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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

Extrajudicial, summary or arbitrary executions

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Morris Tidball-Binz, submitted in accordance with Assembly resolution 77/218.

* A/79/150.



Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Morris Tidball-Binz

Investigating and preventing unlawful deaths of lesbian, gay, bisexual, transgender, gender-diverse and intersex persons¹

I. Introduction

1. The ubiquitous² unlawful deaths of lesbian, gay, bisexual, transgender (LGBT), gender-diverse and intersex persons are examined in the present report. In some places, simply being a person with certain non-conforming sexual orientations, gender identities and expressions and sex characteristics is punishable by law, and capital punishment remains available as a sentence for same-sex sexual acts.

2. Acronyms such as LGBT and terms such as queer and asexual reflect political and legal identities that are not universally embraced and can be controversial. Consequently, in the present report the Special Rapporteur adopts the approach suggested by the former Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz,³ employing the term “LGBT and gender-diverse” in reference to persons or communities to promote inclusivity. “Gender-diverse” refers to persons whose gender identity is inconsistent with the dominant norm. As patterns of violence against intersex persons do not necessarily reflect those experienced by other groups, general findings related to LGBT and gender-diverse communities are not applied to intersex persons unless evidence supports otherwise. When citing documents, the language used by authors is adopted.

3. Government failure to actively intervene to protect the rights of LGBT, gender-diverse and intersex (hereinafter LGBTIQ+) persons leads to their deaths. Law enforcement and security officers act with brutality, and communities and families may murder their non-conforming members. Indeed, even where the behaviour or perceived or actual status or characteristics of LGBT and gender-diverse persons are not criminalized, changes to birth certificates and marriages are permitted and discrimination is prohibited, lasting prejudice means that LGBTIQ+ persons continue to be killed. This has an impact that extends beyond the victim to loved ones and communities. Even when violence is not lethal, “it may nevertheless indirectly contribute to deaths ... by creating environments of discrimination, disadvantage and despair”.⁴

4. To properly investigate these crimes, authorities must have an evidence-based understanding of who the victims are, how they understand themselves and how society understands them. One’s sexual orientation, gender identity and expression and sex characteristics may be entangled with other reasons for societal oppression and exclusion. All motives and pretexts for violence must be named. If the distinct

¹ For the present report, the Special Rapporteur issued a call for input and received 63 submissions. In addition, extensive research into unlawful deaths of lesbian, gay, bisexual, transgender, gender-diverse and intersex persons worldwide was carried out, together with broad consultations with experts. The Special Rapporteur acknowledges the contributions from the Office of the United Nations High Commissioner for Human Rights (OHCHR), including its regional and country offices in Latin America, and is particularly grateful to Bebe Loff of the Michael Kirby Centre/Eleos Justice, Monash University, for her invaluable academic assistance in preparing the report.

² A/HRC/19/41, para. 20.

³ A/77/235, para. 4.

⁴ Australia, *Report of the Special Commission of Inquiry into LGBTIQ Hate Crimes* (New South Wales, 2023), p. 11.

patterns of lethal violence against LGBTIQ+ persons are better understood, these crimes may be better investigated, prosecuted and, of course, prevented. Increased understanding must be accompanied by attitudinal, structural and procedural changes in State institutions, including those responsible for criminal investigation, if not society at large. These processes must be accompanied by protections against violence and discrimination and positive campaigns promoting acceptance.

5. In developing strategies to prevent and address the deaths of LGBTIQ+ persons, it may be more useful to ask whose interests are served by such killings. What constraints exist that interfere with proper investigation of these deaths? How do each of these killings manifest across different times, places, cultures and religions? The answers to these questions may assist in guiding death investigations.

The victims

6. A competent death investigation concerning an LGBTIQ+ person requires deep understanding of the ways in which sex, sexual activity and gender exist and are locally comprehended. A recent report affirms that “knowledge about a community may assist investigators in making an informed judgement about fruitful lines of inquiry in investigations involving members of that community”.⁵ It is further observed that “sex, sexuality and gender are matters of individual identity and experience. ... The only way to accurately characterise a person’s gender, sexuality, and/or sex is by comprehending how they understand and describe themselves ... over time.”⁶

7. In general, characterizations of sex, sexuality and gender vary across time, place, language, culture and society. The desire to name and classify behaviours and characteristics has produced “lesbian, gay, bisexual, transsexual, transgender, queer/questioning and intersex”, among others. These categorizations do not reflect the ways in which persons might have characterized themselves historically, or universally today. MVPFAFF+ is an acronym for the diverse gender and sexuality expressions and roles across Pacific cultures.⁷ What the terms signified by the acronym mean is “best understood within their cultural context and may mean something different to each person”.⁸ Intersex persons may have diverse sexual orientations and gender identities and expressions.

8. Evidence of diverse genders and sexual practices exists in all places. An examination of African homosexualities concludes that there were “no examples of traditional African belief systems that singled out same-sex relations as sinful or linked them to concepts of disease or mental health”.⁹ Moreover, “the argument that protecting the rights of LGBT and intersex persons would be destructive to African ‘family values’ ... ignores the fact that LGBT and intersex persons have long been part of African civilisations”.¹⁰

9. In Asia and Europe, “consistent patterns of Islamic homosexualities ... can be traced over the course of centuries, from age-differentiated relations ... to alternative

⁵ Ibid., p. 1403.

⁶ Ibid., p. vii.

⁷ See <https://homosaurus.org/v3/homoit0002653>.

⁸ InsideOUT, “Rainbow terminology: sex, gender, sexuality and other key terms”, 2021, p. 9.

⁹ Stephen O. Murray, Will Roscoe and Marc Epprecht, *Boy-Wives and Female Husbands: Studies in African Homosexualities* (Albany, State University of New York Press, 2021); Sylvia Tamale, ed., *African Sexualities: A Reader* (Cape Town, Dakar, Nairobi and Oxford, Pambazuka Press, 2011).

¹⁰ African Commission on Human and Peoples’ Rights, *Ending Violence and Other Human Rights Violations based on Sexual Orientation and Gender Identity: A Joint Dialogue of the African Commission on Human and Peoples’ Rights, Inter-American Commission on Human Rights and United Nations* (Pretoria, Pretoria University Law Press, 2016), p. 33.

gender statuses represented by the male *khanith* of Oman, the female *mustergil* of southern Iraq, and the sworn virgins of the Balkans”.¹¹ Gender was not perceived as static, with marriage- and procreation-based movement between genders accepted.

10. More than two genders have long been recognized in all regions of the world.¹² In Asia and the Americas, probably the best known are the *hijra* of South Asia and the two-spirited peoples of North America. Among Indigenous American populations, “many nations accepted the practice of multiple sex and gender roles ... [that] conformed to various culturally accepted roles within their tribes, including warriors, healers, tribal leaders, medicine people, religious ceremonial figures, and visionaries”.¹³

II. International and regional law

11. National observatories and research reveal that killings of LGBT and gender-diverse persons are much more frequent than those that are investigated, are brought to trial or reach regional or international forums.¹⁴ There is an absence of cases dealing with discriminatory murders of intersex persons in international or regional courts.

12. States must investigate any potentially unlawful death, whenever they know of or should have known of it. Additional responsibilities apply where a State agent causes the death or where a person dies in State custody. The duty to investigate remains during armed conflict or hostilities. Investigations must be prompt; effective and thorough; independent and impartial; and transparent. To be effective and thorough, an investigation must at a minimum identify the victim(s), recover and preserve material probative of the cause of death, identify the perpetrator(s) and witnesses, obtain related evidence, determine cause, manner, place and time of death, and finally, determine those involved in the death and their potential responsibility. The State should enable family members of the deceased to participate effectively in the investigation process and protect them from related threats or ill-treatment.¹⁵

13. Family members have the right to equal and effective access to justice; adequate, effective and prompt reparation; recognition of their status before the law; access to information concerning the violations; and relevant accountability mechanisms. This includes information about the circumstances, location and condition of the remains, and the cause of death. Additional provisions apply in cases of enforced disappearance and armed conflicts.¹⁶

14. The General Assembly¹⁷ and the Human Rights Council¹⁸ have repeatedly stressed the need to protect persons from violence and discrimination based on their sexual orientation and gender identity, including their right to life. A report to the Council articulated State obligations regarding LGBTI+ persons, including protection of life,¹⁹ and the Council recently adopted a resolution on combating discrimination, violence and harmful practices against intersex persons.²⁰

¹¹ Will Roscoe and Stephen O. Murray, eds., *Islamic Homosexualities: Culture, History, and Literature* (New York and London, New York University Press, 1997), chap. 1, pp. 5 and 6.

