

**Совет по правам человека****Пятьдесят шестая сессия**

18 июня — 12 июля 2024 года

Пункт 3 повестки дня

**Поощрение и защита всех прав человека,  
гражданских, политических, экономических,  
социальных и культурных прав,  
включая право на развитие****Посещение Соединенного Королевства Великобритании  
и Северной Ирландии****Доклад Независимого эксперта по вопросу о защите от насилия  
и дискриминации по признаку сексуальной ориентации  
и гендерной идентичности Виктора Мадригалья-Борлоса\****Резюме*

В настоящем докладе Независимый эксперт по вопросу о защите от насилия и дискриминации по признаку сексуальной ориентации и гендерной идентичности Виктор Мадригаль-Борлос представляет информацию о своем посещении Соединенного Королевства Великобритании и Северной Ирландии в период с 24 апреля по 5 мая 2023 года. Независимый эксперт оценивает применение национальных и международных стандартов в области прав человека для борьбы с насилием и дискриминацией по признаку сексуальной ориентации и гендерной идентичности в Соединенном Королевстве и предлагает рекомендации по усилению защиты в этой области.

\* Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен.



## Приложение

### **Доклад Независимого эксперта по вопросу о защите от насилия и дискриминации по признаку сексуальной ориентации и гендерной идентичности Виктора Мадригалья-Борлоса о его посещении Соединенного Королевства Великобритании и Северной Ирландии**

#### **I. Introduction**

1. Pursuant to Human Rights Council resolutions 32/2, 41/18 and 50/10, the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, conducted an official visit to the United Kingdom of Great Britain and Northern Ireland from 24 April to 5 May 2023. He assessed the situation of lesbian, gay, bisexual, trans and gender-diverse (LGBT) persons in the country, identifying good practices and challenges in the implementation of national and international human rights standards.

2. The Independent Expert gathered evidence on discrimination and violence against LGBT persons, the measures adopted by the State to address them, and the views of a wide range of stakeholders on the impact, effectiveness and, when relevant, shortcomings of those measures. The visit included stops in London, Manchester, Cardiff, Belfast and Edinburgh.

3. State representation was led by the Minister for Equalities and senior officials from across the devolved governments of Wales and Scotland, and from the Northern Ireland Civil Service. The Independent Expert met with Members of Parliament and political party leaders in the four nations of the United Kingdom, and representatives of the three leading national human rights institutions, the mission of which is to hold the Government to account in relation to its human rights obligations. More than 100 civil servants supported the visit of the Independent Expert, including by sharing presentations, reports, data and other valuable materials.

4. The Independent Expert thanks the State representatives and civil servants, civil society and other stakeholders for their extraordinary cooperation and coordination before, during and after the visit.

#### **II. Background and context**

5. According to the most recent census information available, some 1.8 million persons aged 16 years and over, approximately 3.3 per cent of the population living in the United Kingdom, identify as lesbian, gay or bisexual.<sup>1</sup> Furthermore, it is estimated that between 250,000 and 500,000 persons are gender-diverse.<sup>2</sup> While the human rights of these more than 2 million persons are of direct concern to the mandate of the Independent Expert, concentric circles around them extend to all who love them, respect them, depend on them and, in many other ways, benefit from recognizing and respecting their right to exist in this world in full freedom and equality.

6. The preparation of the country visit included a comprehensive desk review, 37 written submissions from academics, civil society organizations and individuals from England, Northern Ireland, Scotland and Wales, and continued dialogue with State authorities. The

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<sup>1</sup> See

[www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/sexuality/bulletins/sexualidentityuk/2021and2022](https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/sexuality/bulletins/sexualidentityuk/2021and2022).

<sup>2</sup> Government Equalities Office fact sheet, “Trans people in the UK” (London, 2018). During the visit, a government official informed the Independent Expert that that estimate remained valid. See also Office for National Statistics, “Gender identity, England and Wales: census 2021” (released 6 January 2023).

Independent Expert thanks all LGBT persons, communities and populations, human rights defenders, women's organizations and groups, academics and others who contributed those inputs; he is especially grateful to the more than 160 representatives of civil society with whom he met.

7. While this is the first visit by the mandate to the United Kingdom, the Independent Expert has, for several years, actively followed relevant developments in relation to law, policy and practice in the country. He issued advice to the Parliament of the United Kingdom in relation to conversion practices and to the Scottish Parliament on standards and best practices on self-identification for legal recognition of gender identity (June<sup>3</sup> and December<sup>4</sup> 2022). He also engaged the State in relation to the Gender Recognition Reform (Scotland) Bill.<sup>5</sup>

### III. Legal, institutional and public policy frameworks

#### A. International obligations and harmonization of national law

8. At the fifty-second session of the Human Rights Council, in March 2023, during its consideration and adoption of the outcome of the most recent universal periodic review of the United Kingdom, the Government and civil society representatives outlined how the country had benefited from a robust framework of domestic and international legal protections from violence and discrimination on the basis of sexual orientation and gender identity – including protections under the core United Nations human rights treaties and the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), which have been translated into domestic laws, policies and practices.<sup>6</sup>

9. It is a realm in which change has been radical in the last four decades. National, imperial and colonial histories of the United Kingdom include leading roles in criminalization, pathologization and actual or attempted erasure of diversity, including in relation to sexual orientation and gender identity. As recently as 1979, the use of homophobic and biphobic attitudes, and their instrumentalization through the media, led to the enactment of a series of guidelines within school curricula that aimed to prohibit comprehensive sexuality education; they also led to the enactment of section 28 (prohibiting the so-called promotion of homosexuality by local authorities), an infamous piece of public policy that created lasting damage to LGBT persons and institutions.

10. As a result of devolution of responsibilities to national authorities in relation to some human rights issues – including in the education, employment, health and housing sectors – there are at once a robust comparative framework of good practices for the Government of the United Kingdom and the devolved administrations to draw upon and exchange, and unique localized challenges that have resulted from the lack of central guidance in some cases or regionalized resistance to centralized policy initiatives in other cases.

#### B. Legal framework

11. The legal framework includes the Human Rights Act 1998, which made most provisions of the European Convention on Human Rights directly enforceable in the courts

<sup>3</sup> Evidence provided to the Equalities, Human Rights and Civil Justice Committee of the Scottish Parliament, 21 June 2022, available at [www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13837](http://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13837). See also Scottish Parliament (Equalities, Human Rights and Civil Justice Committee), *Stage 1 Report on the Gender Recognition Reform (Scotland) Bill* (Edinburgh, 2022).

<sup>4</sup> Scottish Parliament (Equalities, Human Rights and Civil Justice Committee), 33rd meeting, 19 December 2022 (session 6), available at [www.parliament.scot/~media/committ/4789](http://www.parliament.scot/~media/committ/4789).

<sup>5</sup> See communication GBR 15/2022, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27757>.

<sup>6</sup> See [www.ohchr.org/en/hr-bodies/upr/gb-index](http://www.ohchr.org/en/hr-bodies/upr/gb-index).

of the United Kingdom. It did so by requiring legislation to be interpreted and given effect in accordance with the rights enshrined in the Convention, as elaborated in the jurisprudence of the European Court of Human Rights, and by making it unlawful for public authorities to act in a manner incompatible with those rights. Under the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Act 2006, the devolved administrations likewise cannot act or legislate in violation of the Convention, including in relation to devolved matters of social protection.

12. The Equality Act 2010 legally protects persons in Great Britain from social and workplace discrimination in relation to nine characteristics, including those based on sex, sexual orientation and gender reassignment. The Equality Framework it brought together comprises 116 separate pieces of legislation. Moreover, the Public Order Act 1986 criminalizes offences of intentionally stirring up hatred on the grounds of sexual orientation.

