

Mandates of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on minority issues and the Working Group on discrimination against women and girls

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25 March 2025

Excellency,

We have the honour to address you in our capacities as Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Special Rapporteur in the field of cultural rights; Special Rapporteur on the right to education; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on minority issues and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 50/10, 55/5, 53/7, 52/9, 50/17, 52/5 and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the **Executive Order on Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government (Executive Order 14168) issued on 20 January**, the **Executive Order on Prioritizing Military Excellence and Readiness (Executive Order 14183) issued on 27 January**, and the **Executive Order on Keeping Men Out of Women's Sports (Executive Order 14201)**. In our assessment, the measures encompassed by the three Executive Orders are far-reaching and cross-sector in scope. As such, they raise concern among the experts as a discriminatory set of measures focused on social and political exclusion on the basis of gender identity and expression, which may result in severe infringements on the rights of lesbian, gay, bisexual, transgender and gender diverse persons (LGBT persons). In addition, the definitions included in the Orders on gender and sex run contrary to accepted definitions under international human rights law and are further based on harmful stereotypes, misinformation, and the rejection of sexual and gender diversity. The experts are therefore concerned these measures may have long-term and devastating impacts on the ability of your Excellency's Government to respect, protect and promote the rights of all citizens, including LGBT, and intersex persons who are entitled to equal protection of their rights as enshrined in the Universal Declaration of Human Rights and core international human rights treaties to which the United States is a party.

1. Background

Between January and February 2025, your Excellency's Government issued three Executive Orders concerning gender identity and sexual orientation. On 20 January 2025, the President signed Executive Order 14168, "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government" ("E.O. 14168-Gender Ideology"). One week later, on 27 January and 5 February, respectively, the Executive Order 14183, "Prioritizing Military Excellence

and Readiness” (“E.O. 14183-Military Excellence”), and the Executive Order 14201, “Keeping Men Out of Women’s Sports” (“E.O. 14201-Sports”) were signed into effect.

E.O. 14168-Gender Ideology includes the following, non-exhaustive list of concerning provisions:

Section 2 mandates that all federal agencies recognize only two sexes — male and female — as biologically immutable and defined strictly by reproductive function at conception (sec. 2(a)-(e)) and explicitly rejects gender identity as distinct from sex and as a basis for legal recognition (sec. 2(f)-(g)). The additional Executive Orders detailed in this letter, E.O. 14183-Military Excellence and E.O. 14201-Sports, also incorporate these definitions by reference.

Section 3 directs federal agencies to enforce laws and policies governing rights, protections, opportunities, and accommodations in alignment with the definitions set forth in section 2 (sec. 3(a)-(b)), replace “gender” with “sex” in official documents (sec. 3(d)), and remove all statements, policies, and regulations that promote “gender ideology” (sec. 3(e)). It further requires federal agencies to ensure that government-issued identification documents reflect biological sex only (sec. 3(d)) and replace references to “gender” with “sex” in federal documents (sec. 3(e)). Section 3 also ceases funding for programs that promote so-called “gender ideology” (sec. 3(g)).

Section 4 establishes policies to ensure that certain gender-specific facilities and spaces, including prisons and detention centers, federal housing and shelters, and “intimate spaces”, are based strictly on biological sex rather than gender identity (sec. 4(a), (b), (d)). It also prohibits any medical treatment, drugs, and procedures for incarcerated persons “for the purpose of conforming an inmate's appearance to that of the opposite sex” (sec. 4(c)).

Section 5 directs the Attorney General to issue guidance protecting the “freedom to express the binary nature of sex and the right to single-sex spaces in workplaces and federally funded entities”, and mandates federal agency heads to prioritize enforcement of the purported “freedom to express the binary nature of sex and the right to single-sex spaces” in accordance with the EO 14168 (sec. 5).

Section 7 directs federal agencies to rescind conflicting guidance documents (sec. 7(c)) and to report on their progress in implementing the EO 14168 (sec. 7(a)). It also dissolves the White House Gender Policy Council and overrides provisions in previous executive orders that interpret sex discrimination laws to cover gender identity and sexual orientation and combat discrimination on the bases of gender identity and sexual orientation (sec. 7(b)).

E.O. 14183-Military Excellence includes the following, non-exhaustive list of concerning provisions:

Section 2 asserts that the U.S. policy to establish high standards for military readiness is “inconsistent with the medical, surgical, and mental health constraints on individuals with gender dysphoria” and with pronoun usage that aligns with service members’ gender identity.

Section 4 directs the Secretary of Defense to update medical standards for military service to reflect the policy and purpose of E.O. 14183 (sec. 4(a)) and issue directives to ban the use of self-identified pronouns (sec. 4(b)). It also mandates separate sleeping, changing, and bathing facilities by “sex”, absent extraordinary operational necessity (sec. 4(d)). The Secretary of Defense and the Secretary of Homeland Security must provide further directives and guidance on the implementation of this Order (sec. 4(c), 4(e)).

Section 5 revokes Executive Order 14004, “Enabling All Qualified Americans to Serve Their Country in Uniform” (“E.O. 14004”), which enabled transgender individuals to serve openly in the U.S. military, and rescinds all policies, directives, and guidance issued pursuant to E.O. 14004.

E.O. 14201 includes the following, non-exhaustive list of concerning provisions:

Section 1 suggests that allowing “men to compete in women’s sports” is “demeaning, unfair, and dangerous to women and girls, and denies women and girls the equal opportunity to participate and excel in competitive sports.” It then asserts that the U.S. policy is to rescind all funds to educational institutions and athletic associations that do not discriminate against trans women, citing “safety, fairness, dignity, and truth.”

Section 3 directs the Secretary of Education to enforce a court decision that vacates a rule protecting gender identity in educational settings (sec. 3(a)(i)), to revise federal regulations and policy guidance to exclude trans women and gender-diverse individuals from women’s sports and locker rooms (sec. 3(a)(ii)), and to investigate and penalize educational institutions and athletic associations that allow trans women and gender-diverse individuals in women’s sports, prioritizing action against such institutions and associations (sec. 3(a)(iii)). It also instructs executive departments and federal agencies to rescind funding to programs that do not comply with this Order (sec. 3(b)).

Section 4 expands the reach of the order beyond U.S. educational institutions and local athletic associations to national and international athletic organizations and their governing bodies. For example, it directs the Assistant to the President for Domestic Policy to convene representatives of major athletic organizations and governing bodies and State Attorneys General to promote sex-based policies in sports (sec. 4(a)(i)-(ii)). It orders the Secretary of State to withdraw support for international sports programs that allow gender identity-based participation (sec. 4(b)(i)) and promote sex-based eligibility standards in global sports organizations, including at the United Nations and International Olympic Committee (sec. 4(b)(ii), 4(d)). It also directs the Secretary of State and the Secretary of Homeland Security to review and restrict visa eligibility for transgender women seeking to compete in women’s sports in the United States and to deny entry to trans and gender-diverse athletes under immigration laws that bar fraudulent or misleading self-identification (sec. 4(c)).