¹² A/78/227, paras. 8–14.

¹³ See <https://www.britannica.com/topic/berdache>.

¹⁴ A/HRC/35/23, para. 56.

¹⁵ Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016).

¹⁶ Ibid.

¹⁷ Resolution 57/214, para. 6, resolution 61/173, para. 5 (b), and resolution 65/208, para. 6 (b).

¹⁸ Resolutions 17/19, 27/32, 32/2, 40/5, 41/18, 50/10 and 55/14.

¹⁹ A/HRC/19/41.

²⁰ Resolution 55/14.

15. Few cases on the right to life of LGBT and gender-diverse persons have been brought before the Human Rights Committee. In *X. v. Sweden*, a bisexual Afghani writer and film producer critical of the mujahidin fled to Sweden but was denied asylum. X. claimed that, if he returned to Afghanistan, he would risk being tortured due to his sexual orientation. The Committee found that his deportation would violate the right to life.

16. Former special rapporteurs have repeatedly stressed the need for States to take action to prevent the unlawful killings of LGBT and gender-diverse persons.²¹ Agnes Callamard drew attention to the increased violence experienced by transgender persons in custody and the rape and sexual torture of those perceived as homosexual. She affirmed that applying the death penalty to punish consensual same-sex sexual acts constitutes an arbitrary deprivation of the right to life.²²

African Charter on Human and Peoples' Rights

17. Article 10 of the African Charter on Human and Peoples' Rights on freedom of association has been used by national courts to protect the rights of LGBTI+ persons. The African Commission on Human and Peoples' Rights adopted resolutions protecting the rights of intersex persons²³ and against violence and other human rights violations based on persons' real or imputed sexual orientation or gender identity,²⁴ and condemned the murder of LGBTI+ Africans.²⁵

Inter-American regional law

18. *Azul Rojas Marín et al. v. Peru*²⁶ was the first case before the Inter-American Court of Human Rights that dealt with violence against LGBTI persons. Azul, a trans woman who at the time identified as a gay man, was detained one night by the police, insulted about her sexual orientation, raped and tortured. Subsequently, she was involuntarily examined by a forensic doctor in the presence of a prosecutor to influence medical findings. Authorities did not investigate. In its 2020 decision, the Court determined that it was the State's duty to take all necessary steps to establish if the violence was motivated by prejudice and discrimination and criticized the authorities' questions about past sexual history and stigmatizing language. Where there are "specific indications or suspicions of violence based on discrimination", the failure to investigate discriminatory intent could constitute discrimination.

19. As noted in the report of the Special Rapporteur on femicide,²⁷ in the case of *Vicky Hernández et al. v. Honduras* the Court found the State responsible for failing to sufficiently investigate the death of Vicky Hernández, a trans woman human rights activist and sex worker who was killed by Honduran security forces in 2009, stating that, when discrimination-based violence is suspected, States must take all reasonable steps to gather and safeguard evidence, explore all practical means to discover the truth, and issue fully reasoned, impartial and objective decisions, without omitting suspicious facts that may indicate discrimination-based violence.²⁸ The Court ordered

²¹ A/HRC/4/20, A/HRC/4/20/Add.1, A/HRC/4/20/Add.2, A/HRC/11/2/Add.7, A/HRC/14/24/Add.2, A/HRC/17/28/Add.1, A/HRC/31/66, A/HRC/35/23 and E/CN.4/1999/39.

²² A/HRC/35/23, paras. 45–47.

²³ ACHPR/Res.552 (LXXIV) 2023.

²⁴ ACHPR/Res.275 (LV) 2014.

²⁵ See for example <https://achpr.au.int/en/news/press-releases/2023-01-07/press-statement-tragic-murder-edwin-chiloba-kenya>.

²⁶ Inter-American Court of Human Rights, *Azul Rojas Marín et al. v. Peru*, Judgment, 12 March 2020.

²⁷ A/78/254.

²⁸ Inter-American Court of Human Rights, *Vicky Hernández et al. v. Honduras*, Judgment (merits, reparations and costs), 26 March 2021, para. 107.

Honduras to provide extensive reparation to the family; create and implement a permanent training programme for law enforcement personnel; adopt a legally binding protocol for investigations and administration of justice during criminal proceedings in cases involving violence against LGBTI persons; and design and implement a data-collection system for these cases to assess the type, prevalence and patterns of violence and discrimination.

European regional law

20. In *A.A. v. Russia*,²⁹ it was alleged that in 2017 Grozny police executed between 27 and 56 men suspected of involvement in terrorism or of being homosexual. Relatives complained to the Chechen Investigative Committee that law enforcement agencies had not investigated, requesting that a criminal case be opened. Criminal cases were opened against some of the abducted men. In 2021, the European Court of Human Rights confirmed that there had been a breach of the right to life: when State agents were allegedly responsible, there must be a fully fledged investigation.

21. *Stoyanova v. Bulgaria*³⁰ concerned the homophobic murder of the applicant's son. In 2008 three men lethally attacked the applicant's son because he looked homosexual. Two attackers were found guilty of aggravated murder because of the painful method used. Despite establishing the gratuitously homophobic motives for the attack, domestic courts could not explicitly make this finding. The Court found a systemic breach of the right to life because the Bulgarian Criminal Code did not treat homophobic intent as an aggravating factor. It insisted that, when investigating violent attacks, authorities must take all reasonable steps to unmask possible discriminatory motives; this extends to the judicial proceedings. Treating violence with a discriminatory intent like other violence is tantamount to turning a blind eye to acts particularly destructive of fundamental rights.

22. *M.C. and A.C. v. Romania*³¹ concerns a gay bashing after a 2006 pride march. The victims made a formal complaint to the police. Despite information about some attackers, several requests for information on the progress of the investigation, and a complaint to the Ministry of Internal Affairs, police requested that the investigation cease, a year later. Police advised the victims that the alleged crimes had become statute-barred, which was endorsed by the Prosecutor-in-Chief. The Bucharest District Court agreed that the investigation lacked diligence but dismissed the complaint. In 2016, the Court found that the treatment of M.C. and A.C. was directed at their identity and was incompatible with human dignity. The investigations were ineffective, as they lasted too long, were marred by serious shortcomings, and failed to consider possible discriminatory motives. An inquiry into discrimination as a motivating factor was indispensable, given the hostility to the LGBTI community and the victims' evidence, even in the absence of law prohibiting hate speech; without this, prejudice as a motivation would be ignored, which was viewed as tantamount to State connivance with hate crimes.

23. In *Identoba v. Georgia*,³² the Court found that the State failed to meet its obligations to protect demonstrators from homophobic violence and conduct an effective investigation "with particular emphasis on unmasking the bias motive and identifying those responsible for committing the homophobic violence". The

²⁹ European Court of Human Rights, *A.A. and others v. Russia*, Application No. 37008/19, Judgment, 14 December 2021.

³⁰ European Court of Human Rights, *Stoyanova v. Bulgaria*, Application No. 56070/18, Judgment, 14 September 2022.

³¹ European Court of Human Rights, *M.C. and A.C. v. Romania*, Application No. 12060/12, Judgment, 12 April 2016, para. 113.

³² European Court of Human Rights, *Identoba and others v. Georgia*, Application No. 73235/12, Judgment, 12 May 2015.

European Agency for Fundamental Rights has since produced a paper to assist the authorities of States members of the European Union in investigating hate crimes, regardless of the bias motivation or the actors involved.³³

III. State violence

State-sanctioned and legitimized murders of LGBT and gender-diverse persons

24. Same-sex sexual acts may be a capital offence or an offence potentially punishable by death. States may apply unrelated law with heavy penalties to perceived or actual LGBT and gender-diverse persons, such as for terrorism or obscenity offences. States may condone killings by reducing or removing the perpetrator's criminal responsibility through operation of a lawful excuse. Several States have laws reducing or removing criminal culpability because of the perpetrator's so-called "honourable motive".³⁴

25. States may allow a "gay panic" defence, whereby a male defendant argues that the victim's actual or perceived sexual orientation should mitigate culpability for murder – the murder being a reaction to the victim's apparent non-violent sexual advance. Some States tacitly condone violence against trans persons by permitting a "trans panic" defence in homicide trials. This has been raised in 32 homicide cases involving trans women in the United States of America between 2000 and 2019.³⁵

26. Iranian law prescribes the death penalty for a male who inserts his penis into another male, if that man has a wife or has raped the other man. The receptive man is sentenced to death regardless of the circumstances. The capital offence of "spreading corruption on Earth" may also be employed against LGBT and gender-diverse persons.³⁶ In Uganda, "aggravated homosexuality" is a capital offence under the Anti-Homosexuality Act. It has been reported that at least in one case no evidence was provided to substantiate a claim of aggravated homosexuality,³⁷ raising concerns that prosecutions were simply based on the actual or perceived sexual orientation or gender identity of the accused.

