

Mandate of the United Nations Independent Expert on Protection from Violence and Discrimination based on Sexual Orientation and Gender Identity, Victor Madrigal-Borloz

Country Visit to the United States of America

Preliminary Observations

Background

1. From 16 to 29 August, at the invitation of the Government of the United States of America, I conducted a country visit with the purpose of considering the situation of violence and discrimination based on sexual orientation and gender identity, pursuant to the mandate established by the United Nations Human Rights Council resolution 32/2 in 2016, renewed in 2019 and 2022. The mandate answers to the concern of the community of nations about the intolerance, discrimination and particularly egregious abuses against persons who are lesbian, gay, bisexual, and transgender and gender-diverse (LGBT), documented in the two reports produced in 2011 and 2015 by the United Nations High Commissioner for Human Rights. These concerns have been confirmed through evidence contained in reports presented every year by the mandate to the United Nations General Assembly and Human Rights Council since the start of its functions in 2017.

2. The duties conferred upon me by the Human Rights Council are to bring visibility to the situation of violence and discrimination against LGBT persons, and to advise States in relation to effective measures to address such violence and discrimination.

3. The observations that I am presenting today are preliminary and non-exhaustive and will be followed by a process in which the records of dozens of meetings, conversations, in situ visits, testimonies and interviews will be processed further and brought into a report presenting the overview developed by the mandate, its analysis under applicable international human rights law, and a series of recommendations to the State.

Country visit to the United States of America

4. The purpose of my visit and the subsequent country report is to understand, in the spirit of cooperation and dialogue, how the country endeavors to combat violence and discrimination perpetrated against persons based on their sexual orientation or gender identity, real or perceived. My purpose is to identify best practices to safeguard the human rights of LGBT persons as well as gaps in existing legislation, policies and access to justice implementing the obligations of the United States under international human rights law.

5. I visited the cities of Washington, DC; Birmingham, Alabama; Miami, Florida; and San Diego, California. I met with more than 70 officials at federal, state, and municipal levels, including representatives of the White House, the Department of State, the Department of Housing and Urban Development, the Department of Commerce, the Department of Justice, the Department of Education, the Department of Labor, the Department of Homeland Security, and the Department of Health and Human Services, as well as the secretariat of the Congressional LGBTQ+ Equality Caucus. I hold a meeting with authorities in an immigration detention center, followed by a tour, and an onsite visit to a port of entry at the border with Mexico. I would like to extend my appreciation to the Government of the United States for its invitation and for openness to dialogue of its representatives, as well as the excellent cooperation with its Department of State in the preparation and execution of the visit.

6. I also met with representatives from civil society, as well as faith leaders and academics, and held in-depth conversations with 8 persons with lived experience. My mission included a visit to the Birmingham Civil Rights Institute and benefitted enormously from the facilitation of the Human Rights Campaign (Washington, DC; and Birmingham, Alabama), Survivors of Torture, International

SENSIT
IVE
BUT
UNCLA
SSIFIE
D

(San Diego, California), and the National Black Justice Coalition (Midwestern meeting), as well as over 100 civil society organizations and coalitions that participated in meetings and events. My mission benefitted from desk research of publicly available sources facilitated by the Human Rights Clinic at my academic home, the Harvard University Law School, as well as the invaluable support of the officers supporting the mandate at the Office of the United Nations High Commissioner for Human Rights. I want to express my gratitude to everyone I met with for their generosity in sharing their knowledge and views, something that I appreciate very highly in all cases, but particularly in those of lesbian, gay, bisexual, trans and gender diverse persons who shared with me their lived experience, oftentimes at the great personal cost of reliving harrowing trauma and unspeakable pain: the depth of their stories will continue to inspire and provide inestimable texture to my considerations.

