

**Submission to the Special Rapporteur on Contemporary forms of Racism, Racial
Discrimination, Xenophobia and Related Intolerance
Sexual Rights Initiative
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1. This submission is made by the Sexual Rights Initiative¹. The Sexual Rights Initiative (SRI) is a coalition of national and regional organizations based in Canada, Poland, India, Egypt, Argentina and South Africa, that work together to advance human rights related to sexuality at the United Nations.

2. Today, and in all regions of the world, we are witnessing the resurgence of white supremacist, racist and xenophobic discourse in mainstream, right-wing and populist movements. This is being fueled by impunity for violence and threats of violence in the name of nationalism and manifested in discriminatory laws and policies that target those who do not resemble the hegemonic class. It is therefore necessary to highlight the complicity of States in furthering this kind of violence, “othering” minority and marginalized groups, fueling fear and paranoia and propagating sensationalized half - truths and hyperbole.

3. The previous Special Rapporteur on Contemporary forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (henceforth Special Rapporteur) has highlighted that the resurgence of racism and xenophobia are premised upon two fundamental aspects: “the promotion of a purely materialist form of liberalism, marked by hostility towards, and questioning of, religion and spirituality, which are caricatured as running counter to progress and liberty; and a selective, hierarchical, ideological interpretation of human rights and fundamental freedoms.”² This is manifested in electoral successes of racist, xenophobic governments often called “progressive” and have directly and indirectly instilled fear of the “other” and furthered impunity for violence against those who are ‘othered,’ including through their treatment of migrants. As the Special Rapporteur remarks, this fear is also propagated by manipulating historical prejudices and ideological discourse often based on specious “security” concerns. Moreover, public debates on racial equality regularly overlook the intersections between racial discrimination and xenophobia with sexuality and gender and the particular ways that these intersections compound the discrimination experienced. Similarly, public debates on human rights related to sexuality and gender often fail to account for the impact of racial discrimination and xenophobia.

Sexuality and Gender

4. The World Health Organization’s working definition of sexuality is “a central aspect of being human throughout life; it encompasses sex, gender identities and roles, sexual orientation,

¹ <http://www.sexualrightsinitiative.com/>

² UN Human Rights Council, *Report submitted by Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, 20 February 2008, [A/HRC/7/19](#), para. 56.

eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviors, practices, roles and relationships. While sexuality can include all of these dimensions, not all of them are always experienced or expressed. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, legal, historical, religious and spiritual factors.³ The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health refers to sexuality as “a characteristic of all human beings. It is a fundamental aspect of an individual’s identity. It helps to define who a person is.”⁴

5. In this context, it is important to remember that gender and sexuality are not the domain of particular genders, sexes or orientations, but of every person. They are not a singular isolated “identity” of an individual, but are deeply symbolic, culturally meaningful concepts that affect and are affected by many other aspects of human life. Rights related to sexuality and gender are intrinsically linked to people’s experience of their bodies. The bodies of all persons are never framed within a singular axis but very closely linked to the politics of race, economics, class, religion, and more and vice versa. Moreover, the political embodiment of persons with disabilities, and in particular of women and girls with disabilities, has been a historical threat to the hegemonic social order of controlling and shaping human bodies. Therefore, one cannot seek to address the harmful impacts of racism, xenophobia and populism without organizing these phenomena within a framework of multiple oppressions, including on the basis of gender and sexuality. For instance, rising xenophobic rhetoric is successful by creating the myth of the “authentic and true” patriot/national, often modelled after the majority and/or the powerful. Women and girls are then held “responsible” for the creation of more “authentic” patriots, or punished for giving birth to children that are not of the dominant class. Sexual violence and rape as weapon of war is an extreme and well-documented manifestation of this ideology. More commonly, deviations from the norm of heterosexuality and endogamy⁵ are considered a crime/betrayal/sin, depending on other axes of oppression, resulting in violence, discrimination and denial of dignity and self-determination.

