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

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

Note by the Secretariat

The Secretary-General has the honour to transmit to the General Assembly the report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, submitted in accordance with Human Rights Council resolution [45/10](#).

* [A/77/150](#).



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

Summary

In the present report, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, addresses the call for greater awareness of how gender and sexual orientation and gender identity dynamics operate in the context of armed conflict, and within peacebuilding and peacekeeping. In the report, he aims to provide insight on the application of a comprehensive set of legal resources to foster prevention, participation, protection, relief and sustainable peace for persons, communities and peoples suffering violence and discrimination in war-torn contexts around the world. The Independent Expert seeks to establish a basis for expanding existing policies within the United Nations system to promote compliance by State and non-State actors.

I. Introduction

1. United Nations human rights agencies have gathered significant knowledge on violence and discrimination perpetrated worldwide by State and non-State actors based on actual or perceived sexual orientation and/or gender identity. The Independent Expert seeks to contribute to filling a gap in the evidence base concerning all gendered dimensions of armed conflict, their root causes and their consequences, and to strengthen United Nations strategies to tackle them. The aim of the report is to provide an assessment on conflict dynamics, mechanisms for participation in peacebuilding and political transitions and measures providing access to truth, justice, reparation and non-recurrence: all of these in the light of a comprehensive international law framework for non-discrimination, empowerment, participation and accountability, as well as the just aspiration of a sustainable peace for all.

2. The Independent Expert is indebted to all States, entities, organizations and individuals who are committed to supporting his work and who have so significantly contributed to the present report. Unless otherwise requested for risk-related reasons, the submissions will be published on the web page of the Expert.

3. In the present report, armed conflict is understood in accordance with existing international humanitarian customary and treaty law:

(a) An international armed conflict exists “when one or more States have recourse to armed force against another State, regardless of the reasons or the intensity of this confrontation”,¹ or in armed conflicts in which “peoples are fighting against colonial domination, alien occupation or racist regimes in the exercise of their right to self-determination (wars of national liberation)”;²

(b) A non-international armed conflict is defined as “protracted armed confrontations occurring between government armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State” party to the Conventions, which exist whenever an armed confrontation reaches “a minimum level of intensity and the parties involved in the conflict [...] show a minimum of organisation”.³ In relevant cases, it can also refer to the more restricted definition as enshrined in Additional Protocol II, which supplements common article 3 of the Geneva Conventions.⁴

4. The Independent Expert uses the term gender-diverse to refer to persons whose gender identity is at odds with what is enforced as a norm. The widely used acronym LGBT (lesbian, gay, bisexual and trans) and terms such as queer, questioning and asexual, are all reflections of political and legal identities, and persons affected by violence and discrimination based on sexual orientation and gender identity often self-identify in ways that do not coincide with these.⁵ In relation to intersex persons, the Independent Expert follows a consistent policy not to extrapolate data and policy frameworks on LGBT persons to the intersex population without clear evidence and reasoning for supporting that inclusion.⁶ In all cases, the Expert endeavours to use inclusive nomenclature; when citing evidence, as a rule, he will nonetheless refer to that used at the source.

¹ International Committee of the Red Cross (ICRC), “How is the term ‘armed conflict’ defined in international humanitarian law?”, opinion paper, March 2008, p. 1.

² *Ibid.*, p. 2.

³ *Ibid.*, p. 5.

⁴ Additional Protocol II, Article 1.

⁵ A/HRC/47/27, paras. 8–9.

⁶ A/HRC/50/27, para. 3.

5. In the present report, the Independent Expert concludes that it is fundamental to advance in the recognition of all forms of gender-based violence that distinctively affect LGBT and gender-diverse persons during armed conflict, and that exceed the scope and definition of conflict-related sexual violence. The Expert has consistently stated that gender frameworks, and gender-based and intersectional approaches, provide a sharp lens for analysing violence and discrimination based on sexual orientation and gender identity, as “they enable the analysis of multiple asymmetries of power, deriving from the way in which sex is understood within society, including those that fuel violence and discrimination against women in all their diversity”.⁷ The Independent Expert concludes that, as in other areas, the implementation of inclusive definitions of gender is indispensable in order to make visible, analyse and address the consequences of conflict-related violence for all persons who depart from hegemonic assumptions related to gender and sexuality.

II. Definitional framework

6. International human rights law, international humanitarian law, international criminal law, refugee law, key policy frameworks such as the women and peace and security agenda, and the work of adjudicative international authorities have all contributed to creating a robust framework for visibility, documentation, analysis and accountability in relation to the gender-specific risks faced by women and girls during conflict situations and, to a limited extent, those faced by men and boys.

A. International humanitarian law

7. International humanitarian law, applicable in times of armed conflict and binding on State and non-State armed groups,⁸ prohibits discriminatory treatment based on sex or “any other distinction founded on similar criteria”. However, when contrasted with international human rights law and international criminal law, it seems to fall behind in recognizing the differentiated experiences that people endure in conflict based on gender and sexuality and thus in establishing boundaries for those partaking in hostilities. As the Secretary-General and scholars have pointed out,⁹ an updated interpretation of gender and sexuality, specifically as pertaining to LGBT and gender-diverse persons’ experience during conflict has been identified as a “blind spot” of both customary and treaty international humanitarian law.

8. After the Second World War sexual violence gained a significant place in international humanitarian treaty law, and during both the Tokyo and Nuremberg trials wartime sexual violence was acknowledged as a war crime. In parallel, during the drafting process of the 1949 Geneva Conventions, rape was added as a prohibited conduct under the grave breaches section (art. 27) in the Geneva Convention relative to the protection of Civilian Persons in Time of War of 12 August 1949 (Fourth Geneva Convention) during occupation. Subsequently, there have been two major contributions to the evolution of international humanitarian law in this regard:

⁷ A/76/152, para. 5; A/HRC/47/27, para. 7.

⁸ ICRC, “Non-international armed conflict”, A to Z: How Does Law Protect in War, online casebook. Available at https://casebook.icrc.org/a_to_z.

⁹ 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. 907–909 (April 2018).

(a) Protocols I and II Additional to the Geneva Conventions of 1949, of 1977, which include express prohibitions on rape during both international armed conflicts and non-international armed conflicts;

(b) The expansive interpretation of common article 3, including the aide-memoire issued by the International Committee of the Red Cross in 1992, in which it stated that “grave breaches enumerated in Article 147 of the Fourth Geneva Convention, especially the breach of wilfully causing great suffering or serious injury to body or health, “obviously covers not only rape, but also any other attack on a woman’s dignity.”¹⁰

9. These principles have evolved within the jurisprudence of international humanitarian law, in particular under international criminal tribunals with the authority to adjudicate criminal responsibility for grave breaches of international humanitarian law as war crimes, a process of dialogue between international humanitarian law and international human rights law. Such dialogue has been fundamental for the interpretation of international human rights obligations by Human Rights Council special procedures: in 2005, after complaints raised by the United States of America with regard to the reporting process for killings committed in Iraq and Afghanistan, the Special Rapporteur on extrajudicial, summary or arbitrary executions described the two bodies of law as mutually complementary and inclusive.¹¹ This response followed the clear precedent of rulings by the International Court of Justice, in which it clearly stated that the International Covenant on Civil and Political Rights is applicable in both peace and wartime.¹²

10. On the basis of these principles, scholars have noted that the binary construct in international humanitarian law as either male or female, and the lack of explicit inclusion of sexual orientation and gender identity as protected grounds, lead to gaps in ensuring the full range of protection and redress for people who have experienced violations, including those directly based on their gender expressions and identities during armed conflict,¹³ and an awareness of the need for nuance in the implementation of gender frameworks has been built. For example, in 2016, the International Committee of the Red Cross noted the “growing acknowledgement that women, men, girls and boys are affected by armed conflict in different ways”,¹⁴ and in its 2020 commentary on the Geneva Convention relative to the Treatment of Prisoners of War, it interpreted some protections on grounds of “gender” and “sexual and gender minorities.”¹⁵

11. Relevant to this framework is also the protection granted by the core principle of distinction, which grants the legitimate use of force against non-protected targets – parties taking active participation in hostilities – and, conversely, affords protection to non-combatants, i.e., civilians and persons hors de combat. Sexual orientation and gender identity should be irrelevant when determining the protected or unprotected nature of a given individual or group of individuals.¹⁶ The fact of being a civilian or hors de combat has nothing to do with sexual orientation and gender identity. In

¹⁰ Patricia Sellers, “The prosecution of sexual violence in conflict: the importance of human rights as means of interpretation” (n.d.), p. 9.

