

Annotations to Yogyakarta Principles Plus 10

The current iteration of the annotations includes references from international human rights mechanisms which informed the jurisprudential basis for the Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles (YP+10).

This is intended to be a live document, wherein relevant developments in international human rights norms and standards may compliment the growing repository of references that affirm and support the YP+10. It can be used as a quick reference guide for activists, jurists, and law/policy makers.

PRINCIPLE 30: THE RIGHT TO STATE PROTECTION

Everyone, regardless of sexual orientation, gender identity, gender expression or sex characteristics, has the right to State protection from violence, discrimination and other harm, whether by government officials or by any individual or group.¹

States shall:

A. Exercise due diligence to prevent, investigate, prosecute, punish and provide remedies for discrimination, violence and other harm, whether committed by State or non-State actors;²

¹ Universal Declaration of Human Rights (UDHR, 1948), articles 2, 3, 5, 7, 8; International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), Art. 2(2); International Covenant on Civil and Political Rights (ICCPR, 1966), Art. 2; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979) Art. 2; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984), Art. 2, 4, 12, 13, 14, 16; Convention on the Rights of the Child (CRC, 1989), Art. 2, 19, 37; CEDAW General Recommendation 19 on violence against women (1992): “Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation,” as cited in: CEDAW Communication No. 2/2003, Ms. A.T. v. Hungary, U.N. Doc. CEDAW/C/32/D/2 (2005) (views adopted on 26 January 2005, thirty-second session) and; CEDAW Communication No. 5/2005, Şahide Goekce v. Austria, U.N. Doc. CEDAW/C/39/D/5/2005 (views adopted on 6 August 2007, thirty-ninth session).

² Ibid. See also: CAT General Comment No. 2 on the implementation of Article 2 by States parties, U.N. Doc. CAT/C/GC/2 (2008), para.18: “18. The Committee has made clear that where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State’s indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties’ failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking”; UN Declaration on the Elimination of Violence against Women, U.N. Doc. A/RES/48/104 (1993) Article 4(c): [States should] “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons”; CEDAW Concluding Observations on Kenya, U.N. Doc CEDAW/C/KEN/CO/8 (2017), para.11: “the Committee recommends that the State party exercise due diligence to protect all women, including lesbian, bisexual and transgender women and intersex persons, against discrimination by adopting comprehensive anti-discrimination legislation affording such protection”; CEDAW Concluding Observations on Turkey, U.N. Doc CEDAW/C/TUR/CO/7 (2016), para.33(h): “in line with its general recommendations No. 19 and No. 28 (2010), on the core obligations of State parties under article 2 of the Convention, as well as the Istanbul Convention, exercise due diligence to protect lesbian, bisexual and transgender women against discrimination and violence, by including “sexual orientation and gender identity” in the legislation on

B. Take appropriate and effective measures to eradicate all forms of violence, discrimination and other harm, including any advocacy of hatred that constitutes incitement to discrimination, hostility, or violence on grounds of sexual orientation, gender identity, gender expression or sex characteristics, whether by public or private actors;³

C. Compile statistics and research on the extent, causes and effects of violence, discrimination and other harm, and on the effectiveness of measures to prevent, prosecute and provide reparation for such harm on

hate crimes and among the grounds for prohibited discrimination [...], and ensure that perpetrators of violence against lesbian, bisexual and transgender women do not benefit from the mitigating circumstances provided for in [...] the Penal Code”; CEDAW Concluding observations on Ukraine, U.N. Doc. CEDAW/C/UKR/CO/8 (2017), para.11: “the Committee calls upon the State party [...] As a priority, to establish measures to effectively combat corruption and impunity and comply with its due diligence obligation to prevent, investigate, prosecute and punish violence perpetrated against women and girls by State and non-State actors”; CAT Concluding observations on Serbia, U.N. Doc. CAT/C/SRB/CO/2 (2015), para.19: “The Committee calls on the State party to publicly condemn threats and attacks on [...] lesbian, gay, bisexual, transgender and intersex persons [...] and refrain from supporting, through action or omission, such attacks by ensuring: (a) The effective protection of these groups against threats and attacks to which they may be exposed on account of their activities, sexual orientation or ethnic origin”; Report of the Special Rapporteur in the field of cultural rights on her mission to the Russian Federation, U.N. Doc. A/HRC/23/34/Add.1 (2013), para.115: “(a) Exercise due diligence and protect from violence and threats by other LGBT persons as well as organizers and audiences of LGBT events; (b) Increase efforts to combat prejudice and hostility against LGBT persons.”

³ ICCPR, Art.19(3), 20; Human Rights Committee, Concluding observations on Ukraine, U.N. Doc. CCPR/C/UKR/CO/7 (2013), para.10: “The State party should [...] state clearly and officially that it does not tolerate any form of social stigmatization of homosexuality, bisexuality or transsexuality, or hate speech, discrimination or violence against persons because of their sexual orientation or gender identity. The State party should provide effective protection to LGBT persons and ensure the investigation, prosecution and punishment of any act of violence motivated by the victim’s sexual orientation or gender identity”; CRC, Concluding observations on the second periodic report of the Holy See, U.N. Doc. CRC/C/VAT/CO/2 (2014), para.25: “the Committee is concerned about past statements and declarations made by the Holy See on homosexuality, which contribute to the social stigmatization of and violence against lesbian, gay, bisexual, and transgender adolescents and children raised by same sex couples [...] The Committee also urges the Holy See to make full use of its moral authority to condemn all forms of harassment, discrimination or violence against children based on their sexual orientation or the sexual orientation of their parents”; CRC, Concluding observations on Switzerland, U.N. Doc. CRC/C/CHE/CO/2-4 (2015), para. 24: “the Committee is concerned about incidents of hate speech against lesbian, gay, bisexual, transgender and intersex persons and their impact on children belonging to these groups, as well as the fact that they do not enjoy the protection afforded by article 261 bis of the Criminal Code relating to racial discrimination [...] The Committee also recommends that the State party strengthen its efforts to foster a culture of tolerance and mutual respect , and that it adopt comprehensive legislation against discrimination on the grounds of sexual orientation and gender identity”; Human Rights Committee, Concluding Observations on the United States of America, U.N. Doc. CCPR/C/USA/CO/3 (2006), at para. 25: “State party should ensure that its hate crime legislation, both at the federal and state levels, address sexual orientation-related violence and that federal and state employment legislation outlaw discrimination on the basis of sexual orientation”; Human Rights Committee, Concluding Observations on Uzbekistan, U.N. Doc. CCPR/C/UZB/CO/3 (2010), at para. 22: “[State party should] provide effective protection against violence and discrimination based on sexual orientation”; CAT Concluding Observations on Mongolia, U.N. Doc. CAT/C/MNG/CO/1 (2011), at para. 25: “The State party should establish a comprehensive legal framework to combat discrimination, including hate crimes and speech [...] take measures to bring perpetrators of such crimes to justice [...] ensure the protection of vulnerable groups such as sexual minorities [...] establish effective policing, enforcement and complaints mechanisms with a view to ensuring prompt, thorough and impartial investigations into allegations of attacks against persons on the basis of their sexual orientation or gender identity in line with the Yogyakarta Principles”; CAT Concluding Observations on Republic of Moldova, U.N. Doc. CAT/C/MDA/CO/2 (2010), at para. 27: “[The State party should] incorporate in its Criminal Code an offence to punish hate crimes as acts of intolerance and incitation to hatred and violence based on sexual orientation”; Report of the Special Rapporteur on freedom of opinion and expression U.N. Doc. A/67/357 (2012), para.36: “As with all human rights, however, the exercise of the right to freedom of expression should not be aimed at the violation of any of the rights and freedoms of others, including the right to equality and non-discrimination”, see also paras.75-90; Reports of the Special Rapporteur on violence against women on missions to Kyrgyzstan, U.N. Doc. A/HRC/14/22/Add.2 (2010), at para. 92; to El Salvador U.N. Doc. A/HRC/17/26/Add.2, (2011), at paras. 28-29, 77; Report of the Special Rapporteur on the human rights of migrants on his mission to South Africa U.N. Doc. A/HRC/17/33/Add.4 (2011), at para. 77(a); Report of the Special Rapporteur on racism, U.N. Doc. A/HRC/29/47 (2015), para. 45; See also judgement by the European Court of Human Rights, case of *Vejdeland and others v. Sweden*, No. 1813/07 (2012).

grounds of sexual orientation, gender identity, gender expression and sex characteristics;⁴

D. Identify the nature and extent of attitudes, beliefs, customs and practices that perpetuate violence, discrimination and other harm on grounds of sexual orientation, gender identity, gender expression and sex characteristics, and report on the measures undertaken, and their effectiveness, in eradicating such harm;⁵

E. Develop, implement and support education and public information programmes to promote human rights and to eliminate prejudices on grounds of sexual orientation, gender identity, gender expression and sex characteristics;⁶

⁴ UN Declaration on the Elimination of Violence Against Women, U.N. Doc. A/RES/48/104 (1993), Art.4(k): “Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public”; CAT Concluding Observations on Serbia, U.N. Doc. CAT/C/SRB/CO/2 (2015), para.19: “The Committee is highly concerned that [...] lesbian, gay, bisexual, transgender and intersex persons [...] continue to be attacked, threatened and intimidated. It regrets the lack of complete statistics on the number of complaints of and convictions for threats and attacks on these groups and on measures taken to prevent such acts”; CAT Concluding Observations on Russia, U.N. Doc. CAT/C/RUS/CO/5 (2012), para.15: “The State party should: Take effective measures to ensure the protection of all persons at risk, including [...] LGBT persons [...] The Committee recommends that statistics be compiled regarding all crimes against members of such groups made vulnerable, and on the outcomes of investigations, prosecutions and remedial measures taken in relation to such crimes”; CEDAW Concluding Observations on Ecuador, U.N. Doc. CEDAW/C/EQU/CO/8-9 (2015), para.21: “The Committee, recalling its general recommendation No. 19 on violence against women, urges the State party: To continue its efforts to improve the systematic collection of data on violence against women, disaggregated by age, type of violence and relationship between the victim and the perpetrator; [...]and to] establish a system to systematically monitor cases of violence against women, including lesbian, bisexual and transgender women, and ensure that perpetrators are prosecuted and punished”; CERD Concluding Observations on Argentina, U.N. Doc. CERD/C/ARG/CO/21-23 (2017), para.36: “The Committee recommends that the State party [...] address the multiple forms of discrimination faced by, in particular, indigenous, Afro-descendent and migrant women, including lesbian, gay, bisexual, transgender and intersex persons and women belonging to other minorities. It also recommends that the State party compile disaggregated statistics on this subject”; Report of the Special Rapporteur on freedom of opinion and expression, U.N. Doc. A/67/357 (2012), para.88: “The Special Rapporteur recommends that States, academic institutions and civil society organizations collaborate in establishing a system to regularly gather and analyse relevant data regarding patterns of hate speech to aid policy formulation and evaluation and to establish early warning mechanisms”; Report of the Working Group on the issue of discrimination against women in law and in practice, Mission to Morocco, U.N. Doc. A/HRC/20/28/Add.1, para.89(f): “Compile evidence-based information on the implementation of the State’s due diligence obligations to prevent, prohibit and punish violations of international norms on equality and non-discrimination, and to ensure women’s access to affordable, accessible and timely remedies, including judicial remedies.”

⁵ CESCR General Comment No.20, U.N. Doc. E/C.12/GC/20 (2009), para.8: “Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination.” CRC Concluding Observations on the Democratic Republic of the Congo, U.N. Doc. CRC/C/COD/CO/3-5 (2017), para.15: “While noting the persistent discrimination against children in vulnerable and marginalized situations, including [...] lesbian, gay, bisexual and transgender children [...] The Committee [...] urges the State party to [...] Conduct studies to identify and act on causes of discrimination, carry out awareness-raising activities in order to combat such discrimination, and train professionals working with and for children”; Report of the Independent Expert on sexual orientation and gender identity, U.N. Doc. A/HRC/35/56 (2017), paras.34-37: “What are some of the root causes? While more empirical research is needed on the issue, behind the violence and discrimination there is an environment of negative elements: multiple factors, with longitudinal and intergenerational implications.”; Report of the High Commissioner for Human Rights, on violence and discrimination based on sexual orientation and gender identity, U.N. Doc. A/HRC/29/23 (2015), para.16: “The protection of rights to equality before the law, equal protection of the law and freedom from discrimination is a fundamental obligation of States under international law, and requires States to prohibit and prevent discrimination in private and public spheres, and to diminish conditions and attitudes that cause or perpetuate such discrimination.”

⁶ Human Rights Committee Concluding observations on the Republic of Moldova, U.N. Doc. CCPR/C/MDA/CO/3 (2016), para.12: “[Ensure] that the rights of lesbian, gay, bisexual and transgender persons are effectively protected under [the law], and combating stereotypes and prejudice against such persons through awareness-raising campaigns”; Human Rights Committee Concluding observations on Greece, U.N. Doc. CCPR/C/GRC/CO/2 (2015), para.12: “The

F. Ensure sensitivity training of judicial and law enforcement officers and other public officials on issues relating to sexual orientation, gender identity, gender expression and sex characteristics;⁷

State party should intensify its efforts to combat stereotypes and prejudice against lesbian, gay, bisexual and transgender persons, including by:(a) Organizing awareness-raising campaigns aimed at the general public”; CESCR Concluding observations on Pakistan, U.N. Doc. E/C.12/PAK/CO/1 (2017), para.22: “The Committee recommends that the State party decriminalize same-sex relations between consenting adults and take the measures necessary to raise public awareness and combat discrimination based on sexual orientation and gender identity”; CEDAW Concluding observations on Singapore, U.N. Doc. CEDAW/C/SGP/CO/5 (2017), para.41: “The Committee recommends that the State party ensure that lesbians, bisexual and transgender women and intersex persons are effectively protected against all forms of discrimination in law and in practice, including by undertaking educational and awareness-raising campaigns to combat discriminatory stereotypes, including in its media policies”; CEDAW Concluding observations on Costa Rica, U.N. Doc. CEDAW/C/CRI/CO/7 (2017), para.17(f): “Raise public awareness, in cooperation with civil society organizations, about violence against lesbian, bisexual and transgender women and intersex persons and adopt measures to prevent, investigate, prosecute and adequately punish hate crimes against them and provide reparation, including compensation, to victims”; CEDAW Concluding observations on Estonia, U.N. Doc. CEDAW/C/EST/CO/5-6 (2016), para.37(c): “Address discrimination against lesbian, bisexual, transgender and intersex women in the workplace, through awareness-raising campaigns and the prosecution and punishment of offenders”; CEDAW Concluding observations on Switzerland, U.N. Doc. CEDAW/C/CHE/CO/4-5 (2016), para.25(e): “Educate and train medical professionals on the harmful impact of unnecessary surgical or other medical interventions for intersex children”; CRC Concluding Observations on Serbia, U.N. Doc. CRC/C/SRB/CO/2-3 (2017), para.23(a): “Ensure full implementation of relevant existing laws prohibiting discrimination, including by strengthening public education campaigns to address negative social attitudes towards [...] lesbian, gay, bisexual and transgender children”; CRC Concluding Observations on Suriname, U.N. Doc. CRC/C/SUR/CO/3-4 (2016), para.14: “The Committee recommends that the State party [...] intensify efforts to ensure the effective elimination of any form of discrimination against [...] lesbian, gay, bisexual, transgender and intersex children and other groups of children in marginalized situations through, among other things, awareness-raising campaigns and education, especially at the community level and in schools.”

⁷ UN Declaration on the Elimination of Violence Against Women, U.N. Doc. A/RES/48/104 (1993), Art.4(i): “Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women.”; CEDAW General Recommendation No.33 on women's access to justice, U.N. Doc. CEDAW/C/GC/33 (2015), para.64(a): “The Committee recommends that, in cooperation with non-State actors, States parties: (a) Take immediate steps, including capacity-building and training programmes on the Convention and women's rights, for justice system personnel”; CEDAW Concluding observations on Ukraine, U.N. Doc. CEDAW/C/UKR/CO/8 (2017), para.46: “The Committee recommends that the State party provide the necessary protection against discrimination and violence against lesbian, bisexual and transgender women, in particular through [...] training to medical personnel and the police and law enforcement officials”; CEDAW Concluding observations on Italy, U.N. Doc. CEDAW/C/ITA/CO/7 (2017), para.18(d): “Ensure that intersecting forms of discrimination are adequately addressed by courts, including through training for judges and lawyers”; Human Rights Committee Concluding observations on Bosnia and Herzegovina, U.N. Doc. CCPR/C/BIH/CO/3 (2017), para.26: “intensify its efforts to combat stereotypes and prejudice against lesbian, gay, bisexual and transgender persons, including by providing training to law enforcement officials”; CESCR Concluding observations on Morocco, U.N. Doc. E/C.12/TUN/CO/3 (2016), para.25: “The Committee recommends that the State party [...] provide law enforcement officials with training in respecting diverse sexual orientations and gender identities”; Human Rights Committee Concluding observations on South Africa, U.N. Doc. CCPR/C/ZAF/CO/1 (2016), para.21: “The State party should also ensure adequate training for law enforcement and health service personnel regarding domestic and gender-based violence, and violence based on sexual orientation and gender identity”; Human Rights Committee Concluding observations on Greece, U.N. Doc. CCPR/C/GRC/CO/2 (2015), para.12: “The State party should intensify its efforts to combat stereotypes and prejudice against lesbian, gay, bisexual and transgender persons, including by: [...] Providing appropriate training to public officials to end social stigmatization of lesbian, gay, bisexual and transgender persons”; Human Rights Committee Concluding observations on the Republic of Korea, U.N. Doc. CCPR/C/KOR/CO/4 (2015), para.15: “carry out public campaigns and provide training for public officials to promote awareness and respect for diversity in respect of sexual orientation and gender identity.”; CAT Concluding observations on Serbia, U.N. Doc. CAT/C/SRB/CO/2 (2015), para. 19(c): “The Committee calls on the State party to publicly condemn threats and attacks on [...] lesbian, gay, bisexual, transgender and intersex persons [...] and refrain from supporting, through action or omission, such attacks by ensuring: [...] Effective training of law-enforcement officials and the judiciary on hate-motivated crimes and the systematic monitoring of such crimes”; CAT Concluding observations on Colombia, U.N. Doc. CAT/C/COL/CO/5 (2015), para.27: “Provide mandatory training to law enforcement officers on the prosecution of cases involving the commission of acts of violence motivated by a person's sexual orientation or gender identity”; Human Rights Committee Concluding observations on Croatia, U.N. Doc. CCPR/C/HRV/CO/3 (2015), para.10: “The State party should step up its efforts to combat stereotypes and prejudice against lesbian, gay, bisexual and transgender persons, including by launching an awareness-

G. Ensure that laws against rape, sexual assault and sexual harassment protect all persons regardless of their sexual orientation, gender identity, gender expression and sex characteristics;⁸

H. Establish support services for victims of rape, sexual assault and harassment, and other forms of violence and harm on grounds of sexual orientation, gender identity, gender expression, and sex characteristics;⁹

I. Ensure that human rights violations are vigorously investigated and, where evidence is found, those responsible are prosecuted and, if convicted, punished as appropriate;¹⁰

raising campaign aimed at the general public and providing appropriate training to public officials with a view to putting an end to the social stigmatization of such persons.”; CEDAW Concluding observations on Ecuador, U.N. Doc. CEDAW/C/ECU/CO/8-9 (2015), para.21: “establish a system to systematically monitor cases of violence against women, including lesbian, bisexual and transgender women [...] and conduct training for judges, prosecutors, police officers and other law enforcement officers on equality of women on all grounds mentioned in the Committee’s general recommendation No. 28.”

