

A CATALYST FOR EQUALITY

The mandate of the UN Independent Expert
on Protection against Violence and Discrimination
based on Sexual Orientation and Gender Identity:
some reflections on impact over the first seven years



HUMAN RIGHTS PROGRAM
HARVARD LAW SCHOOL



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Foreword

The Human Rights Program at Harvard Law School has been honored to serve as the academic home of Victor Madrigal-Borloz's mandate as Independent Expert on violence and discrimination based on sexual orientation and gender identity since 2019. The present summary of the achievements of the mandate describes only a part of what our collaboration has contributed to the work of HRP and the opportunities it has given HLS students to learn from this extraordinary Independent Expert. The research projects, workshops and presentations that he has led in connection with his crucially important mandate have been wide-ranging and illuminating. He has generously shared his insights on antidiscrimination law more generally, and we have co-organized workshops as part of an HRP series on the human right to equality. He is also an expert on experts: from the outset his sophisticated and creative approach to the methodology of a UN special rapporteurship has been inspiring. Speaking personally, I have benefitted greatly from our many conversations and the friendship that has grown over the years. And so, with thanks once more to Victor, the Human Rights Program is privileged to share with readers this document encapsulating some main themes and lessons of his mandate.

Gerald L. Neuman

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Chapter 1

Introduction





THE IE-SOGI SPEAKING AT THE ILGA ASIA REGIONAL CONFERENCE IN SEOUL, SOUTH KOREA, IN 2019.

- 1 The mandate of the Independent Expert on protection against discrimination and violence based on sexual orientation and gender identity (IE-SOGI) was created in 2016 by the UN Human Rights Council (HRC), through a resolution led by seven Latin American member states and following years of sustained civil society advocacy across continents. Although this was not the first time that issues of sexual orientation and gender identity (SOGI) had been taken up by the UN human rights system¹, previous efforts had often met with

¹ The Office of the High Commissioner for Human Rights (OHCHR) had carried out two studies with an overview of SOGI-related human rights violations in 2011 and 2015 (A/HRC/19/41 and A/HRC/29/23). The UN treaty monitoring bodies had been addressing specific patterns and cases of discrimination and violence based on SOGI for over two decades since the Human Rights Committee 1994 decision in

strong objection by some countries, reflecting the long-standing polarization, bracketing, and silencing of issues of gender and sexuality at the UN. The creation of a dedicated UN Special Procedure² was therefore a significant turning point given the level of commitment and scrutiny these procedures entail. It also marked a milestone in the explicit recognition of sexual orientation and gender identity as categories protected from discrimination and violence under international human rights law.

- 2 The period since the creation of the IE-SOGI mandate has been a pivotal time for human rights in relation to SOGI, and sexuality and gender more broadly. The years since then have witnessed a marked weaponization of these issues by political actors in many countries. As the Independent Expert's findings have shown in contexts as varied as Uganda, the United States or Russia's war in Ukraine, fuelling homophobia, transphobia and misogyny for political gain has been at the core of the reactionary playbook³. The attack on progressive gender and sexuality policies has become central to the agenda of conservative forces across all continents and has been increasingly at play in multilateral human rights and development forums as a result of transnational "anti-gender" organizing⁴. In the words of a feminist scholar and advocate, "[t]he instrumentalization of these issues in the name of tradition, culture, the family and the state is an old strategy that's become more entrenched over these years. Why? Because it's effective for electoral purposes, a political football that's used to position national and regional identities in countries north and south. In the meantime, we're the ones getting kicked back and forth."⁵
- 3 At the same time, these years have also seen progress in advancing protections against discrimination and violence based on sexual orientation and gender identity in many countries. A global trend to decriminalize consensual same-sex relations has continued

Toonen v. Australia calling for the repeal of Tasmanian laws criminalizing same-sex relations, and references to SOGI had been included in HRC resolutions on specific issues such as extrajudicial killings (see [OHCHR and the Human Rights of LGBTI people](#)).

² Special Procedures are mandates given by the Human Rights Council to independent human rights experts to report and advise on human rights from a thematic or country-specific perspective. Independent experts are unpaid, do not represent any government, and are elected for three-year mandates that can be renewed for another three years. As of November 2023, there are 46 thematic and 14 country-focused special procedure mandates. See [OHCHR, Special Procedures of the Human Rights Council](#).

³ On the political instrumentalization of homophobia, transphobia and misogyny in these countries, see: Sarah Kihika Kasande, [Uganda's State-Sponsored Homophobia](#) (Project Syndicate, June 2023); Erica Chenoweth and Zoe Marks, [Beyond Roe: the Mutually Reinforcing Nature of Misogyny and Autocracy](#) (Foreign Affairs, July 2022); and Graeme Reid, [Russia, Homophobia and the Battle for 'Traditional Values'](#) (Human Rights Watch, May 2023).

⁴ H McEwen and L Narayanaswamy, [The International Anti-Gender Movement: Understanding the rise of anti-gender discourses in the context of development, human rights and social protection](#) (UNRISD, May 2023)

⁵ Interview, 14 September 2023

apace, and a swathe of countries have introduced other important legal or policy reforms, such as including sexual orientation and gender identity as prohibited grounds of discrimination in constitutional or equality law provisions, recognizing self-identification of gender identity and proscribing so-called “conversion therapy.”⁶ Narratives around sexual orientation, gender identity and sex characteristics have also shifted, in large part due to the increased voice and visibility of feminist and lesbian, gay, bisexual, trans and intersex (LGBTI) movements across the globe. Greater access to data and information technology has been key, not just for documenting patterns of discrimination and violence but also demanding justice and accountability. As many have observed, the unstoppable momentum of these advances worldwide may account in part for the virulence of the political backlash in some contexts.

- 4 Against this backdrop, this paper reflects on the impact of the IE-SOGI mandate over its first seven years, the progress it has made in achieving its aims, and the tangible difference its work has made. Changes to laws, policies, narratives, attitudes, data, and information are all dimensions of change which the IE-SOGI and other UN Special Procedures ultimately seek to influence⁷. Yet change in each of these spheres depends on a host of factors and actors that go beyond one UN institution, and often require timeframes significantly longer than the three-to-six-year terms of most mandate-holders. This paper does not attempt to trace every possible connection between the IE-SOGI's activities and the shifts in the external landscape observed over this period. Nevertheless, it sheds light on five widely recognized and well-evidenced outcomes of the mandate's work:

a • ANALYSIS AND EVIDENCE:

the mandate's analysis has added significantly to the body of compelling evidence of patterns of SOGI-related violence and discrimination and their root causes

b • AWARENESS AND VISIBILITY:

the mandate's communications and mainstreaming efforts have heightened awareness of these abusive practices as a human rights issue among key audiences

6 For data on these trends, see the ILGA World Database, available at: <https://database.ilga.org/en>

7 On the dimensions of change Special Procedures seek to impact, see OHCHR, *Making a difference: Special Procedures of the Human Rights Council*

c • LEGISLATIVE AND POLICY CHANGE:

strategic engagement with a range of actors worldwide has added momentum to legal and policy reforms aimed at tackling discrimination and violence

d • ACCOUNTABILITY AND REMEDY:

the mandate's interventions have prompted states to answer for cases and patterns of discrimination and violence, with preventive as well as remedial effects

e • EMPOWERMENT AND VOICE:

the mandate has helped a diverse range of human rights defenders gain greater voice and influence in shaping the agenda at the UN and beyond.

- 5 This paper illustrates these outcomes of the mandate's work, drawing on interviews with a range of stakeholders who have engaged with it in different ways. These include leaders of organizations working for the human rights of LGBTI people in different contexts, member-state representatives, other UN special procedures and UN staff, as well as academics and advocates working at the intersections of human rights, sexuality, and gender. The paper also draws on the analysis of intergovernmental debates related to the mandate over the years, as well on data sources tracking worldwide progress on the human rights of LGBTI people, such as the ILGA World database⁸. It is also informed by the mandate's own planning, monitoring, and evaluation efforts. The paper concludes with some reflections on the learnings of the first seven years of the mandate, aimed at enhancing its response to the challenges and opportunities of the years to come.
- 6 The paper was commissioned by the former IE-SOGI, Victor Madrigal-Borloz, on the conclusion of his second term in October 2023, as an exercise of accountability to those who have support and entrusted him with the mandate, as a resource for future mandate holders, and as a learning tool for all those committed to enhancing the mandate's impact and effectiveness over the coming years. On the 75th anniversary of the Universal Declaration of Human Rights, assessing the impact and effectiveness of UN human rights

8 ILGA World Database, available at: <https://database.ilga.org/en>

mechanisms such as the Special Procedures takes on renewed relevance amid efforts to reimagine the human rights system of the future. It is hoped that this paper can also contribute to that important field of inquiry⁹.

⁹ On methods and challenges for assessing the impact of UN Special Procedures, see Jonathan Andrew, [Assessment Tool for Special Procedures' Impact Evaluation – Developing an Initial Framework](#) (Geneva Academy, January 2023). On renewing and reimagining the human rights system of the future, see David Griffiths, [Renewing Human Rights](#) (Chatham House, 2023) and César Rodríguez Garavito, [Human Rights 2030: Existential Challenges and a New Paradigm for the Field](#) (NYU School of Law, 2021)

Chapter 2

“A Bridge from People to Power”

The mandate and its working methods



- 7 Human Rights Council resolution 32/2¹⁰, renewed in 2019¹¹ and 2022¹², mandates the IE-SOGI to explore ways to better protect persons facing violence and discrimination based on SOGI, by:
- a • Raising awareness of patterns of violence and discrimination and their root causes
 - b • Assessing implementation of relevant human rights standards, identifying best practices and gaps
 - c • Engaging in dialogue, consulting and cooperating with States and other relevant stakeholders on measures to foster the protection of LGBT and gender-diverse persons
 - d • Facilitating and supporting the provision of advisory services, technical assistance, capacity-building and international cooperation to combat violence and discrimination
- 8 The mandate's working methods include submitting reports to the Human Rights Council and General Assembly on relevant themes and trends, as well as on the findings of country visits, for which the IE must request an invitation from the country concerned. The IE also issues urgent appeals and other communications to States regarding individual cases of alleged violence and discrimination or regarding laws, policies or practices that could result in these abuses. As with other Special Procedures, the IE-SOGI mandate was created with a specific allocation of resources from the regular UN budget that includes the support of a small team of OHCHR staff.¹³
- 9 The first IE-SOGI appointed by the HRC in 2016 was Thai international law professor Vitit Muntarbhorn. In his inaugural report to the Council in 2017, he identified six areas of focus for the mandate: decriminalization of consensual same-sex relations and of gender identity and expression; effective anti-discrimination measures; legal recognition of gender identity; destigmatization linked with depathologization; sociocultural inclusion; and promotion of education and empathy.¹⁴ He addressed the first two issues in his 2017 reports to the General Assembly and HRC, but resigned later that year for health reasons.
- 10 His successor, Costa Rican jurist and senior visiting scholar at Harvard Law School, Victor Madrigal-Borloz, was appointed as IE-SOGI for a three-year term starting in 2018, extended for another three years in 2021.¹⁵ In his first report to the HRC in 2018, he reaffirmed the

10 Resolution adopted by the Human Rights Council on 30 June 2016 ([A/HRC/RES/32/2](#))

11 Resolution adopted by the Human Rights Council on 12 July 2019 ([A/HRC/RES/41/18](#))

12 Resolution adopted by the Human Rights Council on 07 July 2022 ([A/HRC/RES/50/10](#))

13 For more on the mandate's aims and working methods, see: OHCHR, [IE-SOGI: About the Mandate](#)

14 Report of the IE-SOGI to the Human Rights Council, 19 April 2017 ([A/HRC/35/36](#))

15 For more on Victor Madrigal-Borloz' background, see OHCHR, [IE-SOGI: Victor Madrigal-Borloz](#)

two overarching objectives of the mandate: raising awareness and visibility of violence and discrimination based on SOGI and their root causes; and supporting effective state measures to eradicate these abuses. The report also underscores two fundamental aspects of the mandate's approach: an openness to dialogue with all relevant stakeholders and an awareness of the need to address SOGI-related discrimination and violence through intersectional analytical frameworks.