6. Heteronormativity and patriarchy both seek to stop certain people from exercising autonomy and from achieving equality, dignity and freedom. Both systems of oppression work to preserve the dominance of men, particularly heterosexual men, by denying power to women, girls and sexuality and gender non-conforming persons of all ages. By promoting rigid ideas about gender and sex, heteronormativity and patriarchy create the illusion that gender is fixed and biological. Heteronormative and patriarchal notions can be found at all levels of society; some of the manifestations are obvious and public (such as legislation limiting women’s access to healthcare or education), while others are more hidden or ideological (such as the common belief that ‘boys

³ “Gender and Human Rights.” World Health Organization, 28 Nov. 2014, www.who.int/reproductivehealth/topics/gender_rights/sexual_health/en/

⁴ UN Commission on Human Rights, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Report of the Special Rapporteur, Paul Hunt*. 16 February 2004 [E/CN.4/2004/49](http://www.unhcr.org/refugees/ref/4/4/49/49.html), para. 54.

⁵ An example is that of caste-based discrimination furthered by perpetuating endogamy in the guise of similar “cultural background.”

will be boys' when boys and men harass and exploit girls and women, and that 'good girls are seen but not heard').

Intersectionality

7. As highlighted by an Expert Group Meeting on gender and racial discrimination convened by OHCHR in 2000, "[t]he idea of 'intersectionality' seeks to capture both the structural and dynamic consequences of the interaction between two or more forms of discrimination or systems of subordination. It specifically addresses the manner in which racism, patriarchy, economic disadvantages and other discriminatory systems contribute to create layers of inequality that structures the relative positions of women and men, races and other groups. Moreover, it addresses the way that specific acts and policies create burdens that flow along these intersecting axes contributing actively to create a dynamic of disempowerment.⁶" Everyone has multiple identities, statuses, expressions and ways of being in the world. These may be personal and individual, emerging from a deeply felt sense of self, or from social, communal and relational positioning--or both. For example, a racial identity or status is first and foremost relational and social, though an individual's self-identity may be absorbed through force or affirmed for political reasons. Alternatively, one's economic status may not be part of an individual's self-identity at all, but may nevertheless identify her to others, and may shape her ability to exercise her rights or belong to communities. Many people face intersecting forms of discrimination, exclusion, marginalisation or oppression as a result of their identities, status, expressions and ways of being in the world.⁷

8. Our experiences are seldom the effect of one separable aspect of our selves. For some people, most of their characteristics place them in a dominant social position, leaving only one or two aspects of their lives in which they experience marginalisation or discrimination. By definition, they have relative or significant privilege, are able to articulate a politics specifically around the restricted aspects where they experience inequality and are often hegemonic voices in some social movements⁸. Examples of such hegemony include white supremacy and heteronormativity. However, many people's experiences of violence and violation result from several intersecting factors, characteristics and identities that render their struggles invisible, their voices unheard and their rights unfulfilled. Populism is almost always rooted in patriarchy and toxic masculinities, glorifying aggression targeting women, girls, gender and sexual non-conformity, and persons with disabilities among others, which, when combined with racist and xenophobic discourse, further marginalises these groups.

⁶ UN Division for the Advancement of Women, Office of the High Commissioner for Human Rights, and the United Nations Development Fund for Women. *Report of the Expert Group Meeting on Gender and Racial Discrimination*. 21-24 November 2000, available at <http://www.un.org/womenwatch/daw/csw/genrac/report.htm>

⁷ Sexual Rights Initiative, *Advancing Sexual Rights for All*, May 2016, available at <http://www.sexualrightsinitiative.com/wp-content/uploads/Advancing-Sexual-Rights-for-All-Full-Paper-FINAL.pdf> last accessed on 12 July 2018 at 3 pm.

⁸ Ibid.

