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

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

Note by the Secretary-General

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

* [A/75/150](#).



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

Violence and discrimination based on sexual orientation and gender identity during the coronavirus disease (COVID-19) pandemic

Summary

In the present report, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, discusses the impact of the coronavirus disease (COVID-19) pandemic on the human rights of lesbian, gay, bisexual and trans (LGBT) and gender-diverse persons, communities and/or populations. The Independent Expert analyses the impact of the pandemic on social exclusion and violence and the interaction with institutional drivers of stigma and discrimination. He also analyses measures adopted in the context of the pandemic aimed at persecuting LGBT and gender-diverse persons or with indirect or unintended discriminatory effects and identifies good practice.

I. Introduction

1. The coronavirus disease (COVID-19) pandemic is an unprecedented global challenge that has exacerbated inequalities prevalent in all regions of the world. The General Assembly has acknowledged that “the poorest and most vulnerable are the hardest hit by the pandemic”¹ and the Secretary-General has noted that 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 and lesbian, gay, bisexual, trans and intersex (LGBTI) people, among others, are all being affected differently.”²

2. The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, is aware of the global nature of the damage inflicted by the pandemic: it has become clear that the entire human population, including persons affected by violence and discrimination based on sexual orientation or gender identity, will be impacted by matters ranging from life-threatening disease, domestic violence during lockdown, mental health concerns created by isolation and stress, and the ever-present concern of financial ruin and its potential impact on access to life-critical sectors such as health, education, employment and housing.

3. Notwithstanding, persons, communities and populations that are victims of violence and discrimination on the basis of sexual orientation and gender identity are among those that face this challenge bearing a legacy that condemns a significant proportion of them to exclusion and poverty, and are therefore not facing it on a level playing field.

4. On 9 March 2020, the day that the World Health Organization declared COVID-19 a pandemic, it became apparent that its impact on the enjoyment of human rights would be unprecedented in our times, and the assessment of impact on the lives of lesbian, gay, bisexual and trans (LGBT) and gender-diverse persons around the world became a core part of the work of the Independent Expert. He opened a wide-ranging dialogue process through an open letter issued on 27 March 2020, convening three virtual Town Hall meetings in the period from 30 April to 1 May 2020 and participating in over three dozen virtual consultations and meetings bringing together activists, human rights defenders, civil society leaders, government officials and scholars. In total, over 1,000 individuals from more than 100 countries contributed anecdotal evidence and perspectives on the implications of the pandemic on LGBT and gender-diverse persons.

5. On 17 May 2020, the Independent Expert joined a group of 96 United Nations and regional independent experts in a statement on the impact of the pandemic on LGBT persons.³

6. On 18 June 2020, the Independent Expert communicated the ASPIRE Guidelines on COVID-19 response free from violence and discrimination based on sexual orientation and gender identity,⁴ and triggered a social media campaign for them to be considered by a wide range of stakeholders. The Independent Expert reviewed claims of human rights violations under the communication procedure, the

¹ General Assembly resolution 74/270, preamble.

² United Nations, “COVID-19 and human rights: we are all in this together” (April 2020).

³ Office of the United Nations High Commissioner for Human Rights (OHCHR), “COVID-19: the suffering and resilience of LGBT persons must be visible and inform the actions of States”, statement by human rights experts on the International Day against Homophobia, Transphobia and Biphobia, Geneva, Washington D.C. and Strasbourg (France), 14 May 2020.

⁴ Available at www.ohchr.org/Documents/Issues/SexualOrientation/SOGI-GuidelinesCOVID19_EN.docx.

totality of the work carried out by the United Nations special procedures⁵ and over 100 reports, documents and essays published up to 30 June 2020, as well as 86 submissions in response to his call for inputs.

7. The present report is the next step in that process, and summarizes the vast array of evidence available, on the basis of which the Independent Expert concludes that COVID-19 has a disproportionate impact on LGBT and gender-diverse persons; that, with few exceptions, the response to the pandemic reproduces and exacerbates the patterns of social exclusion and violence previously identified by him; and that urgent measures must be adopted by States and other stakeholders to ensure that the pandemic response is free from violence and discrimination and thus in conformity with the tenets of international human rights law.

8. The Independent Expert is deeply indebted to all who have contributed to date to the process, which is aimed at placing the Independent Expert and his call for inputs into the context of this most extraordinary juncture at which humankind finds itself in 2020.

II. Human rights concerns of lesbian, gay, bisexual and trans (LGBT) and gender-diverse persons during the pandemic

9. In their joint statement of 17 May 2020, 96 Independent Experts recognized that “in all latitudes, LGBT persons are disproportionately represented in the ranks of the poor, people experiencing homelessness, and those without health care, meaning that they may be particularly affected as a result of the pandemic ... These experiences of inequality and discrimination are compounded by disability, age, ethnicity/race, sex, indigenous or minority status, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, migration or situation of displacement, marital and/or maternal status, urban/rural location, health status, and property ownership. If States and other stakeholders, including businesses and faith-based organizations, are to meaningfully address the impact of the pandemic, they must unreservedly acknowledge that LGBT persons represent a meaningful cross-section of all of these identities, and they must act accordingly.”⁶

10. Since the creation of the mandate in 2016, the mandate holders have dedicated themselves to bringing to light the evidence of the inextricable links existing between stigma, violence and discrimination, as well as the cycles of exclusion and poverty to which many LGBT and gender-diverse persons are condemned if they decide to live freely and openly according to their sexual orientation and gender identity. With its harrowing human, social and financial costs, the COVID-19 pandemic acts as a magnifying glass on those realities, to the point where they become apparent even to the untrained eye, and thus impossible to ignore – except, of course, intentionally.

A. Violence

11. The Independent Expert has amply documented how violence and discrimination based on sexual orientation and gender identity are involved in the lived experience of LGBT and gender-diverse persons. In the context of the pandemic, stay-at-home directives, isolation, increased stress and exposure to disrespectful family members exacerbate the risk of violence,⁷ with a particular impact on older

⁵ OHCHR, Special procedures of the Human Rights Council, “COVID-19 and special procedures”.

⁶ OHCHR, “COVID-19: the suffering and resilience of LGBT persons”.

⁷ European Region International Lesbian, Gay, Bisexual, Trans and Intersex Association, (ILGA Europe), “COVID-19 impacts on LGBTI communities in Europe and Central Asia: a rapid assessment report” (June 2020).

persons and youths.⁸ For the latter, being at home – possibly sharing computer equipment and small spaces⁹ – increases the risk of being “outed”.¹⁰ It was underlined in one submission that, even before the pandemic, youth had been found to be at significant increased risk for depression, anxiety, substance use and suicidality,¹¹ and underlined five key areas of concern with regard to LGBT youth:

- (a) Decrease in positive social interactions;
- (b) Increase in negative social interactions;
- (c) Economic strain;
- (d) Unemployment concerns;
- (e) Housing instability.

12. While research suggests that, in certain contexts, up to 40 per cent of lesbian, gay and bisexual persons live alone,¹² older LGBT and gender-diverse persons are even more likely to live alone and to experience social isolation and frequently report poorer physical health outcomes. They are reportedly less likely than their peers to reach out to health and ageing services providers, such as senior or meal centres, because of fear of discrimination and harassment,¹³ or because of costs that are prohibitive.¹⁴ Family rejection and limitations in the recognition of certain forms of families, and limited access to assisted reproduction techniques, mean that often older LGBT and gender-diverse people are more likely to rely on chosen family for caregiving support. These factors combined can leave older LGBT and gender-diverse people in precarious situations with regard to housing security and can increase the likelihood of the need for formalized social care.¹⁵

13. In a recent survey in the Islamic Republic of Iran, more than 50 per cent of respondents had experienced increased violence; for those of the remaining 50 per cent who had been experiencing violence before the quarantine, no significant change had taken place.¹⁶ Submissions concerning Europe reported an increase in domestic violence in a majority of countries surveyed.¹⁷ For example, in Montenegro, an LGBT organization working with victims of domestic violence reported an almost 300 per cent increase in demand for support from people experiencing domestic violence and abuse since the implementation of “stay home” policies, with similar increases reported in Italy and France.¹⁸ A survey carried out in Singapore showed that half of respondents reported living in environments hostile to their sexual orientation or

⁸ Submissions by The Aguda; Comisión Nacional de los Derechos Humanos (CNDH) (in Spanish); Asociación Civil Más Igualdad Perú. See also Meeting Targets and Maintaining Epidemic Control (EPIC) Project, “Strategic considerations for mitigating the impact of COVID-19 on key population-focused HIV programs” (May 2020).