27. A November 2023 decision by the Supreme Court of the Russian Federation characterizing the "international LGBT movement" as extremist was followed by an increase in attacks and State-sanctioned persecution against the Russian LGBT community.³⁸

Direct non-legitimized State violence

28. State leaders and senior officials may encourage violence against LGBT and gender-diverse persons by vigilante groups and others, and support officials who ignore such crimes. LGBT and gender-diverse persons, activists and human rights defenders may be wrongfully arrested and killed in police stations. They may be incarcerated on spurious grounds and face life-threatening violence in prisons.³⁹

³³ European Agency for Fundamental Rights, "Unmasking bias motives in crimes: selected cases of the European Court of Human Rights", 27 November 2018.

³⁴ Mai Sato and Christopher Alexander, *State-Sanctioned Killing of Sexual Minorities: Looking beyond the Death Penalty* (Eleos Justice, 2021), pp. 61–64.

³⁵ W. Carsten Andresen, "Research note: comparing the gay and trans panic defenses", *Women and Criminal Justice*, vol. 32, Nos. 1–2 (2022).

³⁶ Response from World Coalition Against the Death Penalty and others to the call for input.

³⁷ See <https://www.amnesty.org/en/latest/news/2023/08/uganda-authorities-must-drop-charges-in-death-penalty-case-under-anti-homosexuality-act/>. See also <https://www.hrw.org/news/2024/04/04/uganda-court-upholds-anti-homosexuality-act>.

³⁸ See <https://www.hrw.org/news/2024/02/15/russia-first-convictions-under-lgbt-extremist-ruling>.

³⁹ See https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf.

Trans women are often imprisoned according to the sex assigned at birth, leading to extreme physical, sexual and emotional abuse from inmates and penitentiary or police officials.⁴⁰ Trans women needing life-saving medical treatment have died in custody due to “discrimination in and denial of access to essential services”.⁴¹

29. States may conduct “purge” or “social cleansing” campaigns to disappear and kill LGBT and gender-diverse persons. In Iraq and Colombia, LGBT persons were reportedly forced to leave their homes after suffering death threats during “corrective violence” and “population cleansing” campaigns by armed groups.⁴²

Deaths due to State failure to protect the right to life

30. The denial of economic, social and cultural rights, and the denial of recognition as a person before the law, undoubtedly contributes to early death. State-led or State-complicit stigmatization and marginalization of LGBT and gender-diverse persons can lead to death, as is well documented in relation to HIV/AIDS, but is a causal factor for injury and disease beyond this.

31. Gender-affirming surgeries may be life-saving. A 2015 study reported reduced suicidal ideation in 44 per cent of those who had such surgeries.⁴³ These procedures may be outlawed, fraught with legal obstacles, or too costly. Despite the presumed cure of homosexuality if the person undergoes gender reassignment surgery,⁴⁴ trans women in Iran continue to suffer life-threatening violence. A study of 127 Iranian trans women found that more than 50 per cent had attempted suicide.⁴⁵

32. Without State protection, LGBTIQ+ refugees may be subjected to violence. For example, violence in Kakuma camp in Kenya, populated by around 200,000 refugees, was compounded by the failure to investigate threats. LGBT and gender-diverse refugees recounted only one instance of follow-up of reported violations, including threats to life.⁴⁶

Security and justice agencies

33. Law enforcement agencies are often biased along dominant social values of sexual orientation and gender identities and focused on local interpretations of individual wrongdoing. Other security sector agencies, such as the military, share similar features. In exercising their powers, officers have committed and continue to commit a litany of abuses against LGBT and gender-diverse persons. Extensive reform is necessary before LGBT and gender-diverse persons can be expected to have any degree of confidence in these institutions.

34. Race literature suggests that diversification of law enforcement, although required as a matter of non-discriminatory workplace practice, does not necessarily lead to improved policing or community experience limiting harms against LGBT and gender-diverse persons. A degree of change is possible but will not flourish without deep structural reform, long-term commitment and regular reinforcement.

⁴⁰ A/HRC/35/23, para. 46.

⁴¹ Ibid.

⁴² Alon Margalit, “Still a blind spot: the protection of LGBT persons during armed conflict and other situations of violence”, *International Review of the Red Cross*, vol. 100, Nos. 1–3 (2018).

⁴³ See <https://www.hsph.harvard.edu/news/hsph-in-the-news/mental-health-benefits-associated-with-gender-affirming-surgery/>.

⁴⁴ Sato and Alexander, *State-Sanctioned Killing of Sexual Minorities*, p. 39.

⁴⁵ Azar Nematollahi and others, “Discrimination, violence, and suicide in transgender women in Iran”, *Health Care for Women International*, vol. 43, Nos. 7–8 (2022).

⁴⁶ Submission by the National Gay and Lesbian Human Rights Commission Kenya.

35. After publication of the 1999 Macpherson report, police in the United Kingdom of Great Britain and Northern Ireland sought to build a diverse workforce, dilute the culture of masculinity and establish relationships with minority communities.⁴⁷ Initiatives included the active recruitment of LGB officers; investment in the national Gay Police Association, fostering gay staff networks; the appointment of LGBT Liaison Officers; and senior officer participation in LGB events. In 2003, new legislation prohibited discrimination due to sexual orientation in workplaces. For a time, LGB officers reported improvement in their treatment, although a machismo culture remained, discrediting minority officer contributions.⁴⁸

36. A 2023 review of the London Metropolitan Police Service found that uncoordinated, short-lived initiatives informed its relationship with LGBTQ+ communities. Concerns raised through misconduct and complaints processes were likely to be dismissed, and unacceptable behaviour allowed to flourish. The review asserted that tackling discrimination was a legal and operational imperative: to progress, the Police Service must acknowledge the extent to which racism, misogyny and homophobia were present within its organizational processes and systems. Review recommendations methodically addressed almost every aspect of police structure and process.

Good practices in protecting the rights of LGBTIQ+ persons

37. Achieving change may be possible when the wider society embraces values of non-discrimination and accountability and reflects these values in law, and when these values are modelled and reinforced by politicians and senior office holders. Norway and Sweden are regarded as LGBT-friendly countries: in Norway, the National Police Directorate has developed a three-year plan to strengthen police work with minorities, including LGBTIQ+ persons. A new centre on hate crime aims to raise police competence in prevention, intelligence, dialogue and trust-building work, investigation and prosecution. The centre has regular contact with national organizations working with relevant communities and will develop hate crime statistics. The Action Plan on Gender and Sexual Diversity (2023–2026) of Norway is aimed at improving queer persons' quality of life, safeguarding their rights and contributing to greater acceptance of gender and sexual diversity. The Action Plan sets out priority actions in areas where major challenges remain.⁴⁹

38. In Sweden, the Swedish Police Authority targets hate crime, including against LGBTIQ+ persons. There is a national coordinator and specialized investigators in all police regions. The national police works cooperatively with other authorities, civil society organizations, municipalities, schools and academia, and at-risk groups to better address hate crimes.⁵⁰

39. Police training resources have been developed by government and non-government groups, such as those developed by ILGA Europe⁵¹ and the comprehensive practical guidance on hate crime prosecutions developed by the International Association of Prosecutors.⁵² In the latter, public awareness campaigns,

⁴⁷ Matthew Jones, "A diversity stone left unturned? Exploring the occupational complexities surrounding lesbian, gay and bisexual police officers", in *The Future of Policing*, 1st ed., Jennifer M. Brown, ed. (Routledge, 2014).

⁴⁸ Ibid.

⁴⁹ Response from Norway to the call for input.

⁵⁰ Response from Sweden to the call for input.

