**Call for Inputs**

**Deadline 15 March 2019**

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

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

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

**Background**

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

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

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

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

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

**Call for input**

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

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

At the legislative level Georgian government has ratified several international or domestic instruments that protects LGBTQI persons form discrimination. Namely, in 2013, the Labor code was amended to make discrimination on basis of sexual orientation (and other grounds) illegal not only during the employment, but also in pre-employment/recruitment relations.[[2]](#footnote-2) In 2014, the Constitutional Court ruled that the part of the decree issued by the Minister of Labor Health and Social Affairs prohibiting gay men to donate blood was, in fact, unconstitutional.[[3]](#footnote-3) In 2014, a Law on Elimination of all Forms of Discrimination was adopted, explicitly prohibiting discrimination on the grounds of sexual orientation and gender identity (among other bases).[[4]](#footnote-4) The National HR Strategy (to be reviewed in 7 years) and Action Plans for 2014-15 and 2016-17, chapters on gender equality and women’s empowerment also included issues regarding sexual orientation and gender identity.[[5]](#footnote-5) In order to elaborate and implement a united state policy in the field of human rights, in 2016 was created the Interagency Human Rights Council at the office of Prime minister. In 2017, the government amended 30 normative acts under the ratification process of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention. In 2018 Ministry of Internal Affairs launched the Human rights Department within its system, which would monitor investigation to strengthen response to violence against women (including sexual violence), crimes committed on the grounds of discrimination, hate crimes, trafficking and crimes committed by and/or towards minors.[[6]](#footnote-6) Those steps forward may the reader think that the State increases its knowledge in regard SOGIE. However, some facts speak oppose, - NGOs have documented cases of homo/transphobic attitudes derived from the public authorities mainly spread intolerance upon the marginalized group and showed that the LGBTI community is less favorable for the decision-making authorities.[[7]](#footnote-7) Moreover, given that the stigma towards LGBTQI persons is very strong in the Georgian society, it is vital that the prejudices has been tackled in State level.

In particular, in regard the LGBT population state doesn’t have any affirmative policies. Nor the questions about sexual orientation and gender identity are included in governmental surveys, administrative records, etc. however, what is included is the record about sex in IDs that is a huge obstacle for transgender persons to enjoy their fundamental rights and not to be discriminated in every-day life wherever they are asked to provide IDs.

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

Based on information provided by the various state institutions, we can say that none of them have yet conducted a research on revelling the nature and causes of hostile and negative attitudes against LGBTI people, which clearly is the essential to combat discrimination towards them.

Before 2018 NGO documentation where the only source to measure the scope of homo/transphobic hate crime. It was only 2018 when the state started recording statistics on hate crime against LGBTI persons. In order to extend violence against LGBTI person’s state has to conclude studies on public attitudes and knowledge regarding them. Education and labor market is the most sensitive areas for LGBTI individuals and study of those fields and recording the cases of discrimination on the ground of SOGIE would be far helpful.

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

The law on Personal Data Protection that was adopted in 2011 and since that been amended several times proclaims as its main principles that the data shall be processed a) lawfully and fairly; b) only for specific, clearly defined and legitimate purposes. Further processing of the data is inadmissible for the aims incompatible with the original purpose; c) data shall be processed only as much as necessary to achieve the appropriate legal aims. The data should be adequate and proportionate to the aim of its processing; d) data shall be clear and exact; in case of necessity they shall be updated. Data that are not collected and processed in line with legitimate grounds shall be blocked, deleted or destroyed; e) Data shall only be stored for a period that is necessary to achieve the purpose of its processing. After achieving this purpose they shall be blocked, removed or destroyed or be stored in a way that excludes identification of person, unless otherwise provided by the law.

Moreover processing data of special category, that includes information about sexual life, is prohibited unless prescribed by the law. The grounds of its proceeding are as follows: a) the subject of data gave the written consent on the processing of special category; b)the processing of data related to criminal and health status is essential for the determination of labor relations, including the decision on employment; c) data processing is necessary for protecting the vital important interests of the data subject of the third person and the data subject has no physical or legal capacity to give the consent; d) Data processing is exercised for the purposes of public health, by the medical institution (medical worker) for protection of a person’s health, also if it is necessary for management or functioning of the healthcare system; e) The subject of data made public the information about him/her without clear prohibition of using the data on him/her; f) data processing is exercised in the course of legitimate activity by the associations or other non-commercial organisations of political, philosophical, religious or trade character. In such case the data processing may cover only the members of this organisation, of those persons, who have the constant communication with this organisation; g) processing data for the personal cases of defendants/convicts in order to considerate matters relating to the modification of their penalty with lighter; etc. Herewith, article 15 of the same law guarantees the right of data subject to receive information about the processing data about him/herself, request to correct, update, add, block, delete, and destroy them.