⁹ Submission by the YP Foundation (India).

¹⁰ Submission by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World).

¹¹ Trevor Project, “Implications of COVID-19 for LGBTQ youth mental health and suicide prevention”, 3 April 2020.

¹² Submission by the Williams Institute on Sexual Orientation and Gender Identity Law and Public Policy.

¹³ Submission by Human Rights Watch.

¹⁴ Submission by Sam Togba Slewion.

¹⁵ [A/74/181](#), paras. 46–49.

¹⁶ 6Rang and others, “Covid-19 related hate and homophobia must stop”, 17 May 2020.

¹⁷ ILGA Europe, “COVID-19 impacts on LGBTI communities in Europe and Central Asia” (see footnote 7).

¹⁸ *Ibid.*

gender identity¹⁹ and 14 per cent of the respondents in a survey in Thailand²⁰ reported increased intimate, family or gender-based violence.

14. The restrictions on movement have created a situation of exacerbated risk of abuse during police checks: under the exceptional measures adopted to tackle COVID-19, the Independent Expert has received information about selective arrests,²¹ gay men compelled to kiss, dance and do push-ups on live video broadcasts that identified their names on social media;²² trans women ordered to scream that they wanted to be men in recorded videos, arbitrary detentions and a general increase in mistreatment and violence against LGBT and gender-diverse persons in the public sphere.

15. Violence is clearly not only physical but also psychological. Owing to socioeconomic instability, the inability to leave abusive environments and aggravation of anxiety and other pre-existing conditions related to mental and emotional well-being, LGBT and gender-diverse persons have suffered a significant impact from the pandemic. An Eastern European organization, for example, reported increased demands for psychological assistance, in some cases doubling,²³ in the Republic of Moldova, the Russian Federation and Georgia; in the Islamic Republic of Iran more than 85 per cent of the respondents to a survey reported deteriorating mental health,²⁴ and a service providing mental health support in Belgium reported a four-fold increase in instances in which the caller was contemplating suicide.²⁵

B. Criminalization

16. Criminalization in relation to LGBT and gender-diverse persons has always created significant barriers to their fundamental human rights and access to services, which now continue to be a factor. In Uganda, just after the Government ordered a COVID-19-related lockdown, a shelter for LGBT people was raided by neighbours and security forces, and 23 people at the shelter were arrested. A search was conducted in the shelter to find evidence of “homosexuality.” Two of those arrested were beaten up, and all were subjected to verbal taunts on account of their perceived sexual orientation. Nineteen of those detained were formally charged with engaging in “a negligent act likely to spread infection of disease” and “disobedience of lawful orders.”²⁶

17. Even where decriminalization has been implemented, it will take concrete measures and time investment to create the necessary trust with the populations concerned and civil society organizations.²⁷

18. Persecution also occurs in oppressive environments. It was remarked in one submission²⁸ that, in Egypt, homosexuality is legal on paper, but de facto illegal, and legal gender recognition is not accessible. Even under non-pandemic circumstances, access to health care for LGBT and gender-diverse people is particularly difficult.

¹⁹ Submission by the ASEAN SOGIE Caucus.

²⁰ Submission by the Asia Pacific Transgender Network.

²¹ Ibid.

²² Ryan Thoreson, “Philippines uses humiliation as COVID curfew punishment”, Human Rights Watch, 8 April 2020.

²³ Submission by the Eastern European Coalition for LGBT+ Equality.

²⁴ 6Rang and others, “Covid-19 related hate and homophobia must stop” (see footnote 16).

²⁵ ILGA Europe, “COVID-19 impacts on LGBTI communities in Europe and Central Asia” (see footnote 7).

²⁶ OHCHR, communication UGA/02/2020.

²⁷ Submission by the ASEAN SOGIE Caucus.

²⁸ EuroMed Rights, “How COVID-19 is affecting human rights in Egypt”, updated 18 June 2020.

Homosexuality is repressed through charges of “debauchery”, and trans identities are pathologized, resulting in institutional violence, torture, discrimination and arbitrary detentions.²⁹ During a health crisis, LGBT and gender-diverse people might not even seek medical assistance, which puts them at higher risk.

C. Demonization

19. The use of LGBT lives as scapegoats and fuel for hatred has also been apparent in responses to the pandemic. Around the world, LGBT and gender-diverse people, as well as advances in LGBT rights, have been blamed for natural disasters, and COVID-19 is no exception, with some religious and political leaders scapegoating LGBT and gender-diverse people; as UNAIDS has stated, the latter “are being singled out, blamed, abused, incarcerated and stigmatized as vectors of disease during the COVID-19 pandemic.”³⁰

20. Stakeholders all over the world have reported that the pandemic has been instrumentalized through discriminatory language, and there have been many statements by religious and political leaders blaming the pandemic on the very existence of LGBT persons, their families or their social groups and institutions.³¹

21. To give just a few examples, the Independent Expert received information on such statements in at least 12 European countries³² including Ukraine³³ and Georgia³⁴, in Turkey³⁵ and Iraq,³⁶ Ghana,³⁷ Liberia³⁸ and Zimbabwe³⁹ and in the United States of America.⁴⁰ Nor can the role of social media be ignored. In Malaysia, a social media post claiming that COVID-19 is a punishment from God because of the LGBT people and associated “immoral” acts went viral, with over 30,000 shares, influencing local opinion and leading to a rise in anti-LGBT rhetoric.⁴¹

D. Legal recognition of gender identity

22. There is significant consensus⁴² that the consequences of the pandemic are exacerbated in the case of trans persons,⁴³ in particular given that in most countries

²⁹ Arab Network for Knowledge about Human Rights, “Universal periodic review: statement concerning LGBTIQ+ rights in Egypt”, available at www.ankhfrance.org/statement-concerning-lgbtiq-rights.

³⁰ Joint United Nations Programme on HIV/AIDS (UNAIDS), “UNAIDS and MPact are extremely concerned about reports that LGBTI people are being blamed and abused during the COVID-19 outbreak”, press release, 27 April 2020; Ami Bishop, *Vulnerability Amplified: The Impact of the COVID-19 Pandemic on LGBTIQ People* (New York, OutRight Action International, 2020).

³¹ Submission by Human Rights Watch.

³² ILGA Europe, “COVID-19 impacts on LGBTI communities in Europe and Central Asia” (see footnote 8).

³³ Submission by the Eastern European Coalition for LGBT+ Equality.

³⁴ See www.radiotavisupleba.ge/a/30515743.html?nocache=1&fbclid=IwAR1rNcW8Fcixdx5V1mOmRRCJFpeDk4vDKEfmdER_u07yrcdYCj44hQhwPKM (in Georgian).

³⁵ Frontline Defenders, “End hate speech and targeted attacks against LGBTI people in Turkey”, 8 May 2020.

³⁶ 6Rang and others, “Covid-19 related hate and homophobia must stop” (see footnote 16).

³⁷ Bishop, *Vulnerability Amplified*.

³⁸ Submission by Equal Rights Trust.

³⁹ Bishop, *Vulnerability Amplified*.

⁴⁰ Submissions by ILGA World; Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights.

⁴¹ Fatima Qureshi, “Comment: under MCO, LGBT people face violence at home”, *Malaysiakini*, 22 April 2020.

⁴² Submissions by the Eastern European Coalition for LGBT+ Equality and Human Rights Watch.

