Victor Madrigal-Borloz

Independent Expert on Sexual Orientation and Gender Identity

Office of the UN High Commissioner on Human Rights

31 January 2022

**Re: Call for Inputs to the 2022 Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity**

Thank you for your call for inputs on the right to the enjoyment of the highest attainable standard of physical and mental health, in relation to SDG3, of persons affected by violence and discrimination based on sexual orientation and gender identity. In this letter, we address the questions in your call with respect to the Republic of South Africa. These responses have been compiled by the Centre for Human Rights, University of Pretoria, South Africa (CHR). The CHR team includes Professor Frans Viljoen, Dr Ayodele Sogunro, and Sohela Surajpal.

**Responses to Questionnaire**

## **Research: understanding the health care needs of LGTBI and GNC people**

## Does the State (or other stakeholders) gather data, including data disaggregated by sexual orientation and/or gender identity, on:

## access to and/or delivery of health services

## the number of new HIV infections per 1000 uninfected population?

## The suicide mortality rate?

## Coverage of treatment interventions for substance use disorders?

## Harmful use of alcohol?

## Access to sexual and reproductive health care?

## Coverage of essential health services?

## What steps have been taken to research and understand the health care needs of LGTBI and GNC people of all ages at the national level?

## Is this data analyzed through an intersectional lens, such as by disaggregating data by sexual orientation and/or gender identity, as well as intersecting identities including social or geographic origin, ethnicity, socio-economic status, nationality or migration status, minority, disability, and indigenous or other identity or status?

**Response**

The Department of Statistics collects data on healthcare provision in South Africa, including the type of healthcare facilities consulted by households and medical aid coverage.[[1]](#footnote-1) This information is not disaggregated by sexual orientation or gender. Private research – though limited in scope - has revealed that LGBTI+ persons experience difficulty accessing quality healthcare.

UNAIDS collects information on the total number of persons living with HIV/AIDS in South Africa, rate of new infections, mother-to-child transmission and access to treatment.[[2]](#footnote-2) UNAIDS also collects data on HIV/AIDS prevalence amongst men who have sex with men (MSM). MSM have an HIV prevalence rate of 18.1% and an ARV coverage rate of 69% in South Africa. Private research suggests that HIV prevalence amongst women who have sex with women (WSW) is also high, at 10%.[[3]](#footnote-3)

Suicide mortality rates are available through the World Health Organisation and the Department of Statistics. Unfortunately, while this data is disaggregated by sex, race, age and occupation, there is no reference to sexual orientation or gender identity.

The Department of Social Development collates data from various sources on substance abuse and alcohol consumption in its National Drug Master Plan 2019-2024 and highlights that MSM in particular have high rates of alcohol consumption and drug use, sometimes leading to ‘high-risk sexual practices’.[[4]](#footnote-4)

Data on the health needs of LGBTI+ people is inadequate, largely a result of the fact that data on sexual orientation is not collected during the large-scale, population-based surveys and censuses conducted by the Department of Health or Department of Statistics.

In general, data is analysed through the lens of race, sex and socio-economic status. Little research has been conducted to consider these factors in conjunction with sexual orientation and gender identity.

## **Inclusion: LGTBI and GNC people in the decision-making process**

## What measures have been put in place to consult with and include persons affected by violence and discrimination based on sexual orientation and gender identity in law and policy making in relation to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and in relation to realising the SDGs?

## To what extent are persons affected by violence and discrimination based on sexual orientation and gender identity included in policies and practice around sexual and reproductive health care?

## What support or technical assistance is needed to ensure that the health care needs of persons affected by violence and discrimination based on sexual orientation and gender identity people are comprehensively addressed and included in relevant laws, policies, and practices?

## What are the main barriers, in law or practice, for persons affected by violence and discrimination based on sexual orientation and gender identity to receive care that meets their physical and mental health needs and rights?