In accord with E.O. 14168, E.O. 14183, and E.O. 14201, as of 28 February 2025, federal agencies and executive departments have taken the following non-exhaustive list of concerning policy and regulatory actions:

On 24 January 2025, the U.S. State Department suspended its policy allowing transgender, intersex, and nonbinary persons to update the sex designation on their passports, eliminated the X gender as an option, and removed guidance detailing procedures for amending gender markers on passports. The State Department eliminated references to transgender and intersex travelers on international travel advisories. The State Department also issued guidance providing that immigrant and nonimmigrant visa applicants identify their sex as either male or female and that all visas must reflect an applicant's sex at birth, while authorizing consular officers to deny visas if there is reasonable suspicion that an applicant's listed sex does not match their sex assigned at birth.

On 10 February 2025, the Defense Secretary directed the U.S. military to immediately pause integration of transgender and gender-diverse recruits and suspend all gender-affirming medical procedures for active-duty service members. On 26 February 2025, the Department of Defense issued guidance banning transgender and gender-diverse persons from military service and directing that active-duty transgender and gender-diverse persons be "processed for separation from military service".

On 7 February 2025, the Housing and Urban Development Secretary announced that the Department of Housing and Urban Development would stop enforcing a 2016 policy ensuring equal access to housing programs and shelter spaces for individuals based on their gender identity, thereby allowing for gender-based discrimination.

On 19 February 2025, the Health and Human Services ("HHS") Secretary issued guidance establishing strict sex-based definitions for gender classifications with sex defined as a person's immutable biological classification as either male or female. On 20 February 2025, HHS Office for Civil Rights rescinded a 2022 policy establishing a framework for applying federal civil rights and patient privacy laws to support gender-affirming care.

On an undisclosed date in February 2025, the Department of Homeland Security ("DHS") Office of Intelligence and Analysis removed from its policy manual rules prohibiting surveillance based solely on sexual orientation or gender identity.

On 27 February 2025, the Federal Bureau of Prisons eliminated guidelines protecting transgender and intersex persons in federal prison, including protections on housing placement for incarcerated persons and search accommodations, namely being searched by guards according to their gender.

While we recognize the prerogative of issuing Executive Orders that aim to advance legitimate purposes, we consider these Executive Orders (E.O. 14168-Gender Ideology, E.O. 14183-Military Excellence, and E.O. 14201-Sports) to present serious challenges to your Excellency's Government's compliance with the principles of non-discrimination and equality, subsequently affecting a broad intersection of rights for LGBT and gender-diverse people and others. In particular, we are gravely concerned about the right to employment, economic exclusion and access to public service (military exclusion); the right to education and to take part in cultural life, which includes access to and participation in sports for adults and children; the right to express one's identity, without discrimination; the right to health and gender affirming care; the

right to access information (freedom of opinion and expression) and resources, particularly on sexual orientation and gender identity; the prevention of torture, and cruel, or inhuman and degrading treatment—a jus cogens norm—; and the rights of migrants, asylum seekers, and requirements for international protection. The experts raise particular concern given the requirement that restrictions or limitations to human rights comply with legality, necessity and proportionality under international human rights law. As such, beyond falling short on the basis of equality and non-discrimination on the face of the Orders, these measures may fail to meet the thresholds for legality, necessity, and proportionality for restrictions to rights under international human rights law. It is apparent to the experts that the measures too have significant impact on important institutions that serve individuals and communities, including such departments, agencies, schools, athletic associations and other entities that have decades old institutional frameworks aimed at complying with domestic and international law that protect human rights, particularly of LGBT persons.

We detail hereunder the main human rights norms, standards and principles affected by the Executive Orders:

1. Non-discrimination, equality, and legal recognition

As an overarching matter, we recall articles 1 and 2 of the Universal Declaration of Human Rights (“UDHR”) enshrine the core principles of equality and non-discrimination under international law. These principles are reaffirmed by other human rights treaties, to which your Excellency’s Government is party, including articles 2(1) and 26 of the International Covenant on Civil and Political Rights (“ICCPR”), ratified by the United States of America on 8 September 1992, article 2(2) of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), signed by the United States of America on 5 October 1977, articles 1-3 of the Convention on the Elimination of all Forms of Discrimination against Women, signed by the United States of America on 17 July 1980, articles 1 and 2 of the Convention on the Elimination of all Forms of Racial Discrimination, ratified by the United States of America on 21 October 1994, and article 2(1) of the Convention on the Rights of the Child, signed by the United States of America on 16 February 1995.

We further recall resolution 32/2 of the Human Rights Council, where the Council reaffirmed that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the UDHR and strongly deplored acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity.

Non-discrimination is a foundational principle of international human rights law, ensuring that all individuals can access rights and opportunities without bias based on sex, gender identity, or other protected characteristics. The E.O. 14168-Gender Ideology establishes a strict biological sex classification across federal law and policy, effectively removing legal recognition of gender identity for transgender and intersex individuals. By redefining sex in federal law as binary and immutable, this order may erase the legal existence of transgender, intersex, and gender-diverse people from anti-discrimination protections, removing federal protections against discrimination based on gender identity and sexual orientation in, inter alia, education, healthcare, housing, and employment and effectively legalizing discrimination against them in all federal

programs.

The three Executive Orders require that pronouns and chosen gender be removed from government correspondences and documentations (e.g. passports and government IDs) and that spaces be designated based on sex rather than gender. Such measures may result in (1) a lack of gender-appropriate available spaces for transgender individuals, (2) increased profiling, (3) inequitable access to public facilities, (4) and the inability of LGBT individuals to fully express themselves in gender-affirming environments. In this regard, LGBT individuals may choose not to or simply be unable to participate in facets of public life and some private spaces. Any measures that seek to exclude transgender persons from legal recognition, education, employment, etc., or that seeks to invalidate their identity undermine the right of transgender individuals to self-identification and self-determination to freely determine their identity and life choices. LGBT individuals, like all individuals, have a right to privacy under international law which protects them from the arbitrary interference by the State of their personal and family life, including their home, correspondence, and reputation. These Orders raise concerns about LGBT individuals' right to privacy, self-determination and equal access to legal identity.

We would like to draw your attention, in particular, to the Human Rights Committee's General Comments and jurisprudence on relevant provisions of the International Covenant on Civil and Political Rights (ICCPR), acceded to by the United States of America on 8 September 1992. In its general comment No. 18, the Committee clarified that "discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms." (CCPR/C/21/Rev.1/Add.1, general comment No. 18, para 7). Furthermore, the Committee has found that States have a legal obligation to ensure to everyone the rights recognized by the Covenant without discrimination on the basis of sexual orientation or gender identity.¹ We are deeply concerned that E.O. 14168-Gender Ideology promotes precisely the contrary. In 2023, the Committee welcomed U.S. laws and policies that advance equality and prevent and combat discrimination, such as the Respect for Marriage Act, Executive Order 14075, "Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals," and Executive Order 13988, "Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation." (CCPR/C/USA/CO/5, para. 3(a)).