⁸ Regarding definition of rape, see International Criminal Court (2011), Elements of Crimes, Article 7(1) (g)-1: “The perpetrator invaded¹⁵ the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body” and footnote 15: “The concept of “invasion” is intended to be broad enough to be gender-neutral”; CEDAW General Recommendation No. 35, U.N. Doc CEDAW/C/GC/35 (2017), para.29: “Ensure that sexual assault, including rape, is characterized as a crime against the right to personal security and physical, sexual and psychological integrity and that the definition of sexual crimes, including marital and acquaintance or date rape, is based on the lack of freely given consent and takes into account coercive circumstances.”; CEDAW General Recommendation No.19 on violence against women (1992), para.24: “States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity”; CEDAW Concluding observations on Saint Vincent and the Grenadine, U.N. Doc. CEDAW/C/VCT/CO/4-8 (2015), para.21: “ensure that no woman is excluded from seeking and obtaining protection under the Domestic Violence Act on the basis of the type of relationship in which she is engaged”; UN Convention on the Rights of the Child, U.N. Doc. A/RES/44/25 (1989), Art.19: “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”; Art.43: “States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.”

⁹ CEDAW General Recommendation No.19 on violence against women (1992), para.24: “States parties should establish or support services for victims of family violence, rape, sex assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counselling”; CEDAW Concluding observations on India, U.N. Doc. CEDAW/C/IND/CO/4-5 (2014), para.11: “establish, without delay, one-stop crisis centres providing women and girls who are victims of violence and rape with free and immediate access to medical attention, psychological counselling, legal aid, shelters and other support services”; CEDAW Concluding observations on Sri Lanka, U.N. Doc. CEDAW/C/LKA/CO/7 (2011), para.25: “take the necessary measures to provide support to victims of violence, including by improving women’s access to justice, and implement its decision to establish State-sponsored shelters for victims of violence.”

¹⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. A/RES/39/46 (1984), Art.12: “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”; Human Rights Committee, concluding observations on Bangladesh, U.N. Doc. CCPR/C/BGD/CO/1 (2017), para.12(e): “provide protection to lesbian, gay, bisexual and transgender persons from violence and harassment by ensuring that all cases are promptly investigated and that perpetrators are prosecuted and punished with appropriate sanctions”; Human Rights Committee, concluding observations on Greece, U.N. Doc. CCPR/C/GRC/CO/2 (2015), para.12: “The State party should intensify its efforts to combat stereotypes and prejudice against lesbian, gay, bisexual and transgender persons, including by: [...] Ensuring that all reports of violence against lesbian, gay, bisexual and transgender persons are promptly and effectively investigated and that perpetrators of violence on the grounds of sexual orientation are prosecuted and sanctioned”; CAT, concluding observations on the former Yugoslav Republic of Macedonia, U.N. Doc. CAT/C/MKD/CO/3 (2015), para.13: regarding violence against members of the LGBTI community, “ensure that all acts of violence are promptly, effectively and impartially investigated and prosecuted, and that the resulting prosecutions take into consideration any discriminatory motives. Furthermore, the State should ensure that perpetrators are brought to justice”; CAT, concluding observations on Colombia, U.N. Doc. CAT/C/COL/CO/5 (2015), para.27: “Ensure that murders and assaults motivated by a person’s sexual orientation or gender identity are investigated and that the persons responsible are brought to justice”; Human Rights Committee, concluding observations on Croatia, U.N. Doc. CCPR/C/HRV/CO/3 (2015), para.10: “The State party should ensure that all reports of violence against lesbian, gay, bisexual and transgender persons are effectively investigated and that

J. Ensure access to effective complaints procedures and remedies, including reparation, for victims of violence, discrimination and other harm on grounds of sexual orientation, gender identity, gender expression and sex characteristics.¹¹

PRINCIPLE 31: THE RIGHT TO LEGAL RECOGNITION

Everyone has the right to legal recognition¹² without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics.¹³

Everyone has the right to obtain identity documents, including birth certificates,¹⁴ regardless of sexual orientation, gender identity, gender expression or sex characteristics.¹⁵

Everyone has the right to change gendered information in such documents while gendered information is included in them.¹⁶

the perpetrators of violence based on sexual grounds are prosecuted and sanctioned.”; CEDAW, concluding observations on Ecuador, U.N. Doc. CEDAW/C/ECU/CO/8-9 (2015), para.21: “establish a system to systematically monitor cases of violence against women, including lesbian, bisexual and transgender women, and ensure that perpetrators are prosecuted and punished”; CAT, concluding Observations on Namibia, U.N. Doc. CAT/C/NAM/CO/2 (2017), para.31: “The State party should ensure that violence against lesbian, gay, bisexual, transgender and intersex persons is promptly, impartially and thoroughly investigated and the perpetrators prosecuted and punished”; Human Rights Committee, concluding observations on Mongolia, U.N. Doc. CCPR/C/MNG/CO/6 (2017), para.12: “intensify its efforts to combat stereotypes and prejudices against lesbian, gay, bisexual, transgender and intersex persons, and ensure that acts of discrimination and violence directed against them are investigated, that perpetrators are prosecuted, and if convicted, punished with appropriate penalties”; Human Rights Committee, concluding observations on Honduras, U.N. Doc. CCPR/C/HND/CO/2 (2017), para.41: “Ensure that all allegations concerning intimidation, threats and assault are investigated promptly, thoroughly, independently and impartially, that the perpetrators are brought to justice and duly punished in accordance with the gravity of the offence.”

¹¹ UN Declaration on the Elimination of Violence Against Women, U.N. Doc. A/RES/48/104 (1993), Art.4(d): “Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms”; CAT, concluding observations on the former Yugoslav Republic of Macedonia, U.N. Doc. CAT/C/MKD/CO/3 (2015), para.13: regarding violence against members of the LGBTI community, “Furthermore, the State should ensure that [...] victims provided with redress”; Human Rights Committee, concluding observations on Mongolia, U.N. Doc. CCPR/C/MNG/CO/6 (2017), para.12: “intensify its efforts to combat stereotypes and prejudices against lesbian, gay, bisexual, transgender and intersex persons, and ensure that [...] victims are provided with full reparation”; Human Rights Committee, concluding observations on Switzerland, U.N. Doc. CCPR/C/CHE/CO/4 (2017), para.25: “ensure that psychological assistance and reparation, including compensation, are provided for victims of needless surgical procedures.”

¹² UDHR, Art 6: “Everyone has the right to recognition everywhere as a person before the law.”; ICCPR, Art.16: “Everyone shall have the right to recognition everywhere as a person before the law”; Art.24(2): “Every child shall be registered immediately after birth and shall have a name.”; CRC, Art.7(1): “The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.”; See also, United Nations Children’s Fund, Birth Registration: Right from the start, Innocenti Digest No. 9, UNICEF Innocenti Research Centre, Florence, 2002. “Lack of birth registration is a violation of the child’s inalienable human right to be given an identity at birth and to be regarded as part of society. Article 7 of the CRC gives every child the right to be registered at birth by the State within whose jurisdiction the child is born. This means that states must make birth registration accessible and available to all children, including asylum seekers, refugees and immigrants, documented or otherwise.”

¹³ UDHR, article 12: “No one shall be subjected to arbitrary interference with his privacy...”; ICCPR, article 17: “No one shall be subjected to arbitrary or unlawful interference with his privacy...”

¹⁴ Ibid.

¹⁵ CEDAW Concluding observations on Georgia, U.N. Doc. CEDAW/C/GEO/CO/4-5 (2014), para.35(e): “[calls on the State party] to abolish restrictions for transgender persons with regard to obtaining identity documents.

¹⁶ CEDAW Concluding observations on Kyrgyzstan, U.N. Doc. CEDAW/C/KGZ/CO/4 (2015), para.34: “Finalize and adopt an expeditious, transparent and accessible official procedure to change the gender marker on the identity documents of transgender women who wish to obtain legal recognition of their gender”; CEDAW Concluding

States shall:

A. Ensure that official identity documents only include personal information that is relevant, reasonable and necessary as required by the law for a legitimate purpose,¹⁷ and thereby end the registration of the sex and gender of the person in identity documents such as birth certificates, identification cards, passports and driver licenses, and as part of their legal personality;¹⁸

B. Ensure access to a quick transparent and accessible mechanism to change names, including to gender-neutral names, based on the self-determination of the person;¹⁹

C. While sex or gender continues to be registered:

- i. Ensure a quick, transparent, and accessible mechanism that legally recognises and affirms each person's self-defined gender identity;²⁰
- ii. Make available a multiplicity of gender marker options;²¹
- iii. Ensure that no eligibility criteria, such as medical or psychological interventions, a psycho-medical

observations on Fiji, U.N. Doc. [CEDAW/C/FJI/CO/5](#) (2018), para. 52(b): "Allow changes in gender to be recorded on birth certificates."

¹⁷ Report of the U.N. Independent Expert on sexual orientation and gender identity, U.N. Doc. A/73/152 (2018) para.81(c): "Carefully review the reasoning behind the gathering and exhibition of certain data, and the rules governing data management, which must include separate considerations for the need to gather and the need to exhibit, as well as rigorous adherence to risk assessment and management considerations under the "do no harm" principle, and the participation of the affected populations and communities in the design, implementation and evaluation of the data-gathering systems. States must refrain from gathering and exhibiting data without a legitimate, proportionate and necessary purpose and ensure that, when data must be collected, it should be done on the basis of self-determination, while respecting privacy and confidentiality."

¹⁸ Report of the U.N. Independent Expert on sexual orientation and gender identity, U.N. Doc. A/73/152 (2018) para.37: "From the manifestation of initial data in the form of birth certificates, which are reflected afterwards in identification cards, driving licences and passports, to that of the most intimate information, such as health records, the manner in which data reflects the identity of the individual is a fundamental consequence for the enjoyment of the right to equal recognition. Legal systems must, on an ongoing basis, carefully review the reasoning behind the gathering and exhibition of certain data, and the rules governing data management, which must include separate considerations for the need to gather and the need to exhibit. In this connection, the mandate holder has significant doubts as to the real need for the pervasive exhibition of gender markers in official and non-official documentation, which appears to be fulfilling the vestiges of needs that have long been superseded or adhering to a rationale that should have never been applied in the first place. The simple principle remains that States must refrain from gathering and exhibiting data without a legitimate, proportionate and necessary purpose."

¹⁹ Report of the U.N. Independent Expert on sexual orientation and gender identity, U.N. Doc. A/73/152 (2018), paras.38: "when data must be collected, it must be done on the basis of self-identification and, as appropriate and relevant, on the basis of privacy and confidentiality"; 81(d): "Enact gender recognition systems concerning the rights of trans persons to change their name [...] on identification documents [that ...] (v) Acknowledge and recognize non-binary identities."

²⁰ CEDAW Concluding observations on Kyrgyzstan, U.N. Doc. CEDAW/C/KGZ/CO/4 (2015), para.34: "Finalize and adopt an expeditious, transparent and accessible official procedure to change the gender marker on the identity documents of transgender women who wish to obtain legal recognition of their gender"; CRC Concluding observations on Nepal, U.N. Doc. CRC/C/NPL/CO/3-5 (2016), para.42(b): "[The Committee recommends that the State party] Ensure that intersex children have access to identity documents that correspond with the sex/gender identity of their choosing."; Report of the U.N. Independent Expert on sexual orientation and gender identity, U.N. Doc. A/HRC/47/27 (2021) para.91: The Independent Expert wishes to reiterate the recommendation that States provide access to legal recognition of gender identity in a manner consistent with the rights to freedom from discrimination, equal protection of the law, privacy, identity and freedom of expression, and adopt all necessary measures so that such recognition: (a) Is based on self-determination by the applicant; (b) Is a simple administrative process; (c) Is not connected with abusive requirements, such as medical certification, surgery, treatment, sterilization or divorce; (d) Includes the acknowledgement and recognition of non-binary identities in their full diversity and specificity; (e) Ensures that minors have access to recognition of their gender identity.

²¹ Report of the U.N. Independent Expert on sexual orientation and gender identity, U.N. Doc. A/73/152 (2018), para.81(d): "Enact gender recognition systems concerning the rights of trans persons to change their name and gender markers on identification documents [that ...] (v) Acknowledge and recognize non-binary identities, such as gender identities that are neither "man" nor "woman" and offer a multiplicity of gender marker options;

- diagnosis, minimum or maximum age, economic status, health, marital or parental status, or any other third party opinion, shall be a prerequisite to change one's name, legal sex or gender;²²
- iv. Ensure that a person's criminal record, immigration status or other status is not used to prevent a change of name, legal sex or gender.²³

PRINCIPLE 32: THE RIGHT TO BODILY AND MENTAL INTEGRITY

Everyone has the right to bodily and mental integrity, autonomy and self-determination irrespective of sexual orientation, gender identity, gender expression or sex characteristics.²⁴

Everyone has the right to be free from torture and cruel, inhuman and degrading treatment or punishment on the basis of sexual orientation, gender identity, gender expression and sex characteristics.²⁵

No one shall be subjected to invasive or irreversible medical procedures that modify sex characteristics without their free, prior and informed consent, unless necessary to avoid serious, urgent and irreparable harm to the concerned person.²⁶

²² Human Rights Committee, concluding observations on Ireland, U.N. Doc. CCPR/C/IRL/CO/4 (2014), para. 7: “[ensure] the right to legal recognition of gender without the requirement of dissolution of marriage or civil partnership”; CEDAW, concluding observations on the Netherlands, U.N. Doc. CEDAW/C/NLD/CO/5 (2010), para.47: “revise the law making sterilization compulsory for transgender women”; CAT, concluding observations on Hong Kong, China, U.N. Doc. CAT/C/CHN-HKG/CO/5 (2016), para. 29(a): “Take the necessary legislative, administrative and other measures to guarantee respect for the autonomy and physical and psychological integrity of transgender and intersex persons, including by removing abusive preconditions for the legal recognition of the gender identity of transgender persons, such as sterilization”; Human Rights Committee, concluding observations on Ukraine, U.N. Doc. CCPR/C/UKR/CO/7 (2013), para.10: “[ensure that] any abusive or disproportionate requirements for legal recognition of a gender reassignment are repealed”; Report of the U.N. Independent Expert on sexual orientation and gender identity, U.N. Doc. A/73/152 (2018), para.81(b): “Eliminate abusive requirements as prerequisites for change of name, legal sex or gender, including forced, coerced or otherwise involuntary sterilization; medical procedures related to transition, including surgeries and hormonal therapies; undergoing medical diagnosis, psychological appraisals or other medical or psychosocial procedures or treatment; requirements relating to economic status; health; marital, family or parental status; and any third-party opinion. This should extend to ensuring that a person's criminal record, immigration status or other status is not used to prevent a change of name, legal sex or gender”; Report of the U.N. High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity, U.N. Doc. A/HRC/29/23 (2015), para.79 (I): “[Issue] legal identity documents, upon request, that reflect preferred gender, eliminating abusive preconditions, such as sterilization, forced treatment and divorce.”

²³ Report of the U.N. Independent Expert on sexual orientation and gender identity, U.N. Doc. A/73/152 (2018), para.81(b): “extend to ensuring that a person's criminal record, immigration status or other status is not used to prevent a change of name, legal sex or gender.”

²⁴ UDHR, Art. 3: “Everyone has the right to life, liberty and security of person.”; ICCPR, Art. 7: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”; CRC, Art. 19(1): “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

²⁵ CAT, Art. 1: “For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”; UDHR, Art. 5: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”; ICCPR, Art. 7 (supra, footnote 23); CRC, Art. 37(a): “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.”; Convention on the Rights of People with Disabilities (CRPD), Art. 15(1): “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.”