**Response**

The legislative and policy-making process makes provision for public participation. The Hate Crimes Bill, which would impose criminal sanctions for hate speech and hate crimes committed on the grounds of, among other things, sexual orientation and gender identity, has undergone two rounds of public comment, open to all interested parties. The Commission for Gender Equality (CGE), established by the Constitution to advance gender equality, recently released a call for submissions on weaknesses in the legislative and policy framework regulating LGBTI+ rights. The National Strategic Plan for HIV, TB and STIs is compiled with input from civil society, including LGBTI+ organisations. And the National Strategic Plan on Gender-Based Violence and Femicide 2020-2030 was created after consultation with numerous actors, including the LGBTI+ community.[[5]](#footnote-5)

Attempts have been made to address LGBTI+ people’s sexual and reproductive healthcare needs. The National Strategic Plan for HIV, TB and STIs 2017-2022,[[6]](#footnote-6) recognises LGBTI+ people as a vulnerable population and sets out interventions, including peer-led outreach, economic empowerment programmes, and increased legal and counselling support. South Africa has also adopted a specialised South African National LGBTI HIV Plan, 2017-2022,[[7]](#footnote-7) which endorses greater collection of data, peer-to-peer support groups, initiatives to change the attitudes of healthcare workers, the provision of PrEP to MSM and Universal Test and Treat for all LGBTI+ persons. Unfortunately, LGBTI+ people still experience discrimination and ignorance when attempting to access treatment or information relating to HIV/AIDS.[[8]](#footnote-8) The Department of Justice has formed a National Task Team on Gender and Sexual Orientation-Based Violence (NTT). However, the NTT’s interventions in the field of violence against LGBTI+ people focuses primarily on criminal justice responses.

In order to create effective policy, more data is necessary. Currently, government documents cite limited private research as the basis of policy decisions. Technical assistance could facilitate broad and ethical data collection. Support may also be required to ensure that LGBTI+ persons are aware of and can partake in existing public participation process.

## **Access: ensuring that LGTBI and GNC people have access to health care**

## What measures have been taken to ensure access to affordable non-discriminatory health care services for persons affected by violence and discrimination based on sexual orientation and gender identity?

## What policies or programmes exist to address the mental health care needs of persons affected by violence and discrimination based on sexual orientation and gender identity, specifically around depression and anxiety, suicidal ideation, and substance abuse?

## What policies or programmes exist to assist the health care needs of persons affected by violence and discrimination based on sexual orientation and gender identity following the experience of assault or gender-based violence?

## Have adequate human and financial resources been allocated to implement those policies and/or programmes?

**Response**

LGBTI+ people can access affordable general services as well as LGBTI+ specific healthcare at public health facilities, including clinics and hospitals. However, like all South Africans who rely on these facilities, LGBTI+ people suffer from long waiting times, and under-resourced facilities. Discrimination and erasure exacerbate these challenges. Research has revealed that educational resources, such as pamphlets at clinics, do not address the needs of LGBTI+ people. Many LGBTI+ people resort to NGOs or the private sector (when possible).[[9]](#footnote-9) Transgender persons who cannot afford the prohibitively expensive private healthcare system may access gender affirming treatment at public hospitals at low or no cost. However, resources are limited and waiting periods are excessive.[[10]](#footnote-10) Lack of access leads some to resort to dangerous practices, such as using cross-gender hormones without supervision and self-mutilation.[[11]](#footnote-11) Access to reproductive health services and contraceptives is also limited, often due to health professionals’ discriminatory attitudes and cisgender-focused facilities.

The Alteration of Sex Description and Sex Status Act[[12]](#footnote-12) allows ‘any person whose sexual characteristics have been altered by surgical or medical treatment or by evolvement through natural development resulting in gender reassignment, or any person who is intersexed’ to apply to change their official sex description. The application requires such a person to present a birth certificate and a report from a medical professional detailing the results of a medical examination of their sexual characteristics or the surgical treatment they have undergone. These requirements may present an obstacle to those reliant on the overburdened public health system, minors, undocumented immigrants, refugees and asylum seekers.

The National Drug Master Plan 2019-2024 tasks certain government bodies with coordinating relevant projects that will provide alternative development to key populations (including LGBTI+ persons), though it does not clarify the nature of these programmes.

The National Strategic Plan on Gender-Based Violence and Femicide prioritises LGBTI+ persons, outlining policy interventions including: strengthening the criminal justice system’s capacity, legislative reform, changing behaviour and social norms, strengthening existing response and support services, addressing economic vulnerability and collecting better information.

