

Mandates of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Working Group on Arbitrary Detention; the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences; and the Working Group on discrimination against women and girls

REFERENCE:
OL GHA 3/2021

9 August 2021

Excellency,

We have the honour to address you in our capacities as Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Working Group on Arbitrary Detention; Special Rapporteur on the right to education; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on violence against women, its causes and consequences; and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 41/18, 42/22, 44/3, 43/4, 41/12, 42/16, 43/16, 43/20, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the tabling of a bill entitled "Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill, 2021" before the Parliament of Ghana. According to information at our disposal, the first reading of the bill took place on 2 August. The consideration of the bill is expected to resume in October, after Parliamentary recess and public engagement.

While we do not wish to prejudge the accuracy of the information made available to us, we express our grave concern about the draft bill, which seems to establish a system of State-sponsored discrimination and violence against LGBTI persons of great magnitude. As such, the bill appears to constitute an immediate and fundamental breach of Ghana's obligations under international human rights law, as described below.

¹ Draft Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill, 2021 (hereinafter, "Draft Bill," Preamble.
² Introduction to Draft Bill, p. 1.

According to the information received:

Alleged object of the legislation

1. The object of the bill is to proscribe “LGBTQ+ and related activities,”¹ on the claim that these are incompatible “with the sociocultural values of any ethnic group in Ghana.”²

The targeted population

2. If adopted, the draft legislation would apply to a series of persons based on their sexual orientation, real, perceived or questioned; their gender identity; their sex characteristics or their support to the rights of LGBT persons. This population (hereinafter “the targeted population”) would include any person³:
 - a. who “holds out” (sic) as a lesbian, a gay, a bisexual, a pansexual “or a person of any other sociocultural notion of [...] sexual relationship that is contrary to the sociocultural notions of [...] the relationship between male and female;”
 - b. who “holds out” (sic) as transgender or transsexual, “or a person of any other sociocultural notion of sex [...] that is contrary to the sociocultural notions of male or female;”
 - c. who has a “biological anomaly” (sic) including a person who is intersex;
 - d. “involved in the promotion of, propagation of, advocacy for, support of or funding of “LGBTTQQAAP+”;⁴
 - e. “who provides or participates in the provision of surgical services to enable gender reassignment or the creation of a sexual category other than the category of a person assigned at birth, except where the surgical procedure is to correct a biological anomaly, including intersex; or
 - f. “who engages in a sexual activity prohibited” under the Act.
3. Under some provisions of the law, the targeted population is amplified to include:
 - a. persons who are questioning their sexuality, understood as persons engaged in a process to explore or discover their sexual orientation, gender identity or gender expression;⁵ and

¹ Draft Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill, 2021 (hereinafter, “Draft Bill,” Preamble.

² Introduction to Draft Bill, p. 1.

³ Introduction to Draft Bill, p. 9. See also Draft Bill, Preliminary Provisions, p. 20-21.

⁴ Draft Bill, Clause 2, in which it is stated “LGBTTQQAAP+” includes “lesbian, gay, bisexual, transgender, transsexual, queer, questioning, intersex, ally, asexual, pansexual and any other sociocultural notion of sex and sexual relationship that is contrary to the sociocultural notion of male and female assigned at birth”.

⁵ Draft Bill, Clause 2.

- b. asexual persons, understood as persons not having “sexual desire or attraction to any group of persons;”⁶
 - c. persons referred to as “lifestyle activists.”⁷
4. The Draft Bill also includes “allies” in the targeted population. These are defined as “a non-queer person who supports or advocates for the queer community.”⁸
 5. The draft legislation intends to impose on all members of the targeted population restrictions and penalties including criminalization, and prohibition of marriage, adoption, fosterage and all forms of support to their rights.

Activities to be prohibited as per the Draft Bill

6. The Draft Bill refers to a series of actions, collectively referred as “LGBTQQIAAP+ and related activities,”⁹ which include same-sex intercourse and marriage¹⁰ and intercourse and marriage with trans and gender diverse persons. The draft legislation includes a system of criminalization of all activities described therein;¹¹ these activities include “a public show of amorous relations” between or with LGBT persons, describing these as “gross indecency.”¹²
7. The draft legislation also includes sexual intercourse with animals and marriage with animals under the list of “LGBTQ+ activities,”¹³ and the introduction to the draft legislation endorses a statement of the National House of Chiefs of 26 February 2021 referring to lesbian, gay, bisexual, trans and gender diverse persons as “inhuman”¹⁴, taboo and alien to Ghanaian society.
8. The Draft Law also aims to prohibit the marriage between or with any of the persons in the targeted populations, arguably banning not only same-sex marriage, but also marriage between and with questioning, asexual or intersex persons, or allies; it also bans the adoption or fosterage of children by any person within the targeted populations.¹⁵
9. The proposed legislation also seeks to prohibit surgical procedures “intended to create a sexual category other than the binary categories of

⁶ Draft Bill, Clause 2, in which it is stated that the expression “LGBTQQIAAP+” includes asexual persons, read in conjunction with Clause 6 (in which it is stated that “LGBTQQIAAP+ activities” are prohibited), Clause 11 (that refers to “LGBTQQIAAP+ propaganda”) and Clause 15, that provides the “disbandment” of LGBTQQIAAP+ associations, groups or organisations.

⁷ See, for example, introduction to the Draft Bill, pp. 7 and 13.

⁸ Draft Bill, Clause 2.

⁹ Draft Bill, Clause 6.

¹⁰ Draft Bill, Clause 6. The Draft Bill also aims at ensuring that marriages celebrated outside of Ghana will not be recognized within the country. *See* Draft Bill, Clause 11.

¹¹ Draft Bill, Clauses 7 to 9.

¹² Draft Bill, Clause 10.

¹³ Draft Bill, Clause 6.

¹⁴ Introduction to Draft Bill, p. 1.

¹⁵ Draft Bill, Clauses 17 and 18.

male and female.”¹⁶ Conversely, it promotes practices of conversion therapy by offering incentives to any person within the targeted population who “recants and makes a voluntary request to access an approved medical help or treatment.”¹⁷

10. The Draft Bill also promotes unnecessary medical interventions on intersex children by offering incentives to parents to “realign” the child to an “appropriate (sic) binary designation as determined by a medical practitioner.”¹⁸
11. The draft legislation alleges that “LGBTQQIAAP+ and related activities”¹⁹ threaten the concept of family and associated value systems central to the social structure of “all ethnic groups in Ghana.”²⁰ In particular, the draft legislation refers to the concept of “proper human sexual rights”²¹ and acts on the assumption that the very nature of LGBT persons and the promotion of their rights are contrary to them.²²
12. On these bases, the Draft Bill intends to prohibit the promotion and protection of the human rights of lesbian, gay, bisexual, trans and gender diverse (LGBT) persons. To this respect, it describes the lack of legislation criminalizing the promotion and protection of the rights of LGBT persons as a “gap in the law [that] creates opportunities for advocates [...] to sponsor and promote the proliferation of those sexual activities.”²³
13. The draft legislation therefore seeks to criminalise the production, procurement, marketing, broadcast, dissemination, publication, or distribution of materials concerning so-called “LGBTQQIAAP+ propaganda, advocacy, support and other promotional activities”²⁴ through any medium and would also seek to prohibit any show of support, sympathy for or change of public opinion toward acts prohibited under the bill. Action of promotion under these provisions would be sanctioned with imprisonment between five to ten years.²⁵
14. The Draft Bill also seeks to prohibit the forming of associations, groups “and organizing people in any form” for the purpose of advocating for and promoting the rights of LGBT persons and provides for the dissolution of any group, society, association, club or organization that promotes, facilitates, supports or sustains prohibited activities and criminalises the furtherance of such associations with imprisonment between six to ten years.