²⁶ UDHR; Art.3,5; ICCPR, Art. 7, 9; CRC, Art. 19(1), 37(a); CAT, Art. 1; CRPD, Art. 15; Joint statement of international and regional human rights experts, “End violence and harmful medical practices on intersex children and

States shall:

A. Guarantee and protect the rights of everyone, including all children, to bodily and mental integrity, autonomy and self-determination;²⁷

B. Ensure that legislation protects everyone, including all children, from all forms of forced, coercive or otherwise involuntary modification of their sex characteristics;²⁸

C. Take measures to address stigma, discrimination and stereotypes based on sex and gender, and combat the use of such stereotypes, as well as marriage prospects and other social, religious and cultural rationales, to justify modifications to sex characteristics, including of children;²⁹

D. Bearing in mind the child's right to life, non-discrimination, the best interests of the child, and respect for the child's views, ensure that children are fully consulted and informed regarding any modifications to their sex characteristics necessary to avoid or remedy proven, serious physical harm, and ensure that any such modifications are consented to by the child concerned in a manner consistent with the child's evolving capacity;³⁰

E. Ensure that the concept of the best interests of the child is not manipulated to justify practices that conflict with the child's right to bodily integrity;³¹

F. Provide adequate, independent counselling and support to victims of violations, their families and

adults," (2016), available at <https://www.ohchr.org/en/2016/10/intersex-awareness-day-wednesday-26-october?LangID=E&NewsID=20739> (retrieved 30 March 2022); OHCHR, UN-Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO, "Eliminating forced, coercive and otherwise involuntary sterilization: an interagency statement," (2014).

²⁷ UDHR, articles 3,5; ICCPR, articles 7, 9; CRC, articles 19(1), 37(a); CAT, article 1; CRPD, article 15.

²⁸ CESCR General Comment No. 22 on the right to sexual and reproductive health, U.N. Doc. E/C.12/GC/22 (2016), para. 59: "Violations of the obligation to protect occur when a State fails to take effective steps to prevent third parties from undermining the enjoyment of the right to sexual and reproductive health. This includes the failure to prohibit and take measures to prevent all forms of violence and coercion committed by private individuals and entities, including [...] female genital mutilation, [...] forced sterilization, forced abortion and forced pregnancy; and medically unnecessary, irreversible and involuntary surgery and treatment performed on intersex infants or children."; CPRD Concluding observations on Morocco, U.N. Doc. CRPD/C/MAR/CO/1 (2017), para.37: "prohibit and criminalize the practice of corrective surgeries on intersex persons with disabilities, in the absence of prior and informed consent"; CEDAW Concluding observations on Switzerland, U.N. Doc. CEDAW/C/CHE/CO/4-5 (2016), para.25: "adopt legislation to protect the bodily integrity, autonomy and self-determination of intersex persons and provide families with intersex children with adequate counselling and support."

²⁹ CEDAW, Art.25; CEDAW Concluding observations on Singapore, U.N. Doc. CEDAW/C/SGP/CO/5 (2017), para.41: "ensure that lesbians, bisexual and transgender women and intersex persons are effectively protected against all forms of discrimination in law and in practice, including by undertaking educational and awareness-raising campaigns to combat discriminatory stereotypes, including in its media policies"; CEDAW Concluding observations on Switzerland, U.N. Doc. CEDAW/C/CHE/CO/4-5 (2016), para.25: "Educate and train medical professionals on the harmful impact of unnecessary surgical or other medical interventions for intersex children."

³⁰ CRC, Art.2, 3, 6, 12; CEDAW Concluding observations on Italy, U.N. Doc. CEDAW/C/ITA/CO/7 (2017), para.42: "Develop and implement a rights-based health-care protocol for intersex children, ensuring that children and their parents are appropriately informed of all options, that the children are involved, to the greatest extent possible, in decision-making about medical interventions and that their choices are respected and that no child is subjected to unnecessary surgery or treatment."; CEDAW Concluding observations on the Netherlands, U.N. Doc. CEDAW/C/NLD/CO/6 (2016), para.22(f): (as previous) "ensures that children and their parents are properly informed of all options, that children are, to the greatest extent possible, involved in decision-making about medical interventions and that their choices are fully respected."; CAT Concluding observations on Hong Kong (China), U.N. Doc. CAT/C/CHN-HKG/CO/5 (2016), para.29: "Guarantee impartial counselling services for all intersex children and their parents, so as to inform them of the consequences of unnecessary and non-urgent surgery and other medical treatment to decide on the sex of the child and the possibility of postponing any decision on such treatment or surgery until the persons concerned can decide by themselves"; CAT Concluding observations on Denmark, U.N. Doc. CAT/C/DNK/CO/6-7 (2016), para.43: "Guarantee counselling services for all intersex children and their parents, so as to inform them of the consequences of unnecessary surgery and other medical treatment";

³¹ CRC, Art. 3, 19;

communities, to enable victims to exercise and affirm rights to bodily and mental integrity, autonomy and self-determination;³²

G. Prohibit the use of anal and genital examinations in legal and administrative proceedings and criminal prosecutions unless required by law, as relevant, reasonable, and necessary for a legitimate purpose.³³

PRINCIPLE 33: THE RIGHT TO FREEDOM FROM CRIMINALISATION AND SANCTION ON THE BASIS OF SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION, OR SEX CHARACTERISTICS

Everyone has the right to be free from criminalisation and any form of sanction arising directly or indirectly from that person's actual or perceived sexual orientation, gender identity, gender expression or sex characteristics.³⁴

States shall:

A. Ensure that legal provisions, including in customary, religious and indigenous laws, whether explicit provisions, or the application of general punitive provisions such as acts against nature, morality, public decency, vagrancy, sodomy and propaganda laws, do not criminalise sexual orientation, gender identity and expression, or establish any form of sanction relating to them;³⁵

B. Repeal other forms of criminalisation and sanction impacting on rights and freedoms on the basis of sexual orientation, gender identity, gender expression or sex characteristics, including the criminalisation of sex

³² Human Rights Committee Concluding observations on Switzerland, U.N. Doc. CCPR/C/CHE/CO/4 (2017), para.25: "ensure that psychological assistance and reparation, including compensation, are provided for victims of needless surgical procedures"; CAT Concluding observations on Denmark, U.N. Doc. CAT/C/DNK/CO/6-7 (2016), para.43: "Provide adequate redress for the physical and psychological suffering caused by such practices to intersex persons."

³³ CAT Concluding observations on Lebanon, U.N. Doc. CAT/C/LBN/CO/1 (2017), para.15: "prohibit anal searches or tests for men suspected of homosexuality and ensure that body searches are conducted only in exceptional cases and by the least intrusive means possible, with full respect for the dignity of the person"; CAT Concluding Observations on Tunisia, U.N. Doc. CAT/C/TUN/CO/3 (2016), para.42: "prohibit intrusive medical examinations that have no medical justification and cannot be performed with the free and informed consent of the persons subjected to them, who consequently will then be prosecuted."; CAT Concluding observations on Afghanistan, U.N. Doc. CAT/C/AFG/CO/2 (2017), para.38: "Take all measures, including legal, to ensure that virginity tests are prohibited and ensure that all officials ordering virginity tests are adequately sanctioned"; CEDAW Concluding observations on Turkey, U.N. Doc. CEDAW/C/TUR/CO/7 (2016), para.19: "abolish the provision allowing for genital examinations, including virginity testing, to be performed on a woman or girl without her consent"; Working Group on Arbitrary Detention Opinion No. 25/2009 on Egypt, U.N. Doc. A/HRC/16/47/Add.1 (2011), at paras. 23, 28-29: "These tests, forcibly undertaken, are in and of themselves intrusive in nature and violative of bodily rights of the individual under human rights law [...] forced anal examinations contravene the prohibition of torture and other cruel, inhumane and degrading treatment, whether if, like in the present cases, they are employed with a purpose to punish, to coerce a confession, or to further discrimination. [...] In addition, they are medically worthless for the determination whether or not a person has engaged in same-sex sexual conduct."

³⁴ UDHR, Art.2, 9, 12; ICCPR, Art. 2(1), 6(2), 9, 17, 26; Toonen v. Australia, Human Rights Committee, communication No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (1994), para. 8.3-10; Human Rights Committee, concluding observations on Kuwait, U.N. Doc. CCPR/C/KWT/CO/2 (2011), para. 30; CESCR, concluding observations on the Islamic Republic of Iran, U.N. Doc. E/C.12/IRN/CO/2 (2013), para. 7; CEDAW, concluding observations on Uganda, U.N. Doc. CEDAW/C/UGA/CO/7 (2010), paras. 43-44; CRC, concluding observations on the Gambia, U.N. Doc. CRC/C/GMB/CO/2-3 (2015), paras. 29-30; Report of the Special Rapporteur on the right to health, U.N. Doc. A/HRC/14/20 (2010), paras. 17-26; Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, U.N. Doc. A/HRC/38/43 (2018), paras. 50-56 and 90-91.

³⁵ Ibid. See also: CEDAW General Recommendation No. 35 (CEDAW/C/GC/35), 2017, para.31(a); Report of the Special Rapporteur on health, on a visit to Malaysia (A/HRC/29/33/Add.1), 2015, para. 84-89, 111; CESCR, Concluding Observations on Guyana (E/C.12/GUY/CO/2-4), 2015, paras.24-25; Human Rights Committee, Concluding Observations on Kuwait (CCPR/C/KWT/CO/2), 2011, para. 30.

work, abortion, unintentional transmission of HIV, adultery, nuisance, loitering and begging;³⁶

C. Pending repeal, cease to apply discriminatory laws criminalising or applying general punitive sanctions on the basis of sexual orientation, gender identity, gender expression or sex characteristics;³⁷

D. Expunge any convictions and erase any criminal records for past offences associated with laws arbitrarily criminalising persons on the basis of sexual orientation, gender identity, gender expression and sex characteristics;³⁸

E. Ensure training for the judiciary, law enforcement officers and healthcare providers in relation to their human rights obligations regarding sexual orientation, gender identity, gender expression and sex characteristics;³⁹

³⁶ See footnote 31. See also: CEDAW, General Recommendation No. 38 (CEDAW/C/GC/38), 202, para.76: “Address the adverse collateral effects of anti-trafficking efforts by ensuring that innocent women and girls are not arbitrarily arrested, abused or falsely charged, in particular women belonging to marginalized groups and women in prostitution, including through any raids conducted by law enforcement authorities with a view to dismantling trafficking networks.”; CESCR, General Comment No. 22 (E/C.12/GC/22), 2016, para.40: “States must reform laws that impede the exercise of the right to sexual and reproductive health. Examples include laws criminalizing abortion, on-disclosure of HIV status, exposure to and transmission of HIV, consensual sexual activities between adults, and transgender identity or expression.”; States must not criminalise abortion: *Mellet v. Ireland*, Human Rights Committee. Comm. No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013 (2016); Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/HRC/22/53, paras. 46-50, 90; CAT, concluding observations on Poland, U.N. Doc. CAT/C/POL/CO/5-6 (2013), para. 23; CAT, concluding observations on Peru, U.N. Doc. CAT/C/PER/CO/5-6 (2013), para. 15; CAT, concluding observations on Nicaragua, U.N. Doc. CAT/C/NIC/CO/1 (2009), para. 16; Human Rights Committee, concluding observations on Ireland, U.N. Doc. CCPR/C/IRL/CO/4 (2014), para. 9; Human Rights Committee, concluding observations on Malta, U.N. Doc. CCPR/C/MLT/CO/2 (2014), para. 13; Human Rights Committee, concluding observations on El Salvador, U.N. Doc. CCPR/CO/78/SLV (2004), para. 14; HRC, concluding observations on Kenya, CCPR/CO/83/KEN (2005), para. 14; Human Rights Committee, concluding observations on Paraguay, U.N. Doc. CCPR/C/PRY/CO/2 (2006), para. 10; Human Rights Committee, concluding observations on Peru, U.N. Doc. CCPR/CO/70/PER (2000), para. 20; Human Rights Committee, concluding observations on Dominican Republic, U.N. Doc. CCPR/C/DOM/CO/5 (2012), para 15; CEDAW, concluding observations on Andorra, U.N. Doc. CEDAW/C/AND/CO/2-3 (2013), para. 31.

³⁷ UDHR, articles 2, 9, 12; ICCPR, articles 2(1), 6(2), 9, 17, 26.

³⁸ *ibid.*

³⁹ CEDAW, General Recommendation No.33 on women's access to justice, U.N. Doc. CEDAW/C/GC/33 (2015), para.64(a): “The Committee recommends that, in cooperation with non-State actors, States parties: (a) Take immediate steps, including capacity-building and training programmes on the Convention and women’s rights, for justice system personnel”; CEDAW, concluding observations on Ukraine, U.N. Doc. CEDAW/C/UKR/CO/8 (2017), para.46: “The Committee recommends that the State party provide the necessary protection against discrimination and violence against lesbian, bisexual and transgender women, in particular through [...] training to medical personnel and the police and law enforcement officials”; CEDAW, concluding observations on Italy, U.N. Doc. CEDAW/C/ITA/CO/7 (2017), para.18(d): “Ensure that intersecting forms of discrimination are adequately addressed by courts, including through training for judges and lawyers”; Human Rights Committee, concluding observations on Bosnia and Herzegovina, U.N. Doc. CCPR/C/BIH/CO/3 (2017), para.26: “intensify its efforts to combat stereotypes and prejudice against lesbian, gay, bisexual and transgender persons, including by providing training to law enforcement officials”; CESCR, concluding observations on Morocco, U.N. Doc. E/C.12/TUN/CO/3 (2016), para.25: “The Committee recommends that the State party [...] provide law enforcement officials with training in respecting diverse sexual orientations and gender identities”; Human Rights Committee, concluding observations on South Africa, U.N. Doc. CCPR/C/ZAF/CO/1 (2016), para.21: “The State party should also ensure adequate training for law enforcement and health service personnel regarding domestic and gender-based violence, and violence based on sexual orientation and gender identity”; Human Rights Committee, concluding observations on Greece, U.N. Doc. CCPR/C/GRC/CO/2 (2015), para.12: “The State party should intensify its efforts to combat stereotypes and prejudice against lesbian, gay, bisexual and transgender persons, including by: [...] Providing appropriate training to public officials to end social stigmatization of lesbian, gay, bisexual and transgender persons”; Human Rights Committee, concluding observations on the Republic of Korea, U.N. Doc. CCPR/C/KOR/CO/4 (2015), para.15: “carry out public campaigns and provide training for public officials to promote awareness and respect for diversity in respect of sexual orientation and gender identity”; CAT, concluding observations on Colombia, U.N. Doc. CAT/C/COL/CO/5 (2015), para.27: “Provide mandatory training to law enforcement officers on the prosecution of cases involving the commission of acts of violence motivated by a person’s

F. Ensure that law enforcement officers and other individuals and groups are held accountable for any act of violence, intimidation or abuse based on the criminalisation of sexual orientation, gender identity, gender expression and sex characteristics;⁴⁰

G. Ensure effective access to legal support systems, justice and remedies for those who are affected by criminalisation and penalisation on grounds of sexual orientation, gender identity, gender expression and sex characteristics;⁴¹

H. Decriminalise body modification procedures and treatments that are carried out with prior, free and informed consent of the person. ⁴²

sexual orientation or gender identity”; Human Rights Committee, concluding observations on Croatia, U.N. Doc. CCPR/C/HRV/CO/3 (2015), para.10: “The State party should step up its efforts to combat stereotypes and prejudice against lesbian, gay, bisexual and transgender persons, including by launching an awareness-raising campaign aimed at the general public and providing appropriate training to public officials with a view to putting an end to the social stigmatization of such persons.”; CEDAW, concluding observations on Ecuador, U.N. Doc. CEDAW/C/ECU/CO/8-9 (2015), para.21: “establish a system to systematically monitor cases of violence against women, including lesbian, bisexual and transgender women [...] and conduct training for judges, prosecutors, police officers and other law enforcement officers on equality of women on all grounds mentioned in the Committee’s general recommendation No. 28.”

⁴⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. A/RES/39/46 (1984), Art.12: “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”; Human Rights Committee, concluding observations on Bangladesh, U.N. Doc. CCPR/C/BGD/CO/1 (2017), para.12(e): “provide protection to lesbian, gay, bisexual and transgender persons from violence and harassment by ensuring that all cases are promptly investigated and that perpetrators are prosecuted and punished with appropriate sanctions”; Human Rights Committee, concluding observations on Greece, U.N. Doc. CCPR/C/GRC/CO/2 (2015), para.12: “The State party should intensify its efforts to combat stereotypes and prejudice against lesbian, gay, bisexual and transgender persons, including by: [...] Ensuring that all reports of violence against lesbian, gay, bisexual and transgender persons are promptly and effectively investigated and that perpetrators of violence on the grounds of sexual orientation are prosecuted and sanctioned”; CAT, concluding observations on the former Yugoslav Republic of Macedonia, U.N. Doc. CAT/C/MKD/CO/3 (2015), para.13: regarding violence against members of the LGBTI community, “ensure that all acts of violence are promptly, effectively and impartially investigated and prosecuted, and that the resulting prosecutions take into consideration any discriminatory motives. Furthermore, the State should ensure that perpetrators are brought to justice”; CAT, concluding observations on Colombia, U.N. Doc. CAT/C/COL/CO/5 (2015), para.27: “Ensure that murders and assaults motivated by a person’s sexual orientation or gender identity are investigated and that the persons responsible are brought to justice”; Human Rights Committee, concluding observations on Croatia, U.N. Doc. CCPR/C/HRV/CO/3 (2015), para.10: “The State party should ensure that all reports of violence against lesbian, gay, bisexual and transgender persons are effectively investigated and that the perpetrators of violence based on sexual grounds are prosecuted and sanctioned.”; CEDAW, concluding observations on Ecuador, U.N. Doc. CEDAW/C/ECU/CO/8-9 (2015), para.21: “establish a system to systematically monitor cases of violence against women, including lesbian, bisexual and transgender women, and ensure that perpetrators are prosecuted and punished”; CAT, concluding observations on Namibia, U.N. Doc. CAT/C/NAM/CO/2 (2017), para.31: “The State party should ensure that violence against lesbian, gay, bisexual, transgender and intersex persons is promptly, impartially and thoroughly investigated and the perpetrators prosecuted and punished”; Human Rights Committee, concluding observations on Mongolia, U.N. Doc. CCPR/C/MNG/CO/6 (2017), para.12: “intensify its efforts to combat stereotypes and prejudices against lesbian, gay, bisexual, transgender and intersex persons, and ensure that acts of discrimination and violence directed against them are investigated, that perpetrators are prosecuted, and if convicted, punished with appropriate penalties”; Human Rights Committee, concluding observations on Honduras, U.N. Doc. CCPR/C/HND/CO/2 (2017), para.41: “Ensure that all allegations concerning intimidation, threats and assault are investigated promptly, thoroughly, independently and impartially, that the perpetrators are brought to justice and duly punished in accordance with the gravity of the offence”.