¹¹ During his six-year term, Independent Expert Madrigal-Borloz expanded the research agenda, devoting several thematic reports to the drivers and root causes of discrimination and violence, as well as to the specific manifestations identified by his predecessor. Root causes analyzed include social and political constructions of gender, ongoing legacies of colonialism, and exclusionary moral or religious beliefs and narratives. He also broadened the mandate's focus to address other key contexts of discrimination and violence, including armed conflict and humanitarian protection, exclusion from development and socioeconomic policy agendas, and responses to the COVID-19 pandemic. The challenges of data collection and management were also brought into focus, given the central role of information and documentation in raising awareness of people's lived experiences of discrimination and violence.¹⁶ Periodic consultations were held to inform these reports, and interactive dialogues held at the Human Rights Council and the General Assembly to discuss their findings.

¹² Between 2017 and 2023, the mandate holder conducted country fact-finding visits to eight countries across all world regions: Argentina (2017), Georgia (2018), Mozambique (2018), Ukraine (2019), Tunisia (2021), United States of America (2022), Cambodia (2023) and the United Kingdom (2023)¹⁷. Promotional visits were carried to a further 14 countries, often to participate in conferences



DECEMBER 2018: THE IE-SOGI MEETING WITH THE COMMUNITY OF THE MASSUMA AL-DJAMA MOSQUE IN NAMPULA, MOZAMBIQUE.

¹⁶ For the mandate's thematic reports to the Human Rights Council and General Assembly, see [OHCHR, IE-SOGI: Annual thematic reports](#)

¹⁷ The mandate's UN-allocated resources and methodology foresee two country visits each year; the COVID-19 pandemic, however, impacted the execution of visits during 2019 and 2020.

or other events.¹⁸ 147 communications on individual cases of violence and discrimination based on SOGI were sent to 56 States. As well as publishing 14 thematic and eight country reports, the IE-SOGI issued dozens of press releases and statements, some expressing concern about developments in specific countries, others welcoming good practices. Numerous statements were issued jointly with other special procedure mandate holders on issues of shared concern, from systemic racism to the climate crisis.¹⁹ Other communications outputs produced by the mandate include articles, OpEds, media interviews and frequent engagement on social media.

- 13 Initially established for three years, the IE-SOGI mandate was renewed in June 2019 through resolution 41/18²⁰ and again in July 2022 through resolution 50/10²¹. The fluctuations in the majorities by which the mandate was renewed in 2019 and 2022 reveal that its subject-matter has remained contentious.²² In both cases, against the backdrop of growing weaponization of issues of sexuality and gender in many contexts, several States attempted to dilute the renewal resolutions with paragraphs urging respect for national sensitivities and cultural values. Nevertheless, the steadfast stance of proponent States resulted in far less relativist language in these resolutions than in the 2016 resolution creating the mandate. During the 2022 debate, Argentina, one of the resolution's sponsors, affirmed that the IE-SOGI had helped to consolidate understanding of SOGI-related discrimination and violence as a fundamental human rights concern belonging firmly on the UN agenda: "The right to live free from violence and discrimination based on SOGI is a foundational matter, as established in resolutions of this Council since 2003. It is not a new concept."²³
- 14 The mandate renewal process also galvanized even greater civil society mobilization than at its creation, illustrating the highly valued role it has come to play as a "bridge between people and power," in the words of an OHCHR country representative.²⁴ As one civil society advocate reflected: "An indicator of civil society support for the mandate is that over 1300 CSOs called for its renewal. Had there been doubts about what it had achieved, there would have been no way to mobilize civil society in that way."²⁵

18 For the mandate's country visit reports and statements, see [OHCHR, IE-SOGI Country Visits](#)

19 For statements issued by the mandate, individually and jointly with others, see OHCHR, [IE_SOGI: Statements and speeches](#)

20 Resolution adopted by the Human Rights Council on 12 July 2019 ([A/HRC/41/18](#))

21 Resolution adopted by the Human Rights Council on 07 July 2022 ([A/HRC/50/10](#))

22 The 2016 resolution was adopted with 23 member States voting in favour, 18 against and 6 abstentions. In 2019, the votes were 27 to 12 with 7 abstentions, and in 2022, 23 to 17 with 7 abstentions.

23 Statement by Argentina during the debate on HRC resolution 50/10, 07 July 2022

24 Interview, 13 September 2023

25 Interview, 19 September 2023

Chapter 3

Making a Difference:

Key outcomes
of the mandate



- 15 The following sections explore five key outcomes of the mandate's work, corresponding to some of the critical dimensions of change the Special Procedures seek to influence: (a) an enriched body of compelling **analysis and evidence** of SOGI-related discrimination and violence and its root causes; (b) heightened **awareness and visibility** of it among key audiences; (c) added momentum for **legal and policy reforms** to tackle it; (d) new avenues of **accountability and remedy** for individuals affected by it; and (e) greater **voice and influence** of human rights defenders working to end it.

A Analysis and Evidence

- 16 The mandate seeks to promote understanding “through the production of knowledge on instances and patterns of violence and discrimination based on sexual orientation and gender identity, and the mandate's findings on root causes, and its subsequent dissemination.”²⁶ As substantiated below, evidence indicates that the IE-SOGI mandate has made a unique and widely valued contribution to the analysis of patterns of SOGI-based violence and discrimination worldwide and of the factors enabling them. The rigorous framing of the analysis from a holistic human rights perspective has helped consolidate understanding of such violence and discrimination as a concern of international human rights law. An intersectional, decolonial and interdisciplinary approach has given visibility to experiences, identities and realities not previously addressed by the UN human rights system, helping to counter myths and narratives perpetuating SOGI-based violence and discrimination. The subsections below elaborate on these findings.

A1. THE MANDATE HAS MADE A UNIQUE AND WIDELY VALUED CONTRIBUTION TO THE ANALYSIS OF PATTERNS OF SOGI-BASED VIOLENCE AND DISCRIMINATION WORLDWIDE AND OF THE FACTORS ENABLING THEM

- 17 For many stakeholders, one of the most valuable aspects of the mandate's work has been the production of rigorous analysis on a range of strategically chosen issues rarely if ever addressed by the UN human rights system but which reflect critical civil society concerns. Many have noted the breadth of issues covered and the value of shedding light on specific manifestations of abuse (such as so-called “conversion therapy”) as well as broader contextual

²⁶ IE-SOGI, Results Framework (2020), internal document on file with author



THE IE-SOGI MEETING WITH THE GOVERNOR OF SOUSSE DURING HIS COUNTRY VISIT TO TUNISIA IN JUNE 2021.

factors giving rise to them (such as legacies of colonialism). The mandate's capacity to address "root cause" issues which are at the heart of political debates in many contexts was flagged as particularly important by government as well as civil society representatives. Speaking at the recent interactive dialogue on the IE-SOGI's report on colonialism, for example, Peru remarked that: "We have to understand the root causes that motivate violence and discrimination against LGBTQ people. Each of the mandate's reports constitute valuable support in this direction."²⁷

- ¹⁸ Similarly, the mandate's in-depth focus on binary, patriarchal constructs of gender as a root cause of SOGI-based violence and discrimination, and its direct engagement with "anti-gender" critiques, were welcomed as courageous and timely by civil society advocates. A long-time observer of gender and sexuality politics at the UN noted the significance of having an authoritative UN human rights voice coming out against anti-gender arguments being waged in many countries: "The mandate's reports on gender were the first move by the UN system to name and analyze anti-gender politics as a human rights problem. No-one had done it before though it was happening everywhere. It's ironic because the UN was the first platform

²⁷ Statement by Peru at the interactive dialogue with the IE-SOGI at the 78th session of the General Assembly, 26 October 2023

and testing ground for the anti-gender discourse... From a long-term historical point of view, the reports' analysis of the threat to the human rights paradigm is an absolutely fundamental contribution."²⁸ This was felt to have had a direct impact in specific national contexts. For example, at a time when civil society in Brazil was tackling the rise of anti-gender policies under President Bolsonaro, the mandate's call for submissions on the issue led a group of actors to carry out a systematic analysis of anti-gender policy as state policy, which echoed in national debates.²⁹

A2. THE RIGOROUS FRAMING OF THE ANALYSIS FROM A HOLISTIC HUMAN RIGHTS PERSPECTIVE HAS HELPED CONSOLIDATE UNDERSTANDING OF SOGI-BASED VIOLENCE AND DISCRIMINATION AS A CONCERN OF INTERNATIONAL HUMAN RIGHTS LAW

- ¹⁹ The framing of SOGI-related violence and abuse as a violation of international human rights standards is widely seen as a critical added value of the IE-SOGI's analysis, consolidating and building on the work of UN treaty bodies in this regard. As the mandate's earliest reports clarified, such abuse has long been normalized and justified through laws, policies and attitudes that criminalize, pathologize and demonize LGBT lives. Reframing it as a violation of core international human rights treaties and holding states to their obligation to eradicate it carries particular force in this context. Affirming that forms of "conversion therapy" may amount to cruel, inhuman or degrading treatment or punishment, or framing the lack of legal gender recognition as a denial of access to health and other economic and social rights, not only underscores the severity of these harms, but aids understanding of the need for public policies to prevent and remedy them. The mandate's reports on these issues were described by an international NGO director as "boundary pushing as they strongly managed to frame these topics as a matter of international human rights law."³⁰
- ²⁰ Alongside the unequivocal labelling of abusive practices as human rights violations, the IE-SOGI has also consistently brought to bear affirmative human rights principles such as self-determination, dignity, autonomy and freedoms of expression and belief in his analysis. This positions LGBTI and other gender-diverse people not just as victims to be protected from egregious harm, but human beings endowed with same right to human flourishing and to the full development of the human personality as others.

²⁸ Interview, 25 September 2023

²⁹ *ibid*

³⁰ Interview, 19 September 2023

21 Several human rights defenders spoke of the conceptual and strategic value of the mandate drawing on the full cannon of existing human rights law in framing its work. One described how “flipping the narrative from ‘LGBTI rights’ to ‘the human rights of LGBTI persons’”³¹ had prompted people to think intersectionally about rights and to invoke aspects of the international law framework not previously engaged in relation to SOGI, from the rights of internally displaced people to the international responsibility to remedy the harms of colonialism. An OHCHR staff member spoke of how anchoring the work in human rights rather than LGBTI rights had “opened opportunities to engage in dialogue with those not necessarily supportive or even clearly opposing SOGI issues.”³²



MARCH 2023: MUSLIM THEOLOGIAN AMINA WADUD SPEAKING AT THE EXPERT CONSULTATION ON THE RELATIONSHIP BETWEEN FREEDOM OF RELIGION AND BELIEF, AND SEXUAL ORIENTATION AND GENDER IDENTITY AT HARVARD LAW SCHOOL. AUTHOR AND POLISH CATHOLIC PRIEST KRZYSZTOF CHARAMSA IS SEATED NEXT TO HER.

22 The mandate’s meticulous human rights framing has been critical in countering the challenge still raised by some UN member states that “the controversial concept of SOGI [...] has no basis in international law including international human rights law”.³³ While such

31 Interview, 21 September 2023

32 Interview, 21 September 2023

33 Letter from the Permanent Mission of Pakistan to the UN Secretary General on behalf of the Organization of Islamic Cooperation, 25 August 2023, para 3

objections appear to have more to do with geopolitical and sociocultural differences than disagreements over legal interpretation, the mandate's rigorous approach is seen by long-term observers as having consolidated understanding of how the prohibition of violence and discrimination based on SOGI is firmly grounded in the international human rights framework. Referring to the 2017 Yogyakarta Principles on the application of international human rights law in relation to SOGI,³⁴ an international NGO director reflected that “so many of the documents that the mandate has written over the last six years illustrate what these Principles are saying, helping to enshrine them in the body of human rights law.”³⁵ Similarly, a leading legal scholar considered that one of the mandate's most important contributions has been to “build a coherent analytic lens of sexual orientation and gender identity as rights-bearing categories in human rights law and practice, one that's theoretically rigorous and practically useful”.³⁶



VICTOR MADRIGAL-BORLOZ (CENTER) ADDRESSING THE UN SECURITY COUNCIL IN NEW YORK CITY IN 2023. WITH US AMBASSADOR TO THE UN LINDA THOMAS-GREENFIELD TO HIS RIGHT.