7. The visit took place in extraordinary circumstances. By August of 2022 the United States has been significantly impacted by the COVID-19 pandemic, including close to 100 million cases and over one million deaths; LGBT persons have suffered disproportional material and psychological damages, and so have the organizations that provide services to them and defend their rights. Early evidence suggests that the outbreak of Monkeypox, declared a public health emergency by the World Health Organization on 23 July 2022, affects disproportionately men who have sex with men, and I am mindful of the correlative risk of exacerbation of stigma and discrimination against men who live openly as gay or bisexual; during the visit, I also heard concerns from human rights defenders in relation to asymmetries in Monkeypox vaccine access, given that Black men have received the vaccine at a lower rate than members of other racial groups.

8. The reversal of *Roe v. Wade* by the United States Supreme Court, a regression that is already impacting women's health and lives, is a devastating action for the human rights of lesbian and bisexual women, as well as trans men and other gender diverse persons with gestational faculties. I concur that safe and legal abortion access constitutes a critical part of the right to the highest attainable standard of health (which includes reproductive rights) as well as other human rights including the rights to non-discrimination and equality, the right to respect for private life, the right to life, and the right to freedom from torture and cruel, inhuman, and degrading treatment or punishment. I believe denial of justice in relation to these rights may engage the international responsibility of the State.

Introduction

9. The opening words of the Universal Declaration of Human Rights are unequivocal: "All human beings are born free and equal in dignity and rights." 53 years ago, the Stonewall uprising took place less than 3 miles from the United Nations headquarters. Sylvia Rivera and Marsha Johnson, two trans women of color whose existence stood at the intersection of multiple forms of discrimination, played an essential role in it. A few years later, Elaine Noble and Harvey Milk were among the first openly lesbian women and gay men elected as state representatives in the country. The legacy of these and thousands of other LGBT advocates goes well beyond the United States and has helped shape the global fight for equality.

10. Despite five decades of progress, however, in the United States equality is not within reach, and often not even within sight, for all persons impacted by violence and discrimination based on sexual orientation and gender identity. In general terms, they are poorer, less educated, less sheltered, and incarcerated more often than their cisgender, straight counterparts. Available evidence base suggests that the situation of systemic disadvantage of LGBT persons is replicated in all sectors: for example, among young adults aged 18-25, LGBT people have a 2.2 times greater risk of homelessness than non-LGBT people;ⁱ 23% of LGBTQ adults of color, 22% of transgender adults, and 32% of transgender adults of color have no form of health coverage;ⁱⁱ in a recent study, 43% of LGB participants reported having suffered at least one act of discrimination or harrasment;ⁱⁱⁱ and the percentage of lesbian, bisexual, and queer women incarcerated is ten times higher as in the general population.^{iv}

11. These and similar statistics need to be understood bearing in mind that persons affected by violence and discrimination based on sexual orientation and gender identity in the United States are not a monolithic community. The dynamics of privilege and discrimination place very few at an apex at the base of which trans persons of color live in poverty and disenfranchisement:^v almost 50% of those who are Hispanic and almost 40% of those who are Black live in poverty,^{vi} comparing to a general of 11.4% in the United States population.^{vii}

12. Describing the state of the human rights of LGBT persons in the United States, therefore, requires analysis of social exclusion, consistently carried out by my mandate alluding to the key sectors of housing, employment, health, education, violence, and political participation. It also requires an acknowledgement of the complexities in rights delivery within the division of power between federal and state structures and the way it manifests itself today within a highly polarized bipartisan political system; and the historical context of a vibrant democracy seen by many around the world as a land of unique opportunity, but also marked by deep grooves carved by colonialism and slavery, as well as – until relatively recently – criminalization of same-sex intimacy and pathologization of LGBT persons.