¹⁶ Draft Bill, Clause 6 (p.25).

¹⁷ Draft Bill, Clauses 20 and 23.

¹⁸ Draft Bill, Clause 23.

¹⁹ Introduction to Draft Bill, p. 1.

²⁰ Introduction to Draft Bill, p. 3.

²¹ Introduction to Draft Bill, *in extenso*. See particularly, Clause 3 (p. 25)

²² Draft Bill, Clause 2.

²³ Introduction to Draft Bill, p. 7.

²⁴ Draft Bill, Clause 12.

²⁵ Draft Bill, Clause 12.

15. Finally, the draft legislation aims at prohibiting the funding or sponsorship of prohibited activities and penalizes them with imprisonment of five to ten years. The Draft Bill further expresses its aim to prevent “the activities of highly organized and funded movements and groups that collaborate with local organisations, by the use of financial or other forms of support, to lure young and destitute Ghanaians into LGBTTTQQAAPP+ activities.”²⁶
16. The introduction to the Draft Bill argues that prohibiting the promotion and protection of the human rights of LGBT persons is a reasonable limitation, necessary for public health, order or safety.²⁷ The alleged foundations would be as follows:
 - a. that the passage of the Bill would be justified by the fact that 18.1% of “people living with AIDS (sic) are gays;”²⁸
 - b. that the existing legislative framework is silent on support mechanisms for victims of “LGBTTTQQAAPP+ sexual activities (sic),”²⁹ and argues that economic inequalities and poverty create a fertile environment for “the rapacious activities of persons involved in LGBTTTQQAAPP+ activities (sic)”³⁰ to take advantage of poor youth and other persons in situation of vulnerability;
 - c. that questioning and intersex persons are “easy prey to lifestyle LGBTTTQQAAPP+ persons,”³¹ in connection to which reference is also made to the “glamourization of LGBTTTQQAAPP+ lifestyle [...] in ways that are likely to corrupt public morals, children and the youth.”³²
17. The draft legislation creates an enforcement system that would require any person witnessing any of the activities prohibited by the law to report them to the police “or in the absence of the police, political leaders, opinion leaders or customary leaders in the community.”³³

The Draft Bill relates to the human rights to which our mandates relate, and we are deeply concerned that its adoption in its current or any partial form would infringe a plethora of international human rights norms and standards.

Non-discrimination based on sexual orientation and gender identity, and sex characteristics

The introduction to the Draft Bill contains multiple stigmatizing statements which are not founded on any element of evidence, such as the claims that

²⁶ Introduction to Draft Bill, p. 13.

²⁷ Introduction to Draft Bill, p. 4.

²⁸ Introduction to Draft Bill, p. 5. The draft legislation refers to a 2017 report of the Science Research Council communicated at the National HIV and AIDS Research Conference in Accra. The draft legislation does not include a citation allowing the verification of the source.

²⁹ Introduction to Draft Bill, p. 7.

³⁰ Introduction to the Draft Bill, p. 8.

³¹ Introduction to the Draft Bill, p. 15.

³² Introduction to the Draft Bill, p. 12.

³³ Draft Bill, Clause 5 (p.26).

LGBT persons and their allies “take advantage of poor youth,” find “easy prey” in intersex persons, and glamourize “their lifestyle (sic) in ways that are likely to corrupt public morals, children and the youth.”

The principles of equality and non-discrimination are part of the foundations of the rule of law and human rights. Under articles 1 and 2 of the Universal Declaration of Human Rights (UDHR), “[a]ll human beings are born free and equal in dignity and rights”, and “[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

In connection with its deeply stigmatizing language, it is notable that – without explanation as to its reasoning – the Draft Bill also wrongly describes bestiality as an LGBT activity and that it describes LGBT persons as “rapacious,” “indecent,” and “inhuman.” In its 2018 report to the Human Rights Council, the United Nations Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity concluded that “the rising number of hate crimes based on sexual orientation and gender identity correlates with a steep rise in ultraconservative political leaders and religious groups using their platforms to promote bigotry, dehumanize persons on the basis of sexual orientation, gender identity or gender expression, and foster stigma and intolerance among their constituencies. Such discourse is sometimes used as a means to bolster popularity and detract attention from pressing economic and internal political problems.”³⁴ In the same vein, the Human Rights Council, in its resolutions 17/19, 27/32, 32/2 and 41/18, expressed grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity, and in the last Universal Periodic Review of Ghana (A/HRC/37/7), the recommendations in paragraph 146.59 (which enjoyed the support of Ghana) state that Ghana should “[t]ake the steps necessary to protect lesbian, gay, bisexual, transgender and intersex persons from violence and discrimination on the basis of their sexual orientation and gender identity.”

States have the responsibility to ensure space for all persons to enjoy their fundamental rights and freedoms. They must strengthen the capacities of communities to access and express a range of views and information and embrace the healthy dialogue and debate that they can encompass.³⁵ In this context, the intended effect of the Draft Bill, outlawing and punishing freedom of opinion and expression in relation to the human rights of LGBT and gender diverse persons, raises a colorable claim of violation of an ample range of human rights.

In particular, the criminalisation of sexual relations between consenting adults has been condemned as violating international human rights norms enshrined in international treaties to which Ghana is party, including the International Covenant on Civil and Political Rights (ICCPR) (ratified by Ghana on 7 September 2000), the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (ratified by Ghana on 7 September 2000),

³⁴ A/HRC/38/43, par. 38.

³⁵ A/HRC/22/17/Add.4

the International Covenant on Economic, Social and Cultural Rights (ICESCR) (ratified by Ghana on 7 September 2000), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (ratified by Ghana on 2 January 1986) and the Convention on the Rights of the Child (ratified by Ghana on 5 February 1990). Human rights treaty bodies and the former High Commissioner for Human Rights have repeatedly called for such discriminatory laws to be repealed (A/HRC/29/23, A/HRC/19/41). The Human Rights Committee and the Working Group on Arbitrary Detention have clarified multiple times that detention on discriminatory grounds, including based on sexual orientation and gender identity, is per se arbitrary and violates the ICCPR (CCPR/C/GC/35, A/HRC/22/44).