34 Drawn up by a group of international human rights experts in 2006 and updated in 2017. See: Yogyakartaprinciples.org

35 Interview, 19 September 2023

36 Interview, 20 September 2023

- 23 This consolidation has enabled supportive States to counter cultural relativist arguments more assertively in UN forums. For example, speaking at the Human Rights Council in 2022, Chile affirmed that: “SOGI-based discrimination and violence can no longer be dismissed as some kind of cultural manifestation. They are a universal human rights concern, and there’s a critical mass around world who see it as an urgent task to address them.”³⁷

A3. AN INTERSECTIONAL, DECOLONIAL AND INTERDISCIPLINARY APPROACH HAS GIVEN VISIBILITY TO IDENTITIES AND REALITIES NOT PREVIOUSLY ADDRESSED BY THE UN HUMAN RIGHTS SYSTEM, HELPING TO COUNTER MYTHS AND NARRATIVES PERPETUATING VIOLENCE AND DISCRIMINATION BASED ON SOGI

- 24 Intersectionality was explicitly included as a cross-cutting approach of the mandate in the original resolution of 2016, reflecting a commitment by its proponents to ensure that the mandate gave due attention to the full diversity of LGBTI identities and experiences,³⁸ mindful of disparities of gender, race, class, caste, disability and migratory or other status. Many shared their perception that the mandate has been intentionally inclusive in its approach to outreach, consultations and fact-finding, resulting in a body of work that gives visibility to the experiences of communities and individuals facing multiple and intersecting forms of discrimination. In the words of a regional NGO director: “[t]he mandate has been very intentional about inclusion, through relationships and through the writing. It’s allowed new voices to come in, bringing a textural quality to what is an ever-changing movement. The queerness of our identities has been made clearer, what was invisible has become visible.”³⁹
- 25 This intentionally intersectional approach appears to have gone some way in allaying several concerns which surfaced in civil society debates around the creation of the mandate. One was whether a focus on SOGI would neglect or undermine attention to critical issues of sexual and reproductive health and rights (SRHR). There is appreciation for the efforts made by the IE-SOGI to take on topics at the intersections of SOGI and SRHR within the scope of the mandate. As one international NGO leader remarked, “the mandate demonstrated that it has the ability to build a bigger tent than we initially thought.”⁴⁰ The mandate’s deliberate inclusiveness and

37 Statement of Amb. Claudia Fuentes Julio, Permanent Representative of Chile to the UN in Geneva, at the Human Rights Council side-event, “Seven years of the UN IE-SOGI mandate”, on 21 June 2023

38 On the mandate’s approach to the rights of intersex persons and the commonalities and distinctions between SOGI-based abuses and those based on sex characteristics, see the Report of the IE-SOGI on the right to health in relation to the SDGs (A/HRC/50/27, November 2022), para 3.

39 Interview, 21 September 2023

40 Interview, 19 September 2023

attentiveness to power dynamics within the LGBTI movement is also credited by feminist and trans advocates as an important safeguard against the risk of “capture”⁴¹ by historically dominant constituencies, and as having ensured that “this was a mandate that covered the whole umbrella, treating gender identity and sexual orientation as par.”⁴²

- 26 A related hallmark of the mandate's analysis has been its decolonial approach. This has manifested in different ways, including highlighting the colonial roots of discriminatory laws and the erasure of diverse precolonial sexual and gender identities, issues addressed in depth in the mandate's July 2023 thematic report on colonialism and decolonialism. The choice of country focus has reflected a concern for geographical/regional balance, as well as an attentiveness to the double standards and neocolonialism manifest at times in interventions by countries of the global North on LGBTI issues in the global South. Proactively seeking inputs from LGBTI people and human rights defenders from Africa, Asia, and the Middle East/North Africa, and giving voice and visibility to them in outputs and forums, has aimed to counter the myth propagated by some member states in those regions that SOGI concerns are a purely “western” issue and that “there are no LGBTI persons or issues in their countries.”⁴³
- 27 Given that these narratives - and the traction they still have in some countries - are the main obstacle to universal recognition of the right to be free from violence and discrimination based on SOGI, the mandate's frontal and in-depth engagement with them has been described by governmental and civil society actors as strategic as well as principled. At the interactive dialogue on the colonialism report, member States welcomed the debunking of “the too often repeated narrative that western influence has imposed this diversity in the world”⁴⁴ and the “decolonization of knowledge”⁴⁵ around gender and sexuality. A regional NGO director from the Asia-Pacific also pointed to the value of the mandate's decolonial focus on the responsibilities and rhetoric of global North countries: “It's been useful to have the mandate as an impartial, objective observer in countries such as the UK or US, as there's a dissonance in donor countries' demands for equality when their house is not in order. It has helped level the playing field.”⁴⁶

41 Interview, 25 September 2023

42 Interview, 19 September 2023

43 Interview, 21 September 2023

44 Statement by Belgium at the IE-SOGI interactive dialogue at the 78th session of the General Assembly, 26 October 2023

45 Statement by South Africa at the IE-SOGI interactive dialogue at the 78th session of the General Assembly, 26 October 2023

46 Interview, 21 September 2023



MADRIGAL-BORLOZ AT THE CONVERSION THERAPY EXPERT CONSULTATION HOSTED BY THE HARVARD LAW SCHOOL HUMAN RIGHTS PROGRAM IN MARCH 2020.

- 28 The mandate's interdisciplinary and intersectoral approach has also enabled it to bring its concerns into spheres of the UN adjacent to human rights, including humanitarian, refugee, development, and peace and security forums, defying the compartmentalization of these realms at the UN and drawing attention to the concurrent application of other branches of international law to address discrimination and violence based on SOGI. For example, the mandate's engagement with the UN High Commissioner for Refugees (UNHCR) and other stakeholders working on migration and displacement was considered by an advocate working with LGBTI refugees and migrants to have reinforced the links between the human rights and humanitarian sectors and "signified a real shift in UNHCR's thinking around LGBTQI+ displacement, prompting an ongoing dialogue about what inclusion means in humanitarian responses."⁴⁷ The report on SOGI-related violence and discrimination in situations of armed conflict and displacement, and the subsequent Arria formula briefing to the members of the Security Council, was also highlighted by an international NGO advocate as an important incursion into spaces where LGBTI issues are rarely raised.⁴⁸
- 29 Similarly, the focus on socioeconomic inclusion and engagement with the Sustainable Development agenda was flagged as giving visibility to the critical but neglected economic and social rights dimensions of violence and discrimination based on SOGI, whether in terms

⁴⁷ Statement by South Africa at the IE-SOGI interactive dialogue at the 78th session of the General Assembly, 26 October 2023

⁴⁸ Interview, 22 September 2023

of authoritarian scapegoating of LGBTI communities to deflect from people's economic grievances, or the economic exclusion that such violence and discrimination entails. As a regional NGO director observed: "The mandate has helped us tie in development issues to the rights of LGBTI people. We tend to be the first scapegoats in countries in economic distress, and when the economy collapses the impact is felt by the poorest in our communities. In our region, most people in our community are economically depressed and live in the subsistence economy. This is something the mandate has helped us be attentive to."⁴⁹

B Awareness and Visibility

- ³⁰ The mandate's strategic approach to public outreach and dissemination has enabled its analysis and findings to reach key audiences, including young people and queer communities in the global South. In many cases, it has given increased visibility to issues which are of critical concern to civil society groups worldwide, but which have been marginalized in their national contexts and neglected on the international human rights agenda. Moreover, its proactive role in mainstreaming SOGI issues within the UN system has aided efforts by other Special Procedures and various UN entities and forums to give attention to SOGI-related human rights violations from different perspectives, contributing in turn to greater visibility, awareness and understanding of SOGI-based violence and discrimination. The sub-sections below elaborate on these findings.

B1: THE MANDATE HAS ELEVATED THE INTERNATIONAL VISIBILITY OF KEY ISSUES AFFECTING THE RIGHTS OF LGBTI AND GENDER DIVERSE PEOPLE

- ³¹ Many civil society actors spoke of the mandate's power to bring to international attention issues which are either woefully neglected or wilfully misunderstood in their contexts. In the words of one human rights defender: "The ability of the office to elevate the struggle as represented by activists, to back the issues and help us elevate the asks for specific countries has been very useful."⁵⁰ Some gave concrete examples of how the mandate's thematic reports have made a difference to the visibility and awareness of particular issues, impacting on broader debates around them. The 2019 report on the right to legal recognition of gender identity and the standard of self-identification was described by the director of

⁴⁹ Interview, 21 September 2023

⁵⁰ Interview, 21 September 2023

an international LGBTI rights organization as setting out the state of play on the issue: “This had never been put together as clearly by an institution like this. It changed how people perceived and discussed the issue, elevating it.”⁵¹

- 32 Similarly, international awareness of the issue of “conversion therapy” was seen as having been given a powerful boost by the mandate. An OHCHR staff member spoke of the impact of the mandate’s decision to contribute to the body of evidence civil society groups were gathering on the issue: “When you see the impact in terms of people who know about it and know it’s wrong, and the number of states who’ve adopted measures to prevent it, it’s quite impressive. The visibility and awareness has been quite effective.”⁵²

B2. THE MANDATE’S STRATEGIC APPROACH TO COMMUNICATIONS HAS ENABLED IT TO REACH KEY AUDIENCES, INCLUDING YOUNG PEOPLE AND QUEER COMMUNITIES IN THE GLOBAL SOUTH

- 33 A strategic approach to outreach, media and dissemination has been a key vehicle for achieving the objective of heightening awareness. Relying primarily on social media channels to amplify the reach of the mandate’s work, digital campaigns have been organized around “flagship” outputs and three global calls (decriminalization, legal recognition of gender identity and conversion therapy). Producing accessible report summaries and visual illustrations has allowed the mandate to reach different audiences, reflected in a steady growth in followers on social media (up 80% across different media from 2019 to 2021) and extensive engagement with the mandate’s key outputs. Communications around the first gender report in 2021, for example, generated more than half a million views, directing attention to the global call for legal recognition of gender identity.
- 34 Young adults appear to be one of the mandate’s main audiences: available social media analytics indicate that almost half of those engaging with the mandate’s communications are between 18 and 34, and three quarters are under 45. The mandate has built a significant audience across regions: outside the United States, the five countries with the largest number of followers are in Africa (Uganda, South Africa and Kenya) and in Latin America (Mexico and Costa Rica).⁵³

51 Interview, 19 September 2023

52 Interview, 21 September 2023. For more on the impact of the mandate’s work on conversion therapy and perceptions around it, see part C (“Legislative and Policy Change”)

53 IE-SOGI Social Media Annual Report (2020)

- 35 A valued characteristic of the mandate's communication approach has been to complement rigorous evidence-based analysis of the issues with a focus on individual stories that speak to people's common humanity. As an African human rights defender pointed out: "The mandate has always been keen to tell the story of people on the ground, to reference specific examples which strike a chord with anyone. 'Here's the research, here's exactly what is happening, with numbers and examples.' Without that, there wouldn't have been such a large number of people interacting with the issues."⁵⁴ Also notable is the consistent use of affirmative narratives that avoid the tendency of some human rights reporting to sensationalize accounts of violence and discrimination in order to capture media attention.⁵⁵
- 36 A proactive approach to dialogue has also been key to raising awareness among particular audiences. For example, webinars have been organized in different languages to present report findings to target regions or sectors. The mandate has given interviews to influential media outlets and responded to invitations to participate in conferences or events that present new opportunities to give visibility to SOGI human rights issues. Many country visits have included deliberate outreach to key constituencies including religious leaders and health professionals, which has resulted in fruitful dialogue and opened doors for civil society to continue the conversation. The mandate's respectful approach to dialogue with a range of actors, including those with divergent views, has been widely welcomed as critical to shifting attitudes and debates. As one member State representative affirmed: "We welcome the importance that the Independent Expert attaches to dialogue and mutual respect, which is fundamental to deepen debate around these issues and avoid confrontational positions."⁵⁶

