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**Mr. Victor Madrigal-Borloz**

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

**Office of the United Nations**

**High Commissioner for Human Rights**

**E:** ie-sogi@ohchr.org

Date: 31 May 2019

Subject: **Contribution by the Advocate of the Principle of Equality to the forthcoming report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity**

Dear Mr. Madrigal-Borloz,

Advocate of the Principle of Equality (hereinafter the Advocate) is the national equality body in the Republic of Slovenia. The Advocate is an independent statutory body established on the basis of the Protection Against Discrimination Act[[1]](#footnote-1) adopted in May 2016. The institution of the Advocate was formally established in October 2016 with the election of the institution’s first Head, Mr. Miha Lobnik, in the National Assembly of the Republic of Slovenia.

After devoting most of the first two years of its existence to the setting up of the institution, securing adequate financial and human resources, and reducing the backlog of cases, the Advocate started with substantive systemic work in late 2018 / early 2019. Below we provide answers to questions from the Independent Expert’s *Call for Inputs* that fall within the ambit of Advocate’s competences and address issues that the Advocate has dealt with or been informed about since its establishment.

**Question 1**

**Public institutions in Slovenia do not collect data on discrimination against persons identifying as LGBTQI+** (hereinafter LGBTQI+ persons). The only official data collected by the national Statistical Office is on registered same-sex civil unions. However, given a relatively low number of same-sex civil unions, this data is combined in public datasets with that on registered marriages due to personal data protection concerns.

Various complaint mechanisms such as inspection services, petition offices, police, prosecution and courts at all levels of the judicial system do not record discrimination-related cases by individual protected grounds. The only complaint mechanism collecting data which includes the protected ground of the complainant (including sexual orientation and gender identity) are the Advocate and, to an extent, the Ombudsperson. Research on the general situation of discrimination against LGBTQI+ persons is conducted exclusively by LGBTQI+ organisations either through their direct work with members of the community or in the framework of various national and international projects.

In late 2018, the Advocate launched a structured and continuous dialogue with representatives of LGBTQI+ organisations with the goal of identifying key challenges in the field. Below, we briefly point out key information received through this dialogue with respect to topics of particular interest to the Independent Expert in the context of his forthcoming report:

* Education. Field research conducted by an interlocutor among LGBTQI+ youth[[2]](#footnote-2) showed that more than half of respondents do not disclose their gender identity or sexual orientation in the school context. 28 % of respondents experienced discrimination and/or violence in schools and 29 % reported their classmates to be the perpetrators of discrimination and/or violence against them in general. Underreporting of bullying/violence/harassment against LGBTQI+ persons remains problematic.

The Advocate’s interlocutors reported that schools perform poorly in their responses to harassment of LGBTQI+ students, with teachers and principals often tolerating such violence and not adopting any preventive measures. Trainings on the prevention of peer violence based on sexual orientation and gender identity are included in the official Catalogue of further training programs for education workers, however, participation is not mandatory and low attendance is reported.

LGBTQI+ minors (younger than the age of 18) who experience harassment in schools based on their sexual orientation or gender identity can turn to the Advocate for advice. however, they cannot trigger an official procedure on establishing discrimination on their own due to general statutory rules on limited legal capacity of minors. This is particularly problematic with regard to persons who have not yet disclosed themselves to their families or have been rejected by them post-disclosure.

* Health care. Interlocutors reported to the Advocate that LGBTQI+ persons often have difficulties accessing basic health care services due to inappropriate communication by health professionals – this discourages patients from revealing their sexual orientation or gender identity which in many cases can be related to their health care needs. The Advocate was informed about cases where psychiatrists were trying to ‘treat’ their patients’ homosexuality and harassment by gynaecologists of transgender persons. Recently, the Advocate received an official complaint on a transgender person being denied health services due to their gender identity. The case has not yet been decided on.