13. The Gender Recognition Act 2004 enabled trans persons in the United Kingdom to have their acquired gender legally recognized without requiring surgery or hormone treatment. In September 2020, the Government released the long-awaited results of the consultation on the Act, which covers England and Wales, according to which the majority of the population supported the removal of medical requirements. While removing some administrative barriers and lowering costs, the Government nonetheless retained a system that requires a psychiatric diagnostic that no longer exists in the International Statistical Classification of Diseases and Related Health Problems of the World Health Organization, as well as proof of life in the affirmed gender for two years and evaluation by an external committee composed of legal and medical professionals.

#### 1. Political tides in relation to legal protection of human rights

14. The Bill of Rights Bill, first proposed in Parliament in June 2022, would have repealed and replaced the Human Rights Act 1998, altering the enforcement of judgments of the European Court of Human Rights by the United Kingdom. In presenting and summarizing for the Independent Expert the potential legal effects of the Bill, the Government said that the Human Rights Act 1998 was the guiding light of human rights protection in the United Kingdom and that it would remain a party to the European Convention on Human Rights even if the Bill were adopted. The Government suggested that it would aim to work within the parameters of the “margin of appreciation” doctrine of the European Court of Human Rights and yet in line with a State-specific understanding of the needs of the people.

15. To the wider public, however, the Bill of Rights Bill was promoted under a different light. In the words of a top State representative, it was legislation that would enable judges of the United Kingdom to “push back” against judgments of the European Court of Human Rights, including by determining how and whether to implement judgments on policies such as the removal of asylum-seekers under the Migration and Economic Development Partnership between the United Kingdom and Rwanda.<sup>7</sup> The Bill was criticized by many, including the Law Society<sup>8</sup> and the Joint Committee on Human Rights,<sup>9</sup> for its potential to undermine access to justice and damage the rule of law. The Independent Expert was similarly concerned about the Bill’s potentially detrimental impact on existing human rights protections and welcomed the Government’s withdrawal of the Bill on 27 June 2023.<sup>10</sup>

16. The government of Scotland voiced its intention to introduce legislation to incorporate four United Nations human rights treaties to which the United Kingdom is party into the Scottish legal framework, in order to make them justiciable in Scottish law, within devolved competence. The cross-cutting obligation of non-discrimination based on any status in relation to all human rights provided by those treaties – including based on sexual orientation and gender identity – would be applicable directly through the national legal system.

<sup>7</sup> See [www.gov.uk/government/news/uk-and-rwanda-strengthen-agreement-to-deal-with-global-migration-issues](http://www.gov.uk/government/news/uk-and-rwanda-strengthen-agreement-to-deal-with-global-migration-issues).

<sup>8</sup> See [www.lawsociety.org.uk/topics/human-rights/human-rights-act-reforms](http://www.lawsociety.org.uk/topics/human-rights/human-rights-act-reforms).

<sup>9</sup> See <https://committees.parliament.uk/publications/33649/documents/183913/default>.

<sup>10</sup> See <https://bills.parliament.uk/bills/3227/news>.

17. The Independent Expert noted a distinct contrast between the direction of the Government of the United Kingdom and that of the devolved administrations in relation to legislation and policies on human rights, a trait that was underscored by the recent blocking by the Government of the adoption of new legislation in Scotland on legal gender recognition through self-identification.

18. In December 2022, the Scottish Parliament passed the Gender Recognition Reform (Scotland) Bill with overwhelming support across political parties. In doing so, Scotland followed international good practice recommended by the vast majority of United Nations human rights bodies and the High Commissioner for Human Rights.<sup>11</sup> However, the Government of the United Kingdom made, in January 2023, an order under section 35 of the Scotland Act 1998 to prevent the Bill from being submitted for Royal Assent and enacted into law. The government of Scotland contested that order in court, yet did not appeal the judgment upholding the order. It has, however, not withdrawn the Bill, and still aims to work with the Government of the United Kingdom to implement it in the future. As noted above, the Independent Expert previously testified twice before the Scottish Parliament in June and December 2022 in support of the Bill. Although he takes no stance in relation to the legal dispute between the United Kingdom and Scottish Governments, which relates to matters that are primarily constitutional in nature, he laments that that action has de facto deprived trans persons in Scotland of the benefits of a simplified process by which to obtain Gender Recognition Certificates, and notes that it may engage the responsibility of the State under international human rights law. The Independent Expert heard direct testimony from more than a dozen trans and gender-diverse persons who were waiting for the simplified process, some of them because – out of principle and a perception of their own dignity – they reject the pathologization of their lives.

19. The Independent Expert has repeatedly expressed concern at misinformation in political, social and legislative debates around legal recognition of gender identity. A system of self-identification is one that gives pre-eminence to the person’s sense of self, eliminating pathologizing approaches that erroneously claim that they are mentally ill or deeply inhumane requirements, such as sterilization, castration or divorce, and recognizing that their dignity is inextricably linked to the perception of self.<sup>12</sup> Like any administrative decision, legal recognition of gender identity can be challenged in cases in which misuse of the system is suspected.

20. The Independent Expert was alarmed by a letter, dated 3 April 2023, from the Equality and Human Rights Commission to the Minister for Women and Equalities, by which it advised that defining the term “sex” as “biological sex” under the Equality Act would “bring greater legal clarity” to the implementation of the Act.<sup>13</sup> In contrast, the Scotland Committee of the Equality and Human Rights Commission had itself, on 28 February 2023, expressed concerns that it did “not consider sufficient evidence has been presented to justify amending the definition of legal sex in the [Equality Act] 2010 to biological sex at this time”. The Committee cautioned that: “the Board should consider the risk to our perceived political independence if we are perceived to be aligning with Government in the absence of robust evidence. This is a potential existential risk that such a perception could risk the Commission’s existence going forward.”<sup>14</sup> Moreover, the Committee indicated that there had been no clear demonstration of a legal need or legitimate aim, even though “changing the definition of sex could diminish trans people’s rights; for example, legal colleagues advised that, if the proposed change were implemented, obtaining a Gender Recognition Certificate would no longer change a person’s sex in discrimination law. The Committee considered the Commission should be advancing the rights of minorities and not potentially diminishing rights for some groups.”<sup>15</sup>

<sup>11</sup> See [www.parliament.scot/~media/committ/4789](http://www.parliament.scot/~media/committ/4789).

<sup>12</sup> See [A/73/152](#).

<sup>13</sup> See [https://dev.equalityhumanrights.com/sites/default/files/2023/letter-to-mfwe-definition-of-sex-in-ea-210-3-april-2023\\_0.pdf](https://dev.equalityhumanrights.com/sites/default/files/2023/letter-to-mfwe-definition-of-sex-in-ea-210-3-april-2023_0.pdf).

<sup>14</sup> See [www.equalityhumanrights.com/sites/default/files/28\\_feb\\_-\\_scotland\\_committee\\_meeting\\_minutes.docx](http://www.equalityhumanrights.com/sites/default/files/28_feb_-_scotland_committee_meeting_minutes.docx).

<sup>15</sup> Ibid.

21. In a meeting with the Independent Expert on 4 May 2023, the Equality and Human Rights Commission confirmed that it had decided to issue that advice without itself having any definition of “biological sex”; the law of the United Kingdom provides no such definition either. The Commission nonetheless conceded, however, that, in the context of the letter, the intended meaning of the term “biological sex” was to define “women” as “women who are not trans”. As one Commissioner elaborated: “under the Equality Act ... a trans woman who does have a [Gender Recognition Certificate] is a woman under the current case law. ... if the Government decides to make the amendment, they don’t need to define biological sex, they can do it by way of exclusion of the [Gender Recognition Certificate].” In the months following the visit, the Independent Expert has not received any information that would change his preliminary conclusions: through its advice, the Commission inappropriately offered the Government a formula to seek to exclude trans and gender-diverse persons from legal protections that they currently enjoy under the law of the United Kingdom – and that they will continue to enjoy under international human rights law. The Independent Expert finds that advice to be flawed, not based on evidence, lacking legal need or legitimate aim, and deeply harmful to the physical and mental integrity of trans and gender-diverse persons and the LGBT community in general.