B3. THE MANDATE'S INTENTIONAL ROLE IN MAINSTREAMING SOGI ISSUES WITHIN THE UN SYSTEM HAS PROMPTED OTHER SPECIAL PROCEDURES, UN ENTITIES AND FORUMS TO GIVE ATTENTION TO SOGI-RELATED HUMAN RIGHTS VIOLATIONS FROM DIFFERENT PERSPECTIVES, CONTRIBUTING IN TURN TO GREATER VISIBILITY AND AWARENESS

- 37 In addition to generating awareness and visibility through its own outputs, the mandate has played a significant role in prompting many other parts of the UN system to address

⁵⁴ Interview, 21 September 2023

⁵⁵ An illustrative example is the title of the recent IE-SOGI press release on the decriminalization of same sex relations in Mauritius: "[Supreme Court ruling tells LGBTQ people in Mauritius that their dignity is valued](#)" (13 October 2023)

⁵⁶ Statement of the Permanent Representative of Peru at the [Interactive Dialogue on the report of the IE-SOGI on freedom of religion](#) at the 53rd session of the Human Rights Council, 21 June 2023

patterns of SOGI-related discrimination and violence from the perspective of their respective mandates. A deliberate and strategic approach to collaboration with other Special Procedures, UN entities and country teams has been key to the mandate's mainstreaming effect across the UN system. Many observers see this as an important dimension of the IE-SOGI's intersectional approach. Despite initial fears that the creation of a dedicated mandate on SOGI might absolve others of their responsibility to address it, the IE-SOGI mandate has been carried out with "a sense of duty to foster inclusion of LGBTI issues in the work of the UN in general", as an OHCHR staff member observed.⁵⁷



MADRIGAL-BORLOZ AND FORMER
UN HIGH COMMISSIONER FOR HUMAN
RIGHTS MICHELLE BACHELET

- 38 Among the numerous examples of impactful collaboration are: the Queer Youth Dialogues⁵⁸ co-organized with the Secretary General's Special Envoy on Youth, ILGA and the Queer Youth Network; a joint campaign with the Special Rapporteur on Human Rights Defenders on the challenges facing LGBTQ human rights defenders;⁵⁹ the alliance with UNHCR on the 2021 Global Roundtable on Protection and Solutions for LGBTIQ+ People in Forced Displacement, and with Rainbow Railroad on efforts to mobilize data on such displacement;⁶⁰ and collaboration with several mandate holders working on themes addressed in specific IE-SOGI reports, such as the current and former Special Rapporteurs on Freedom of Religion.⁶¹
- 39 UN insiders trace a direct line between the IE-SOGI's systematic mainstreaming efforts and significant developments at the UN in recent years, including major advancements in the inclusion of SOGI issues in the strategies and action plans of institutions such as UN Women, UNFPA, UNHCR and the World Bank, and the ongoing process to develop a UN-wide SOGI strategy and accountability framework.⁶² An indication of the mandate's success in raising awareness of the relevance of SOGI-based discrimination and violence to all parts of the

57 Interview, 21 September 2023

58 <https://www.un.org/youthenvoy/qyd/>

59 <https://srdefenders.org/sogi/>

60 UNHCR and IE-SOGI, [Summary Conclusions, 2021 Global Roundtable on Protection and Solutions for LGBTIQ+ People in Forced Displacement \(16 August 2021\)](#); Rainbow Railroad, [Understanding the State of Global LGBTIQ+ Persecution 2022](#)

61 IE-SOGI, [Report on Freedom of Religion](#)

62 Interviews 12 and 21 September 2023

UN's human rights system is that dozens of joint statements have been issued with other special procedures on issues ranging from climate change to violence based on religion or belief.⁶³ In the opinion of one special procedure mandate holder, a key strategic contribution of the mandate has been in "streamlining SOGI issues across different parts of the UN system in a very polarized political environment and, through these interactions, positioning an issue which people are scared to talk about in a positive and constructive light."⁶⁴



THE IE-SOGI MET WITH UN SECRETARY GENERAL ANTONIO GUTERRES IN 2018.

- 40 Civil society advocates spoke of the impact this integration of SOGI across UN mandates has had on their own work: as a human rights defender from the Asia-Pacific region observed, "Our organizations have also been inspired to make those linkages because of the mandate's work, for example ILGA World calling for feedback to the Special Rapporteur on Housing on the impact of COVID-19 on homelessness in the region, tied into vulnerability and violence against LGBT persons. More connection with those experts will benefit our programming."⁶⁵ A long-standing observer of gender and sexuality at the UN pointed to the ways in which the IE-SOGI has "built on the trajectory of prior work on SOGI within the UN system," as well as "being receptive to strengthening its own work by absorbing the priorities of other mandates",⁶⁶ such as those on the right to health or freedom of religion. This proactive and two-way approach to fostering collaboration was felt by other UN Special Procedures to have been strategic and effective in "channelling the integration of queer perspectives into the work of other mandate holders, opening many doors."⁶⁷
- 41 The mandate has also had a mainstreaming effect across the UN's operations in national contexts. The head of a UN country team spoke to the impact of the IE-SOGI's country visit on

63 See for example [OHCHR: Resolve to expose violence based on religion or belief: UN Experts](#), 18 August 2023 and [COP 27: Urgent need to respect human rights in all climate change action, say UN experts](#), 4 November 2022

64 Interview, 12 September 2023

65 Interview, 21 September 2023

66 Interview, 14 September 2023

67 Interview, 12 September 2023

the UN's agenda at the national level: "Since the visit, SOGI is back on the table in meetings with NGOs, with the country team and international community reps. I feel comfortable raising it in meetings with officials. Every time we have development meetings these issues are raised, and we'll raise them in the country's future treaty body reviews."⁶⁸ Beyond the UN, the mandate has also fostered greater integration of SOGI issues on the agenda of regional human rights mechanisms and national human rights institutions, as well as providing an important stimulus to the work of other intergovernmental bodies such as the Equal Rights Coalition which have followed up the mandate's findings with public pronouncements and diplomatic interventions.⁶⁹

c Legislative and Policy Change

42 A third critical dimension of change has been in catalysing state commitments and reinforcing efforts to implement the legal, policy and institutional reforms needed to protect against SOGI-based discrimination and violence. The mandate has sought to do so by engaging in constructive dialogue with a range of authorities -from law enforcement, health and human rights officials



LAURENCE VANCEUNEBROCK, MEMBER OF PARLIAMENT OF FRANCE, AT THE 2020 PUBLIC CONSULTATION ON CONVERSION THERAPY AT THE UNITED NATIONS IN GENEVA.

to parliamentarians and ministers of justice and religion – and by providing advice and guidance on good and best practices. A measure of the priority given to dialogue and interaction with states is that the IE-SOGI is estimated to have engaged in-depth with over a hundred states through country visits, bilateral conversations, individual communication procedures or interactive dialogues around his reports.⁷⁰ Similarly, the decision to devote a third of each thematic or country report to good practices reflects the commitment the mandate has attached to highlighting and promoting these.⁷¹

68 Interview, 13 September 2023

69 Equal Rights Coalition, *Buenos Aires 2022 Conference Report*, pp38 and 39. The ERC is an intergovernmental body of 43 member States committed to the protection of the rights of LGBTI persons. See equalrightscoalition.org

70 Intervention by Victor Madrigal-Borloz at the side event, "Seven Years of the IE-SOGI Mandate" at the 53rd session of the Human Rights Council, 21 June 2023

71 *ibid*

43 While the mandate's recommendations to states have covered an extensive range of topics reflecting diverse national and regional realities, a global focus has been on three emblematic areas of law and policy which the mandate has called on all members of the international community to bring into line with international standards: universal decriminalization of same-sex relations and diverse gender identities and expressions by 2030; an immediate end to so-called "conversion therapy" practices; and the legal recognition of gender identity based on self-identification. This section looks at the contribution of the IE-SOGI's work to these three areas of legal and policy change.

C1. THE MANDATE'S ARGUMENTS AND INTERVENTIONS TO DECRIMINALIZE SAME-SEX RELATIONS AND DIVERSE GENDER IDENTITIES HAVE ADDED MOMENTUM TO LEGAL REFORM PROCESSES ACROSS DIFFERENT REGIONS

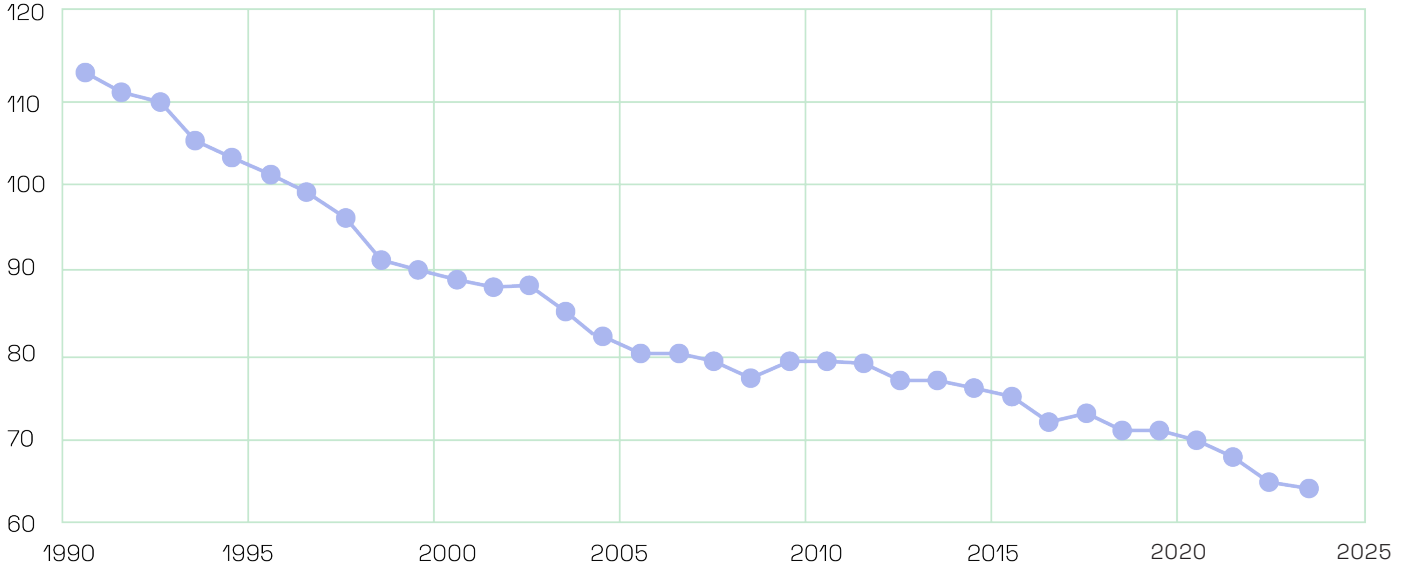
44 The issue of decriminalization has been on the mandate's agenda since its inception. The decision to focus on it became all the more pertinent as a number of states including Ghana, Iraq, Niger and Uganda moved to increase criminal penalties, including application of the death penalty, in the name of protecting the family, religion and culture, and resisting the colonial imposition of "western" values. The mandate's thematic and country analysis has sought not only to make visible the harms to human rights and dignity criminalization entails, but to counter the narratives justifying it, for example by highlighting the colonial origins of the laws being defended and the role of US evangelical forces in promoting them in other countries. The mandate's arguments and interventions for repeal have also been advanced through country visits, in individual communications and briefings to decision-makers on reform processes.