Further, trans and gender-diverse people are subject to various forms of violence, discrimination or social exclusion (A/HRC/38/43, paras. 40-44). In this regard, States should adopt all measures necessary to eliminate the social stigma associated with gender diversity, including the development, implementation and evaluation of an education and sensitization campaign, and in particular, all measures necessary to protect trans and gender-diverse children from all forms of discrimination and violence, including bullying, by raising public awareness and implementing safety and support measures (*Ibid.*, paras. 96, 97(a)-(d), A/73/152, para. 79 (b)).

¹ See, e.g., CCPR/C/89/D/1361/2005: X v. Colombia. (2007); CCPR/C/78/D/941/2000: Young v. Australia (2003); CCPR/C/50/D/488/1992: Toonen v. Australia (1994); E/C.12/GC/20. (2009), para 32 & footnote 25

We wish to draw the attention of your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), signed by the United States of America on 5 October 1977, which recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In its concluding observations, the Committee on Economic, Social, and Cultural Rights has urged the adoption of legislation to protect LGBT and intersex persons from discrimination² and has praised States for the adoption of such legislation.³

In 2016, the Committee explained that non-discrimination: "[. . .] encompasses the right of all persons, including lesbian, gay, bisexual, transgender and intersex persons, to be fully respected for their sexual orientation, gender identity and intersex status. [. . .] State parties also have an obligation to combat homophobia and transphobia, which lead to discrimination, including violation of the right to sexual and reproductive health" (E/C.12/GC/22: CESCR general comment No. 22, para. 2). While your Excellency's Government has not ratified the ICESCR, the United States Government agreed to bind itself in good faith to ensure that nothing is done that would defeat the object and purpose of the international instrument, pending a decision on ratification.

We would also like to draw your attention to the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW"). According to article 1 of the Convention, "discrimination against women" means any distinction, exclusion, or restriction made on the basis of sex which impairs or nullifies the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field. Gender-based discrimination constitutes persecution directed against women because they are women or that disproportionately affects women. Article 2(d) of CEDAW requires States to avoid discriminatory practices and ensure public authorities comply. Article 2(g) mandates repealing discriminatory national laws. Article 5(a) obliges states to eliminate gender stereotypes and prejudices. Article 16(e) guarantees women equal rights in deciding "freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."

The Committee on the Rights of the Child ("CRC") likewise interpreted the right to non-discrimination in article 2 of the Convention on the Rights of the Child to include sexual orientation, (CRC/GC/2003/4: CRC general comment No. 4, para. 6; CRC/GC/2003/3: general comment No. 3, para. 8), as well as gender identity (CRC/C/GC/13: general comment No. 13; CRC/C/GC/15: general comment No. 15). In concluding observations, the Committee has raised concerns about legislation that does not protect individuals from discrimination on the grounds of sexual orientation or gender identity and about inadequate efforts to combat such discrimination. The Committee also acknowledged that transgender adolescents face persecution, including abuse and violence, stigmatization, discrimination, bullying, exclusion from education

² See, for example, E/C.12/HND/CO/2, E/C.12/SDN/CO/2, E/C.12/ITA/CO/5, E/C.12/IRQ/CO/4, E/C.12/UGA/CO/1, E/C.12/1/Add.107, E/C.12/1/Add.80.

³ E/C.12/ALB/CO/2-3, E/C.12/1/Add.35, E/C.12/1/Add.70, E/C.12/LIE/CO/1, E/C.12/MCO/CO/1, E/C.12/CO/BRA/2.

and training, as well as a lack of family and social support, or access to sexual and reproductive health services and information. In extreme cases, they face sexual assault, rape and even death. These experiences have been linked to low self-esteem, higher rates of depression, suicide and homelessness (CRC/C/GC/20: general comment No. 20, para. 33). In light of this, the Committee urged States to take effective action to protect transgender adolescents from all forms of violence, discrimination or bullying by raising public awareness and implementing safety and support measures (*Ibid.*, para. 34).

We wish to express our concern about the Executive Orders that would deprive trans and gender diverse people of the right to legal recognition, and their right to self-determination, which contravene international human rights standards. International human rights law acknowledges that everyone has the right to recognition as a person before the law, including persons of diverse gender identities. Such human rights standards are included in article 6 of the Universal Declaration of Human Rights, article 16 of the ICCPR, article 15 of the CEDAW, and article 8 of the Convention on the Rights of the Child.

In addition, there are concerns that trans and gender-diverse persons whose identity is not adequately recognized suffer denial of the right to health; discrimination, exclusion and bullying in education contexts; discrimination in employment, housing and access to social security; violations of the rights of the child; and arbitrary restrictions on the rights to freedom of opinion, expression, peaceful assembly and association, the right to take part in cultural life, the right to freedom of movement and residence and the right to leave any country including one's own (A/73/152, para. 23). Equal recognition before the law is a basic element in a well-functioning framework for protection from arbitrary arrest and detention, torture and ill-treatment, as it is well established that in all situations of deprivation of liberty, the proper identification of the individual is the first guarantee of State accountability (*Ibid.*, para. 24). In light of these conclusions, States should enact gender recognition systems concerning the rights of trans persons to change their name and gender markers on identification documents based on the procedures that ensure due respect for free and informed choice and bodily autonomy - in particular, based on self-determination by the applicant (*Ibid.*, para. 81 (d) (i)).

2. The right to employment, economic exclusion, and access to public service (military exclusion)

These Orders may reshape federal workplace policies, hiring practices, and access to job-related benefits, eroding anti-discrimination protections and introducing legal and structural barriers to employment. Executive Order 14168-Gender Ideology mandates that federal agencies apply a strict binary definition of sex, removing gender identity from workplace protections. Transgender, intersex, and gender-diverse employees in federal agencies, federal contractors, and federally funded programs may face termination, demotions, or hostile work environments without legal recourse, and employers may be empowered to deny gender-affirming accommodations, such as restroom access and name/pronoun recognition. Federal agencies and federally funded employers may be required to classify employees strictly by sex assigned at birth. Transgender, intersex, and gender-diverse applicants may be barred from consideration for gendered roles, especially in agencies and fields where sex-based hiring is enforced

(e.g., law enforcement, healthcare, and corrections). The cumulative impact of employment discrimination, job loss, and exclusion from federal careers increases financial insecurity for transgender and gender-diverse persons leading to worsening economic disparities and heightened risks of homelessness.

The text of E.O. 14183-Military Excellence suggests that transgender and gender-diverse individuals will be excluded completely from service in the military on the basis of their gender identity, presenting a harmful and inaccurate narrative that military “excellence and readiness” is hindered by service of the thousands of transgender military servicemembers. This Order seems to wholly exclude openly transgender members of the military who are currently serving, deeming them no longer fit, and prevents transgender individuals from being recruited to the military. It presents harmful and inaccurate discriminatory rhetoric that “adoption of a gender identity inconsistent with an individual’s sex conflicts with a soldier’s commitment to an honorable, truthful, and disciplined lifestyle, even in one’s personal life.” This language presents a facially discriminatory approach that not only openly excludes transgender individuals from the military but also suggests that your Excellency’s Government may proceed with invasive and arbitrary processes to ascertain and make its own determination of the sex and gender identity of service members. The disqualification of a segment of the population from public service in the military on this discriminatory basis may also result in compounding violations to economic, social and cultural rights, including because the military continues to be a meaningful source of employment and service for low-income individuals. Exclusion impacts not only employment opportunities, but access to health and other services. Through these orders, transgender women in the military are not allowed to sleep, change, or bath in the facilities designated for females, nor allow females to use or share sleeping, changing, or bathing facilities designated for male. We raise serious concerns about the equal rights of citizens to access public service in their country, the right to work, the right to economic security, and the right to participate in public life.