22. The Equality and Human Rights Commission is a national human rights institution, distinct and necessarily independent from government institutions. The Independent Expert recommends that national authorities and international experts take the measures necessary to examine its actions and independence, under the sphere of their competences. The independence of a national human rights institution is essential to effectively review and remedy any apparent breaches of the obligations of the State under international human rights law.

## 2. Widespread concerns over toxic political discourse

23. National authorities and civil society representatives in Wales, Northern Ireland and Scotland expressed concerns about where the Government of the United Kingdom stood on the protection of the human rights of LGBT persons. Following the unprecedented use of the section 35 order vis-à-vis Scotland, they also raised questions about the detrimental social ramifications of the high-profile blocking of the legal protections of the human rights of trans persons, and the instrumentalization of prejudice in the context of upcoming national elections.

24. Bolstered by strong legal protections of freedom of information in the United Kingdom, news media and social media are instruments for advocacy and visualizing violations of the human rights of LGBT persons, however, they were also spreading anti-trans discourse and stereotypical imagery of LGBT persons as dangerous, often employing homophobic and transphobic rhetoric. Similarly, abusive rhetoric by politicians had trickled down and facilitated hateful speech in social media, which in turn seemed to have spurred rapid increases in the frequency of bias-motivated incidents of harassment, threats and violence, including hate crimes. Human rights defenders shared consistent accounts of experiencing substantial amounts of abuse both online and offline.

25. Scottish officials confirmed having received direct testimony from trans persons about the harmful health impacts of toxic political and media discourse concerning their human rights, which is consistent with other testimonies received by the Independent Expert. In Edinburgh, a 68-year-old trans man told the Independent Expert that the hateful and hurtful public political discourse had caused profound and wide-ranging damage to the mental health of trans persons in Scotland: “trans persons have always been here. We are just as we are. It feels like there is an attempt to erase us legally. ... It seems that Westminster is trying to terrorize us.” A prominent London-based trans legal professional shared her plans for self-exile “not if, but when” the Government revokes the legal recognition of her gender, which she has enjoyed for decades.

26. The acrimonious nature of the discussion affects persons holding very different points of view. Accusations of silencing and “cancellation” are also made by those who hold the view that gender identity is an ideology or that systems of self-identification in legal recognition of gender identity raise unacceptable risks for others. While the Independent Expert is thankful that some of those persons, including gay men, lesbians and other women,

accepted invitations to hold conversations with him and to present evidence, in sessions held in a respectful, constructive and professional manner, he notes the abundant work of the mandate that has addressed those concerns, which he views as consistently based on prejudice and not evidence.

### C. Institutional and policy framework

27. Universal enjoyment of human rights should not be a partisan matter. In practice, that means that there is an obligation to ensure a principled policymaking process, that the allocation of resources by State authorities must reflect the prioritization of human rights protection without discrimination, and the use of resources must be optimized to achieve those ends. As part of the design of national strategies, State authorities are obligated to measure progress through indicators and benchmarks, the realization of minimum standards and the provision of judicial guarantees to enforce legal guarantees of human rights.

28. The Independent Expert identified numerous good practices and commendable efforts by public authorities in the drafting of LGBTQ+ human rights strategies. Those strategies and other policy measures aimed to fully guarantee the national and international human rights legal protections that already exist for all persons – without discrimination based on sexual orientation, gender identity or any other status – on the basis of broad public consultations and the identification of necessary measures to advance universal social inclusion for all.

29. As an example of good practice in human rights policymaking, the government of Wales published, in February 2023, the ambitious LGBTQ+ Action Plan,<sup>16</sup> prepared in partnership with civil society stakeholders and through consultations that received more than 1,300 inputs, with a view to make Wales “the most LGBTQ+ friendly nation in Europe”. Some civil society organizations criticized the lack of dedicated structures and staff to implement the plan. However, the authorities confirmed their commitment to adopt the measures necessary to ensure the sustainability of the plan. Moreover, the authorities indicated that they had already allocated funding and oversight mechanisms for implementation among departmental director structures.

30. Best practices seem to emerge from partnership approaches. All stakeholders with whom the Independent Expert met in Manchester agreed that the key to the city’s remarkable success in a series of health, education, housing and employment outcomes had been their design, implementation and evaluation in partnership with civil society organizations, which in turn consider the participation of populations and communities as a fundamental part of their business models.

31. In Belfast, however, the Northern Ireland Civil Service observed that no new policy development could occur without a functioning devolved government, amidst considerable budgetary pressures that had recently resulted in numerous cuts that could imperil social services for marginalized groups, including LGBT persons. Even without an executive government in place for a third of the past 25 years, the Civil Service has been resilient in holding together social protection structures. However, the absence of an executive has resulted in a failure to deliver on the ambitious LGBT human rights strategy,<sup>17</sup> the development of which was committed to by the last functioning government administration. Work to develop that strategy was taken forward based on significant engagement with the LGBT sector, however, finalization and subsequent administration has not been possible due to the absence of a Northern Ireland Executive.

32. Scottish authorities informed the Independent Expert that they were in the process of finalizing a comprehensive equality action plan based in part on achieving the implementation of recommendations emanating from an extensive public consultation

<sup>16</sup> See [www.gov.wales/lgbtq-action-plan-wales](http://www.gov.wales/lgbtq-action-plan-wales) and [www.gov.wales/lgbtq-action-plan-wales-progress-update](http://www.gov.wales/lgbtq-action-plan-wales-progress-update).

<sup>17</sup> See [www.communities-ni.gov.uk/articles/sexual-orientation-strategy](http://www.communities-ni.gov.uk/articles/sexual-orientation-strategy). See also [www.equalityni.org/Footer-Links/News/Employers-Service-Providers/Blog-The-need-for-LGBTQI-and-gender-equality-str](http://www.equalityni.org/Footer-Links/News/Employers-Service-Providers/Blog-The-need-for-LGBTQI-and-gender-equality-str).

process.<sup>18</sup> Similarly, in the development of the Gender Recognition Reform (Scotland) Bill the government of Scotland reported having received more than 30,000 responses to public consultations in relation to the proposed reforms. Scotland was the first of the four nations to initiate the development of a non-binary equality action plan,<sup>19</sup> based on consultations with constituents who faced challenges, including accessing health and other social services based on their non-binary gender identities. LGBT human rights organizations noted that the government of Scotland had gathered good data – including through civil society consultations – to inform policies on LGBT human rights issues. Strategies implemented by the government of Scotland on mental health, suicide prevention and other forms of self-harm were reported to have been inclusive and successful at gathering good qualitative data on the lived experiences of LGBT persons.

## D. Data

33. The importance of data gathering to advance human rights law and policy decisions cannot be overstated. It is a central component of the immediate human rights obligation to carry out administrative action through strategies and action plans that address identified human rights protection gaps, utilizing indicators and benchmarks to measure and advance progress.