45 Despite notable reversals in some countries, the overall trend towards decriminalization of same-sex relations has continued (see **graphic 1**). Since the establishment of the mandate, 14 countries have decriminalized, including five in Africa (Angola, Botswana, Gabon, Mauritius and Seychelles); five in Latin America and the Caribbean (Antigua and Barbuda, Barbados, Belize, St Kitts and Nevis, and Trinidad and Tobago,); and four in the Asia-Pacific (Bhutan, India, Nauru and Singapore). The United Kingdom, the State with the greatest historical responsibility for the imposition of such laws in dozens of countries it colonized, formally apologized to Commonwealth leaders in 2018 urging their repeal. That same year, India, the world's most populous nation, repealed its colonial era "sodomy" laws (which had been used as the template for many other countries under British colonial rule) in a

ruling acknowledging that millions of LGBT Indians “continue to be denied a truly equal citizenship seven decades after Independence.”⁷²

GRAPHIC 1: NUMBER OF COUNTRIES CRIMINALIZING SAME-SEX RELATIONS, BY YEAR

SOURCE: ILGA WORLD DATABASE



46 Though many different factors have shaped each of these processes, evidence indicates that the IE-SOGI's interventions and arguments have been referenced or taken into account by decision-makers and civil society groups advocating for reform. For example, in April 2019, the mandate along with 5 other special procedures voiced its concern regarding Brunei's implementation of the Syariah Penal Code Order (SPCO) punishing “sodomy” and “adultery” with death by stoning. The government sent a detailed response denying that the Penal Code “had any intention to victimize a person's status based on sexual orientation or belief”. Nevertheless, as international criticism mounted, the sultan of Brunei committed in August 2023 to extend the moratorium on the death penalty for acts punishable under the SPCO.

47 In 2021, the IE-SOGI made two interventions before the Ghanaian parliament regarding the Human Sexual Rights and Family Values Bill, proposing stringent criminal penalties for same-sex relations, trans identities and LGBTI rights advocacy. The IE-SOGI's arguments that the bill would establish a state-sponsored system of discrimination and violence were echoed by a broader group of UN human rights mandate-holders and widely cited in media

72 Supreme Court of India, Navtej Singh Johar v. Union of India, Writ petition (criminal) No. 76 of 2016, Judgment (6 September 2018), paras 267 and 268, cited in the Report of the IE-SOGI on the impact of colonialism (A/78/227), 25 July 2023, para 53



DUE TO THE COVID PANDEMIC, THE IE-SOGI CONDUCTED MANY MEETINGS VIRTUALLY. IN JUNE 2023, MADRIGAL-BORLOZ MET WITH THE REPRESENTATIVES OF MEMBER STATES OF THE LGBTI CORE GROUP AT THE UNITED NATIONS IN NEW YORK, USA.

and civil society reactions.⁷³ In the face of widespread support for the bill among members of parliament, Ghanaian human rights advocates welcomed the UN's strong positioning as potential encouragement to others to speak against it.⁷⁴ In 2023 the parliamentary committee reviewing the bill acknowledged that the concerns raised by international human rights bodies were "worthy of consideration"⁷⁵, and both the Attorney General and the Ghanaian Commission on Human Rights and Administrative Justice reportedly warned parliament that its provisions would violate fundamental human rights.⁷⁶ Against this backdrop, further consideration of the bill was deferred to 2024.

- 48 A human rights defender from Kenya spoke of the impact of collaboration with the mandate on decriminalization litigation efforts there. Although the case was ultimately unsuccessful, a statement released by the IE-SOGI made an imprint on the debate and provided powerful support to those leading the case: "In contexts like Kenya, where the government doesn't want to be held accountable and wants to behave as if the world is not looking, the IE represented to the state and to the human rights sector that we're not working alone."⁷⁷ They

73 [OHCHR, Ghana: Anti-LGBTQI draft bill a "recipe for violence" – UN experts](#), 12 August 2021. As an example of civil society uptake of the IE-SOGI's intervention, see: Amnesty International, [We are facing extinction: Escalating anti-LGBTI sentiment, the weaponization of law, and their human rights implications in select African countries](#), 9 January 2024, p.19

74 Nita Bhalla, Ghana's anti-gay bill condemned as 'state-sponsored violence', Reuters 12 August 2021

75 Committee on Constitutional, Legal and Parliamentary Affairs, [Report on the Promotion of Proper Human Sexual Rights and Family Values Bill](#), 2021 (March 2023), para 8.3

76 Adom Online, [Some aspects Anti-LGBT bill are 'quite problematic' – CHRAJ](#), 11 December 2023; Modern Ghana, [Anti-LGBT Bill: Committee report to be laid in parliament before end of March](#) – Sam George, 7 January 2024

77 Interview, 21 September 2023

also pointed to indirect contributions the mandate has made to decriminalization efforts in other countries in the region, for example, by enabling activists to see international financial institutions such as the World Bank as an important site of advocacy on these issues. In 2023, the World Bank said it would freeze its lending to Uganda following the country's adoption of the Anti-Homosexuality Act imposing life imprisonment for same-sex relations.⁷⁸



MADRIGAL-BORLOZ DISCUSSING WITH MEMBERS OF THE AFRO-LGBTI NETWORK IN CARTAGENA, COLOMBIA, IN 2018.

49 While there was widespread agreement among civil society actors that the mandate has been an effective voice in challenging criminalization, some feminist advocates warned of the shortcomings of “an overemphasis on decriminalization in the absence of other strategies for lesbians and trans folks who may not be targeted by sodomy laws.”⁷⁹ Although, as the mandate has pointed out, 41 of the 67 countries that criminalize same-sex relations outlaw sexual intimacy between women, advocates warned that strategies centered on

⁷⁸ While such loan conditionalities have been criticized by LGBTI, feminist and other human rights activists for their potential adverse consequences and neocolonial connotations, the World Bank's stance in this case was welcomed by a Ugandan rights advocate leading the challenge against the AHA as a “powerful statement about the importance of human rights and inclusion” which had “sparked more dialogue and constructive debate on LGBTQ+ human rights within the country on a wider scale”. See Frank Mugisha, “[World Bank statement is a call for LGBTQ Inclusion](#)” (Monitor, 12 August 2023)

⁷⁹ Interview 14 September 2023

decriminalization “do not reach the range of state measures that women erotically oriented to women need to remedy their lack of rights and social invisibility, such as rights to property, contract and freedom of movement.”⁸⁰ The mandate’s intersectional embrace of issues of gender and socioeconomic exclusion were therefore seen as a critical safeguard against the risk of limiting the mandate’s focus to the most visible manifestations of discrimination in criminal law.

C2. THE MANDATE HAS HELPED BRING ABOUT A SHIFT IN INTERNATIONAL RECOGNITION OF “CONVERSION THERAPY” AS A HARMFUL PRACTICE TO BE ELIMINATED

50 Drawing on his 2017 report, and a body of work on the issue by international NGOs such as ILGA World and OutRight International, the IE-SOGI has called for a global ban on practices of so-called “conversion therapy” (CT). This umbrella term covers a range of practices carried out in all world regions by mental health-care providers, faith-based organizations, traditional healers and State agents with the aim of changing a person’s sexual orientation from non-heterosexual to heterosexual, or their gender identity from trans or gender diverse to cisgender. As the mandate and other human rights bodies have affirmed, these practices implicate a range of rights, including the rights to health, non-discrimination, freedom of conscience and freedom from cruel, inhuman and degrading treatment.

51 The IE-SOGI was invited to present his findings and recommendations on conversion therapy in countries including Canada, Indonesia, Malaysia, Mexico and Peru. Canada and Mexico are among a swathe of countries which have since taken legislative and regulatory action against these practices.⁸¹ Many others are reportedly considering doing so. As graphic 2 shows, there has been a notable increase in the momentum for state action since the mandate’s 2017 report.

52 Many countries have sought guidance from the mandate as they considered these measures, including requests for input on draft policies and legislation to ensure compliance with international human rights law. The IE-SOGI engaged with parliamentary commissions on the issue in Canada, Colombia, Costa Rica, France, the Netherlands and Peru. In Colombia,

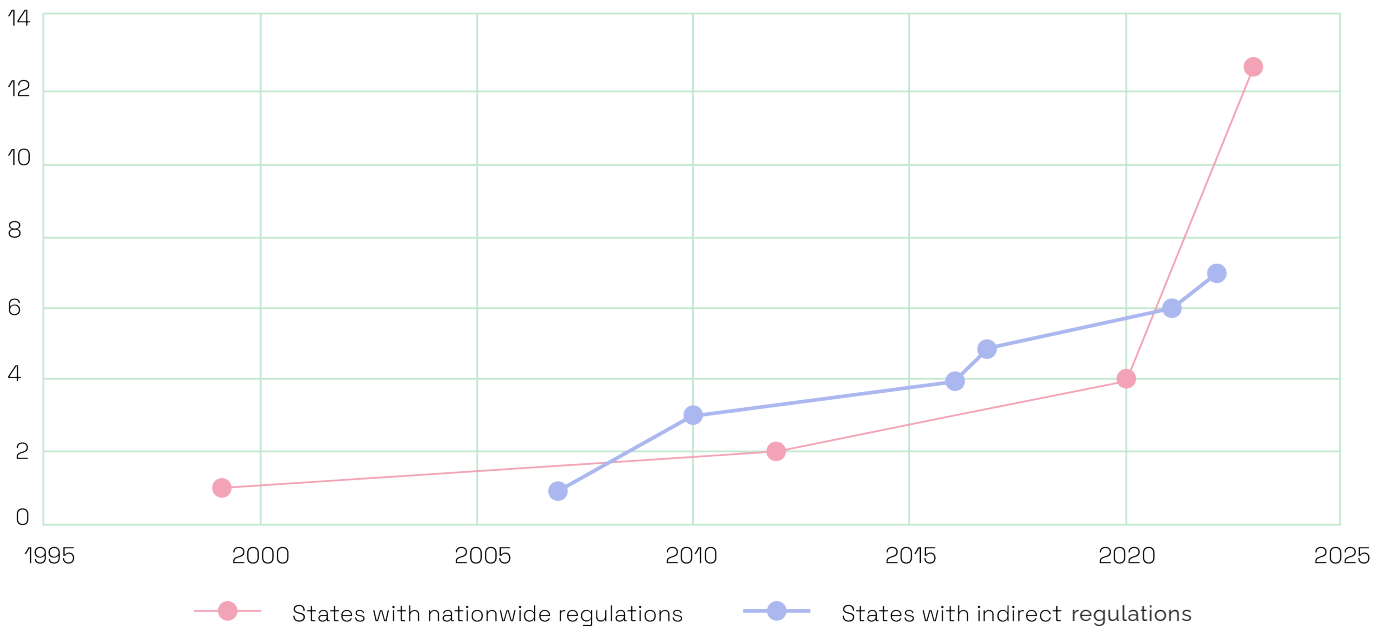
80 Interview 20 September 2023

81 According to the [ILGA World Database](#), other countries which have introduced nationwide or indirect regulations since 2017 include Chile, Cyprus, France, Germany, Greece, Iceland, Israel, New Zealand, Paraguay, Spain, Uruguay and Vietnam.

the IE raised the issue in a parliamentary hearing focusing on the implementation of the National Human Rights Action Plan. In October 2020, pursuant to the IE's recommendation, the European Parliament's Intergroup on LGBTI rights requested the European Commission to end "conversion therapy" through legislation and public policy. The mandate was also asked to brief the 43 member states who make up the Equal Rights Coalition on the issue.

