**Open Consultation on Legal Recognition of Gender Identity and Destigmatization through Depathologization**

**Concept Note**

# 1. Background

The United Nations (UN) Human Rights Council established the mandate of the (UN) Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (UN IE SOGI) during its 32nd session in 2016. The Human Rights Council requested the Independent Expert in its resolution 32/2, inter alia, to:

1. Assess the implementation of existing international human rights instruments with regard to ways to overcome violence and discrimination against persons on the basis of their sexual orientation or gender identity, while identifying both best practices and gaps;
2. Raise awareness of violence and discrimination against persons on the basis of their sexual orientation or gender identity, and to identify and address the root causes of violence and discrimination;
3. Engage in dialogue and to consult with States and other relevant stakeholders, including UN agencies, programmes and funds, regional human rights mechanisms, national human rights institutions, regional mechanisms, civil society organizations and academic institutions;
4. Work in cooperation with States in order to foster the implementation of measures that contribute to the protection of all persons against violence and discrimination based on sexual orientation and gender identity;
5. Address the multiple, intersecting and aggravated forms of violence and discrimination faced by persons on the basis of their sexual orientation and gender identity;
6. Conduct, facilitate and support the provision of advisory services, technical assistance, capacity-building and international cooperation in support of national efforts to combat violence and discrimination against persons on the basis of their sexual orientation or gender identity.

# 2. Working Methods

In fulfilling the mandate, the Independent Expert will submit annual reports to the Human Rights Council and the General Assembly on activities, trends and methods of work. Moreover, he will undertake country visits; act on individual cases and concerns of a broader, structural nature by sending communications to States and others in order to bring alleged violations or abuses to their attention; raise public awareness; and provide advice on technical cooperation.

# 3. The Muntarbhorn underpinnings

At his inaugural report to the Human Rights Council in June 2017 (A/HRC/35/36), Independent Expert Vitit Muntarbhorn identified six underpinnings for the mandate on protection from violence and discrimination based on sexual orientation and gender identity (hereinafter “the Muntarbhorn underpinnings”). The first two (criminalisation of same-sex relations and effective anti-discrimination measures) were elaborated in the mandate’s 2017 report to the UN General Assembly (A/72/172). The third and fourth Muntarbhorn underpinnings were described as follows (A/HRC/35/36):

Legal recognition of gender identity

57. In many countries, transgender persons are not able to have their self-identified gender recognized by the State, even with gender reassignment surgery, and have to endure lifelong abuses and discrimination. Non-recognition is interlinked with the environment that leads to violence and discrimination. In some situations, they are forced to undergo gender reassignment surgery, other medical procedures, such as psychological assessment, conversion therapy, sterilization and also divorce, with or without legal recognition of their self-identified gender. Other impediments include bureaucratic hurdles and difficulties in accessing medical care, such as hormone treatment, as well as in accessing the wherewithal of life, such as education, housing, a decent standard of living and employment opportunities. Yet, a number of countries, such as Argentina, Australia, Malta, and Scandinavian countries, are now leading the way by enabling people to have their self-identified gender recognized under national law without the need for surgery and related medical procedures, unless they opt for the latter on a non-coerced basis, and by reducing the bureaucratic hurdles along the way. On a related front, the issue of forced surgery (from a young age) also pertains to intersex persons; this is interrelated with violence and discrimination, whereby such persons are prevented from enjoying the element of choice concerning their sexual orientation and gender identity, which is an intrinsic part of the diversity of human life. There is thus a need to move towards legal recognition of self-defined gender identity without coerced methods.

D. Destigmatization linked with depathologization

58. Stigma based on sexual orientation and gender identity, and, concomitantly, violence and discrimination, may arise in a variety of situations, including in the medical and related sectors, and this is linked with the issue of pathologization. Before 1990, even at the international level, homosexuals were classified as mentally ill; this exemplified a pathologizing approach towards sexual and gender identity (looking as lesbian, gay, bisexual and transgender persons as suffering from some form of illness, mental disorder, dysphoria or incongruence), which is now increasingly being questioned. Even though the pathologization facing homosexuals/gays is now no longer the case internationally, at the national and local levels, the situation is still opaque. There are also some parts of the world where gays and lesbians are still being forced into conversion therapy in the distorted belief that this will change their sexual orientation and gender identity. In regard to transgender and intersex persons, the situation is difficult internationally, as they still fall under the International Classification of Diseases, which is now in the process of being adjusted to reduce stigma.31 There is a further consideration as regards how to ensure sustained access to medical care and services, such as access to hormones and related treatment. The preferred approach should be to ensure access to comprehensive health care for all, without resorting to labels that give rise to stigma. The invitation to destigmatize and depathologize opens the door to more cooperation with the medical, scientific and ethics sectors, to promote shared understanding that sexual orientation and gender identity are part of the natural state of being human, and correlatively, to ensure respect for all persons without distinction.