The Advocate was furthermore informed about cases of persons living with HIV being harassed by health professionals and being denied health services. In July 2018 a district court adopted a decision establishing the denial of dental care to a patient living with HIV constituted discrimination.[[3]](#footnote-3)

Rights of *intersex persons* are not regulated by law at all. Interlocutors have informed the Advocate that intersex medical interventions at birth due to atypical or ambiguous genitalia and other sex characteristics are often performed either without the consent or knowledge of the parents or are presented as medical necessity. Intersex persons are often not informed about their diagnosis later on in their lives or are provided with a false diagnosis. The Advocate is currently gathering information from all relevant stakeholders with the purpose of planning further action on this issue.

Family relations. The recently adopted Civil Unions Act (see answers to Question 3 below), which establishes equal rights for same-sex and opposite-sex couples, still denies access by same-sex couples to adoption of children and access to medically assisted reproduction procedures. Interlocutors reported to the Advocate that same-sex couples are sceptical of exhausting all legal remedies in order to finally reach constitutional review of these provisions before the Constitutional Court as this inevitably involves a degree of unwanted public exposure.

* The elderly. Research in this field is almost non-existent, with LGBTQI+ organisations struggling with establishing contacts with members of this target group. Elderly LGBTQI+ persons often face social isolation and when/if they move to retirement homes or other institutions of the sort they are often forced to ‘go back into the closet’ in order not to be ostracised by other residents.
* Legal gender recognition. The existing procedure on the legal recognition of gender is not prescribed by law but a statutory regulation – *Rules on the implementation of the Civil Register Act*.[[4]](#footnote-4) Article 37(1) requires applicants to acquire an “assessment certificate issued by a competent health institution or a physician” demonstrating that the person has changed their gender. Transgender persons must thus acquire the appropriate certificate from a psychiatric institution diagnosing them with a specific psychiatric disorder. LGBTQI+ persons have on several occasions raised opposition as to the compliance of such a procedure with the internationally recognised rights to privacy and personal integrity. The procedure should be defined in law, however, several ministries have up until now denied their competence *ratione materiae*.
* Homelessness. Interlocutors have informed the Advocate that homelessness is a growing issue among LGBT youth who disclose their sexual orientation or gender identity to their family members and as a consequence face severe rejection. Interlocutors emphasised that in order to respond to this phenomenon, an LGBTQI+ safe house (for youth as well as adults) should be established.
* Housing. In 2016 a consortium of NGOs conducted situational testing in respect of access of same-sex couples to commercial housing available on the market.[[5]](#footnote-5) While the testing sample was indeed small (82 apartments all over the country), raising certain questions as to its representability, testing result unequivocally showed discriminatory treatment of same-sex couples in 9,7 % of the cases.

**Question 2**

Existing legislation in Slovenia explicitly prohibits discrimination against persons on the basis of their sexual orientation and gender identity. Marriage equality, however, is not established in law and same-sex couples do not have access to adoption procedures and medically assisted reproduction (see questions above and below).

To an important extent, marginalisation and socio-cultural and economic exclusion of LGBTQI+ persons is grounded in the negative public discourse based on harmful stereotypes and prejudice stemming from the lack of knowledge about LGBTQI+ persons and historically determined discrimination against them. In recent years, the fuelling and perpetuation of such discourse was particularly damaging during the 2012 referendum campaign concerning the Family Code (proposing the right of same-sex partners to adopt children of the other partner) and the 2015 referendum campaign concerning the amendment of the Marriage and Family Relations Act (establishing marriage equality). Both campaigns were characterised by the dissemination of misinformation and untruths as well as serious intolerance, with opponents of the proposed bills arguing that equal LGBTQI+ rights were incompatible with the traditional conception of family in Slovenian society. Given the existing negative public attitude towards the LGBTQI+ community – which was confirmed and reinforced by the popular rejection of both proposed laws – decision makers’ and opinion leaders’ condemnation of exhibited intolerance remains bland and lacklustre. Additionally, the recent 2019 European elections campaign brought up the use of the “LGBT+P” acronym in one of the running party’s promotional material, implying that homosexuality and paedophilia are inextricably connected. The case has also been reported to the Advocate and is currently being processed.

Particularly since the abovementioned 2012 referendum on the proposed Family Code, opponents of equal LGBTQI+ rights have publically rejected any kind of education in public schools on equal LGBTQI+ rights, deeming it harmful ideological indoctrination into gender theory. The lack of an assertive response from the competent authorities seems to have further slowed down the pace of promoting an inclusive attitude towards LGBTQI+ persons.

