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Advancing the Human Rights and Inclusion of LGBTI People: A Handbook for Parliamentarians

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Parliamentarians for Global Action (PGA) is an international, cross-party, non-governmental network of parliamentarians that informs and mobilizes legislators to advocate for human rights and the rule of law, democracy, human security, non-discrimination and gender equality.

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Advancing the Human Rights and Inclusion of LGBTI People: A Handbook for Parliamentarians

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Acronyms and definitions

Biphobia	The fear, unreasonable anger, intolerance or/and hatred toward bisexuality and bisexual people (see “bisexual”). The phobia may exist among heterosexuals, gay men, lesbians or bisexuals themselves and is often related to multiple negative stereotypes of bisexuals centred on a belief that bisexuality does not exist and on the generalization that bisexuals are promiscuous. (ILGA)
Bisexual	Refers to a person who is emotionally and/or sexually attracted to persons of more than one sex.
Cisgender	A term referring to persons whose gender identity and gender expression match the sex they were assigned at birth and the social expectations related to their gender. (ILGA)
Gay man	A person who identifies as a man and has a romantic and/or sexual attraction to other men. (RFSL)
Gender	Refers to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, as well as the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes. They are context- and time-specific and changeable. Gender determines what is expected, allowed and valued in a woman or a man in a given context. In most societies there are differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources, as well as decision-making opportunities. Gender is part of the broader socio-cultural context. Other important criteria for socio-cultural analysis include class, race, poverty level, ethnic group and age. (Office of the Special Advisor to the Secretary-General on Gender Issues and Advancement of Women-OSAGI)
Gender expression	The way a person communicates masculinity and/or femininity externally through their physical appearance (for example, through their clothing, hair style, use of cosmetics, mannerisms, way of speaking and behavioural patterns). (TRANSIT)
Gender-based violence	An umbrella term for any harmful act that is perpetrated against a person’s will and that is based on socially-ascribed (gender) differences between males and females. (MSMIT)
Gender binary	A classification system consisting of two genders, male and female (see below in contrast, a graphic that reflects gender as non-binary).
Gender identity	A person’s internal, deeply-felt sense of being male, female, an alternative gender or a combination of genders. A person’s gender identity may or may not correspond with her or his sex assigned at birth. (TRANSIT)
Heterosexism	Refers to the imposition of heterosexuality as the only normal and acceptable expression of sexuality, resulting in prejudice or discrimination against people who are not heterosexual or who are perceived to not be heterosexual. (MSMIT)
HIV	Human Immunodeficiency Virus.

Homophobia	An irrational fear of, aversion to, or discrimination against persons known or assumed to be homosexual, or against homosexual behaviour or cultures. (MSMIT)
Homosexual	A sexual orientation classification based on the gender of the individual and the gender of her or his sexual partner(s). When the partner's gender is the same as the individual's, then the person is categorized as homosexual. It is recommended to use the terms lesbians and gay men instead of homosexuals. The terms lesbian and gay are being considered neutral and positive and the focus is on the person's identity rather than their sexuality. Lastly, the term homosexual has, for many, a historical connotation of pathology. (ILGA)
Intersex	Intersex people are born with physical sex characteristics that do not fit medical norms for female or male bodies. (OII Australia)
Key Populations	Key populations, or key populations at higher risk, are groups of people who are more likely to be exposed to HIV or to transmit it and whose engagement is critical to a successful HIV response. In all countries, key populations include people living with HIV. In most settings, men who have sex with men, transgender people, people who inject drugs and sex workers and their clients are at higher risk of exposure to HIV than other groups. However, as discussed in the Gap report from UNAIDS, each country should define the specific populations that are key to their epidemic and response based on the epidemiological and social context. (UNAIDS)
Lesbian	A woman who is sexually and emotionally attracted to women. (ILGA)
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex.
NHRI	National human rights institution.
Men who have sex with men	(And the corresponding acronym, MSM) refer to all men who engage in sexual and/or romantic relations with other men or who experience sexual attraction towards the same sex. As used in this publication, the term is inclusive both of a variety of patterns of sexual behaviour by males with members of the same sex and of diverse self-determined sexual identities and forms of sexual and social associations ("communities"). 'Men who have sex with men' can include men who identify as gay or bisexual, transgender men who have sex with men and men who identify as heterosexual. Some men who have sex with men also form relationships with, or are married to, women. Some men sell sex to other men, regardless of their sexual identity. Some men who have sex with men do not associate themselves with any particular identity, community or terminology. (MSMIT)
OHCHR	United Nations Office of the High Commissioner for Human Rights.
Parliamentarians for Global Action (PGA)	Parliamentarians for Global Action is an international, cross-party, non-governmental network of parliamentarians that informs and mobilizes legislators to advocate for human rights and the rule of law, democracy, human security, non-discrimination and gender equality.
Queer	This has become an academic term that is inclusive of people who are not heterosexual – includes lesbians, gay men, bisexuals and transgender people. Queer theory is challenging heteronormative social norms concerning gender and sexuality and claims that gender roles are social constructions. For many LGBTI persons, the term 'queer' has negative connotations as it was traditionally an abusive term. However many LGBTI persons are now comfortable with the term and have reclaimed it as a symbol of pride. (ILGA)