⁵¹ See <https://www.ilga-europe.org/report/toolkit-for-training-police-officers-on-tackling-lgbti-phobic-crime/>.

⁵² International Association of Prosecutors, *Prosecuting Hate Crimes: A Practical Guide* (Warsaw, Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights, 2014).

outreach with community groups and civil society, media strategies, data collection and monitoring are discussed.

40. While the human rights of LGBT persons in Colombia have advanced, homicides remain common. In 2022, the Office of the Attorney General issued a good practice guide for the investigation and prosecution of violence based on the sexual orientation and/or gender identity (real or perceived) of the victim, in which it defines this violence, how it should be understood, and State obligations concerning investigation and prosecution.⁵³ In 2023, the Office created a special group to investigate crimes motivated by the victim's sexual orientation or gender identity.

41. The Supreme Court of India provides a judges' sensitization module⁵⁴ that explains concepts of sex, gender, sexuality and queer relationships; describes discrimination faced by LGBTIQ+ individuals; promotes the use of correct terminology; offers an overview of relevant jurisprudence; and provides recommendations to ensure equal treatment and welfare. The module contains a police protocol for "handling missing person complaints or allegations of kidnapping/wrongful confinement by family/relatives". The protocol affirms that courts may consider whether disciplinary or penal consequences should follow police harassment of LGBTIQ+ persons or of others assisting them. In Buenos Aires, a training course on the human rights of intersex persons is part of a gender and human rights training programme for judicial officials.

42. Monitoring and evaluation of any initiative concerning LGBT and gender-diverse communities are necessary to ensure that aims remain appropriate and are being met. In South Africa, the Government has established a multi-stakeholder task team that includes law enforcement authorities and civil society organizations to monitor the investigation and prosecution of hate crimes based on sexual orientation and gender identity, with a mandate to facilitate the resolution of open and unresolved cases.⁵⁵

Conflict-related violence

43. Extrajudicial killings of LGBT and gender-diverse persons by police and security forces abound during conflict when accountability diminishes. LGBT persons are often among the least protected of all groups.⁵⁶ Discriminatory motives underlie much of this violence. LGBTQ persons may be targeted because the security vacuum enables it and others will not defend them, the violence being popular, and because they often join resistance movements due to prior activist experience and solidarity with oppressed groups, among other reasons.⁵⁷ During transitional periods and beyond, these entrenched behaviours are difficult to shift. "When political and societal uncertainty is high, when structures and rules are new, when crime is rising, and when officers expect antagonism from citizens ... governments tend to give security forces even wider leeway and allow continuation of many of the violent practices".⁵⁸ If changes occur, backlash can be expected.

⁵³ Response from the Ministry for Foreign Affairs of Colombia to the call for input.

⁵⁴ Available at <https://ecommitteesci.gov.in/document/sensitisation-module-for-the-judiciary-on-lgbtqa-community/>.

⁵⁵ OHCHR, *Living Free and Equal: What States Are Doing to Tackle Violence and Discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex People* (New York and Geneva, 2016), p. 31.

⁵⁶ Margalit, "Still a blind spot".

⁵⁷ Outright International, "LGBTQ lives in conflict and crisis: a queer agenda for peace, security, and accountability", February 2023, pp. 7 and 8.

⁵⁸ Mark Ungar, "State violence and LGBT rights", in *Violence and Politics: Globalization's Paradox*, 1st ed., Kenton Worcester, Sally Avery Bermanzohn and Mark Ungar, eds. (New York and London, Routledge, 2002), p. 53.

44. Building accountability for the crime of gender persecution is a focus of the International Criminal Court. Its 2023 policy outlines 10 principles informing the work of the Office of the Prosecutor, including a trauma-informed approach; an intersectional perspective; due diligence regarding gender-based crimes; overcoming myths, stereotypes and misconceptions; mainstreaming gender competence; and implementing, monitoring and evaluating the policy. These principles should apply from preliminary examinations to sentencing and reparations. The Office recruits people with specialized expertise in gender-based crimes and expects baseline gender competence in all hiring. Ongoing education of staff is essential to ensuring the effective investigation and prosecution of gender-based crimes.

45. The Special Jurisdiction for Peace of Colombia has determined that conflict-driven violence against LGBTQ persons is gender persecution, a crime against humanity. The Revolutionary Armed Forces of Colombia (FARC) was recently accused of persecution of 29 LGBTQ victims. “The [Special Jurisdiction for Peace] recognized that armed actors persecuted these LGBTQ victims because of their perceived sexual orientation, gender identity, and gender expression, and as a broader tactic to cement control.”⁵⁹ Moreover, “it is crucial to attend to power differentials that are exploited during war and to commit to undoing these toxic hierarchies, including hierarchies of gender and sexuality. ... The [Special Jurisdiction’s] recognition of gender persecution against queer people and women in all their diversity provides hope that States, following Colombia’s example, will commit to inclusive approaches to atrocity prevention and peacebuilding.”⁶⁰

Data collection and analysis

46. To properly protect communities and investigate potentially unlawful deaths of LGBT and gender-diverse persons, officers must develop familiarity with local patterns of discriminatory violence. Data, disaggregated according to sexual orientation, gender identity and expression and sex characteristics, must be collected and analysed. This is unlikely unless the law requires the collection of specific data, with variables aligning with elements of the crime and its investigation. Without analysis of rigorously collected data, hypotheses made about violence against LGBT and gender-diverse persons will remain mere speculation. The findings of interdisciplinary research based on sound data and other sources of knowledge can inform investigation strategies and prosecutions.

47. Where States criminalize certain forms of sexual orientation and gender identity and expression, “a presumption must exist that data is gathered for purposes that are contrary to international human rights law, a working theory supported by multiple accounts ... of data being used in such contexts as the basis for surveillance, harassment, entrapment, arrest and persecution by government officials”.⁶¹

48. In 2021, the United Kingdom census included questions on sexual orientation and gender identity. While 7.5 per cent of adults chose not to respond to the question on sexual orientation and 6 per cent on gender identity, the knowledge that an estimated 500,000 persons identify as gender-diverse is vital information for planning inclusive access to services and the protection of human rights.⁶²

49. The Swedish National Council for Crime Prevention publishes biennial reports on hate crime statistics based on crimes reported to the police, where a hate crime motive is identified. In 2022, 340 LGBTIQ-related hate crime motives were identified

⁵⁹ Outright International, “Colombia’s peace tribunal breaks new ground on LGBTQ persecution”, 2 October 2023.

⁶⁰ Ibid.

⁶¹ A/HRC/41/45, para. 22.

⁶² A/HRC/56/49/Add.1, paras. 33–38.

in 328 reports to the police; there were no murders. In addition, the Swedish Gender Equality Agency has been tasked with mapping the exposure and risk of exposure of LGBTIQ persons to violence in close relationships, to determine the type of interventions needed. The Swedish Agency for Youth and Civil Society conducts an in-depth analysis of the need for further support efforts targeting young LGBTQ persons who may be at risk for honour-related violence and oppression, including exposure to conversion attempts.⁶³

50. In 2012, the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe received statistics on hate crimes from 27 out of 57 participating States. It subsequently produced *Hate Crime Data-Collection and Monitoring Mechanisms: A Practical Guide* to assist member States with their data-collection efforts. The European Union Agency for Fundamental Rights conducts surveys on experiences of discrimination and hate crime, as well as on the views of and challenges faced by LGBTIQ persons, most recently in 2023, gathering data from over 100,000 respondents in 30 countries. From the data collected, it was found that over a third of LGBTIQ persons had considered suicide in the year before the survey. Young people, trans, non-binary and gender-diverse persons were most likely to have suicidal thoughts.⁶⁴

51. In 2020, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity visited Ukraine. He described measures that had a positive impact on the number of hate crimes recorded by the police, the number of cases registered and the number prosecuted, including the adoption of rules on ethical behaviour of police to treat everyone fairly regardless of sexual orientation; the nomination of national and regional contact points on hate crime; the development of internal guidelines, practical guidance and training on investigating hate crimes; the inclusion of motives of intolerance in the police crime report form; the training of employees in the Ministry of Internal Affairs on tolerance and non-discrimination and the holding of awareness-raising sessions to counter misconceptions related to sexual orientation and gender identity; the display of posters to encourage reporting of hate crime; the adoption by the national police of a hate crime prevention plan; and the establishment of hate crime monitoring groups in police units.⁶⁵

52. Several Latin American observatories have been formed to address the lack of data. Their findings are often more comprehensive than State records, as they rely on numerous sources. For example, the Honduran lesbian feminist organization Cattrachas monitors the media, and its observatory systematizes information that supports strategic litigation. A report⁶⁶ found 194 violent deaths of lesbian, gay, travesti, transsexual, bisexual and intersex persons and 3 disappearances from 2017 to 2022. In the report, it was noted that most victims tend to be between 18 and 33 years old. A total of 28 bodies were found on public roads. Weapons used included firearms, knives and blunt objects. Types of violence included shootings, lacerations, stoning, beatings and asphyxiation due to strangulation. Similar categories of reporting are used to document gay and lesbian murders.