**Question 3**

There is no systemic public policy approach to address socio-cultural and economic exclusion of LGBTQI+ persons, nor is there any designated focal point in public administration bodies (ministries, government departments or other policy-making institutions) that would address issues and coordinate policies related to equality and non-discrimination of LGBTQI+ persons across the board. Support services for members of the community, awareness-raising programs and trainings on LGBTQI+ rights are predominantly performed by LGBTQI+ organisations. The absence of a systemic state-led approach may also be linked to the fact that there is no comprehensive national-level Government strategy on the promotion of human rights and the fight against discrimination.

In the past few years, however, certain pieces of legislation have been passed and individual measures have been taken that importantly advanced socio-economic rights of LGBTQI+ persons. We briefly outline a selection of such measures below:

Legislation:

In April 2016 the National Assembly adopted the **Civil Union Act[[6]](#footnote-6)** which repealed and replaced the 2005 Civil Partnership Registration Act that was found unconstitutional by the Constitutional Court in February 2016. The Civil Union Act establishes equal rights for opposite-sex and same-sex couples in all respects, apart from access to adoption of children and access to medically assisted reproduction procedures.

Also in April 2016 the National Assembly adopted the **Protection Against Discrimination Act** (PADA) which establishes the prohibition of discrimination on all protected grounds (including sexual orientation, gender identity and gender expression) in various fields of social life, including employment, education, social security, health care, social benefits, access to housing and access to goods and services available to the public. PADA covers the prohibition of all forms of discrimination, namely, direct and indirect discrimination, harassment and sexual harassment, incitement to discrimination, instructions to discriminate, multiple and intersectional discrimination. Supervision over the implementation of PADA is conducted by the Advocate and competent sectoral inspection services. PADA also authorises the Advocate to conduct research in various fields of discrimination and propose the adoption of special/positive measures to both public and private sector actors.

Selected Measures / Actions:

Between 2015 and 2017 the Ministry of Labour, Family, Social Affairs and Equal Opportunities, together with the NGO Legebitra and the Faculty of Arts at the University of Ljubljana, implemented the **project DARE** (“Dare to Care About Equality”) aimed at improving social attitudes towards LGBTQI+ persons, disseminating information on equality and non-discrimination, and developing monitoring mechanisms on non-discrimination and equality-promotion policies.

In April 2019 the Ministry of Education organized a public consultation focusing on the **prevention of hate speech among youth**. The event was intended particularly for education and youth workers. It included a public presentation of the Council of Europe handbook on how to tackle hate speech among youth *“We CAN! Taking action against hate speech through counter and alternative narratives”* that was translated into Slovenian at the initiative of the Office of the Republic of Slovenia for Youth.

The Ministry of Health runs a pilot project on the implementation of **pre-exposure prophylaxis** for men who have sex with men (MSM) and regularly finances NGO programs focusing on **HIV/STD testing** for MSM and on **consulting** and **peer support**.

In 2016, the National Institute of Public Health (NIPH) published a **Handbook on the Development of Cultural Competences of Health Professionals**.[[7]](#footnote-7) While the handbook does not explicitly focus on LGBTQI+ persons in terms of separate chapters or parts (as this might, in NIHP’s opinion, reinforce negative stereotypes), it addresses specific needs of LGBTQI+ persons when communicating with health professionals where appropriate.

The Municipality of Ljubljana, in cooperation with LGBTQI+ organisations, developed an **“LGBT Friendly Certificate”** which is awarded on a regular basis to public and private institutions which undergo awareness-raising activities in order to provide for a more inclusive and friendly environment for their members, students, employees and customers. Past recipients of the certificate have been the Ljubljana municipal administration, schools, kindergartens, cultural institutions, public health institutions, media outlets and private companies in Ljubljana.