In this vein, we would like to recall the Concluding Observations of 9 August 2016 of the Human Rights Committee, in which it was highly concerned about reports that LGBT persons in Ghana are subjected to discrimination, intimidation and harassment and about the impunity enjoyed by the perpetrators of such acts (CCPR/C/GHA/CO/1, para. 43). The Committee further noted with concern that same-sex sexual activity falls within the definition of “unnatural carnal knowledge, under section 104 of the Criminal Offences Act, 1960, and is considered a misdemeanour if it is between two consenting adults” (*Ibid.*). In light of this, the Committee urged Ghana to take the steps necessary to protect LGBT persons against all forms of discrimination, intimidation and violence. The Committee also urged Ghana to amend section 104 of the Criminal Offences Act of 1960, to ensure that sexual relations between consenting adults of the same sex are not considered a misdemeanour and not punishable by law (*Ibid.*, para. 44).

Similarly, in its Report of the country visit to Ghana in 2018 the Special Rapporteur on extreme poverty and human rights remarked on the impact of stigma and discrimination on poverty among LGBT persons:

While the Government might argue that it is not responsible for acts of discrimination by private persons, the reality is that the law sets the overall framework and strongly influences attitudes. Decriminalizing adult consensual same-sex conduct would be a first step towards recognizing the human rights of lesbian, gay, bisexual, transgender and intersex people and fighting discrimination based on sexual orientation and gender identity. A national public education campaign on the rights of such persons and legal remedies and social services for victims of sexual discrimination based on sexual orientation and gender identity is urgently needed to uphold the country’s commitment to equality and fairness.³⁶

Other forms of discrimination against populations targeted by the Draft Bill

Even within the worrisome context of its intent to target LGBT and gender diverse persons based on their sexual orientation and gender identity, we find it deeply concerning that the Draft Bill also targets populations who may be

³⁶ A/HRC/38/33/Add.2, par. 42.

questioning their sexuality, asexual persons³⁷ and persons belonging to a highly undetermined category of “lifestyle activists,”³⁸ as well as intersex persons. In particular, the Draft Bill does not appear to consider the scientific knowledge amassed by the international community about the lived experience of some persons among the targeted populations. The lack of consideration of these elements of evidence leads to imprecisions that could have a devastating impact on Ghanaian citizens and other persons living under the jurisdiction of Ghana. Some examples:

Intersex persons

In the *Background Note on Human Rights Violations against Intersex People*, the UN High Commissioner for Human Rights documented that intersex persons are born with physical sex characteristics (such as sexual anatomy, reproductive organs, hormonal patterns and/or chromosomal patterns) that do not fit typical definitions for male or female bodies. Human rights violations include forced and coercive medical interventions; infanticide; restrictions on the exercise of legal capacity and in access to remedies and justice; discrimination in access to education, sport, employment and services. The formulation presented in the Draft Bill when referring to “biological anomalies” of intersex persons and describing these persons as violating the undefined (and non-existent) standard of an “appropriate (sic) binary designation”³⁹ is a shocking example of the harmful stereotypes, stigma, taboos and pathologization that implies treating these persons as necessarily ill or disordered⁴⁰ and leads to grave human rights violations against them. It is noteworthy that on the bases of the findings of the High Commissioner, targeting intersex persons could impact more than 300.000 Ghanaians,⁴¹ an available element of evidence that the Draft Bill has failed to include in its introduction.

The Draft Bill also promotes unnecessary medical interventions on intersex children by offering incentives to parents to “realign” the child as determined by a medical practitioner.”⁴² We are deeply concerned that an official endorsement would constitute a *prima facie* violation of the human rights of intersex persons, including a violation of the prohibition of torture.

The right to health, under article 12 of ICESCR, includes the freedom to decide what happens to one’s own body (E/C.12/GC/22, paras. 1–5). Therefore, intersex children and adults should be the only ones who decide whether they wish to modify the appearance of their own bodies

³⁷ Draft Bill, Clause 2, in which it is stated that the expression “LGBTQQIAAP+” includes asexual persons, read in conjunction with Clause 6 (in which it is stated that “LGBTQQIAAP+ activities” are prohibited), Clause 11 (that refers to “LGBTQQIAAP+ propaganda”) and Clause 15, that provides the “disbandment” of LGBTQQIAAP+ associations, groups or organisations.

³⁸ See, for example, introduction to the Draft Bill, pp. 7 and 13.

³⁹ Draft Bill, Clause 23.

⁴⁰ <https://www.ohchr.org/Documents/Issues/Discrimination/LGBT/BackgroundNoteHumanRightsViolationsagainstIntersexPeople.pdf>, p. 3

⁴¹ For an explanation of the upper estimate see Blackless M, Charuvastra A, Derryc A, Fausto-Sterling A, Lauzanne K and Lee E, “How Sexually Dimorphic Are We? Review and Synthesis” (2000) 12 Am. J. Hum. Biol. 151; cited in <https://www.ohchr.org/Documents/Issues/Discrimination/LGBT/BackgroundNoteHumanRightsViolationsagainstIntersexPeople.pdf>, footnote 4.

⁴² Draft Bill, Clause 23.

(See, for example, CRC/C/NZL/CO/5, para. 25; CRC/C/CHE/CO/2-4, para. 43; CRC/C/NPL/CO/3-5, para. 42). Further, United Nations and regional human rights experts, including the Committee on the Rights of the Child, the Committee against Torture, the Subcommittee on Prevention of Torture and the Special Rapporteur on torture, have indicated that States must urgently prohibit medically unnecessary surgery and procedures on intersex children. United Nations human rights experts have called on States to “uphold the autonomy of intersex adults and children and their rights to health, to physical and mental integrity, to live free from violence and harmful practices and to be free from torture and ill-treatment.”⁴³

Allies, advocates, and human rights defenders

It is also notable that the Draft Bill seeks to extend its vast catalogue of prohibitions and sanctions to allies. Defined as “a non-queer persons who supports or advocates for the queer community,”⁴⁴ the draft legislation intends to impose on allies all restrictions and penalties imposed on the rest of the targeted population, including criminalization and prohibition of marriage, adoption, fosterage and all forms of support to their rights.

States have obligations to protect rights to freedom of thought and expression, association and peaceful assembly without discrimination on the grounds of sexual orientation or gender identity (A/HRC/29/23, para. 18). To that end, the former High Commissioner for Human Rights recommended that States ensure that individuals can exercise their rights to freedom of opinion, expression, association and peaceful assembly in safety without discrimination on grounds of sexual orientation and gender identity (A/HRC/19/41, para. 84 (f)).

The Special Rapporteur on the situation of human rights defenders highlighted that defenders promoting the rights of LGBT persons are often the target of numerous attacks and the lack of any protection under the law or in practice exacerbates the vulnerability of those defenders (A/70/217, para. 65-66). Therefore, he recommended that States do more to disseminate the work of defenders and to support their work through campaigns and specific communication and information activities that pay tribute, in particular, to the contributions made by certain categories of defenders, such as the rights of LGBT persons (*Ibid.*, para. 93 (a)).

Funders and cooperation partners

The draft legislation also targets persons who take part in the funding of activities of promotion and protection of the human rights of LGBTI

⁴³ Joint statement of international and regional human rights experts, “End violence and harmful medical practices on intersex children and adults”, 2016, available at <http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E>. See also, OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO, “Eliminating forced, coercive and otherwise involuntary sterilization: an interagency statement”, 2014 available at https://apps.who.int/iris/bitstream/handle/10665/112848/9789241507325_eng.pdf?sequence=1&isAllowed=y.