Additionally, E.O. 14183-Military Excellence raises serious questions and fears among those individuals who are already in service in the military and may either face increased discrimination or be forced to hide their gender identity. Policies that force individuals to hide their gender identity in the context of military service are likely to only exacerbate stigmatization, including verbal and physical forms of violence experienced by transgender individuals. This order appears to undermine the right of self-determination for transgender individuals, preventing them from freely determine not only their political status but their economic, social and cultural development by participating in the military.

Under international law obligations such as the ICCPR, States have an obligation to prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on grounds such as gender identity.

The Committee on Economic, Social and Cultural Rights has stated that the CESCR requires States, to “guarantee through law the exercise of the right [to work] without discrimination of any kind as to ... sexual orientation, gender identity, intersex status” (E/C.12/GC/23: general comment No. 23, para 65(a); E/C.12/GC/18: general comment No. 18, para 12(b)(1)). This obligation includes ensuring that hiring, promotion and termination are not discriminatory against LGBT individuals (*Ibid.*). We

are concerned that the language of E.O. 14183, suggesting that transgender and gender diverse individuals will be excluded completely from serving in the United States military based on their gender identity, contravenes this principle.

The Human Rights Council expressed grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity (A/HRC/RES/17/19, 27/32, 32/2 and 41/18). In this connection, we wish to draw your attention to the United Nations High Commissioner for Human Rights reports to the Human Rights Council on violence and discrimination based on sexual orientation and gender identity (A/HRC/19/41 and A/HRC/29/23). In his reports, the High Commissioner emphasized that, under international human rights law, States are obligated to protect individuals from any discrimination in access to and maintenance of employment and recommended States to enact comprehensive anti-discrimination legislation that includes sexual orientation and gender identity among the prohibited grounds of discrimination (A/HRC/19/41, paras. 51-53, 84 (e), A/HRC/29/23, paras 58, 79 (c)).

LGBT people's right to work is also highlighted in the Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles. Under principle 12, everyone has the right to protection against unemployment, without discrimination on the basis of sexual orientation or gender identity. Also, States shall take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of sexual orientation and gender identity in public and private employment in relation to dismissal, among others (principle 12 (a)).

We would also like to draw your attention to the right to privacy, which is enshrined in article 12 of UDHR and article 17 of ICCPR. In relation to the military service, the Special Rapporteur on the right to privacy recommended States to design and implement a protocol for the military service of LGBT and intersex individuals in which their gender identities are identified, military service is enabled and there is protection from discrimination and violence (A/HRC/43/52, para. 37 (p)). We take this opportunity to remind the Government that in the broader human rights context, not limited to the Military, the Government has a duty to uphold the right to privacy in relation to gender identity (A/HRC/RES/34/7, para. 5 (g)). This was the conclusion of the UN Human Rights Committee, which reiterated that the right to privacy covers gender identity (CCPR/C119/D/2172/2012).

Pathologization of transgender persons has had a deep impact on public policy, legislation and jurisprudence, thus penetrating all realms of State action in all regions of the world and permeating the collective conscience (A/73/152, para. 14). To that end, we urge States to move swiftly to adopt and implement the elements in the eleventh revision of the International Classification of Diseases that relate to the removal of the trans categories from the chapter on mental and behavioural disorders, including the adoption of all measures conducive to eradicating the conception of gender diversity as a pathology from all aspects of everyday life (*Ibid.*, para. 77 (a)).

3. The right to education and to participate in cultural life, which includes access to and participation in sports without discrimination

Under E.O. 14168-Gender Ideology, federal agencies must apply a strict binary sex definition, which may reverse legal protections for transgender, intersex, and gender-diverse students. Such students may no longer be protected under sex-based anti-discrimination laws, and schools and educational facilities may, in accord with this Order, prohibit students from using facilities that align with their gender identity. Under E.O. 14168-Gender Ideology and E.O. 14201-Sports, schools that allow transgender, intersex, and gender-diverse students to use gender-appropriate facilities or participate in sports may lose federal funding. Moreover, any educational institution that recognizes gender identity outside of biological sex classifications could face financial penalties, impacting scholarships, student aid, and federal grants, while programs that support LGBT and gender-diverse students such as resources centers and counseling services could face funding restrictions or otherwise be terminated. Federal agency may prohibit funding for curricula that acknowledge gender diversity, and educators may face restrictions on teaching or discussing topics related to gender identity, the rights of transgender people, or intersex issues.

In light of the above, we draw the attention of Your Excellency's Government to the International Covenant on Economic, Social and Cultural Rights (ICESCR). In accordance with Articles 2.2 and 15 of the Covenant, everyone has the right to participate in cultural life without discrimination. Sports and games, like arts, languages, and knowledge, are integral to cultural life as practices that allow for the expression and development of individual and collective identities, values, and meanings, and serve as spaces for interaction, sharing, and connection. Consequently, everyone has the right to participate in sports without discrimination.

The experts have previously expressed grave concern about structural barriers to sports faced by women and girls in all their diversity, lesbian, gay, bisexual, trans and other gender diverse persons and intersex persons.⁴ In this connection, we would also like to refer to the report on the right to participate in sports, A/79/299, which affirms the right to participate in sports without discrimination. The experts have urged States to “take measures to improve the access and participation of all,” in sports “without discrimination and throughout their lives, in sports and physical activities” ... “Participation in sports must challenge entrenched gender stereotypes and promote empowerment, contributing to greater gender equality by providing women, girls and gender-diverse persons with platforms to showcase their capabilities and leadership. The equal participation of minority and marginalized persons must be prioritized. Adapted and inclusive sports programmes play a critical role in promoting the inclusion and participation of persons with disabilities, challenging societal stigma, and advancing such persons’ rights and dignity.” (A/79/299). Meaningful efforts to address the rights of women and girls in sports cannot be accomplished without inclusive policies that refrain from the “use the male-female categorisation in sport to argue for the exclusion of trans women and women with intersex variations from female

⁴ <https://www.ohchr.org/en/press-releases/2023/10/un-experts-urge-states-uphold-ideal-sport-inclusive-lgbt-and-intersex>. The experts: Special Rapporteur in the field of cultural rights; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Working Group on discrimination against women and girls; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Working Group on the issue of human rights and transnational corporations and other business enterprises.

categories.” However, the text of the E.O. 14201-Sports appears to present multiple stigmatizing statements, which repeat harmful rhetoric that has resulted in the harassment, stigmatization and discrimination against many athletes, including transgender and intersex women. Available evidence indicates that trans women who have undergone testosterone suppression have no clear biological advantages over cis-gender women and there is virtually no data on the argued advantage or safety of excluding transgender women from participating in sports that would make such a regulation necessary or proportional under international human rights law. What studies do exist, often use biological data that is severely limited and methods that are flawed by not accounting for various compounding factors like height, the level of athletic training, or lean body mass.