SDGs	Sustainable Development Goals.
Sex characteristics	Intersex people are born with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies. Because their bodies are seen as different, intersex children and adults are often stigmatized and subjected to multiple human rights violations, including violations of their rights to health and physical integrity, to be free from torture and ill-treatment and to equality and non-discrimination. (OHCHR)
Sexual orientation	Sexual orientation is understood to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender. (The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender)
SOGIE	Sexual orientation, gender identity and gender expression.
SOGIESC	Sexual orientation, gender identity, gender expression and sex characteristics.
Transgender	As used in this publication, transgender describes persons whose gender identity (their internal sense of their gender) is different from the sex they were assigned at birth. Transgender is an umbrella term that describes a wide variety of cross-gender behaviours and identities. It is not a diagnostic term and does not imply a medical or psychological condition. This term should be avoided as a noun: a person is not ‘a transgender;’ they may be a transgender person. It is important to understand that not all people who are considered transgender from an outsider’s perspective in fact identify as transgender, nor will they necessarily use this term to describe themselves. In many countries there are indigenous terms that describe similar cross-gender identities. (TRANSIT)
Transphobia	Prejudice directed at transgender people because of their actual or perceived gender identity or expression. Transphobia can be structural, i.e. manifested in policies, laws and socioeconomic arrangements that discriminate against transgender people. It can also be societal, when transgender people are rejected or mistreated by others. Additionally, transphobia can be internalized when transgender people accept and reflect such prejudicial attitudes about themselves or other transgender people. (TRANSIT)
Transvestite /cross-dresser	Refers to people who enjoy wearing the clothing of another gender for certain periods of time. Their sense of identification with another gender can range from being very strong and indeed their primary gender, to being a less critical part of their identity. Some transvestite or cross-dressing people may seek medical assistance to transition and live permanently in their preferred gender at some point in their life. Others are happy to continue cross-dressing part-time for the rest of their lives. (ILGA)

Breaking through the Binary

There is now wide global consensus among scientists that homosexuality is a normal and natural variation of human sexuality without any inherently detrimental health consequences.