13. As I have observed during this visit, the dynamics within federal and state competencies play a prominent role in relation to fundamental human rights concerns such as bodily autonomy, comprehensive sexual and gender education, and sexual and reproductive rights, all which significantly impact the human rights of LGBT persons. Earlier I spoke about my concerns in relation to the overturning of *Roe v. Wade*, and I would like to offer some examples that lie at the base of that concern: the available evidence suggests that adult sexual and gender minorities have higher rates of mis-timed or unwanted pregnancy,^{viii} that LGB persons are at higher risk of sexual violence^{ix} and that bisexual women are three times as likely as heterosexuals to have a pregnancy, a teen pregnancy, and an abortion than their heterosexual peers.^x Abortion bans have also led (or will likely lead) to the closure of clinics that are critical sources of sexual and reproductive health care for LGBT persons:^{xi} contraception and abortion services, wellness services, examinations, STI testing and treatment, hormone replacement therapy and insemination services.^{et.}

I. Federal protections

14. The violation of a binding international obligation by any branch of the State creates international responsibility, irrespective of the federal structure of the country. The United States has ratified several core human rights treaties, such as the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. I must underline the importance of ratifying all human rights treaties, including those with provisions that would allow persons under the jurisdiction of the United States to present individual complaints to the United Nations human rights treaty bodies or to the jurisdiction of the Inter-American Court of Human Rights.

15. At the same time, I applaud the United States for its decision to issue a standing invitation to the United Nations Special Procedures and to take a seat at the United Nations Human Rights Council. I consider it an honor that my visit is carried out as part of this reintegration to the international human rights architecture.

16. Further, the evidence shows that the current administration has taken an impressive array of executive measures aimed at the protection of the human rights of LGB persons. I speak, for example, of Executive Order 13888 that, building upon the 2020 Supreme Court ruling in *Bostock v Clayton County* instructed all federal agencies that everyone “should receive equal treatment under the law, no matter their gender identity or sexual orientation,”^{xii} and ensures that such interpretation of protection against discrimination based on sex extends beyond the field of employment.

SENSIT
IVE
BUT
UNCLA
SSIFIE
D

17. Since then, the administration has issued a series of executive orders aiming either at dismantling anti-LGBT policies put in place by the Trump-Pence administration (including an Executive order overturning ban of service for trans persons in the military), or at increasing protection based on sexual orientation and gender identity, including the Executive Order Advancing Equality for LGBTQI+ Individuals which increase the protection of LGBT children and their family and ban practices of so-called conversion therapy.

18. Some of the policies adopted by the Government build on already existing measures, like the 2011 Presidential Memorandum on International Initiatives to Advance the Human Rights of Lesbian, Gay, Bisexual, and Transgender Persons. Others are autonomous and new, such as the announcement by the State Department to add a third gender marker on identity documents for gender non-conforming, non-binary, and intersex persons, or the creation of the White House-led Interagency Working Group on Safety, Inclusion, and Opportunity for Transgender Americans, which focuses especially on trans women and girls of color and has already published a first report.^{ST.zzz.1}

19. I also note that the Government adopted an intersectional approach that includes sexual orientation and gender identity in its efforts toward a comprehensive strategy to advance gender equity and equality across the whole government, including by addressing issues faced by LGBT persons, and in particular by trans women and girls. Notable initiatives in this respect include the adoption of a National Strategy on Gender Equity and Equality, as well as the establishment of the White House Gender Policy Council.

20. These are powerful and meaningful developments. While they are too numerous to list, they have been part of my considerations and I believe they are based on principles and values that are in conformity with international human rights law, show a clear strategic intent, and provide significant muscle capacity for their implementation.

21. However, I am concerned at the extent to which these protections might remain volatile and subject to change by executive or judicial action, or (as seen in *Dobbs v. Jackson Women's Health Organization*) by a decision of the Supreme Court. In my view, the sole suggestion that *Jackson* could be the blueprint for a decision with the effect of reinstating the criminalization of same-sex intimacy is objectionable. For that reason, in my report, I will exhort the United States Congress to secure overarching anti-discrimination protections.

22. I am also of the opinion that these recent events should trigger a nation-wide reflection on the relation of the United States with international and regional human rights law and its institutions, as well as reconsidering the call, previously made by some of my colleagues, for the creation of a National Human Rights Institution for oversight of international treaty obligations, as well as the need for an interagency federal body responsible for implementation and follow up to the recommendations of United Nations human rights mechanisms.