¹¹ E/CN.4/2005/7, para. 52.

¹² *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 168, para. 216.

¹³ ILGA World, Colombia Diversa and Center for Reproductive Rights submission, p. 21.

¹⁴ *Ibid.*, p. 19. See ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (Cambridge University Press, 2016), art. 12.

¹⁵ ICRC, *Commentary on the Third Geneva Convention: Convention (III) Relative to the Treatment of Prisoners of War* (Cambridge University Press, 2021), art. 14, para. 1664.

¹⁶ Margalit, “Still a blind spot”.

contrast, if a party to the conflict resorts to armed violence against an individual solely on the basis of their actual or perceived sexual orientation or their gender identity, such an act should be viewed as adverse distinction, which, under international humanitarian law, is a grave breach of international humanitarian law that might amount to a war crime depending on the nature of and motivation for the conduct and its connection – which might be direct or indirect – to the conflict. Therefore, even if those regarded as lawful targets are subjected to the use of force on the sole basis of their actual or perceived sexual orientation and gender identity, the act of force should be considered unlawful and thus a breach of international humanitarian law.

B. International human rights law

12. Fundamental human rights obligations continue to apply in humanitarian settings, including during armed conflict, and international and regional human rights bodies and tribunals have recognized a core of rights which cannot be derogated from,¹⁷ as well as the strict conditions for the imposition of limitations on others under states of exception.¹⁸ Those conditions include an absolute prohibition of discrimination,¹⁹ pursuant to which human persons are protected from violence and discrimination based on their real or perceived sexual orientation and gender identity.

13. In the 1990s, complementary developments gave rise to demands for a systematic and effective response to gender-based violence in the Vienna Declaration and Programme of Action,²⁰ the recognition of armed conflict as a salient source of vulnerability for women in the Declaration on the Elimination of Violence against Women²¹ and the acknowledgement that grave violations of the human rights of women occur in times of armed conflict in the Global Framework of the Beijing Platform for Action.²² These developments on the global stage were mirrored by simultaneous developments within the Inter-American,²³ European²⁴ and African²⁵ systems for the protection of human rights.

14. Based on this body of law, international and regional human rights bodies, tribunals and procedures have observed the status of gender as a source of distinct exposure to the risk of human rights violations, and that the acknowledgment and visibility of stereotypes, power asymmetries and inequality that lie at the foundation of violence and discrimination are a fundamental component of the formula for addressing and eradicating them. Key among the relevant standards is the recognition by the Committee on the Elimination of Discrimination against Women that gender-based violence is violence “directed against a woman because she is a woman or that

¹⁷ See Human Rights Committee, general comment No. 29 (2001), para. 7; Committee on Economic, Social and Cultural Rights, general comment No. 14 (2004), para. 47; and Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002), para. 40. See also [E/2015/59](#), pp. 4–5; and African Charter for Human and Peoples’ Rights, art. 25.

¹⁸ Human Rights Committee, general comment No. 29 (2001); and *International Legal Protection of Human Rights in Armed Conflict* (United Nations publication, 2011).

¹⁹ Human Rights Committee, general comment No. 29 (2001), para. 8.

²⁰ [A/CONF.157/24 \(Part I\)](#), chap. III.

²¹ Resolution [48/104](#).

²² [A/CONF.177/20/Rev.1](#), chap. I, para. 12.

²³ Inter-American Convention on the Prevention, Punishment and Eradication of the Violence against Women, art. 9.

²⁴ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

²⁵ Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, art. XI.

affects women disproportionately,” and that it includes “the right to equal protection according to humanitarian norms in time of international or internal armed conflict.”²⁶

15. In addition to the general obligation to approach human rights in conflict situations under a comprehensive gender focus, these sources have established that:

(a) Women and girls experience armed conflict differently from men, and the reason that they do so is gender, i.e., the social roles they fulfil before, during and even after conflict;

(b) Armed conflict exacerbates gender and sexuality norms in a given society, which in turn leads to specific forms of violence, including but not restricted to sexual violence;

(c) Maintaining peace and security is crucial to keep women and children safe from those forms of gender-specific violence in conflict;

(d) States should take measures to both prevent and provide proper redress to victims of gender-based violence, inside and outside of conflict.

16. Given the connection between the preconceptions, stereotypes and power asymmetries that are at the core of the most advanced understanding of gender, and the root causes of conflict-related violence based on sexual orientation and gender identity, the Independent Expert concludes that these patterns and the related human rights standards are applicable, *mutatis mutandis*, to LGBT and gender-diverse persons.

C. International criminal law

17. A set of forward-thinking standards has been adopted under international criminal law to respond to the myriad forms of conflict-related gender-based violence. Following the international human rights obligations set out above, the Independent Expert considers that such standards apply fully to the prosecution and punishment of international crimes perpetrated against LGBT and gender-diverse persons in the context of armed conflicts worldwide.

18. The International Criminal Tribunal for the former Yugoslavia has acknowledged that persons can be victims of sexual violence irrespective of gender, and that the sexual mutilation of a man constituted “torture or inhuman treatment”, “wilfully causing great suffering or serious injury to body or health” – both grave breaches under the Geneva Conventions of 1949.²⁷ The tribunal also held that forcing men to have sex with others (men or women) was sexual assault, which contributed to a finding of the crime against humanity of persecution,²⁸ and in *Furundžija* it asserted that forcing a man to watch someone else be sexually assaulted caused severe physical and mental suffering and public humiliation constitutive of torture.²⁹

²⁶ Committee on the Elimination of Discrimination against Women, general recommendation, No. 19 (1992).

²⁷ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Tadić*, Case No. IT-94-1-T, Opinion and Judgment of 7 May 1997, paras. 206, 243 and 726.

²⁸ See the following cases of the International Criminal Tribunal for the Former Yugoslavia: *Prosecutor v. Todorovic*, Case No. IT-95-9/1-S, Sentencing Judgment of 31 July 2001, paras. 9, 12 and 37–40; *Prosecutor v. Stakić*, Case No. IT-97-24-T, Judgment of 31 July 2003, paras. 236 and 241.

²⁹ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Furundžija*, Case No. IT-95-17/1-T, Judgment of 10 December 1998, paras. 127–130.

19. Despite extensive evidence of widespread and systematic rape of women and men, the Office of the Prosecutor characterized sexual violence against men and boys as torture, as an outrage against personal dignity or as an inhuman act, but not as rape as a crime against humanity.³⁰ A similar observation could be made in relation to the Tribunal's definition of rape as the direct and masculinized action of forced penetration by a male perpetrator on a female victim, primarily with a male sex organ, a definition that failed to capture one of the central ways in which perpetrators in the Bosnian war harmed victims: by forcing them to penetrate each other.³¹

20. The Rome Statute of the International Criminal Court acknowledged the social construction of gender, and the accompanying roles, behaviours, activities and attributes assigned to women and men and to girls and boys "within the context of society."³² As in the case of international humanitarian law, international criminal law is complementary to international human rights law: article 21 (3) of the Rome Statute, for example, requires the Court to interpret its provisions in the light of international human rights law.

21. In its 2014 "Policy paper on sexual and gender-based crimes", the Office of the Prosecutor reaffirmed that gender must be interpreted as socially and culturally constructed,³³ therefore including sexual orientation and gender identity. As noted by the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), "the inclusion of gender persecution as a crime against humanity in the Rome Statute, which governs the International Criminal Court, provides a pathway forward for the international community to meaningfully challenge gender-based violence, including violence targeting people on the basis of their sexual orientation or gender identity, and ensure that these crimes are a part of the historical record."³⁴

22. On 30 November 2018, the Independent Expert, together with other special procedures mandate holders, presented his recommendations to the International Law Commission regarding the persecutory grounds in the draft crimes against humanity convention, recognizing its potential contribution to deter and prevent human rights violations, address impunity and hold perpetrators accountable.³⁵ The recommendation included the explicit inclusion of sexual orientation, gender identity and sex characteristics under the persecutory grounds driving perpetrators' intent to commit heinous crimes against particular groups.