⁴¹ Human Rights Committee, concluding observations on Mongolia, U.N. Doc. CCPR/C/MNG/CO/6 (2017), para.12: “intensify its efforts to combat stereotypes and prejudices against lesbian, gay, bisexual, transgender and intersex persons, and ensure that [...] victims are provided with full reparation”; CAT, General Comment No. 3, U.N. Doc. CAT/C/GC/3 (2012), para.32: “States parties shall ensure that access to justice and to mechanisms for seeking and obtaining redress are readily available and that positive measures ensure that redress is equally accessible to all persons regardless of [...] gender, sexual orientation, gender identity, [...] reason for which the person is detained.”

⁴² UDHR, Art.12; ICCPR, Art.9, 17;

PRINCIPLE 34: THE RIGHT TO PROTECTION FROM POVERTY

Everyone has the right to protection from all forms of poverty and social exclusion associated with sexual orientation, gender identity, gender expression and sex characteristics.⁴³ Poverty is incompatible with respect for the equal rights and dignity of all persons, and can be compounded by discrimination on the grounds of sexual orientation, gender identity, gender expression and sex characteristics.

States shall:

A. Take all necessary legislative, administrative, budgetary and other measures, including economic policies, to ensure the progressive reduction and elimination of all forms of poverty associated with or exacerbated by sexual orientation, gender identity, gender expression or sex characteristics;⁴⁴

B. Promote social and economic inclusion of persons marginalised on the basis of sexual orientation, gender identity, gender expression and sex characteristics;⁴⁵

C. Ensure the participation and inclusion of those experiencing poverty on grounds of sexual orientation, gender identity, gender expression and sex characteristics in the adoption and implementation of legislative, administrative, budgetary and other measures to combat poverty;⁴⁶

D. Ensure appropriate institutional arrangements and data collection with the view to reduce poverty and social exclusion related to sexual orientation, gender identity, gender expression and sex characteristics;⁴⁷

E. Ensure access to effective remedies for violations of human rights, including those caused by non-State actors, that result in poverty and exclusion, and that adversely affect persons on the grounds of sexual

⁴³ UDHR, Arts.22, 25; CESCR, Arts. 9, 11, 12, 13; CEDAW, Arts.11, 12, 13, 14; CRC, Arts. 24, 27.

⁴⁴ CESCR, Art. 9, 11(1); CESCR, General Comment No. 7 U.N. Doc. E/1992/23 (1992); CESCR, General Comment No.19, U.N. Doc. E/C.12/GC/19 (2008), para. 29: “The Covenant thus prohibits any discrimination, whether in law or in fact, whether direct or indirect, on the grounds of [...] sex, [...] health status (including HIV/AIDS), sexual orientation, and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to social security”; para.34: “States parties must take steps to the maximum of their available resources to ensure that the social security systems cover those persons working in the informal economy.”; CESCR, General Comment No. 20 U.N. Doc. E/C.12/GC/20 (2009), para. 8: “In order for States parties to “guarantee” that the Covenant rights will be exercised without discrimination of any kind, discrimination must be eliminated both formally and substantively...”; Eliminate discrimination in education: CCPR/C/MEX/CO/5, para.21; CRC/C/SRB/CO/2-3 (2017), para.22(b); CEDAW/C/ALB/CO/4 (2016), para.38; CEDAW/C/PHL/CO/7-8 (2016), para.45(a); CEDAW/C/JPN/CO/7-8 (2016), para.46; E/C.12/MNG/CO/4 (2015), para.13; CRC/C/COL/CO/4-5 (2015); E/C.12/GTM/CO/3 (2014), para.9; E/C.12/UKR/CO/6 (2014), para.10; E/C.12/IRN/CO/2 (2013), para.7; E/C.12/PER/CO/2-4 (2012), para.5; CEDAW/C/CRI/CO/5-6 (2011), para.40; CEDAW/C/UGA/CO/7 (2010), para.43

⁴⁵ Guiding Principles on Extreme Poverty and Human Rights, U.N. Doc. A/HRC/21/39 (2012); CESCR, General Comment No. 23 U.N. Doc. E/C.12/GC/23 (2016), at para. 31: “All workers have the right to equal opportunity for promotion through fair, merit-based and transparent processes that respect human rights [...] This is highly relevant for women and other workers, such as [...] lesbian, gay, bisexual, transgender and intersex workers.”

⁴⁶ Universal Declaration of Human Rights, art. 21; International Covenant on Civil and Political Rights, art. 25; International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(c); Convention on the Elimination of All Forms of Discrimination against Women, art. 7; Convention on the Rights of Persons with Disabilities, art. 29.; Report of the Office of the United Nations High Commissioner for Human Rights on “Factors that impede equal political participation and steps to overcome those challenges” (A/HRC/27/29), 2014, at para.2.; Guiding Principles on Extreme Poverty and Human Rights, U.N. Doc. A/HRC/21/39 (2012), para.37: “Effective and meaningful participation is an affirmation of the right of every individual and group to take part in the conduct of public affairs. It is also a means of promoting social inclusion and an essential component of efforts to combat poverty, not least by ensuring that public policies are sustainable and designed to meet the expressed needs of the poorest segments of society.”

⁴⁷ Guiding Principles on Extreme Poverty and Human Rights, U.N. Doc. A/HRC/21/39 (2012), para.52: “States should ensure that the design and implementation of public policies, including budgetary and fiscal measures, take into account disaggregated data and up-to-date information on poverty.”

orientation, gender identity, gender expression and sex characteristics.⁴⁸

PRINCIPLE 35: THE RIGHT TO SANITATION

Everyone has the right to equitable, adequate, safe and secure sanitation and hygiene, in circumstances that are consistent with human dignity, without discrimination, including on the basis of sexual orientation, gender identity, gender expression or sex characteristics.⁴⁹

States shall:

A. Ensure that there are adequate public sanitation facilities which can be accessed safely and with dignity by all persons regardless of their sexual orientation, gender identity, gender expression or sex characteristics;⁵⁰

B. Ensure that all schools and other institutional settings provide safe access to sanitation facilities to staff, students and visitors without discrimination on grounds of sexual orientation, gender identity, gender expression or sex characteristics;⁵¹

C. Ensure that both public and private employers provide safe access to sanitation without discrimination on grounds of sexual orientation, gender identity, gender expression or sex characteristics;⁵²

D. Ensure that entities offering services to the public provide adequate sanitation without discrimination, including on grounds of sexual orientation, gender identity, gender expression or sex characteristics;⁵³

E. Ensure that places of detention have adequate sanitation facilities which can be accessed safely and with dignity by all detainees, staff and visitors without discrimination on grounds of sexual orientation, gender

⁴⁸ UDHR, Art.8: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”; CEDAW, General Comment No. 33 on access to justice, U.N. Doc. CEDAW/C/GC/33 (2015); Guiding Principles on Extreme Poverty and Human Rights, U.N. Doc. A/HRC/21/39 (2012), para.68; Human Rights Committee, General Comment No. 31, U.N. Doc. CCPR/C/21/Rev.1/Add.1326 (2004), para.15: “States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights. Such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of person.”

⁴⁹ UDHR Art.25; ICESCR Art, 11, 12; CEDAW Art. 12; CRC Art. 24, 27; CESCR, Statement on the right to sanitation, U.N. Doc. E/C.12/2010/1 (2011), para. 7: “since sanitation is fundamental for human survival and for leading a life in dignity, the right to sanitation is an essential component of the right to an adequate standard of living, enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights. The right to sanitation is also integrally related, among other Covenant rights, to the right to health, as laid down in Article 12 paragraphs 1 and 2 (a), (b) and (c), the right to housing, in Article 11, as well as the right to water.”

⁵⁰ Ibid.

⁵¹ UDHR Art.26; ICESCR, Art.13; CEDAW, Art.10; CRC, Art.28, 29; Report of the U.N. Special Rapporteur on the human right to safe drinking water and sanitation, U.N. Doc. A/HRC/33/49 (2016), para.31: “States must take all measures necessary to remove the barriers that deter people from using sanitation facilities. A concerted approach is needed against violence based on gender identity and initiatives must aim to increase respect and acceptance throughout society [...] States should attach considerable importance to training and supporting teachers and administrators on non-violent learning environments.”

⁵² Report of the U.N. Special Rapporteur on the human right to safe drinking water and sanitation, U.N. Doc. A/HRC/33/49 (2016), para. 77(d): “Create an enabling environment for women and girls to safely use water and sanitation facilities. Discrimination and violence based on gender identity must be prevented, investigated and remedied, and those responsible must be prosecuted”; para.77(i): “Ensure the gender-responsive water, sanitation and hygiene facilities are available in schools, hospitals, the workplace, market places, places of detention and public spaces like public transport hubs and public institutions, among other places. Laws and regulations must be developed, promoted and enforced and must serve to hold Governments and non-State actors to account.”

⁵³ *ibid.*; Report of the Special Rapporteur on the human right to safe drinking water and sanitation, U.N. Doc. A/HRC/24/44/Add.3 (2013), para.69: “Establish strong independent accountability mechanisms to ensure full compliance by all – including the private sector – with the human rights to safe drinking water and sanitation, in all aspects of safety, affordability, availability, accessibility, adaptability, equality and non-discrimination.”

identity, gender expression or sex characteristics.⁵⁴

PRINCIPLE 36: THE RIGHT TO THE ENJOYMENT OF HUMAN RIGHTS IN RELATION TO INFORMATION AND COMMUNICATION TECHNOLOGIES

Everyone is entitled to the same protection of rights online as they are offline.⁵⁵ Everyone has the right to access and use information and communication technologies, including the internet, without violence, discrimination or other harm based on sexual orientation, gender identity, gender expression or sex characteristics.⁵⁶ Secure digital communications, including the use of encryption, anonymity and pseudonymity tools are essential for the full realisation of human rights, in particular the rights to life, bodily and mental integrity, health, privacy, due process, freedom of opinion and expression, peaceful assembly and association.⁵⁷

States shall:

A. Take all necessary measures to ensure that all persons enjoy universal, affordable, open, safe, secure and equal access to information and communication technologies, including the internet,⁵⁸ without discrimination based on sexual orientation, gender identity, gender expression or sex characteristics;⁵⁹

B. Ensure the right of all individuals, without discrimination based on sexual orientation, gender identity, gender expression or sex characteristics, to seek, receive and impart information and ideas of all kinds, including those concerning sexual orientation, gender identity, gender expression and sex characteristics, through information and communication technologies;⁶⁰

C. Ensure that any restrictions to the right to access and use information and communication technologies and the internet are provided for by law and are necessary and proportionate to protect the human dignity,

⁵⁴ The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 15: “The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner”; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings, U.N. Doc. A/HRC/35/23 (2017), para. 110: “Ensure that judicial and prison authorities, when deciding allocation of transgender person to either a male or female prison, do so in consultation with the prisoner concerned and on a case-by-case basis. Safety considerations and the wishes of the individual must be paramount.”

⁵⁵ Human Rights Council resolution on the promotion, protection and enjoyment of human rights on the Internet, U.N. Doc. A/HRC/RES/20/8 (2012), OP1: “the same rights that people have offline must also be protected online”

⁵⁶ UDHR Art.19; ICCPR, Art.19; CESCR Concluding observations on Pakistan, U.N. Doc. E/C.12/PAK/CO/1 (2017), para.88: “take all measures necessary to improve access to the Internet, especially in rural areas”; CESCR Concluding observations on the Philippines, U.N. Doc. E/C.12/PHL/CO/5-6 (2016), para.58: “narrow the digital divide by expanding Internet access, in particular for disadvantaged and marginalized individuals and groups.”; CESCR Concluding observations on Burkina Faso, U.N. Doc. E/C.12/BFA/CO/1 (2016), para.52: “increase access to the Internet and redouble its efforts to set up educational and information centres focusing on the use of new technologies and the Internet.”

⁵⁷ UDHR, Arts. 3, 12, 19, 20, 25; ICCPR, Arts. 6(1), 9(1), 17, 19, 21, 22; ICESCR, Arts. 12; CEDAW, Art. 12; CRC, Arts. 6(1), 12, 15, 16, 19; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, U.N. Doc. A/HRC/29/32 (2015), para.56: “Encryption and anonymity, and the security concepts behind them, provide the privacy and security necessary for the exercise of the right to freedom of opinion and expression in the digital age. Such security may be essential for the exercise of other rights, including economic rights, privacy, due process, freedom of peaceful assembly and association, and the right to life and bodily integrity.”

⁵⁸ See footnote 53; Report of the Special Rapporteur on freedom of peaceful assembly and association, U.N. Doc. A/HRC/29/25/Add.1 (2015): “Ensure freedom of access to the Internet in accordance with international human rights standards, including the protection of the rights to freedom of peaceful assembly and of association online.”

⁵⁹ UDHR, Art.2; ICCPR, Art. 2(1), 26; ICESCR, Art.2(2); CEDAW, Art.1; CRC, Art.2(1)

⁶⁰ Human Rights Committee General Comment No. 34, U.N. Doc. CCPR/C/GC/34 (2011), para.12: “[ICCPR Article 19] Paragraph 2 protects all forms of expression and the means of their dissemination. [...] They include all forms of audio-visual as well as electronic and internet-based modes of expression.”; Joint statement of international and regional human rights experts, “Free expression and association key to eliminating Homophobia and Transphobia” (May 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14602&LangID=E>

equality and freedoms of others, without discrimination on the basis of sexual orientation, gender identity, gender expression or sex characteristics;⁶¹

D. Respect and protect the privacy and security of digital communications, including the use by individuals of encryption, pseudonyms and anonymity technology;⁶²

E. Ensure that any restrictions on the right to privacy, including through mass or targeted surveillance, requests for access to personal data, or through limitations on the use of encryption, pseudonymity and anonymity tools, are on a case specific basis, and are reasonable, necessary and proportionate as required by the law for a legitimate purpose and ordered by a court;⁶³

F. Take measures to ensure that the processing of personal data for individual profiling is consistent with relevant human rights standards including personal data protection and does not lead to discrimination, including on the grounds of sexual orientation, gender identity, gender expression and sex characteristics;⁶⁴

⁶¹ ICCPR, Art.19(3) Human Rights Committee General Comment No. 34, U.N. Doc. CCPR/C/GC/34 (2011), para.22: “restrictions must be “provided by law”; they may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3; and they must conform to the strict tests of necessity and proportionality. Restrictions are not allowed on grounds not specified in paragraph 3, even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated”; and, para.43: “Any restrictions on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, are only permissible to the extent that they are compatible with [ICCPR Article 19] paragraph 3.”

⁶² UDHR, Art.12; ICCPR, Art.17; CRC, Art.16; Report of the Special Rapporteur on freedom of expression and opinion, U.N. Doc. A/HRC/29/32 (2015), para.1: “Encryption and anonymity, today’s leading vehicles for online security, provide individuals with a means to protect their privacy, empowering them to browse, read, develop and share opinions and information without interference and enabling [...] those persecuted because of their sexual orientation or gender identity [...] and others to exercise the rights to freedom of opinion and expression”; para.59: “States should promote strong encryption and anonymity. National laws should recognize that individuals are free to protect the privacy of their digital communications by using encryption technology and tools that allow anonymity online.”; Report of the Special Rapporteur on freedom of expression and opinion, U.N. Doc. A/HRC/32/38 (2016), para. 57.

⁶³ Human Rights Committee Concluding observations on South Africa, U.N. Doc. CCPR/C/ZAF/CO/1 (2016), para. 43: “take all measures necessary to ensure that its surveillance activities conform to its obligations under the Covenant, including article 17, and that any interference with the right to privacy complies with the principles of legality, necessity and proportionality. The State party should refrain from engaging in mass surveillance of private communications without prior judicial authorization and consider revoking or limiting the requirement for mandatory retention of data by third parties. It should also ensure that interception of communications by law enforcement and security services is carried out only according to the law and under judicial supervision. The State party should increase the transparency of its surveillance policy and speedily establish independent oversight mechanisms to prevent abuses and ensure that individuals have access to effective remedies.”; Human Rights Committee Concluding observations on the United Kingdom, U.N. Doc. CCPR/C/GBR/CO/7 (2015): “Ensure that any interference with the right to privacy, with the family, with the home or with correspondence is authorized by laws that (i) are publicly accessible; (ii) contain provisions that ensure that collection of, access to and use of communications data are tailored to specific legitimate aims; (iii) are sufficiently precise and specify in detail the precise circumstances in which any such interference may be permitted, the procedures for authorization, the categories of persons who may be placed under surveillance, the limit on the duration of surveillance, and procedures for the use and storage of data collected; and (iv) provide for effective safeguards against abuse.”; Report of the Special Rapporteur on freedom of expression and opinion, U.N. Doc. A/HRC/29/32 (2015), para.60: “States should not restrict encryption and anonymity, which facilitate and often enable the rights to freedom of opinion and expression. Blanket prohibitions fail to be necessary and proportionate. States should avoid all measures that weaken the security that individuals may enjoy online, such as backdoors, weak encryption standards and key escrows. In addition, States should refrain from making the identification of users a condition for access to digital communications and online services and requiring SIM card registration for mobile users. Corporate actors should likewise consider their own policies that restrict encryption and anonymity (including through the use of pseudonyms). Court-ordered decryption, subject to domestic and international law, may only be permissible when it results from transparent and publicly accessible laws applied solely on a targeted, case-by-case basis to individuals (i.e., not to a mass of people) and subject to judicial warrant and the protection of due process rights of individuals.”