⁴³ Submission by Transgender Europe.

in the world no legal gender recognition is in place. The absence of identification documents matching identity and gender expression is an immediate risk factor, and in some cases will result in refusal of humanitarian assistance.⁴⁴ It was reported in one submission⁴⁵ that, in India, the central Government had issued several relief packages; however, access to identification is a prerequisite for receiving the relief support and food rations and since many transgender people do not have this, the public relief was unavailable to them.⁴⁶

23. In countries where judicial services were limited to those deemed “essential” during the pandemic, legal gender recognition processes were generally stalled owing to being classified as “non-essential,”⁴⁷ and in general the Independent Expert has received numerous reports of the connection between the lack of legal gender recognition with problems of access to goods and services and even the ability to travel safely outside of the home in contexts of increased policing, or to leave one’s house when gender-based curfews are imposed.

24. The pandemic has in some cases been utilized as a reason for issuing restrictive legislation with no evident connection with health concerns: the Independent Expert has engaged the Government of Hungary, for example, to express its concern over a legal amendment that prohibits trans persons from legally changing their gender.⁴⁸ Certain major legislation, utilizing the excuse of the pandemic, has included provisions increasing penalties for HIV exposure, non-disclosure and transmission – thereby exacerbating stigma against persons living with HIV.⁴⁹

E. Poverty

25. In general, LGBT and gender-diverse persons are disproportionately affected by poverty,⁵⁰ and will as a consequence experience an equally disproportionate burden during the pandemic. For example, a recent survey carried out by a civil society organization in Bangladesh found that 86 per cent of respondents had no savings and 82 per cent had earned no income in the weeks before the survey.⁵¹ Other sources document that trans persons are commonly trapped in the multiple loaning systems, with money borrowed from private money lenders.⁵²

26. Research suggests that, even before the pandemic, in certain contexts one in three LGBT persons experienced food insecurity at any given time, with 66 per cent

⁴⁴ Submission by the International Commission of Jurists.

⁴⁵ Submission by the Asia Pacific Transgender Network.

⁴⁶ Sonal Rawat, “COVID-19 and the transgender community in India”, Tim Zubizarreta, ed., *Jurist*, 5 June 2020; Human Rights Watch, “India: identification project threatens rights”, 13 January 2018.

⁴⁷ ILGA Europe, “COVID-19 impacts on LGBTI communities in Europe and Central Asia”.

⁴⁸ OHCHR, communication HUN/01/2020.

⁴⁹ Equal Rights Coalition Civil Society Organizations Working Group on COVID-19, “Global impact of COVID-19 on LGBTI communities” (May 2020).

⁵⁰ See [A/72/502](#), para. 6. See also Equal Rights Coalition, “Global impact of COVID-19 on LGBTI communities”; M.V. Lee Badgett, Kees Waaldijk and Yana van der Meulen Rodgers, “The relationship between LGBT inclusion and economic development: Macro-level evidence”, Williams Institute, August 2019. The Williams Institute uses a poverty variable based on the United States federal poverty thresholds provided by the United States Census Bureau. Using number of adults and children in the household, and household income, respondents are categorized as either experiencing poverty or not.

⁵¹ Kyle Knight, “Bangladesh should support Hijra, trans under Covid-19”, Human Rights Watch, 8 May 2020.

⁵² Suryasarathi Bhattacharya, “Coronavirus outbreak: Trans community’s lives come to standstill, but hope presents itself through welfare initiatives”, *Firstpost*, 19 April 2020.

of those identifying as female.⁵³ Poverty also lies behind the generally poorer outcomes for LGBT persons in all sectors interacting with pandemic response and recovery.⁵⁴ For example, while being able to afford and access medical care is essential to testing for COVID-19, as well as treating the symptoms of the disease, a recent study in the United States⁵⁵ determined that LGBT persons are more likely than their peers to lack health coverage or the monetary resources to visit a doctor, even when medically necessary; 17 per cent of LGBT persons do not have any kind of health insurance coverage, compared with 12 per cent of the general population; while 23 per cent of LGBT adults of colour, 22 per cent of trans adults, and 32 per cent of trans adults of colour have no form of health coverage. The same study found that one in five LGBT adults have not seen a doctor when they needed to because they could not afford it. Black LGBT adults (23 per cent), Latinx LGBT adults (24 per cent) and all transgender women (29 per cent) are most likely to have avoided going to the doctor because of costs.

27. The Independent Expert notes that the precariousness of the financial situation of LGBT persons is a constant in the submissions to him and the knowledge base available,⁵⁶ as is the overwhelming concern about the deterioration in their living conditions.

F. Health

28. As previously established by the mandate holder, LGBT persons are in general facing significant health disparities and poorer health outcomes, with concerns that could be classified under three main headings:

(a) **Social disparities placing LGBT persons at greater risk of contracting COVID-19.** For example, a rapid survey in Indonesia found that 90 per cent of trans women surveyed were at high risk of contagion owing to their living conditions in slums and cramped areas and their work involving interaction with other people;⁵⁷

(b) **Physical and mental health disparities placing some LGBT persons at greater risk of severe health consequences.** For example, a 2017 Centre for American Progress survey found that in the United States 65 per cent of LGBT people have a pre-existing health condition, such as diabetes, asthma, heart disease and HIV, and other research shows that LGBT people across the age spectrum are more likely to smoke and vape, and to have substance use disorders, all of which could increase their vulnerability to COVID-19-related complications and fatalities.⁵⁸ Men who have sex with men and trans women are key populations within the population living with HIV, and while there is no conclusive evidence that persons living with HIV are more vulnerable to acquiring COVID-19 or suffering greater consequences than those not living with HIV, the experts' working theory is that persons with a high HIV viral load and low CD4 counts may be more susceptible to negative COVID-19 outcomes.⁵⁹ It thus follows that disruptions in HIV care must be avoided and, where they have occurred, must be reversed. However, it is reported throughout the world that access to HIV care and services have also been impacted: a recent global survey involving

⁵³ Submission by the Williams Institute on sexual orientation and gender identity law and public policy.

⁵⁴ Meeting Targets and Maintaining Epidemic Control (EPIC) Project, "Strategic considerations for mitigating the impact of COVID-19" (see footnote 8); Egale Canada, "Impacts of COVID-19: Canada's LGBTQI2S community in focus", 6 April 2020.

⁵⁵ Submission by the Human Rights Campaign (United States).

⁵⁶ Ibid.

⁵⁷ Submission by the Crisis Response Mechanism (Indonesia).

⁵⁸ Submission by the Fenway Institute (United States).

⁵⁹ Submission by Global Action for Gay Men's Health and Rights (MPact).

2,732 respondents from 103 countries revealed that 23 per cent of participants living with HIV indicated that they had lost access to HIV care providers as a result of COVID-19 social isolation measures, and only 17 per cent reported that they were able to communicate with their providers via telemedicine;⁶⁰ disruptions in service were reported to the mandate from all regions of the world.⁶¹ Multiple submissions documented the concern, even before COVID-19, about stock-outs of antiretroviral drugs and HIV services, which have been intensified.⁶² In many places, health care for LGBT communities is delivered through informal networks or a hybrid between community-driven care and official clinical care. It was reported in several submissions that people living with HIV, including LGBT people, struggled to access their medication as their points of medication distribution and medical attention have typically been government-designated as COVID-19 centres, meaning that immunocompromised people would be taking extra risks to go there to collect medication,⁶³ or deprioritized;⁶⁴

(c) **Historical and continuing discrimination that make accessing inclusive health care, support, services and information, and interacting with law enforcement, more challenging.** A recent report found that, in the Russian Federation,⁶⁵ six trans people who had become sick with coronavirus-like symptoms had not sought care, but were isolating in their homes, and in Cambodia, where many individuals travel to neighbouring Thailand to receive treatment, this has been unavailable owing to border and travel restrictions.⁶⁶

29. Access by trans and gender-diverse persons to gender-affirming care was cited in several submissions as a particular concern.⁶⁷ Before the pandemic, waiting periods were already very long and care has either been further delayed⁶⁸ or made completely unavailable, including in cases where the continuation of ongoing treatment and support was vital.⁶⁹ A recent report indicates that 14 interviewees from 12 European countries specifically cited concerns about accessing hormones and other gender-affirming care, which, in some cases, have now been deemed “non-essential.” Pre-existing challenges to accessing hormones are also now amplified.⁷⁰

G. Shelter

30. The loss of shelter is a cause of particular concern for LGBT and gender-diverse persons.⁷¹ As noted by the Independent Expert, the scarce data available suggests that LGBT persons are represented in homeless populations at twice the rate of their

⁶⁰ Ibid.

