



**Statement by Tlaleng Mofokeng**

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highest attainable standard of physical and mental health**

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economic, social and cultural rights, including the right to development

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Ms. President,  
Distinguished Delegates,  
Colleagues,

It is a great honour to make my **second presentation to the Human Rights Council** at a time when the globe is eager for life in a post COVID-19 world, one that resembles some form of normalcy and comfort for some, on the one hand, and another, promising continued marginalisation and deep inequality on the other hand.

As you remember, I have taken up functions amidst the COVID-19 pandemic and I have tried to find ways to collaborate with different stakeholders despite the challenges we were experiencing worldwide. I would like to continue expressing my availability to Member States to provide technical cooperation and assistance on issues related to my mandate. In this regard, I have sent requests to visit **Barbados, Cuba and the Netherlands**, among others, to gather information *in situ*. I thank the Government of the Netherlands for accepting a visit by my mandate and look forward to agreeing on the dates for such visit. I also hope that the two other visits will materialize to be able to share my findings next time I report to you, in 2023.

Ending all forms of violence against the person is **a global commitment of States under the 2030 Agenda for Sustainable Development**. Today, I bring to your attention a report that examines **many different forms of violence and its effects on the right to health**. They range from interpersonal, societal and structural violence, which are often rooted in **intersectional forms of discrimination**, not only on the bases of age, race, class, ethnicity, sex, gender, sexual orientation, gender identity, sex characteristics and disability, but also in situations of vulnerability such as poverty, health or migration status, affecting people experiencing homelessness and those who use drugs, those living in residential institutions and in conflict and post-conflict situations. Due to the indivisibility and

interdependence of civil, political, economic, social and cultural rights, when a human right violation occurs, it can enable violations of other human rights. In this report, I have **clarified legal obligations** that arise under the **right to health framework in addressing violence** and was intentional in seeking and reporting on examples of responses to violence, with a focus on **sharing good practices**. I wish to express my deep appreciation to all stakeholders who contributed to the report, following my call for written submissions.

### **Distinguished delegates,**

Under international human rights law, the right to health extends to effective protection from all forms of violence, torture and discrimination against all persons and **from all gender-based expressions of violence**. It also requires preventive, promotional and remedial action to shield all individuals from the harmful practices and norms and gender-based violence that deny them their enjoyment of their full sexual and reproductive health rights.

As a **practicing clinician**, I have first-hand experience on the medical, social, medico-legal and mental health needs of survivors and victims of violence, and agree with the analysis of my predecessors in that violence needs to be addressed in a **comprehensive and proactive way**, not only as a cause of serious violations of human rights, but also as a **consequence of a lack of political will to effectively invest in human rights**, including the right to health, as a priority.

I wish to underscore the **criticality of adopting a non-binary approach** to gender and gender-based violence under the right to health. In this regard, I recognize the need to **expand the scope of the definition** of gender-based violence to include violence based on sexuality, sexual orientation, gender identity and sex characteristics, thereby **including all cisgender, queer, intersex and transgender women and feminine presenting people**. The binary conceptualization of gender as strictly being heteronormative creates an assumption that shapes how LGBTIQ+ persons navigate social, political,

economic and legal structures, including those directly relating to gender-based violence and is one of the root causes of the particularly brutal forms of gender-based violence, hate crimes and hate speech they face. These are targeted and rooted in the desire to punish people whose identities, expressions and bodies do not conform to the heteronormative, man/woman binary system. This type of violence manifests in acts that are often committed or condoned by State actors. **Violence against LGBTIQ+ persons is institutionalized by prejudiced systems grounded in laws and policies that impede or forbid the exercise of one's own personhood.**

My report focuses on the **multiple forms of violence** providing an analysis of the different types of violence that one can experience and in different contexts, including violence that was intensified by coronavirus (COVID-19) lockdowns, the brutality by State agents, including police, in democracies and dictatorships alike and discrimination against marginalized groups arising to levels of violence.

