**Call for Inputs**

**Deadline 15 March 2019**

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

In accordance with my mandate as Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, pursuant to Human Rights Council resolution 32/2, I intend to present a thematic report at the 41st session of the Human Rights Council, which will focus on data as a means to create heightened awareness about violence and discrimination based on sexual orientation and gender identity. Further, the report will discuss human rights implications of State activities related to gathering information on violence and discrimination based on sexual orientation and gender identity.

My report will discuss the types of data relevant to assess violence and discrimination based on sexual orientation and gender identity; map what data are already being collected, by whom, and for what purpose; highlight key human rights safeguards that must be taken into consideration when collecting and using data; and formulate recommendations to States and other relevant stakeholders.

**Background**

Social prejudice and criminalization lead to the marginalization and exclusion of lesbian, gay, bisexual or trans and gender non-conforming (LGBT) persons from essential services, including health, education, employment, housing and access to justice.[[1]](#footnote-1)

In May 2018, a group of [United Nations and international human rights experts](https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23092&LangID=E) expressed concern that LGBT people are being effectively left behind. They noted: “the development commitments of the international community, placed in the frame of the SDGs, demands that immediate attention be given to ensuring that the systematic exclusion of these groups, communities and populations be addressed: to make sure that no one is left behind, actions must be taken to tear down the systematic barriers that exclude LGBT persons from the benefits of the development agenda.” In this context, the experts underlined that such actions will rely among other, on the availability of data and on ensuring that disaggregated data collection and management are implemented in strict compliance with human rights standards.

Currently, however, there is a serious gap in the data available to capture the lived realities of LGBT people. Social prejudice and criminalization may result in non- or underreporting of violence and discrimination based on sexual orientation and gender identity and may seriously affect data collection efforts, which would help to provide evidence of the extent of the challenges faced by the LGBT population and of the policy and legislative needs in that regard. Similarly, the negation, by some States, of the existence of violence and discrimination based on sexual orientation and gender identity or even of the presence of LGBT persons in their jurisdiction, will result in serious data gaps. The collection is crucial to create visibility and build an evidence base about human rights abuses and potential responses, dispel myths and stereotypes that feed stigma and discrimination, and aid policy-makers and advocates in the formulation of State measures regarding socio-economic inclusion, access to health and education, inclusion in the civic and political sphere, anti-discriminatory measures, prevention of abuses, and access to justice.

In recent years, some States, regional human rights bodies, and multilateral institutions such as the United Nations have initiated efforts to increase the level of knowledge about LGBT people and the discrimination and violence they face. Additionally, governments are increasingly including aspects of sexual orientation and gender in routine data collection that takes place as part of governmental administrative functions. This interest in collecting data has been driven by several factors, including increased concern by States for the human rights of LGBT people, a call for disaggregated data as part of the 2030 Agenda (UN General Assembly Resolution A/RES/70/1), the development a new [LGBTI Inclusion Index](http://documents.worldbank.org/curated/en/608921536847788293/A-Set-of-Proposed-Indicators-for-the-LGBTI-Inclusion-Index), and the articulation of a [human rights based approach to data](https://www.ohchr.org/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf) by the Office of the High Commissioner for Human Rights. Moreover, in 2018, the [Global Commission on HIV and the Law](https://hivlawcommission.org/supplement/) supplemented its 2012 report to address new developments in this field and, among other matters, identified data collection and a security as an issue of concern. The Commission recommended that governments establish legal protections to safeguard privacy and confidentiality in social media, digital health, online healthcare records, communications with providers. The Commission further recommended that governments prohibit non-consensual use by law enforcement or private entities of digitally-collected or stored private information, especially data related to sexual and reproductive health.

These efforts carry benefits for, and risks to, the human rights of LGBT people. Data is needed to understand the nature and extent of violence and discrimination against LGBT people, dispel myths and stereotypes that feed stigma and discrimination, and aid in the formulation of state measures that incorporate relevant communities. At the same time, any effort to collect data about sexual orientation and gender identity raises concerns about privacy, identity, self-determination, and security. Information about an individual’s sexuality and gender continues to be highly stigmatizing. LGBT people remain vulnerable to the risks associated with the collection, maintenance and use of data. In countries where same-sex sexual conduct is criminalized, where laws and policies are used to discriminate against or persecute LGBT persons, or where stigma and prejudice are rampant, the probability that victims will dare to report abuses is very low, owing to fear of prosecution, stigma, reprisals or victimization, unwillingness to be “outed”, or lack of trust. Even in progressive environments, the worry of regression may lead to non- or underreporting. In addition, there is currently no globally accepted definition, or international classification scheme, to facilitate internationally comparable data between subpopulations according to sexual orientation and gender identity.

**Call for input**

To inform my report, I am seeking views and inputs from all relevant stakeholders (Member States, civil society organizations, National Human Rights Institutions, United Nations agencies, regional institutions, corporate entities, etc.) and I kindly invite you to consider the following questions:

1. What are the current efforts by States to increase their knowledge of the LGBT population? Specifically, are questions about sexual orientation and gender identity included in government surveys (e.g. the census, national health surveys, income and living condition surveys, or other surveys funded or mandated by the State), administrative records (e.g. birth certificates/birth registries, identity Cards, school records, professional licenses, social security and public benefit records, and other government documents)?