⁴⁴ Draft Bill, Clause 2.

persons, which would *prima facie* raise a claim of discrimination against them, and the violation of their human rights as analysed for all other targeted populations. In addition, we note that the Draft Bill makes the claim that it will contribute to “establishing and consolidating the relevant local indicators on sexual expressions in accordance with the country’s developmental needs.”⁴⁵ This claim is not supported by any evidence and is in fact contrary to all available evidence within the United Nations Human Rights and Development systems.

In particular, the Independent Expert on the Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity has amassed a significant evidence base and concluded that “laws and policies which criminalize same-sex relationships and gender identity, particularly in regard to its expression, directly lead to violence and discrimination, and are also part of the background environment in which they take place. They also stymie efforts to prevent and reduce HIV transmission. Conversely, inclusion policies and practices help to overcome discrimination and contribute to the realization of the Sustainable Development Goals.”⁴⁶ LGBTI persons are at a disadvantage in all social indicators determining quality of life, including education and political and civic participation, and other factors contributing to economic instability, homelessness and ill health. Given that the full potential and equal opportunities of LGBTI persons is not ensured, the society, as a whole is impoverished. The development commitments of the international community, placed in the frame of the Sustainable Development Goals, demands that immediate attention be given to ensuring that the systematic exclusion of these populations is addressed and to making sure that no one is left behind.

The rates of poverty, homelessness and food insecurity are higher among LGBTI individuals than in the wider community, a situation that bears direct relation with SDGs 1, 8, 10 and 11, the targets of which include ensuring that all human beings, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services; and creating sound policy frameworks at the national, regional and international levels, based on pro-poor and gender-sensitive development strategies.

LGBTI persons are also systematically excluded from quality education, the subject matter of SDG 4, as a result of harassment, abuse and even being thrown out of schools. In all regions of the world, bullying based on real or perceived sexual orientation and gender identity, and gender expression is commonplace, resulting in significantly higher desertion rates for LGBTI persons. This, in turn, deepens exclusion from economic opportunities and access to employment. For these reasons, States need to start designing and implementing educational policies and programmes to modify social patterns and cultural behaviour, counteract prejudice and customs, and

⁴⁵ Introduction to Draft Bill, p. 7.

⁴⁶ A/72/172, par. 33.

to eradicate practices based on stereotypes related to LGBTI persons that can legitimise or exacerbate discrimination and violence.

These exclusionary processes also lead to a disproportionate representation of LGBTI people, as well as their dependents and children, within the homeless population, which must be observed in connection to SDG 11. LGBTI persons are more likely to be turned away from shelters serving the general population; or when living in such facilities, they are often subject to further discrimination or forced to conceal their identity or sexuality. As with all other social indicators, this has a rebound effect, as studies show that almost two-thirds of LGBTI youth experiencing homelessness grapple with mental health issues and suggest they are more likely to report depression, bipolar disorder and suicidal ideation and attempts.

In relation to the right to health and SDG 3, several specific targets are especially relevant to LGBTI populations, such as target 3.3 on HIV/AIDS, target 3.4 on mental health and well-being, target 3.5 on drug and alcohol use, target 3.7 on sexual and reproductive health and target 3.8 on universal health coverage. Very few medical education curricula, health standards and professional training programmes have incorporated a comprehensive approach to LGBTI health care. LGBTI persons often encounter rejection, humiliation, derision or substandard services when accessing health care, which deters them from seeking services and may lead to the denial of care or to an absence of services that respond to their specific health needs.

We therefore express our deep concern that the Draft Bill explicitly promotes discrimination and violence against those who support the promotion and protection of the human rights of LGBTI persons, and creates significant risk of adverse impact in the furtherance of the Sustainable Development Goals.

Protecting freedom of opinion, expression, peaceful assembly and association

States have an obligation to guarantee to everyone the rights to freedom of opinion, expression, association and peaceful assembly, without discrimination (articles 19 and 20 (1) of UDHR, articles 19 (2), 21 and 22(1) of ICCPR, articles 1, 2, 5 and 6 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms). Limitations on these rights that are based on sexual orientation or gender identity violate international human rights norms and standards.

The Human Rights Committee noted that States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of opinion and expression (CCPR/C/GC/34, para. 23).

The right to freedom of opinion and expression under article 19 of the ICCPR is a broad and inclusive right to seek, receive and impart information and ideas of all kinds. The Human Rights Committee has clarified that the protection of information and ideas include those that may shock, offend or disturb. Sexual

expression has been recognized by the Special Procedures as an element of freedom of expression. Any restriction of the freedom of expression must meet the requirements set out in article 19 (3) of being lawful, proportionate and necessary to protect certain stated legitimate objectives. While “public morals” is a legitimate objective under article 19 (3), the Human Rights Committee has clarified that restrictions to protect public morals cannot be based “exclusively on a single tradition”⁴⁷ and must respect the universality of human rights and non-discrimination.⁴⁸ In our view, the draft bill fails to meet the requirements of article 19(3) as being unnecessary, disproportionate and not in keeping with the proper definition of “public morals”.

Furthermore, evidence shows that the criminalization of information relating to LGBTIQ on grounds of morals or traditional values fosters intolerance, stigmatization and violence, and deprives people from access to accurate information.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association emphasised that the rights to freedom of peaceful assembly and of association play a key role in empowering individuals belonging to groups most at risk (including LGBT people) to claim other rights and overcome the challenges associated with marginalisation. Such rights must therefore not only be protected, but also facilitated. It is the responsibility of all stakeholders to ensure that the voices of individuals belonging to groups most at risk are heard, and taken into account, in compliance with the principles of pluralism of views, tolerance, broadmindedness and equity (A/HRC/26/29, para. 72). In this regard, he called upon States to: (i) ensure that no individual belonging to a group most at risk is criminalised for exercising his/her rights to freedom of peaceful assembly and of association, nor is subject to threats or use of violence, harassment, persecution, intimidation or reprisals; (ii) ensure that any restrictions on the rights of freedom of peaceful assembly and of association, for individuals belonging to groups most at risk, are prescribed by law, necessary in a democratic society and proportional to the aim pursued, and do not harm the principles of pluralism, tolerance and broadmindedness; (iii) provide individuals belonging to groups most at risk exercising their rights to freedom of peaceful assembly and of association with the protection offered by the right to freedom of expression; and (v) ensure that individuals belonging to groups most at risk who are victims of violations and abuse of their rights to freedom of peaceful assembly and of association have the right to a timely and effective remedy and obtain redress (*Ibid.*, paras. 74 (a), (b), (d), and (g)).

Freedom to access funding

Article 22 of the ICCPR affirms that “everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.” In communication No. 1274/2004, the Human Rights Committee observed that “the right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities. The protection afforded by article 22 extends to all activities of an association [...]”