⁶¹ See, for example, submissions by the South Korean Human Rights Network, the Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights and TransAktion (Denmark).

⁶² Submission by Human Rights Watch. See also APCOM Foundation, “COVID-19 and its effects on diverse SOGIESC communities, HIV services and key populations”, COVID-19 Effect Series, Part 1. Available at www.apcom.org/.

⁶³ Submission by Human Rights Watch. See also Gloria Careaga’s presentation at a town hall.

⁶⁴ Submission by the YP Foundation (India).

⁶⁵ Bishop, *Vulnerability Amplified* (see footnote 30).

⁶⁶ Submission by the Cambodian Center for Human Rights.

⁶⁷ Submissions by CHOICE for Youth and Sexuality (Netherlands); ILGA World and Transgender Europe.

⁶⁸ Anna I. R. van der Miesen, Daphne Raaijmakers and Tim C. van de Grift, “‘You have to wait a little longer’: transgender (mental) health at risk as a consequence of deferring gender-affirming treatments during COVID-19”, *Archives of Sexual Behavior*, vol. 49, No. 5 (June 2020).

⁶⁹ Submission by CHOICE for Youth and Sexuality.

⁷⁰ ILGA Europe, “COVID-19 impacts on LGBTI communities in Europe and Central Asia”.

⁷¹ Syed Bukhar Shah, “Transvestites seek relief in face of lockdown”, *News International*, 13 April 2020.

presence in the general population,⁷² which disproportionately results in further exclusion, criminalization and stigma.

31. LGBT community members that are already homeless found themselves in an especially precarious position because, while their chances of finding even short-term employment and temporary housing solutions decreased drastically, they were compelled to rely on social housing and shelter programmes that were not safe for stigmatized communities.

32. During the pandemic, homelessness or life in cramped communal spaces also creates health concerns, or the dilemma of being compelled to return to hostile families and communities where persons have to relive experiences of harassment, abuse and violence.⁷³

H. Employment

33. Most submissions to the Independent Expert made reference to employment as a major factor of impact during the pandemic. For one, LGBT and gender-diverse persons employed in the formal sector are more likely to be employed in industries highly disrupted by the pandemic,⁷⁴ such as restaurants and food service, retail, grooming, public sector education, hospitals and sex work. In a recent global survey of 2,732 gay men, 11 per cent reported losing their employment as a result of the pandemic and 40 per cent anticipated a reduction of 30 per cent or more in their income;⁷⁵ and in Georgia about one third of respondents in a survey reported having lost their jobs.⁷⁶

34. Many LGBT and gender-diverse persons rely disproportionately on the informal sector for income.⁷⁷ Many submissions underlined the particular concerns of trans women, carrying out sex work or other types of informal work,⁷⁸ who will therefore experience an extreme impact from the crisis, while remaining at risk of harassment and violence. In Brazil, for example,⁷⁹ where it is estimated that 90 per cent of the trans population engages in sex work, government stimulus cheques are conditional on prior registration in public records of self-employment or informal work, which excludes many workers with unregulated occupations (such as sex workers).

I. Asylum seekers and refugees, migrants

35. As the Independent Expert has established, “the structural vulnerability of LGBT and gender-diverse persons may be compounded by their status as migrants, asylum seekers and refugees. As they flee discrimination and violence at home, they may be at particular risk of violence, abuse and exploitation at all stages of their journey and at the hands of immigration officers, traffickers and smugglers.”⁸⁰ LGBT and gender-diverse people on the move experience violence and discrimination at every step of a cycle that begins well before the crossing of any border, and in most

⁷² A/74/181, para. 15.

⁷³ Submission by the Asia Pacific Transgender Network.

⁷⁴ Submissions by the Human Rights Campaign and Human Rights Watch.

⁷⁵ Submission by MPact.

⁷⁶ Submission by the Women’s Initiatives Supporting Group (Georgia).

⁷⁷ Asociación Internacional de Lesbianas, Gays, Bisexuales, Trans e Intersex para América Latina y el Caribe, “Pronunciamiento de ILGALAC ante la pandemia de coronavirus y sus efectos en nuestra región”, 20 March 2020.

⁷⁸ See, for example, submission by the Asociación Civil Más Igualdad Perú.

⁷⁹ Submission by ANTRA (Brazil).

⁸⁰ A/74/181, para. 52.

cases continues for years and even decades for those fortunate enough to see it completed.

36. As the world came to the realization of the risks posed by the pandemic, States adopted unprecedented measures of border closure and stringent limitations to cross-border travel. As noted in one submission,⁸¹ risks range from exacerbated homophobia and stigmatization that could lead to a regression in refugee and asylum policy to the intensification of violence against LGBT and gender-diverse persons in countries of origin, and the ominous risk that COVID-19 may gain a foothold in refugee camps with, in many instances, cramped living conditions with little possibility for physical distancing and which are poorly served in terms of basic health, water and sanitation services.

37. LGBT migrants find themselves at the intersection of different forms of stigma and exclusion and often do not have access to minimal protection against contagion. Overcrowding in centres is also compounded by the fact that patterns of violence and discrimination on the basis of sexual orientation and gender identity are reproduced therein.⁸²

III. A human rights-based approach to pandemic response

38. States have the obligation to take measures to prevent and, as relevant, to mitigate the impact of the crisis. The human rights framework that has been identified to this end is clear: measures adopted by the State must be compliant with principles of equality and non-discrimination, participation, empowerment and accountability; they must also be necessary to combat the public health crisis posed by the pandemic, and be reasonable and proportionate to their legitimate purpose. Emergency powers granted to address the pandemic must not be abused, which entails that they 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.⁸³

A. Non-discrimination

39. The Independent Expert is concerned at allegations about State measures taken during the pandemic that intentionally discriminate against LGBT and gender-diverse persons. Governments must not use COVID-19 measures to target or prosecute persons on the basis of their sexual orientation or gender identity. For example, using the pandemic to justify the introduction or passing of legislation limiting or withdrawing rights or postponing the entry into force of judicially mandated rights is a shocking way to use the health emergency to achieve political goals that have otherwise failed.

40. No action by the police or administrative officials, including enforcement of quarantine provisions, raids, demands for identification documents and enforcement of fines during curfews must be discriminatory or arbitrary, or be an excuse to target LGBT and gender-diverse persons or the enjoyment of their rights.

⁸¹ Paul Dillane and Kimahli Powell, “The impact of COVID-19 on displaced LGBTIQ persons: a report with four recommendations for policy makers” (Toronto and New York, Rainbow Railroad, 2020).

⁸² United Nations, “COVID-19 and human rights” (see footnote 1); Equal Rights Coalition, “Global impact of COVID-19 on LGBTI communities” (see footnote 49). See also submission by the Refugee and Immigrant Center for Education and Legal Services (United States).

⁸³ [CCPR/C/128/2](#).

41. Similarly, when Governments enact public policies to fight the pandemic, they must consider how these policies will affect the lives and livelihoods of LGBT and gender-diverse persons. It was noted in one submission,⁸⁴ for example, that in Italy family reunification has sometimes been a reason for granting permission to circulate, although highly criticized by LGBT activists for discriminating against non-heteronormative forms of family.