34. The United Kingdom is a global leader in LGBT-relevant data collection, particularly through its periodic census research. The 2021 iteration of the Census for England and Wales included questions on sexual orientation and gender identity for the first time, for the purpose of planning inclusive social services that reach and meet the needs of all persons without discrimination. According to the 2021 Census, 3.2 per cent of the surveyed population of England and Wales identified as “gay or lesbian”, “bisexual” or “other sexual orientation”, which equates to 1.5 million persons. In total, 0.5 per cent of the adult population in England and Wales reported that the gender they identified with was not the same as their sex registered at birth, which equates to 262,000 persons. Of those who responded, 48,000 persons (0.1 per cent of the surveyed population) identified as trans men, 48,000 (0.1 per cent) identified as trans women and 30,000 (0.06 per cent) identified as non-binary. However, the largest group of persons who reported that their gender identity did not match their sex registered at birth, comprising 118,000 persons (0.24 per cent), provided no further details about their gender identity. A further 18,000 persons (0.04 per cent) wrote in a different gender identity. Overall, 7.5 per cent of adults chose not to respond to the question on sexual orientation and 6 per cent of adults chose not to respond to the question on gender identity.<sup>20</sup>

35. Scotland had not yet released its data on gender identity, following a delay in carrying out the census until 2022 due to the coronavirus disease (COVID-19) pandemic. The Northern Ireland Statistics and Research Agency carried out a consultation in 2015 and 2016, in which it was found that there was very limited need for a question on gender identity and that approximately 3 per cent of the population of Northern Ireland self-identified as lesbian, gay or bisexual. The first conclusion conflicts with the fact that more than 700 persons in Northern Ireland were on official waiting lists for those seeking gender-affirming health care in 2023. As regards the second finding, the Equality Commission for Northern Ireland informed the Independent Expert that it believed the figure was an undercount, since it was the first time that the question had been asked.

36. As an example of the importance of robust data gathering, the official estimate of up to 500,000 persons who identify as gender-diverse in the United Kingdom is vital information for planning inclusive access to services and protection of human rights.

37. In contrast, only 7,111 persons, as of December 2022, in England, Scotland and Wales had been granted Gender Recognition Certificates since the Gender Recognition Act entered

<sup>18</sup> The human rights of LGBT persons are also prominently included in the second National Human Rights Action Plan of Scotland (2023–2030). See [www.snaprights.info/snap-2](http://www.snaprights.info/snap-2).

<sup>19</sup> See [www.gov.scot/policies/lgbti](http://www.gov.scot/policies/lgbti).

<sup>20</sup> See [www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/sexuality/bulletins/sexualorientationenglandandwales/census2021](http://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/sexuality/bulletins/sexualorientationenglandandwales/census2021).



into force in 2005. In the last one-year period in 2023, there was a 71 per cent increase in the annual number of applications received by the Gender Recognition Panel, following a reduction in the application fee in May 2021; the authorities expected the increase in the number of applications to continue following the digitalization of the process in June 2022. While Gender Recognition Certificates are not necessary to access most services, the discrepancy between the number issued and the number of persons self-identifying as trans in census data provides vital public policymaking information to plan and provide for the needs of trans service beneficiaries.

38. Civil society representatives informed the Independent Expert that data gathered by the authorities of the United Kingdom on violence and discrimination against LGBT persons lacked information on persons of colour, among other LGBT persons facing multiple discrimination.<sup>21</sup> The Office for National Statistics indicated that it had the capacity to collect and evaluate the interplay of intersectional data. The Independent Expert hopes that such work will be carried out as soon as possible: it will prove vital to better inform public discussion to the benefit of all.

## **IV. Violence and discrimination based on sexual orientation and gender identity**

### **A. Bias-motivated violence and hate speech**

39. Democracies benefit from healthy debate; that includes the protection of free speech and accountability for hate speech. The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence contains a test for defining restrictions on freedom of expression, incitement to hatred and the application of article 20 of the International Covenant on Civil and Political Rights. It outlines a six-part threshold test: (a) the social and political context; (b) the status of the speaker; (c) intent to incite the audience against a target group; (d) content and form of the speech; (e) the extent of its dissemination; and (f) the likelihood of harm, including imminence. During the visit, the Independent Expert received information about thousands of articles spreading misinformation ((e) above) and witnessed first-hand the casual appropriation by top-level political actors ((b) above) of rhetoric closely associated with the questioning of legal protections based on gender reassignment. The following is a key example: “what is a woman?”, a question that, in the social and political context ((a) above), is commonly asked by “gender-critical” actors to challenge the legal recognition of trans women under the law of the United Kingdom and to mock trans women.

40. The Independent Expert received consistent accounts of increases in bias-motivated violence and hate speech directed at LGBT persons across all four nations of the United Kingdom. Official data on increases in rates – however dramatic their rise – did not seem fully reliable, based on the high variability of those rates year-on-year, with large increases and decreases across rates of hate crimes based on various group characteristics. For instance, in England and Wales, hate crime data are published annually in October (at the time of the visit, the most recent statistics were from up until March 2022). Those data indicated a 56 per cent increase in crimes targeting trans persons, and large rises in figures concerning crimes based on sexual orientation (41 per cent), disability (43 per cent), religion (37 per cent) and race (19 per cent). However, in previous years, those rates rose and fell in a fashion that indicated that other factors – such as inconsistency in data-gathering techniques – could undermine the reliability of the figures.

41. In contrast, a leading non-governmental organization that gathers data on LGBT populations in the United Kingdom informed the Independent Expert that it found even higher increases in reported violence and abuse targeting LGBT persons over the previous 18 months (53 per cent), which had been climbing consistently for years, with apparently reliable trends based on consistent community outreach-based data gathering. Those data indicated a startling 74 per cent increase in trans and non-binary persons experiencing

<sup>21</sup> See [www.ukblackpride.org.uk/wewillbeheard](http://www.ukblackpride.org.uk/wewillbeheard).

transphobic hate crimes in the six months prior to the visit, compared with the previous six months. Those trends are alarming considering that official estimates indicate that 91 per cent of hate crimes against LGBT persons go unreported to the police.<sup>22</sup>

42. In response to widely reported increases in hate crimes targeting the LGBT population in Wales (by approximately 33 per cent in 2022, according to representatives of the authorities and civil society organizations), the government of Wales launched an updated version of the Hate Hurts Wales campaign, focused on safety and freedom from discrimination, as well as increasing diversity among law enforcement personnel.

43. In Northern Ireland and Scotland, hate crime legislation is devolved to national institutions. A human rights defender in Northern Ireland noted the lack of accurate data on bias-motivated violence against LGBT persons, suggesting considerable undercounting. However, statistics issued in March 2022 by the Police Service of Northern Ireland indicated, nonetheless, the highest rates of homophobic and transphobic bias-motivated crimes ever recorded since hate-motivated crimes began being tracked in 2004. In Scotland, a non-governmental organization reported documenting a 68 per cent rise, compared with 2022, in hate crimes against trans persons, with a three-fold increase in hate crime against trans persons over the last seven years. Official data released by Justice Analytical Services in January 2023 indicated that hate crime incidents against LGBT persons in Scotland had increased by 75 per cent over the preceding eight years.