⁴⁷ CCPR/C/21/Rev.1/Add.4, General Comment 22, para 8

⁴⁸ CCPR/C/GC/34, General Comment 34, para 32

Accordingly, fundraising activities are protected under article 22 of the Covenant, and funding restrictions that impede the ability of associations to pursue their statutory activities constitute an interference with article 22 (A/HRC/23/3, paras. 15-16). The Special Rapporteur on the rights to freedom of peaceful assembly and of association also stated that “the ability for associations to access funding and resources is an integral and vital part of the right to freedom of association” (A/HRC/20-27, para. 67).

Article 6 (f) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (General Assembly resolution 36/55) explicitly refers to the freedom to access funding, stating that the right to freedom of thought, conscience, religion or belief shall include, inter alia, the freedom “to solicit and receive voluntary financial and other contributions from individuals and institutions.” The Human Rights Council adopted resolution 22/6, in which it called upon States to ensure that reporting requirements “do not inhibit functional autonomy [of associations]” and “do not discriminatorily impose restrictions on potential sources of funding.”

Ensuring comprehensive, non-discriminatory, evidence-based sexual education

Providing and receiving sexual education without fear of persecution is protected under the freedom of opinion and expression under article 19 of UDHR and article 19 of ICCPR. This right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice (article 19 (2) of ICCPR).

Also, article 13 of ICESCR provides that education should be aimed at the full development of the human personality and the sense of its dignity, and should strengthen respect for human rights and fundamental freedoms. The Committee on Economic, Social and Cultural Rights (“CESCR”) emphasized that the right to education can only be enjoyed if staff and students throughout the education sector are entitled to academic freedom (E/C.12/1999/10, para. 38). Members of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing (*Ibid.*, para. 39). Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor (*Ibid.*).

Further, article 12 (1) of ICESCR provides that States recognized the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In its General Comment 14, CESCR interpreted the right to health as an inclusive right, which extends not only to timely and appropriate health care but also to access to health-related education and information, including on sexual and reproductive health (E/C.12/2000/4, para. 11). Accordingly, States are under an obligation to respect the right to health by, inter alia, refraining from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information, as well as abstaining from preventing people’s participation in

health-related matters (*Ibid.*, para. 34). Obligations of the right to health further include the promotion of health education, as well as information campaigns, in particular with respect to sexual and reproductive health (*Ibid.*, para. 36).

CESCR further stated that the right to sexual and reproductive health, combined with the right to education (articles 13 and 14 of ICESCR) and the right to non-discrimination and equality between men and women (articles 2 (2) and 3 of ICESCR), entails a right to education on sexuality and reproduction that is comprehensive, non-discriminatory, evidence-based, scientifically accurate and age-appropriate (E/C.12/GC/22, para. 9). All individuals and groups, including adolescents and youth, have the right to evidence-based information on all aspects of sexual and reproductive health (*Ibid.*, para.18). Such information must be provided in a manner consistent with the needs of the individual and the community, taking into consideration, for example, age, gender, language ability, educational level, disability, sexual orientation, gender identity and intersex status (*Ibid.*, para.19). States violate the obligation to fulfil when they fail to take measures to ensure that up-to-date, accurate information on sexual and reproductive health is publicly available and accessible to all individuals, in appropriate languages and formats, and to ensure that all educational institutions incorporate unbiased, scientifically accurate, evidence-based, age-appropriate and comprehensive sexuality education into their require curricula (*Ibid.*, para. 63).

The CEDAW guarantees women and girls' right to access specific educational information to help to ensure the health and well-being of families, including information and advice on family planning (article 10 (h)). The Committee on the Elimination of Discrimination against Women recommended States to develop and introduce age-appropriate, evidence-based, scientifically accurate mandatory curricula at all levels of education covering comprehensive information on sexual and reproductive health and rights in order to curtail violence against girls and women associated with educational institutions and schooling thereby protecting their right to be treated with respect and dignity (CEDAW/C/GC/36, para. 69 (i)). Moreover, to prevent violence against women, the Committee recommended States to address and eradicate gender stereotypes, prejudices, customs and practices that condone or promote gender-based violence against women and underpin structural gender inequality, including by integrating gender equality content into curricula at all levels of education. This content should target stereotyped gender roles and promote values of gender equality and non-discrimination, including non-violent masculinities, as well as ensure age-appropriate, evidence-based and scientifically accurate comprehensive sexuality education (CEDAW/C/GC/35, para. 35).

The Committee on the Rights of the Child (CRC) observes that LGBTI adolescents commonly face a lack of access to sexual and reproductive health services and information (CRC/C/GC/20, para. 33). CRC underscored that there should be no barriers to commodities, information and counselling on sexual and reproductive health and rights, and particular efforts need to be made to overcome barriers of stigma and fear experienced by, inter alia, LGBTI adolescents, in gaining access to such services (CRC/C/GC/20, para. 60). All adolescents should have access to free, confidential, adolescent-

responsive and non-discriminatory sexual and reproductive health services, information and education, available both online and in person (*Ibid.*, para. 59). Therefore, The CRC urged States to adopt comprehensive gender and sexuality-sensitive sexual and reproductive health policies for adolescents, emphasizing that unequal access by adolescents to such information, commodities and services amounts to discrimination (*Ibid.*). The CRC further noted that age-appropriate, comprehensive and inclusive sexual and reproductive health education, based on scientific evidence and human rights standards and developed with adolescents, should be part of the mandatory school curriculum and reach out-of-school adolescents (*Ibid.*, para. 61).

The United Nations High Commissioner for Human Rights acknowledged that limiting or obstructing information related to sexuality or using materials that contain stereotypes and prejudices can contribute to violence and expose young LGBT persons to health risks. Therefore, he recommended States to provide comprehensive age-appropriate sexuality education, since it is part of the right to education and can be a tool for combating discrimination (A/HRC/29/23, paras. 57 and 79 (f); A/HRC/19/41, para. 61).

The World Health Organization has also highlighted the need for a curriculum-based process of teaching and learning about the cognitive, emotional, physical and social aspects of sexuality. It pointed out that there is strong evidence for the positive effects of comprehensive sexual education on increasing adolescents' knowledge and improving their attitudes related to sexual and reproductive health. On the other hand, there is no evidence that comprehensive sexual education increases sexual activity, sexual risk-taking behaviour, or rates of HIV or other sexually transmitted infections.⁴⁹

The Special Rapporteur in the field of cultural rights stressed that, concerning article 15 1 (b) of ICESCR (the right to enjoy the benefits of scientific progress and its applications), access to scientific knowledge increases the range of available options to choose a life with dignity, thereby strengthening people's capacity for self-determination and empowerment (A/HRC/20/26, paras. 19-20). The right to have access to scientific knowledge implies a right to science education, understood as a right to be introduced to and informed about main scientific discoveries and their applications, regardless of frontiers. It also entails education instilling a spirit of scientific inquiry (*Ibid.*, para. 27).

In this vein, we would like to recall Concluding Observations 9 June 2015 of the CRC on the periodic report of Ghana, in which it was concerned about the inadequate reproductive health and mental health services for adolescents (CRC/C/GHA/CO/3-5, para. 51). In light of its General Comment No. 4 (2003) on adolescent health and of General Comment 15 (2013) on the right of the child to the enjoyment of the highest attainable standards of health, the Committee recommended that Ghana adopt a comprehensive sexual and reproductive health policy for adolescents and ensure that sexual and reproductive health education is part of the mandatory school curriculum, among others (*Ibid.*, para. 52 (a)).