42. Indirect discrimination occurs when an apparently neutral provision or practice puts persons having a particular sexual orientation or gender identity at a disadvantage compared with others – unless the provision or practice has a legitimate aim and is necessary and appropriate. COVID-19-related measures may significantly raise the risk of indirect discrimination. For example, testing and treatment must be available and accessible to all persons, a principle that has been affirmed by the great majority of special procedures mandate holders: “everybody has the right to health.”⁸⁵

43. Several submissions mentioned measures that, without evident or explicit discriminatory intent, nonetheless had a discriminatory impact. Gender-based quarantines, for example, have revealed themselves to be problematic in general, but particularly so in contexts in which gender-diverse persons do not have access to legal recognition, and have led to abuse and mistreatment.⁸⁶

B. Participation

44. Historically, LGBT and gender-diverse persons and communities have not been part of the formulation of public policies that affect them. The overwhelming majority of evidence provided to the Independent Expert leads to the conclusion that this feature has been replicated in the design, implementation and evaluation of pandemic response and recovery measures.⁸⁷

45. The dilemmas created by the pandemic in relation to public space are particularly grave. Deconstructing the “otherness” of LGBT and gender-diverse persons requires increased visibility and discussion of LGBT identities and topics in public – a step that first requires that LGBT and gender-diverse persons are able to operate safely and openly in public spaces. While limitations to public space appear to exist at all times and in all places, they are particularly apparent with regard to the ability of LGBT and gender-diverse persons to freely assemble through marches such as those held to commemorate the International Day against Homophobia, Transphobia and Biphobia, as well as annual LGBT pride marches. The use of public spaces has proven to be a critical and effective tool in raising awareness of, and fighting against, discrimination and violence on the basis of sexual orientation or gender identity. Several organizations also remarked on their reliance on these very large events for their yearly funding.⁸⁸ COVID-19 swept through one yearly cycle of such events.

46. Other difficulties, while connected to the conditions created by pandemic responses, are also a reflection of systemic challenges. One European non-governmental organization (NGO), for example, reported having received reports of decreased access to policymakers and advocacy opportunities across the board⁸⁹ and denounced a closed loop whereby LGBT persons were unable to have basic needs

⁸⁴ Submission by Gender and Policy Insights (GenPol) (Italy).

⁸⁵ OHCHR, “No exceptions with COVID-19: ‘Everyone has the right to life-saving interventions’ – UN experts say”, 26 March 2020.

⁸⁶ Submission by Hombres Trans Panamá.

⁸⁷ Submission by MPact.

⁸⁸ Submissions by the Human Rights Campaign and ILGA Europe.

⁸⁹ Submission by ILGA Europe.

met and organizations with the mission to promote their rights were blocked from advocacy spaces. However, while a multiplicity of intersecting reasons was given for this distancing, including that institutions themselves were closed, it was also reported that cancelled meetings and conferences and postponed parliamentary hearings were not rescheduled because concerns believed to be “LGBT issues” were not considered a priority.⁹⁰ The Independent Expert would like to underline that, as the measures required to respond to the pandemic are protracted, it is the duty of States to create alternative spaces and opportunities for participation.

47. Aside from the principal reasons of good governance and democratic legitimacy, participation of LGBT communities is also a predictor of the chance that any measures adopted will be efficient and effective: 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 for survival, coping and thriving that will not be immediately evident to those not belonging to their communities or having interacted with them over time. Routines developed by LGBT persons might be quite different: persons engaged in sex work, for example, might be able to interact only with health providers that offer services at night,⁹¹ or working with persons living with HIV will require an understanding of how this community may rely on unproven but well-disseminated theories that antiretroviral treatment prevents COVID-19 infection.⁹²

48. For these reasons, if positive impact is the objective, policymakers should not rely on intuitive thinking when designing responses that will impact the LGBT community, and it is therefore not surprising that the importance of involving LGBT organizations in their design, their implementation and the evaluation of their efficiency and effectiveness was a constant for many stakeholders that conversed with the Independent Expert.⁹³

49. The Independent Expert received information⁹⁴ to the effect that good practice of inclusion in State response can be attributed to three factors: (a) long-term engagement of civil society organizations with political actors, (b) political will – in particular from local officers – to ensure better governance through inclusion, and (c) the building and nurturing of trustworthy relationships between LGBT groups and local governments over time. The Independent Expert has received information on good practices that are encouraging signs of innovation and diligence. For example, the call by the Prime Minister of the Netherlands for young people to submit proposals and critiques of the pandemic response – accompanied by the offer that those with the most inspiring proposals will meet with him –⁹⁵ and processes of consultation reported by several States, including Argentina and Spain,⁹⁶ gathered specialized input from civil society organizations.

⁹⁰ Submissions by Asociación Colectivo Hombres XX (Mexico) and Colectivo Síwo Alar (Costa Rica) and TransAktion.

⁹¹ Submission by ASEAN SOGIE Caucus.

⁹² Meeting Targets and Maintaining Epidemic Control (EPIC) Project, “Strategic considerations for mitigating the impact of COVID-19” (see footnote 8).

⁹³ Equal Rights Coalition, “Global impact of COVID-19 on LGBTI communities”; Meeting Targets and Maintaining Epidemic Control (EPIC) Project, “Strategic considerations for mitigating the impact of COVID-19”.

⁹⁴ Submission by ASEAN SOGIE Caucus.

⁹⁵ Submission by CHOICE for Youth and Sexuality.

⁹⁶ Submission by Spain.

C. Empowerment

50. 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 per cent. 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 per cent.⁹⁷ In the great majority of countries in the world the extraordinary challenges raised by violence and discrimination based on sexual orientation and gender identity are addressed by civil society with these limited resources, with no contribution from the State.

51. These challenges are now exacerbated by the situation created by the pandemic. In his information-gathering activity, the Independent Expert received information about many organizations that saw their sources of income significantly reduced or suspended practically overnight, and many others that since then have considerable concerns about their prospects for future financing.

52. The Independent Expert has been made aware of various initiatives undertaken by civil society organizations, even under the present grave circumstances, to address the consequences of the pandemic in their communities. These include:

(a) **Food, shelter and other basic goods and services.** Most organizations that operate locally have dedicated themselves to providing food for persons in need,⁹⁸ money to pay for their shelter⁹⁹ and other basic goods, both directly and through the creation of physical and virtual meeting spaces to cater for supply and demand. In Brazil a “solidarity map”,¹⁰⁰ created to track initiatives providing support, is focused on the distribution of food and personal hygiene supplies, but some locations also offer mental health support and legal and administrative assistance for social security benefits. In France and Belgium, collectives provide accommodations for LGBT youths who have been rejected by their families or are facing other forms of discrimination.¹⁰¹ In South Africa, organizations are assisting LGBT migrants and asylum seekers who do not have access to food, government aid or other forms of essential goods.¹⁰² In El Salvador, an organization is monitoring and tracking LGBT individuals who have been incarcerated to provide support to them where possible.¹⁰³ In Mexico¹⁰⁴ and Kyrgyzstan, shelters were created for LGBT persons facing violence and discrimination in their households during the pandemic;

⁹⁷ 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* (May 2020).

⁹⁸ Submissions by “Coming Out” (Russian Federation); the Crisis Response Mechanism (Indonesia); the Eastern European Coalition for LGBT+ Equality; Mitini Nepal. See also Bhattacharya, “Coronavirus outbreak” (see footnote 52).

⁹⁹ Submission by the Crisis Response Mechanism (Indonesia).

¹⁰⁰ Submission by ANTRA.

¹⁰¹ Alix Froissart, «Le Mans. «Un soulagement» d’être logé dans un appartement pour les jeunes LGBT en difficulté», *Ouest France*, 17 May 2020.

¹⁰² Submission by ILGA World.

¹⁰³ Ibid.

¹⁰⁴ Televisa.News, “Casa Frida opera como refugio para comunidad LGBT”, video, 21 May 2020.