23. Similarly, in the context of the recent consultations on gender-based persecution, the Independent Expert and other special procedures mandate holders presented recommendations to the Office of the Prosecutor.³⁶ The recommendations were formulated in the awareness that disproportionate exposure to risk is experienced, and often exacerbated, in armed conflict and situations in which international criminal law is applicable, and with the objective that the new policy go beyond the binary mould to recognize the identity and rights of gender-diverse persons.

³⁰ See Michelle Jarvis and Kate Vigneswaran, "Challenges to successful outcomes in sexual violence cases", in *Prosecuting Conflict-Related Sexual Violence at the ICTY*, Serge Brammetz and Michelle Jarvis, eds. (Oxford University Press, 2016), pp. 34–42.

³¹ Maike Isaac, "The prosecution of sexual violence against men in international criminal law", *IntLawGrrls*, 11 February 2016.

³² Rome Statute of the International Criminal Court, art. 7(3).

³³ International Criminal Court, "Policy paper on sexual and gender-based crimes", June 2014.

³⁴ Submission by UN-Women, p. 7.

³⁵ See www.ohchr.org/sites/default/files/Documents/Issues/SexualOrientation/LetterPersecution.pdf.

³⁶ International Criminal Court, "Recommendations to the Prosecutor of the ICC for the policy on gender-related persecutions", position paper, April 2022.

24. Unlike these remarkable developments, the Convention on the Prevention and Punishment of the Crime of Genocide and most definitions of the crime of genocide do not include LGBT and gender-diverse persons as possible victims, a gap identified by scholars as missing the intrinsic connections between heteronormativity and genocide³⁷ and regrettable in the light of the robust body of evidence gathered by the Independent Expert identifying the link between heteronationalism and narratives of otherness that often lie at the origin of genocidal intent.³⁸

D. Refugee law

25. The Office of the United Nations High Commissioner for Refugees (UNHCR), in its Guidelines on International Protection No. 9,³⁹ the Agency's authoritative source of doctrinal guidance on adjudicating claims for international protection from sexual orientation and gender identity-based persecution, states that the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol must be interpreted and applied in a non-discriminatory way, and that sexual orientation and gender identity can influence or dictate the form of persecution or harm experienced by forcibly displaced persons. Pursuant to this principle, the UNHCR Guidelines on Working with Lesbian, Gay, Bisexual, Transgender, Intersex and Queer Persons in Forced Displacement⁴⁰ set forth the primary guidance for its field offices and operational partners on implementing the Agency's mandate for stateless and forcibly displaced LGBT and gender-diverse persons, including internally displaced persons.

26. Accountability to affected populations is widely used by humanitarian practitioners to refer to commitments and mechanisms that humanitarian agencies have put in place to ensure that displaced communities are meaningfully and continuously involved in shaping decisions that directly affect their lives, families and communities. To assess the protection needs of LGBT displaced persons, including for potential third-country resettlement, UNHCR employs tools such as the heightened risk identification tool,⁴¹ which links community-based participatory assessments with individual assessment methodologies in order to identify at-risk LGBT and gender-diverse persons who may require specific protection responses. As established by UNHCR, "these policies aim to ensure that LGBTIQ+ persons of concern to UNHCR can enjoy their rights on [an] equal footing, through their meaningful participation in humanitarian programming decisions that directly affect their well-being."⁴²

³⁷ See Lily Nellans, "A queer(er) genocide studies", *Genocide Studies and Prevention: An International Journal*, vol. 14, No. 3 (2020); David Eichert, "Expanding the gender of genocidal violence: towards the inclusion of men, transgender women, and people outside the binary", *UCLA Journal of International Law and Foreign Affairs*, vol. 25, No. 2 (2021); and Matthew Waites, "Genocide and global queer politics", *Journal of Genocide Research*, vol. 20, No. 1 (2018).

³⁸ A/76/152, paras. 26–30.

³⁹ Office of the United Nations High Commissioner for Refugees (UNHCR), document HCR/GIP/12/09.

⁴⁰ UNHCR, "Guidelines for working with lesbian, gay, bisexual, transgender and intersex and queer (LGBTIQ+) persons in forced displacement", Need to Know Guidance Series, No. 1 2021.

⁴¹ UNHCR, "Heightened risk identification tool", 2nd ed., June 2010.

⁴² UNHCR, "LGBTIQ+ persons in forced displacement and statelessness: protection and solutions", paper prepared for a global round table of UNHCR and the United Nations' independent expert on sexual orientation and gender identity, Geneva, June 2021, p. 9.

E. Peace and security agendas and frameworks

27. The landmark Security Council resolution 1325 (2000) and its additional related resolutions⁴³ (hereafter the women and peace and security architecture) create a crucial framework to advance the identification of the sexual and gender dimensions of conflict and the means to tackle their causes and consequences. A robust evidence base has been created through this framework to protect all persons from sexual and gender-based violence in conflict.⁴⁴

28. It was within the women and peace and security agenda that the Secretary-General identified the gaps created through implementation modalities that are largely written in a binary, heteronormative register, thereby disregarding the dimensions of conflict differentially relevant to LGBT and gender-diverse persons. After an Arria-formula meeting in 2015 linking the extremist violence of Islamic State in Iraq and the Levant (ISIL) “to the global context of discrimination and violence fuelled by homophobia and transphobia,”⁴⁵ the Secretary-General noted that extremist groups were systematically targeting individuals “for physical and sexual violence on the basis of their actual or perceived sexual orientation,” and that the “the risks facing lesbian, gay, bisexual, transgender and intersex minorities [had] been a blind spot in the monitoring of civilian protection.”⁴⁶ In his report on women and peace and security, he disclosed his concern “about continued threats and attacks against, and the persecution of, those who do not conform to gender norms [and] those perceived to be lesbian, gay, bisexual, transgender and intersex.”⁴⁷ Drawing upon the findings of the Independent International Commission of Inquiry on the Syrian Arab Republic, he asserted lastly that ISIL “continues to target sexual minorities for execution.”⁴⁸

29. It thus follows that the Secretary-General, in his reports, has consistently called for intersectional policy developments and indicator updates. This includes sexual orientation and gender identity indicators as societal markers relevant to assessing the progress of the women and peace and security agenda.⁴⁹ Regrettably, the Independent Expert is not aware of references to sexual orientation and gender identity or LGBT and gender-diverse persons in national action plans for the implementation of resolution 1325 (2000), or any other peace and security domestic agendas.

30. The annual dialogue on the responsibility to protect⁵⁰ is another framework widely invoked,⁵¹ given its role in the protection of populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications.⁵² There were no references to sexual orientation and gender identity in the annual dialogue until 2019,⁵³ when Costa Rica and Uruguay referred to legal protections for LGBT persons, while the Russian Federation stated that Ukraine “[needed] real

⁴³ See Security Council resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), 2122 (2013), 2242 (2015), 2467 (2019) and 2493 (2019).

⁴⁴ See Security Council resolutions 1820 (2008), 1888 (2009), 1960 (2010) and 2467 (2019).

⁴⁵ Submission by Outright Action International, p. 5.

⁴⁶ S/2016/361, para. 14.

⁴⁷ S/2016/822, para. 36.

⁴⁸ S/2016/822, para. 36.

⁴⁹ See S/2015/716, para. 124; S/2016/822, para. 36; S/2017/861, paras. 37 and 111; S/2018/900, paras. 61 and 71; S/2019/800, paras. 3 and 118; S/2020/946, para. 10; S/2021/827, para. 26. See also the following reports on conflict-related sexual violence: S/2015/203, para. 11; S/2016/361, para. 14; S/2017/249, para. 2; S/2018/250, paras. 2, 13, 98 (b) and 98 (d); S/2019/280, paras. 3, 4 and 19; S/2020/487, paras. 4 and 14; and S/2021/312, paras. 5 and 60.

⁵⁰ See submission by Protection Approaches, p. 5.