GRAPHIC 2: NUMBER OF COUNTRIES REGULATING SO-CALLED "CONVERSION THERAPIES", BY YEAR

SOURCE: ILGA WORLD DATABASE



53 The United States Special Envoy on SOGI and former executive director of OutRight International reflected on the powerful impact of the IE-SOGI taking up the issue, which she saw as a powerful example of the mandate's success in surfacing the knowledge that comes from communities and making governments stop and listen: "It's been eye opening to watch how he's listened, gathered information assiduously and elevated these issues. It's had a transformative impact: there's been a shift in the recognition of conversion therapy globally. When Victor issued the report, governments suddenly started saying 'what can we do about it?'"⁸²

54 While the mandate's impact in driving public attention to CT was widely recognized, some saw scope to nuance the framing of the issue and broaden the focus of policy recommendations. As a legal scholar working at the intersections of gender, sexuality and health explained:

⁸² Jessica Stern, US Special Envoy on SOGI, intervention at the side-event, "Seven years of the IE-SOGI", at the 53rd session of the Human Rights Council, 21 June 2023

“The work is developing to intervene and end CT as a rights concern but not reinforce the somewhat monolithic depiction of CT as CID/torture and criminal law as the best response in most cases.” In their view, “criminalization feeds into what we’re often fighting against, which is the capture of the punitive state. It’s too easy to make one legal change and see a few cases stand in for real system change.” A more comprehensive range of policy interventions would need to include “engaging with religious practices of conversion in ways that encompass the ambiguous rights and interests at play”.⁸³

C3. THE MANDATE’S IN-DEPTH ENGAGEMENT WITH GOVERNMENTS AND CIVIL SOCIETY ORGANIZATIONS HAS HELPED GENERATE MOMENTUM TOWARDS THE LEGAL RECOGNITION OF GENDER IDENTITY IN MANY COUNTRIES

- 55 In a climate of increasing polarization and weaponization of the issue in many contexts, the IE-SOGI outlined the human rights case for legal recognition of gender identity (LRGI) in his 2018 report. Describing lack of access to LRGI as “a fundamental rupture of state obligations”, given its pervasive impact on the full range of a person’s rights, and framing it as an issue of self-determination, the report outlines actionable guidelines for public policy aligned with human rights principles. As with “conversion therapies”, LRGI was the focus of extensive engagement with government officials and policymakers.
- 56 In Spain, for example, the IE-SOGI was invited to a working meeting with the Ministry of Equality to review the draft Law on the Full and Effective Equality of Trans Persons, a collaboration which the Ministry welcomed publicly.⁸⁴ This and other legislation adopted by the Spanish government to advance equality for women, trans and LGBTI people, was hailed by several mandates including the IE-SOGI as an example of best practice, in a statement that urged countries to “guard against the populist allure that regressive forces may find in exploiting anti-abortion, anti-education and anti-trans discourse”.⁸⁵
- 57 An example of intense engagement with a member State was the advice provided to the Scottish and UK governments regarding the Gender Recognition Reform Bill passed by the devolved Scottish parliament, simplifying regulations for granting a gender

⁸³ Interview 20 September 2023

⁸⁴ Ministerio de Igualdad, [“Irene Montero se reúne con el Experto Independiente sobre orientación sexual e identidad de género de la ONU”](#), 11 February 2021

⁸⁵ OHCHR, [Spain: UN experts hail new feminist legislation](#), 21 February 2023

recognition certificate. The IE-SOGI presented expert testimony on the Bill's conformity with international human rights standards in June 2022 to the Equalities, Human Rights and Civil Justice Committee of the Scottish Parliament (EHRCJC) and restated its advice during final deliberations on the Bill in December of the same year. This detailed communication set out why the Bill was aligned with the UK's obligations under international human rights law, challenged the UK government's objections and noted the stigmatizing narratives in the public discourse around the issue, which pitted trans people's rights against women's rights.⁸⁶ The Bill was adopted shortly thereafter by a large majority in the Scottish parliament. However, the UK government subsequently indicated it would veto the Bill by not submitting it for royal assent, invoking for the first time its power to block legislation deemed to infringe on UK-wide law or policy.



THE IE-SOGI ENGAGING WITH UKRAINIAN GOVERNMENT OFFICIALS DURING HIS 2019 VISIT TO UKRAINE.

58 In this context, the IE-SOGI's intervention received extensive media coverage and attracted widespread endorsement from LGBTI, women's rights and human rights groups worldwide, as well as vehement criticism from groups claiming the Bill would undermine cisgender women's rights and safety. The latter position found support from another UN mandate holder, the UN Special Rapporteur on Violence against Women, who was also invited to brief the

86 IE-SOGI, Communication [OL-GBR 15/2022](#) (13 December 2022)

EHRCJC and submitted a separate communication to the UK government substantiating her concerns.⁸⁷ While seeking to minimize public disagreement between mandates, the IE-SOGI provided detailed input to the Scottish and UK governments on the broad consensus within international human rights bodies on the standard of self-identification, as well as on the situation in other jurisdictions which had applied it. Although a recent legal challenge by the Scottish Government to the UK's veto of the bill was unsuccessful, it has affirmed that the bill's reforms will remain government policy, so that the latter is in line with global good practice and internationally-recognized human rights.⁸⁸

- 59 The mandate has also engaged in-depth on the issue of LRGI with governments in countries of the global South. In Cambodia, for example, the mandate's dialogue with the authorities on the issue was valued as particularly constructive by the head of the UN Country Office: "These are aspects that haven't been addressed in Cambodia before. He went into the nitty gritty of identity, recognition, society and community life. He knew how to engage and sensitize the government."⁸⁹The mandate has also raised concerns through its individual communications procedure with several States introducing legislation that would put obstacles in the way of LRGI or perpetuate discriminatory stereotypes around it. While some states have rebutted criticism, others such as Chile have been responsive to the concerns raised, modifying draft legislation accordingly.⁹⁰

C4. THERE IS EVIDENCE THAT THE MANDATE HAS INFLUENCED OTHER LEGAL, POLICY AND INSTITUTIONAL REFORMS BEYOND THE THREE ISSUES WHICH HAVE BEEN THE FOCUS OF GLOBAL CALLS TO ACTION

- 60 The above are some examples of how the mandate's engagement with states has contributed to policy or legal change aimed at tackling specific forms of SOGI-based violence and discrimination. That engagement has covered a far broader range of issues, including the inclusion of anti-discrimination provisions in national constitutions or equality legislation, reforms enhancing LGBTI people's access to economic, social and cultural rights, and the adoption of marriage equality and other reforms aimed at the protection and recognition of LGBT families.

87 SR-VAW, Communication [OL-GBR 14/2022](#) (29 November 2022)

88 [Section 35 Order Judicial Review: Scottish Government Response](#), 20 December 2023

89 Interview, 13 September 2023

90 For communications to countries on LRGI, see OHCHR, [The struggle of trans and gender-diverse persons](#)

- 61 Country visits have offered particular scope for engagement and follow up on reform recommendations tailored to each context. Recent examples include following up with the Mozambican authorities on a multisectoral approach to data-collection on the human rights situation of LGBTI people, among other recommendations made by the mandate; coordinating with UN bodies in Ukraine regarding the wave of hate crimes prior to the Russian invasion; and exchanges with the government of Argentina on programs to secure the labour rights of trans persons, among other issues covered during the visit.⁹¹ On a yearly basis, the Georgian State has included information on follow-up to the mandate's country visit and recommendations during its Interactive Dialogue interventions at the Human Rights Council and the General Assembly.⁹²
- 62 Engagement has also contributed to important institutional reforms, such as the creation of governmental mechanisms to oversee strategies for the protection of LGBTI rights. A prominent example is the influence the mandate has had on the creation of SOGI-related Special Representative positions (or equivalents) at the national level. Argentina created such a role with the rank of Undersecretary at the Ministry of Foreign Affairs in 2022, as "a measure aligned with the recommendations of the IE-SOGI."⁹³ The current Special Representative spoke appreciatively of the impact of the mandate in that regard: "The mandate was fundamental for our community in Argentina, it helped us see that we could have a say in the public policies affecting our rights. Having a Special Representative is not a privilege of rich countries, it's the right of our communities to live in a world without inequalities."⁹⁴

D Accountability and Remedy

- 63 An important dimension of change to which the mandate contributes is the increased protection and recourse it can provide to individuals facing discrimination and violence for reasons of SOGI, and to human rights defenders working on their behalf when they face reprisals, attacks or harassment. Due to the limited, sensitive and often confidential nature of the mandate's interventions in such cases, this dimension is perhaps less publicly visible.

91 Responses from the Ambassador of Mozambique to the UN, the Ministry of Women, Genders and Diversity of Argentina, and the UN Country Team in Ukraine to the IE-SOGI questionnaire on country visit follow-up (November 2022 – April 2023)

92 See for example the intervention of the representative of Georgia during the [interactive dialogue on colonialism](#) at the 78th session of the General Assembly, 26 October 2023

93 Response from the Argentinian Mission in Geneva to the IE-SOGI country visit questionnaire, 13 January 2023

94 Intervention by Alba Rueda, Special Representative on SOGI of Argentina, at the side event on "The Impact of the IE-SOGI Mandate" at the 50th session of the Human Rights Council, 14 June 2022

Yet it is an aspect of the mandate's work which has had a dramatic impact on the life, liberty and security of dozens if not hundreds of people across the globe. Though generating accountability for SOGI-based violence and discrimination can be seen as the overarching goal of the mandate, the most immediate way in which it enables access to justice and remedy for individual cases of human rights abuses is through its urgent action and communication procedures, as well as its occasional intervention in processes aimed at strengthening the international legal framework for accountability.



DECEMBER 2022: THE IE-SOGI MEETING WITH KARIM KHAN (SEATED TO THE LEFT OF MADRIGAL-BORLOZ), PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT, TO LAUNCH THE COURT'S NEW GENDER POLICY.

D1. THE MANDATE'S INTERVENTIONS THROUGH THE COMMUNICATIONS PROCEDURES HAVE HAD A PREVENTIVE OR REMEDIAL IMPACT FOR SCORES OF PEOPLE AT RISK OF VIOLENCE AND DISCRIMINATION BASED ON SOGI

64 The mandate has engaged in 147 communications, often issued jointly with other mandates, on behalf of individual cases or situations of concern, addressed to the governments of 56 countries, as well as 15 companies, two religious leaders and two intergovernmental bodies.⁹⁵ Recent years have seen a significant uptake in the use of the communications procedures since 2019, when an analysis found this aspect of the mandate to be

⁹⁵ See OHCHR, [Communication report and search](#)

"significantly underused especially when compared to other mandates."⁹⁶ Twice as many communications have been sent in the last three years of the mandate as compared to the first three years.⁹⁷ Over half (54%) of the communications sent by the IE-SOGI have elicited a reply, comparing favourably to the most recent average response rate across all Special Procedures (44%).⁹⁸

65 Some illustrative examples of the outcomes of these interventions are given below. It should be noted that the impact of these interventions may go beyond the individual case: many are of an emblematic nature and may have a broader preventive effect in the longer-term, for example where they prompt a change in the laws, policies or practices which facilitated the abuse. Alternatively, they may also lead to reprisals against those initiating the communication, or to other unintended consequences.