It is the intention of the current mandate holder to further elaborate these two underpinnings mentioned above in its report to the General Assembly this year, in furtherance of its mandate to promote heightened awareness of violence and discrimination based on sexual orientation and gender identity, and to advice on effective State measures to address said violence and discrimination.

# 4. Previous consultation and call for inputs

The mandate held consultations on the overall objective of the mandate on 24 and 25 January 2017 at the Palais des Nations in Geneva, and sent a questionnaire in May 2017 requesting inputs regarding the six underpinnings mentioned above, with particular focus on the following areas:

1. current situation in the country/region;
2. key laws, policies and practices, including good practices;
3. legal cases, including court judgements.

Through these means the input of over a hundred stakeholders was received and will be part of the considerations of the mandate, including when elaborating the thematic report to the General Assembly this year.

# 5. Objectives of the consultation

Against this backdrop, the Independent Expert wishes to hold this consultation to:

1. Exchange views with participants on the scope of legal recognition of gender identity and destigmatization linked with depathologization, in particular:
   * Discuss good practices and challenges with regard to the adoption and implementation of gender recognition procedures aiming at giving official recognition to a transgender person’s gender identity;
   * Exchange on human rights violations and abuses that transgender persons face when such recognition is not available and when their identification documents do not reflect their self-perceived gender identity;
   * Discuss the pathologization and the branding of persons as ill based on their sexual orientation, gender identity or gender expression as one of the root causes behind the human rights violations that lesbian, gay, bisexual and transgender persons face. In particular, the Independent Expert will welcome information and views on the intersection of these problematics with global processes such as ICD11 (WHO) and other relevant normative or policy processes;
   * Discuss violence that transgender persons face in health-care settings in order to practice their right to recognition before the law, such as involuntary psychiatric evaluations, unwanted surgeries, sterilization or other coercive medical procedures, often justified by discriminatory medical classifications;

* Discuss the extent of the use of conversion therapies and measures adopted to ban these practices that are harmful to patients and may cause severe pain and suffering and lead to depression, anxiety and suicidal ideation.

1. Highlight possible good practices and gaps at international, regional and national levels on the two topics of the consultation;
2. Offer a platform of dialogue between participants, including facilitating the exchange of experiences, knowledge, and lessons learned.

# 6. Outputs

Discussions will inform the Independent Expert’s report to the General Assembly, to be presented in October 2018. A short summary of the proceedings will be posted on the webpage of the Independent Expert thereafter, at: <http://www.ohchr.org/EN/Issues/SexualOrientationGender/Pages/Index.aspx>

# 7. Participants and methodology

The consultation is open to States, UN agencies, programmes and funds, regional human rights mechanisms, National Human Rights Institutions, members of civil society organizations, religious communities and interfaith groups, medical professionals, academic institutions and all other interested stakeholders. The consultation will start with a general segment during which the Independent Expert will introduce his work and his initial thoughts about the issues of legal recognition of gender identity and destigmatization linked with depathologization, taking into consideration the inputs already received by the mandate. Thereafter participants will be invited to present their views. A list of speakers will be circulated in the room and the Independent Expert will hear three interventions from each cluster of participants, i.e. States, civil society organizations, and other stakeholders, successively.

# 8. Practical details and contact information

The consultation will take in Palais des Nations, Room XI, on **Tuesday 19 June 2018 from 10:00 to 13:00**. If you do not have a badge to enter the Palais des Nations, please request accreditation online through [UNOG’s Indico system](https://reg.unog.ch/): <https://reg.unog.ch/>

Kindly note that it will unfortunately not be possible to participate via videoconferencing.

Should you have any questions about this event, or should you wish to submit information related to the topics under consideration, please contact the Independent Expert through the Office of the High Commissioner for Human Rights ([ie-sogi@ohchr.org](mailto:ie-sogi@ohchr.org), +41 22 917 9327 or +41 22 917 9681).

Questions and comments can be sent in advance of the meeting to the Independent Expert at: [ie-sogi@ohchr.org](mailto:ie-sogi@ohchr.org)

The following hashtag will be used during the meeting: #IESOGI