9. An example of ways in which populism fuels racial inequality and undermines intersectionality is the increasing manipulation and co-optation of “progressive” and human rights language by mainstream, populist and right-wing discourses in the Global North to undermine rights of the marginalised, including the right to seek asylum. By relying on racist stereotypes and “national security” fears, populist discourses seek to spread a narrative according to which migrants and refugees pose a “danger” to women and sexual and gender non-conforming people, and should therefore not be allowed to migrate or seek asylum. This type of discourse does not in fact stem from genuine gender equality concerns, but rather from racial and xenophobic hatred. It creates a false opposition between racial equality and the rights of women and non-conforming persons, and completely disregards the many people at the intersections of these groups. This co-optation of gender and sexuality is used to disguise xenophobia and create mythical champions of human rights. Such homonationalism and consequent pink washing of gross human rights violations creates an artificial divide between different human rights, and is used as ruse by Global North States to further racial and ethnic hatred and violence.

Neoliberalism, patriarchy and racial inequality

10. The rise of the populist and xenophobic rhetoric is not confined to one country or region but extends across the world. The manifestation of this xenophobia in different regions varies, but one of the commonalities is the fomenting of violence and discrimination based on race, ethnicity, caste, class among others. At the same time, we live in a globalised albeit neo-liberal world. Neoliberalism is often characterized in terms of its belief in sustained economic growth as the means to achieve human progress, its confidence in free markets as the most-efficient allocation of resources, its emphasis on minimal state intervention in economic and social affairs, and its commitment to the freedom of trade and capital.⁹ Neoliberalism is closely related to globalisation, which refers to the increasing economic, trade and cultural links between different countries. The current form of globalisation is based on and benefits from unequal power relationships and neoliberal economic policies that cause certain countries to become richer while others become poorer. As a result, poorer countries become increasingly dependent on richer ones and further subject to neoliberal ‘reforms’. In this context, Global North donor countries resorting to aid conditionality effectively perpetuate and prolong inequalities, which feeds into racist and xenophobic narratives but do not change the politics of control and power. Furthermore, these unequal power relationships overwhelmingly mirror the colossal power imbalances brought about by colonialism and its roots in racial oppression.

11. Actions taken by global economic structures have very real impacts on the lives of people in developing countries, and particularly on the lives of women and other marginalised groups. A good example of this is the effect of the structural adjustment policies demanded by the International Monetary Fund (IMF) as a condition for receiving loans. Countries seeking an IMF loan are forced to allow privatisation of public sector services and goods, remove price controls

⁹ Encyclopaedia Britannica, available at <https://www.britannica.com/topic/neoliberalism>, last accessed on 12 July 2018, at 3.00 pm.

and cut civil and welfare services, often leading to massive unemployment among women (who are the first to lose their jobs in a patriarchal society that sees men as primary breadwinners and women as homemakers) and a decrease in wages. Women are pushed out of the formal job market and forced to seek work in the least profitable and unprotected sectors of the urban economy, mostly in activities that rely on domestic skills. Increasing competition for products or services (through an increase in supply) forces informal workers to lower their prices, shrinking their already meagre earnings. When employed in formal sectors, women are also paid less than men for performing the same jobs as men, again because men are considered to have families to support.

12. The structural adjustment policies implemented all over the Global South are a form of terrorism that has generated its own response in the shape of armed resistance. The instability and insecurity created by the decline of social services and by the privatization and monopoly of public goods and services produce ideal conditions for regressive forces to take advantage of the lack of social cohesion to put forth their ideologies and impose their beliefs. It also contributes to disgruntled people taking up arms in the name of religion—which offers solace in the face of anger, despair and dissatisfaction. In some instances, religious fundamentalist leadership deploy anti-imperialist, anti-west analysis and rhetoric to mobilise support for their causes. Meanwhile, as the state rolls back and leaves people to the workings of the capitalist market, which only benefits a small minority in any community, women have to take on more and more of the burden of care and bear the brunt of deepening inequality, poverty and violence that ensues.