II. State-level status

23. I am deeply concerned by a widespread set of State-level actions aimed at regression of the human rights of LGBT people by legislative, executive, and judicial action. A veritable plague of so-called anti-LGBT bills is sweeping across the country: in 2021, 268 anti-equality bills were introduced in state legislatures; it is expected that the number will be higher in 2022. These attempts to legislate or administratively create restrictions cover a broad range of issues, targeting especially comprehensive sexual and gender education, access of trans persons to sports and single-sex facilities, and gender-affirming care. As I was travelling across the country, news of such legislation, as well as administrative measures, kept on surfacing: one example is the decision by the Florida Board of Medicine to adopt new standards of care restricting access to gender-affirming care for trans youth and adults.

SENSIT
IVE
BUT
UNCLA
SSIFIE
D

24. The recent wave of “Don’t Say Gay or Trans” laws that passed in several states, among them Florida and Alabama, with similar proposals in many other states restrict teachers and staff from discussing LGBT issues at school and can have the impact of endorsing exclusion, bullying, and harassment of LGBT youth in American education settings. Lawmakers and school officials are also barring transgender children and youth from participating in sports, restrict their ability to use names and pronouns that accurately reflect their gender identity, and limit their access to bathrooms and locker rooms.

25. Over the last two decades, lawmakers and school administrators in the United States have increasingly recognized that LGBT youth are a vulnerable population in school settings, and many have implemented policies designed to ensure all students feel safe and welcome at school. As highlighted in my latest report, the adoption of comprehensive sexuality education inclusive of sexual orientation and gender identity can significantly reduce physical and psychological health risks for LGBT and gender-diverse youth. Yet 83% of LGBT youth in the United States reported not having received comprehensive sexuality education in their current or previous academic institution and setting back access to comprehensive education can only be expected to worsen the situation.

26. Many anti-LGBT bills attempt at restricting access to healthcare for trans persons, in particular trans youth, in blatant violation of their right to the enjoyment of the highest attainable standard of physical and mental health. For example, in Arkansas, the State legislature adopted a legislation which bans gender-affirming medical treatments for transgender children. In Alabama, a legislation criminalized medical providers of gender-affirming care whilst in Texas, a directive classified medical treatments for transgender adolescents as “child abuse”, thus leading to the possible criminalization of parents supporting their child’s transition. To date, all these laws have been blocked by injunctions.

27. In what concerns executive and judicial action, I observed a trend to weaponize state agencies, and various stakeholders are developing a litigation strategy against actions taken in furtherance of Executive Order 13988. For example, on 26 July 2022, 22 States sued the administration over a rule that would cut federal meal funding for schools that don’t include LGBT-friendly policies. So far, all rulings that are not pending have been in favor of the federal administration.

28. Throughout my conversations with human rights defenders and civil society leaders, I heard that the promotion of state-level legislation would follow a particular methodology backed by significant resources, by template model laws, and the intervention of organizations claiming research and community legitimacy. According to a person who I interviewed, “the judiciary is less and less a safe harbor for LGBT persons in the country,” and in Birmingham, Alabama, I met with some faith leaders who conveyed their substantial concern about the misuse of religious narratives and the deliberate exploitation of earnestly religious persons for political purposes. Similar views were conveyed to me in all meetings with human rights defenders. The legal analysis of this topic also includes religious exemptions, a topic in which I am persuaded that deliberate attempts are made to misrepresent the complimentary nature of the human right to freedom of religion and belief and the concept of freedom from violence and discrimination based on sexual orientation and gender identity.

29. An independent judiciary, that decide matters before them impartially, based on facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats, or interferences, direct or indirect, from any quarter or for any reason, is of utmost importance for the protection against violence and discrimination based on sexual orientation and gender identity. I commend the United States Department of Justice for its consistent concern and vigilance in relation to anti-trans legislation.