*The government does not launch any surveys related to sexual orientation and gender identity. However, the Ministry of Labour and Social Policy has included SOGI and protection against discrimination of LGBTI people in the National Equality and Non-discrimination Strategy, and its Action Plan, both adopted in 2016. Within the scope of the Action Plan, one of the activities is conducting basic level trainings for state authorities in addressing discrimination and hate speech. These trainings are implemented in partnership with Subversive Front – Sexual and Gender Minorities Association from Skopje, North Macedonia, where quantitative and qualitative assessment on the knowledge, the skills, the attitudes and perceptions of the public administration employees – participants to the trainings, is being conducted prior the training, and after the training. The results of the analysis of the assessment show significant disparities in the level of knowledge, skills, and attitudes public administration employees have toward discrimination based on ethnic origin (i.e. Albanian, Roma, etc.), and discrimination based on other grounds – SOGI, (dis)ability, health status (i.e. PLHIV), etc.*

1. What kinds of data can be collected by government to understand the nature and extent of violence (e.g. through statistics on LGBT-phobic hate crimes and hate speech), discrimination, and disparities in health, education, labour, civic participation, and other important areas?

*The data can be collected through integration of qualitative and quantitative research methodologies, and community-based participatory research which will include all beneficiaries and stakeholders - LGBT community members, government officials (police, the Commission’s members, judges, legal representatives) and CSOs staff members who are responsible for processing the cases of violence and discrimination. Quantitative data can be collected by examining the cases of violence, hate speech, hate crime, and discrimination reported to relevant state institutions - Commission for protection against discrimination, Ombudsman, police; official and non-official cases reported to human rights-based CSOs. Qualitative data can be collected for understanding the nature of violence by conducting interviews with LGBT community members and CSOs staff members. The interview questions/guides should be developed by an experienced researcher.*

1. What safeguards are in place, and what safeguards are needed, to protect the human rights of individuals providing personal data as well as individuals collecting such data? This question includes the following:
   1. Safeguards to protect the privacy of individuals who provide data about their sexual orientation/gender identity, and the confidentiality of the data provided by these individuals.
   2. Broader statutory rules or administrative policies to insure transparency and accountability of government institutions such as statistical bodies.

*The privacy can be ensured by anonymous questionnaires for the quantitative data collection and using pseudonyms for the qualitative interviews - not requesting any personal/identifiable information which can identify the research participant: name, surname, ID/personal document numbers, etc. Consent forms and ethical approval should be obtained by relevant bodies.*

1. What are the risks associated with the collection and management of data on sexual orientation and gender identity and initiatives to overcome those?

*The risks depend on the methodology which is going to be used - For example, 1. To ensure reasonable representation of diverse LGBT community members in the research sample (gays, lesbians, bisexual, trans\*, Roma, Albanian LGBT community members) A; 2. To recruit LGBT participants from different cities and towns, 3. To engage experienced researchers to conduct the research study, 4. To recruit well-informed state officials as research participants in the study; 5. Political events which are going to be prioritized in the country and might prevent successful recruitment process, 6. Cognitive, emotional, and communication barriers coming from the sensitiveness of the topic - interview process with LGBT community members who are/were victims of violence, discrimination and other forms of human rights violations.*

1. Are there circumstances where data collection is ill-advised, such as in countries that criminalize same-sex behavior or where particular government agencies have demonstrated a cause for concern regarding their treatment of issues related to sexual orientation and gender identity?

*N/A*

1. When States engage in data gathering activity, to what extent is civil society able to meaningfully participate in the design and implementation of these programs? This question includes the following:
   1. Do states have policies that guide the process of civil society participation national statistical programs and other State efforts to increase knowledge about LGBT populations?

*We do not have information about this/if there are any policies.*

* 1. Does civil society have the capacity, in terms of expertise and technical knowledge, to meaningfully participate in State efforts to gather data?

*Yes, the civil society organizations have the expertise, knowledge and skills to initiate and conduct empirical research and participate in the State efforts throughout the entire research process*.

* 1. What constitutes meaningful participation in this area?

*This would mean engaging into consultations with the civil society organisations in designing the research methodology, data collection, analysis of the collected data, and compiling the research report, while preserving the confidentiality, and privacy of the research participants.*

1. Does the lack of a global classification scheme carry risks that data will not be useful for international comparisons or will not accurately reflect the identities and lived realities of local populations?

*Yes, it does, however, there can be a model which will meet the international comparison criteria, and still accurately reflect the identities and the lived realities of local populations. One suggestion for this would be conducting community research studies that focus on the issues such as violence, discrimination, whilst being LGBTI in the geographic, political, economic and social context where the community members exist.*

Responses to the questions above can be submitted in English, French or Spanish, and in Word format. Please note that if you wish your submissions to be kept confidential, you are required to make an explicit request in your submission, as otherwise information may be referenced in the report.

I would be particularly grateful to receive the information requested at your earliest convenience, and preferably by 15 March 2019 at the latest. Responses may be addressed to the Independent Expert at the Office of the UN High Commissioner for Human Rights and can be submitted by email ([ie-sogi@ohchr.org](mailto:ie-sogi@ohchr.org)).

For any further question or clarification, please do not hesitate to contact me through the Office of the United Nations High Commissioner for Human Rights (Ms. Catherine de Preux De Baets, telephone: 022 917 93 27, email: [cdepreuxdebaets@ohchr.org](mailto:cdepreuxdebaets@ohchr.org) or Ms. Alice Ochsenbein, telephone: 022 917 32 98, [aochsenbein@ohchr.org](mailto:aochsenbein@ohchr.org)).

Warm regards,



Victor Borloz-Madrigal

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

1. Report of the IE SOGI to the Human Rights Council ([A/HRC/38/43](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/132/12/PDF/G1813212.pdf?OpenElement)), 2018. [↑](#footnote-ref-1)