53. The Brazilian Observatory has found prolific violence against LGBTI+ persons. Between January and December 2022, 273 were murdered, making Brazil the country that killed the most LGBTI+ persons – or the country whose data are the most comprehensive. Some 58 per cent were travestis and trans women (travesti entails the

⁶³ Response from Sweden to the call for input.

⁶⁴ European Union Agency for Fundamental Rights, *LGBTIQ Equality at a Crossroads: Progress and Challenges* (Vienna, 2024), p. 23.

⁶⁵ A/HRC/44/53/Add.1, para. 44.

⁶⁶ Available at https://www.cattrachas.org/_files/ugd/b262b8_31318f169864488ba9052c0bb8626dbc.pdf.

refusal to be a woman, or the refusal to be intelligible in categories constructed by a State system of social oppression). Most victims were between 20 and 29 years old. The Observatory also makes public policy recommendations.⁶⁷

54. Observatories produce invaluable data and must be supported. A detailed Australian review of 88 homicides and suspected homicides of predominantly gay men, men perceived to be gay, and trans women between 1990 and 2015⁶⁸ reported findings of little or no pre-existing relationship between assailants and their victims; evidence of serial killings by gangs of young men and lone assailants; killings by groups of assailants of their victims in social spaces but by individual assailants in private residences; scenarios that were commonly sexualized, or affected by the consumption of alcohol and drugs; assailants employing a variety of killing methods, often inflicting violence upon their victims; and variation in the type of attack and the weapons used according to the location of the killings.

55. Trans Murder Monitoring is a research project of Transgender Europe. The project recognizes that most deaths are unreported or reported without mentioning the sexual orientation, gender identity and expression and sex characteristics of the victim. The high number of murder reports from Latin America and the Caribbean is attributable to monitoring systems in these regions. According to Trans Murder Monitoring 2023 data, 321 trans and gender-diverse persons were reported murdered, 94 per cent of whom were trans women or transfeminine persons, mostly of colour and between the ages of 19 and 25; 48 per cent were sex workers; 80 per cent of trans persons were affected by racism; 45 per cent of murdered trans persons in Europe were migrants or refugees; and 46 per cent were shot, 28 per cent of them on the street and 26 per cent in their residence.⁶⁹

56. Findings of peer-reviewed research published in academic journals on homicide of LGBT and gender-diverse persons are inconsistent, even within countries. Some researchers nominate strangers as the primary perpetrators, whereas others emphasize the role of known offenders.⁷⁰ One thing is clear: most perpetrators are men, either acting alone or in groups. Women who kill tend to kill their intimate partners or commit infanticide.

57. A nationwide survey of 1,309 transgender persons in China indicates a lifetime prevalence of suicidal ideation and attempts at 56.4 per cent and 16.1 per cent, respectively, significantly higher than in general Chinese community samples.⁷¹ Over 40 transgender individuals have died by suicide in recent years, typically after facing domestic violence, school bullying or conversion therapies.⁷²

58. One exploratory study dealing with violence⁷³ relied on survey evidence from 3,798 self-identifying sexual and gender minority participants from nine Eastern and Southern African countries. "Gender minority" was defined as a trans woman, a trans man or gender non-conforming. It found that 56 per cent of participants had

⁶⁷ Observatório de Mortes e Violências LGBTI+ no Brasil, "Brazil murders one LGBTI+ person every 32 hours in 2022", 11 May 2023.

⁶⁸ See https://www.aconhealth.org.au/report_into_historic_gay_hate_murders_calls_for_justice_and_healing.

⁶⁹ See <https://transrespect.org/en/trans-murder-monitoring-2023/>.

⁷⁰ Jill Kehoe, "Anti-LGBTQ hate: an analysis of situational variables", *Journal of Hate Studies*, vol. 16, No. 1 (2020), p. 24.

⁷¹ Runsen Chen and others, "Suicidal ideation and attempted suicide amongst Chinese transgender persons: national population study", *Journal of Affective Disorders*, vol. 245 (15 February 2019).

⁷² Joint submission from Chinese Trans Voices, China Rainbow Observation and the International Service for Human Rights in response to the call for input.

⁷³ Alex Müller and others, "Experience of and factors associated with violence against sexual and gender minorities in nine African countries: a cross-sectional study", *BMC Public Health*, vol. 21 (2021).

experienced physical or sexual violence in their lifetime, and 29 per cent in the past year, mostly associated with being coerced into marriage (18 per cent), followed by having persons living nearby who knew one's sexual orientation and/or gender identity, and living with HIV. Non-cisgender participants experienced significantly higher levels of violence compared with cisgender participants who identified as a sexual minority. The study indicates that members of sexual and gender minorities coerced into heterosexual marriage are at higher risk of spousal violence if their sexual or gender identity is revealed.

59. A systematic review of literature on LGBT homicides published in 2021,⁷⁴ comprising 16 studies from Australia, Brazil, Italy, Mexico and the United States, found that offenders are more likely to be male and tend to have a "macho mindset". The consumption of drugs and alcohol by victims and perpetrators may be a precipitating factor. Victims are more likely to be beaten, tortured or repeatedly stabbed to death with a knife or other sharp instrument. The crimes generally involve a single victim and a single offender. Gay victims are more likely to be murdered in their residence. The killing of transgender persons was more prevalent in the Americas (Brazil, Mexico and the United States) and was more likely to happen in public locations because they are easily recognizable and often work on the street as sex workers. Transgender persons are twice as likely to be murdered as gay men. More than 80 per cent of them were under 30 years old. The findings confirm a trend of increasing violence against the LGBT community, producing a "problem of epidemic proportions".

60. Although excess brutality is often regarded as a marker of such killings, multiple wounds caused by sharp objects are a feature of many homicides. Anatomical and/or genital foci and the disfiguring nature of the wounds may be of greater significance in identifying homicides among LGBT and gender-diverse persons.⁷⁵

61. Prominent sites of criminality that remain underdocumented are conflict settings, in particular killings perpetrated by military and paramilitary groups during periods of social unrest, and deaths in refugee camps. "To identify risks and prevent and respond to violence against LGBTQ persons in conflict and crisis settings, policymakers and practitioners should seek to understand the root causes, which share commonalities across contexts."⁷⁶ LGBTQ persons are often targeted by armed groups and other perpetrators and are uniquely vulnerable in armed conflict and crises. It has been recommended that information on LGBTIQ persons' experiences in conflict settings be collected and securely stored, including through Security Council-mandated monitoring, analysis and reporting arrangements on conflict-related sexual violence. Also largely undocumented are intermittent acts of "social cleansing" during times of conflict or peace involving targeted murders of LGBT and gender-diverse persons who are homeless, work on the streets or are outside for any reason.

The right to life of intersex persons

62. An intersex person may have non-conforming sexual orientations, expressions and genders and be denied the right to life as a result. However, deaths of persons specifically due to their intersexuality follow distinct patterns.

63. A person may be born intersex due to a variety of biological causes. When this is obvious at birth, infants, mothers and families may be viewed as cursed, the infants presaging bad fortune, which could lead to their murder. They may be abandoned and

⁷⁴ Wallace Góes Mendes and others, "Systematic review of the characteristics of LGBT homicides", *Ciência & Saúde Coletiva*, vol. 26, No. 11 (November 2021).

⁷⁵ Stephen Cordner, former Director of the Victorian Institute of Forensic Medicine (Australia), personal communication, 1 May 2024.