(b) **Employment.** Some organizations have dedicated their efforts to the creation of entrepreneurship platforms, self-employment opportunities or linkages with corporate jobs;¹⁰⁵

(c) **Health.** Given limitations in access, organizations have put together resources to facilitate people's access to advice and medicine. A Russian Federation organization,¹⁰⁶ for example, reported having organized online space for free-of-charge endocrinologist consultations on hormonal therapy for transgender people, and it was reported¹⁰⁷ that civil society organizations were providing mental health support in contexts as diverse as France, Slovenia,¹⁰⁸ Greece, the Russian Federation, the Netherlands, Nigeria¹⁰⁹ and Bulgaria.¹¹⁰ In Ireland, numerous NGOs are providing remote and online services such as health-care recommendations and resources, self-care and support groups, as well as educational initiatives;¹¹¹

(d) **Resources.** Organizations in all regions of the world have released guides on how LGBT individuals can protect themselves,¹¹² also including helplines for psychological support. These include the provision of psychosocial support, but also hotlines for persons experiencing loneliness;¹¹³

(e) **Working methods.** LGBT civil society has been extraordinarily effective in transitioning to online meeting models.¹¹⁴ A positive aspect of this process is that it has made it necessary to explore the possibilities of online activity. Capitals or big cities are usually the only place in a country where there are regular LGBT events, so online activities are a significant step towards community organizing on a national level;¹¹⁵

(f) **Online resources.** The creation of online resource hubs¹¹⁶ through which persons can meet, obtain information and exchange information and support. For example, a well-known LGBT organization in the Netherlands maintains an updated list of available resources on its website, which has become highly popular.¹¹⁷ The active adoption of online services by civil society is reported across the globe. In particularly difficult contexts, online events may be even more secure than in-person events and enable LGBT and gender-diverse people in rural and remote areas to participate;

(g) **Solidarity networks.** In several contexts in which persons fear for their integrity if going out (as is the case with gender-based quarantine), some organizations have recruited volunteers to do their shopping.¹¹⁸ A Swedish NGO organized safe outdoor activity for older LGBT people on a weekly basis;

(h) **Awareness campaigns.** Campaigns have also been deployed to underscore certain general messages among the LGBT community, including campaigns that

¹⁰⁵ Bhattacharya, "Coronavirus outbreak".

¹⁰⁶ Submission by "Coming Out".

¹⁰⁷ Submission by ILGA Europe.

¹⁰⁸ Total Slovenia News, "The LGBT+ community and Covid-19 in Slovenia", 1 May 2020.

¹⁰⁹ Mike Daemon, "How LGBTIQ+ Nigerians are coping with COVID-19 pandemic", RightsAfrica, 17 April 2020.

¹¹⁰ Submission by the Bilitis Resource Center Foundation.

¹¹¹ Rebecca Kelly, "LGBT+ support groups around Ireland still operating during lockdown", Gay Community News, 7 May 2020.

¹¹² Melalin Mahavongtrakul, "Pandemic guidelines for the LGBTI", *Bangkok Post*, 27 April 2020.

¹¹³ Submission by CHOICE for Youth and Sexuality.

¹¹⁴ Submission by Gender and Policy Insights, GenPol.

¹¹⁵ Submission by Bilitis Resource Center Foundation.

¹¹⁶ Bishop, *Vulnerability Amplified* (see footnote 30).

¹¹⁷ Submission by CHOICE for Youth and Sexuality.

¹¹⁸ Submissions by Hombres Trans Panamá and Legebitra (Slovenia).

encourage people to date online but to postpone dating in person;¹¹⁹ and dating applications have proven to be excellent platforms for dissemination;

(i) **Monitoring and reporting.** There have been myriad efforts by international civil society to assist the LGBT community, States and other stakeholders, including significant efforts to provide evidence through data collection and research. Most, if not all of these studies, are part of the knowledge base consulted in the preparation of the present report. A careful reading of these publications led the Independent Expert to the conclusion that many are reflective of good and best practice, as shown in the quality of the methodology, the participative and victim-centred approach taken in their preparation and the quality of their findings;

(j) **Emergency funds.** Some organizations also focused their efforts on the creation of emergency funds. Through these, thousands of grant requests were processed and reached organizations operating locally and requiring quick solutions to immediate challenges. The Independent Expert 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-term 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 need to reconceptualize the design and management structures of cooperation activities, continuity and outcome mapping of global and regional work, continued support for local community-based organizations (and, in particular, for their strategic planning and execution capacities), equal access to financing for all and continued democratization of international cooperation activities remain indispensable components in the human rights agenda.

53. The high quality and timeliness of all of these initiatives notwithstanding, a general observation is that, in most cases, remote and virtual work is a vastly imperfect second to physical proximity. One organization¹²⁰ provided a simple example as to why: persons who have not yet come out to their family struggle to participate in online meetings because they fear being overheard or accidentally discovered, a state of mind that creates concerns about mental well-being. The creation of safe physical spaces has always been a cornerstone of the work of protection of persons from violence and discrimination.

54. The support system that exists within the LGBT movement is an extraordinary asset for humankind – and is acting to fill States’ shortcomings. It must therefore be supported wholeheartedly by all in the international community and at the regional and national levels. Not only can it continue providing for LGBT persons and the community; as proven by the HIV/AIDS pandemic and now the exceptional response to COVID-19, it can also be an extraordinary asset in the construction of community-based responses and strengthen the networks through which all responses to the public health emergency can be implemented.

¹¹⁹ Submission by CHOICE for Youth and Sexuality.

¹²⁰ Submission by GenPol.

55. Several submissions to the Independent Expert¹²¹ underlined deep concern as to the continued ability of civil society to carry out this fundamental work: in a context where the active shrinkage of civil society spaces was already a concern, there are fears that the pandemic creates an existential threat to LGBT movement-building and organizational survival. Some organizations clustered and classified the challenges identified within the work of the LGBT community during the pandemic in their submissions to the Independent Expert:

- (a) Physical distancing, which raises significant challenges to the provision of assistance to the most vulnerable members of the community;
- (b) Fewer chances to connect safely and securely;
- (c) Limitations in the use of public and community space, which make it more difficult to implement programmes, maintain visibility and raise funds;
- (d) The impossibility of meeting donor expectations or commitments in a context in which it is impossible to implement activities;¹²²
- (e) The risks of burnout and lack of self-care;
- (f) The risk of shifts in donor priorities from LGBT movement-building priorities and community needs. In particular, some¹²³ expressed concerns about the redirection of funding towards response and recovery activities.

56. In their dialogue with the Independent Expert, all stakeholders uniformly expressed deep gratitude for the flexibility and responsiveness shown by donors and cooperation agencies during these exceptional times and expressed the hope that they would maintain a strategic approach to their support for civil society.

IV. Effective State measures

57. It is widely accepted that the juncture at which humanity finds itself as a result of COVID-19 was unexpected, and that there was no comprehensive plan in place, anywhere in the world, that fully captured the degree of human, material, financial and emotional devastation that the pandemic has brought upon humankind, or the manner in which it has tested prevailing notions about the world order created throughout the twentieth century. As the present report is being completed, the pandemic rages on in one third of the world's countries and has claimed at least 650,000 lives.

58. Some valuable lessons nevertheless exist in these most challenging of circumstances that point to the imperative of building communities and societies that are respectful of the rights of all to live free and equal in dignity and in rights: there is now irrefutable evidence that therein lies the key to ensuring that all members of the human family face challenges such as these on a level playing field.

59. Against this backdrop, the Independent Expert considers that three fundamental processes must be continued or put in place: a political decision to acknowledge and embrace diversity in sexual orientation and gender identity; the adoption of decisive measures to deconstruct stigma and the adoption of evidence-based approaches for all State measures.

¹²¹ Bishop, *Vulnerability Amplified*; See also, submission by Human Rights Campaign.

¹²² Dignity Network Canada, "Briefing memo on COVID-19 and global SOGIESC/LGBTI+ human rights" (April 2020).

¹²³ Submissions by ILGA Europe and ASEAN SOGIE Caucus. See also Bishop, *Vulnerability Amplified*; Equal Rights Coalition, "Global impact of COVID-19 on LGBTI communities" (see footnote 49).