⁵¹ See www.globalr2p.org/what-is-r2p/.

⁵² A/60/L.1, para. 138.

⁵³ A 2013 statement from Finland however referred to increased protection for minorities including “sexual orientation”.

democratization, and not just colourful gay parades in the central squares of Kyiv.”⁵⁴ This points to a widespread trend to utilize homophobia and gender-normativity in nationalist, militarist narratives to berate, humiliate and dehumanize the enemy as “other” – whether at the individual, collective or national level.

31. The same rationale applies to some of the most pressing contemporary human rights issues. As the Secretary-General has pointed out, gender and sexual violence are one of the main obstacles hindering lasting peace and stability, as many women, LGBT and gender-diverse activists and human rights defenders are targeted on the basis of both their gender and/or sexual identity and their role as social leaders.⁵⁵ This exposure has been exacerbated by the rising rates of violent extremism, and the multidimensional crisis triggered by coronavirus disease (COVID-19), in connection with which both the Secretary-General and the Independent Expert have signalled the heightened exposure of LGBT and gender-diverse persons to discriminatory violence by security forces and other armed actors, in particular with regard to human rights defenders in conflict-affected areas.⁵⁶ Lastly, with the recent warring aggression of the Russian Federation on Ukrainian territory, the Expert has once again highlighted the relevance of coordinated peace and security action to address the risks that LGBT and gender-diverse persons face during conflict, with special focus on the situation of refugees and internally displaced persons.⁵⁷

32. Considering the calls from civil society, academia and United Nations agencies to expand the scope of action, implementation, monitoring and assessment of the women and peace and security agenda from an intersectional perspective, the Independent Expert considers the gender dimensions of the international agenda on peace and security to be incomplete if they do not address the situation of LGBT and gender-diverse persons during the outbreak, escalation, recurrence or continuation of conflict. It is therefore essential that States implement all women and peace and security-related policies including references to sexual orientation and gender identity in their actions, and that the Security Council advances in backing these coordinated actions as a means of fostering a comprehensive and sustainable peace based on the human rights mandate of non-discrimination.

1. Toward inclusive and expansive definitional frameworks

33. The standards and policies identified above have not been consistently accepted as being applicable to both the understanding of the situation and the provision of international protection to LGBT and gender-diverse persons enduring the consequences of armed conflict worldwide, and they tend to implement a narrow understanding of gender understood in terms of sex, using the expressions “women” and “gender” interchangeably. Similar conclusions have been reached by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, who has highlighted how the gender mainstreaming agenda within the United Nations lacks a commitment to address the human rights impact based on sexual orientation and gender identity in countering terrorism and extreme violence.⁵⁸

34. As a result, there is very little evidence on the needs of LGBT and gender-diverse persons, communities and populations in conflict, with an obvious consequence for planning, allocation of resources and data gathering for monitoring

⁵⁴ [A/73/PV.96](#).

⁵⁵ [S/2018/900](#), para. 61.

⁵⁶ [S/2020/946](#), para. 33.

⁵⁷ OHCHR, “Ukraine: protection of LGBTI and gender-diverse refugees remains critical – UN expert”, 22 March 2022.

⁵⁸ [A/HRC/46/36](#), paras. 3 and 27.

and evaluation.⁵⁹ As expressed in one submission, for example, “despite the health and social burden associated with conflict-related sexual violence, virtually no evidence exists on how medical, mental health and psychological support interventions work for men, boys, and LGBTIQ survivors of conflict-related sexual violence.”⁶⁰

35. Some of these dynamics result from the conscious erasure and negation of sexual orientation and gender identity as applicable frameworks under international human rights law, as abundantly documented by the Independent Expert.⁶¹ In the particular case of armed conflict, negation results in a reliance on the idea that conflict-related sexual violence is exclusively perpetrated by male combatants, and exclusively against heterosexual and cisgender female civilians – and, exceptionally, male enemies. It therefore “lacks an understanding of all the social and political implications of gendered power dynamics beyond those understood between men and women,”⁶² disregards the lived experience of LGBT and gender-diverse persons and communities in relation to and beyond sexual violence⁶³ and has the effect that these experiences continue to be “deliberately rejected and systematically ignored by law enforcement agencies, judicial systems, politicians, and conservative religious factions”.⁶⁴

36. The intersection of different practices of international law and the key women and peace and security agenda creates myriad obligations for State and non-State actors in situations of armed conflict. He is convinced that this robust *corpus iuris* is the basis for a framework for prevention, protection, participation, redress and sustainable peace for LGBT and gender-diverse persons. This was addressed by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence when identifying the inclusion of sexual orientation and gender identity as essential in the design and implementation of truth and justice measures, and calling for the adoption of comprehensive and cross-cutting mechanisms to ensure that all stages of the transitional process involve active participation by LGBT and gender-diverse person, as well as a proper reckoning with the causes and effects of serious human rights violations against LGBT and gender-diverse persons.⁶⁵

III. Conflict-related violence against lesbian, gay, bisexual and trans and gender-diverse persons

37. Conflict-related violence based on sexual orientation and gender identity can be structural in its nature, and some acts are connected to larger social discriminatory patterns as a result of criminalization⁶⁶ and/or exclusionary social norms, all of which

⁵⁹ See Ligia Kiss and others, *The Health of Male and LGBT Survivors of Conflict-Related Sexual Violence* (All Survivors Project, 2020).

⁶⁰ Submission by Outright International, p. 5.

⁶¹ [A/HRC/38/43](#), paras. 62–65; [A/HRC/41/45](#); [A/HRC/44/43](#), para. 19; [A/HRC/47/27](#), para. 28; and [A/76/152](#), para. 19.

⁶² Submission by Queen’s University Belfast and Oxford University, p. 2.

⁶³ Dianne Otto, “Women, peace and security: a critical analysis of the Security Council’s vision”, in *The Oxford Handbook of Gender and Conflict*, Fionnuala Ni Aolain and others, eds. (New York, Oxford University Press, 2018); Lisa Davis and Jessica Stern, “WPS and LGBTI rights”, in *The Oxford Handbook of Women, Peace and Security*, Sara E. Davis and Jacqui True, eds. (New York, Oxford University Press, 2019); Jamie Hagen Megan Daigle and Henri Myrntinen, “Sexual orientation and gender identity or expression (SOGIE) in violent conflict and peacebuilding”, in *Routledge Handbook of Feminist Peace Research*, Tarja Väyrynen and others, eds. (New York, Routledge, 2021).

⁶⁴ Submission by Global Research Network, p. 4.

⁶⁵ [A/75/174](#).

⁶⁶ See, for example, UNFPA and Colors Rainbow; submission p. 6.

are used strategically and tactically by conflict actors: for example, with the Taliban’s takeover of Afghanistan in August 2021 and its determination to rule according to a particular interpretation of Sharia, the Independent Expert noted that the safety of LGBT and gender-diverse people in Afghanistan became considerably more precarious.⁶⁷ The patterns are frequently opportunistic, as noted by the Expert in his report on the impact of COVID-19,⁶⁸ when highlighting that some Governments exploited the global public health crisis to further hinder access to existing sexual and reproductive health information and services in humanitarian settings.⁶⁹ It was noted in some submissions that the breakdown of State infrastructure exacerbates pre-existing systemic inequalities and patterns of discrimination that negatively affect women, girls and other persons based on sexual orientation and gender identity. All of these exacerbate existing multiple and intersecting forms of discrimination.

38. A majority of submissions exhorted the Independent Expert to recognize the fine line between intentional and structural dynamics that promote “the obviation of LGBT people’s vulnerability during war.”⁷⁰ By enforcing the gendered binary and social practices that hammer in place cisheteronormative structures, fundamentalist forces compel LGBT gender-diverse people to hide their identities and suppress their desires and personhood, or face assault, rape, torture, imprisonment and/or death,⁷¹ or forced displacement.⁷² This instrumental nature of the relationship between conflict-related sexual orientation and gender identity-based violence and patterns of social exclusion was brilliantly captured by the Commission for the Clarification of Truth, Coexistence and Non-Repitition of Colombia in its report issued in July 2022:

[e]ach group, with a particular pattern, persecuted LGBTIQ+ people because of their sexual orientations and non-normative gender identities and expressions, to consolidate population control in the territories, by imposing or reaffirming a moral, social, political, economic and military order that it considered “correct,” and to obtain or maintain legitimacy before the citizens who saw them as “undesirable,” in order to win the war.⁷³

39. The destructive legacy of war is not limited only to structural or institutional damage. Acts of conflict-related sexual orientation and gender identity-based violence and conflict-related gender-based violence are explicit and tactical: in the Bosnian war (1992–1995), converging with ethnonational rhetoric, perpetrators made men perform homosexual acts on each other, or expunged phallic and reproductive attributes through genital mutilation so that the victims were no longer cognizable as what is expected of “a man”.⁷⁴ Parties to the non-international armed conflict in

⁶⁷ ILGA World and ILGA Asia; submission p. 5.