⁶⁴ Human Rights Council resolution on the right to privacy in the digital age, U.N. Doc. A/HRC/RES/34/7 (2017);

G. Take all necessary legislative, administrative, technical and other measures, including ensuring private sector accountability, as outlined by relevant international standards, in consultation with relevant stakeholders, to seek to prevent, remedy and eliminate online hate speech, harassment and technology-related violence against persons on the basis of sexual orientation, gender identity, gender expression or sex characteristics under the framework of international human rights law.⁶⁵

PRINCIPLE 37: THE RIGHT TO TRUTH

Every victim of a human rights violation on the basis of sexual orientation, gender identity, gender expression or sex characteristics has the right to know the truth about the facts, circumstances and reasons why the violation occurred.⁶⁶ The right to truth includes effective, independent and impartial investigation to establish the facts, and includes all forms of reparation recognised by international law.⁶⁷ The right to truth is not subject to statute of limitations and its application must bear in mind its dual nature as an individual right and

Human Rights Committee concluding observations on Sweden, U.N. Doc. CCPR/C/SWE/CO/7 (2016), para.37: “ensure: (a) that all laws and policies regulating the intelligence-sharing of personal data are in full conformity with its obligations under the Covenant, in particular article 17, including the principles of legality, proportionality and necessity; (b) that effective and independent oversight mechanisms over intelligence-sharing of personal data are put in place; and (c) that affected persons have proper access to effective remedies in cases of abuse.”; CAT Concluding observations on Cameroon, U.N. Doc. CAT/C/CMR/CO/4 (2010), para.31: “the collection of personal data raises sensitive confidentiality issues, and emphasizes that appropriate measures should be taken to avoid misuse of data.”; CEDAW Concluding observations on Slovakia, U.N. Doc. CEDAW/C/SVK/CO/5-6 (2015), para.38: “ensure the stringent protection of personal information throughout the data-collection process, including the collection, processing and dissemination of data”; Report of the Independent Expert on minorities, U.N. Doc. A/HRC/28/64/Add.2 (2015): “Provisions should be put into place to safeguard against discrimination, stigmatization and any misuse of sensitive information, in accordance with international standards of personal data protection and privacy.”; Reports of the Independent Expert on the rights of older persons, U.N. Doc. A/HRC/33/44/Add.1 (2016), para.77: “Data collection and analysis must comply with international standards on data protection and the right to privacy”; U.N. Doc. A/HRC/30/43/Add.2 (2015): “data have to be used sensibly to avoid stigmatization and potential misuse, and that particular care should be exercised when collecting and analysing data in order to respect and enforce data protection and the right to privacy.”

⁶⁵ Human Rights Committee Concluding observations on Bosnia and Herzegovina, U.N. Doc. CCPR/C/BIH/CO/3 (2017), para.22: “combat hate speech, including on the Internet, in accordance with articles 19 and 20 of the Covenant and the Committee’s general comment No. 34 (2011) on the freedoms of opinion and expression”; Human Rights Committee, Concluding Observations on Poland, U.N. Doc. CCPR/C/POL/CO/6 (2010), para. 8: “amend the Penal Code to define hate speech and hate crimes based on sexual orientation or gender identity among the categories of punishable offences”; CAT Concluding observations on Norway, U.N. Doc. CAT/C/NOR/CO/6-7 (2012), para.21: “ensure that violent acts, discrimination and hate speech are systematically investigated, prosecuted and the alleged perpetrators prosecuted, if found guilty, convicted and sanctioned with penalties commensurate with the gravity of the offence”; CERD, concluding observations on the Netherlands, U.N. Doc. CERD/C/NLD/CO/19-21 (2015), para.12: “Actively promote among the media and Internet service providers awareness of the importance of avoiding stereotypes and discriminatory attitudes and of the intrinsic value of diversity”; UN Guiding Principles on Business and Human Rights (2011); OHCHR “Standards of Conduct for Business on Tackling Discrimination against LGBTI people” (2017).

⁶⁶ UDHR, Art.19: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”; ICCPR, Art.19(2): “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”; Updated Set of principles for the protection and promotion of human rights through action to combat impunity, U.N. Doc. E/CN.4/2005/102/Add.1 (2005), Principle 2: “Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations.”; Report of the Special Rapporteur on freedom of expression, U.N. Doc. A/68/362 (2013), para.24: “The right to truth and the right to access information are clearly interrelated. The right to seek and receive information on human rights violations is not limited to past grave and/or systematic violations.”; U.N. General Assembly resolution 68/165 on the Right to truth (2013), OPI: “Recognizes the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights”

⁶⁷ Report of the Special Rapporteur on freedom of expression, U.N. Doc. A/68/362 (2013), para.30: “the pursuit of judicial investigations into human rights violations is a core responsibility of the State and a major starting point for the realization of the right to truth”

the right of the society at large to know the truth about past events.⁶⁸

States shall:

A. Adopt legal provisions to provide redress to victims of violations on the basis of sexual orientation, gender identity, gender expression and sex characteristics, including public apology, expungement of relevant criminal convictions and records, rehabilitation and recovery services, adequate compensation and guarantees of non-recurrence;⁶⁹

B. Ensure, in cases of violations of the right to mental and bodily integrity, effective access to remedies, redress, reparation and, where appropriate, psychological support and restorative treatments;⁷⁰

C. Protect individuals' right to know the truth about their medical histories, including through full access to accurate medical records;⁷¹

D. Adopt and fully implement procedures to establish the truth concerning violations based on sexual orientation, gender identity, gender expression and sex characteristics;⁷²

E. Establish a truth-seeking mechanism and process in regard to human rights violations based on sexual orientation, gender identity, gender expression and sex characteristics;⁷³

⁶⁸ U.N. Basic Principles on Reparations and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, annex at U.N. Doc. A/RES/60/147 (2005), para. 6: "Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law."

⁶⁹ Report of the Special Rapporteur on freedom of expression, U.N. Doc. A/68/362 (2013), para.98: "The adoption of a national normative framework that objectively establishes the right to access information held by public bodies in the broadest possible terms is crucial to give effect, at the national level, to the right to access information. Legislation should be grounded by the principle of maximum disclosure."; U.N. Basic Principles on Reparations and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, annex at U.N. Doc. A/RES/60/147 (2005), para.2: "If they have not already done so, States shall, as required under international law, ensure that their domestic law is consistent with their international legal obligations by [...] Making available adequate, effective, prompt and appropriate remedies, including reparation"; and paras.18-23: "In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition."

⁷⁰ UDHR, Art.8; ICCPR, Art 2(3); CAT, Art.14.; Updated Set of principles for the protection and promotion of human rights through action to combat impunity, U.N. Doc. E/CN.4/2005/102/Add.1 (2005), Principle 34: "The right to reparation shall cover all injuries suffered by victims; it shall include measures of restitution, compensation, rehabilitation, and satisfaction as provided by international law."

⁷¹ Human Rights Committee Concluding observations on Switzerland, U.N. Doc. CCPR/C/CHE/CO/4 (2017), para.25: "see to it that medical records are accessible and that inquiries are launched in cases where intersex persons are subjected to treatment or surgical procedures without their effective consent"; CEDAW Concluding observations on the Czech Republic, U.N. Doc. CEDAW/C/CZE/CO/6 (2016), para.29: "on the matter of sterilizations performed in contravention of the law... To provide all victims with assistance in gaining access to their medical records."

⁷² Updated Set of principles for the protection and promotion of human rights through action to combat impunity, U.N. Doc. E/CN.4/2005/102/Add.1 (2005), Principle 8(d): "Commissions of inquiry may have jurisdiction to consider all forms of violations of human rights and humanitarian law. Their investigations should focus as a matter of priority on violations constituting serious crimes under international law, including in particular violations of the fundamental rights of women and of other vulnerable groups";

⁷³ Updated Set of principles for the protection and promotion of human rights through action to combat impunity, U.N. Doc. E/CN.4/2005/102/Add.1 (2005), Principle 5: "Societies that have experienced heinous crimes perpetrated on a massive or systematic basis may benefit in particular from the creation of a truth commission or other commission of inquiry to establish the facts surrounding those violations so that the truth may be ascertained and to prevent the disappearance of evidence."; CEDAW Concluding observations on the Czech Republic, U.N. Doc. CEDAW/C/CZE/CO/6 (2016), para.29: "appoint an independent committee to research the full extent of the harm

F. Ensure that, in addition to individual victims and their families, communities and society at large can realise the right to the truth about systemic human rights violations based on sexual orientation, gender identity, gender expression and sex characteristics, while respecting and protecting the right to privacy of individuals;⁷⁴

G. Preserve documentary evidence of human rights violations based on sexual orientation, gender identity, gender expression and sex characteristics, and ensure adequate access to archives with information on violations based on sexual orientation, gender identity, gender expression and sex characteristics;⁷⁵

H. Ensure that the facts and truth of the history, causes, nature and consequences of discrimination and violence on grounds of sexual orientation, gender identity, gender expression and sex characteristics are disseminated and added to educational curricula with a view to achieving a comprehensive and objective awareness of past treatment of persons on grounds of sexual orientation, gender identity, gender expression and sex characteristics;⁷⁶

I. Commemorate the suffering of victims of violations on the basis of sexual orientation, gender identity, gender expression and sex characteristics through public events, museums and other social and cultural activities.⁷⁷

PRINCIPLE 38: THE RIGHT TO PRACTICE, PROTECT, PRESERVE AND REVIVE CULTURAL DIVERSITY

Everyone, individually or in association with others, where consistent with the provisions of international human rights law, has the right to practice, protect, preserve and revive cultures, traditions, languages, rituals and festivals, and protect cultural sites of significance, associated with sexual orientation, gender identity, gender expression and sex characteristics.⁷⁸ Everyone, individually or in association with others, has the right

caused by the practice of involuntary sterilization, and support continuing outreach to all potential applicants for compensation.”

⁷⁴ Human Rights Committee, General Comment No.34 on Article 19, U.N. Doc. CCPR/C/GC/34 (2011), para. 19: “To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation. The procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant. Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests.”; Report of the Special Rapporteur on freedom of expression, U.N. Doc. A/68/362 (2013), para. 29: “in the context of serious human rights violations, there is a particular obligation which requires States to inform not only the victims and their families but also society as a whole of what has happened.”; U.N. Basic Principles on Reparations and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, annex at U.N. Doc. A/RES/60/147 (2005), para.22: “verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim’s relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations.”

⁷⁵ Updated Set of principles for the protection and promotion of human rights through action to combat impunity, U.N. Doc. E/CN.4/2005/102/Add.1 (2005), Principle 3: “A people’s knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfilment of the State’s duty to preserve archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments.”

⁷⁶ U.N. Basic Principles on Reparations and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, annex at U.N. Doc. A/RES/60/147 (2005), para.22(h): “Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels”

⁷⁷ Special Rapporteur in the Field of Cultural Rights, Report on memorialization processes of the events of the past in post-conflict and divided societies, U.N. Doc. A/HRC/25/49 (2014).

⁷⁸ CESCR, Arts. 1(1), 2(2), 15(1); CEDAW, Art. 13(c).

to manifest cultural diversity through artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used, without discrimination based on sexual orientation, gender identity, gender expression or sex characteristics.⁷⁹ Everyone, individually or in association with others, has the right to seek, receive, provide and utilise resources for these purposes without discrimination on the basis of sexual orientation, gender identity, gender expression or sex characteristics.⁸⁰

States shall:

A. Ensure the right to practice, protect, preserve and revive the diversity of cultural expressions of persons of all sexual orientations, gender identities, gender expressions and sex characteristics on the basis of the equal dignity of and respect for all.⁸¹

ADDITIONAL STATE OBLIGATIONS

ADDITIONAL STATE OBLIGATIONS TO PRINCIPLE 2: RELATING TO THE RIGHTS TO EQUALITY AND NON-DISCRIMINATION

States shall:

G. Take all appropriate steps to ensure that reasonable accommodation is provided, where needed, in order to promote equality and eliminate discrimination on the basis of sexual orientation, gender identity, gender expression or sex characteristics, including in education, employment, and access to services;⁸²

H. Ensure that HIV status is not used as a pretext to isolate, marginalise or exclude persons of diverse sexual orientations, gender identities, gender expressions or sex characteristics, or prevent them from accessing goods, commodities and services;⁸³

I. Ensure that all individuals can participate in sport in line with the gender with which they identify, subject only to reasonable, proportionate and non-arbitrary requirements;⁸⁴

⁷⁹ UDHR, Art.27; CRC, Art.31(2); CESCR, General Comment 21 on the right of everyone to take part in cultural life, U.N. Doc. E/C.12/GC/21

⁸⁰ UDHR, Art.19; ICCPR, Art.19(2)

⁸¹ UDHR, Arts.1, 2, 27; CESCR, Arts. 1(1), 2(2), 15(1); ICCPR, Art.19(2); CESCR, General Comment 21 on the right of everyone to take part in cultural life, U.N. Doc. E/C.12/GC/21

⁸² CRPD, Art 2: "Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;"; CRPD, Art 5(3): "In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided."

⁸³ UDHR, Art.2.; Human Rights Committee, concluding observations on Serbia, U.N. Doc. CCPR/C/SRB/CO/3 (2017), para.13: "eradicate all forms of social stigmatization, discrimination and violence against persons based on their sexual orientation and gender identity or HIV status"; Committee on Migrant Workers, concluding observations on Sri Lanka, U.N. Doc. CMW/C/LKA/CO/2 (2016), para.27: "Ensure that no medical examination at entry is required on discriminatory grounds, including health or medical conditions that pose no risk, physical or psychosocial disability, real or perceived HIV/AIDS status, other communicable disease, sex work or sexual orientation or gender identity."; Report of the Special Rapporteur on extreme poverty, U.N. Doc. A/HRC/23/36/Add.2 (2013), para.97(cc): "Ensure protection against discrimination on the basis of health status in all aspects of life and provide effective mechanisms for redress. Amend the law on non-discrimination in the workplace based on HIV status and ensure employment opportunities are available when possible"

⁸⁴ See footnotes to Principles 31 and 32; Report of the Special Rapporteur on health, U.N. Doc. A/HRC/32/33 (2016), para.57: "Sporting organizations must implement policies in accordance with human rights norms and refrain from introducing policies that force, coerce or otherwise pressure women athletes into undergoing unnecessary, irreversible and harmful medical procedures in order to participate as women in competitive sport", para. 61: "States, sporting organizations and other actors should adopt anti-discrimination policies that permit all persons to participate in amateur sport on the basis of their self-identified gender. Practical steps to create welcoming spaces for participation in sport and physical activity for transgender people and non-binary people could include the installation of appropriate changing rooms, the sensitization of sporting communities, and the enforcement of anti-discrimination laws in the sporting

J. Ensure that all individuals can participate in sport without discrimination on the grounds of sexual orientation, gender identity, gender expression or sex characteristics;⁸⁵

K. Adopt legislative, policy and other measures in line with international human rights norms and standards to eliminate bullying and discriminatory behaviour at all levels of sports, on the basis of sexual orientation, gender identity, gender expression and sex characteristics;⁸⁶

L. Combat the practice of prenatal selection on the basis of sex characteristics, including by addressing the root causes of discrimination against persons on the basis of sex, gender, sexual orientation, gender identity, gender expression and sex characteristics, and by carrying out awareness-raising activities on the detrimental impact of prenatal selection on these grounds;⁸⁷

M. Take measures to address discriminatory attitudes and practices on the basis of sex, gender, sexual orientation, gender identity, gender expression and sex characteristics in relation to the application of prenatal treatments and genetic modification technologies.⁸⁸

ADDITIONAL STATE OBLIGATIONS TO PRINCIPLE 6: RELATING TO THE RIGHT TO PRIVACY

States Shall:

G. Ensure that requirements for individuals to provide information on their sex or gender are relevant, reasonable and necessary as required by the law for a legitimate purpose in the circumstances where it is sought, and that such requirements respect all persons' right to self-determination of gender;⁸⁹

H. Ensure that changes of the name or gender marker, as long as the latter exists, is not disclosed without the prior, free, and informed consent of the person concerned, unless ordered by a court.⁹⁰

ADDITIONAL STATE OBLIGATIONS TO PRINCIPLE 9: RELATING TO THE RIGHT TO TREATMENT WITH HUMANITY WHILE IN DETENTION

States shall:

H. Adopt and implement policies to combat violence, discrimination and other harm on grounds of sexual orientation, gender identity, gender expression or sex characteristics faced by persons who are deprived of their liberty, including with respect to such issues as placement, body or other searches, items to express gender, access to and continuation of gender affirming treatment and medical care, and "protective" solitary confinement;⁹¹

context."

⁸⁵ Report of the Special Rapporteur on health, U.N. Doc. A/HRC/32/33 (2016), paras. 50-61, 101-102

⁸⁶ *ibid.*

⁸⁷ To be read in conjunction with Principles 32(A), 33(B) and 17(M),(P); see for example OHCHR, UNFPA, UNICEF, UN Women and WHO Interagency Statement on Preventing Gender-Biased Sex Selection (2011): "Ensure women's access to safe abortion and other services – efforts to manage or limit sex selection should also not hamper or limit access to safe abortion services. This should be part of broader efforts to protect the right of women to have access to legitimate sexual and reproductive health technologies and services."; CEDAW Concluding observations on Montenegro, U.N. Doc. CEDAW/C/MNE/CO/2 (2017), para. 19: "Develop and implement awareness-raising measures for the general public and relevant professional groups, such as doctors and nurses, on the pervasiveness and adverse effects of sex selection"; CRC Concluding observations on Georgia, U.N. Doc. CRC/C/GEO/CO/4 (2017), para. 15: "Combat the practice of sex-selective abortion, including by addressing its root causes and the long-term implications for society, expanding family planning services and carrying out awareness-raising activities on the detrimental impact of sex selection"

⁸⁸ UDHR, Art. 2, 16; ICCPR, Art.2(1), 23(2); ICESCR Art.2(2), CEDAW Art.1

⁸⁹ UDHR, Arts. 2, 12; ICCPR, Arts. 2(1), 17; CRC, Arts. 2(1), 16

⁹⁰ *ibid.*

⁹¹ ICCPR, Art.10; Ninth annual report of the United Nations Subcommittee on the Prevention of Torture, U.N. Doc.