13. Economic uncertainty and exploitation predictably lead to social crisis, with vulnerable populations often experiencing heightened violence, crime and exploitation. High unemployment rates and insufficient workplace regulations lead to appalling work conditions and badly paid (often temporary) jobs. This has the further effect of lowering living standards and limiting access to basic resources for the majority, while a small minority benefit and work to keep the exploitative economic system in place.

Maternal Mortality and Morbidity as an illustrative case study

14. All of the above-mentioned oppressive structures often work together to result in grave consequences for women and girls. We are using maternal mortality and morbidity and access to the health system as an illustrative case study to display the practical interplay of many of these factors and their impact. Health systems are more than delivery apparatus for interventions and commodities. A society in which rich and poor women alike – irrespective of race, ethnicity, caste, disability or other characteristic– can rely on the health system to meet their sexual and reproductive health needs fairly is a more just society.¹⁰ The complex interplay of privatisation due to neoliberal policies, discrimination based on gender, race, caste, class, sexuality and gender non-conformity among other grounds, and the criminalisation and environment of fear created

¹⁰ Office of the High Commissioner of Human Rights, *Technical Guidance on the application of human rights based approach to the implementation of policies and programmes to reduce preventable maternal mortality and morbidity*. Report of the Office of the High Commissioner of Human Rights, July 2012, [A/HRC/21/22](#), last accessed on 12 July 2018, at 2.33 pm.

by state and non-state actors regularly results in the violation of many women’s and girls’ basic right to life during pregnancy. A similar trajectory can be traced to all essential services.

15. WHO estimates that most maternal deaths are preventable as the health-care solutions to prevent or manage complications are well known. All women need access to antenatal care in pregnancy, skilled care during childbirth, and care and support in the weeks after childbirth¹¹. More recently, UNICEF has reaffirmed that approximately 80 percent of maternal deaths could be averted if women had access to essential maternity and basic health-care services.¹² There are large disparities in maternal mortality rates between and within States. Although the majority of maternal deaths occur in developing States, mainly in Africa and South Asia, when maternal mortality and morbidity data in developed States are disaggregated, they reveal rates that vary dramatically between different ethnic and socioeconomic communities.¹³ For instance, in the United States, where disparities in health have been widely studied, there has been a two-decade rise in maternal-mortality rates (from 12 per 100,000 live births in 1990 to 28 per 100,000 live births in 2013)¹⁴. However, the increase in maternal mortality rates in the United States has been highest among black women, according to the report from nine Maternal Mortality Review Committee: “Non Hispanic black women experience maternal deaths at a rate three to four times that of non Hispanic white women, a racial disparity that is mirrored across many maternal and infant outcomes”¹⁵.

16. The Office of the High Commissioner of Human Rights (OHCHR) has highlighted that specific groups of women face higher levels of risk of preventable maternal mortality and morbidity. The risk of death or injury due to pregnancy-related causes can depend upon various grounds, including race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status. Where a person faces discrimination on the basis of more than one of the prohibited grounds (i.e. on the basis of sex and another ground), they are facing cumulative, multiple or intersectional discrimination, which can have a substantially heightened effect on their ability to exercise and enjoy their human rights.¹⁶ For example, laws or social

¹¹ WHO fact sheets available at <http://www.who.int/news-room/fact-sheets/detail/maternal-mortality> last accessed on 12 July 2018, at 2.33 pm

¹² UNICEF fact sheet, “Leading and underlying causes of maternal mortality” available at https://www.unicef.org/wcaro/overview_2642.html, last accessed on 12 July 2018, at 3.00 pm

¹³ UN Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights on preventable maternal mortality and morbidity and human rights*, 16 April 2010, A/HRC/14/39, available at: <http://www.refworld.org/docid/4c0615622.html>

¹⁴ Sister Song, National Latina Institute for Reproductive Health, and Center for Reproductive Rights, *Reproductive Injustice: Racial and Gender Inequalities in Health Care*, 2014, at https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/CERD_Shadow_US_6.30.14_Web.pdf last accessed on 12 July 2018, at 3.00 pm