⁴⁹ WHO recommendations on adolescent sexual and reproductive health and rights, available at <http://www.who.int/reproductivehealth/publications/adolescent-srhr-who-recommendations/en/>

Protecting Right to Health

Every person, without distinction, should be able to enjoy the highest attainable standard of physical and mental health (hereafter the “right to health”). Health facilities, goods and services must be accessible without discrimination.⁵⁰ In Agenda 2030, 193 UN Member States undertook a commitment to “ensure healthy lives and promote wellbeing for all at all ages (SDG 3)”, defining specific targets that are highly relevant for LGBT persons, such as target 3.3 on HIV/AIDS, target 3.4 on mental health and well-being, target 3.5 on drug and alcohol use, target 3.7 on sexual and reproductive health and target 3.8 on universal health coverage. In the spirit of leaving no one behind, LGBT people, like other persons, groups, communities and peoples historically subjected to discrimination, must be included in national health policies and implementation of health services.

We are gravely concerned that the stigma and prejudice, criminalisation of homosexuality and gender identity or gender expression, negation, and the actions of pathologisation of sexual orientation, some forms of gender identity and sex characteristics that would be enshrined through the adoption of the Draft Bill will impact negatively on national health policies and practices, leading to and exacerbating serious health disparities.

In almost all countries of the world, LGBT persons encounter rejection, humiliation, derision or substandard services when seeking health care, which deters them from seeking services and may lead to the denial of care or to an absence of services that respond to their specific health needs.⁵¹ In 2011, the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health concluded that criminalization and stigma were major obstacles to the furtherance of actions of prevention in relation to HIV in Ghana:

This stigmatization is reinforced through criminalization of the conduct of some of the most at risk populations, namely female sex workers and men who have sex with men. Criminalization of the conduct of these groups is a serious concern in light of discrimination experienced by men who have sex with men. The impact of criminalization, aside from the generation of stigma, includes reduced access to goods and services for PLHIV who are afraid to seek out such services for fear of sanction. As a result, HIV prevalence rates among female sex workers (25.1 per cent) and men who have sex with men (25 per cent) remain far and unacceptably higher than in the general population.⁵²

In the context of these findings, it is profoundly disturbing to observe that the Draft Bill intends to take action to exacerbate stigma and criminalization. Indeed, in countries where non-conforming sexual orientations and gender

⁵⁰ CESCR Committee, *CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, UN Doc E/C.12/2000/4, 11 May 2000, [12(b)].

⁵¹ See UN Free & Equal factsheet, “Criminalization” (available at www.unfe.org/en/fact-sheets) and A/64/272, para. 46, cited in the report of the United Nations High Commissioner for Human Rights report, A/HRC/29/23; see also; CCPR/C/TUR/CO/1, para. 10, CEDAW/C/NOR/CO/8, paras. 33-34, CCPR/C/JAM/CO/3, paras. 8- 9, A/HRC/14/20, paras. 20-23. A/HRC/20/15/Add.1

identities are criminalized, abuses and discriminatory attitudes in health-care institutions are encouraged by the very existence of such legislation. Such a context has a negative impact on access to health-care services and health-related information, and on the quality of the services provided. It also affects the ability of States to design adequate policy responses to global and public health concerns.⁵³ The negative health impact of laws criminalizing non-conforming sexual orientations and gender identities has been acknowledged throughout the UN system, including by numerous United Nations human rights experts,⁵⁴ as well as Regional Human Rights Systems,⁵⁵ the World Health Organization (WHO)⁵⁶, the United Nations Development Programme (UNDP)⁵⁷ and the Joint United Nations Programme on HIV/AIDS (UNAIDS).⁵⁸ This context has deterred some populations at risk of HIV infection, including gay and bisexual men, men who have sex with men, and trans women, from coming forward for testing and treatment out of fear of being deemed a criminal.⁵⁹ It also affects the ability of States to design adequate policy responses to global and public health concerns.

In contexts of criminalisation or negation, health professionals may feel motivated and enabled to suppress or punish diversity, subjecting LGBT people to forced medical examinations, including anal examinations, involuntary treatment, so-called “conversion therapies”, coercive, inhumane and degrading practices such as forced or otherwise involuntary psychiatric evaluations, forced or coerced surgery, sterilization and other coercive medical procedures and inadequately address so called “corrective” rape or punitive sexual violence.⁶⁰ The Draft Bill is an instrument of promotion of all of these heinous practices, in some cases explicitly, such as Clause 20.e, which provides that “at any time during incarceration for the commission of an offence under this Act recants and makes a voluntarily request to access an approved medical help or an approved medical treatment, shall be granted access to the approved medical help or approved medical treatment.”

As long as LGBT people continue to not have their health needs met and to be subjected to coerced and forced treatment and procedures in health related and

⁵³ See report by the Independent Expert on sexual orientation and gender identity, A/HRC/38/43, para. 59, see also: WHO, “Prevention and treatment of HIV and other sexually transmitted infections among men who have sex with men and transgender people: Recommendations for a public health approach” 2011.

⁵⁴ See report by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, A/HRC/38/43; report by the Special Rapporteur on the highest attainable standard of physical and mental health, A/HRC/14/20; report by the Working Group on discrimination against women and girls, A/HRC/32/44; the reports of the United Nations High Commissioner for Human Rights, A/HRC 19/41 and A/HRC/29/23.

⁵⁵ See also; “[Leave no LGBT person behind](#)”, statement by human rights experts on the International Day against Homophobia, Transphobia and Biphobia, 17 May 2018

⁵⁶ World Health Organization, “Brief sexuality-related communication: recommendations for a public health approach”, 2015.

⁵⁷ UNDP “Risks, Rights and Health, Global Commission on HIV and the Law”, 2012.

⁵⁸ See for instance; UNAIDS, “The Gap report”, or WHO, UNAIDS, GIZ, MSMGF and UNDP, “Prevention and treatment of HIV and other sexually transmitted infections among men who have sex with men and transgender people: Recommendations for a public health approach”, 2015.

⁵⁹ See for instance African Commission on Human and Peoples Rights, “HIV, the Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses to HIV”, December 2016, para. 118.

⁶⁰ Report of the Working Group on the issue of discrimination against women in law and in practice, A/HRC/32/44, para. 58.

other settings, their mistrust towards health institutions and personnel will remain and, as a result, adversely affects their right to appropriate and quality health care. Subjecting patients to medical treatment, without their full, free and informed consent has been found to be degrading and damaging,⁶¹ and so-called “conversion therapies” have been found to be unethical, unscientific, ineffective and, in some instances, tantamount to torture.⁶² Transgender people should be able to change their legal gender on the basis of self-determination, without invasive prerequisites such as surgery or sterilisation.