Therefore, data subjects are kind of given the certain rights to “control the process,” as they are entitled to ask what kind of data about him/her is being processed; the purpose of data processing; the legal base for data processing; how the data was collected; to whom the data was submitted, the ground and purpose of submission. If requested, the data processing official is obliged to correct, update, add, block, delete or destroy the data, if it is incomplete, incorrect or outdated, or if it has been collected and processed unlawfully. The information about a person’s sexual life includes information about their sexual orientation and is covered by the law. Unlawful treatment of this information is a criminal offence. Hence, as mentioned above, data regarding sexual life is strictly limited to be collected, stored or otherwise used.

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

Whereas, due to homophobic environment in the country, the existence of such information in official form, and moreover – its release to thirds parties – can have significant negative repercussions on person’s life and enjoyment of his/her fundamental rights and freedoms. On the other hand, Georgian society has certain soviet legacy when people were labelled as representatives of LGBTI community to undermine their reputation in the public eye. Therefore, strict limitation in accordance to mentioned regulations is essential to be ensured.

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

The right to inviolability of the private life of LGBTI persons in often violated and it is expressed through different forms. It includes “forced coming out,” which means spreading information about a person’s sexual orientation or gender identity, or revealing it to a third party without the permission of this person. Due to strong stigma existing among the society, in such cases the member if the LGBTI community may become a victim of violence and discrimination. Despite the frequency of such facts and their negative influence, the members of the group refrain from contacting law-enforcement authorities.

The safety of personal data is an indivisible part of the right to inviolability of the private life and is protected by the Constitution of Georgia. Personal data consists of data of different categories and the level of its protection also varies. Information about a person’s sexual life is considered as the specific personal data, the processing or passing of which to a third party is only possible with the written consent of the person, or in case, that this person has made in public.[[8]](#footnote-8) The information about a person’s sexual life includes information about their sexual orientation and is covered by the law. Unlawful treatment of this information is a criminal offence.[[9]](#footnote-9)

The practice of WISG consists of a lot of documented cases of “forced coming out,” but the majority of the victims refuse referring to legal authorities in order to retrain making their condition even harder. For people living in regions and especially in the villages of Georgia contacting the police is even more complicated, as there are higher chances of revealing information and this may push violence further.

Moreover, WISG’s Administrative case of the July, 2018 concerning spreading photo evidence of the criminal case filed at the programme of the Ministry of the Internal Affair, that came into revealing beneficiary’s gender identity and forcible coming out, on December 10, WISG has been communicated that the police officer has been fired in regard investigation conducted by the General Inspection. Herewith, Personal Data Protection Inspector filed offence against E.G.

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

At present the cooperation is more of a one-sided process. It is mostly LGBTI organisations who send their proposals and suggestions to state institutions; in particular, it includes proposals, policy papers or recommendations prepared by NGOs in order to evaluate challenges faced by trans people for changing their documents, co-sponsorship of gender reassignment procedures, combating homophobic hate speech, etc.[[10]](#footnote-10) Unfortunately, most of the proposals does not get any feedback from the state.

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

Before 2018 it was only civil society that gathered statistics in regard homo/transphobic hate crime. So that it definitely has expertise and technical knowledge in gathering such data.

* 1. What constitutes meaningful participation in this area?

First of all protection of private life of LGBTI community and avoiding ill-gathering and ill-usage of their personal data will be the main scopes of such participation. As already highlighter the homophobic environment of Georgian society is a threat for them per se, and collecting such type of data needs additional monitoring.

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

At some point maybe yes. However, the will of State on the local level is vital for solving the issue. As a rule States should ensure that personal data referring to a person’s sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed. Those lawful and legitimate purposes is far sensitive sphere that has to be prevented to be ill-gathered.

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

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

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

Warm regards,



Victor Borloz-Madrigal

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

1. Report of the IE SOGI to the Human Rights Council ([A/HRC/38/43](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/132/12/PDF/G1813212.pdf?OpenElement)), 2018. [↑](#footnote-ref-1)
2. Amendment to Labor Code of Georgia, June 12, 2013. [↑](#footnote-ref-2)
3. Asatiani et.al v. The Minister of Labour, Health and Social Protection, decision #2/1/536 of the Constitutional Court. [↑](#footnote-ref-3)
4. Law of Georgia on Elimination of all Forms of Discrimination, article 1. [↑](#footnote-ref-4)
5. Human Rights Action Plan for 2014-15, Chapter 14 available online at: <https://bit.ly/2J89M1v>; Human Rights Action Plan for 2016-17, Chapter 13,2. available online at: <http://goo.gl/GB7hUn> [accessed: 22.05.2018]; [↑](#footnote-ref-5)
6. Order of Minister of Georgia, available online at: <https://bit.ly/2s7PEmE> [accessed 21.05.2018] [↑](#footnote-ref-6)
7. CM/REC(2010)5 – monitoring of implementation 2013-2018 (Georgia), available online at: <http://women.ge/en/publications/204/> pg.52. [↑](#footnote-ref-7)
8. The Law of Georgia on “Personal Data Protection,” article 6 (2,d) [↑](#footnote-ref-8)
9. The Criminal Code of Georgia, Article 157. [↑](#footnote-ref-9)
10. for example: Policy paper, Legal Situation of LGBTI People in Georgia, WISG, 2015. [↑](#footnote-ref-10)