacts in order to know if they are working; and (4) communicating on how impacts are being addressed and showing stakeholders – in particular affected communities – that there are adequate policies and processes in place as an integral element of the process of design, implementation and evaluation of pandemic response measures.*<sup>43</sup>

## **V. Representation of LGBT persons in the process of design, implementation and evaluation of COVID-19 specific measures is key (and reflect their voices)**

The need to involve LGBT organizations was a constant demand made by most stakeholders that intervened in the dialogues with the mandate. As a result of the history of violence and discrimination on the basis of sexual orientation and gender identity, LGBT persons have in many cases developed particular mechanisms of survival, coping and thriving that will not be immediately evident to those not belonging to the communities, or having had interaction with

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<sup>39</sup> UN human rights experts, “[No exceptions with COVID-19: ‘Everyone has the right to life-saving interventions’](#)”, 26 March 2020.

<sup>40</sup> Equal Rights Coalition Civil Society Organisations Working Group on COVID-19, *supra* note 10, p. 9.

<sup>41</sup> Human Rights Campaign, “[The Lives & Livelihoods of Many on the LGBTQ Community are at Risk Amidst COVID-19 Crisis](#)”, Human Rights Campaign Foundation, 3 March, 2020.

<sup>42</sup> OHCHR, *supra* note 18.

<sup>43</sup> ILGA World, “[Call to Action: Addressing Discrimination and Inequality in the Global Response to COVID-19](#)”, 7 May 2020.

them over time. Policymakers should not rely on intuitive thinking when designing responses that will impact the LGBT community.

For example, it is difficult to rely on trust between LGBT persons and law enforcement personnel in contexts in which sexual and gender diversity are criminalized and, even without criminalization, historical State-sponsored violence and discrimination make the sharing of information difficult. Routines developed by LGBT persons might be quite different – persons engaged in sex work might only be able to interact with health providers that offer services at night.

*Only the involvement of the concerned individuals and communities in the process through which the measures are envisaged and implemented will allow for responses to increase their impact refocusing the response to community-led health service delivery models, community-led and based monitoring of pandemic responses, community mobilization and advocacy, and human rights related monitoring.*<sup>44</sup>

## **VI. Evidence concerning the impact of COVID-19 on LGBT persons must be gathered (and States must follow good practices)**

As noted by the mandate,<sup>45</sup> as a result of barriers created by criminalization, pathologization, demonization and other institutional drivers for stigma, there are no accurate estimates regarding the world population affected by violence and discrimination based on sexual orientation and/or gender identity. In addition, “[i]n a context of negation, perpetrators feel motivated and enabled to suppress or punish diversity. Invariably, any data gathered will be unreliable, unsystematic and biased; all State measures to address violence and discrimination, be it public policy, access to justice, law reform or administrative actions, will be therefore hindered by this fact.”<sup>46</sup>

The principle of due diligence, which requires States to protect those at particular risk of violence and discrimination and to take measures to understand and eliminate cultural stigmatization and other social causes of violence and discrimination, is also part of the basis of the State’s responsibility when the State knows, or has reasonable grounds to believe, that abuses are being perpetrated.

The laws which exist in over 70 countries that criminalize, stigmatize and impose discrimination against gay, lesbian, and bisexual persons will make it nearly impossible to properly collect public health data on them: As noted by the mandate,

[F]ull State diligence to prevent, prosecute and punish violence and discrimination based on sexual orientation and gender identity and expression is impossible in environments in which the State criminalizes certain forms of sexual orientation and gender identity and expression. In those environments, fully effective data collection, that is, data collection that serves the purpose of addressing violence and discrimination, is also impossible. Indeed, in contexts such as those a presumption must exist that data is gathered for purposes that are contrary to international human rights law, a working theory supported by multiple accounts received by the mandate holder of data being used in such contexts as the basis for surveillance, harassment, entrapment, arrest and persecution by government officials.<sup>47</sup>

Disaggregation of data allowing a comparison of population groups, therefore, forms part of the human rights obligations of States and has become an element of the human rights-based approach to data. This includes data relating to violence and discrimination based on sexual orientation and

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<sup>44</sup> MPact Global Action for Gay Men’s Health and Rights, [“Global Fund and COVID-19: Implications for Key Populations”](#).

<sup>45</sup> IE SOGI, [A/HRC/41/45](#), para. 12.

<sup>46</sup> IE SOGI, [A/HRC/38/43](#), para. 62.

<sup>47</sup> IE SOGI, *supra* note 45, para. 22.

gender identity. States also need data of this nature for their reports to international human rights bodies pursuant to their obligations. Monitoring includes looking at data gathered by administrative agencies and through statistical surveys, censuses, perception and opinion surveys and expert judgements.

*Through this system of monitoring and evaluation, States can discharge their duty to monitor the impact of the pandemic on all persons whose identity (or identities) place them in a situation of disadvantage or vulnerability. The IE SOGI encourages States to engage with LGBT organisations and networks to design and adopt methodologies that would enable collection of data relating to LGBT people while ensuring their safety and security. Only then can it be said that lessons learned will be drawn from this pandemic and applied to mitigate and prevent a discriminatory impact of the next.*