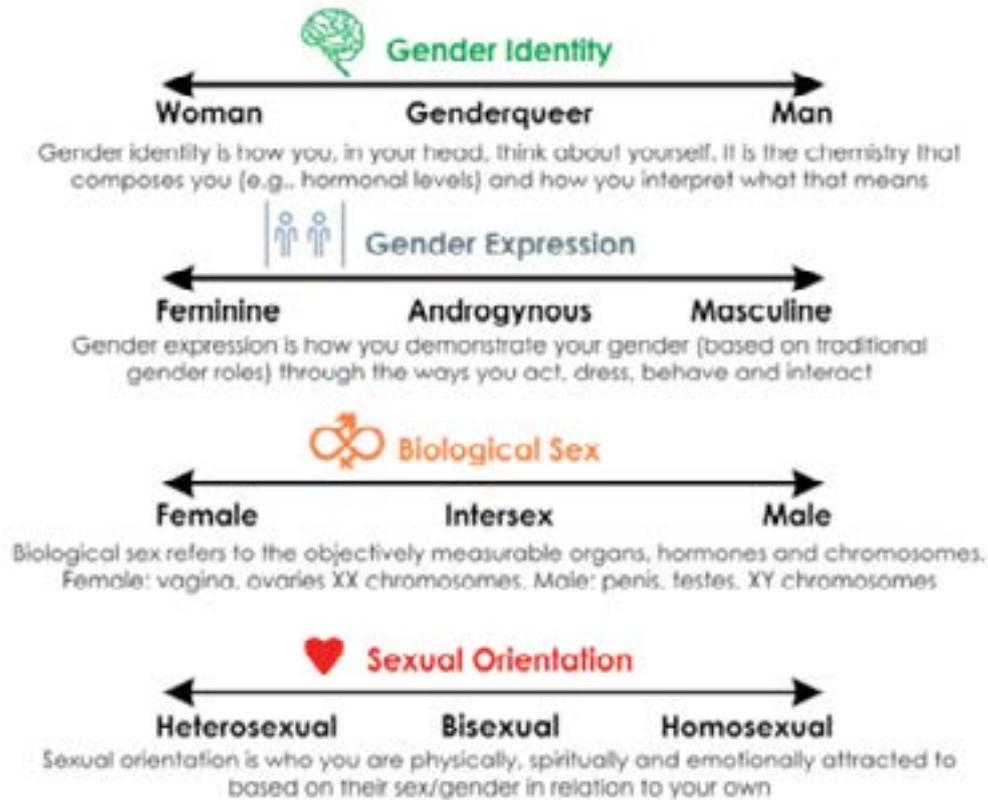


Figure 2: Breaking through the binary: gender explained using continuums (Killermann, 2014).

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The **United Nations Development Programme** (UNDP) is the United Nation's global development network, advocating for change and connecting countries to knowledge, experience and resources to help people build a better life. We are on the ground in some 170 countries and territories, supporting people's own solutions to development challenges and developing national and local capacities that will help achieve human development and the Sustainable Development Goals. Our work is focused on three main areas: i) sustainable development; ii) governance and peacebuilding; and iii) climate and disaster resilience.

Parliamentarians for Global Action (PGA) is a non-governmental, non-partisan international network of approximately 1,400 legislators in 143 elected parliaments around the globe that informs and mobilizes parliamentarians to advocate for human rights and the rule of law, democracy, human security, non-discrimination and gender equality. In 2013, PGA launched its Global Parliamentary Campaign against Discrimination Based on Sexual Orientation and Gender Identity (SOGI Campaign) to promote the human rights principles of equality and non-discrimination and to sensitize parliamentarians on the obligations that States have to all individuals regardless of their sexual orientation and gender identity and expression under regional and international conventions to which their countries are party. The SOGI Campaign has sensitized parliamentarians from all regions of the world, contributed to advocacy efforts by Salvadoran legislators to reform the Penal Code (increasing sanctions on hate crimes) and facilitated meaningful interactions between parliamentarians and representatives of the LGBTI community. PGA gratefully acknowledges the support of the Arcus Foundation, the Global Equality Fund, The Open Society Foundations, Hivos, the Sigrid Rausing Trust and Oak Foundation. For additional information on PGA's SOGI Campaign please visit www.pgaction.org/campaigns/discrimination-based-on-sexual-orientation-and-gender-identity.html.

Introduction to the Handbook and a call for action

As mounting research and data reflects, lesbian, gay, bisexual, transgender and intersex (LGBTI) people all over the world continue to experience violations of their human rights and exclusion. What LGBTI people want, and are entitled to, is dignity to live their lives free of stigma, violence and discrimination and to be able to reach their full potential and contribute to their families, communities and countries. Parliamentarians have a vital role to play in making this a reality.

Advancing the Human Rights and Inclusion of LGBTI People: A Handbook for Parliamentarians has been jointly produced by the United Nations Development Programme (UNDP) and Parliamentarians for Global Action (PGA). This Handbook sets out relevant human rights frameworks and highlights the role of parliamentarians in implementing Agenda 2030, to ensure no one, including LGBTI people, is left behind. It offers practical tips, tools and resources designed to support parliamentarians to undertake legislative, representational and oversight activities that advance the rights and inclusion of LGBTI people.

A wide range of diverse examples are presented, each reflecting concrete efforts undertaken by parliamentarians in every region of the world in support of the human rights and inclusion of LGBTI people. These examples provide valuable insights and lessons learned. They vary in approach and style, as the context and strategies employed are context driven. Some of the examples may be relevant in a wide range of countries, while others may have a more limited applicability.

Not all strategies used would be appropriate for every parliamentarian to try. However, the examples are provided to stimulate ideas and inspire parliamentarians to frame their own actions within their local environment and seek out the most strategic partners for making real progress. Many of the examples reflect the mutual benefits of parliamentary engagement with LGBTI organizations, as well as with broad-based civil society coalitions.