A. Giving visibility to lesbian, gay, bisexual and trans (LGBT) and gender-diverse lives in public policy

60. Denying the existence of LGBT persons in any society is a violation of their human rights in all times and a particular shocking form of negligence during the pandemic, when an understanding of the lives of all affected persons is the key to effective and efficient responses.¹²⁴ States must recognize the existence of LGBT persons under their jurisdiction, acknowledge that their sexual orientation and gender identity lie behind the violence and discrimination that are determinants for vulnerability vis-à-vis the pandemic and the measures taken to address it, and act accordingly by adopting measures to incorporate their concerns and challenges into the design, implementation and evaluation of these measures.

61. The Independent Expert is encouraged at the manner in which some States have chosen to give visibility to LGBT concerns in public policy. Spain,¹²⁵ for example, informed him of a detailed series of actions, including the publication of guidance on the economic support programmes available to LGBT persons, including support for shelter, health and emotional support, a step that was also taken by Peru.¹²⁶

62. One of the consequences of acknowledging the existence of LGBT persons in public policy is the ability to create evidence-based diagnostics. While all evictions in the province of Buenos Aires, Argentina, were suspended by law until 30 September 2020, it became clear to the Public Defence Service¹²⁷ that a significant number of trans and *travesti* persons under its jurisdiction live in hotels or hostels and were therefore not protected by the suspension. That knowledge allowed the Ministry to preventively trigger processes to ensure continuity of shelter or, alternatively, to request that the persons concerned be assigned temporary lodgings or a subsidy.¹²⁸ In addition, the State was in position to carry out a number of measures, including:

- (a) The inclusion of trans persons in the emergency income programme;
- (b) The inclusion of trans persons in programmes aimed at continuing education;
- (c) The registration of trans persons in a census run by the National Institute Against Discrimination, Xenophobia and Racism (INADI);
- (d) The issuance of a manual on access to health care for trans, *travesti* and non-binary persons, including the use of digital access to enable hormonal treatment to be continued, and steps to better manage the provision of the relevant medication.¹²⁹

63. The existence of diverse family units should be acknowledged, as should the community and social networks that unite LGBT persons. As expressed in one submission,¹³⁰ State support policies are usually designed around a traditional family model that does not necessarily correspond to the reality of LGBT families and the communities from which they get their support and protection.¹³¹ An excellent example was reported in the Philippines, where three local governments included

¹²⁴ Submission by the Egyptian Initiative for Personal Rights.

¹²⁵ Submission by Spain.

¹²⁶ Submission by ILGA World.

¹²⁷ Submission by Public Defence Service (Argentina).

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Submission by Asociación Civil Más Igualdad Perú.

¹³¹ Submission by Spain.

same-sex partners with children in a social improvement programme for families¹³² and as recipients of cash aid if ineligible for the programme.¹³³

64. Some efforts demonstrate an intention to ensure the accessibility of information, such as those deployed by the University of the Philippines Resilience Institute, which developed a multilingual artificial intelligence chatbox to answer questions regarding COVID-19 that can also speak in Filipino LGBT slang, or “Beki” language.¹³⁴

B. Deconstructing stigma and protecting lesbian, gay, bisexual and trans (LGBT) and gender-diverse persons from violence and discrimination

65. The prejudice and stigma to which LGBT and gender-diverse persons are subjected every day has been amply documented by the Independent Expert, and the increased vulnerability of LGBT and gender-diverse persons in emergency situations is also well documented.¹³⁵ As established by the Independent Expert, “pre-existing inequalities, discrimination and violence are exacerbated in humanitarian settings, putting those who are already most vulnerable at further risk”.¹³⁶

66. The weight of official State discourse is of great importance and the Independent Expert has received concerning reports of the exacerbation of hate and discriminatory speech, as well as fallacious attribution of responsibility for the pandemic to the advancement of LGBT rights. Government measures to combat the pandemic must be limited to the protection of public health and not to the advancement of 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 strictly recognized and enforced by State authorities.

67. As noted by the Special Rapporteur on Freedom of opinion and expression, “public health authorities around the world have been legitimately concerned about disinformation during the COVID-19 pandemic. Unreliable information, particularly when disseminated by individuals with significant platforms, can cause grave harm, whether maliciously intended or not”.¹³⁷ The strategy proposed by the World Health Organization involves monitoring, analysis and control and mitigation measures. It thus follows that misinformation must be countered by objective, rational and well-informed communication from the public health authorities.

68. Measures should be taken to address disinformation campaigns and hate speech about the pandemic via social media. Inclusive official discourse is fundamental to deconstructing stigma and, when it is lacking, it foments acts of violence and discrimination, the opportunities for which are multiplied in emergency situations.

¹³² Janine Peralta, “LGBTQ parents included in Pasig City supplemental cash aid”, CNN News, 5 May 2020; Jeline Malasig, “‘Lahat kwalipikado’: Vico Sotto’s COVID-19 financial aid for Pasig residents include LGBTQ+ couples”, Interaksyon, 6 May 2020; Manila Bulletin, “Pasig includes LGBTQ families in city’s SAP”, 8 May 2020.

¹³³ Dorothy Andrada, “Iloilo City gov’t to give financial aid to LGBTQ+ citizens during lockdown”, Nation, 12 May 2020; Regi Adosto, “Iloilo City may P2,000 ayuda sa mga miyembro ng LGBT community”, ABS-CBN News, 13 May 2020 (in Tagalog); Roel Hoang Manipon, “Iloilo City aids LGBTQ+ residents”, Tribune, 18 May 2020; Perla Lena, “Iloilo City needs 2 days more to complete SAP release”, Philippine News Agency, 11 May 2020.

¹³⁴ University of the Philippines, UP Media and Public Relations Office, “Yani, the EndCovBot, learns LGBT slang”, 26 May 2020. The chat box can be engaged via Facebook Messenger at: m.me/YaniEndCovBot.

¹³⁵ Bishop, *Vulnerability Amplified* (see footnote 30).

¹³⁶ [A/74/181](#), para. 59.

¹³⁷ [A/HRC/44/49](#), para. 41.

For example, in South Korea, after a cluster of cases was traced to a prominent gay club in Itaewon resulting in a national outpouring of homophobic sentiment, the Government urged journalists and media personnel to exercise caution to prevent personal information from leaking.¹³⁸

69. Specific measures to protect victims of domestic violence are particularly necessary and, when adopted, it is extremely important that they include LGBT and gender-diverse persons, as was the case with measures adopted in Argentina. Similarly, in one submission¹³⁹ it was noted that the city of Naples in Italy, along with the main local LGBT associations, had undertaken joint action to ensure that anti-violence centres and women's shelters would also accept a quota of LGBT people who were experiencing gender-based intimate partner violence. During the lockdown, aware that domestic violence would increase, the central Government in France, deployed national systems. One example is a new homophobia reporting app called FLAG, specifically designed for LGBTI individuals at risk where victims can report acts of violence and be directed to relevant services.¹⁴⁰ Finally, in France, the Secretary of State for Equality between Women and Men has implemented plans to address the hardships facing the LGBT communities.¹⁴¹

70. Efficient and effective access to justice is essential. As noted by the Committee on Economic, Social and Cultural Rights, "Access 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."¹⁴²

71. Community or religious leaders may often be recruited into food or hygiene product distribution systems. As a requirement to carry out this function, such persons must commit to non-discrimination on all grounds. In a public health emergency, specific definitions cannot be used as an excuse to refuse delivery of family-based resources, and preconceptions about families perceived as traditional and LGBT families must not play a part in the delivery of decisions. In the case of communities or populations in which distrust for police is widespread, alternative means should be considered for the delivery of food or other resources.

72. Health-care services such as treatment for HIV/AIDS, hormone replacement therapy and reproductive and sexual health care should be deemed essential, 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 these through virtual means during quarantine or isolation.

¹³⁸ Submission by ILGA World.

¹³⁹ Submission by GenPol.

¹⁴⁰ L'Express, «Homophobie: lancement d'une application pour signaler des actes de violences anti-LGBT», 24 April 2020.

¹⁴¹ L'Express, «Confinement : Marlène Schiappa annonce un "plan d'urgence" contre les violences anti-LGBT», 24 April 2020.

¹⁴² E/C.12/2020/1, para. 12.

