



THE PERMANENT MISSION  
OF THE  
UNITED STATES OF AMERICA  
TO THE  
UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS  
IN GENEVA

January 15, 2022

Victor Madrigal-Borloz  
Independent Expert on Protection Against Violence  
and Discrimination based on Sexual Orientation  
and Gender Identity  
Geneva, Switzerland

Dear Independent Expert Madrigal-Borloz:

Please find enclosed the U.S. response to the call for input you sent on January 7, 2022, regarding your upcoming report on the realization of the right of persons affected by violence and discrimination based on sexual orientation and gender identity to the enjoyment of the highest attainable standard of physical and mental health, including the context of sustainable development.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel A. Kronenfeld".

Daniel A. Kronenfeld  
Deputy Permanent Representative  
Human Rights

## **U.S. Response to the UN Independent Expert (IE) on protection against violence and discrimination based on sexual orientation and gender identity (SOGI) call for input on SDG3**

We are grateful for the work you do across the globe to promote respect for human rights, and we appreciate the opportunity to provide the information below on U.S. policy and initiatives. Notably, this response does not comprehensively cover all policy and programmatic efforts of the U.S. government on issues relevant to your inquiry or report. Likewise, this response will not detail the U.S. government's position with respect to economic, social, and cultural rights generally, including the right to the enjoyment of the highest attainable standard of physical and mental health, which is well-known. Rather, it provides select examples and updates that may be of interest to the Independent Expert.

Information on research undertaken to understand the health care needs of persons affected by violence and discrimination based on sexual orientation and gender identity:

- The National Institutes of Health (NIH) is an operating division of the Department of Health and Human Services (HHS). The mission of the NIH is to seek fundamental knowledge about the nature and behavior of living systems and the application of that knowledge to enhance health, lengthen life, and reduce illness and disability. The NIH is composed of different components called Institutes, Centers, and Offices (ICOs). Each has its own specific research agenda and most fund sexual and gender minority (SGM) health-related research. The NIH Sexual & Gender Minority Research Office (SGMRO) coordinates SGM-related health research across the agency. The SGM Research Coordinating Committee (RCC), coordinated by the SGMRO, provides an NIH-wide forum for discussing the diverse health research issues of SGM communities and serves as a catalyst for developing additional research and research training initiatives in these areas across the agency. The committee interfaces with other federal agencies on SGM-related issues. Both domestic and international research-related issues are considered by the RCC. In addition, the SGMRO publishes a [Portfolio Analysis](#) and [Annual Report](#) each year, highlighting both the SGM funding portfolio and additional related activities at NIH, both domestic and international. The SGMRO spearheaded development of the [NIH FY 2021-2025 Strategic Plan to Advance Research on the Health of Sexual and Gender Minorities](#). Implementation and tracking of this agency-wide plan is being led by the SGMRO.
- In 2021, the NIH SGMRO held a multi-phase [Scientific Workshop on Violence & Related Health Outcomes in Sexual & Gender Minority Communities](#). Co-sponsored by 7 institutes, centers, and office, cross-cutting themes for consideration included an intersectional approach, a life course perspective, and systems influences on violence. Experts and relevant stakeholders were invited to discuss the current landscape of violence research across the four domains of interest: family origin abuse, peer/friend victimization, romantic/sexual partner violence, and community violence. Discussions included an overview of each subset of violence research, relevant terminology, impacts on SGM populations, and institutional contexts. The overall goal of the workshop was to identify research opportunities for five key areas to understand violence against SGM individuals: demographics and epidemiology; risk factors and pathways; preventive interventions; treatment-focused Interventions; and ethics and logistical challenges.
- The U.S. Agency for International Development (USAID) has supported a variety of global research reports related to LGBTQI+ inclusion, in addition to multiple regional- and country-level research reports that help document local priorities and needs around the globe. The [Global](#)

[Barometer of Gay Rights and the Global Barometer of Transgender Rights](#) measure and rank state and societal persecution and protection of LGBT people in 203 countries across time. Produced through a partnership with Franklin & Marshall College, the barometers include the items, “Health care non-discrimination includes sexual orientation” and “Health Care non-discrimination includes gender identity.”