- In March 2019, the IE-SOGI along with seven other Special Procedures issued a joint urgent appeal concerning the alleged arbitrary detention of **Malak Al-Kashif**, a transgender woman and LGBTI human rights defender who had been detained for calling for peaceful protests to denounce the mishandling by the authorities of the investigation into a train accident. Following coordinated calls from outside Egypt, including by the Special Procedures, Malak Al-Kashif was released on 16 July 2019.⁹⁹

- Another communication sent by the IE-SOGI to Egypt in 2019 contributed to the release of **Eman Al Helw**, a woman HRD and **Hossam Ahmad**, a trans man, both detained on terrorism related charges. Ahmad was detained in a women's holding cell, and both were subjected to involuntary and invasive medical examinations.¹⁰⁰

- A communication sent to Zambia in March 2020 contributed to the release of **Japhet Chataba** and **Steven Sambo**, who had been convicted and sentenced to 15 years' imprisonment for allegedly engaging in consensual same-sex relations.¹⁰¹

- A communication was sent to Uganda in 2020 on behalf of 19 young LGBT persons arrested during a raid on an LGBTI shelter in Kyengera run by the **Children of the Sun**

96 Arvind Narrain, *The mandate of the SOGI Independent Expert: The compelling case for its renewal* (Arc International, 2019)

97 OHCHR, *Communication report and search*. The IE-SOGI issued 49 communications from November 2016 to October 2019, and 98 from November 2019 to October 2023

98 *ibid*

99 Mandates of the Working Group on Arbitrary Detention and seven others, *Communication UA EGY 4/2019*

100 Mandates of the IE-SOGI and five others, *Communication UA EGY 14/2014*

101 Mandates of the IE-SOGI and four others, *Communication AL ZMB 1/2020*

Foundation, on the pretext of measures taken to combat the spread of COVID-19. The 19 were subsequently released.¹⁰²

- The mandate issued a communication to Kazakhstan in 2019 on the case of discrimination and harassment against a **young lesbian couple in Almaty** who, without their consent, were filmed kissing and the video disseminated on social media with a call to “correct them or at least put them to shame”. A complaint brought by the couple against their aggressor was rejected by the Almaty Appeal Court on grounds that their behaviour was deemed to “openly violate moral and ethical values of the society”. Following the communication, the Supreme Court of Kazakhstan issued a ruling favourable to them, ordering the man to compensate them for moral damages.¹⁰³

- Two communications were sent by the IE SOGI and other mandate holders to Saudi Arabia about a **young Yemeni blogger** detained and sentenced to prison for the cybercrime of “advocating homosexuality” who feared for his life if deported to Yemen.¹⁰⁴ According to OHCHR staff, the deportation was avoided and the young Yemeni blogger was safely resettled in a third country, thanks to extraordinary multi-stakeholders' efforts, strong UN coordination, and intense diplomatic efforts.¹⁰⁵

- In June 2021, six mandate holders, including the IE SOGI, sent a communication to Ghana about the alleged arbitrary detention of **21 LGBTI rights defenders** (16 of them women) conducting a paralegal training in Ho. Ghana replied stating that they had been detained on suspicion of committing or promoting the crime of “unnatural carnal knowledge”. However, on 5 August, the case against the 21 was dropped by the court, and the defenders were acquitted and discharged.

- A number of communications were sent to Poland in 2021 and 2022, together with the mandates on freedom of expression and human rights defenders, expressing concern at multiple legal cases brought against the organization **Atlas of Hate**, which maps and publishes information on those local authorities that have adopted discriminatory resolutions opposing “LGBT ideology”. In 2022 at least three cases

102 Mandates of the IE-SOGI and five others, [Communication UA UGA 2/2020](#)

103 Mandates of the Special Rapporteur on the independence of judges and lawyers and four others, [Communication AL KAZ 2/2019](#)

104 Mandates of the IE-SOGI and four others, [Communications UA SAU 10/2020](#) and [UA SAU 2/2021](#)

105 Correspondence, 22 September 2023

against the organization were dropped following court rulings citing the concerns of international human rights mechanisms.¹⁰⁶

- A joint communication was sent to Iran in 2022 on behalf of **Zahra Sedighi** and **Elham Choubdar**, sentenced to death for “spreading corruption on earth” including through “promoting homosexuality”, accusations apparently relating to Zahra Sedighi’s SOGI-related human rights work. According to information provided by the authorities, the case went before the Supreme Court which reversed the verdict, and the two women were released on bail in March 2023.¹⁰⁷

D2. THE MANDATE HAS ALSO PROMOTED ACCESS TO JUSTICE FOR THOSE FACING SOGI-BASED VIOLENCE AND DISCRIMINATION THROUGH EFFORTS TO STRENGTHEN THE INTERNATIONAL LEGAL FRAMEWORK FOR ACCOUNTABILITY

66 The mandate has also sought to advance systemic change by engaging with international accountability processes within different fora. In 2018, for example, the Independent Expert contributed to a multi-mandate effort to provide input to the International Law Commission (ILC) on the draft Crimes Against Humanity Convention. The advice contained in one communication was taken up by the ILC, which removed the limiting and outdated definition of gender as a grounds for persecution contained in a previous draft.¹⁰⁸ Nevertheless, the recommendation of twenty mandate holders to include sexual orientation, gender identity, sex characteristics and other specific grounds of persecution have not been taken up by the ILC.¹⁰⁹ More recently, however, the new policy on gender-based crimes issued by the Office of the Prosecutor of the International Criminal Court in December 2023 reflects many of the key points made in a 2022 submission by the IE-SOGI and the mandates on health, violence against women, and discrimination against women and girls with regard to accountability for SOGI-related violence and discrimination under international criminal law.¹¹⁰

106 Mandates of the Special Rapporteur on human rights defenders, the Special Rapporteur on Freedom of Expression, and the IE-SOGI, Communication [AL POL 2/2022](#)

107 Mandates of the Working Group on Arbitrary Detention and seven others, [Communication UA IRN 21/2022](#)

108 Mandate of the Special Rapporteur on Extrajudicial Executions and 23 others, [Comments to the Draft Crimes against Humanity Convention, 30 November 2018](#)

109 Mandate of the Special Rapporteur on Extrajudicial Executions and 19 others, [Comments Regarding the Persecutory Grounds in the Draft Crimes against Humanity Convention, 30 November 2018](#)

110 ICC Office of the Prosecutor, [Policy on Gender-Based Crimes](#), December 2023; UN Human Rights Special Procedures, [Position on the ICC Policy on gender-related prosecutions](#), 21 April 2022

E Empowerment and Voice

- 67 One of the most enduring changes which the mandate has helped bring about, and one of its most widely valued contributions, is in enabling LGBTI people and human rights defenders to have greater voice, space and influence at the global, regional and national levels. Its consultative and inclusive approach, its responsiveness to the concerns of LGBTI, feminist and other movements, and its attentiveness to differences of perspective and dynamics of power within such movements, are attributes of the IE-SOGI that appear to be universally appreciated by civil society advocates.



MAY 2020: MADRIGAL-BORLOZ CHATTING WITH HUMAN RIGHTS ACTIVISTS IN A COFFEE HOUSE IN LVIV, UKRAINE.

E1. THE MANDATE HAS PROVIDED A PLATFORM FOR THE VOICES OF LGBTI PEOPLE AND DEFENDERS TO BE HEARD

- 68 LGBTI human rights defenders from every continent highlighted the unique value for communities and activists facing marginalization and attack at the domestic level to have an ambassador and voice at the UN. In the words of an international NGO director, “Our

movements do not have access to governments or to other civil society stakeholders in many countries, so being able to take issues to the UN level is something we value a lot as a movement: we want to be heard, but in lots of countries there's a complete silencing."¹¹¹

69 Human rights defenders across continents described the empowering role the mandate plays, opening doors for them to engage with power-holders, placing its privileged positioning and connections at the service of the movement, and at times serving as a lightning rod for attacks by governments. One spoke of the enabling and democratizing impact of the mandate's work on the broader movement: "Empowerment also comes from giving people a language and vocabulary to describe their experience. The mandate has provided a platform where everyone's voice and experience are heard and understood. It has democratized the voices of the queer experience globally."¹¹²

70 Those working in particularly hostile environments spoke of the impact of the mandate's solidarity and care in maintaining its relationships with human rights defenders "When you're working in situations where your life is consistently on the line, it really means a lot when there's a friend checking in, trying to help you figure out your safety and that of people that you're working with, mentioning your name in kindness to others, that bears fruit."¹¹³

E2. THE IE-SOGI'S CONVENING ROLE HAS HELPED FOSTER CONNECTIONS WITHIN AND ACROSS MOVEMENTS

71 The mandate has also played an enabling role as a convener, opening spaces for civil society connections across geographies and movements, as well as opportunities for cross-learning, skills-building and exchange. An example is the October 2022 workshop in Bangkok where some 50 LGBTI human rights defenders from South-East Asia identified priorities for work in coalition and across the region and built skills in using the mandate's communications procedures.

72 There is evidence that the broad-based credibility and trust developed by the mandate over the years has fostered greater convergence within the increasingly diverse global LGBTI movement. An indicator of the mandate's value for civil society actors across the globe is

111 Interview, 25 September 2023

112 Interview, 21 September 2023

113 Interview, 21 September 2023

the way many actors have come together to advocate for its renewal. As one human rights defender observed, “That has to be earned: in 2016 there wasn’t universal consensus, but in 2022 it was a coordinated and deeply invested effort. The mandate was able to get us to coalesce.”¹¹⁴ Seeing the extent of civil society investment in the mandate has, in turn, had a positive impact on state engagement, at least in some contexts. In the words of one state representative: “Our conviction grows stronger whenever we speak to civil society organizations, big and small. For them, the very existence of the mandate is a recognition of their right to live a life free of discrimination and violence.”¹¹⁵



DURING HIS 2018 COUNTRY VISIT TO MOZAMBIQUE, MADRIGAL-BORLOZ LISTENED TO MEMBERS OF THE TRANS COMMUNITY ABOUT THEIR EXPERIENCES.

¹¹⁴ Interview, 21 September 2023

¹¹⁵ Intervention of Alejandra Acosta, Deputy Permanent Representative of Uruguay, at the side event, “Seven years of the IE-SOGI mandate” at the 50th session of the Human Rights Council, 14 June 2022

Chapter 4
**Conclusions
& pointers
to the future**



The mandate has played an important role in generating broader consensus that SOGI-based violence and discrimination is a legitimate concern under international human rights law

- 73 At a time of great contestation over the scope and legitimacy of the international human rights framework, the IE-SOGI mandate has played a skilful and strategic role in navigating the persistent political fault-lines around human rights in relation to gender and sexuality. Comparing state discourses around the mandate's creation with those today, there has been a clear evolution towards greater acceptance that SOGI issues have a legitimate place on the human rights agenda and cannot continue to be left behind in the development, security and humanitarian agendas. An indication of this evolution can be found in the unequivocal commitments expressed by the former and current High Commissioners for Human Rights, for whom: "The creation of the mandate represented a major milestone in our collective endeavour for equality"¹¹⁶ and "[those] targeting LGBTIQ+ people for hatred, exacerbating violence, stigmatisation and discrimination...are on the wrong side of history."¹¹⁷ Referring to the preambular language of the 2016 resolution that created the mandate, the former President of the Human Rights Council was equally resolute: "'Respecting cultural particularities' means we have to accept that this is a process and that different States need different times and paces to evolve. But all need to be clear that we have to evolve. The resolutions this Council has adopted by consensus need to be respected."¹¹⁸
- 74 The mandate has advanced this evolution by pursuing constructive dialogue with representatives of member States up to now unsupportive of the mandate, including individual member states within the Africa group and the Organization of Islamic Cooperation (OIC), understanding that these are not monolithic blocs. For example, country visit invitations from Mozambique and Tunisia led to open and fruitful dialogue with state and non-state actors in both countries, often beginning with a recognition of the cultural sensitivity of the issue but then resulting in genuine commitments to tackle SOGI-based discrimination and violence.¹¹⁹ The mandate's interaction with individual OIC countries through the communications procedure have also yielded more open and nuanced responses from the authorities than the statements made by the OIC as a group.¹²⁰

116 Statement of Michelle Bachelet at the HRC side event, The Impact of the IE-SOGI Mandate, June 2022

117 OHCHR, [Türk pledges solidarity with LGBTIQ+ activists](#), 17 May 2023

118 Statement of Federico Villegas at the HRC side event, The Impact of the IE-SOGI Mandate, June 2022

119 See Report of the IE-SOGI on the visit to Tunisia, 11 May 2022 ([A/HRC/50/27/Add.1](#)), para 82

120 For example, in responses to communications from the IE-SOGI, Indonesia has affirmed that it "upholds the principles of non-discrimination...[which] provide protection for all individuals from discrimination and violence, including to LGBT persons" and has shared information on hate crime directives to ensure police protection of groups facing discrimination and violence "including on the basis of