## B. Right to education

44. The Equality and Human Rights Commission<sup>23</sup> and the Northern Ireland Human Rights Commission<sup>24</sup> informed the Independent Expert of significant concerns about shortcomings across the United Kingdom regarding the lack of LGBT-inclusive relationships and sex education and health education. Those concerns followed a submission in 2020 by the Equality and Human Rights Commission to the Committee on the Rights of the Child, in which it documented the failures of the Government of the United Kingdom to protect trans children in schools and the negative mental health consequences of toxic discourse on children. In June 2023, the Committee on the Rights of the Child expressed deep concern about persistent discrimination and bullying against LGBT children in the United Kingdom – calling upon the Government to ensure inclusion of trans and gender-questioning children in all schools in the United Kingdom, while fully respecting their rights, including their rights to identity and to privacy.<sup>25</sup>

45. Surveys suggest that children in the United Kingdom are at an increased risk of bullying, mental health issues and self-harm.<sup>26</sup> Schools are subject to the Equality Act 2010 and cannot legally discriminate based on sexual orientation and gender identity in situations in which the legislation applies. The Government of the United Kingdom informed the Independent Expert that relationships and sex education and health education are statutory in all schools in England, a part of the Scottish curriculum for excellence and a part of the 2022 relationships and sex education curriculum in Wales. The Department of Education of Northern Ireland observed that schools were required to deliver a legal minimum content on relationships and sex education and that schools were supported in the delivery of a range of related topics by the Council for the Curriculum, Examinations and Assessment. However, effective implementation is disputed: “Schools can essentially choose to teach absolutely

<sup>22</sup> Government Equalities Office, *National LGBT Survey* (Manchester, 2018), p. 71. See also Luke Hubbard, *Hate Crime Report 2021: Supporting Victims of LGBT+ Hate Crime* (London, Galop, 2021), p. 45 (87 per cent of LGBT respondents had not reported hate crimes to the police).

<sup>23</sup> Equality and Human Rights Commission, *Submission to the UN Committee on the Rights of the Child: Children’s Rights in Great Britain* (2022), pp. 69–72.

<sup>24</sup> Northern Ireland Human Rights Commission, *The 2022 Annual Statement: Human Rights in Northern Ireland* (Belfast, 2022), pp. 239–241.

<sup>25</sup> *CRC/C/GBR/CO/6-7*, para. 47 (g). Moreover, the Committee expressed concerns regarding inadequate funding of mental health services for LGBT children, health inequalities for trans children and lack of inclusion in decisions on the legal recognition of their identities.

<sup>26</sup> See <https://www.justlikeus.org/wp-content/uploads/2023/05/Positive-Futures-report-by-Just-Like-Us-compressed-for-mobile.pdf>.

nothing in relation to [relationships and sex education]” one political party representative said in Northern Ireland. The representative added that “young children and teenagers are growing up in total ignorance”.

46. A leading organization working with LGBT youth in the United Kingdom expressed alarm that the Government was considering publishing education guidelines that could include advice to report the gender identities of trans children to their parents, which is contrary to the best interests of the child, in the light of the high rates of transphobic abuse in family environments. Additional efforts to exclude trans children from so-called single-sex spaces, from sports activities and potentially from physical education programmes in schools were also flagged as potentially damaging.

47. In some communities, LGBT rights organizations reported that LGBT children were being taken out of schools by parents who objected to relationships and sex education and health education lessons. As one non-binary trans young woman in Cardiff stated: “I got pulled out of sexuality classes that teach people about the existence of queer persons, so it was hard to get an education or have other people understand the issues that visibly queer and trans people face.” A trans rights activist in Northern Ireland likewise said that LGBT youth were frequently self-excluding from school and leaving school earlier with fewer skills and less access to further education or employability, compounding social exclusion. The Government of the United Kingdom informed the Independent Expert that, in England, there was no right to withdraw children from education that had LGBT-inclusive content.

48. Along with other special procedure mandate holders, the Independent Expert recently published a compendium of international standards on comprehensive sexuality education,<sup>27</sup> which was seen by one national human rights institution in the United Kingdom as very helpful to detoxify discourse in relation to relationships and sex education and health education in schools, which are self-governing on these issues.

49. In Scotland, the Cabinet Secretary for Social Justice and most of civil society reported that LGBT-inclusive education was a success, in particular the successful roll-out of extensive resources,<sup>28</sup> including modules drafted, developed and shared with educational professionals to help teachers to deliver LGBT-inclusive messages. The authorities indicated that additional education reform was upcoming, including to accommodate a public desire for parental input into the process, for example, by ensuring that parents know that inclusive education is age-appropriate and factual, contrary to what the officials described as inaccurate fearmongering in public rhetoric.

50. Authorities in Wales also presented good practices of public policymaking intended to improve the LGBT-inclusivity of relationships and sex education and health education available to children, to protect LGBT youth from bullying and the negative health consequences of discrimination in educational institutions. The government of Wales reported that it was developing school guidance for trans students, including broad consultations with religious organizations, parents, practitioners, experts, children and young persons, and the broader public, which would be presented for public comment during the months ahead, so that the guidance could be rolled out in 2024.

51. Those human rights-based public policymaking efforts are part of the comprehensive and inclusive relationships and sex education and health education platform in the LGBTQ+ Action Plan and the HIV Action Plan<sup>29</sup> of the government of Wales. Welsh authorities indicated that some groups opposed to LGBT-inclusive relationships and sex education in certain localities had spread misinformation about campaigns on the topic, which were aimed at creating anxiety among the public. The Ministry of Education had redoubled its efforts to produce strong educational campaign materials to disseminate positive messaging around mandatory relationships and sex education in Wales to counter that misinformation and correct the record on constructive efforts to discuss healthy relationships. A judicial review brought forward by some campaigners in late 2022 found in favour of the Welsh ministers

<sup>27</sup> See [www.ohchr.org/en/documents/tools-and-resources/compendium-comprehensive-sexuality-education](http://www.ohchr.org/en/documents/tools-and-resources/compendium-comprehensive-sexuality-education).

<sup>28</sup> See <https://lgbteducation.scot>.

<sup>29</sup> See [www.gov.wales/hiv-action-plan-wales-2023-2026](http://www.gov.wales/hiv-action-plan-wales-2023-2026).

on all grounds: the government of Wales reported that, in its view, that confirmed the government's policy that relationships and sex education was intended to keep children safe and to promote respect and healthy relationships.

### **C. Right to health**

52. Health care, especially in relation to mental health and sexual health, including HIV prevention and protection, was identified as a key area in which there were protection gaps and protection needs in the survey of LGBT persons carried out in 2017 in the United Kingdom. In England, the Department of Health and Social Care presented as an example of good practice that its treatment facilities were often co-located with prevention services, as a key facet of the implementation of its HIV Action Plan in partnership with the National Health Service, local authorities, the United Kingdom Health Security Agency and civil society organizations. It also highlighted the progress made in early HIV diagnosis, with an estimated 4,400 persons living in England with undiagnosed HIV in 2021. The Government of the United Kingdom highlighted that quality of care received by people living with HIV remained high, having met the 95-95-95 targets of the Joint United Nations Programme on HIV/AIDS for the second time in 2021, with 95 per cent of people living with HIV being diagnosed, 99 per cent of those diagnosed being on treatment and 98 per cent of those on treatment having an undetectable viral load. The authorities nonetheless reported that those sexual health services had been most utilized by men who have sex with men, whereas the need for improved services and cervical screenings for lesbian and bisexual women, and expanded provision of gender-affirming care for trans persons, had not been equally funded or as successful.

53. Gender identity services are specialized services that are commissioned nationally. There has been a sustained increase in the number of referrals in recent years, despite only limited clinical capacity, resulting in increasingly long waiting lists. With only a small pool of specialists in the area, authorities in England tried to increase capacity through funding, yet still faced a shortage of specialists. With clinical staff seeing patients waiting since 2019, waiting times were reportedly four years or more, although the current length of the waiting lists depended on the respective clinic. Since 2020, the National Health Service had rolled out five pilot clinics.

54. Across the United Kingdom, the Independent Expert received information from a variety of actors about the difficulties and delays that trans persons face in seeking gender-affirming care. One LGBT human rights organization put it in blunt terms: "kids are killing themselves in response to lack of care and horrendous waiting lists of young persons looking for gender-affirming care".