⁶⁸ [A/75/258](#), para. 39.

⁶⁹ Inter-Agency Working Group on Reproductive Health in Crises, “COVID-19 pandemic further threatens women and girls already at risk in humanitarian and fragile settings”, full advocacy statement, May 2020; and ILGA World, Colombia Diversa, and Center for Reproductive Rights, submission p. 10.

⁷⁰ Queen’s University Belfast and Oxford University; submission p. 4.

⁷¹ Human Rights Watch, “*Even If You Go to the Skies, We’ll Find You*”: *LGBT People in Afghanistan After the Taliban Takeover* (2022).

⁷² Colombia Diversa, *Orders of Prejudice: Systematic Crimes Committed against People in the Colombian Armed Conflict* (2020), p. 81; and Outright Action International, submission pp. 2–3.

⁷³ Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición, *Mi Cuerpo es la Verdad: Experiencias de Mujeres y Personas LGBTIQ+ en el Conflicto Armado* (Bogotá, 2022) **Error! Hyperlink reference not valid.**, p. 224.

⁷⁴ Paula Drumond, “Sex, violence, and heteronormativity: revisiting performances of sexual violence against men in former Yugoslavia”, in *Sexual Violence Against Men in Global Politics*, Marysia Zalewski (New York, Routledge, 2018), pp. 152 and 156–57; see also Dubravka Žarkov, *The Body of War: Media, Ethnicity, and Gender in the Break-up of Yugoslavia* (Durham, North Carolina, Duke University Press, 2007), pp. 156 and 160–65.

Colombia saw violence against LGBT and gender-diverse persons as a military opportunity to gain a foothold and legitimacy on the basis of shared prejudice against them.⁷⁵ The Independent Fact-Finding mission on Libya “heard first-hand accounts of persons being targeted for arrest and abuse, including sexual violence, solely on the basis of their sexual orientation or gender identity,” in all cases perpetrated with complete impunity by groups with Salafist-leaning views, including some affiliated to the State, seeking “to enforce their own interpretation of religious or societal norms and act with the stated objective of cleansing Libya of ‘deviant’ behaviour.”⁷⁶

40. The strategic and tactical use of sexual orientation and gender identity to galvanize popular support is clear in the commonplace use of homophobic and transphobic messages in nationalist propaganda in conflicts across the globe, for example in Ukraine, where separatist regions use them as a sign of opposition to pro-European movements.⁷⁷ The independent international fact-finding mission on Myanmar documented the situation of Rohingya trans women, who suffered sexual and gender-based violence, including rape, by State agents, that in some cases was “sufficiently connected with the armed conflict [...] to warrant an investigation as a war crime”.⁷⁸ In Colombia, violence against LGBT and gender-diverse persons differed depending on factors such as the type of group, the overall goals in each territory, the relationship with other armed groups and the social perception against these populations. A comparative study between two regions with a significant Revolutionary Armed Forces of Colombia-People’s Army (FARC-EP) presence showed that, where they had a more disputed and illegal-economy-dependent presence, they tended to have recourse to more brutal and terrorizing forms of violence, including gang-conflict-related sexual violence against trans women and gay men. In contrast, in places where they had a historic and more ideologically rooted presence, their repertoires sought to correct what they deemed to be foreign deviance.⁷⁹

41. In combination with and because of these factors, LGBT and gender-diverse persons are often in well-founded fear of persecution in the context of armed conflicts, and they are often marginalized or excluded from many established evacuation and emergency response services and processes. A clear example is that of trans and gender-diverse people whose legal identity documents do not correspond to their gender or physical presentation, who face severe difficulties in evacuating from civilian enclaves through humanitarian corridors, securing medical exemptions from gender-determined compulsory military service, being admitted at border crossings as refugees and accessing safe housing with adequate sanitation facilities, gender-sensitive medical care and reproductive rights services. These barriers increase the likelihood of some people being forced to seek irregular routes to safety, with the attendant risks of trafficking, exploitation and abuse.

42. Modern atrocity analyses show that the persecution of persons, communities and peoples based on sexual orientation and gender identity foreshadows the persecution of other groups, in connection with the “reassertion of patriarchal, heteronormative values and legislation [indicating] a constriction of the rights, freedoms and safety of a society”, and that “from Nazi Germany to genocide in Darfur to the breakup of former Yugoslavia, the imposition of ‘moral’ codes that directly assault sexual and gender identities and freedoms came before widespread state-led physical violence and atrocity crimes.”⁸⁰ However, formal international frameworks

⁷⁵ Caribe Afirmativo; submission pp. 9–10.

⁷⁶ A/HRC/49/4, para. 42.

⁷⁷ NDI Ukraine; submission p. 5.

⁷⁸ A/HRC/42/CRP.4, paras. 6 and 180–188.

⁷⁹ Colombia Diversa, *Orders of Prejudice*, pp. 44 and 80.

⁸⁰ Protection Approaches, submission, pp. 1–2.

of atrocity risks do not include violence based on sexual orientation and gender identity as an indicator.⁸¹

A. Weaponization of prejudice

43. Conflict-related sexual orientation and gender identity-based violence is also framed by the strategies of social and territorial control of armed actors, is supported by pre-existing contexts of social prejudice, enjoys social legitimacy and is deepened by the lack of State responses and community support.⁸² The first element, prejudice-based violence, is a concept to which some truth-finding and international human rights⁸³ mechanisms have referred. For example, it was examined by the Group of Eminent International and Regional Experts on Yemen while gathering evidence of numerous cases of persecution and violence during the Houthi campaign against “immorality” and prostitution.⁸⁴ Similarly, the Truth and Reconciliation Commission in Peru found that the “terror against sexual minorities” was effected through the weaponization of prejudice through threats and executions that were the signature repertoire of violence.⁸⁵

44. The categorization of violence by prejudice⁸⁶ serves as a “tool of analysis that allows broader frameworks of understanding [including] (a) the relationship of the social context with the violence; (b) the symbolic impacts of violence, beyond the individual harm to the people directly affected, which involves the reinforcement of prejudices/social stereotypes about sexuality and gender and the instilling of fear in people who identify with the characteristics of the victim; (c) objective indicators that facilitate their identification; and (d) the hierarchical and exclusionary purposes of the violence itself.”⁸⁷

45. The most recent description of that analytical framework is that of the Truth Commission of Colombia, whereby conflict-related sexual orientation and gender diversity-based violence is seen as having a point of departure in negative social representations of LGBT and gender-diverse persons and the reproduction and continuous building of stereotypes around them as “undesirable, immoral, sinful, disordered and criminal.” The broad reach of prejudice which has permeated Colombian society, reiterated through institutional drivers such as the family, education settings and the media, has exposed LGBT and gender-diverse persons to

⁸¹ Ibid., p. 3.

⁸² Colombia Diversa, *Vivir Bajo Sospecha: Estudio de Caso – Personas LGBT en el Conflicto Armado en Vistahermosa y San Onofre* (Bogotá, 2017), p. 201.

⁸³ Inter-American Commission of Human Rights, *Violence against LGBTI Persons in the Americas* (2015); Inter-American Commission of Human Rights, *Case of Azul Rojas Marín et Al. v. Perú*, Judgment of 12 March 2020; and *Vicky Hernández et Al. v. Honduras*, Judgment of 26 March 2021.

⁸⁴ A/HRC/42/CRP.1, paras. 214–222.