75 While deeply concerned about regressive steps in some contexts, LGBTI human rights defenders have also observed significant discursive shifts around SOGI issues since the mandate elevated the UN's attention to them. Some noted less hostile rhetoric from a number of member States who no longer deny the existence of LGBTI people in their country and “don't brag about killing or jailing LGBTI people in the way they might have done before.”¹²¹ Others remarked on the greater familiarity around SOGI issues they've seen in the contexts they work in: “However heart-breaking the conversation is, it's now much more nuanced. Ten years ago the whole point of our activism was to make people know you could be Kenyan and black and gay. Now when we fight about registration, people already understand what the basic issues are. I feel the same about the UN system, it may feel like we're still fighting for the same things, but on closer look we can see the progress.”¹²²

Nevertheless, progress cannot be taken for granted. Building on the mandate's gains in a volatile context will require a highly strategic and collaborative approach

76 While acknowledging progress, all those interviewed stressed that the current context poses formidable challenges given the convergence of factors spurring the unprecedented weaponization of gender, sexuality and rights across the globe. As cogently articulated by one long-standing advocate, “rising authoritarianism, entrenched economic, religious and political fundamentalisms, weakened multilateralism, and misinformation-fuelled polarization has made the work of the mandate and the broader work around sexuality issues riskier and harder.”¹²³ The challenge posed by well-resourced and well-connected ‘anti-gender’ forces, including trans-excluding sectors of the feminist movement, was seen as something the LGBTI movement would have to contend with for many years to come, despite being under-resourced to respond. As well as holding ground and defending what has been gained in many contexts, advocates identified the need to step up efforts to counter such movements, and to carry out “constant future-scoping and future-proofing for the community.”¹²⁴ As one feminist advocate pointed out, movements opposing progressive action on sexuality and gender should not be seen as ‘anti-rights’ but as forces “advancing a different conception of rights, as the field of human rights is in dispute”.¹²⁵

sexual orientation and gender identity”. (OHCHR Communications IDN 02/2022 and IDN 01/2018)

121 Interview, 25 September 2023

122 Interview, 21 September 2023

123 Interview, 14 September 2023

124 Interview, 21 September 2023

125 Interview, 25 September 2023

77 Against this background, aspects of the mandate's work that were considered strategically important to build on in future include:¹²⁶

- consolidating broader efforts within the UN human rights system to counter anti-gender forces and navigate the rift in feminism “without retreat”
- connecting SOGI-based abuses to other sexual rights issues, including access to abortion and comprehensive sexuality education
- engaging with the social reproduction and distribution of care work through a SOGI lens
- deepening connections with other core feminist issues such as property inheritance, restrictions on political participation, access to health without the authorization of a male family member, which play out in specific ways for lesbians, trans women and other gender-diverse people
- deepening the mandate's decolonial and cross-cultural approach and framing, sustaining attention to human rights violations in countries of the global North and calling out “pinkwashing” by those using LGBTI rights to legitimize racism, colonialism or xenophobia
- creating new openings for non-confrontational dialogue with ‘moveable’ states, including by relating normative principles to societal values resonant in each context
- furthering work on structural socioeconomic inequalities and the links to SOGI-based violence and discrimination, as well as on specific economic and social rights issues such as housing
- addressing the impacts of the climate crisis on SOGI-based violence and discrimination
- continuing the momentum on LGBTQI+ forced displacement generated in the 2021 Global Roundtable with UNHCR
- analyzing the conditions fuelling impunity for abuses, the weakening and capture of

¹²⁶ This non-exhaustive list of issues draws on future priorities proposed by all those interviewed for this paper, as well as by panelists Cynthia Rothschild, Tlaleng Mofokeng, Julia Ehrt and Ambassador Claudia Fuentes Julio of Chile at the side-event “Seven Years of the IE-SOGI Mandate” at the 53rd session of the Human Rights Council on 21 June 2023

judicial systems and misuse of criminal law to police, regulate and repress sexuality and gender

- drawing on and supporting work the work of regional, national and local human rights mechanisms to tackle SOGI-related discrimination and violence

- 78 Advocates also considered that the mandate, through its analytical and convening role, has an important role to play in deepening inclusion in the movement, including young trans, non-binary, neurodivergent and other people who, in the words of one advocate, “feel we don’t understand their language, identities or issues enough.”¹²⁷ It can also play a role in fostering connections between LGBTI movements and broader coalitions against race, gender, economic and climate inequality; as a feminist legal scholar highlighted, “that is what is powering populism and the scapegoating of feminism, abortion and SOGI.”¹²⁸
- 79 Many of the advances to which the mandate has contributed are in large part the fruit of an ever more diverse, vibrant and visible global movement for LGBTI rights. Advocates urged the mandate to continue drawing on the capabilities of civil society in pursuing its goals. As one observed: “For all the horrific things happening, the activism has never stopped. It has continued to be strategic and gorgeous and beautiful. The momentum within and outside the UN is still consistent, and extraordinary.”¹²⁹

A commitment to dialogue, inclusivity and accountability have been key to the IE-SOGI’s effectiveness

- 80 Those engaging with the mandate pointed to a consistent set of attributes that in their view has enabled its work to make a difference. Chief among these is an ability to listen and a willingness to engage with opposing views. The mandate’s openness to dialogue with anti-gender feminists was described by one advocate as “an exercise in democratic deliberation that is rare in this field.”¹³⁰ Similarly, an intention to find common ground in meetings with religious leaders, traditional healers and sceptical government officials appears to have been an important asset in changing attitudes and discourses over time. Acting as ‘a bridge from people and power’ requires a combination of diplomatic skills

127 Interview, 21 September 2023

128 Interview, 20 September 2023

129 Interview, 14 September 2023

130 Interview, 25 September 2023

with an activist spirit, and what one human rights defender described as “an ability to shape shift.”¹³¹ Many flagged the importance of the mandate centering communities and individuals with lived experience of SOGI-based violence and discrimination at the heart of the work and listening to them in a meaningful and inclusive manner. As another special procedure mandate-holder stressed: “It’s very important for the mandate to be seen not just as a proper legal official but to meet people where they are and connect to their realities.”¹³²

81 Finally, many spoke of the IE-SOGI’s strong sense of accountability to its key constituencies as a valued hallmark of its practice to date. This reflection paper is itself an expression of the mandate’s commitment to accountability, and of the desire of the outgoing mandate-holder to answer for the impact the role has had over its first seven years. It is hoped that, by shedding light on the many ways in which the IE-SOGI has been a catalyst for change, it can contribute to future efforts to strengthen, support and sustain its vital work.



JANUARY 2020: MADRIGAL-BORLOZ VISITING AN LGBTQ SHELTER IN BRAZIL.

131 Interview, 21 September 2023

132 Interview, 12 September 2023

Epilogue

- 82 The text that you just finished reading is the result of a careful compilation and critical analysis of evidence carried out by Ignacio Saiz under the auspices of the Human Rights Program of the Harvard Law School. It describes the first seven years of activity of the mandate of the United Nations Independent Expert on protection from violence and discrimination based on sexual orientation and gender identity; it was my privilege to hold the mandate from 2018 to 2023.
- 83 In those vertiginous 70 months of tenure, through hundreds of consultations with civil society and States, country visits, thematic inquiries and political dialogues, I became firmly convinced that a fundamental contribution required of the mandate was the gathering and systematization of evidence on the way in which violence and discrimination are perpetrated against lesbian, gay, bisexual, trans and gender diverse persons around the globe every day. For a wide array of human rights outcomes, visibility matters.
- 84 Similarly, legal standards matter deeply for persons, communities and peoples historically subjected to discrimination: oftentimes, they are the only tool with which they have to wage life-long battles. Since the crafting of the Universal Declaration of Human Rights 75 years ago, words in treaties, international custom, general principles of law, and judicial decisions and teachings from the most highly qualified publicists have come to life to ensure protections that respond to what we know about the manner in which sexual orientation and gender identity are used as base for violence and discrimination. Dynamic processes within international law answer to what was brought to light by evidence, invisible before: the impacts of criminalization of same-sex intimacy, the social exclusions promoted by non-recognition of gender identity, and the understanding of practices of conversion as cruel, inhuman and degrading treatment or punishment are only a few examples of the building blocks provided by the mandate.
- 85 I was also convinced from day one that the mandate was also called to link States' policy-making processes with the knowledge built at the grassroots on violence and discrimination; to contextualize the needs of protection of lesbian, gay, bisexual, trans and other gender-diverse persons within the complex UN system and matching them with mandates that could effectively provide an answer; to create avenues so that the stories of victims would reach the corridors of power in Geneva and New York.

- 86 Resolution 32/2, that created the mandate in 2016, requested it to address “multiple, intersecting and aggravated forms of violence and discrimination.” The mandate drew this understanding of intersectional frameworks from feminist theory, in furtherance of which its work made it clear that connecting the lived experience of victims of human rights violations to public policy makers requires multidimensional assessment of all factors, including historical, socio-cultural, political and anthropological, that have concurred to create an understanding of what is perceived as a norm in relation to gender, sex and sexual desire in a given place and at a given time. With reference to those and other identities, the fabric of a lived experience gets woven by the threads of race, ethnicity, religion or belief, health, status, age, and class. Placing the victim at the center of the mandate’s work always meant the recognition that violent actions against a person invariably result from intersecting factors that create a continuum of violence and a dynamic of disempowerment.
- 87 The work of the mandate has also provided clear evidence that the substantial challenges faced by persons, communities and populations historically subjected to discrimination will only be addressed effectively when their political demands are placed in the context of wider social justice. Consider racialized exclusion and violence, or national immigration policies around the world structured to exclude African, Afro-descendant, Asian, Latin America and Arab world persons. The work of liberating lesbian, gay, bisexual, trans and gender diverse persons from cycles of violence and discrimination necessarily implies vigorous opposition to those and other settings and processes where they suffer enormous damage precisely because of the way in which their identities intersect. As I have often said, I always knew that it was a must that the mandate be feminist; throughout my work, I became also convinced that it is equally important to conceive it as fundamentally and existentially anti-racist.
- 88 To nurture and frame these processes, the United Nations human rights architecture is a space of fundamental importance. *Toonen*, the seminal case in which the Human Rights Committee recognised a duty of protection from discrimination on the foundation of privacy, marked a starting point of a legal, political, and social conversation that has evolved the last three decades. Since then, myriad reports, studies, judgments, declarations, and resolutions have analysed human problems through a queer lens. The voices of victims of forms of torture so heinous as so-called “corrective” rape have resonated in the very Security Council Chamber of the United Nations in connection to the peace and security agenda; and all agencies and entities of the United Nations are expected to relate to the task of integrating the human rights concerns of LGBT persons. This arch of justice is far from complete, as is well shown by new initiatives of criminalization of same-sex intimacy, the persecution of

89 LGBT human rights defenders, and the level of toxicity of the social conversation on the human rights of trans and gender-diverse persons. This is why the work of the mandate has always been placed, and must continue to be, at the intersection of these and other deeply divergent views and strategies, and why it must continue until the complete eradication of the scourge of violence and discrimination based on sexual orientation and gender identity.

* * *

90 When I decided to apply to the mandate, I published an open letter describing it as an additional thread in a strong and colorful fabric that the movement has been knitting for half a century, and committing to recognize and respect the good work done by others in the global South and the global North alike, reinforce it as much as possible and focus where it would add value. In the process of selection, I often referred to the mandate as a patrimony of humankind, and of persons who are victims of violence and discrimination everywhere and see in it the authority of the United Nations, and a promise of International Human Rights Law. Throughout my tenure, I always felt a sense of accountability to the key stakeholders and constituencies that had invested so much work, energy and imagination to bring this institution to life. I believe that the contents of the report that you just read faithfully take stock of the results of the mandate and, in that sense, I see it as a final step in a long conversation about purpose, impact and accountability.

91 As I conclude these words, and with them a reflection on the six years of my tenure as mandate-holder, I remain convinced of the absolute relevance and significance of the mandate for millions of lesbian, gay, bisexual, trans and gender-diverse persons around the world, who suffer psychological and physical pain and damage because of oppression and injustice. Listening to their voices will forever remain the mandate's highest privilege; using them to speak truth to power, its fundamental responsibility.

Victor Madrigal-Borloz

Cambridge, Massachusetts;

July 30, 2024.