30. In the context of this concerted attack, I was shocked to discover, from many persons with whom I had conversations, that supportive families have decided to leave the States in which they

SENSIT
IVE
BUT
UNCLA
SSIFIE
D

resided with their trans and gender-diverse children because they fear persecution or have made plans or contemplated making plans to escape in case that persecutory measures were to be adopted.

31. The use of stigmatizing and prejudiced views of LGBT persons disproportionately impacts children, in particular trans children and youth, who are utilized for political purposes and restricted in their ability to freely develop their personality. There is a robust stock of knowledge concerning the benefits of gender-affirming treatment, and its positive impact on mental health.

III. Overarching issues of concern

a) Violence

32. According to official statistics, in 2019 some 8.8 percent of hate crimes in the Uniform Crime Reports^{xiii} and 20.3 percent of hate crimes in the National Crime Victimization Survey are related to sexual orientation or gender identity bias.^{xiv} The Centers for Disease Control and Prevention found that bisexual women encounter intimate partner violence at higher rates than other populations; 46.1 percent reported being raped in their lifetime, and 74.9 percent reported being victims of sexual violence other than rape.^{xv} In the 2015 United States Transgender Survey, more than half of respondents reported having experienced intimate partner violence; 47 percent reported lifetime sexual assault; and 10 percent reported having been sexually assaulted in the past year. In many cases, victimization rates were greater for transgender respondents of color than for white transgender people.^{xvi}

33. One issue brought up frequently to the mandate is the high underreporting of hate crimes against LGBT persons, and generalized impunity of those that are indeed reported, and particularly those against trans persons of color. During a meeting with Midwestern civil society organizations, for example, I heard since 2002 in Chicago only one killing of a trans person of color has been solved, and it was not labelled as a hate crime.

34. During my meetings in Alabama, I was struck by the fact that despite hearing dozens of stories of violence based on sexual orientation and gender identity having occurred in the last five years, the information recorded in the Uniform Crime Reporting Program was of one hate crime based on sexual orientation in 2020; in relation to gender identity, the number is zero. Stakeholders expressed the view that this is due to the voluntary nature of the reporting to the Federal Bureau of Investigation, but also to distrust of the law enforcement agencies due to a number of factors that include their own unwillingness to register and investigate the claims as hate crimes. I strongly encourage the State to increase its efforts to solve the issue of underreporting and impunity of hate crimes on the ground of sexual orientation and gender identity.

35. I am also concerned about the rates of incarceration of LGBT persons in the United States, as it appears to be disproportionate with the population averages: while only 4.5% of the adult population in the United States identifies as LGBT, some research suggests that as much as 9.3% of men in prison, 6.2% of men in jail, and 42.1% of women in prison, and 35.7% of women in jail belong to sexual minorities.^{xvii} In addition, research also suggests that gay men are eleven times more likely as compared to heterosexual men to report being sexually victimized by another inmate, and whereas bisexual males are ten times as likely.^{xviii}

36. The evidence strongly suggests that LGBT persons of color face higher rates of discrimination in education, employment, access to health services, housing, the criminal justice system, and violence in general.

37. The Center for American Progress fielded a survey in June 2020 and found that 24% of LGBT persons of color reported some form of discriminatory treatment from a doctor or health care providers, compared to 17% of their white counterparts; while 44% stated that discrimination against them affected their ability to purchase or rent a home to some extent, and 48% of them have an

SENSIT
IVE
BUT
UNCLA
SSIFIED
D

income below \$40,000 per year.^{xix} In a more extreme form, 10% of LGBT persons of color had doctors refusing to attend them due to their sexual orientation. Even on occasions when doctors attend them, 19% experienced doctors being visibly upset due to their sexual orientation.

b) LGBT refugees and asylum seekers

38. The Biden-Harris administration included protection for refugees and asylum seekers in the February 4, 2021, Memorandum on Advancing the Human Rights of Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Persons Around the World. In addition, an executive order provides for the recognition of same-sex partners unable to marry as “spouses” to allow them entry to the United States as a derivative under the United States Refugee Admissions Program.^T

39. When the current administration triggered a winding down of Migrant Protection Protocols and admitted some 13,000 persons, allowing them to apply for asylum, that was a welcome development. I lament that the administration had to restart the program in late 2021, and warmly welcome the determined steps taken to obtain a ruling by the Supreme Court in June 2022, after which a second winding down of the program is being effectuated. I was informed that no new registrations are taking place under the Migrant Protection Protocols.