Information on data collection and measurement:

- There are significant challenges that persist in sexual orientation and gender identity (SOGI) data collection. Not only is data for sexual and gender minority populations limited in health research across a variety of health conditions and disease areas and/or simply not collected, but there is also a lack of standardization of SOGI measures utilized in the research that does include these subpopulations. Standardization of SOGI measures is necessary to better pool data and accurately assess health disparities among SGMs. The Director of the SGMRO is deeply involved in U.S.-government-wide discussions about the need for SOGI data collection and co-chairs the SOGI Measurement Working Group of the Federal Committee on Statistical Methodology. SGMRO and 18 NIH ICOs are supporting a NASEM consensus study on [Measuring Sex, Gender Identity, and Sexual Orientation](#) that will develop recommendations and guiding principles for collecting non-binary sex, sexual orientation, and gender identity information in research and non-research surveys, medical, and administrative records. This report will be vital in expanding standardized data collection efforts and will have significant implications for advancing the field of SGM health research. The report is scheduled for completion in early 2022.
- Challenges remain in our ability to appropriately capture SGM populations in NIH human subjects and clinical trials participation because the information is not collected in NIHs reporting for planned and cumulative inclusion enrollment data. Enrollment data is collected on race, ethnicity, age, and gender. The gender field only asks for binary sex (male, female) and there is nowhere to capture sexual orientation of research participants. Therefore, accurately reporting on inclusion of SGM communities in research cannot be accomplished in most NIH studies.
- Clinical trial access for SGM individuals may be hindered or restricted in foreign countries where individuals who do not identify as cisgender or heterosexual are not accepted, and these identities are punishable by law and society.
- Many challenges to health research in SGM populations exist at the societal, community, interpersonal, and individual levels globally. Discriminatory policies and laws, as well as issues like stigma, affect equitable access to research and care. Limited existing research and surveillance data related to health inequities among SGM populations worldwide are a barrier to realized progress in improving health and wellbeing.

Information on U.S. government domestic policy efforts to improve health care for people affected by violence and discrimination based on sexual orientation and gender identity:

- On January 20, 2021, President Biden issued [Executive Order \(EO\) 13988](#), *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*. The EO sets forth the Administration’s policy “to prevent and combat discrimination on the basis of gender identity or sexual orientation, and to fully enforce Title VII and other laws that prohibit

discrimination on the basis of gender identity or sexual orientation.” The EO directs agencies to apply the U.S. Supreme Court’s reasoning in *Bostock v. Clayton County*, 590 U.S. \_\_\_, 140 S.Ct. 1731, 207 L.Ed.2d 218 (2020), that the sex discrimination prohibition in Title VII of the Civil Rights Act of 1964 covers discrimination on the basis of gender identity and sexual orientation, to other laws that prohibit sex discrimination and their respective implementing regulations.

- On May 10, 2021, the U.S. Department of Health and Human Services (HHS) announced that the HHS Office for Civil Rights will interpret and enforce Section 1557 of the Affordable Care Act’s and Title IX of the Education Amendments of 1972’s prohibitions on discrimination on the basis of sex to include: (1) discrimination on the basis of sexual orientation; and (2) discrimination on the basis of gender identity. Section 1557 prohibits discrimination on the basis of sex, race, color, national origin, age or disability under covered health programs and activities; and Title IX prohibits sex discrimination in federally funded education programs and activities. ([HHS Rule: Notification of Interpretation and Enforcement of Section 1557 of the Affordable Care Act and Title IX of the Education Amendments of 1972.](#))
- [Improving the health, safety, and well-being of LGBT people](#) is also an objective of [Healthy People 2030](#), a framework that identifies public health priorities to help individuals, organizations, and communities across the United States improve health and well-being.
- Agencies across HHS are working with health care providers, grantees, employees and others to improve [cultural competency and training](#) with respect to serving and working with LGBTQ+ populations.
- Additionally, HHS has dedicated a specific website to the topic of [Health & Well-being for Lesbian, Gay, Bisexual and Transgender Americans](#), as a reflection of its importance.
- President Biden knows that LGBTQ+ individuals and families have been disproportionately burdened by the COVID-19 health crisis and economic crisis. Even before COVID-19, LGBTQ+ Americans were more likely to be uninsured and unemployed, and were more likely to experience poverty, have a pre-existing condition, and experience food insecurity. These barriers have posed unique risks to the physical and financial health of LGBTQ+ people during this crisis. For this reason, the American Rescue Plan (ARP), signed into law by the President in March 2021, makes significant investments in an equitable recovery, such as advancing health equity by improving access to and affordability of health coverage through the Health Insurance Marketplace and expanding mental health resources.

Information on USAID efforts to improve access to health care for persons affected by violence and discrimination based on sexual orientation and gender identity:

- As announced in March 2016, USAID updated its internal guidance on development policy (Automated Directives System (ADS) Chapter 200) regarding “Promoting Nondiscrimination and Inclusive Development in USAID-Funded Programs.” This is aligned with USAID’s commitment to inclusive development. USAID’s emphasis on inclusive development focuses on expanding rights and opportunities for women and girls; marginalized ethnic and religious populations; indigenous peoples; internally displaced persons; people with disabilities; youth and the elderly; lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals; and other socially marginalized individuals or people unique to the country or regional context.