55. The Northern Ireland Civil Service reported that gender-affirming health and social care is provided to trans persons through the Regional Gender Identity Service, including through general practitioner referrals to transition care. However, current pathways for young persons were lacking and compounded by long waiting lists for adult pathways. The current waiting list for adult gender-affirming care was reportedly five years and four months, with 638 persons on the waiting list. For persons under 18, the waiting list for the "Know Our Identity" service was almost two years (91 weeks), with 51 individuals on the waiting list.

56. Political party representatives in Northern Ireland informed the Independent Expert that rates of "self-medication" by trans residents were very high due to the difficulty of accessing gender-affirming care through official channels. As a result, they reported that most trans persons they knew chose to self-fund or crowdfund to finance trips to other countries to get access to surgery or other forms of gender-affirming care. The dearth of gender-affirming care was also resulting in a mental health crisis among young trans persons, compelling many of them to leave Northern Ireland, seeing no future in which they would be able to live openly in their gender.

57. In Wales, the government highlighted its Welsh Gender Service Clinic for adults as an example of good practice, in terms of its provision of support to trans persons in gender-affirming care. A care provider working at the clinic noted the vital importance of timely intervention as regards the health needs of young persons – without which, medical

professionals know what happens, since they see those youths again in awful shape by the time that they reach the age of 18. In asking for an evidence basis for policy decisions on the denial of adequate resources for gender-affirming care, she noted, “we are asking for something wholly legal and wholly achievable” – an evidence-based policy framework that prioritizes the best interests of young persons. She further noted that there was sufficient paediatric and gender identity expertise in Wales to provide for an estimated 350 Welsh young persons currently stuck on the waiting list of nearly 7,500 patients in England and Wales.

#### **D. Right to housing and homelessness**

58. The Government of the United Kingdom informed the Independent Expert that there were significant data gaps in relation to the number of LGBT persons experiencing homelessness in the country, which was one of the main challenges in adopting effective policies in this area. For instance, only 3 per cent of persons accessing services for homeless persons were recorded as self-reporting as lesbian, gay or bisexual, whereas 22.6 per cent reportedly preferred not to give any details about their sexual orientation in survey data. Authorities noted that the lack of clarity in the data could also represent service providers’ unwillingness to ask service recipients about their sexual orientation and recording the data inaccurately as a result.

59. However, some relevant data existed to consider in the future for intersectional purposes, for instance, noting that Black persons were more likely, in particular, to experience homelessness than others. One civil society organization assisting homeless LGBT youth reported that 24 per cent of homeless young persons identified as LGBT; and 77 per cent of those persons believed that coming out to their parents was the main factor in their being homeless.

60. Another organization supporting LGBT persons experiencing homelessness noted that that it was particularly difficult to find safe accommodation for trans and non-binary persons in England and Wales. Compounding those challenges was the absence of conjoined services to provide for mental health, physical health and associated needs. The organization indicated that, among its beneficiaries, trans women in particular lacked recourse to public funds for shelter in the United Kingdom, especially trans women of colour or those without regular migration status. As one coordinator elaborated: “There are lots of helplines, lots of research, but there is nowhere for people to actually step in the door and be housed for that evening. We are given a pacifier amount of support.”

61. A trans man, himself a survivor of conversion practices in Wales, informed the Independent Expert about his experience helping LGBT persons experiencing homelessness, after having been rendered homeless himself: “We saw the same thing over and over again: that trans people do not feel safe going to homeless services in the first place and would rather sleep on a sofa or the street. ... We are seeing more and more trans people among LGBT people, and especially LGBT persons of colour.”

62. In Scotland, a women’s rights organization examined the performance of 173 social housing providers, 73 of which agreed to implement gender-inclusive approaches in housing that included trans women. However, only a few years later, the organization informed the Independent Expert that just nine of those providers were gender-inclusive on paper and only six or seven remained so in practice. That organization also indicated that data collection was a major problem, which likewise needed to be reconciled with training standards for service providers to gather accurate and useful data at service access points.

#### **E. Older persons**

63. The Independent Expert is encouraged to have received information about important initiatives that specifically aimed at understanding and acting in relation to LGBT older persons. An example is the development of one of the first purpose-built LGBTQ+ majority older persons’ housing schemes in the United Kingdom by Manchester City Council in partnership with businesses and civil society. Fulfilling the right to housing for LGBT older

persons through such programmes creates a safe and secure environment in which they can receive inclusive care and support in dignity, based on their needs and age. Older persons are experiencing the negative effects of social and political discourse as well, which increases their feelings of vulnerability, loneliness and isolation.

64. An additional issue for LGBT older persons is their access to health services. For example, only 12 per cent of LGBT older persons in Manchester reported that they had never experienced a mental health issue. As a 55-year-old community member from Manchester informed the Independent Expert: “I have a strong number of friends around me, but as I get older, they too will die and I may be left isolated.” Indeed, the prospect of being compelled to return to non-accepting families and communities, or of having their chosen relationships denied, was cited by many stakeholders as a pressing existential concern. Those concerns are exacerbated for LGBT older persons of colour.

## F. Prisons

65. Approximately 5 per cent of men and 31 per cent of women in prison identify as either homosexual or bisexual.<sup>30</sup> Official statistics on trans prisoners in England and Wales as of 2022 indicated that, out of a total of 78,058 prisoners, 230 identified and officially disclosed themselves as trans persons, including 187 trans women and 43 trans men. Approximately, 10 per cent of that officially recognized trans prison population in England and Wales self-identified as Black, Asian or another “minority ethnic” background.<sup>31</sup>

66. The authorities of the United Kingdom informed the Independent Expert that there had been incidents of suicides by trans women held in men’s prisons. In February 2023, the Government prohibited trans women charged with or convicted of a sexual or violent offence, or retaining male genitalia, from being held in women’s prisons, unless an exemption was granted by a minister. The excluding criterion of the presence of male genitalia is new, and significantly increased the challenges for trans women to be held in the women’s estate – whereas previously it existed as a criterion in the risk assessment prior to admission to women’s prisons but was not automatically an excluding criterion.

67. Representatives of political parties in Northern Ireland informed the Independent Expert that the detention of trans persons (especially, trans women) had been one of the most complex issues in public discussions about trans persons’ rights. As one of them put it: “Rationality seems to have evaporated. Yet, obviously, in detention no one is being set loose to harm others without supervision.”

68. The Northern Ireland Human Rights Commission indicated that, in its most recent meeting with prison services, prison staff felt that they were prepared to handle the situations of trans persons, yet it did not appear that there were any trans prisoners in the penitentiary system of Northern Ireland. In Scotland, the Cabinet Secretary for Social Justice confirmed the government’s duty of care to those in custody. The Independent Expert agrees, however, that with fewer than 10 trans persons in the women’s estate, the conversation currently occupies a disproportionate space in public discourse.

69. The government of Scotland informed the Independent Expert that, out of approximately 7,500 incarcerated individuals in Scotland, there were 15 trans individuals as of December 2022. Under the gender identity and gender reassignment policy of the Scottish Prison Service, there is no assumption that a trans woman would pose a risk to other prisoners in custody. The policy is underpinned by risk assessment to identify whether an individual (in a case-by-case analysis) would pose a risk to other inmates, to staff or to themselves. With such a small number of trans persons in custody, there was concern about the potentially harmful consequences of those individuals’ identities having been exposed and debated so publicly in the media and in Parliament. Even in cases of individuals who had been convicted but not yet sentenced, an official noted that privacy concerns had not stopped politicians from naming some of those individuals, which also resulted in the public airing and sharing of

<sup>30</sup> Prison Reform Trust, *Bromley Briefings Prison Factfile: January 2023* (London, 2023), p. 32.