If a critical mass of parliamentarians commit to taking concrete actions to advance the rights and inclusion of LGBTI people, the impact would be profound and can drive legal, policy and social norm changes in every corner of the globe, genuinely ensuring that no one is left behind.

What is the situation of LGBTI people that parliamentarians can help address?



In too many countries, lesbian, gay, bisexual, transgender and intersex people are among the poorest, most marginalized members of society... Studies show that gay and lesbian people suffer disproportionate discrimination and abuse. They are rejected by their families... kicked out of their homes... and pushed out of school. Too many of our LGBT brothers and sisters are jobless, homeless and struggling to survive.

The situation of transgender people is even worse overall. They have higher rates of homelessness, poverty and hunger. For individuals and their families, this is a personal tragedy. And for society, it is a shameful waste of human talent, ingenuity and economic potential.

– United Nations Secretary-General Ban Ki-moon, remarks at the High Level LGBT Core Group Event, “Leaving No-One Behind: Equality & Inclusion in the Post-2015 Development Agenda,” New York 29 September 2015

Homophobia and other forms of stigma, violence and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) people contribute significantly to their exclusion from society, limit their access to health and social services and hinder social and economic development.

Although many important gains have been made, thanks in large part to the efforts of LGBTI activists, organizations and their allies, no country in the world has successfully eliminated all forms of discrimination against and exclusion of LGBTI people. Homophobic and transphobic attitudes, often combined with punitive laws and/or lack of effective legal protection against discrimination, continue to expose many lesbian, gay, bisexual, transgender and intersex (LGBTI) people¹ around the world to serious violations of their human rights.

Currently, 73 countries and territories still criminalize same-sex acts between consenting adults and eight countries punish such acts with a death sentence.² Very few countries legally recognize the gender identity of transgender people, and only two countries provide legislation aimed at protecting the rights of intersex people.³ In many places, being LGBTI can lead to exclusion, discrimination, violence and even death. Even in countries where punitive laws have been repealed and social attitudes are changing, LGBTI people continue to be excluded from many spheres of life and continue to experience stigma, discrimination and violence.

1 Although lesbian, gay, bisexual, transgender and intersex people are referred to as a group (LGBTI), the experiences of discrimination and exclusions that individuals suffer can differ significantly within and between these various groups, including on the basis of additional and intersecting factors such as race, ethnicity, religion, age, indigenous status, disability, etc.

2 Carol Aengus, State Sponsored Homophobia: A World Survey of Sexual Orientation Laws: Criminalization, Protection and Recognition, 11th Edition, May 2016 (ILGA). Source: http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf

3 Malta and Chile.

It is important to reflect that in recent years, many countries have made a determined effort to strengthen human rights protection for LGBTI people. An array of new laws have been adopted, including anti-discrimination laws that cover sexual orientation and gender identity, which provide sanctions and remedies for LGBTI persons who have experienced discrimination on these grounds. Countries have adopted laws against homophobic and transphobic hate crimes, granted recognition of same-sex relationships and made it easier for transgender people to obtain official documents that reflect their preferred gender. And, of course, in every country where laws have been reformed or introduced to strengthen the human rights and inclusion of LGBTI people, parliamentarians have played a central role.

Only recently has research started to provide much-needed evidence of the depth and the breadth of the discrimination and exclusion experienced by LGBTI people, as well as the physical, emotional, economic and social costs borne by LGBTI people, their families, communities and countries. For example, a recent World Bank study reflected that in India, the discrimination against LGBTI people in employment and health disparities costs between US\$ 1.9 and \$ 30.8 billion.⁴

A thorough understanding of the gravely negative impacts on human rights and sustainable human development that are caused by discrimination against and the exclusion of LGBTI people and, conversely, awareness of the benefits that inclusive processes and promoting freedom and equality create, are instrumental for effective parliamentary action on LGBTI issues. This Handbook seeks to inform and help catalyse actions by parliamentarians to advance the human rights and inclusion of LGBTI people.

WHAT IS THE PROBLEM?

The infographic consists of three vertically stacked boxes, each with an icon and a text block. The first box features a rainbow heart with a jagged crack down the center, symbolizing brokenness or stigma. The second box shows five colorful gender symbols (male, female, transgender, and others) arranged in a circle, representing diversity. The third box contains three circular icons: one with a rainbow flag, one with a person silhouette, and one with a person silhouette and a red 'X' over it, representing discrimination and exclusion.