40. I am however concerned that, despite its clear willingness and drive to adopt measures to protect LGB persons, the Biden-Harris administration has not yet achieved to dismantle the discriminatory architecture put in place by the Trump-Pence administration that has so damaged refugee law at the global level. Therein, human rights advocates have identified some 100 policies that negatively impact the rights of immigrants, asylum-seekers, and refugees, that daily harm thousands. A salient example is public health ordinance Title 42,^{xx} introduced at the onset of the COVID-19 pandemic and which so far in fiscal year 2022, has been used to carry out approximately 1.8 million rapid expulsions without access to seeking asylum,^{xxi} only in July 2022 some nearly 80,000 rapid expulsions were effectuated.^{xxii}

41. In September 2021 the administration issued new Guidelines for the Enforcement of Civil Immigration Law, including non-discrimination based on sexual orientation and gender identity. On April 1, 2022, the administration announced its decision to end the application of Title 42 the following month. As a result of two different State-led challenges, however, Title 42 expulsions are still effectuated, and the new enforcement guidelines are currently vacated and will be taken up by the US Supreme Court in December 2022. It is estimated that over 2,500 rapid expulsions are carried out daily under Title 42.^{T,N} Human rights defenders have documented thousands of cases of kidnapping, torture, rape, and other violent attacks on people blocked in or expelled to Mexico due to the Title 42 policy during the current administration alone, including LGBT persons.

42. Considering the fundamental impact of the Title 42 ordinance, the mandate recommends that the administration adopts all steps necessary to limit its implementation, including measures identified by human rights defenders, such as the suspension of 287(g) contracts. Given the administration’s views on the need to discontinue Title 42 dispositions, I would recommend that these measures be given serious consideration, as alternative means pending the decision of the courts.

43. In the absence of the unique visiting framework afforded by a National Prevention Mechanism through the Optional Protocol to the United Nations Convention against torture and other cruel, inhuman, and degrading treatment or punishment, I chose to have conversations with several asylum seekers who had been in administrative detention, but no longer were deprived of liberty. They shared with me harrowing stories of human misery: a gay man travelled for three years throughout the American hemisphere fleeing daily beatings and police abuse in his country of origin and waited for months at the border to be able to present his case, only to find himself handcuffed and taken to a detention center where he was deprived of liberty for 6 months. When he was released on parole, he was compelled to wear an ankle monitor for a further 6 months; two years later he had not yet obtained his work permit. This is consistent with information, received from several

Governmental and non-Governmental sources, that points out to a backlog of 1,2 million asylum cases.

44. This and other testimonies were consistent with numerous claims and grievances set forth by human rights defenders to the effect that asylum seekers face violence and discrimination when they are detained in immigration detention centers; and, as I advised the Government during the country visit debriefing, it is particularly concerning given that a general policy of administrative detention of asylum seekers is not justified under international human rights law, and also not based on any reasonable need within a democratic society. It is reported that in some cases that are up to 97 times more likely to be sexually assaulted than other detained persons.^{xxiii} Asylum seekers who are detained while awaiting their results or following a decision to deny them entry often face a higher risk of sexual harassment and mistreatment while detained than those who do not identify as LGBT persons.^{xxiv} Further, the mandate received allegations of differentiated challenges of LGTBI persons living with HIV, and systemic failures to on the part of Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) to provide appropriate treatment to all HIV-positive immigrants entrusted to their care, including interruption in the provision of medication, denial of access to medical records, and misinformation in relation to the COVID-19 pandemic.^{cc.5}