⁸⁵ Peru, Truth and Reconciliation Commission, “Los actores del conflicto”, in *Final Report*, vol. II, second sect. (2003), p. 433.

⁸⁶ The concept was first coined by the Colombian philosopher María Mercedes Gómez. See, María Mercedes Gómez, “Prejudice-based violence”, in *Gender and Sexuality in Latin America: Cases and Decisions*, Cristina Motta and Macarena Saez, eds. (Springer, 2013), p. 281. As explained in Colombia Diversa, *Orders of Prejudice*, p. 60, this framework draws attention to the context in which the violence occurs, stressing that, “there is no individual prejudice without social complicity”, and refocuses the locus of the aggression, situating it not in the identity of the victim but rather in the perpetrator’s socially mediated value judgment about the victim’s characteristics and is useful to analyse violence in war-torn societies because it helps to “elucidate the complex interactions between the political and moral aspirations of armed groups, the formation of sexed and gendered subjectivities in war-torn areas, and the symbolically and materially violent discourses and practices that operate in these regions.”

⁸⁷ Caribe Afirmativo submission, pp. 1–2.

multiple forms of violence.⁸⁸ Equally important is the notion of violence by prejudice: the social acceptance of violence motivated actors in the armed conflict to pursue it: “this represented gains in war: by violating people whom society considered ‘undesirable’ they obtained social legitimacy. If society had rejected or denounced these acts, the perpetrators would have seen no advantage in their execution.”⁸⁹

B. Sexual and gender-based violence

46. Violence endured by women and girls, especially that of a sexual nature, is centrally associated with the gendered dimensions of war. In its recent report, the Commission for the Clarification of Truth, Coexistence and Non-Repetition of Colombia includes hundreds of testimonies from lesbian, bisexual and trans women and trans men that have in common the constant reference to their sexual orientation and gender identity and the reference to “catalogues” of violence: forced displacement was preceded by threats, sexual violence, torture and non-sexual slavery, or forced nudity, rape and torture were enabled through arbitrary detentions.⁹⁰

47. The importance of recognizing conflict-related sexual orientation and gender identity-based violence as a specific manifestation of conflict-related gender-based violence is made clear by the exacerbation of certain forms of violence that are inextricably linked to the social mores regarding sexual orientation, such as conversion practices and, in particular, rape heinously called “corrective.” In addition, for lesbian and bisexual women, the coerced motherhood that frequently results from the rape lies at the intersection of gender stereotypes that call into question their ability to exercise motherhood because of their sexual orientation; and, for trans men, a possible obstacle to bodily transformation that may be important in a process of identity construction. In patriarchal and conservative societies and communities, these mechanisms become in themselves opportunities for violence.⁹¹

48. In 2019, the independent international fact-finding mission on Myanmar documented sexual and gender-based violence against a backdrop of wide-ranging gender inequality and denial of reproductive health care,⁹² and in 2020 the United Nations Mission in South Sudan and the United Nations High Commissioner for Human Rights recommended a substantial increase in funding for public health and improving access to sexual and reproductive care.⁹³ The report, which covered human rights as a component of a peace mission, was seen as groundbreaking as it went beyond a focus on criminal accountability for perpetrators and covered the steps needed to comprehensively and sustainably deliver quality sexual and reproductive health services, as a step towards ensuring accountability for survivors of sexual violence.⁹⁴ Regrettably, however, no mention is made in the report of sexual orientation or gender identity.

49. Even in the light of its connection with robust frameworks such as the women and peace and security agenda, the evidence bases for conflict-related sexual orientation and gender identity-based violence against lesbian, bisexual and trans women are thin; and they are virtually non-existent in the case of gay and bisexual men, trans men and other gender-diverse persons. There is however sufficient

⁸⁸ Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición, *Mi Cuerpo es la Verdad*, p. 350.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*, p. 272.

⁹¹ Submission by ILGA World, Colombia Diversa, and Center for Reproductive Rights, p. 6.

⁹² A/HRC/42/CRP.4.

⁹³ United Nations Mission in South Sudan and OHCHR, “Access to health for survivors of conflict-related sexual violence in South Sudan”, May 2020.

⁹⁴ ILGA World, Colombia Diversa, and Center for Reproductive Rights submission, p. 16.

evidence to suggest that, as a rule, their sexual orientation and/or gender identity is at the origin of heinous violations to their rights in the context of armed conflict. Although the real figures likely will never be known,⁹⁵ it is estimated that roughly 20,000 to 50,000 women were sexually assaulted during the Bosnian War.⁹⁶ While anecdotal evidence suggests a similar incidence among men,⁹⁷ pervasive homophobia may have been a significant impediment to coming forward. In a 2017 submission to the Office of the Prosecutor of the International Criminal Court, organizations concluded that departing from hegemonic expectations of masculinity (e.g., not growing full beards, wearing designer jeans) was conflated by ISIL with homosexuality and punished by execution, carried out in public and with extreme cruelty: several persons targeted as “sex deviants” were thrown from public buildings, lashed to death, beaten and then burned alive, immolated and beheaded.⁹⁸

C. Damage

50. The literature consulted shows that victims of conflict-related sexual orientation and gender identity-based violence suffer significant physical and emotional consequences. Psychosocial impacts vary in intensity and form: chronic fear; suffering; post-traumatic stress; inability to experience healthy and pleasurable sexual relations; consumption of psychoactive substances; and physical sequelae of physical and sexual violence that give rise to identity disturbances, inter alia, may occur. Feelings of insecurity, not belonging, failure and rejection become entrenched, and lasting mental health concerns are common.

51. Sexual violence increases the risk of sexually transmitted diseases. This, in turn, reinforces stigma, and LGBT people endure socioeconomic impacts that violate their right to work, education, housing and comprehensive health care; as well as collective and community impacts such as the denial of political and citizen participation, public space and social and legal denunciation, invisibility and social delegitimization. The disruption of life projects deepens exclusion and discrimination owing to diverse sexual orientation, gender identity and gender expression, generating precarity, marginalization and condemnation for engaging in sex work, participation in the informal economy and school dropout, inter alia.

52. Furthermore, violence results in serious ruptures in the social and territorial fabric. Social complicity in violence due to prejudice, the lack of spaces for the socialization of LGBT people, family rejection, constant forced displacement and threats to their integrity owing to their diverse sexual orientation or gender identity generate a loss of primary and secondary support networks, leading to a continuum of violence and discrimination. LGBT and gender-diverse refugees and internally displaced persons face stigmatization, sexual and gender-based violence, abuse by or lack of protection from security forces, arbitrary detention and exclusion from access to essential basic services; and they also are forced to flee to countries that are hostile to them.

⁹⁵ A/48/92-S/25341, para. 22; and S/1994/674, paras. 234 and 235.

⁹⁶ Alexandra Stiglmeier, “Sexual violence: systematic rape”, in *Crimes of War: What the Public Should Know*, Roy Gutman and David Rieff, eds. (New York, W.W. Norton, 1999), p. 327; and Cindy S. Snyder and others, “On the battleground of women’s bodies: mass rape in Bosnia-Herzegovina”, *Affilia: Journal of Women and Social Work*, vol. 21, No. 2 (2006), p. 189.

⁹⁷ S/1994/674, paras. 241–263.

⁹⁸ Human Rights and Gender Justice Clinic of the City University of New York, MADRE and Organization of Women’s Freedom in Iraq, *Gender-Based Persecution and Torture as Crimes Against Humanity and War Crimes Committed by the Islamic State of Iraq and the Levant (ISIL) in Iraq* (2017), in *extenso* and, particularly, paras. 67–73.