⁷⁶ Outright International, "LGBTQ lives in conflict and crisis", p. 6.

left to die.⁷⁷ Killings are typically carried out by families or medical staff immediately after birth. A South African study conducted between 2008 and 2010 found that 88 of 90 traditional birth attendants and midwives interviewed admitted to having “gotten rid of” infants with apparent intersex characteristics.⁷⁸ Given the stigma associated with intersexuality, and the covert nature of baby dumping and infanticide, such cases are largely unreported.⁷⁹ Similarly, while it is estimated that 10,000 intersex babies are born each year in India, there is no mechanism to determine accurate numbers. In one Indian community, it was reported that intersex infants are buried alive.⁸⁰ Similar killings have been reported in China⁸¹ and Nepal.⁸²

64. Murders and persecution of intersex adolescents and adults are also reported.⁸³ A 2017 analysis of research on family violence against persons from LGBTI communities surmised that intersex persons are as likely as any other person to be subjected to it, but there is little research available. “Consequently, public policy remains silent on the issues specific to intersex people, which further entrenches harmful beliefs and understandings about intersex people, compulsory binary sex constructs, and diversity more broadly.”⁸⁴

65. It is difficult to find State-sponsored data collections on violence against intersex persons. The Inter-American Commission on Human Rights Rapporteur on the Rights of LGBTI Persons created a registry of violence against LGBTI persons in the Americas and issued a report.⁸⁵ No data were produced by States on instances of violence against intersex persons, supposedly because such violence, including unnecessary medical interventions to “normalize” intersex bodies, complies with State-approved medical protocols not denounced by families or otherwise reported.

66. In reports of the Office of the United Nations High Commissioner for Human Rights (OHCHR),⁸⁶ it was found that very few countries had taken steps to address specific violations faced by intersex persons. Australia, Malta and South Africa were the only countries then that explicitly prohibited discrimination on the grounds of sex characteristics or intersex status. South Africa prohibits discrimination, harassment and hate speech against intersex persons by incorporating intersex within the definition of sex in anti-discrimination legislation. Malta was the first country to make “sex characteristics” an aggravating factor in relation to hate crime, thereby protecting intersex persons. In Kenya, an earlier law enabled intersex persons to be recognized as “I” on their birth certificates, thus providing a recognized legal status.

⁷⁷ See https://www.chr.up.ac.za/images/researchunits/sogie/documents/Intersex_Report/Intersex_report_Oct_Sept_2022.pdf; and OHCHR, *Human Rights Violations against Intersex People: A Background Note* (Geneva, 2019).

⁷⁸ See <https://www.justice.gov.za/vg/lgbti/2018-NationalIntersexMeetingReport.pdf>.

⁷⁹ See https://www.knchr.org/Portals/0/REPORT-ON-INTERSEX-PERSONS%203_1.pdf.

⁸⁰ Srishti Madurai and NNID Foundation, joint non-governmental organization submission to the Committee on the Rights of Persons with Disabilities at its twenty-second session, 26 July 2019.

⁸¹ OHCHR, *Human Rights Violations against Intersex People*.

⁸² CEDAW/C/NPL/CO/6, para. 18 (c).

⁸³ OHCHR, *Human Rights Violations against Intersex People*. See also Joseph Otero, “Intersex in Kenya: held captive, beaten, hacked. Dead.”, 76crimes.com, 23 December 2015; and Olumide Makanjuola, “Who do we blame when an intersex teenager is attacked?”, *The Guardian* (Nigeria), 20 September 2017.

⁸⁴ See <https://rainbowhealthaustralia.org.au/media/pages/research-resources/primary-prevention-of-family-violence-against-people-from-lgbti-communities/116140877-1709686054/primary-prevention-of-fv-against-lgbti-people-report-accessible-pdf.pdf>.

⁸⁵ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas* (2015), paras. 102–106.

⁸⁶ OHCHR, *Living Free and Equal*; and OHCHR, *Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law*, 2nd ed. (New York and Geneva, 2019).

67. In 2024, the Human Rights Council, in its landmark resolution 55/14, entitled “Combating discrimination, violence and harmful practices against intersex persons”, requested OHCHR to prepare a report examining discriminatory laws and policies, acts of violence and harmful practices against persons with innate variations in sex characteristics, in all regions of the world, and their root causes.

Perpetrators’ motivations: establishing legal intention

68. The “assessment of potential perpetrator-motivations is a core part of a homicide detective’s role; ... indicators of motivation ... may assist in determining who committed a particular crime and, in turn, determining the appropriate charge to lay”.⁸⁷

69. It is impossible to comprehend motivations for LGBTIQ+ murders without reference to the research describing the emergence of patriarchy societies that increasingly characterized wealth as male earned and protected, and were fortified by the growth and brutal enforcement of religions reflecting cisgendered heterosexist values. A binary emerged in which cis heterosexual men were characterized as active and strong, others being passive, weak and devious. Cis women were confined to prevent wealth from being conferred to children of other men, and all who strayed were increasingly punished, particularly men behaving like women.

70. According to the former Independent Expert, Victor Madrigal-Borloz, “at the root of the acts of violence and discrimination under examination lies the intent to punish based on preconceived notions of what the victim’s sexual orientation or gender identity should be, with a binary understanding of what constitutes a male and a female or the masculine and the feminine, or with stereotypes of gender sexuality. The connected acts are invariably the manifestation of deeply entrenched stigma and prejudice, irrational hatred and a form of gender-based violence, driven by an intention to punish those seen as defying gender norms.”⁸⁸

71. Various theories have been proposed to explain perpetrator motivation, such as “doing difference”, or expressing and protecting a gender boundary, especially where the offender’s gender is challenged.⁸⁹ “Social identity theory” hypothesizes that personal identity diminishes as one takes on a superior group identity, which may fuel violence.⁹⁰ These theories typically envisage the perpetrator as a male seeking to display his masculinity as a source of superiority. Prejudices may be nurtured by families and friends; online hate speech and broader social discourse; frustrations related to a lack of education and to economic insecurity; and the inability to resolve interpersonal conflict.⁹¹

72. Former members of illegal armed groups have justified their acts based on “religious or cultural ideas about sexuality held by those in leadership; as a correction of perceived aberrant behaviour; as the actual elimination (through forced displacement or assassination) of those individuals considered to pose a danger to the moral integrity of society; and as a demonstration of power, where the bodies of marginal individuals are used as a canvas on which armed groups inscribe their willingness to kill in order to dominate a territory”.⁹²

⁸⁷ Australia, *Report of the Special Commission of Inquiry into LGBTIQ Hate Crimes*, p. 1408.

⁸⁸ A/HRC/38/43, paras. 48 and 49.

⁸⁹ Kayla Allison, “The relevance of bias violence in the 21st century”, in *Homicide and Violent Crime*, Mathieu Deflem, ed. (Emerald Publishing Limited, 2018).

⁹⁰ Ibid.

⁹¹ Mark Walters, “A general theories of hate crime? Strain, doing difference and self control”, *Critical Criminology*, vol. 19, No. 4 (2011).

⁹² William J. Payne, “Death-squads contemplating queers as citizens: what Colombian paramilitaries are saying”, *Gender, Place and Culture*, vol. 23, No. 3 (2016), p. 329.

73. Octavio Romero was an officer of the coastguard and river police force in Argentina, whose body was found floating in a river policed by his employer after attempting to become the first Argentinian uniformed officer to enter a same-sex marriage. The identified cause of death was “asphyxiation from submersion, after being knocked unconscious from being beaten and thrown into the water”. The Public Prosecutor hindered proper investigation. Proceedings of the Inter-American Commission on Human Rights led to a settlement that included measures to rectify security force behaviour,⁹³ including the creation by the Ministry of Security of a protocol governing steps to be taken in response to complaints of discrimination based on sexual orientation and/or gender identity, its expression and sexual characteristics; instituting an Octavio Romero training and awareness days programme and reports on its execution; and disseminating a booklet on sexual diversity among security forces. To strengthen access to justice for LGBTIQ+ persons, guidelines will establish the approach to be adopted in suspected murders of transvestites and trans persons, femicides, and homicides due to prejudice or discrimination based on sexual orientation, gender identity, sexual expression or sexual characteristics, and will be disseminated in the Ministry of Security. The mandate of the Inter-American Commission on Human Rights Rapporteur on the Rights of LGBTI Persons includes monitoring, auditing and following up on these commitments.

Formulating and qualifying the crime

74. Jurisdictions have sought to emphasize the hate or bias elements of violent crimes against LGBT and gender-diverse persons.⁹⁴ Crimes motivated by hate may be composed as stand-alone crimes, or the existence of hate, bias or prejudice may be interpreted as an aggravating factor resulting in a greater penalty.