45. During the meeting with authorities at Otay Mesa Detention Center, I was informed of several measures adopted to address concerns such as those that I have cited. I observed an awareness of concepts relating to sexual orientation and gender identity, and I was informed of differentiated protocols for the intake, showers, housing, and other aspects of the detention of trans persons, as well as the existence of a Sex Assault Coordinator and a Transgender Classification and Care Committee. I believe these measures attest to the importance of awareness-raising and training, as well as the positive impact of ICE's implementation of DHS's regulation issued pursuant to the Prison Rape Elimination Act (6 CFR 115), as well as ICE Policy No. 11062.2: Sexual Assault and Abuse Prevention and Intervention (SAAPI Directive) and ICE's 2015 Further Guidance regarding the Care of Transgender Detainees. As I remarked during the visit, however, no differential measures or protocols were observed or reported in relation to gay, lesbian, or bisexual persons; and it was discussed that while the official ICE statistics mention LGBT persons under "vulnerable populations," there are no means to corroborate the information, given that there are no data gathering mechanisms for those identities throughout the system. The same could be said for grievance processes against personnel, and complaints against other detained persons: I was informed that there are no overarching comprehensive systems to follow-up on these, an information that appears to correlate with previous findings of the United States Government Accountability Office.^{xxv}

46. According to an ethnographic fieldwork conducted in Los Angeles and New York City between May 2017 and August 2019, anti-trafficking programs rarely address the abuse and criminalization faced by LGBT migrants, in particular trans women. The study found that anti-trafficking interventions had little impact on their lives as most are unaware of services offered by anti-trafficking programs, even if they may not have been implicitly or explicitly excluded in the process.^{xxvi} Furthermore, there is a high criminalization of LGBT forcibly displaced persons, linked to the difficulty to access the formal labor market. Discriminatory law enforcement practices led to the hyper-criminalization of trans migrants who were profiled not only by their gender identity status but by their immigration status as well."

Conclusions

47. I applaud the significant measures adopted by the administration, and I recognize them as conducive to addressing the challenges faced by LGBT persons living under the jurisdiction of the United States of America. But I must warn that these are being deliberately undermined. I am deeply alarmed by a widespread, profoundly negative ripple created by deliberate actions to roll back the human rights of LGBT people at state level. These include deeply discriminatory measures seeking to rebuild stigma against lesbian and gay persons, limiting comprehensive sexual and gender education for all, and access to gender-affirming treatment, sports, and single-sex facilities for trans and gender

SENSIT
IVE
BUT
UNCLA
SSIFIE
D

diverse persons. The evidence shows that, without exception, these actions rely on prejudiced and stigmatizing views of LGBT persons, in particular transgender children and youth, and seek to leverage their lives as props for political profit.

48. The United States played a central role in the design and adoption of the Universal Declaration of Human Rights, a document which appeals to the highest values of humankind and has provided a compass in the search of a world in which all persons see their dignity respected and live free and equal. The Biden-Harris administration has adopted powerful and meaningful actions that are in conformity with international human rights law, reveal a thoughtful strategy created through participative approaches, and provide significant capacity for their implementation. This is exactly the combination of values, knowledge, and muscle that can drive social change. In the light of a concerted attack to undermine these actions, I exhort the administration to redouble its efforts to support the human rights of all LGBT persons living under its jurisdiction and helping them to safe waters.

Following process

49. I will expand the analysis surrounding these preliminary observations in a report the draft of which will be transmitted to the State, which may present all relevant observations. The final report is scheduled for subsequent publication, and its presentation during the 53rd session of the United Nations Human Rights in June 2023 at its seat in Geneva, Switzerland.