Medical classifications of sexual or gender diversity as a pathology reduces the identities of LGBT people to diseases, which compounds stigma and discrimination and create additional barriers for LGBT people to access services that address their actual health needs.⁶³ Such pathologization has had a deep impact on public policy, legislation and jurisprudence, thus penetrating all realms of State action in all regions of the world and permeating the collective conscience. Eradicating the conception of some forms of sexual orientation or gender as a pathology from everyday life is essential to allow individuals to access better health care.⁶⁴

Stigma at the root of violence and discrimination corrodes the social fabric. It affects values of fundamental importance, such as empathy, social inclusion and solidarity. Positive and inclusive measures need to be taken on a legal and policy level, in full recognition and celebration of a diverse society. Human rights standards call for the availability, accessibility, acceptability and quality of health information, care and services, including for LGBTI people, and require States to ensure access by adopting laws and develop health policies and services, inclusive of LGBTI people’s concerns and needs. We are deeply concerned that the Draft Legislation promotes precisely the contrary.

Trans and gender-diverse persons’ right to gender recognition

We wish to express our concern about the bill that would deprive trans and gender diverse people of the right to gender recognition, and their right to self-determination, which contravene international human rights standards. International human rights law acknowledges that everyone has the right to recognition as a person before the law, including persons of diverse gender identities. Such human rights standards are included in article 6 of the Universal Declaration of Human Rights, article 16 of the ICCPR, article 15 of the CEDAW, and article 8 of the Convention on the Rights of the Child.

The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity expressed concerns that trans and gender-diverse persons whose identity is not adequately recognized suffer denial of the right to health; discrimination, exclusion and bullying in

⁶¹ UNDP and APF, “Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender Identity and Sex Characteristics. A handbook for NHRI’s”, p. 39, June 2016; see also: Principles 17 and 18 of the Yogyakarta Principles, highlighting the importance of safeguarding informed consent of sexual minorities.

⁶² Report of the United Nations High Commission for Human Rights, A/HRC/29/23, para. 52. See also the report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, A/HRC/44/53.

⁶³ Report of the Special Rapporteur on the highest attainable standard of physical and mental health, A/HRC/35/21, para. 48.

⁶⁴ Report of the Independent expert on protection against violence and discrimination based on sexual orientation and gender identity, A/73/152.

education contexts; discrimination in employment, housing and access to social security; violations of the rights of the child; and arbitrary restrictions on the rights to freedom of opinion, expression, peaceful assembly and association, the right to take part in cultural life, the right to freedom of movement and residence and the right to leave any country including one's own (A/73/152, para. 23). In addition, he noted that equal recognition before the law is a basic element in a well-functioning framework for protection from arbitrary arrest and detention, torture and ill-treatment, as it is well established that in all situations of deprivation of liberty, the proper identification of the individual is the first guarantee of State accountability (*Ibid.*, para. 24). In light of these conclusions, he urged States to enact gender recognition systems concerning the rights of trans persons to change their name and gender markers on identification documents based on the procedures that ensure due respect for free and informed choice and bodily autonomy - in particular, based on self-determination by the applicant (*Ibid.*, para. 81 (d) (i)).

Combating discrimination and violence against LGBTI youth and LGBTI women

LGBTI youth frequently experience bullying, violence and harassment in school from classmates and teachers. The Committee on the Rights of the Child, for instance, noted that LGBTI adolescents commonly face persecution, including abuse and violence, stigmatization, discrimination, bullying, exclusion from education and training, as well as a lack of family and social support. In extreme cases, they face sexual assault, rape and even death. These experiences have been linked to low self-esteem, higher rates of depression, suicide and homelessness (CRC/C/GC/20, para. 33). Under article 2 (1) of the Convention on the Rights of the Child, States parties should take effective action to protect all LGBTI adolescents from all forms of violence, discrimination or bullying by raising public awareness and implementing safety and support measures (CRC/C/GC/13, paras. 60 and 72 (g); CRC/C/GC/20, para. 34).

The United Nations High Commissioner for Human Rights acknowledged that many children and adolescents perceived as LGBT or gender non-conforming experience discrimination, harassment and, in some cases, violent abuse both in and outside of school. Such abuse can force students to skip or drop out of school, and can lead to feelings of isolation and depression, even suicide (A/HRC/29/23, para. 55). Confronting this kind of prejudice and intimidation requires concentrated efforts from school and education authorities and integration of principles of non-discrimination and diversity in school curricula and discourse. The media also have a role to play by eliminating negative stereotyping of LGBT people, including in television programmes popular among young people (A/HRC/19/41, para. 58). In this regard, he recommended States (i) address discrimination by establishing national standards on non-discrimination in education; developing anti-bullying programmes and establishing helplines and other services to support LGBT and gender-non-conforming youth, and (ii) support public information campaigns to counter homophobia and transphobia among the general public and targeted anti-homophobia campaigns in schools (A/HRC/29/23, para. 79 (f); A/HRC/19/41, para. 84 (g)).

Lesbian, bisexual, trans, intersex and gender non-conforming women are particularly vulnerable to all types of violence, in the private and the public sphere, on the basis of their sexual orientation and gender identity. The United Nations High Commissioner for Human Rights has noted the particular risk for lesbians and transgender persons which is tied to broader gender inequality and power imbalances within families and the wider society (A/HRC/19/41, para. 21). Furthermore, the Special Rapporteur on violence against women, its causes and consequences, has equally highlighted the targeting, violence against and killings of women based on their sexual orientation and gender identity (A/HRC/20/16, paras. 71-73), as well as the fact that discrimination against women based on different factors including sexual orientation and gender identity exacerbate violence against them.

The bill in question would essentially legitimize these instances of violence against LGBTI women and reinforce existing gender stereotypes and discrimination against women, which are both cause and consequence of violence against women and girls. In this context, we wish to recall the Declaration on the Elimination of Violence against Women, which was adopted by the United Nations General Assembly and states that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia, (a) the right to life; (b) the right to equality; (c) the right to liberty and security of person; and (d) the right to equal protection under the law (article 3). Additionally, we wish to recall that CEDAW in its General Recommendation No. 19 (1992), updated by General Recommendation No. 35 (2017), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (ratified by your Excellency's Government on 22 Apr 1991), whether perpetrated by a State official or a private citizen, in public or private life. In it, the Committee reminds States to repeal all legal provisions that discriminate against women, and thereby enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence against them. In particular, States should repeal provisions that allow, tolerate or condone forms of gender-based violence against women, including legislation that criminalizes being lesbian, bisexual, or transgender (para. 31).

Practices of conversion therapy

We wish to recall the recent report by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, which explores practices of so-called “conversion therapy”, including their impact on victims, their human rights implications and their connection with violence and discrimination based on sexual orientation and gender identity (A/HRC/44/53).

Diverse sexual orientations, gender identities or expressions is not an illness, disorder or sin that need to be “cured” or “changed”. The Independent Expert observed that all practices of “conversion therapy” take as a point of departure the belief that sexually diverse or gender-diverse persons are somehow inferior – morally, spiritually or physically – than their heterosexual and cisgender

siblings and must modify their orientation or identity to remedy that inferiority. The opposite view, supported by international human rights law, is that LGBT persons are equal to others, that their sexual orientation and gender identity are a natural part of their development, without any detrimental qualification to their moral stature, their mental or physical health or their ability to seek and achieve fulfilment, including through spirituality. That recognition is fundamental to giving content to the principle of dignity, according to which there is an innate and equal value of all human beings (Ibid., para. 63).