<sup>31</sup> See <https://www.gov.uk/government/statistics/hm-prison-and-probation-service-offender-equalities-annual-report-2021-to-2022>.

views that were not completely accurate in relation to their cases. Such practices appeared to diverge from existing guidelines and good practices.<sup>32</sup>

## G. Asylum

70. The Home Office presented current and envisaged asylum policies to the Independent Expert, including provisions on the inadmissibility of claims that could effectually amount to an asylum ban, contrary to the standards of international refugee law to which the United Kingdom has agreed to be legally bound. On that issue, notwithstanding the autonomy of the Independent Expert under his mandate, he is in full agreement with the recent statements and interventions of the United Nations High Commissioner for Refugees in relation to the current and proposed legislation restricting access to asylum procedures in a fashion that would be contrary to refugee law.<sup>33</sup> LGBT persons could be specifically affected by any such ban and, for instance, forced to return to countries that criminalize persons on the basis of their sexual orientation and gender identity, or in which there are extremely hostile environments.<sup>34</sup>

71. In England, the Independent Expert met with LGBT asylum-seekers and organizations providing support services to them once they arrived in the United Kingdom. One of those organizations shared information in relation to 10 cases of alleged abuse against LGBT asylum-seekers in accommodation for asylum-seekers and refugees (including in hotels, houses and barracks).<sup>35</sup>

72. In Wales, another organization supporting LGBT asylum-seekers noted that their beneficiaries in some cases had not been asked about their sexual orientation and gender identity, indicating a need to improve and sensitize the language of reception agencies in order to be more accessible and clear. Without dedicated housing for LGBT asylum-seekers, trans asylum-seekers were also being housed with persons of different genders, which exposed them to increased risk of sexual violence and other abuses.

## H. Conversion therapy or practices

73. A trans woman survivor in Wales recounted a traumatic experience to the Independent Expert about being taken out of the United Kingdom for the purposes of conversion practices:

Something not talked about is that conversion therapy starts at home – where punitive measures like sending parents to jail are not going to work. There needs to be some education available on these matters. There is not enough understanding that one can be kidnapped essentially for conversion therapy. And since I have been back, there has been no support for people who have experienced conversion therapy, for instance it took me seven years to get treatment for PTSD, which I just started last week. ... I attempted suicide while in my parents' custody. ... All that I could find even now is a phone line for conversion therapy. And a phone line isn't enough; there is not enough dedicated support to help people understand. It took a long time before I even realized what had happened to me.

74. In October 2022, the Government of the United Kingdom launched the Victim Support Service for anyone affected by or at risk of conversion practices, regardless of their sexual orientation or gender. The service comprises a helpline, instant messaging service and website, and signposts appropriate support options, such as counselling, options for how to make a report to the police and recourse to other public services, such as advice about emergency housing.

<sup>32</sup> See [www.apr.ch/sites/default/files/publications/apr\\_20181204\\_towards-the-effective-protection-of-lgbti-persons-deprived-of-liberty-a-monitoring-guide-final.pdf](http://www.apr.ch/sites/default/files/publications/apr_20181204_towards-the-effective-protection-of-lgbti-persons-deprived-of-liberty-a-monitoring-guide-final.pdf).

<sup>33</sup> See [www.unhcr.org/countries/united-kingdom-great-britain-and-northern-ireland](http://www.unhcr.org/countries/united-kingdom-great-britain-and-northern-ireland).

<sup>34</sup> See [www.independent.co.uk/news/uk/home-news/rwanda-asylum-seekers-home-office-uk-b2075674.html](http://www.independent.co.uk/news/uk/home-news/rwanda-asylum-seekers-home-office-uk-b2075674.html).

<sup>35</sup> See [www.rainbowmigration.org.uk/publications/lgbtqi-peoples-experiences-of-immigration-detention-a-pilot-study](http://www.rainbowmigration.org.uk/publications/lgbtqi-peoples-experiences-of-immigration-detention-a-pilot-study).

75. A trans man survivor of conversion practices in Wales also reported failures by law enforcement authorities to identify, halt and prevent repetition of human rights violations resulting from such practices: “It was a corrective rape kind of situation with my brother. He literally fled the country, and [the police] did nothing. My family are also very religious, and they were very against the police being involved. ... I was terrified and I knew that if I went to a women’s shelter the same would happen to me.”

76. A non-governmental organization indicated that official statistics in the United Kingdom on the frequency of conversion practices were overly narrow and less extensive than national statistics gathered by civil society. The latter show that 20 per cent of LGBT persons had reported being subjected to conversion practices in the United Kingdom. An estimated 25 per cent of sexual assaults against LGBT persons were also reportedly intended to punish or change someone’s sexual orientation or gender identity – including through heinous sexual violence (so-called “corrective rape”), forced marriage and other abuses. LGBT youth under 25 years old are most likely to be subjected to such violations.

77. Police reportedly returned victims of conversion practices to their abusers in some cases, particularly when those abusers were family members. In that regard, one of the main reported failures of authorities in the United Kingdom has been to recognize when conversion practices have happened (as opposed to encouraging survivors simply to recognize that the perpetrators are homophobic or transphobic).

78. A ban on conversion practices enjoys significant support in Parliament and therefore the Independent Expert finds the political vicissitudes of repeatedly promised legislation particularly perplexing. The Government first pledged to ban conversion practices in 2018. The ban was then abandoned entirely, repledged without protection for trans persons and then delayed several times. The Independent Expert recalled in several meetings his global call to end conversion practices. The Government of the United Kingdom informed him that it had finalized consultations in relation to draft legislation for England and Wales and that it was committed to publishing the draft legislation for scrutiny during the parliamentary session ending in autumn 2023.

79. The government of Wales indicated that it remained unclear whether the Government of the United Kingdom would deliver on its manifesto commitments to ban conversion practices, and that the devolved administrations were currently waiting for updates without operational solutions to ongoing human rights violations. Furthermore, it informed the Independent Expert that it was proceeding with the roll-out of support services for survivors through a programme to be launched in 2024 – noting correctly that government authorities could proceed with meaningful policy measures, even while the Government of the United Kingdom finalized the legislation for England and Wales.<sup>36</sup>

80. In Northern Ireland, political party representatives noted that efforts to ban conversion practices, as with all LGBT human rights issues, had been highly polarizing and had not made progress due to possible political costs. Nonetheless, they noted that approximately one quarter of LGBT persons experienced domestic abuse, which was another reason for domestic abuse legislation to be utilized to address conversion practices in the home, rather than waiting to do so under the auspices of stand-alone legislation. In that regard, there are already new coercive control laws in force in Northern Ireland that pertain to domestic abuse (and not just by partners, but also family members). Accordingly, law enforcement authorities already have the power under existing legislation to address ill-treatment in the context of conversion practices, if they are willing to do so.

81. The Northern Ireland Human Rights Commission noted that the Independent Expert’s past analysis and definition of conversion practices<sup>37</sup> had already been raised during the co-design of the draft LGBTIQ+ strategy in Northern Ireland, although its finalization and subsequent implementation had been delayed because of the political deadlock. The government of Scotland highlighted its own approach to legislation on ending conversion

<sup>36</sup> After the visit, the government of Wales reported having set up a working group on banning conversion practices, which advises on actions, including research, awareness and support for survivors ([www.gov.wales/working-group-banning-conversion-practices](http://www.gov.wales/working-group-banning-conversion-practices)).

<sup>37</sup> See A/HRC/44/53.



practices, which included both protective measures and prohibitions. The government now intends to publish a public consultation on its proposals before bringing forward legislation to Parliament.