I. Adopt and implement policies on placement and treatment of persons who are deprived of their liberty that reflect the needs and rights of persons of all sexual orientations, gender identities, gender expressions, and sex characteristics and ensure that persons are able to participate in decisions regarding the facilities in which they are placed;⁹²

J. Provide for effective oversight of detention facilities, both with regard to public and private custodial care, with a view to ensuring the safety and security of all persons, and addressing the specific vulnerabilities associated with sexual orientation, gender identity, gender expression and sex characteristics.⁹³

ADDITIONAL STATE OBLIGATIONS TO PRINCIPLE 10: RELATING TO THE RIGHT TO FREEDOM FROM TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

States shall:

D. Recognise that forced, coercive and otherwise involuntary modification of a person's sex characteristics may amount to torture, or other cruel, inhuman or degrading treatment;⁹⁴

E. Prohibit any practice, and repeal any laws and policies, allowing intrusive and irreversible treatments on the basis of sexual orientation, gender identity, gender expression or sex characteristics, including forced genital-normalising surgery, involuntary sterilisation, unethical experimentation, medical display, "reparative" or "conversion" therapies, when enforced or administered without the free, prior, and informed consent of the person concerned.⁹⁵

CAT/OP/C/57/4 (2016), section D; General Assembly resolution 70/175 on the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 17 December 2015, Rules 43, 45.

⁹² Ninth annual report of the United Nations Subcommittee on the Prevention of Torture, U.N. Doc. CAT/OP/C/57/4 (2016) section D; General Assembly resolution 70/175 on the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 17 December 2015, Rule 7(a).

⁹³ CAT, Concluding Observations on Costa Rica, U.N. Doc. CAT/C/CRI/CO/2 (2008), at para. 11, 18; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57 (2016), para. 70 (y).

⁹⁴ Report of the United Nations Special Rapporteur on torture (A/HRC/22/53), 2013, para.39: "medical care that causes severe suffering for no justifiable reason can be considered cruel, inhuman or degrading treatment or punishment, and if there is State involvement and specific intent, it is torture."

⁹⁵ CESCR, General Comment No. 22 (E/C.12/GC/22), 2016, para.59: "Violations of the obligation to protect occur when a State fails to take effective steps to prevent third parties from undermining the enjoyment of the right to sexual and reproductive health. This includes the failure to prohibit and take measures to prevent all forms of violence and coercion committed by private individuals and entities, including [...] violence targeting lesbian, gay, bisexual, transgender and intersex persons or women seeking abortion or post-abortion care; harmful practices such as female genital mutilation, child and forced marriage, forced sterilization, forced abortion and forced pregnancy; and medically unnecessary, irreversible and involuntary surgery and treatment performed on intersex infants or children."; Report of the Special Rapporteur on torture (A/HRC/22/53), 2013, paras. 36-38, 76-79, 88: "not only does enforced surgery result in permanent sterility and irreversible changes to the body, and interfere in family and reproductive life, it also amounts to a severe and irreversible intrusion into a person's physical integrity"; Human Rights Committee, Concluding Observations on Ukraine (CCPR/C/UKR/CO/7), 2013, para.10: "The State party should also amend order No. 60 and other laws and regulations with a view to ensuring that: (1) the compulsory confinement of persons requiring a change (correction) of sex in a psychiatric institution for up to 45 days is replaced by a less invasive measure; (2) any medical treatment should be provided in the best interests of the individual with his/her consent, should be limited to those medical procedures that are strictly necessary, and should be adapted to his/her own wishes, specific medical needs and situation; (3) any abusive or disproportionate requirements for legal recognition of a gender reassignment are repealed."; CEDAW, Concluding Observations on the Netherlands (CEDAW/C/NLD/CO/5), 2010, para. 47: "The Committee strongly supports the intention of the Netherlands to conduct in-depth research on the health situation of transgender women and to revise the law making sterilization compulsory for transgender women." See also, CEDAW, Concluding Observations on Belgium (CEDAW/C/BEL/CO/7), 2014, para. 45; Human Rights Committee, Concluding Observations on Ecuador (CCPR/C/EQU/CO/5), 2009, para. 12: "The State party should take preventive and protective measures to ensure that persons of a different sexual orientation are not detained in private clinics or rehabilitation centres in order to be subjected to so-called sexual reorientation treatments. The Committee recommends that the State party investigate the alleged detentions and torture and adopt the necessary remedial measures in accordance with the

ADDITIONAL STATE OBLIGATIONS TO PRINCIPLE 16: RELATING TO THE RIGHT TO EDUCATION

States shall:

I. Ensure inclusion of comprehensive, affirmative and accurate material on sexual, biological, physical and psychological diversity, and the human rights of people of diverse sexual orientations, gender identities, gender expressions and sex characteristics, in curricula, taking into consideration evolving capacities of the child;⁹⁶

J. Ensure inclusion of comprehensive, affirmative and accurate material on sexual, biological, physical and psychological diversity, and the human rights of people of diverse sexual orientations, gender identities, gender expressions and sex characteristics, in teacher training and continuing professional development programmes.⁹⁷

Constitution.”; Committee Against Torture, Concluding Observations on China (CAT/C/CHN/CO/5), 2016, paras.55-56: “55. The Committee is concerned about reports that private and publicly run clinics offer the so-called “gay conversion therapy” to change the sexual orientation of lesbian and gay persons, and that such practices include the administration of electroshocks and, sometimes, involuntary confinement in psychiatric and other facilities, which could result in physical and psychological harm. While noting that, in December 2014, a Beijing court ordered one such clinic to pay compensation for such treatment, the Committee regrets the State party’s failure to clarify whether such practices are prohibited by law, have been investigated and ended, and whether the victims have received redress (arts. 10, 12, 14 and 16). 56. The State party should: (a) Take the necessary legislative, administrative and other measures to guarantee respect for the autonomy and physical and personal integrity of lesbian, gay, bisexual, transgender and intersex persons and prohibit the practice of so-called “conversion therapy”, and other forced, involuntary or otherwise coercive or abusive treatments against them.” See also, Human Rights Committee, Concluding Observations on Korea (CCPR/C/KOR/CO/4), 2015, para.15; Report of the Special Rapporteur on torture (A/HRC/22/53), 2013, para.88: “The Special Rapporteur calls upon all States to repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery, involuntary sterilization, unethical experimentation, medical display, “reparative therapies” or “conversion therapies”, when enforced or administered without the free and informed consent of the person concerned. He also calls upon them to outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups.”

⁹⁶ CESCR General Comment No. 13, U.N. Doc. E/C.12/1999/10 (1999) para.59: violations of article 13 include the introduction or failure to repeal legislation which discriminates against individuals or groups, on any of the prohibited grounds, in the field of education; the failure to take measures which address de facto educational discrimination; the use of curricula inconsistent with the educational objectives set out in article 13 (1); Human Rights Committee Concluding Observations on the Republic of Korea, U.N. Doc. CCPR/C/KOR/CO/4 (2015), para.15: “develop sex education programmes that provide students with comprehensive, accurate and age-appropriate information regarding sexuality and diverse gender identities”; Report of the Special Rapporteur on the right to education, U.N. Doc. A/65/162 (2010), para.23: “In order to be comprehensive, sexual education must pay special attention to diversity, since everyone has the right to deal with his or her own sexuality without being discriminated against on grounds of sexual orientation or gender identity.”; Report of the Special Rapporteur on the right to health, U.N. Doc. A/66/254 (2011), para.65: “Take steps to standardize national curricula to ensure that sexual and reproductive education is comprehensive, evidence-based, and includes information regarding human rights, gender and sexuality.”

⁹⁷ Report of the Special Rapporteur on the right to education, U.N. Doc. A/65/162 (2010), para.87: “Provide high-quality, specialized teacher training in an institutional environment that supports teachers and increases their confidence through a curriculum framework of medium- and long-term projects.”; CEDAW Concluding observations on Belarus, U.N. Doc. CEDAW/C/BLR/CO/8 (2016), para.31: “ensure, as a matter of priority, that: (a) School textbooks, curricula and teacher training materials are reviewed and revised to eliminate all discriminatory gender stereotypes; [...] (d) Gender equality and gender sensitivity training are made integral and mandatory components of teacher training at all levels.”; CRC Concluding observations on Timor Leste, U.N. Doc. CRC/C/TLS/CO/2-3 (2015), para.55: “Mainstream gender equality policies in the education sector, ensuring that gender issues and sensitivity training are made an integral, substantive and mandatory component of all teacher training at all levels, and address the situation of violence and sexual harassment in schools.”

ADDITIONAL STATE OBLIGATIONS TO PRINCIPLE 17: RELATING TO THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH

States shall:

J. Protect all persons from discrimination, violence and other harm on the basis of sexual orientation, gender identity, gender expression and sex characteristics in healthcare settings;⁹⁸

K. Ensure access to the highest attainable standard of gender affirming healthcare, on the basis of an individual's free, prior and informed consent;⁹⁹

L. Ensure that gender affirming healthcare is provided by the public health system or, if not so provided, that the costs are covered or reimbursable under private and public health insurance schemes;¹⁰⁰

M. Take all necessary measures to eliminate all forms of sexual and reproductive violence on the basis of sexual orientation, gender identity, gender expression and sex characteristics, including forced marriage, rape and forced pregnancy;¹⁰¹

N. Ensure access, without discrimination on the grounds of sexual orientation, gender identity, gender expression, or sex characteristics, to pre and post-exposure prophylaxis (PrEP and PEP);¹⁰²

⁹⁸ CESCR, General Comment No. 22 (E/C.12/GC/22), 2016, para.59: "Violations of the obligation to protect occur when a State fails to take effective steps to prevent third parties from undermining the enjoyment of the right to sexual and reproductive health. This includes the failure to prohibit and take measures to prevent all forms of violence and coercion committed by private individuals and entities, including [...] violence targeting lesbian, gay, bisexual, transgender and intersex persons or women seeking abortion or post-abortion care; harmful practices such as female genital mutilation, child and forced marriage, forced sterilization, forced abortion and forced pregnancy; and medically unnecessary, irreversible and involuntary surgery and treatment performed on intersex infants or children."; Report of the Special Rapporteur on torture (A/HRC/22/53), 2013, paras. 36-38, 76-79, 88: "not only does enforced surgery result in permanent sterility and irreversible changes to the body, and interfere in family and reproductive life, it also amounts to a severe and irreversible intrusion into a person's physical integrity"; Human Rights Committee, Concluding Observations on Ireland (CCPR/C/IRL/CO/3), 2008, para. 8, and on Ukraine (CCPR/C/UKR/CO/7), 2013, para.10; CEDAW, Concluding Observations on the Netherlands (CEDAW/C/NLD/CO/5), 2010, para. 46-47, and on Belgium (CEDAW/C/BEL/CO/7), 2014, para. 45; CESCR Concluding Observations on Germany (E/C.12/DEU/CO/5), 2011, para. 26; Human Rights Committee, Concluding Observations on Ecuador (CCPR/C/ECU/CO/5), 2009, para. 12; Committee Against Torture, Concluding Observations on China (CAT/C/CHN/CO/5), 2016, para.56; Human Rights Committee, Concluding Observations on Korea (CCPR/C/KOR/CO/4), 2015, para.15; Report of the Special Rapporteur on torture (A/HRC/22/53), 2013, para.88

⁹⁹ UDHR, Arts. 2, 5, 25; ICCPR, Arts. 2(1), 26, 16; ICESCR, Arts. 2(2), 12; CEDAW, Arts 1, 12; Human Rights Committee, Concluding Observations on Ukraine (CCPR/C/UKR/CO/7), 22 August 2013, para.10: "medical treatment should be provided in the best interests of the individual with [their] consent, should be limited to those medical procedures that are strictly necessary, and should be adapted to [their] own wishes, specific medical needs and situation."

¹⁰⁰ CEDAW Concluding Observations on the Netherlands, U.N. Doc. CEDAW/C/NLD/ CO/5 (2010), paras. 46-47: "reconsider its position to not reimburse transgender women for breast implants"; CEDAW Concluding Observations on Switzerland, U.N. Doc. CEDAW/C/CHE/CO/4-5 (2016), paras. 38-39: "review the decisions taken by civil courts requiring transgender persons to undergo surgical and/or hormonal treatment before legal gender recognition can be granted, and ensure that the costs for such interventions is reimbursed"

¹⁰¹ UDHR Art 3; ICCPR, Art 9(1); CEDAW, Art.16; UN Declaration on the Elimination of Violence Against Women (1993); Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962); CAT, General Comment No.2, U.N. Doc. CAT/C/GC/2 (2008), para.18; Human Rights Committee, Concluding Observations on the former Yugoslav Republic of Macedonia, U.N. Doc. CCPR/C/MKD/CO/3 (2015), para.7; on Latvia, U.N. Doc. CCPR/C/LVA/CO/3 (2014) para.19; on Kazakhstan U.N. Doc. CCPR/C/KAZ/CO/2 (2016), para.10; CAT Concluding Observations on Iraq U.N. Doc. CAT/C/IRQ/CO/1 (2015), para.25; on Macedonia U.N. Doc. CAT/C/MKD/CO/3 (2015), para. 13.

¹⁰² UDHR, Art 25; ICESCR, Art.12; CEDAW, Art.12; CRC, Art.24; CESCR General Comment No.14 on the right to the highest attainable standard of health, U.N. Doc. E/C.12/2000/4 (2000), para. 17: "The creation of conditions which would assure to all medical service and medical attention in the event of sickness" (art. 12.2 (d)), both physical and mental, includes the provision of equal and timely access to basic preventive, curative, rehabilitative health services and health education; regular screening programmes; appropriate treatment of prevalent diseases, illnesses, injuries and

O. Ensure access to a range of safe, affordable and effective contraceptives, including emergency contraception,¹⁰³ and to information and education on family planning and sexual and reproductive health,¹⁰⁴ without discrimination based on sexual orientation, gender identity, gender expression and sex characteristics;¹⁰⁵

P. Take all necessary legislative and other measures to ensure access to quality post abortion care, and remove any barriers that may hinder timely access to affordable and quality abortion services, without discrimination based on sexual orientation, gender identity, gender expression or sex characteristics;¹⁰⁶

Q. Prevent the disclosure of HIV status, as well as personal health and medical information related to sexual orientation, gender identity, gender expression and sex characteristics, such as gender affirming treatment, without the free, prior informed consent of the person;¹⁰⁷

disabilities, preferably at community level; the provision of essential drugs; and appropriate mental health treatment and care.”; Report of the Special Rapporteur on the right to health, U.N. Doc. A/HRC/32/32/Add.2 (2016): “Ensure that survivors of sexual violence who seek assistance have access to comprehensive clinical services, including [...] post-exposure prophylaxis to prevent HIV infection”

¹⁰³ CEDAW Committee, Concluding Observations on Cyprus, U.N. Doc. CEDAW/C/CYP/CO/6-7 (2013), para. 30(b); on Hungary, U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013) para. 31; on India, U.N. Doc. CEDAW/C/IND/CO/4-5 (2014), paras. 30-31; on Sierra Leone, U.N. Doc. CEDAW/C/SLE/CO/6 (2014) paras. 32-33, and; on Haiti, U.N. Doc. CEDAW/C/HTI/CO/8-9 (2016) para. 34 (e).

¹⁰⁴ CEDAW General Recommendation No. 24 on women and health (1999) para. 28; CRC Committee, General Comment No. 15, U.N. Doc. CRC/C/GC/15 (2013), para. 69; Human Rights Committee, Concluding Observations on Paraguay, U.N. Doc. CCPR/C/PRY/CO/3 (2013), para. 13.

¹⁰⁵ CESCR General Comment 22 on the right to sexual and reproductive health, U.N. Doc. E/C.12/GC/22 (2016), para.22: “All individuals and groups should be able to enjoy equal access to the same range, quality and standard of sexual and reproductive health facilities, information, goods and services, and to exercise their rights to sexual and reproductive health without experiencing any discrimination.”

¹⁰⁶ –Quality post-abortion care: CESCR General Comment 22 on the right to sexual and reproductive health, U.N. Doc. E/C.12/GC/22 (2016), para.28: “guarantee women and girls access to safe abortion services and quality post-abortion care”; CAT Concluding observations on Paraguay, U.N. Doc. CAT/C/PRY/CO/4-6 (2011), para.22: “concerned about the denial of medical care to women who have decided to have an abortion, which could seriously jeopardize their physical and mental health and could constitute cruel and inhuman treatment [...] The State party should, in accordance with the guidelines issued by the World Health Organization, guarantee immediate and unconditional treatment for persons seeking emergency medical care”; CEDAW Concluding observations on Kenya, U.N. Doc. CEDAW/C/KEN/CO/8 (2017), para.39: “ensure access to high-quality post-abortion care, especially where complications arise from unsafe abortions”; CAT Concluding observations on Ireland, U.N. Doc. CAT/C/IRL/CO/2 (2017), para.32: “Ensure the provision of post-abortion health care for women irrespective of whether they have undergone an illegal or a legal abortion.” – Affordable abortion services: CESCR Concluding observations on Slovakia, U.N. Doc. E/C.12/SVK/CO/2 (2012), para.24: “recommends that the State party lower the cost of abortion services”; CEDAW Concluding observations on Austria, U.N. Doc. CEDAW/C/AUT/CO/7-8 (2013), para.39: “recommends that the State party provide financial support to economically disadvantaged women and girls needing an abortion who cannot afford it”; CEDAW Concluding observations on Portugal, UN Doc. CEDAW/C/PRT/CO/8-9 (2015), para. 37: “amend its law on voluntary termination of pregnancy and eliminate the excessively burdensome conditions recently introduced, including the requirement of fees, in order to provide women with freedom of informed choice and ensure respect for their autonomy”; – Quality abortion services: CESCR General Comment 22 on the right to sexual and reproductive health, U.N. Doc. E/C.12/GC/22 (2016), para.28: “guarantee women and girls access to safe abortion services and quality post-abortion care”; para.21: “Facilities, goods, information and services related to sexual and reproductive health must be of good quality, meaning that they are evidence-based and scientifically and medically appropriate and up-to-date. This requires trained and skilled healthcare personnel and scientifically approved and unexpired drugs and equipment. The failure or refusal to incorporate technological advances and innovations in the provision of sexual and reproductive health services, such as medication for abortion, assisted reproductive technologies and advances in the treatment of HIV and AIDS, jeopardizes the quality of care.”