It follows that means and mechanisms that treat LGBT persons as lesser human beings are degrading by their very definition. He further continued that the overwhelming evidence available on the psychological and physical suffering inflicted on victims, as well as its lasting effects, leads the Independent Expert to conclude that perpetrators must act on callous disregard for human suffering. The asymmetrical power relationship between an enlightened converter and a benighted convert further evokes the dehumanization, moral exclusion and delegitimizing rationale, which not only is an enabling mechanism of torture, but lies at the base of most gross human rights violations in recorded history (Ibid.).

Abundant evidence shows the methods and means commonly utilized to implement practices of “conversion therapy” are conducive to psychological and physical pain and suffering (Ibid., para. 55). The deep impact on individuals includes significant loss of self-esteem, anxiety, depressive syndrome, social isolation, intimacy difficulty, self-hatred, shame and guilt, sexual dysfunction, suicidal ideation and suicide attempts and symptoms of post-traumatic stress disorder, as well as often significant physical pain and suffering (Ibid., para. 56). Children and young people are particularly vulnerable to the impact of practices of “conversion therapy”. In addition to suicidal tendencies, children experience a pronounced loss of self-esteem and a sharp increase in depressive tendencies, which can lead to school dropout and the adoption of high-risk behaviours and substance abuse (Ibid., para. 57).

Practices of “conversion therapy” target a specific group on the exclusive basis of sexual orientation and gender identity, with the specific aim of interfering in their personal integrity and autonomy. Moreover, lesbian women are particularly vulnerable to “corrective rape”, carried out in order to “cure” or punish women for not conforming to social and patriarchal norms and expectations (A/HRC/44/53, paras. 18, 38 and 39). In that sense, such practices are per se discriminatory, as it has been ascertained by several United Nations treaty bodies, including the Human Rights Committee (See, for instance, CCPR/C/KOR/CO/4, paras. 14-15) and the Committee on the Elimination of Discrimination against Women (See, for instance, CEDAW/C/MYS/Q/3-5, para. 21).

Further, practices of “conversion therapy” may amount to torture, cruel, inhuman or degrading treatment. The Committee against Torture has issued explicit reproaches against the treatments that are forced, involuntary or otherwise coercive or abusive (See, for instance, CAT/C/CHN/CO/5, paras. 55-56, CAT/C/ECU/CO/7, paras. 49-50).

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concluded that, given that “conversion therapy” can inflict severe pain or suffering, given also the absence both of a medical justification and of free and informed consent, and that it is rooted in discrimination based on sexual orientation or gender identity or expression, such practices can amount to torture or, in the absence of one or more of those constitutive elements, to other cruel, inhuman or degrading treatment or punishment (A/74/148, para. 50. See also A/56/156, para. 24; A/HRC/43/49, para. 84 (e)). Considering this, he recommended that States explicitly prohibit, prevent, investigate and ensure appropriate accountability and redress for forced “conversion therapy” (A/74/148, para. 75).

In this context, we are deeply concerned that the draft legislation explicitly promotes practices of conversion therapy. In other words, if enacted, it would constitute legislatively sponsored ill treatment and torture.

The Draft Bill entitled “Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill 2021” raises prima facie concerns of advocacy of hatred to incite violence

Article 20 (2) of ICCPR prohibits advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. We are concerned that the draft bill, if enacted, would encourage such advocacy of hatred. Some of the bill’s provisions, as they now stand, could be interpreted as advocacy of hatred to incite discrimination, hostility or violence.

Although article 20 (2) does not mention gender and sex, under international law discrimination on grounds of sex, sexual orientation, gender identity or intersex status is clearly prohibited. Therefore, the prohibition of incitement to hatred under article 20 (2) would apply, in our view, also to these categories. It is worth noting that article 2 (1) of the ICCPR guarantees the rights of all individuals “without distinction of any kind”, and article 26 states that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground.”

The report of former United Nations High Commissioner for Human Rights denounced violence motivated by homophobia and transphobia. In particular, it expressed concern at rhetoric used to incite homophobic and transphobic hatred and related violence by some political and community leaders to promote negative stereotypes, stir up prejudice and harass particular individuals, especially during electoral periods (A/HRC/29/23, para. 33). In light of this, the report recommended that States address violence by prohibiting incitement of hatred and violence on the grounds of sexual orientation and gender identity, and by holding to account those responsible for related hate speech (*Ibid.*, para. 78 (d)). In addition, the report recommended to States to address discrimination by supporting public education campaigns to counter homophobic and transphobic attitudes, and addressing negative, stereotypical portrayals of LGBT persons in the media (*Ibid.*, para. 79 (j)).

The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or

violence⁶⁵ (“the Rabat Plan of Action”) has identified that “members of minorities are de facto persecuted, with a chilling effect on others, through the abuse of vague domestic legislation, jurisprudence and policies.”⁶⁶

The Draft Bill entitled “Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill 2021” indeed describes a system of State-sponsored discrimination and violence of such magnitude that its adoption, in its current or in any partial form, would appear to constitute an immediate and fundamental breach of the State’s obligations under international human rights law.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of these observations, and in particular reference to the State obligation to examine the draft legislation under the criteria guiding the identification of hate speech, we respectfully urge your Excellency’s Government to take all measures necessary to withdraw the proposed bills from consideration. Further, it is our advice that it is the duty of the State under applicable international human rights law to assess the actions surrounding the emission of this form of hate speech and apply the thresholds crossed in accordance with the Rabat Plan of Action – and trigger any necessary measures to establish the connected responsibilities.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on how the Draft Bill would be compatible with your obligation to ensure that all persons are guaranteed their internationally recognized human right and provided with equal protection of the law without any type of discrimination, including on the basis of their sexual orientation, gender identity, gender expression or sex characteristics, as well as their opinion and affiliation in support of LGBT persons.
3. Please explain the process through which this bill has been developed, including information on the initiators, drafters and funders.
4. Please provide details of the assessment of the human rights impact of these proposed legislative changes, and measures taken to ensure that the discussion of these proposals is not accompanied by increases in discrimination, harassment or violence towards LGBT individuals, of any age, or towards those who support them and advocate for their equal human rights.
5. Please provide details of the risk assessment of the impact of these proposed legislative changes on the furtherance of Sustainable

⁶⁵ A/HRC/22/17/Add.4

⁶⁶ A/HRC/22/17/Add.4, par. 7.

Development Goals, and the evidence bases upon which the Draft Bill claims that it will contribute to their furtherance.

6. Please indicate the measures taken to ensure the conformity of the State's actions as described in this communication with its duty to ensure that every person can carry out their human rights activities, including the exercise of their rights to freedom of opinion, expression, peaceful assembly and association, and to freely take part in cultural life in a safe and enabling environment, without fear of threats or acts of intimidation and harassment of any sort.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

In addition, we may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

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

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

Koumbou Boly Barry
Special Rapporteur on the right to education

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Reem Alsalem

Special Rapporteur on violence against women, its causes and consequences

Melissa Upreti

Chair-Rapporteur of the Working Group on discrimination against women and girls