75. Hate crimes generally adopt the hostility model or the discriminatory selection model. The hostility model requires proof of the perpetrator’s subjective intent – animus towards the group, which is difficult to demonstrate. Legislation might provide examples of acts such as a derogatory comment or admission from which hostility towards the victim, as a member of a group, can be inferred. This makes the subjective hate or bias element slightly easier to prove. The discriminatory selection model adopts an objective approach in which it is only necessary to prove that the perpetrator has harmed the victim because of the latter’s actual or presumed status as a member of a prescribed group; it is unnecessary to prove the existence of hate or hostility.⁹⁵

76. Latin American “prejudice” crimes are a version of the discrimination selection model.⁹⁶ As the focus is on the value that the perpetrator assigns to group characteristics, animosity is not required. Social complicity is necessary for these acts to occur. Criteria have been developed to enable the identification of prejudice crimes:

- Victim selection: non-heteronormative gender expression, being a human rights defender, potentially in combination with other stigmatized characteristics
- Context: previous threats or attacks against the victim, other LGBTI persons, human rights defenders or members of other marginalized populations; perpetrator use of prejudiced language; incident occurring on or close to a day,

⁹³ Inter-American Commission on Human Rights, “Report on friendly settlement: Case 13.696, *Octavio Romero and Gabriel Gersbach*, Argentina” (report No. 31/24), 21 May 2024.

⁹⁴ Rose E. Gibson, “Beyond hate: investigating and prosecuting bias-motivated violence targeting the LGBTQI community”, *Department of Justice Journal of Federal Law and Practice*, vol. 70, No. 2 (March 2022), p. 202.

⁹⁵ International Association of Prosecutors, *Prosecuting Hate Crimes*.

⁹⁶ See <https://www.gob.pe/institucion/mpfn/informes-publicaciones/2829986-caracteristicas-criminologicas-de-las-muertes-dolosas-de-personas-lgtb-en-el-peru-2012-2021>.

event or place associated with LGBTI persons, or where there was a strong presence of armed groups using stereotypes against marginalized populations

- Type of violence: crime accompanied by sexual violence, torture or cruel treatment; physical violence concentrated on anatomy associated with the victim's gender expression or sexuality; or disposition of the victim's body
- Social context: event occurred in a context of LGBTI criminalization or persecution promulgated by State agents, armed groups or political or religious leaders
- Perceptions of third parties: third parties suspect homicide motivated by prejudice, and/or police or prosecution investigators confirm it⁹⁷

77. To prove the existence of a hate crime against LGBT and gender-diverse persons, a United States Department of Justice prosecutor has sought to create criteria for perpetrator intent,⁹⁸ suggesting that investigators and prosecutors examine what brought the perpetrator and victim together and the perpetrator's choice of assaultive conduct. Crimes are divided into three categories: premeditated crimes, crimes of opportunity, and crimes committed by perpetrators known to the victim. With premeditated crimes, the selection of victim may reveal critical evidence. For example, if there is evidence that "the perpetrator was looking for victims in places the perpetrator expected to find LGBTQI persons", this constitutes compelling evidence that the perpetrator targeted the victim because of the latter's perceived status. Opportunity crimes occur simply because the perpetrator suspects the victim to be a member of the LGBTQI+ community, based on stereotypes, and employs certain types of violence as a result. "Corrective" rapes are one example. The fact that a perpetrator may have been in an intimate or other relationship with the victim, or other LGBTQI+ persons, does not preclude the existence of a bias crime. The more familiar investigators and prosecutors are with local stereotypes and motivations for these crimes, the more effective they are likely to be.

78. The Inter-American Commission on Human Rights notes that "when crimes are truly motivated by prejudice but are not classified as such, there is a shifting of blame toward the victim (i.e., the prejudice may result in the crime being excused or less grave on the basis of the actions or conduct of the victim). This shift renders invisible the power structures that reproduce the homophobic stereotypes that underpin the prejudice"⁹⁹ and may contribute to rendering the true nature of the crime invisible.

Investigation: best practices

79. As mentioned previously, the Inter-American Commission on Human Rights produced a detailed report on violence against LGBTI persons.¹⁰⁰ Before addressing the specifics of investigation, the report gives an insight into sexuality and gender, the features of violence against LGBTI persons, laws criminalizing same-sex intimacy and non-normative gender identities, the nature of violence targeting LGBTI persons, intersectionality, data collection and measures to prevent violence. Investigations must apply due diligence and be competent, impartial and independent.

80. Barriers to effective investigation include negligent and biased attitudes of law enforcement personnel; stereotyped assumptions about the motives; witness fear of

⁹⁷ See https://colombiadiversa.org/ddhh-2017/pdf/Informe_completo_DDHH_Violencia.pdf, adapted in <https://www.gob.pe/institucion/mpfn/informes-publicaciones/2829986-caracteristicas-criminologicas-de-las-muertes-dolosas-de-personas-lgtb-en-el-peru-2012-2021>.

⁹⁸ Gibson, "Beyond hate", p. 201.

⁹⁹ Inter-American Commission on Human Rights, *Violence against LGBTI Persons in the Americas*, para. 485.

¹⁰⁰ Ibid.

victimization or retaliation; witness allegations disbelieved, or credibility questioned; the law criminalizing consensual same-sex intimacy; the law condoning violence against LGBT persons; and discriminatory attitudes of judges and other justice system officials.

81. The Commission advises States that there must be no deterrence to reporting crimes and no victimization of or attack against victims and witnesses. Because of the risk of retribution, LGBTI victims and witnesses should be able to report with a guarantee of privacy, and they should be treated with respect. State agents should not make biased assumptions in their receipt, processing and investigation of complaints and should use people's preferred pronouns. If uncertain, they should respectfully ask. During investigations and judicial proceedings, victims' next of kin should have meaningful opportunities to be heard on the facts, punishment and compensation. Legal aid programmes should be available to those representing LGBTI victims' interests, ensuring that they have access to justice. Comprehensive training and the observance of protocols addressing violence against LGBTI persons is necessary, and sentences should reflect the seriousness of the crime.

82. The Commission asserts that reparations should be tailored to the next of kin and be calculated to provide adequate restitution, compensation, and rehabilitation, measures of satisfaction and guarantees of non-repetition. In the context of structural discrimination, the Inter-American Court of Human Rights noted that reparations should result in restitution and rectification.¹⁰¹ Trans women who are murdered often do not have birth or adoptive family members who will seek justice on their behalf. This may fall to the "social family" of the deceased. However, members of the social family may be ignored and suffer discrimination.¹⁰²

83. In 2019, the Mexico City Human Rights Commission recommended that the Attorney General's Office acknowledge the social family of the direct victim as victims, despite the lack of blood ties. The national protocol for LGBTI+ persons of Mexico recognizes the social family as persons other than the immediate family acting in expected familial roles and providing support for the LGBTI+ person's well-being.¹⁰³

84. In 2022, in the Latin American and Caribbean region, OHCHR, the Specialized Network on Gender of the Ibero-American Association of Public Ministries and the regional network of non-governmental organizations Without LGBTI Violence initiated a process to develop a regional protocol for the criminal and forensic investigation of gender-related crimes against LGBTI persons; draft instruments including operational guidance will be considered later in 2024. This may well become a reference for use and/or adaptation in other regions.

85. In the case of the murder of Diana Sacayán, a prominent Argentinian transvestite and human rights defender, by the man with whom she had an intimate relationship and by another,¹⁰⁴ the investigating prosecutor involved the Specialized Unit on Violence against Women (UFEM), whose mission is to strengthen the performance of the Office of the Public Prosecutor with regard to gender violence, including violence perpetrated against LGBT persons, and which enjoys trust from the community. The Unit urged the implementation of the Latin American Model Protocol for the Investigation of Gender-related Killings of Women and the exclusion of stereotypical or prejudiced views about the attitudes, characteristics or roles of victims or accused

¹⁰¹ Ibid., para. 512.

¹⁰² Ibid., para. 511.

¹⁰³ See https://www.gob.mx/cms/uploads/attachment/file/383250/Protocolo_LGBTI_.pdf, cited in the response from Ideas, Litigio Estratégico en Derechos Humanos, to the call for input.