¹⁰⁷ UDHR, Art.12; ICCPR, Art.17; CRC, Art.16; CESCR General Comment 22 on the right to sexual and reproductive health, U.N. Doc. E/C.12/GC/22 (2016), para.40: “The obligation to respect requires States to refrain from directly or indirectly interfering with the exercise by individuals of the right to sexual and reproductive health. States must not limit or deny anyone access to sexual and reproductive health, including through laws criminalizing sexual and reproductive health services and information, while confidentiality of health data should be maintained. States must reform laws that impede the exercise of the right to sexual and reproductive health. Examples include laws criminalizing abortion, non-

R. Ensure that legal provisions, regulations or any other administrative measures on the donation of blood, gametes, embryos, organs, cells or other tissues do not discriminate on grounds of sexual orientation, gender identity, gender expression or sex characteristics;¹⁰⁸

S. Ensure inclusion of affirmative material on sexual, biological, physical and psychological diversity and the human rights of people of diverse sexual orientations, gender identities, gender expressions and sex characteristics in medical curricula and continuing professional development programmes.¹⁰⁹

ADDITIONAL STATE OBLIGATIONS TO PRINCIPLE 19: RELATING TO THE RIGHT TO INFORMATION

States shall:

G. Take legislative, administrative, and other appropriate measures to ensure that all persons have access to information about their civil, political, economic, social and cultural rights, including how these rights apply in relation to sexual orientation, gender identity, gender expression and sex characteristics;¹¹⁰

H. Make freely available and accessible, both online and otherwise, international and regional treaties and instruments; the national constitution, national laws and regulations; research studies, reports, data, archives; reports and information submitted by the State to international and regional bodies and mechanisms; and all other information as may be necessary to secure or enable the exercise of any human rights or fundamental freedoms or access to remedy for a violation of any such right;¹¹¹

disclosure of HIV status, exposure to and transmission of HIV, consensual sexual activities between adults, and transgender identity or expression.

¹⁰⁸ UDHR, Art.2; ICCPR, Art.2(1), 26; ICESCR, Art.2(2); CESCR General Comment No.14 on the right to the highest attainable standard of health, U.N. Doc. E/C.12/2000/4 (2000), para.12: “health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.”; Human Rights Committee Concluding observations on Georgia, U.N. Doc. CCPR/C/GEO/CO/4 (2014), para.3: “The Committee welcomes the following legislative and institutional steps taken by the State party: [...] (c) The decision of the Constitutional Court of 4 February 2014 declaring non-constitutional “homosexuality” as an indicator against donation of blood and its components”; Human Rights Committee Concluding observations on Italy, U.N. Doc. CCPR/C/ITA/CO/6 (2017). para.11 on LGBTI people: “The State party should provide for equal access to in vitro fertilization”

¹⁰⁹ CESCR General Comment No.22 on the right to sexual and reproductive health, U.N. Doc. E/C.12/GC/22 (2016), para.46: “States must ensure that healthcare providers are adequately trained on the provision of quality and respectful sexual and reproductive health services”; CESCR General Comment No.14 on the right to the highest attainable standard of health, U.N. Doc. E/C.12/2000/4 (2000), para.36: “States have to ensure the appropriate training of doctors and other medical personnel”

¹¹⁰ UDHR, Art.19; ICCPR, Art.19; CRC, Art.13; Human Rights Committee Concluding observations on Azerbaijan, U.N. Doc. CCPR/C/AZE/CO/4 (2016), para.9: “take all measures necessary to guarantee in practice the effective enjoyment of the rights to freedom of expression and peaceful assembly of lesbian, gay, bisexual and transgender persons and to defenders of those rights.”; UN Declaration on Human Rights Defenders, U.N. Doc. A/RES/53/14 (1999), article 6: “Everyone has the right, individually and in association with others: (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems ...”

¹¹¹ UDHR, Art.19; ICCPR, Art.19; CRC, Art.13; Human Rights Committee General Comment No. 34 on Article 19: Freedoms of opinion and expression, U.N. Doc. CCPR/C/GC/34 (2011), paras.18-19: “Article 19, paragraph 2 embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production. [...] o give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation.”; CRC Concluding observations on Panama, U.N. Doc. CRC/C/PAN/CO/5-6 (2017), para.16(d): “Ensure that all cases of discrimination against children are addressed effectively, including by disseminating accessible information about what constitutes discrimination”; CEDAW Concluding observations on Honduras, U.N. Doc. CEDAW/C/HND/CO/7-8 (2016), para.13(f): “undertake awareness-raising campaigns to inform women and girls about their rights under the Convention and disseminate information on the available legal remedies and their right to file complaints, including against government officials”

I. Recognise that the needs, characteristics and human rights situations of populations of diverse sexual orientations, gender identities, gender expressions and sex characteristics are distinct from each other, and ensure that data on each population is collected and managed in a manner consistent with ethical, scientific and human rights standards and made available in disaggregated form.¹¹²

ADDITIONAL STATE OBLIGATIONS TO PRINCIPLE 20: RELATING TO THE RIGHT TO THE FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION

States shall:

F. Respect, protect and facilitate the formation of associations for the purpose of promoting the rights of all persons, including on the basis of sexual orientation, gender identity, gender expression or sex characteristics;¹¹³

G. Ensure that associations which seek to promote human rights related to sexual orientation, gender identity, gender expression or sex characteristics can seek, receive and use funding and other resources from individuals, associations, foundations or other civil society organisations, governments, aid agencies, the private sector, the United Nations and other entities, domestic or foreign;¹¹⁴

H. Ensure that requirements and procedures to register associations, where they exist, are not burdensome or impose unjustifiable limitations, including on grounds of morality and public order;¹¹⁵

¹¹² UDHR, Art.12; ICCPR, Art.17; OHCHR (2018), “A Human Rights-Based Approach to Data: Leaving No-One Behind in the 2030 Agenda for Sustainable Development”; Report of the U.N. Independent Expert on the rights of older persons, U.N. Doc. A/HRC/33/44/Add.1 (2016), para.77: “Data collection and analysis must comply with international standards on data protection and the right to privacy.”

¹¹³ UDHR, Art.20; ICCPR, Arts.21, 22; Human Rights Committee Concluding observations on the Russian Federation, U.N. Doc. CCPR/C/RUS/CO/6 (2009), para. 27: “Take all necessary measures to guarantee the exercise in practice of the right to peaceful association and assembly for the LGBT community.”; Human Rights Committee Concluding observations on Mongolia, U.N. Doc. CCPR/C/MNG/CO/6 (2017), para. 12: “promote and guarantee freedom of expression, association and peaceful assembly for lesbian, gay, bisexual, transgender and intersex persons, and should abstain from any unjustified interference with the exercise of these rights and ensure that any restrictions imposed comply with the strict requirements of articles 19, 21 and 22 of the Covenant and are not applied in a discriminatory manner.”

¹¹⁴ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, U.N. Doc. A/HRC/23/39 (2013), para.82(b): “ensure that associations – registered and unregistered– can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; foreign Governments and aid agencies; the private sector; the United Nations and other entities”; UN Declaration on Human Rights Defenders, U.N. Doc. A/RES/53/14 (1999), Article 13: “Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means”; Report of the Special Rapporteur on Human Rights Defenders, U.N. Doc. A/HRC/40/60 (2019), para.108(f): “Refrain from interfering with funding provided to women for human rights work and ensure that legal and administrative frameworks do not restrict access to funding for human rights activism”;

¹¹⁵ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, U.N. Doc. A/HRC/23/39 (2013); UN Declaration on Human Rights Defenders, U.N. Doc. A/RES/53/14 (1999), Article 17; Human Rights Committee, Concluding Observations on Georgia, U.N. Doc. CCPR/C/GEO/CO/4 (2014), para. 8; Nikolai Alekseev v. Russian Federation, Communication No. 1873/2009, U.N. Doc. CCPR/C/109/D/1873/2009 (2013); Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, U.N. Doc. A/HRC/26/29 (2014), paras. 10, 27, 28, 30, 31, 44, 46, 55, 64; Reports of the Special Rapporteur on human rights defenders, on communications. U.N. Doc. A/HRC/31/55/Add.1 (2016), para.109; Report of the Special Rapporteur on violence against women. U.N. Doc. A/HRC/4/34/Add.1, paras.28, 29; Reports of the Special Rapporteur on freedom of expression and opinion, U.N. Doc. A/71/373 (2016), para.47; U.N. Doc. A/HRC/29/32 (2015), paras.1, 12; Report of the Special Rapporteur on torture, U.N. Doc. E/CN.4/2001/66 (2001), para.1153.

I. Ensure that the right to freedom of association applies equally to associations that are not registered, including associations working on issues related to sexual orientation, gender identity, gender expression or sex characteristics;¹¹⁶

J. Take positive measures, including affirmative action measures, to overcome specific challenges to the enjoyment of the freedom of association of groups that are marginalised and made vulnerable on grounds of sexual orientation, gender identity, gender expression or sex characteristics;¹¹⁷

K. Take positive measures to protect the right to association of service providers working with those discriminated against on grounds of sexual orientation, gender identity, gender expression or sex characteristics.¹¹⁸

ADDITIONAL STATE OBLIGATIONS TO PRINCIPLE 23: RELATING TO THE RIGHT TO SEEK ASYLUM

States Shall:

D. Ensure that a well-founded fear of persecution on the basis of sexual orientation, gender identity, gender expression or sex characteristics is accepted as a ground for the recognition of refugee status, including where sexual orientation, gender identity, gender expression or sex characteristics are criminalised and such laws, directly or indirectly, create or contribute to an oppressive environment of intolerance and a climate of discrimination and violence;¹¹⁹

E. Ensure persons seeking asylum are protected from violence, discrimination and other harm committed on grounds of sexual orientation, gender identity, gender expression or sex characteristics, including during the determination of their claims and in reception conditions;¹²⁰

¹¹⁶ Reports of the Special Rapporteur on the rights to freedom of peaceful assembly and of association: U.N. Doc. A/HRC/20/27 (2012), para.96: “Any associations, including unregistered associations, should be allowed to function freely, and their members operate in an enabling and safe environment”; U.N. Doc. A/HRC/26/29 (2014), para.55: “The Special Rapporteur emphasizes that the right to freedom of association applies equally to associations that are not registered. He endorses as best practice a voluntary registration regime that permits unregistered associations to operate.”

¹¹⁷ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, U.N. Doc. A/HRC/26/29 (2014), para.73(c): “Take positive measures, including affirmative action measures, to ensure that all individuals belonging to groups most at risk have the ability to exercise effectively their rights, including to freedom of peaceful assembly and of association;”

¹¹⁸ Report of the Special Rapporteur on human rights defenders, U.N. Doc. A/HRC/25/55/Add.2 (2014), para.86(m): “Ensure that defenders can work in a safe and enabling environment, in particular women and those working for the rights of LGBT persons, by removing obstacles to their work and amending relevant legislation”

¹¹⁹ UDHR, Art.14(a); Convention Relating to the Status of Refugees, Art.1; UNHCR, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (HCR/GIP/12/01), 2012; CEDAW General Recommendation no.32, U.N. Doc. CEDAW/C/GC/32 (2014), para.38: “38. States parties should interpret the definition of a refugee in the 1951 Convention relating to the Status of Refugees in line with obligations of non-discrimination and equality;41 fully integrate a gender-sensitive approach while interpreting all legally recognized grounds; classify gender-related claims under the ground of membership of a particular social group, where necessary; and consider adding sex and/or gender, as well as the reason of being lesbian, bisexual or transgender, and other status to the list of grounds for refugee status in their national asylum legislation.”; CAT General Comment No.4, U.N. Doc. CAT/C/GC/4 (2018).

¹²⁰ CEDAW General Recommendation no.30, U.N. Doc. CEDAW/C/GC/30 (2013), para.57(b): “Address the specific risks and particular needs of different groups of internally displaced and refugee women who are subjected to multiple and intersecting forms of discrimination, including [...] women belonging to ethnic, national, sexual or religious minorities”; CERD Concluding Observations on The Netherlands, U.N. Doc. CERD/C/NLD/CO/19-21 (2015), para. 33-34: “the Committee is concerned about [...] Reports of cases of homo-, bi- and transphobic behaviour by employees at asylum facilities, as well as questioning by civil servants about sexual acts, and harassment by fellow detainees [...] The Committee recommends that the State party [...] Take measures of protection with regards to women, children and LGBTI asylum seekers, because of their particular vulnerability”

F. Ensure no person is denied asylum on the basis that a person may conceal or change their sexual orientation, gender identity, gender expression or sex characteristics in order to avoid persecution;¹²¹

G. Accept the self-identification of a person seeking asylum on the basis of sexual orientation, gender identity, gender expression or sexual characteristics as the starting point for consideration of their asylum claim;¹²²

H. Ensure persons seeking asylum are not refused asylum because they did not set out their sexual orientation, gender identity, gender expression or sexual characteristics as a ground for persecution on the first occasion they were given to do so;¹²³

I. Ensure sensitive and culturally appropriate guidelines and training on sexual orientation, gender identity, gender expression and sexual characteristics for agents involved in the process of determination of refugee status and in managing reception conditions;¹²⁴

J. Ensure respect for the dignity and privacy of persons seeking asylum at all times, including by recording information about a person's sexual orientation, gender identity, gender expression and sex characteristics only where it is lawful, reasonable, necessary and proportionate to do so, by storing it securely and by prohibiting its release to any person other than a person directly involved in the refugee determination process;¹²⁵

K. Develop and implement guidelines on assessing credibility in relation to establishing a person's sexual orientation, gender identity, gender expression and sex characteristics when seeking asylum, and ensure such assessments are determined in an objective and sensitive manner, unhindered by stereotyping and cultural bias;¹²⁶

¹²¹ CEDAW General Recommendation No. 32, U.N. Doc. CEDAW/C/GC/32 (2014); UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity..., UN.Doc. HCR/GIP/12/01 (2012); UNHCR, "Working With Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Forced Displacement" (2011); UNHCR, "The Protection of Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees" (2010); UNHCR, "Resettlement Assessment Tool: Lesbian, Gay, Bisexual, Transgender and Intersex Refugees" (2013), p. 3; Human Rights Committee Concluding observations on Namibia, U.N. Doc. CCPR/C/NAM/CO/2 (2016), para.36: "The State party should [...] include persecution based on sexual orientation and gender identity among the grounds for protection against refoulement."

¹²² UNHCR, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/12/01 (2012).

¹²³ CAT General Comment No.4, U.N. Doc. CAT/C/GC/4 (2018); UNHCR, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/12/01 (2012).

¹²⁴ UNHCR, "Working With Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Forced Displacement" (2011), at pages 7-11; UNHCR, "Resettlement Assessment Tool: Lesbian, Gay, Bisexual, Transgender and Intersex Refugees" (2013), at pages 8-9; UNHCR, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1a(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/12/01 (2012); UNHCR, "Working with Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Forced Displacement" (2011), p. 9.

¹²⁵ UDHR, Art.12; ICCPR, Art.17; Human Rights Committee General Comment No.16 on Article 17 (the Right to Privacy), (1988), para.10: "The gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law. Effective measures have to be taken by States to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the Covenant. In order to have the most effective protection of his private life, every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request rectification or elimination."

¹²⁶ UNHCR, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/12/01 (2012); CEDAW Concluding observations on Costa Rica, U.N. Doc.