Human Rights Watch has noted that despite the promises of the Plan, the state has failed to fund shelters and other crucial services for victims of GBV.[[13]](#footnote-13) Public health receives generous funding from the state, but corruption, immense demand and widespread disease mean that resources remain sparse.

## **Training and Education: health care professionals and educational institutions**

## Are sexual orientation and gender identity, and the specific health needs of persons affected by violence and discrimination based on sexual orientation and gender identity, included in training and education of health care professionals?

## What measures are being taken to provide age-appropriate comprehensive sexuality education inclusive of sexual and gender diversity in educational institutions?

## Are evidence-based and up-to-date guidelines that include SOGI issues available? How are they used to influence health related decisions on policy, programming, services including diagnostic manuals, and practices within the health care institutions?

**Response**

In 2013, the South African Department of Health, South African National AIDS Council and several advocacy organisations developed the Healthcare Provision for MSM, Sex Workers, and PWUD: An Introductory Manual for Healthcare Workers in South Africa. The Manual discusses sexuality, legal context, prejudice, and interventions to foster an enabling healthcare environment. Utilising the Manual, the Department conducted a one-day training programme for 405 nominated healthcare workers. Independent evaluation of the programme revealed that it increased awareness, empathy, capability and comfort among healthcare workers providing services to MSM, sex workers and PWUD.[[14]](#footnote-14) However, the programme occurred in 2013 among a limited number of healthcare professionals and ought to be rolled out on a grander scale.

Comprehensive Sexuality Education has been a part of the South African school curriculum since 2000 and covers a range of topics including consent, safe sex, sexuality and gender identity. The Department of Education has also consulted with a team of approximately 100 experts to develop scripted lesson plans, comprehensive textbooks, and teacher training programmes.[[15]](#footnote-15) However, researchers report that, in practice, teachers approach CSE in a regressive manner.[[16]](#footnote-16)

The Healthcare Provision for MSM, Sex Workers, and PWUD and National LGBTI HIV Plan are both useful guidelines on LGBTI+ health related issues. The Southern African HIV Clinicians Society have released a gender affirming healthcare guideline with the input of members of the LGBTI+ community and medical professionals.[[17]](#footnote-17) While up to date and evidence-based, the impact of these guidelines has not been evaluated.

## **Sustainable Development Goals**

## Where the State measures its progress against SDG3, does it make reference to the health outcomes and needs of persons affected by violence and discrimination based on sexual orientation and gender identity?

## Does the State measure progress against any of the following SDG3 indicators for persons affected by violence and discrimination based on sexual orientation and gender identity? If so, please comment on whether health outcomes are improving or declining:

* + - Indicator 3.3.1: Number of new HIV infections per 1,000 uninfected population, by sex, age and key populations;
    - Indicator 3.4.2: Suicide mortality rate;
    - Indicator 3.5.1: Coverage of treatment interventions (pharmacological, psychosocial and rehabilitation and aftercare services) for substance use disorders;
    - Indicator 3.5.2: Harmful use of alcohol, defined according to the national context as alcohol per capita consumption (aged 15 years and older) within a calendar year in litres of pure alcohol
    - Indicator 3.7.1: Proportion of women of reproductive age (aged 15-49 years) who have their need for family planning satisfied with modern methods, including lesbian and bisexual women, and trans persons;
    - Indicator 3.7.2: Adolescent birth rate (aged 10-14 years; aged 15-19 years) per 1,000 women and trans men in that age group, particularly among LBT and GNC young individuals;
    - Indicator 3.8.1: Coverage of essential health services (defined as the average coverage of essential services based on tracer interventions that include reproductive, maternal, newborn and child health, infectious diseases, non-communicable diseases and service capacity and access, among the general and the most disadvantaged population); and
    - Indicator 3.8.2: Proportion of population with large household expenditures on health as a share of total household expenditure or income.

**Response**

The Department of Statistics records the state’s progress in achieving the SDGs in country reports, the latest of which is the Sustainable Development Goals: Country Report 2019.[[18]](#footnote-18) It mentions the LGBTI+ community only in relation to the National Strategic Plan for HIV, TB and STIs and does not measure progress against any of the mentioned SDG3 indicators for persons affected by violence and discrimination based on sexual orientation and gender identity.