## **V. Conclusions and recommendations**

### **A. Conclusions**

82. **The United Kingdom and its devolved government authorities have developed strong frameworks incorporating national and international standards for the protection of LGBT persons' human rights. Nevertheless, the policy directions are not monolithic or always aligned across the four nations of the United Kingdom.**

83. **LGBT persons, as well as LGBT-led and LGBT-serving organizations, conduct their lives and work in the United Kingdom under the extreme pressure and hostility of a public debate that questions and undermines the protection of their human rights – rights that are directly connected to their dignity and, in some cases, their very existence.**

84. **During his visit, the Independent Expert met with diverse stakeholders who uniformly described the current political and social environment in the United Kingdom as toxic. Nonetheless, all of those whom he met declared themselves unable to suggest a winning formula to make inroads into a situation that has been driven to a such state of acrimony.**

85. **For that reason, the Independent Expert reaffirmed his calls upon authorities to utilize and expand the robust disaggregated data in their possession, to examine the evidence that they have gathered and to engage in a principled policymaking process to close protection gaps and effectively meet the particular needs of persons experiencing violence and discrimination on the basis of their sexual orientation or gender identity.**

86. **In some cases, those gaps included protection from violence and discrimination on the streets, in mass and online media, in educational institutions, in the provision of health care, in access to housing, in places of detention and in legal processes to request asylum. Through principled policymaking processes, and increased responsiveness to robust data identifying the needs of LGBT persons, the United Kingdom and the devolved national authorities have an abundance of good practices to share and replicate across the country. Nonetheless, human rights protection and progress in that regard have been uneven, with political opportunism threatening to polarize compliance with binding national and international human rights standards, at the cost of people's dignity, well-being and, in some cases, lives.**

### **B. Recommendations**

87. **Based on these conclusions and the observations made in the present report, the Independent Expert makes the following recommendations to the Government of the United Kingdom and the devolved administrations in relation to their respective competences.**

88. **With regard to legal and policy frameworks, the Government of the United Kingdom and the devolved administrations should:**

(a) **Simplify the administrative process of legal recognition of gender identity, in accordance with internationally recognized good practices of legal recognition of gender identity based on self-determination by the applicant, without abusive requirements, including for non-binary persons and children;**

(b) **Halt and reject any efforts to remove or diminish existing human rights protections under the law and policy frameworks of the United Kingdom – including protection of refugees under the asylum system and protection of trans persons under the Equality Act 2010;**

(c) Ensure the independence of the national human rights institutions of the United Kingdom from government influence in reviewing and remedying any apparent breaches of the State's human rights obligations.

89. With regard to data collection and management, the Government of the United Kingdom and the devolved administrations should:

(a) Gather data on sexual orientation and gender identity at the central, national and local levels at all relevant service access points, to better guide implementation of services, including by closing information and protection gaps in census data;

(b) Direct the Office for National Statistics to collect and evaluate the interplay of intersectional data, in order better to inform effective human rights-based public policymaking and delivery of services to beneficiaries without discrimination;

(c) Improve mechanisms to integrate official statistics and strong data collection mechanisms into the provision of funding and services for all LGBT persons without discrimination based on their identified needs (such as in the areas of health, housing and law enforcement).

90. With regard to protection against bias-motivated violence and hate speech, the Government of the United Kingdom and the devolved administrations should:

(a) Ensure, through all necessary means, that homophobic, biphobic and transphobic hate crimes are effectively investigated, accurately categorized and prosecuted, and that those found guilty are punished with sentences commensurate with the gravity of the offence, whereas victims are provided with effective remedies;

(b) Carry out awareness-raising campaigns among parents, families and communities on sexual and gender diversity, aimed at reducing intra-family violence against LGBT persons and rejection by their family.

91. With regard to the right to education, the Government of the United Kingdom and the devolved administrations should:

(a) Strengthen comprehensive sexuality education materials – and adopt effective school policies and campaigns to disseminate those resources – to counter misinformation, discrimination and violence affecting students;

(b) Ensure the inclusion of sexual orientation and gender identity in all relevant educational materials, including teacher training and student textbooks, to promote human rights education and to reduce violence and discrimination in educational institutions.

92. With regard to the right to health, the Government of the United Kingdom and the devolved administrations should:

(a) Ensure that persons of diverse sexual orientations and gender identities have access to mental health support and treatment specific to their needs and delivered by trained medical providers;

(b) Take concrete actions to reduce the years-long waiting times and waiting lists for gender-affirming health care and associated services;

(c) Identify and address disparities in the physical, mental and sexual health of persons of diverse sexual orientations and gender identities, with a view to integrating their specific needs into public health policies – ensuring that all LGBT persons are equally included and enabled to access services, irrespective of age, race or other characteristics.

93. With regard to the right to housing, the Government of the United Kingdom and the devolved administrations should:

(a) Effectively meet the service needs of LGBT persons experiencing homelessness, by closing data gaps that undermine effective policymaking, and require

improved training for housing service providers to gather accurate and useful data at service access points on the sexual orientation and gender identity of beneficiaries;

(b) At service points, identify the cross-cutting needs of LGBT persons experiencing homelessness, including in situations in which their housing insecurity has been affected by discrimination and violence in the community, family, schools or otherwise, in order to connect them with all services necessary to improve their situations;

(c) Improve access to safe accommodation for trans and non-binary persons, particularly trans women of colour or those without regular migration status.

94. With regard to older persons, the Government of the United Kingdom and the devolved administrations should:

(a) Identify protection gaps for LGBT older persons, including in their access to health care, employment and other services, and intersectional discrimination that exposes them to increased rates of violence, abuse, neglect, isolation and poverty;

(b) Identify, exchange and replicate good practices adopted by authorities and civil society across the United Kingdom, including purpose-built initiatives for LGBT older persons to access housing, health care and other social services without discrimination.

95. With regard to prisons, the Government of the United Kingdom and the devolved administrations should:

(a) Improve documentation of the number and situations of LGBT persons in detention, and apply human rights-based policies and guidelines on their treatment in detention that take into consideration their particular needs and situations of vulnerability;

(b) Consult trans and other gender-diverse persons in detention on their protection needs, and assess risks to those individuals and others on a case-by-case basis.

96. With regard to asylum, the Government of the United Kingdom and the devolved administrations should:

(a) Halt the adoption and application of laws and policies that constitute “refoulement in disguise” – including the “extraterritorialization” of asylum procedures to third countries, and other denials of access to asylum procedures – which deny LGBT persons’ access to protection from violence and discrimination;

(b) Engage and implement the advice and remedial recommendations of the Office of the United Nations High Commissioner for Refugees where it has identified laws, policies and practices contrary to international refugee law;

(c) Ensure reception agencies are accessible to LGBT persons, including by improving and sensitizing reception language to support their self-identification as such;

(d) Provide dedicated housing for LGBT asylum-seekers and ensure trans asylum-seekers are consulted on their needs, including when not to be housed with persons of different genders.

97. With regard to conversion practices, the Government of the United Kingdom and the devolved administrations should:

(a) Finalize consultations and adopt legislative bans on conversion practices, which have been pending in England and Wales since 2018;

(b) Ban practices of conversion therapy from being advertised and carried out in health-care, religious, educational, community, commercial or any other settings, public or private. Carry out campaigns to raise awareness among parents, families and communities about the invalidity and ineffectiveness of and the damage caused by conversion practices;

(c) Proceed with the proactive roll-out of effective support services for survivors, without waiting for legislative bans to adopt the necessary protection measures and effective remedies;

(d) Apply criminal laws on domestic abuse and coercive control to cases of conversion practices, including within families where applicable, prior to and in concert with the legislative ban on such practices;

(e) Train law enforcement authorities to correctly identify, halt and prevent repetition of conversion practices, including within families and communities.

98. With regard to awareness-raising, the Government of the United Kingdom and the devolved administrations should disseminate widely the relevant findings of the present report to central, national and local authorities to share and consider the replication of good practices, as well as to address any identified protection gaps.

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