The E.O. 14201-Sports appears to categorically deny all transgender women any opportunity to participate and excel in sports both inside and outside of school settings. We have previously stated that “categoric exclusions of trans and intersex women from women’s sports is a *prima facie* violation of human rights obligations under the principle of non-discrimination, and their right to privacy.”⁵ This Order aims to exclude adults and children from athletic spaces of the gender they identify with and remove federal funding from institutions, organizations, schools, and other entities that recognize gender identity. Policies that impact trans women’s participation in sports hinders not only the participation of transgender individuals, but results in the policing of women’s bodies, including intersex and trans women. Many studies have shown that there is a significant overlap in sexual characteristics between ‘male’ and ‘female,’ that women self-exclude from certain sports due to sex and gender stereotypes, and that policies that center on sex could cause invasive sex and sex characteristic testing (see A/79/325).

E.O. 14201-Sports may further impact inclusion in sports for young people. Exclusion from school sports, has been associated with increased dropout rates, social marginalization, and various mental health issues. Additionally, exclusion from school sports violates the right of LGBT students to participate fully in education, cultural and social life by undermining the full development of children, exacerbating barriers to college admissions/scholarships, and creating stigma within sports settings. All the above risk factors are often magnified and compounded by the vulnerabilities and discrimination based on poverty, race, ethnicity, disability and other factors. The language of this Order may also disproportionately affect women and girls, especially those of color and those who have diverse sex characteristics, that would result in them being excluded from sports, such as physical features, muscle mass, and high testosterone. Further, E.O. 14201-Sports may promote exclusion of transgender and other gender diverse persons and intersex individuals from athletic spaces beyond the borders of the United States, as well, as it calls for the Secretary of State to promote changes in international rules/norms that govern sport competitions to ignore gender and advocate for the alteration of the standards governing Olympic sporting to be solely based on sex. Sports regulations and practices that discriminate against women and girls on the basis of gender can lead to the exclusion of women and girls from competing as such on the basis of their physical and biological traits, reinforce harmful gender stereotypes, sexism and stigma, and infringe upon the dignity, privacy, physical and mental integrity and bodily autonomy of women and girls.

⁵ <https://www.ohchr.org/en/press-releases/2023/10/un-experts-urge-states-uphold-ideal-sport-inclusive-lgbt-and-intersex>.

Lastly, E.O. 14201-Sports appears to use legal mechanisms to compel institutions who base athletic participation on evidence-based approaches that recognize gender identity and variation in sex-based characteristics rather than the binary of sex through targeted Title IX enforcement domestically. Additionally, this Order seems to create visa restrictions on transgender athletes seeking to come to the United States to participate in athletic activities. Restrictions on transgender individuals' ability to travel to the United States can have detrimental impacts on the ability of transgender, other gender diverse individuals and intersex persons to meaningfully participate in athletics, without discrimination.

Providing and receiving sexual education without fear of persecution is protected under freedom of opinion and expression under article 19 of UDHR and article 19 of ICCPR. This right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice (article 19 (2) of ICCPR). Also, article 13 of ICESCR provides that education should be aimed at the full development of the human personality and the sense of its dignity and should strengthen respect for human rights and fundamental freedoms. The Committee on Economic, Social and Cultural Rights (“CESCR”) emphasized that the right to education can only be enjoyed if staff and students throughout the education sector are entitled to academic freedom (E/C.12/1999/10, para. 38). Members of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing (Ibid., para. 39). Academic freedom includes the liberty of individuals to freely express opinions about the institution or system in which they work, and to fulfil their functions without discrimination or fear of repression by the State or any other actor (Ibid.). In this connection, we would also like to refer to the report on the right to academic freedom, A/HRC/56/58, and the principles for implementing the right to academic freedom, A/HRC/56/CRP.2, which stresses that academic freedom is an autonomous human right grounded in several provisions of international law. It encompasses the freedom of individuals to access, disseminate and produce information, to think freely and to develop, express, apply and engage with a diversity of knowledge within or related to their fields of expertise or of study, whether inside or outside the academic community, including with the public.

Further, article 12 (1) of ICESCR provides that States recognized the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In its general comment 14, the CESCR interpreted the right to health as an inclusive right, which extends not only to timely and appropriate health care but also to access to health-related education and information, including on sexual and reproductive health (E/C.12/2000/4, para. 11). Accordingly, States are under an obligation to respect the right to health by, inter alia, refraining from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information, as well as abstaining from preventing people's participation in health-related matters (Ibid., para. 34). Obligations of the right to health further include the promotion of health education, as well as information campaigns, in particular with respect to sexual and reproductive health (Ibid., para. 36).

The CESCR further stated that the right to sexual and reproductive health, combined with the right to education (articles 13 and 14 of ICESCR) and the right to non-discrimination and equality between men and women (articles 2 (2) and 3 of ICESCR), entails a right to education on sexuality and reproduction that is comprehensive, non-discriminatory, evidence-based, scientifically accurate and age-appropriate (E/C.12/GC/22, para. 9). All individuals and groups, including adolescents and youth, have the right to evidence-based information on all aspects of sexual and reproductive health (Ibid., para. 18). Such information must be provided in a manner consistent with the needs of the individual and the community, taking into consideration, for example, age, gender, language ability, educational level, disability, sexual orientation, gender identity and intersex status (Ibid., para. 19). States violate the obligation to fulfil when they fail to take measures to ensure that up-to-date, accurate information on sexual and reproductive health is publicly available and accessible to all individuals, in appropriate languages and formats, and to ensure that all educational institutions incorporate unbiased, scientifically accurate, evidence-based, age-appropriate and comprehensive sexuality education into their required curricula (Ibid., para. 63).

The Committee on the Rights of the Child (CRC) observes that LGBTI adolescents commonly face a lack of access to sexual and reproductive health services and information (CRC/C/GC/20, para. 33). CRC underscored that there should be no barriers to commodities, information and counselling on sexual and reproductive health and rights, and particular efforts need to be made to overcome barriers of stigma and fear experienced by, inter alia, LGBT adolescents, in gaining access to such services (CRC/C/GC/20, para. 60). All adolescents should have access to free, confidential, adolescent-responsive and non-discriminatory sexual and reproductive health services, information and education, available both online and in person (Ibid., para. 59). Therefore, the CRC urged States to adopt comprehensive gender and sexuality-sensitive sexual and reproductive health policies for adolescents, emphasizing that unequal access by adolescents to such information, commodities and services amounts to discrimination (Ibid.). The CRC further noted that age-appropriate, comprehensive and inclusive sexual and reproductive health education, based on scientific evidence and human rights standards and developed with adolescents, should be part of the mandatory school curriculum and reach out-of-school adolescents (Ibid., para. 61).