C. Involvement of lesbian, gay, bisexual and trans (LGBT) and gender-diverse organizations in designing State response

73. The need to involve LGBT organizations was a constant for many stakeholders in the dialogues with the Independent Expert.¹⁴³ As a result of the history of violence and discrimination, LGBT and gender-diverse persons have in many cases developed particular mechanisms for survival, coping and thriving that will not be immediately evident to those not belonging to the communities, or having had interaction with them over time. Given the specific coping and survival mechanisms developed by LGBT and gender-diverse persons facing violence and discrimination (see para. 47), policymakers should not rely on intuitive thinking when designing responses that will impact the LGBT community.

74. For example, it is difficult to rely on trust between LGBT and gender-diverse 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.

75. It is obvious that crisis situations amplify pre-existing inequalities, and that marginalized groups are disproportionately affected as a consequence of inadequacies which have been amplified, not created, by the pandemic. States must address these without delay, and must include LGBT civil society organizations to inform their actions.

76. Only through the involvement of the individuals and communities concerned in the process through which the measures are developed will responses to increase their impact be enabled.

D. Evidence-based approaches

77. There was an overwhelming consensus in the submissions to the Independent Expert that States are not gathering data systematically,¹⁴⁴ even when highly specialized organizations recommended this to local and national authorities.¹⁴⁵ As in many other facets pertaining to the lives of LGBT and gender-diverse persons, the information available is being gathered by non-governmental organizations,¹⁴⁶ even in contexts in which the State possesses significant resources and data-gathering capabilities,¹⁴⁷ or by international organizations, or through alliances involving both.

78. For example, in the Dominican Republic, the United Nations Development Programme conducted an online survey to meet the needs of LGBT non-governmental organizations and identified their main activities and priority areas of care. It also included data gathering points for sexual orientation and gender identity in its general surveys, which allowed it to determine levels of integration into social assistance and solidarity programmes and the vulnerabilities generated by the reduction in income in families with one or more LGBT people, resulting in more than half having to reduce the number of meals per day as a result of the reduction in income. It was also found that 72 per cent of households with at least one LGBT person have had

¹⁴³ OHCHR, “No exceptions with COVID-19: “Everyone has the right to life-saving interventions” (see footnote 86); Meeting Targets and Maintaining Epidemic Control (EPIC) Project, “Strategic considerations for mitigating the impact of COVID-19” (see footnote 8).

¹⁴⁴ Submissions by “Coming Out”; Diversidad Sexual LGBTIQ de Nicaragua; the Crisis Response Mechanism (Indonesia); Fundación para el Estudio y la Investigación de la Mujer and enREDando Salud.

¹⁴⁵ Submission by The Fenway Institute (United States).

¹⁴⁶ Submission by ASEAN SOGIE Caucus.

¹⁴⁷ Submission by the Human Rights Campaign.

difficulty accessing protective equipment such as masks, 34 per cent have access to safe drinking water, and 45 per cent indicated that household members in need of regular treatment have not been able to access health services.¹⁴⁸

79. The principle of due diligence is also an essential part of the State's responsibility when the State knows, or has reasonable grounds to believe, that abuses are being perpetrated. However, as noted by the Independent Expert, "as a result of barriers created by criminalization, pathologization, demonization and other institutional drivers for stigmatization, there are no accurate estimates regarding the world population affected by violence and discrimination based on sexual orientation and/or gender identity".¹⁴⁹ Lack of recognition of gender identity adds to this distorted view of reality, given that persons are not represented in a manner that corresponds to their self-identification.

80. Disaggregation of data allowing a comparison of population groups therefore forms a 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 demographic, economic, social and cultural characteristics, literacy rates, unemployment rates, voting patterns, the number of reported cases of violence and other indicators. 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. For example, in Pennsylvania, the Governor referred to government plans to collect data on sexual orientation, gender identity and gender expression when studying the coronavirus to ensure that the specific needs of the LGBT communities were taken into account when formulating policy.¹⁵⁰ This plan was implemented in response to the Pennsylvania Response Task Force on Health Disparity, which sought to address the needs of vulnerable populations.¹⁵¹

81. The Independent Expert is deeply concerned about information received through this process about States that have issued decrees authorizing cremation and interment without a death certificate,¹⁵² which creates "a large number of persons who have died from COVID-19 and been lost to the historical record", a measure that allegedly would disproportionately impact the LGBT community.

V. Recommendations

82. Given that the present report is part of an integral process for the COVID-19 response and recovery free from violence and discrimination based on sexual orientation and gender identity, reference will be made to the broader context of the ASPIRE Guidelines, which further define the recommendations below. It must be noted however that one of the lessons learned in 2020 is that we are in an iterative learning process and that no statement should be seen as final in the foreseeable future.

¹⁴⁸ Submission by the United Nations Development Programme (UNDP), the Office of the United Nations High Commissioner for Refugees (UNHCR) and UNAIDS in the Dominican Republic.

¹⁴⁹ A/HRC/41/45, para. 12.

¹⁵⁰ Governor Tom Wolf, Pennsylvania, United States, "Gov. Wolf announces inclusion of gender identity, sexual orientation or expression in COVID-19 data collection", 13 May 2020.

¹⁵¹ Submission by ILGA World.

¹⁵² Asociación Internacional de Lesbianas, Gays, Bisexuales, Trans e Intersex para América Latina y el Caribe, *CORONAPAPERS: Nuestra Comunidad LGBTI en Tiempos de Pandemia* (Buenos Aires, 2020).

83. Within that understanding, the Independent Expert recommends that States consider the implementation of the following guidelines:

A. Acknowledge that LGBT and gender-diverse persons are everywhere and that they are hard-hit by the pandemic

84. States must recognize the existence of all LGBT and gender-diverse 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 for pandemic response and recovery.

B. Support the work of LGBT civil society and human rights defenders and learn from their significant achievements

85. 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 and gender-diverse 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 and gender-diverse persons.

86. Donors that have not yet done so should urgently consider introducing relevant changes to 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.

C. Protect LGBT and gender-diverse persons from violence and discrimination in the pandemic context and prosecute perpetrators

87. 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 and gender-diverse persons, and ensure the continued operation of systems of support and access to justice. In contexts in which same-sex relations are still criminalized, States must remedy all barriers created by them 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.¹⁵³

88. 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. These must, in turn, be

¹⁵³ OHCHR, “COVID-19 and the human rights of LGBTI people: what is the impact of COVID-19 on LGBTI people”, 17 April 2020; OHCHR, “United Nations guidance note on addressing and countering COVID-19-related hate speech”, 11 May 2020.

accompanied by relevant action to ensure the accountability of State and non-State agents involved in the perpetration.

D. Indirect discrimination must be assessed as a real and significant risk which exacerbates stigmatization against LGBT and gender-diverse persons

89. States should adhere proactively to a standard of due diligence by: (a) identifying and assessing human rights impacts that they may cause or contribute to through pandemic response or recovery measures; (b) integrating findings from impact assessments across relevant inter-agency processes and taking appropriate action according to their involvement in the impact; (c) tracking the effectiveness of measures and processes to address adverse human rights impacts in order to ascertain whether they are working; and (d) 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.¹⁵⁴

E. Representation of LGBT and gender-diverse persons in the process of design, implementation and evaluation of COVID-19 specific measures is key and must reflect their voices

90. Only the involvement of the individuals and communities concerned 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.¹⁵⁵

F. Evidence concerning the impact of COVID-19 on LGBT and gender-diverse persons must be gathered and States must follow good practices

91. The Independent Expert encourages States to engage with LGBT organizations and networks to design and adopt methodologies that would enable collection of data relating to LGBT and gender-diverse 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 any discriminatory impact of the next.

¹⁵⁴ ILGA World and others, “Call to action: addressing discrimination and inequality in the global response to COVID-19”, 5 July 2020.

¹⁵⁵ Global Action for Gay Men’s Health and Rights (MPact), “Global Fund and COVID-19: implications for key populations”. Available at <https://mpactglobal.org/>.