¹⁰⁴ See Federal Criminal and Correctional Court No. 4 of Buenos Aires, Judgment (CCC 62182/2015/TO1), 6 July 2018.

persons, while rendering visible the gender aspect of the crime. Experts including a specialist anthropologist provided evidence on the structural violence suffered by travestis.

86. Fluid, constant two-way dialogue, and access to information, took place between the authorities and the victim's family and friends and civil society organizations. Measures were adopted to protect the rights of victims and witnesses and ensure that they were treated with respect. Professional support was provided to those most affected. Some interviews took place at the homes of those who were located at a distance from the prosecutor's office or who had had no prior contact with the justice system. Surviving and indirect victims were involved as active parties in the criminal process and were able to participate effectively during the investigation and trial. Civil society organizations formed the Justice Commission for Diana Sacayán, facilitating communication and gaining recognition as a party during the trial. A conscious effort was made to address community needs and promote a reparatory end to the criminal process. Formal communications with the media attempted to ensure that coverage was not stigmatizing and that the crime was perceived as a social phenomenon. Justice system representatives requested all relevant information in Sacayán's social media account, and steps were taken to avoid the loss or degradation of all evidentiary material.

87. Although not adopted by the judges, the prejudice construct was used to explain the structural reasons for violence against LGBT persons – the violence characterized as a cultural product of patriarchy that imposes heteronormativity, while other sexual orientations and gender identities must be censored and punished. Thus, during the trial, evidence was tendered to prove that the violations of Diana Sacayán's body reflected the profound discrimination and stigmatization that she had experienced. The notion of "transvesticide" was introduced to the court.

88. This example demonstrates a commitment to developing and maintaining an informed consciousness of the personal and political nature of the crime and associated sensitivities, an understanding of which was introduced to the court; the existence and value of strong community linkages; and the effort made to ensure the respectful involvement of and accountability to family, friends and the community. Attention was given to both the needs and rights of those affected. Evidence was sought from all possible sources, local and international, analysed, preserved and relied on. This was a diligent investigation.

IV. Conclusion

89. For a person to be deemed to have committed an immoral or criminal act, the harm to another should be demonstrable. Merely having non-conforming sexual orientations, gender identities and expressions and sex characteristics cannot, under any circumstances, be regarded as inherently criminal or antisocial and is absolutely never a reason to justify deprivation of life. Accepting this should be seen as a gateway to freedom, allowing persons to be themselves rather than conform to an antiquated patriarchal or religious vision of normalcy. States must prohibit and prevent the killing of people as punishment for their non-conformity or to ensure that others conform to a straitjacketed vision of sex, sexuality or gender. States are obliged to fulfil the right of all to life, free from discrimination.

V. Recommendations

90. **Direct and indirect State involvement.** States should immediately repeal all criminal penalties for consensual same-sex conduct. Offences that may be applied in a discriminatory manner against LGBT and gender-diverse persons should be repealed or redrafted to ensure legal precision. Honour killings and killings of intersex infants should be punishable as intentional homicide. Specious defences to murders, such as the “gay panic” defence, should be abolished. All violence, including coercive bodily examinations perpetrated or encouraged by government officers including the military and associated groups and the murder of intersex infants perpetrated or encouraged by health practitioners, should be criminalized with penalties commensurate with the seriousness of the offence.

91. **Addressing discrimination in justice systems and security forces.** Tackling discrimination against people is a State duty and operational imperative for all State agencies. Discriminatory attitudes feed the violence that leads to deaths of persons who are or are perceived to be LGBTIQ+. Instead of perpetrating violence, all State agencies, especially those tasked with upholding justice and security, must urgently and thoroughly identify and address all forms of discrimination against LGBTIQ+ persons present within organizational processes and systems. Led by senior justice system and military officers and informed by communities and experts, workforces must develop broad-based competence around sexuality, gender and sex characteristics. When recruiting staff, baseline competence on crime related to sexual orientation, gender identity and expression and sex characteristics should be expected. Protocols devoted to non-discriminatory engagement with LGBTIQ+ communities, persons, defenders, relatives and friends should be created and observed. Specific protocols should address the investigation of their deaths. It may be useful to create dedicated investigation and prosecution units and assign only judges with expertise on violence against LGBTIQ+ persons to hear cases. Instituting short-term initiatives is insufficient; the obligation to end all aspects of agency discrimination against LGBTIQ+ persons should be regarded as ongoing. States must ensure that all such programmes, initiatives and laws are subject to regular internal and independent monitoring and evaluation. Related recommendations made should be implemented, unless there are sound, publicly discussed reasons for not doing so.

92. **State agents’ accountability.** States should create and implement strict accountability measures within law enforcement, military and health agencies for officers found to have committed or been complicit in violence against LGBTIQ+ persons, defenders, relatives and friends. Officers who have been dismissive of reports of potentially unlawful deaths of LGBTIQ+ persons, disrespectful to complainants, family, including social family, or witnesses, or negligent in their conduct of investigations should be held accountable. This includes disciplinary action, prosecution and removal from duty where necessary.

93. **Culture of understanding.** Justice and security system agencies should build understanding of LGBTIQ+ persons and the drivers of violence against them. This includes forging strong links with local LGBTIQ+ communities and commitment to regular dialogue; engagement with experts; and ongoing workforce training on violence against LGBTIQ+ persons, the perpetrators and their motivations.

94. **Disaggregated data collection.** States should collect comprehensive, disaggregated data on unlawful deaths and disappearances of LGBTIQ+ persons. At a minimum, data should include the perceived and actual sexuality, gender identity and expression and sex characteristics of both victim(s) and perpetrator(s), intersecting vulnerabilities, the relationship between the victim(s) and the perpetrator(s), and indicators that the homicide might be a crime of prejudice or hate, including the

location of wounds, perpetrator hate speech, locations or dates associated with LGBTIQ+ persons, and locations where bodies are found. Information on LGBTIQ+ persons' experiences in conflict settings should be collected and securely stored, including through Security Council-mandated monitoring, analysis and reporting arrangements on conflict-related sexual violence. Observatories collecting informal data should be supported.

95. Proving the crime. Hate or prejudice crime legislation should be reviewed to ensure that it protects LGBTIQ+ persons. Proving that the perpetrator "hates" the victim because the latter is perceived to be of non-conforming sexual orientation, gender identity and expression and sex characteristics may be difficult. Governments may wish to consider formulating these crimes as discrimination selection or prejudice crimes. This allows evidence on the social and structural problems faced by LGBTIQ+ persons to be introduced, creating a more informed environment for judicial decision-making.

96. Respect and reparations. Families or social families, friends, community members and witnesses, as appropriate, should be treated with respect and given the support and protection that they require to be active participants in death investigations and trials. This includes respecting their preferences concerning the language used to refer to the victim, themselves and others. The content of reparations and rectification measures should be discussed with relevant family and community members. The implementation of agreed rectification measures should be monitored, and progress publicly reported.

97. Rectification. States may wish to enable domestic superior courts to make rectification orders if this power is currently unavailable to them.

98. Precautionary measures. States may wish to consider providing national human rights or other suitable institutions with the power to issue precautionary measures protecting individuals or groups in grave and urgent situations from irreparable harm.

99. Recognition as persons before the law. Governments must protect the economic, social and cultural rights of LGBTIQ+ persons and ensure that they are recognized as persons before the law, which is critical for trans and intersex persons. Governments, in partnership with LGBTIQ+ communities, must take immediate and sustained steps to rectify structural barriers faced by LGBTIQ+ persons that may cause or contribute to death. This includes decriminalization of sex work. Failure to do so exacerbates vulnerability to violence and exposure to life-threatening risks. Public campaigns should encourage social inclusion of LGBTIQ+ persons and condemn violence against them.

100. Development and implementation of specific guidance for investigating potentially unlawful deaths of LGBTIQ+ persons. States should diligently investigate all potentially unlawful deaths of LGBTIQ+ persons in accordance with the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), for which the respective specific protocols under preparation in Honduras and in Latin America, with the support of OHCHR, may serve as models. In addition, as previously recommended for the investigation of femicide, an addendum should be added to the Minnesota Protocol for the investigation of potentially unlawful deaths of LGBTIQ+ persons.

101. Assistance to organizations protecting the right to life of LGBTIQ+ persons. States, international agencies and philanthropy should provide financial and technical assistance to organizations that aim to protect the right to life of LGBTIQ+ persons.