¹⁵ Report of the nine Maternal Mortality Review Committee at <http://reviewtoaction.org/sites/default/files/national-portal-material/Report%20from%20Nine%20MMRCs%20final%20edit.pdf> accessed on 12 July 2018 at 3.30 pm

¹⁶ Office of the High Commissioner of Human Rights, *Technical Guidance on the application of human rights based approach to the implementation of policies and programmes to reduce preventable maternal mortality and morbidity. Report of the Office of the High Commissioner of Human Rights*, July 2012, [A/HRC/21/22](http://www.unhcr.org/refworld/docid/4c0615622.html), last accessed on 12 July 2018, at 2.33 pm.

practices may place age limits, or restrictions related to marital status, on access to sexual and reproductive health care, services and information. Meanwhile for reasons of distance, cost and lack of information or lack of cultural sensitivity, women living in rural areas, indigenous women, displaced persons/refugees, girls, or women of lower social and economic status may not have sufficient access to antenatal services, emergency obstetric care and skilled birth attendants. These factors can be further compounded by a history of discrimination by the State and health care providers, sometimes manifested in involuntary and non-consensual interventions such as forced sterilizations. The risk of death and disability from pregnancy-related causes increases even further for women who fall into more than one such category.

17. In addition, as highlighted by the Committee on Economic, Social and Cultural Rights in its General Comment 22, “the right to sexual and reproductive health is also deeply affected by “social determinants of health”, as defined by WHO. In all countries, patterns of sexual and reproductive health generally reflect social inequalities in society and unequal distribution of power based on gender, ethnic origin, age, disability and other factors. Poverty, income inequality, systemic discrimination and marginalization based on grounds identified by the Committee are all social determinants of sexual and reproductive health, which also have an impact on the enjoyment of an array of other rights as well. The nature of these social determinants, which are often expressed in laws and policies, limits the choices that individuals can exercise with respect to their sexual and reproductive health. Therefore, to realize the right to sexual and reproductive health, States parties must address the social determinants as manifested in laws, institutional arrangements and social practices that prevent individuals from effectively enjoying in practice their sexual and reproductive health.”¹⁷

Recommendations:

To the UN Mechanisms

- (i) UN protection systems should acknowledge and work with an intersectional perspective, incorporate gender, sexuality as well as race, ethnicity, caste, religion, class, disability and other discrimination grounds across mandates and issues and address the root causes and the structural causes.
- (ii) There is a need to elaborate on the way intersectional analysis should influence laws and policies and its implementation, and to provide technical assistance to States and compile good practices in that area.
- (iii) It is essential that multiple special procedures do a joint report to address racial inequality and its impacts on issues usually considered separately. Some suggestions of mandates for such a joint report could be the Special Rapporteur on Racism, the Working Group on Discrimination against Women in Law and Practice, and the Working Group on Arbitrary Detention.

¹⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, 2 May 2016, [E/C.12/GC/22](#), para. 8

To the States

- (iv) UPR recommendations on racial equality or on sexuality and gender , for instance, are often simplistic and do not address multiple factors that contribute to the increase in the experience of discrimination especially for marginalised groups, States should use the UPR mechanism ensure accountability to address the real challenges.
- (v) UN Human Rights Council resolutions should focus on structural causes and remedies and States should use this fora not as political game but as way to respect, protect and fulfill human rights for all persons.
- (vi) There is a need for disaggregation of information on the basis of sex, gender, disability, age, urban/rural residence and ethnicity, as well as of education, wealth quintile and geographic region insofar as possible. This is essential for ensuring non-discrimination and equity, and affording due protection to marginalized groups.
- (vii) States should show leadership domestically, regionally and internationally by making unequivocal statements condemning discrimination and violence targeting marginalised groups. This should include holding accountable and removing Ministers and public officials who are complicit in furthering this violence and discrimination.
- (viii) States should work with the media and advertisers to align messaging with human rights principles and geared towards racial and gender equality.
- (ix) States should adopt policies for all that pursue the objective of substantive equality.