Washington, DC
29 August 2022

SENSIT
IVE
BUT
UNCLA
SSIFIE
D

i https://www.supremecourt.gov/DocketPDF/19/19-1392/193045/20210920163400578_19-1392%20bsac%20United%20Nations%20Mandate%20Holders.pdf

ii <https://voicesofyouthcount.org/wp-content/uploads/2018/05/VoYC-LGBTQ-Brief-Chapin-Hall-2018.pdf>

iii <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/files/assets/resources/COVID19-IssueBrief-032020-FINAL.pdf>

iv <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Workplace-Discrimination-Sep-2021.pdf>

v <https://williamsinstitute.law.ucla.edu/publications/system-involved-lbq-girls-women/>

vi <https://doi.org/10.1007/s11113-018-9457-5>

vii <https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf>

viii <https://www.census.gov/library/publications/2021/demo/p60-273.html>

ix <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5819992/>

x <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3118668/>

xi <https://www.sciencedirect.com/science/article/abs/pii/S1049386719304839>

eT, <https://www.sciencedirect.com/science/article/pii/S2590151620300022>

xii https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/us_20191202_june-medical-services-v-gee_brief-of-lgbtq-orgs-as-amici.pdf

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and-combating-discrimination-on-basis-of-gender-identity-or-sexual-orientation/>

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/25/executive-order-on-enabling-all-qualified-americans-to-serve-their-country-in-uniform/>

Fact sheet: Biden-Harris Administration Advances Equality for Transgender Americans, June 30, 2021 (mimeograph, provided by the US State Department during the visit)

ST.zzz 1 https://www.whitehouse.gov/wp-content/uploads/2021/11/Report_Memorializing-Transgender-Day-of-Remembrance_FINAL-002.pdf

xiii <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcrle1019.pdf>

xiv https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519_1.pdf

xv https://www.cdc.gov/violenceprevention/pdf/nisvs_sofindings.pdf

xvi <https://www.ustranssurvey.org/reports>

<https://www.justice.gov/hatecrimes/state-specific-information/alabama>

xvii Meyer I, Flores A, Stemple L et al. (2017). “Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey, 2011–2012.” *Am J Public Health*. 107(2):234–240. The data that Meyer et al. analyze is from: Beck AJ, Berzofsky M and Krebs C (2013). *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12 National Inmate Survey, 2011–2012*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics <https://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>

xviii https://fenwayhealth.org/wp-content/uploads/TFIP-33_Best-Practices-for-LGBTI-Incarcerated-People-Brief_web.pdf

xix <https://www.americanprogress.org/article/lgbtq-people-color-encounter-heightened-discrimination/>

<https://www.americanprogress.org/article/lgbtq-people-color-encounter-heightened-discrimination/>

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/04/memorandum-advancing-the-human-rights-of-lesbian-gay-bisexual-transgender-queer-and-intersex-persons-around-the-world/>; see also <https://www.americanprogress.org/article/4-ways-u-s-government-can-strengthen-refugee-resettlement-lgbtqi-people/>

.T <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/04/executive-order-on-rebuilding-and-enhancing-programs-to-resettle-refugees-and-planning-for-the-impact-of-climate-change-on-migration/>; see also https://www.uscis.gov/sites/default/files/document/memos/Revised_Guidance_on%20Informal_%28_Camp_%29_Marriages.pdf

xx https://www.cdc.gov/coronavirus/2019-ncov/downloads/CDC-Order-Suspending-Right-to-Introduce-_Final_8-2-21.pdf

xxi

xxii

T.N <https://www.humanrightsfirst.org/sites/default/files/AttacksonAsylumSeekersStrandedinMexicoDuringBidenAdministration.3.15.2022.pdf>

xxiii <https://www.americanprogress.org/article/ices-rejection-rules-placing-lgbt-immigrants-severe-risk-sexual-abuse/>

xxiv <https://link.springer.com/article/10.1007/s41134-019-00092-2>

CC.S <https://immigrationequality.org/wp-content/uploads/2020/09/Complaint-to-Office-of-Civil-Rights-and-Civil-Liberties-Re-HIV-Care-in-Detention-Facilities.pdf>

xxv <https://www.gao.gov/assets/gao-20-596.pdf>

xxvi <https://www.tandfonline.com/doi/abs/10.1080/23322705.2020.1690116?journalCode=uhmt20>

.. <https://www.tandfonline.com/doi/abs/10.1080/23322705.2020.1690116?journalCode=uhmt20>