D. Perpetrators and victims and accountability

53. The link between violence and armed conflict may be apparent in the profile of the perpetrator, often affiliated with a State or non-State armed group (including terrorist entities or networks); the profile of a victim targeted on the basis of actual or perceived sexual orientation and gender identity; the climate of impunity, generally associated with State collapse; cross-border consequences, such as displacement or trafficking; and/or violations of the provisions of a ceasefire agreement.⁹⁹

54. In the case of non-State actors, studies on insurgencies targeting LGBT and gender-diverse civilians based on sexual orientation and gender identity have shown that there are at least three underpinning factors to this form of violence: two are strategic and one is ideological. First, engaging in anti-sexual orientation and gender identity violence against civilians is a means to outbid warring opponents whenever the group considers that it is socially legitimate to attack this population. Second, these actors have significant territorial control to “demonstrate their ability to selectively punish individuals in order to deter defections”.¹⁰⁰ Lastly, it is likely that non-State actors with more exclusionary ideologies and policies engage in this form of violence (e.g., radical Islamists, Christian fundamentalists, extreme Marxists or fascists).¹⁰¹

55. The evidence also suggests that these types of violence, irrespective of whether perpetrated by State or non-State actors, go beyond the civilian realm. Peace and security scholars have pointed out that stigma and prejudice become entrenched during armed conflict and apply to civilians and combatants within armed groups that participate in hostilities.¹⁰² LGBT and gender-diverse persons also wage war and participate in conflict, and the evidence suggests that their experiences are heterogenous and often marked by discrimination and violence. Researchers have nonetheless acknowledged the “methodological difficulties of conducting research in this area, including the engrained secrecy surrounding deviation from heterosexual norms among combatants.”¹⁰³

56. All these factors, in their turn, contribute to the suspicion that there is a significant undercount of victims. Within conflict and humanitarian situations, the data gap on LGBT and gender-diverse people is glaring, in part owing to the risks involved in collecting data that relates to their realities.¹⁰⁴

57. As a result of these and other factors, conflict-related sexual orientation and gender identity-based violence is often met with absolute impunity, and widespread negation of sexual orientation and gender identity as protected categories under international human rights law by a great majority of States in which non-international armed conflicts have occurred and continued to occur in recent decades significantly contributes to this situation.

⁹⁹ S/2021/312, para. 5.

¹⁰⁰ Joshua Tschantret, “Cleansing the Caliphate: insurgent violence against sexual minorities”, *International Studies Quarterly*, vol. 62, No. 2 (June 2018), p. 260.

¹⁰¹ Ibid.

¹⁰² Theresia Thylin, “Violence, toleration, or inclusion? Exploring variation in the experiences of LGBT combatants in Colombia”, *Sexualities*, vol. 23, No. 3 (2020).

¹⁰³ Ibid, p. 446.

¹⁰⁴ Outright Action International, submission, p. 6.

IV. Transition, truth and peace

Participation of lesbian, gay, bisexual and trans and gender-diverse persons

58. Far from being reduced to mere passive recipients of violence, LGBT and gender-diverse persons have much to contribute to peacebuilding and peacekeeping. In general, they have a right to do so under a human rights-based approach; in addition, the Independent Expert has gathered evidence on mechanisms generated by persons, communities and peoples for coping individually and collectively with an entrenched hostile environment. However, available databases¹⁰⁵ show that no more than nine peace deals include measures or references to sexual orientation and gender identity issues; two of them¹⁰⁶ to explicitly exclude LGBT and gender-diverse persons from the political pact emerging from the transition. In the construction of peace, as well as in the context of armed conflict, continued structural and targeted discrimination is at the origin of exclusion, and significantly hinders sustainable peace.

59. The absence of LGBT and gender-diverse persons in peacebuilding can lead to disastrous consequences for their human rights. In Indonesia, the 2005 agreement that resolved the long-running non-international armed conflict devolved certain government functions and allowed the Aceh region to institute a version of Sharia law that includes public canings, the forced detransition of trans individuals and the prohibition of trans persons from working, all situations about which the Independent Expert has expressed his deep concern.¹⁰⁷

60. In the history of peacebuilding, however, some good practice exists. The Good Friday Agreement included provisions on fostering equality of opportunity and good relations between all people in the post-conflict era,¹⁰⁸ and the Government of the United Kingdom of Great Britain and Northern Ireland committed to the creation of a statutory obligation on public authorities in Northern Ireland to promote equality of opportunity in relation to a series of factors including sexual orientation.¹⁰⁹ The agreement contains the first-ever reference to sexual orientation discrimination in an international peace agreement, and section 75 of the Northern Ireland Act 1998 contains the first component of sexual orientation discrimination law to be introduced domestically.¹¹⁰

61. A second and more recent example is that of the Colombian peace agreements, stemming from the first peace process in the world to explicitly include a gendered approach and considerations on the rights of LGBT and gender-diverse persons in its development, a process in which civil society played a significant role. Through the evidence that they presented to the gender subcommittee, they ensured that gendered and sexual orientation and gender identity-based perspectives were included in the final agreement: the subcommittee recognized the cases of 4,000 LGBT and gender-diverse persons and more than 7,000 acts of violence, including murders, forced displacement and threats. The agreements include over 100 measures based on gender

¹⁰⁵ University of Edinburgh, Peace Agreements database, available at www.peaceagreements.org.

¹⁰⁶ Democratic Republic of the Congo and Zimbabwe. See South African Litigation Center submission.

¹⁰⁷ ASEAN SOGIE Caucus; submission, p. 2; and communication, No. JUA IDN 1/2018.

¹⁰⁸ United Kingdom of Great Britain and Northern Ireland, Secretary of State of Northern Ireland, *The Belfast Agreement: An Agreement Reached at the Multi-Party Talks on Northern Ireland* (London, The Stationary Office, 1998), p. 16, para. 3.

¹⁰⁹ Ibid.

¹¹⁰ Barry Fitzpatrick, "Sexual orientation discrimination", in *Human Rights in Northern Ireland: The CAJ Handbook*, Brice Dickson and Brian Gormally, eds. (Oxford, United Kingdom, Hart Publishing, 2015).

approaches,¹¹¹ 39 of which have been identified as inclusive of LGBT and gender-diverse persons; submissions presented to the Independent Expert nonetheless also contained details of significant challenges in implementation.¹¹²

62. In addition, the Special Rapporteur on truth, justice, reparation and guarantees of non-recurrence has called on all States to adopt a gender perspective in the conceptualization, design and implementation of truth-making mechanisms and strategies to address discrimination and violence based on sexual orientation and gender identity during the conflict,¹¹³ which will address much-needed participation demands in these processes.

63. In Sierra Leone, surveys estimate that as many as 257,000 women and girls were subjected to sexual violence during the conflict,¹¹⁴ but no comparable data exist on sexual violence against men and boys or in relation to the sexual orientation and gender identity dimensions of these violations. This limited understanding, implemented primarily by the Truth and Reconciliation Commission, therefore failed to capture what might be essential features of the catalogues of violence and ensure justice. Anecdotal evidence leads one to presume that fear of being targeted for violence led gay men – in particular men who exhibited “feminine” traits – either to flee to neighbouring countries or, if they lacked the resources to flee, to hide from public view wherever possible during the conflict. Similarly, the assumption is that the homophobic atmosphere and fear of being perceived as gay discouraged victims from coming forward.¹¹⁵

64. In the Philippines, the Transitional Justice and Reconciliation Commission’s limited understanding of gender emerged in its discussion of sexual violence in the Listening Report and Final Report. Although rape was acknowledged in the Listening Report as “the most common form of sexual violence against women and men in Bangsamoro,” the Commission’s analysis was focused exclusively on sexual violence against women.¹¹⁶

65. The significant actions of LGBT social movements in alliance with feminist organizations have proven somewhat effective in promoting justice and accountability in transitional settings. For example, several alliances have been formed in Colombia to advance a gender-sensitive peace that recognizes both women and LGBT persons as rights holders and peacebuilders. That is the case of the gender and peace alliance Grupo Género en la Paz (GPaz), which, since 2016, has consistently provided data on the implementation of the Colombian peace agreement for measures related to both women and LGBT persons.¹¹⁷ Similarly, the Cinco Claves Alliance has promoted the opening of a nationwide case on conflict-related sexual, reproductive and gender-based violence in the Special Jurisdiction for Peace, the judicial component of the Peace Agreement.¹¹⁸ After four years, the Special Jurisdiction for Peace recently announced the opening of *Case II*, which will cover gender, sexual and reproductive offences committed during the Colombian armed

¹¹¹ UN-Women, *100 Medidas Que Incorporan la Perspectiva de Género en el Acuerdo de Paz Entre el Gobierno de Colombia y las Farc-Ep para Terminar el Conflicto y Construir una Paz Estable y Duradera* (New York, 2018).