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Homophobia, transphobia, and other forms of stigma and discrimination against LGBTI people impede development and threaten global and national progress on the SDGs
- 

These issues are especially complex because the LGBTI community is diverse
- 

The discrimination and exclusion that LGBTI people face are largely invisible because we lack national and global data

4 Badgett, Lee (2014). *The Economic Cost of Stigma and the Exclusion of LGBT People: a case study of India*. World Bank Group.

The international human rights framework and LGBTI people

Human rights principles, norms and standards lie at the heart of efforts to raise awareness about and advocate for specific actions focused on ending discrimination against and the exclusion of LGBTI people. This does not mean that new 'LGBTI rights' are being established that will benefit or apply only to LGBTI people. On the contrary, international human rights law makes it clear all people, including LGBTI people, must be protected against discrimination. And the legal obligations of States to respect, protect and fulfil the human rights of LGBTI people are well established in international human rights law.

To be able to fulfil their obligations to advance the human rights and inclusion of LGBTI people, parliamentarians must first familiarize themselves with human rights norms and standards so they can apply these in their work. An international human rights framework has developed over time which includes human rights declarations, treaties, bodies and mechanisms that together explain the content of the range of human rights that all people have and that help clarify the obligations of States to ensure that these rights can be realized by all people.

While non-discrimination on the basis of sexual orientation, gender identity or sex characteristics is not explicitly referred to in any international human rights treaty, this is not at all required in order for it to be clear that discrimination on these grounds is prohibited. States are required to protect LGBTI people from being discriminated against and to take specific steps in response if it does happen. Indeed, in recent years, concerns about human rights violations of LGBTI people have received increasing attention and there is an ever-growing body of international human rights law in this area.

Many of the treaty bodies responsible for interpreting human rights treaties and monitoring their implementation have found that violations of the rights of LGBTI people have taken place and have held States accountable for these violations. When Member States have had their human rights records reviewed (by other Member States) through the Universal Periodic Review process established by the United Nations Human Rights Council, recommendations have been issued to them about the ways in which States must change their laws or take other steps to protect the human rights of LGBTI people.

The progress in legislating to protect the rights of intersex people who experience discrimination on the basis of sex characteristics has been somewhat slower and has focused primarily on legal recognition and the banning of non-consensual surgical interventions ("corrective surgeries"). In several countries, training programmes have been developed for police, prison staff, teachers, social workers and other personnel. Many educational institutions are implementing anti-bullying programmes. And the Senate in Australia held an inquiry into and issued a joint cross party report on involuntary or coerced sterilization of persons with disabilities and intersex people. Still, much more needs to be done to ensure that the discrimination and exclusion that intersex people experience is well understood and documented and that the necessary steps are taken to prevent and adequately respond to it. Regrettably, this Handbook contains less specific discussion and practical examples of actions parliamentarians have taken to prevent the discrimination and exclusion of intersex people, as there are fewer resources available to draw on. Clearly this is an area that requires additional attention and support and parliamentarians can play an important role in ensuring this happens in their countries.

5 The Universal Periodic Review database provides country specific and thematic information, including on sexual orientation and gender identity, see page 48: www.upr-info.org/database/files/Database_Issues_explanation.pdf.

6 Parliament of Australia, Second Report, Involuntary or coerced sterilization of intersex people in Australia, 2013, Canberra, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Sec_Report/index.



The Yogyakarta Principles represent the culmination of a collaborative process with input from activists, national and international human rights defenders and advocates, United Nations Special Rapporteurs as well as academics, writers, theorists and movement builders with expertise in a number of fields. The primary target audience for the Yogyakarta Principles are States, however there are also a number of important recommendations... for different stakeholders in charge of promoting and protecting human rights. The Principles address how LGBTI people have experienced or are likely to experience unequal treatment in society when accessing State services or when participating in society in general. Almost 10 years have passed since the Yogyakarta Principles came into existence, a revision of the text may be due soon. This would be a great opportunity to strengthen the Principles by emphasizing their application in relation to transgender and intersex persons.”

– Boris Dittrich, Advocacy Director of the LGBT Rights Program at Human Rights Watch, and former Member of Parliament, The Netherlands, and PGA member

Parliamentarians will also find it useful to be familiar with the relevant regional human rights declarations, mechanisms and bodies that have also been established and that may apply to their respective country.