The United Nations High Commissioner for Human Rights acknowledged that limiting or obstructing information related to sexuality or using materials that contain stereotypes and prejudices can contribute to violence and expose young LGBT persons to health risks. Therefore, he recommended States to provide comprehensive age-appropriate sexuality education, since it is part of the right to education and can be a tool for combating discrimination (A/HRC/29/23, paras. 57 and 79 (f); A/HRC/19/41, para. 61). The World Health Organization has also highlighted the need for a curriculum-based process of teaching and learning about the cognitive, emotional, physical and social aspects of sexuality. It pointed out that there is strong evidence for the positive effects of comprehensive sexual education on increasing adolescents' knowledge and improving their attitudes related to sexual and reproductive health. On the other hand, there is no evidence that comprehensive sexual education increases sexual activity, sexual risk-taking behaviour, or rates of HIV or other sexually

transmitted infections.⁶

We also bring your Excellency's government's attention to principle 2(I)-(K) of the Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles, which urges States to ensure that every person "can participate in sport without discrimination on the grounds of sexual orientation, gender identity, gender expression or sex characteristics."

On the right to equal access to and participation in sports, the Special Rapporteur on the field of cultural rights has recently clarified the status of the right to participate in sports in her report to the General Assembly (A/79/299).⁷ Special Procedures have previously expressed grave concern about structural barriers to sport faced by women and girls in all of their diversity, lesbian, gay, bisexual, trans and other gender diverse persons and intersex persons.⁷ The Special Rapporteur and other experts have therefore urged States to "take measures to improve the access and participation of all," in sport "without discrimination and throughout their lives, in sports and physical activities." (A/79/299).

4. Concerns regarding the right to health and gender-affirming care

E.O. 14168-Gender Ideology, E.O. 14183-Military Excellence, and E.O. 14201-Sports may limit access to or deter usage of gender-affirming medical care and promote stigmatization in those seeking medical care. E.O. 14168-Gender Ideology demands that each federal agency apply a strict binary definition of sex. Applying such definition to federal health policies may have wide-ranging negative impacts on the health and well-being of transgender, intersex, and gender-diverse individuals, as well as cisgender women and girls. It may lead to the prohibition of all gender-affirming care such as hormone therapy, puberty blockers, and gender-affirming surgeries. Transgender men and gender-diverse persons who need reproductive care may also be denied services.

The three Orders may also impact the availability, accessibility, acceptability and quality of healthcare for LGBT persons. Transgender, intersex, and gender-diverse persons could face a denial of primary care services, such as routine check-ups, if their gender identity does not match with their sex assigned at birth. The experts have previously outlined the conditions through which LGBT and gender diverse persons face "discriminatory and often violent barriers in accessing health and other services that impede their full and equal enjoyment of the right to the highest attainable standard of physical and mental health. These factors include structural drivers of exclusion, including pathologization, stigmatization and negation, and criminalization (A/HRC/50/27). E.O. 14183, E.O. 14201, and E.O. 14168 present similar obstacles, particularly in the pathologization, stigmatization and negation discussed in past findings that could lead not only to the absence of suitable medical care for some LGBT individuals, but also the inability to achieve the full and equal enjoyment of health.

⁶ WHO recommendations on adolescent sexual and reproductive health and rights, available at <http://www.who.int/reproductivehealth/publications/adolescent-srhr-who-recommendations/en/>

⁷ See the Joint policy position of 5 Special Procedures Mechanisms on this matter www.ohchr.org/sites/default/files/documents/issues/culturalrights/activities/2023-10-31-stm-sogi-policy-en-1.pdf

E.O. 14183-Military Excellence mandates that those members of the military who require “routine medical treatment or special provisions” such as “hormonal and surgical medical interventions” are unfit for service, which may lead to transgender members of the military either losing or being unable to obtain gender-affirming care while in the military. The limitation on access to medical care could pose significant risk to the mental health and sense of belonging of transgender individuals who wish to serve your Government through the military.

Every person, without distinction, should be able to enjoy the highest attainable standard of physical and mental health (hereafter the “right to health”) (article 12 ICESCR, see also CESCR general comment No. 14: The Right to the Highest Attainable Standard of Health). This includes the four elements of availability, accessibility, acceptability, and quality. Health facilities, goods and services must be accessible without discrimination (E/C.12/2000/4: general comment No. 14). We are gravely concerned that E.O. 14183, E.O. 14201, and E.O. 14168 may limit access to or deter usage of gender-affirming medical care and promote stigmatization in those seeking medical care. The Human Rights Committee, pursuant to articles 2, 3, 6, 7, 17, 23, and 26 of the ICCPR, has further expressed concerns about state laws in the United States that ban and criminalize gender-affirming care for transgender persons; forbid transgender individuals from using restrooms or from participating in school sports consistent with their gender identity; and reports of discriminatory treatment that LGBTI persons face and recommended that the United States adopt comprehensive legislative initiatives prohibiting discrimination against persons based on their sexual orientation and gender identity and increase efforts to combat violence and discrimination on such grounds (CCPR/C/USA/CO/5, para. 24-25).

The Committee on the Rights of the Child has also highlighted States’ obligations to ensure that children’s health is not undermined as a result of discrimination based on a child’s or their parent or legal guardian’s sexual orientation and gender identity (CRC/C/GC/15, para. 8).

In his report to the Human Rights Council on his country visit to the United States of America in 2022, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity noted that discrimination and prejudice against LGBT persons in their access to healthcare remains widespread. This suggests that measures promoting further discrimination would likely constitute a *prima facie* violation of the Government’s human rights obligations. The report observed: “Many anti-LGBT bills are designed to restrict access to health care for trans persons, in particular trans youth, in violation of their right to the enjoyment of the highest attainable standard of physical and mental health.” (A/HRC/56/49/Add.3, para. 37).

5. The right to information (freedom of opinion and expression) and resources, particularly on sexual orientation and gender identity

While the three Orders raise several questions regarding the right to freedom of opinion and expression and access to information, the experts are particularly concerned that E.O. 14168-Gender Ideology calls for federal agencies to remove all statements, policies, regulations, forms, communications, or other internal and external messages that mention or promote the use gender identity. In the context of the rights of children,

experts have previously noted that States should not use the rhetoric of protecting children to prevent access to information on lesbian, gay, bisexual and transgender issues and thereby legitimize discrimination against sexual minorities (A/69/335). The erasing of government resources may not only lead to a lack of information being readily available for the general population and for government officials, causing gaps in LGBT-related knowledge for those who need it, but also may legitimize discrimination among various segments of the population and within institutions.

The right to freedom of opinion and expression encompasses the right to seek and receive information of all kinds. The Human Rights Committee in its General Comment No. 34 affirmed that freedom of expression, including therefore the right to access information, “is a necessary condition for the achievement of the principles of transparency and accountability which, in turn, are essential for the promotion and protection of human rights” (CCPR/C/GC/34, para. 3) “article 19 sets out a right of access to information held by public bodies” and, accordingly, “to give effect to the right of access to information, States parties should actively pursue the incorporation into the public domain of government information that is in the public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information” (paras. 18 and 19).