- These [nondiscrimination requirements](#) are a best practice and reflect USAID’s principles. The exact text is as follows: in designing and administering USAID programs, pursuant to existing USAID policy, Bureaus/Missions and Operating Units must not discriminate against any beneficiary or potential beneficiary, such as, but not limited to, by withholding, adversely impacting, or denying equitable access to benefits or services on the basis of any non-merit factor. A non-merit factor includes race, color, religion, sex (including gender identity and pregnancy), national origin, disability, age, sexual orientation, genetic information, marital status, parental status, political affiliation, or veteran’s status. Nothing in this requirement is intended to limit the ability of a program to target assistance to certain populations as defined in the project design.
- Globally, via the President’s Emergency Plan for AIDS Relief (PEPFAR) funding, USAID supports access to HIV prevention and treatment services in over 45 countries. In 2021 alone, USAID-supported programs—working in partnership with LGBTQI+ community organizations, mainstream public health institutions, and Ministries of Health—reached over 669,000 LGBTQI+ community members with health services; initiated over 54,000 on pre-exposure prophylaxis (PrEP); and retained over 98,000 LGBTQI+ individuals on life-saving ARV treatment. Beyond HIV, these programs address structural barriers to accessing health services, mitigating stigma, discriminations and violence within health facilities, families, communities, other social services, law enforcement, and societies in general.

Information on USAID efforts to ensure the inclusion of persons affected by violence and discrimination based on sexual orientation and gender identity in decision making processes in the context of international development:

- When working to advance the human rights of LGBTQI+ people, USAID abides by two foundational principles: “do no harm” and “do nothing about them without them.” “Do no harm” means that we take measures to ensure that our efforts do not put LGBTQI+ individuals or groups at increased risk of harm or raise their public profile in a way that could lead to backlash. “Do nothing about them without them” means that we thoughtfully consult with LGBTQI+ individuals and groups before and throughout any engagement designed to support them and their priorities.

Information on USAID efforts to ensure the specific needs of persons affected by violence and discrimination based on sexual orientation and gender identity are included in U.S.-government supported training and education of health care professionals internationally:

- USAID implements through [PEPFAR’s Core Principles](#) including:
  - Diversity, Equity, Inclusion, and Accessibility (DEIA): Uphold, promote, and advance DEIA principles and practices across all PEPFAR programs, business practices, and workforce. Support zero tolerance for exploitation or discrimination based on sexual orientation, race, religion, disability, age, or gender.
  - Gender-Responsive: Work to ensure PEPFAR programs support gender equity and equality, and are gender-affirming, including by preventing and combating discrimination on the basis of gender identity or sexual orientation.

- HIV-related stigma, discrimination, and violence reduce access to, and use of, essential health services, and undermine efforts toward effective responses to HIV/AIDS. Stigma, discrimination, and violence are frequently targeted at people living with HIV, and key and other vulnerable populations including LGBTQI+. Any post-violence care provided by PEPFAR implementing partners must take into account WHO guidelines and required sensitivity training for all PEPFAR sites which aim to reduce stigma and discrimination and provide support those who experience violence. More information on PEPFAR's approach to gender equality and GBV can be found in the Gender Based Violence and Violence Against Children section of the [Technical Considerations of COP22 Guidance](#) Section 6.6.2 and 6.6.2.1.
- The [Gender & Sexual Diversity Training](#) was developed by the USAID- and PEPFAR-funded Health Policy Project, in coordination with a U.S. government interagency team made up of members of the PEPFAR Key Populations Working Group and the PEPFAR Gender Technical Working Group. This curriculum was developed specifically for PEPFAR staff and their country-level implementing partners to help country programs understand and address the needs of gender and sexual minority communities in the context of HIV programming, U.S. workplace policy on non-discrimination, and through a human rights lens. While the focus of this training curriculum is HIV programming, and it is centered on U.S. government-funded programs, much of the material could be adapted and applied to a variety of country-specific and technical program areas.
  - Training teams included U.S. government staff, Health Policy Project staff, and local gender and sexual minorities and their allies as trainers and panelists. The training aims to:
    - Educate participants on terminology, U.S. government policies, and workplace expectations related to gender and sexual diversity;
    - Sensitize participants to the needs of gender and sexual minorities, including as beneficiaries of HIV and other health programs;
    - Provide examples and recommendations for meaningfully engaging gender and sexual minority beneficiaries when developing and implementing programs; and
    - Connect participants with local/regional resources on gender and sexual diversity issues.