¹¹² ILGA World, Colombia Diversa, and Center for Reproductive Rights, submission, pp. 7–8.

¹¹³ [A/75/174](#).

¹¹⁴ Human Rights Watch, *“We’ll Kill You if You Cry”: Sexual Violence in the Sierra Leone Conflict*, vol. 15, No. 1(A) (2003), pp. 25–26.

¹¹⁵ *Ibid.*

¹¹⁶ Philippines, Transitional Justice and Reconciliation Commission, *Transitional Justice and Reconciliation Commission Listening Process Report 2017* (2017), p. 143 (emphasis added).

¹¹⁷ Colombia Diversa, submission, p. 10.

¹¹⁸ *Ibid.*, pp. 9–10.

conflict against women, girls and LGBT and gender-diverse persons.¹¹⁹ This shows that resilience, organization and empowerment by civil society can trigger institutional adaptations during transition, having the potential to lead to more inclusive societies in the aftermath of conflict. It also shows the relevance of expanded notions of gender that create fertile terrain for collective action interfacing the needs and interest of women and LGBT and gender-diverse persons.

V. Conclusions and recommendations

66. Drawing on the substantial body of evidence gathered by the Independent Expert, some fundamental features of violence against LGBT and gender-diverse persons during armed conflict can be identified:

(a) **During times of conflict or when the rule of law is threatened, the intensification of gender roles¹²⁰ gives rise to extreme codes of conduct whereby LGBT and gender-diverse persons are expected to “correct” their “deviations” from gender expectations in situations;**

(b) **LGBT and gender-diverse persons are the victims of differentiated methodologies and experience specific patterns of violence in connection with their sexual orientation and gender identity;¹²¹**

(c) **LGBT and gender-diverse persons become targets of violence when they break with gender parameters, exhibit their diverse sexuality and organize. These patterns also include the reaction characterized as “hypervigilance,” which generates a spectrum of general terror that makes everyone behave according to the gender norm that is imposed. This act of violence due to prejudice thus impacts all those who identify with the main victims of the crimes, ensuring generalized obedience towards the armed actor.¹²²**

67. It thus follows that violence against LGBT and gender-diverse persons, communities and populations during armed conflict differs depending on the relevant ideologies, types of conflicts, stakes, tactical approaches and overall strategies related to the armed conflict. These factors influence the way in which actual or perceived LGBT and gender-diverse persons are targeted by armed groups. The repertoires of violence also show that, although United Nations policies related to sexual violence have acknowledged the differentiated impact based on sexual orientation and gender, frameworks to date may have overlooked the scope of the phenomenon. In other words, an exclusive focus on conflict-related sexual violence as a paradigmatic form of gender-based violence in the international policy and legal frameworks, as well as the monitoring endeavours stemming from them, might lead to a narrow understanding of the gendered and sexuality dimensions of conflict and thus to limited responses addressing their causes and consequences, particularly detrimental to LGBT and gender-diverse persons.

¹¹⁹ Special Jurisdiction for Peace (Colombia), “Apertura de la etapa de agrupación y concentración de un macrocaso No.11 sobre violencia sexual, violencia reproductiva y otros crímenes cometidos por prejuicio, odio y discriminación de género, sexo, identidad y orientación sexual diversa en el marco del conflicto armado”, Auto SRVR No. 103 de 2022 Bogotá D.C., 11 July 2022.

¹²⁰ Colombia Diversa, *Orders of Prejudice*, pp. 44 and 80.

¹²¹ Colombia Diversa, *Vivir Bajo Sospecha*, p. 201.

¹²² Colombia Diversa submission, p. 2 (translated from the original).

68. Wider definitions of gender should go beyond the binary mould to recognize the identity and rights of non-binary persons, i.e., those that may not identify as exclusively man or woman, boy or girl. Similarly, the policies and legal frameworks should also take into consideration the profile and needs of gender-diverse persons, i.e., those who do not conform to prevailing narratives that define socially accepted gender expressions.
69. All parties involved in armed conflicts, whether non-international armed conflicts or international armed conflicts, should abide by their international obligations under both international human rights and humanitarian law. This includes acting strictly in accordance with the principle of non-discrimination, which in turn mandates the prohibition of targeting both civilians and non-civilians solely on the basis of their actual or perceived sexual orientation and gender identity.
70. States and non-State humanitarian institutions shall promote the effective support, relief, reallocation and protection of LGBT and gender-diverse refugees and/or internally displaced persons in war-torn contexts. Such measures shall consider the fragile situation of trans persons that lack access to document modification owing to State-sanctioned prohibitions in this regard.
71. All forms of violence that weaponize gender and sexual prejudice (such as sexual violence against male prisoners of war) are strictly prohibited under international law and may amount to international crimes that should be prosecuted and punished accordingly.
72. International and domestic accountability mechanisms should interpret their respective legal bodies of adjudication according to the international human rights obligations related to the broad interpretation of gender.
73. Conflict-affected States or States with ongoing political transitions dealing with the aftermath of destructive conflict should put in place all political and technical efforts to provide a comprehensive assessment of victimization against LGBT and gender-diverse persons. Such efforts entail mapping and gathering data and making them public as a first step in this connection; data gathering processes should create safe spaces for LGBT and gender-diverse persons.
74. Official databases on conflict should disaggregate data on gender identity and sexual orientation, promoting an assessment of the differentiated experiences and avoiding conflating the initials LGBT with the general experience of all LGBT and gender-diverse victims of conflict.
75. States transitioning from conflict to peace should enact relevant policies and legislation that ensure LGBT and gender-diverse persons who are victims of armed violence comprehensive access to all their rights as victims and citizens, including: truth-seeking mechanisms; reparations programmes; justice proceedings; and other social and development programmes aimed at rebuilding the social fabric in the aftermath of conflict.
76. Combating impunity is a key step towards safer, more peaceful and inclusive societies for LGBT and gender-diverse persons living in conflict-torn societies. For that reason, States should guarantee access to an effective remedy for human rights violations, humanitarian law offences and potential international crimes that LGBT and gender-diverse persons endure during conflict.
77. States should ensure a safe and enabling environment for civil society organizations that work on the promotion and protection of the rights of LGBT and gender-diverse persons affected by conflict, and create programmes to

stimulate action by civil society organizations that promote the rights of LGBT and gender-diverse persons affected by conflict. Such actions entail: refraining from shrinking civic space; opening special positions for their representatives on multisectoral platforms that develop peace and transitional policies; and providing for channels of communication that regularly create interfaces between society, civil society organizations and State institutions. States and humanitarian agencies must ensure that civil society organizations with such expertise are included in the planning and implementation of all humanitarian assistance and recovery efforts.

78. States should devise transitional justice and peacebuilding mechanisms aimed at transforming the structural forms of exclusion and discrimination fuelling the armed violence against LGBT and gender-diverse persons during conflict. For that reason:

(a) Truth-seeking and justice institutions should underscore the role that social mores concerning sexual orientation and gender identity play in armed conflict, with the purpose of highlighting social patterns and traditions that might have exposed LGBT and gender-diverse persons to violence. These institutions should also communicate the way in which those social mores were integrated into the philosophies and repertoires of violence of armed groups;

(b) Peace conversations and negotiations and other peacebuilding-related frameworks should devise special instances and mechanisms to guarantee the meaningful and impactful participation of LGBT and gender-diverse persons in all institutional efforts related to nation-building and reconstruction in the aftermath of conflict;

(c) Reparation measures should include special strategies to award gender-sensitive reparations to LGBT and gender-diverse persons, with special focus on rehabilitation, satisfaction and non-repetition;

(d) In the security sector, doctrinal reform is fundamental to eliminate all remnants of homophobic and transphobic institutional ideologies that might create a fertile terrain for abuses against this population in the aftermath of conflict;

79. United Nations peacekeeping and peace operations should also promote the recognition of gender diversity as an asset to enhance a culture of peace whenever their bodies are deployed.

80. The Security Council should respond to the institutional, academic and civil society calls to back politically the expansion of the women and peace and security agenda, with the purpose of including an intersectional approach that will in turn contribute to more comprehensive implementation and global monitoring of the agenda.