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has repeatedly stressed the importance of access to information and transparency as fundamental pillars for peace, democracy and development, as well as the fundamental role that this right plays in the enjoyment of other rights (A/68/362, paras. 18, 19, 20 and 89; E/CN.4/1998/40, para. 12; E/CN.4/1995/32, para. 135). Along these lines, the Special Rapporteur has recommended and encouraged States to review their regulatory and institutional frameworks, mechanisms and tools to guarantee and promote the right of access to information and transparency as fully and completely as possible. The actions of the States should tend in this direction and, in any measure adopted, take into account the impact on this right that may be caused by any measure that may be adopted, in order to avoid setbacks in this area.

Further, we emphasize that expression on matters related to sexual orientation and gender identity is encompassed in the right to freedom of expression, which the Human Rights Committee interprets as including “the expression and receipt of communications of every form of idea and opinion capable of transmission to others, subject to the provisions in article 19, paragraph 3, and article 20,” comprising “political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse” (CCPR/C/GC/34, para 11). Any restriction on free expression on matters related to sexual orientation and gender identity can only be adopted in line with the strict requirements under international law, notably articles 19(3), 20 and 4 ICCPR.

6. Prevention of torture and other cruel, inhuman or degrading treatment or punishment (detention settings)

Based on our analysis, E.O. 14168-Gender Ideology may lead to a lack of health care and increased violence against LGBT persons in detention settings, particularly transgender individuals. This Order restricts access to the appropriately gendered-

facilities for transgender men and women and forces them to use facilities in gender-incongruent environments. The Committee against Torture and its Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, has observed that individuals often experience multiple and extreme forms of discrimination in the form of torture and other cruel, inhuman or degrading treatment or punishment in relation to their sexual orientation or gender identity (CAT/C/57/4). The Special Rapporteur on torture and the Subcommittee on the Prevention of Torture also noted that members of sexual minorities are disproportionately subjected to such treatment because they fail to conform to socially constructed gender expectations. (A/56/156, para. 19; CAT/C/57/4). Additionally, there is abundant evidence to conclude that torture and ill-treatment of lesbian, gay, bisexual, transgender and intersex persons are endemic concerns, as has been attested to by the United Nations High Commissioner for Human Rights (see A/HRC/19/41), and that such treatment takes place in prisons and juvenile detention facilities, as defined in article 4 of the Optional Protocol.

In prisons, E.O. 14168-Gender Ideology mandates that the Attorney General ensures that the Federal Bureau of Prisons restricts trans women from being housed in women's prisons or detention centers. The forcing of transgender individuals into gender incongruent environments may put them at significant risk of violence, causing not only physical but also mental harm. While abuse in prisons may be perpetrated by fellow inmates or by the staff of the place of detention, the State has a categorical obligation to prevent all forms of torture, cruel, inhuman and degrading treatment (CAT/C/57/4). Some American studies have recorded that non-heterosexual inmates are 10 times more likely than heterosexual inmates to be sexually assaulted by other inmates, and 3 times more likely to be sexually assaulted by prison staff. In the case of transgender persons, the likelihood of being sexually assaulted by a fellow inmate was 13 times higher than for cisgender persons.

The lack of institutional policies and methods to adequately address gender identity, risk assessment, and placement may lead to transgender women being placed in male-only prisons, where they are exposed to a high risk of violence, including sexual violence, and exploitation. During its country visits, the Subcommittee has outlined that transgender persons deprived of their liberty may be subject to distinct forms of sexual and gender based violence, including being required to shower in the presence of persons of the opposite gender, be patted down by officers of the opposite gender, and groped with the sole purpose of determining the nature of their genitalia (see e.g., CAT/OP/PRY/1, para. 214).

Further, E.O. 14168-Gender Ideology mandates that the Attorney General ensure that the Federal Bureau of Prisons revise their medical policies to ensure that no federal funds are expended for any medical procedure, treatment, or drug for the purpose of conforming an inmate's appearance to that of the opposite sex. In the health-care settings, Subcommittee on the prevention of torture and other cruel, inhuman or degrading treatment or punishment has stated that "ill-treatment and torture include denial of gender-appropriate medical treatment" from transgender individuals (CAT/C/57/4). This order may lead to punishment of transgender persons in prison that goes beyond their sentence, denying them adequate healthcare and allowing greater levels of discrimination and violence.

The above-mentioned concerns address the possible increase in violence in public and private spaces, as well as in military and detention settings. In line with the principles of equality and non-discrimination, the State is obliged to protect and promote the rights of individuals in each of the settings and to prevent violations committed by private and public actors.

We recall the Standard Minimum Rules for the Treatment of Prisoners (the so-called Nelson Mandela Rules) which include provisions on the responsibility of States regarding health care for persons detained in prisons (rules 24-35). In particular, the provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community. We also bring your Excellency's government's attention to principle 9 and 23 (O) of the Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles, which recommends States to ensure that placement in detention, where used, avoids further marginalising LGBTI persons or subjecting them to violence, discrimination or other harm, and to adopt and implement policies to combat violence, discrimination and other harm on grounds of sexual orientation, gender identity, gender expression or sex characteristics faced by persons who are deprived of their liberty, with respect to access to and continuation of gender affirming treatment and medical care, among others.

We further emphasize States' obligations to "undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment."⁸ In 2014, the Committee Against Torture expressed concern about the disproportionately high rate of sexual violence faced by lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals (CAT/C/USA/CO/3-5, para. 21). Furthermore, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has stressed the "situation of complete abandonment of transgender women and men in detention," noting with concern the severe consequences of transgender women being placed in male-only prisons, where they are exposed to high risk of physical violence, including sexual violence (CAT/C/57/4, para. 66). The Subcommittee has urged that, in cases of lesbian, gay, bisexual, transgender and intersex persons deprived of liberty in any place of detention, States have an obligation to recognize the specific risks individuals face, identify individuals who are in vulnerable situations, and protect them. In particular, the Subcommittee has stressed that "decisions on the housing of transgender persons should be done on a case-by-case basis, considering seriously their views as to their safety and, to the extent possible, with their informed consent" (*Id.*, para. 76).

7. Migration, asylum, and international protection

The lack of recognition of gender identity in E.O. 14201-Sports, and E.O. 14168-Gender Ideology may lead to immigration detention in gender-incongruent facilities, exposure to sexual violence for gender non-conforming or transgender individuals, the denial of gender-affirming care while in detention, and possibly physical assault. Similarly, the removal of gender identity from federal law can result in the refusal of transgender, gender non-conforming, and intersex identities as a valid

⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), art. 16, ratified by your Excellency's Government on 21 October 1994.

bases for asylum for non-refoulement purposes as described in UNHCR guidelines on international protection no. 9. The erasure of gender identity from federal law may lead to a lack of access and substantial harm for LGBT, intersex, and gender diverse individuals going through the migration or asylum processes. The conditions of detention for all individuals should be human, dignified, gender-appropriate and free from violence in order to meet international standards.