#### **Distinguished delegates,**

Gender-based violence applies to girls, cisgender and trans women and is one of the **most prevalent human rights violations** worldwide. I am concerned that global data and disaggregated data on gender-based violence against **women and girls with disabilities** and on harmful practices – including female and intersex genital mutilation and forced marriage – and violence in obstetric care is limited. Gender-based violence against women and girls, including against those with disabilities **can vastly impact their health**, leading to injuries, pregnancies, induced abortion, gynaecological problems, obstetric complications, anxiety and depressive disorders and suicide, among other concerns. I wish to recall that, under international human rights law, **States are also responsible** for gender-based violence resulting from actions or omissions by State and non-State actors.

I also wish to underscore that **violations of women's sexual and reproductive health rights**, such as forced sterilizations, forced pregnancy, criminalization of abortion, denial or delay of safe abortion and post-abortion care, forced continuation of pregnancy **are forms of gender-based violence** that may amount to torture or cruel, inhuman or degrading treatment.

**Distinguished delegates,**

Childhood is recognized as a protected period of time and children must be **allowed to grow, learn, play, develop and flourish with dignity**. During childhood, children's personal autonomy is developing, and hence their independence and participation must be respected. The COVID-19 pandemic has impacted violence against children and led to an increase in calls to helplines about child abuse. **Increased online sexual exploitation and cyberbullying** have also been reported.

In areas of conflict, **conflict-related sexual violence** is used as a tactic of war, torture and terrorism, with violent actors weaponizing it to achieve a myriad of politically, socially and/or economically motivated ends. The Security Council has placed this form of violence prominently on its agenda, and demanded action by peace, security, political, human rights, humanitarian and development actors. There is also a lack of information about the availability of sexual and reproductive health. States embroiled in conflict often have an insufficient number of qualified, trained health-care workers available to assist survivors of sexual violence.

**Distinguished delegates,**

I welcome the growing **attention to human rights** in situations of structural violence. A strictly interpersonal or individual conception of violence falls short in its exclusive focus on one side of the distinction drawn by Galtung between **"being killed" – direct violence – and being allowed to die – structural violence**. The violence inherent in social structures of racism, ableism, patriarchy and classism and their everyday operation is evident to anyone

subjected to them. Structural violence is a subtle and quite often an **invisible form of violence normalized through laws**, policies and the institutionalization of practices. It creates unjust barriers that are systemically designed to marginalize individuals across the race, class and gender divide, thereby limiting the realization of the right to health for many populations.

**Distinguished delegates,**

Globally, **police brutality and impunity** contribute to non-reporting of sexual and gender-based violence. Those issues arise particularly in contexts where gender-based violence is condoned, where abortion, same-sex relationships, transgender status or sex work are criminalized. **Criminalization enables abuse and exploitation.**

In addition, the legacy of **discriminatory spatial planning and land dispossession** persist today, and often, people have to commute over multiple days for medical services, across military zones, experiencing multiple rights violations. The resulting **inequality is violence, yet it is positioned as circumstantial.**

I am also concerned that **attacks on medical facilities and personnel** in protracted and recent conflicts continues. I want to underscore that the right to health includes the **right to healthy occupational conditions.** It is crucial that health-care workers' physical and mental health remain supported.

In the context of COVID-19, I urge States to ensure that any and all processes and negotiations on a new international instrument on pandemic preparedness and recovery are accountable, transparent, include civil society participation and in particular, are grounded in human rights. States must ensure that **business respect human rights.**

**Distinguished delegates,**

After sharing my concerns, allow me to share some good practices with you. Among the submissions received, States reported legal frameworks in place and provided insight into specific budget lines. Some shared national statistics, as well as insights into multisectoral responses and that often include coordinated referral mechanisms and specialised protocols for survivors of sexual violence.

A **holistic response** to violence must address the ways in which it manifests in different contexts. It is about addressing violence against the person, mindful of situations of vulnerabilities, discrimination and exclusion linked to belonging to specific groups, categories or situations, and avoiding category-based responses that forget intragroup differences and intersections. A substantive equality approach when responding to violence requires being knowledgeable and addressing common root causes of violence entrenched in **patriarchy, racism, inequalities and binary approaches to gender**. Laws and practices that enable violence must be repealed and denounced. I want to underscore that a **non-binary approach to gender and gender-based violence is well-rooted in international human rights law**.

I am looking forward to continuing cooperating with you in these important aspects to ensure that billions of people throughout the world realize the full enjoyment of the right to the highest attainable standard of physical and mental health.

Thank you.

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