**Question 4**

In Slovenia, the following procedures exist for enforcing the principle of equal treatment:

1. A complaint may be filed with the Human Rights Ombudsman, for violation of Article 14 of the Constitution, which prohibits discrimination; the Ombudsman issues non-binding opinions.
2. A complaint may be filed with the Advocate of the Principle of Equality, due to violation of the Protection against Discrimination Act (PADA). The Advocate issues binding decisions and recommendations, but may not impose sanctions. PADA covers all fields of life, in particular employment, membership in employers’ organizations and trade unions, education, social protection, social advantages and access to goods and services, including housing.
3. The same complaint related to violation of PADA may also be lodged with other inspections competent for the oversight of the implementation of legislation in certain fields (e.g. education, goods and services, health, social protection etc.), as these inspections are also competent to oversee the implementation of PADA; they issue binding decisions and may impose sanctions.
4. A complaint may be filed with the Ethics Commission of Journalists, for violations of the Code of Ethics of the Slovenian Association of Journalists. This complaint is appropriate for discrimination and homophobic speech in the media. The Ethics Committee issues non-binding judgments and opinions addressed to the media.
5. A complaint may be filed with the Labour Inspector for violations of Violation of Articles 6 (prohibition of discrimination) or 6.a (prohibition of mobbing and harassment) of the Employment Relationship Act; the Inspectorate issues binding decisions and may impose sanctions.
6. A lawsuit may be filed with the Administrative Court of the Republic of Slovenia, against the decisions of the administrative bodies, in cases of discrimination in administrative procedures.
7. A civil law lawsuit may be lodged with the civil courts, to claim compensation due to discrimination, to ask the court to order termination of discriminatory treatment and to ask for publication of judgment in the media.
8. A lawsuit may be filed with the Labour and Social Court, for violations of Article 6 or 6.a of the Employment Relationship Act, in cases of discrimination related to employment and social security.
9. A criminal complaint may be lodged to the State Prosecutor’s Office, in cases of discrimination that amount to a crime (e.g. incitement to hatred, violence and intolerance – Art. 297 of the Criminal Code) or violation of equality – Art. 131 of the Criminal Code).
10. The final instance is the Constitutional Court where a constitutional complaint may be lodged in cases of violation of Article 14 of the Constitution (prohibition of discrimination); at the same time the Constitutional Court is also competent for the constitutional review of the accordance of the legislation with the Constitution. Several cases have already been decided in relation to discrimination on the grounds of sexual orientation in the fields of inheritance, family reunification of same sex partner in procedures related to international protection (asylum), the right to ask for official ceremony of concluding a civil union to be held outside the administrative offices.

**Question 5**

Slovenia does not run a separate process on the implementation of Sustainable Development Goals (SDGs) but has rather incorporated individual SDGs into the **Slovenian Development Strategy 2030[[8]](#footnote-8)** adopted by the Government in December 2017. While elimination of discrimination is an explicit target under goal no.3 (“Decent Life for All”) and goal no.10 (“Trustworthy Legal System”), there is no specific mention of LGBTQI+ persons as explicit beneficiaries of any envisaged measures to be taken. A comprehensive operationalisation of the Strategy has yet to be carried through.

Yours sincerely,

Prepared by:

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1. <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7273>; unofficial English version available at <http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/enake_moznosti/ZakonNediskriminacijaEN.pdf> [↑](#footnote-ref-1)
2. <http://www.ljubljanapride.org/wp-content/uploads/2018/11/Vsakdanje-%C5%BEivljenje-mladih-LGBTIQ-oseb_eknjiga.pdf> (in Slovenian) [↑](#footnote-ref-2)
3. <http://www.sodisce.si/vismb/odlocitve/2015081111423054/> (judgement in Slovenian) [↑](#footnote-ref-3)
4. <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV5572> (in Slovenian) [↑](#footnote-ref-4)
5. <https://lgbtpravice.si/userfiles/files/LGBTpravice.pdf>, pp. 35-41 (in Slovenian) [↑](#footnote-ref-5)
6. <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7434> [↑](#footnote-ref-6)
7. <https://www.nijz.si/sites/www.nijz.si/files/publikacije-datoteke/prirocnik_kulturne_kompetence_2016.pdf> (in Slovenian) [↑](#footnote-ref-7)
8. <http://www.vlada.si/fileadmin/dokumenti/si/projekti/2017/srs2030/en/Slovenia_2030.pdf> (in English) [↑](#footnote-ref-8)