We wish to remind the State that every person has the right to seek and enjoy asylum from persecution, as universally codified in the Universal Declaration of Human Rights.⁹ States have further codified special protections for refugees in the 1951 Refugee Convention (“Refugee Convention”) and the 1967 Protocol relating to the Status of Refugees (“1967 Protocol”). While the State has not ratified the Refugee Convention, it ratified and acceded to the 1967 Protocol on 1 November 1968, legally committing itself to adhering to the Refugee Convention’s substantive refugee protections.¹⁰ These protections include a prohibition on refoulement, as well as the adoption of the legal definition of refugees to include “membership in a particular social group.”¹¹

While neither the Refugee Convention nor the 1967 Protocol explicitly mention gender-based asylum claims, the United Nations High Commissioner for Refugees (“UNHCR”), the body responsible for interpreting the Refugee Convention and the 1967 Protocol, provides further elaboration. In its Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity, the UNCHR recognizes gender identity as a basis for asylum claims under article 1A(2), the legal refugee definition.¹² Furthermore, the UNCHR has noted that the “refugee definition as a whole should be interpreted with an awareness of possible gender dimensions,” as endorsed by the General Assembly and the Executive Committee on UNCHR’s Programme.¹³

In addition to the above-mentioned obligations under the 1967 Protocol, the State, under customary international law, is bound to the principle of non-refoulement.¹⁴ This core principle of international law prohibits States from forcibly returning or expelling displaced persons to their country of origin or another country when there are substantial grounds to believe they would face serious human rights violations. The State has also bound itself to this principle through its ratification of the ICCPR, on 8 June 1992,¹⁵ and CAT, on 21 October 1994.¹⁶

We draw attention to the State’s domestic implementation of its international obligations. The State aligned its asylum system with that of the 1967 Protocol’s

⁹ [Universal Declaration of Human Rights](#), art. 14.

¹⁰ United Nations High Commissioner for Refugees, “[States parties, including reservations and declarations, to the 1967 Protocol Relating to the Status of Refugees](#).”

¹¹ [1967 Protocol relating to the Status of Refugees](#), art. 1.

¹² United Nations High Commissioner for Refugees, [Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity](#), para. 1.

¹³ United Nations High Commissioner for Refugees, [Guidelines on International Protection: Gender-Related Persecution within the context of Article 1\(A\)\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees](#), para. 2.

¹⁴ Declaration of States parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, Ministerial Meeting of States Parties, [HCR/MMSP/2001/09](#); Resolution [A/RES/57/187](#), para. 4.

¹⁵ United Nations Treaty Collection, [Depositary: International Covenant on Civil and Political Rights](#)

¹⁶ United Nations Treaty Collection, [Depositary: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#)

refugee definition through the Refugee Act of 1980.¹⁷ The Immigration and Nationality Act defines refugees based on the Protocol’s standards.¹⁸ The State’s own courts and the Board of Immigration Appeals have followed the UNCHR’s guidelines and recognized that individuals persecuted for their gender identity or gender expression qualify for asylum under the “membership in a particular social group” category.¹⁹ Under the Immigration and Nationality Act, asylum seekers cannot be returned if they meet the refugee definition.²⁰

We are concerned that the lack of recognition of gender identity in E.O. 4201 and E.O. 1416 may lead to an increase in human rights violations and a continuation of the State’s failure to protect asylum seekers, including those with diverse gender identities. In 2022, the IE SOGI made explicit reference to the State’s failures to provide protections for asylum seekers (A/HRC/56/49/Add.3). Specifically, the IE SOGI brought attention to cases where LGBT persons waiting in or expelled to Mexico faced kidnappings, torture, rape, and other violent human rights violations (A/HRC/56/49/Add.3, para. 65). The IE SOGI also observed that LGBT persons in Immigration and Custom Enforcement custody are more likely to lack access to medical care and face physical and sexual violence (A/HRC/56/49/Add.3, para. 68). Furthermore, the IE SOGI noted that the exclusion of migrants from formal labor markets has led to a high criminalization of LGBT forcibly displaced persons, especially trans migrants profiled because of their gender identity and their immigration status (A/HRC/56/49/Add.3, para 70). We are deeply alarmed by the potential of E.O. 14201 and E.O. 1416, in their denial of gender identity, to directly contribute to and increase human rights violations against those of gender-diverse identities going through the migration or asylum processes.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned assessment of the three Executive Orders and how these measures comply with international human rights law standards, including the rights and principles of equality and non-discrimination and the requirements of legality, necessity, and proportionality of the restriction or limitation of fundamental rights.
2. Please provide specific details about the measures which will be undertaken to ensure that your Government will respect its international obligations, in particular regarding the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

¹⁷ [8 U.S.C. 1101](#), Sec. 201.

¹⁸ [8 U.S.C. 1101](#).

¹⁹ See the decision of the United States Court of Appeals for the Ninth Circuit, *Hernandez-Montiel v. INS* (2000).

²⁰ [8 USC 1158\(c\)\(1\)\(A\)](#)

3. Please explain whether an ex-ante human rights impact assessment has been undertaken to analyse the impact of these executive orders and the proposed implementation measures on the human rights of LGBT and gender-diverse persons.
4. Please explain how the Executive Orders outlined in this letter align with the U.S. Government's internal regulation including the United States Supreme Court decision in *Bostock v. Clayton County* (2020), Title IX, and the expression of the "right to single-sex spaces in workplaces and federally funded entities covered by the Civil Rights Act of 1964."
5. Please explain how the Executive Orders outlined in this letter align with the U.S. Government's internal regulations governing the expenditure of federal funds and the analysis conducted on the legality, necessity and proportionality of withdrawing expenditures related to the promotion of "gender ideology," including how such measures affect the right to highest attainable standard of physical and mental health, including gender affirming medical care.
6. Please provide information on how your Excellency's Government will uphold its obligations to protect the right to freedom of expression and opinion, including the right to information, and how it intends to ensure that resources previously accessible on government websites on sexual orientation and gender identity remain available for those who desire access.
7. Please indicate how measures taken, as a result of these Orders, to augment change or restrict access to previously publicly available government information, research and other data complies with regulations of your Excellency's government on freedom of information, as well as international human rights law standards.
8. Please outline what measures have been taken to ensure that the administrative due process rights of transgender members of the military are respected in their hiring or firing in accordance with these Executive Orders.
9. Please provide information of any measures taken to ensure that alternative military accommodations and/or gender appropriate housing is available for transgender individuals and that medical treatment can be continued after the issuance of this order.
10. Please explain what alternatives have been considered to blocking transgender athletes from entering the United States to compete.
11. Please indicate what measures your government intends to take to further and protect the rights of all human beings and foster diversity, to promote respect and acceptance regardless of sexual orientation or gender identity.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Graeme Reid
Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Alexandra Xanthaki
Special Rapporteur in the field of cultural rights

Farida Shaheed
Special Rapporteur on the right to education

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Gina Romero
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Nicolas Levrat
Special Rapporteur on minority issues

Laura Nyirinkindi
Chair-Rapporteur of the Working Group on discrimination against women and girls