L. Ensure that inappropriate, invasive, unnecessary or coercive medical or psychological testing or evidence is not utilised to assess a person's self-declared sexual orientation, gender identity, gender expression or sex characteristics when seeking asylum;¹²⁷

M. Provide access to medical care and counselling appropriate to those seeking asylum, recognising any particular needs of persons on the basis of their sexual orientation, gender identity, gender expression or sex characteristics, including with regard to reproductive health, HIV information and therapy, hormonal or other therapy, and gender affirming treatment;¹²⁸

N. Ensure that the detention of asylum seekers is avoided, and is only used as a measure of last resort and for the shortest possible time;¹²⁹

O. Ensure that placement in detention, where used, avoids further marginalising persons on the basis of sexual orientation, gender identity, gender expression or sex characteristics or subjecting them to violence, discrimination or other harm;¹³⁰

CEDAW/C/CRI/CO/7 (2017), para.38-39: “[concern at] The inadequate conditions in migrant detention centres for transgender women throughout the refugee determination procedure. [...] Adopt guidelines for appropriately addressing the protection of transgender women throughout the refugee determination procedure

¹²⁷ UNHCR, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (HCR/GIP/12/01), 2012; CAT Concluding observations on Lebanon, U.N. Doc. CAT/C/LBN/CO/1 (2017), para.15: “prohibit anal searches or tests for men suspected of homosexuality and ensure that body searches are conducted only in exceptional cases and by the least intrusive means possible, with full respect for the dignity of the person”; CAT Concluding Observations on Tunisia (CAT/C/TUN/CO/3), 2016, para.42: “prohibit intrusive medical examinations that have no medical justification and cannot be performed with the free and informed consent of the persons subjected to them, who consequently will then be prosecuted.”; CAT Concluding observations on Afghanistan, U.N. Doc. CAT/C/AFG/CO/2 (2017), para.38: “Take all measures, including legal, to ensure that virginity tests are prohibited and ensure that all officials ordering virginity tests are adequately sanctioned”; CEDAW Concluding observations on Turkey, U.N. Doc. CEDAW/C/TUR/CO/7 (2016), para.19: “abolish the provision allowing for genital examinations, including virginity testing, to be performed on a woman or girl without her consent”; Working Group on Arbitrary Detention Opinion No. 25/2009 on Egypt U.N. Doc. A/HRC/16/47/Add.1 (2011), at paras. 23, 28-29: “These tests, forcibly undertaken, are in and of themselves intrusive in nature and violative of bodily rights of the individual under human rights law [...] forced anal examinations contravene the prohibition of torture and other cruel, inhumane and degrading treatment, whether if, like in the present cases, they are employed with a purpose to punish, to coerce a confession, or to further discrimination. [...] In addition, they are medically worthless for the determination whether or not a person has engaged in same-sex sexual conduct”

¹²⁸ UDHR, Art.25; ICESCR, Art.12; CEDAW, Art.12; CRC, Art.24; CESCR General comment No.22 on the right to sexual and reproductive health, U.N. Doc. E/C.12/GC/22 (2016), paras.15-19: “Health facilities, goods, information and services related to sexual and reproductive health care should be accessible to all individuals and groups without discrimination and free from barriers. [...] accessibility should be ensured for all, especially persons belonging to disadvantaged and marginalized groups, including, but not limited to, persons living in rural and remote areas, persons with disabilities, refugees and internally displaced persons, stateless persons and persons in detention. [...] People without sufficient means should be provided with the support necessary to cover the costs of health insurance and access to health facilities providing sexual and reproductive health information, goods and services.”

¹²⁹ UDHR, Arts. 3,9; ICCPR, Art. 9; CERD, Concluding observations on Slovakia, U.N. Doc. CERD/C/SVK/CO/11-12 (2018), para.28: “ensure that no child is detained because of his or her migration status, to provide alternatives to the detention of asylum seekers, and to use detention only as a measure of last resort and for the shortest appropriate period”; CERD Concluding observations on Canada, U.N. Doc. CERD/C/CAN/CO/21-23 (2017), para.34: “Ensure that immigration detention is only undertaken as a last resort after fully considering alternative non-custodial measures. Establish a legal time limit on the detention of migrants”; CAT Concluding observations on Ireland, U.N. Doc. CAT/C/IRL/CO/2 (2017), para.12: “Enshrine in its legislation the principle that asylum seekers should be detained only as a measure of last resort, for as short a period as possible and in facilities appropriate for their status”; Report of the Special Rapporteur on the human rights of migrants, on the detention of migrants in an irregular situation, U.N. Doc. A/HRC/20/24 (2012), para.10: “Security detention poses particular risks to migrants, who may end up in prolonged or even indefinite detention justified by vague criteria. The Special Rapporteur would like to stress that detention for security purposes may only be imposed after conducting an individual assessment in each case, for the shortest time possible, and in compliance with all procedural safeguards.”

¹³⁰ ICCPR, Article 10; United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela

P. Ensure that solitary confinement is not used to manage or to protect persons at risk of discrimination, violence or other harm on the basis of sexual orientation, gender identity, gender expression or sex characteristics, and release or refer asylum seekers to alternatives to detention, if effective protection cannot be provided.¹³¹

ADDITIONAL STATE OBLIGATIONS TO PRINCIPLE 24: RELATING TO THE RIGHT TO FOUND A FAMILY

States shall:

H. Protect children from discrimination, violence or other harm due to the sexual orientation, gender identity, gender expression or sex characteristics of their parents, guardians, or other family members;¹³²

I. Issue birth certificates for children upon birth that reflect the self-defined gender identity of the parents;¹³³

J. Enable access without discrimination to methods to preserve fertility, such as the preservation of gametes and tissues for any person without discrimination on grounds of sexual orientation, gender identity, gender expression, or sex characteristics, including before hormonal treatment or surgeries;¹³⁴

Rules), General Assembly resolution 70/175, annex, adopted on 17 December 2015; Ninth annual report of the United Nations Subcommittee on the Prevention of Torture, U.N. Doc. CAT/OP/C/57/4 (2016) para.76: “In cases of lesbian, gay, bisexual, transgender and intersex persons deprived of liberty in any place of detention, State authorities must recognize specific risks, identify those who are in a vulnerable situation, and protect them in ways that do not leave them isolated. [...] In particular, decisions on the housing of transgender persons should be done on a case-by-case basis, considering seriously their views as to their safety and, to the extent possible, with their informed consent. The specificity of the needs of transgender persons makes the involvement of transgender activists and experts particularly desirable.”

¹³¹ United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), General Assembly resolution 70/175, annex, adopted on 17 December 2015, Rules 43-45; Ninth annual report of the United Nations Subcommittee on the Prevention of Torture, U.N. Doc. CAT/OP/C/57/4 (2016) para.78-80: “Solitary confinement, isolation and administrative segregation are not appropriate methods of managing the security of persons, including lesbian, gay, bisexual, transgender and intersex persons. [...] In placing lesbian, gay, bisexual, transgender and intersex migrants, refugees and asylum seekers in any form of detention, authorities must avoid exposing them to a risk of ill-treatment and torture, and take into account their medical needs. If the security of the person cannot be guaranteed in detention, alternatives must be considered.”

¹³² CRC, Articles 2, 6, 19, 37; CRC General Comment No.15, U.N. Doc. CRC/C/GC/15 (2013), para 8: “A number of grounds on which discrimination is proscribed are outlined in article 2 of the Convention, including the child’s, parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. These also include sexual orientation, gender identity and health status, for example HIV status and mental health.”; CRC Concluding observations on Hungary, U.N. Doc. CRC/C/HUN/CO/3-5 (2014): “prohibit discrimination against categories of children in marginalized and disadvantaged situations, such as children [...] living with same - sex parents”; CRC Concluding observations on the Holy See, U.N. Doc. CRC/C/VAT/CO/2 (2014): “condemn all forms of harassment, discrimination or violence against children based on their sexual orientation or the sexual orientation of their parents”.

¹³³ See references under Additional Principle 31; ICCPR, Article 16; CRC, Article 7; Human Rights Committee, concluding observations on Slovakia, U.N. Doc. CCPR/C/SVK/CO/4 (2016), para.15: “develop and implement a procedure for legal gender recognition that is compatible with the provisions of the Covenant.”; CAT Concluding observations on Hong Kong, China, U.N. Doc. CAT/C/CHN/HKG/CO/5 (2016), para.29: “Take the necessary legislative, administrative and other measures to guarantee respect for the autonomy and physical and psychological integrity of transgender and intersex persons, including by removing abusive preconditions for the legal recognition of the gender identity of transgender persons”; Report of the Special Rapporteur on extreme poverty, U.N. Doc. A/HRC/23/36/Add.1 (2013): “Ensure immediate and universal birth registration of all children without discrimination of any kind”

¹³⁴ UDHR, Art.2; ICCPR, Art.2(1), 26; ICESCR, Art.2(2); CESCR General Comment No.14 on the right to the highest attainable standard of health, U.N. Doc. E/C.12/2000/4 (2000), para.12: “health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.”; Human Rights Committee Concluding observations on Italy, U.N. Doc. CCPR/C/ITA/CO/6 (2017). para.11 on LGBTI people: “The State party should provide for equal access to in vitro fertilization”

K. Ensure that surrogacy, where legal, is provided without discrimination based on sexual orientation, gender identity, gender expression or sex characteristics.¹³⁵

ADDITIONAL STATE OBLIGATIONS TO PRINCIPLE 25: RELATING TO THE RIGHT TO PARTICIPATE IN PUBLIC LIFE

States shall:

D. Take measures to ensure that sexual orientation, gender identity, gender expression and sex characteristics are not used as grounds to prevent a person from exercising their right to vote;¹³⁶

E. Develop and implement affirmative action programmes to promote public and political participation for persons marginalised on the basis of sexual orientation, gender identity, gender expression or sex characteristics.¹³⁷

ADDITIONAL STATE OBLIGATIONS TO PRINCIPLE 27: RELATING TO THE RIGHT TO PROMOTE HUMAN RIGHTS

States shall:

F. Enact a law, including to establish, designate or maintain an adequately resourced mechanism, for the protection of defenders of the rights of persons who experience or are at risk of violations on the basis of sexual orientation, gender identity, gender expression or sex characteristics;¹³⁸

G. Ensure the participation of individuals and organisations working on human rights issues related to sexual orientation, gender identity, gender expression or sex characteristics in public and political decision-making

¹³⁵ UDHR, Art.2; ICCPR, Art.2(1), 26; ICESCR, Art.2(2); CESCR, General Comment No. 20, U.N. Doc. E/C.12/GC/20, 2009, para. 32; Report of the Special Rapporteur on violence against women, U.N. Doc. A/HRC/32/42/Add.3 (2016): “Draft a law on medically assisted procreation, including surrogacy, in order to establish the legal grounds for such procedures and to protect women and children’s rights in cases relating to surrogacy”

¹³⁶ UDHR, Art.2; ICCPR, Art.2(1), 25, 26; Human Rights Committee General Comment No.25 on the right to participate in public affairs, voting rights and the right of equal access to public service (art.25), U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996), para.3: “ No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

¹³⁷ CEDAW, Articles 4, 7, 8; CEDAW General Recommendation No. 23: Political and public life (1997), para.15: “Under article 4, the Convention encourages the use of temporary special measures in order to give full effect to articles 7 and 8. Where countries have developed effective temporary strategies in an attempt to achieve equality of participation, a wide range of measures has been implemented, including recruiting, financially assisting and training women candidates, amending electoral procedures, developing campaigns directed at equal participation, setting numerical goals and quotas and targeting women for appointment to public positions such as the judiciary or other professional groups that play an essential part in the everyday life of all societies. The formal removal of barriers and the introduction of temporary special measures to encourage the equal participation of both men and women in the public life of their societies are essential prerequisites to true equality in political life.”; CEDAW General Recommendation No. 25 on temporary special measures (2004); Human Rights Committee, concluding observations on Uruguay, U.N. Doc. CCPR/C/URY/CO/5 (2013): “The State party should also continue to adopt affirmative action measures, as necessary, to increase women’s participation in public affairs at all levels of government”; CAT, concluding observations on the Former Yugoslav Republic of Macedonia, U.N. Doc. CAT/C/MKD/CO/3 (2015): “the State party should fully include representatives of the lesbian, gay, bisexual, transgender and intersex community in any matter concerning the interests of the community.”; Report of the Special Rapporteur on extreme poverty, U.N. Doc. A/HRC/23/36/Add.2 (2013), para.97(gg): “Facilitate the full participation of LGBT persons at the decision-making level”

¹³⁸ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, annex to U.N. Doc. A/RES/53/144 (1999c); Human Rights Committee Concluding observations on Honduras, U.N. Doc. CCPR/C/HND/CO/2 (2007), para.41: “Set up a mechanism to ensure that acts of violence and threats against human rights defenders are properly investigated” Reports of the Special Rapporteur on human rights defenders, U.N. Doc. A/HRC/40/60 (2019), paras.97-98; A/HRC/31/55 (2016), para. 27; A/HRC/16/44 (2011), para.109

processes that affect them.¹³⁹

ADDITIONAL RECOMMENDATIONS

All members of society and of the international community have responsibilities regarding the realisation of human rights. We therefore further recommend that:

Q. National human rights institutions ensure that in their programmes and activities they take action on human rights issues relating to sexual orientation, gender identity, gender expression and sex characteristics, mainstream those issues in all their functions, including complaint handling and human rights education, and promote the inclusion of persons of diverse sexual orientation, gender identity, gender expression and sex characteristics in their leadership and staff;¹⁴⁰

R. Sporting organisations integrate the Yogyakarta Principles (2006) and these Additional Principles (2017), as well as all relevant human rights norms and standards, in their policies and practices, in particular:

- i. Take practical steps to create welcoming spaces for participation in sport and physical activity, including installation of appropriate changing rooms, and sensitisation of the sporting community on the implementation of anti-discrimination laws in the sporting context for persons of diverse sexual orientations, gender identities, gender expressions, and sex characteristics;¹⁴¹
- ii. Ensure that all individuals who wish to participate in sport are supported to do so irrespective of sexual orientation, gender identity, gender expression and sex characteristics, and that all individuals are able to participate, without restriction, subject only to reasonable, proportionate and non-arbitrary requirements to participate in line with their self-declared gender;¹⁴²

¹³⁹ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, annex to U.N. Doc. A/RES/53/144 (1999); CAT, concluding observations on the Former Yugoslav Republic of Macedonia, U.N. Doc. CAT/C/MKD/CO/3 (2015): “the State party should fully include representatives of the lesbian, gay, bisexual, transgender and intersex community in any matter concerning the interests of the community.”; Report of the Special Rapporteur on extreme poverty, U.N. Doc. A/HRC/23/36/Add.2 (2013), para.97(gg): “Facilitate the full participation of LGBT persons at the decision-making level”; Reports of the Special Rapporteur on human rights defenders, U.N. Doc. A/HRC/40/60 (2019), paras.87-89; A/HRC/16/44 (2011), para.109; Report of the High Commissioner for Human Rights on violence and discrimination based on sexual orientation and gender identity, U.N. Doc. A/HRC/29/23, para. 79(k): “Ensuring that LGBT and intersex persons and organizations are consulted with regard to legislation and policies that have an impact on their rights.”

¹⁴⁰ Principles relating to the Status of National Institutions (the Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993: “A national institution shall be vested with competence to promote and protect human rights. [...] A national institution shall, inter alia, have the following responsibilities: [...] To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation [...] The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights”; Report of the High Commissioner for Human Rights on violence and discrimination based on sexual orientation and gender identity, U.N. Doc. A/HRC/29/23, para.80: “The High Commissioner recommends that national human rights institutions address violence and discrimination against LGBT and intersex persons in the context of their respective mandates to promote and monitor effective implementation of international human rights standards at the national level.”

¹⁴¹ UDHR, Articles 2, 25; ICESCR, Articles 2(2), 12; CEDAW, Articles 1, 12; CRC, Articles 2(1), 24; Report of the Special Rapporteur on the right to health, U.N. Doc. A/HRC/32/33 (2016), para.59-61: “Policies must reflect international human rights norms, should not exclude transgender people and non-binary people from participation and should not require irrelevant clinical data or unnecessary medical procedures as a precondition to full participation. [...] States, sporting organizations and other actors should adopt anti-discrimination policies that permit all persons to participate in amateur sport on the basis of their self-identified gender. Practical steps to create welcoming spaces for participation in sport and physical activity for transgender people and non-binary people could include the installation of appropriate changing rooms, the sensitization of sporting communities, and the enforcement of anti-discrimination laws in the sporting context.”

¹⁴² UDHR, Articles 2, 25; ICESCR, Articles 2(2), 12; CEDAW, Articles 1, 12; CRC, Articles 2(1), 24; Report of the Special Rapporteur on the right to health, U.N. Doc. A/HRC/32/33 (2016), para.53: “sex segregation policies have led to multiple rights violations in sport. Sex segregation has historically been justified on the basis of safety and fairness,

- iii. Remove, or refrain from introducing, policies that force, coerce or otherwise pressure women athletes into undergoing unnecessary, irreversible and harmful medical examinations, testing and/or procedures in order to participate as women in sport;¹⁴³
- iv. Take measures to encourage the general public to respect diversity based on sexual orientation, gender identity, gender expression and sex characteristics in sports, including measures to eliminate hate speech, harassment, and violence at sports events.¹⁴⁴

THESE ADDITIONAL PRINCIPLES, STATE OBLIGATIONS AND RECOMMENDATIONS reflect the application of international human rights law to the lives and experiences of persons of diverse sexual orientations, gender identities, gender expressions and sex characteristics, and nothing herein should be interpreted as restricting or in any way limiting the rights and freedoms of such persons as recognised in international, regional or national laws or standards.

– Prepared by S Kara for the International Service for Human Rights (January 2019)

rooted in assumptions of male physical superiority. Various legal decisions have noted that this is a generalization and have granted individual girls and women the right to compete in male sporting competitions — although not vice versa. Although it is important to preserve spaces for girls and women to confidently participate in sport, this should not result in exclusion of others, such as transgender people.”

¹⁴³ UDHR, Articles 2, 3, 5; ICCPR, Articles 2(1), 7, 9(1), 26; CAT, Article 2; Report of the Special Rapporteur on the right to health, U.N. Doc. A/HRC/32/33 (2016), para.57: “Sporting organizations must implement policies in accordance with human rights norms and refrain from introducing policies that force, coerce or otherwise pressure women athletes into undergoing unnecessary, irreversible and harmful medical procedures in order to participate as women in competitive sport”; para.102: “Remove any policies that require women athletes, including intersex and transgender women athletes, to undergo unnecessary medical procedures in order to participate in competitive sport (international sporting bodies)”

¹⁴⁴ Report of the Special Rapporteur on the right to health, U.N. Doc. A/HRC/32/33 (2016), para.52: “More must be done to secure the full and safe participation of lesbian, gay and bisexual people in sport and physical activity”; OHCHR, Tackling Discrimination against LGBTI People: Standards of Conduct for Business (2017): “Act in the public sphere: Businesses are encouraged to use their leverage to contribute to stopping human rights abuses in the countries in which they operate. In doing so, they should consult closely with local communities and organizations to identify what constructive approaches businesses can take in contexts where legal frameworks and existing practices violate the human rights of LGBTI people. Such steps can include public advocacy, collective action, social dialogue, financial, and in-kind support for organizations advancing LGBTI rights and challenging the validity or implementation of abusive government actions. Companies will need to undertake more extensive due diligence to ensure that they respect the rights of LGBTI people where higher levels of human rights violations have been documented, including in countries with discriminatory laws and practices.”