For more information, please do not hesitate to contact us:

Prof Frans Viljoen

Director

Centre for Human Rights

Frans.Viljoen@up.ac.za

1. Statistics South Africa, ‘General Household Survey’ (2020) at 23-4. Available at: <http://www.statssa.gov.za/publications/P0318/P03182020.pdf>. [↑](#footnote-ref-1)
2. Available at: <https://aidsinfo.unaids.org/>. [↑](#footnote-ref-2)
3. TGM Sandfort et al, ‘Forced sexual experiences as risk factor for self-reported HIV infection among Southern African lesbian and bisexual women’ (2013) *PLoS One*. Available at: <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0053552>. [↑](#footnote-ref-3)
4. Available at: <https://www.gov.za/sites/default/files/gcis_document/202006/drug-master-plan.pdf>. [↑](#footnote-ref-4)
5. Available at: <https://www.justice.gov.za/vg/gbv/NSP-GBVF-FINAL-DOC-04-05.pdf>. [↑](#footnote-ref-5)
6. Available at: <https://sanac.org.za/wp-content/uploads/2017/06/NSP_FullDocument_FINAL-1.pdf>. [↑](#footnote-ref-6)
7. Available at: <https://sanac.org.za/wp-content/uploads/2017/06/LGBTI-HIV-Plan-Final.pdf>. [↑](#footnote-ref-7)
8. A Muller ‘Scrambling for access: availability, accessibility, acceptability and quality of healthcare for lesbian, gay, bisexual, and transgender people in South Africa’ (2017) 17 *BMC International Health and Human Rights*. Available at: <https://bmcinthealthhumrights.biomedcentral.com/articles/10.1186/s12914-017-0124-4>. [↑](#footnote-ref-8)
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10. T Jeranji ‘In-depth: The incredibly long wait for gender-affirming surgery for those who can’t pay’ Available at: <https://www.spotlightnsp.co.za/2021/09/14/in-depth-the-incredibly-long-wait-for-gender-affirming-surgery-for-those-who-cant-pay/>. [↑](#footnote-ref-10)
11. ZPB Luvuno et al, ‘Transgender population’s experiences with regard to accessing reproductive health care in Kwazulu-Natal, South Africa: A qualitative study’ (2019) 11(1) *African Journal of Primary Health Care Family Medicine*. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6676963/#CIT0020>. [↑](#footnote-ref-11)
12. Available at: <https://www.gov.za/sites/default/files/gcis_document/201409/a49-03.pdf>. [↑](#footnote-ref-12)
13. Human Rights Watch, ‘South Africa: Broken Promises to Aid Gender-Based Violence Survivors’ 24 November 2021. Available at: <https://www.hrw.org/news/2021/11/24/south-africa-broken-promises-aid-gender-based-violence-survivors>. [↑](#footnote-ref-13)
14. # Z Duby et al, ‘‘”We must treat them like all the other people”: Evaluating the Integrated Key Populations Sensitivity Training Programme for Healthcare Workers in South Africa’ (2019) 20(1) *South African Journal of HIV Medicine*. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6556945/>.

    [↑](#footnote-ref-14)
15. For more information see: <https://www.education.gov.za/Home/ComprehensiveSexualityEducation.aspx>. [↑](#footnote-ref-15)
16. J Glover and C Macleod ‘Rolling out comprehensive sexuality education in South Africa: an overview of research conducted on Life Orientation sexuality education’ (2016). Available at: <https://www.ru.ac.za/media/rhodesuniversity/content/criticalstudiesinsexualitiesandreproduction/documents/Life_Orientation_Policy_Brief_Final.pdf>. [↑](#footnote-ref-16)
17. Available at: <https://sahivsoc.org/Files/SAHCS%20GAHC%20guidelines.pdf>. [↑](#footnote-ref-17)
18. Available here: <http://www.statssa.gov.za/MDG/SDGs_Country_Report_2019_South_Africa.pdf>. [↑](#footnote-ref-18)