Of particular relevance are the Yogyakarta Principles, an important human rights instrument. Called in full ‘The Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity’, the Yogyakarta Principles are a set of principles that apply international human rights law standards to issues that affect LGBTI people. Named after the city in Indonesia where they were adopted, the Yogyakarta Principles identify specific rights and the related duties and obligations required of States in order to ensure that LGBTI people are able to exercise and enjoy those rights. A summary of the Yogyakarta Principles is on the next page and the full text is found in Annex 1.⁷

Further recommendations from human rights declarations, agreements, bodies and mechanisms are found in Annex 2.

7 The Yogyakarta Principles can be found online at: www.yogyakartaprinciples.org

Yogyakarta Principles: A summary

Although the Yogyakarta Declaration and the Principles are not binding, they are a very useful reference for parliamentarians (and others). Below is a summary of the principles.

Rights to universal enjoyment of human rights, non-discrimination and recognition before the law:

Principles 1 through 3 establish the universality of human rights and their application to all without discrimination. All people have a right to recognition as a person before the law, regardless of their sexual orientation or gender identity. Forced medical procedures, like sterilization or sex reassignment surgery, cannot be required for legal recognition.

Rights to human and personal security: Principles 4 through 11 address fundamental rights to life, freedom from violence and torture, privacy, access to justice and freedom from arbitrary detention and human trafficking.

Economic, social and cultural rights: Principles 12 through 18 elaborate on non-discrimination in the enjoyment of economic, social and cultural rights. This covers the rights to employment, housing accommodations, social security and education, as well as sexual and reproductive health rights that include the right to informed consent and sex reassignment therapy.

Rights to expression, opinion and association: Principles 19 through 21 set forth the freedom to express oneself, one's identity and one's sexuality based on sexual orientation or gender identity, without State interference. Along with this right to free expression, everyone also has the right to freely participate in peaceful assemblies and associate.

Freedom of movement and asylum: Principles 22 and 23 highlight the rights of persons to seek asylum from persecution based on sexual orientation or gender identity.

Rights of participation in cultural and family life: Principles 24 to 26 address the rights of people to have family life and to participate in public affairs and the cultural life of their communities without discrimination based on sexual orientation or gender identity.

Rights of human rights defenders: Principle 27 establishes the right to defend and promote human rights without discrimination based on sexual orientation and gender identity, as well as the obligation of States to ensure the protection of human rights defenders working in these areas.

Rights of redress and accountability: Principles 28 and 29 elaborate on holding rights violators accountable and ensuring appropriate redress for those who face rights violations.

Additional recommendations: The Principles establish 16 additional recommendations to national human rights institutions, professional bodies, funders, nongovernmental organizations, the High Commissioner for Human Rights, United Nations agencies, treaty bodies, Special Procedures and others.

The United Nations and the rights and inclusion of LGBTI people

Concerns about human rights violations experienced by LGBTI people have been voiced by the United Nations Secretary-General and many other senior United Nations officials. The United Nations, including its funds programmes, specialized agencies and affiliated organizations, are increasingly addressing priority issues facing LGBTI people in their respective work.

Specific actions have included:

- In March 2011, Colombia delivered a **Joint Statement to the United Nations Human Rights Council** on ending acts of violence and related human rights violations based on sexual orientation and gender identity. Submitted on behalf of more than 80 United Nations Member States, this statement publicly acknowledged the unacceptable treatment experienced by people in all regions of the world on the basis of their sexual orientation or gender identity. Not all Member States participated in this Joint Statement, which points to the ongoing challenges that LGBTI people face when trying to claim their rights.
- In June 2011, the United Nations **Human Rights Council adopted Resolution 17/19, which recognizes that acts of violence and discrimination are committed against LGBTI persons around the world.** The Resolution requested the United Nations Office of the High Commissioner for Human Rights (OHCHR) to prepare a report on these issues. This report submitted by OHCHR to the United Nations Human Rights Council outlined the problems faced by LGBTI people and reiterated each State's duty to protect the rights of all citizens.⁸ The report recommends that all States **investigate** serious acts of violence, **repeal laws** criminalizing homosexuality and **enact legislation** to prevent discrimination on the basis of sexual orientation and gender identity.
- In July 2013, OHCHR launched the **Free & Equal Campaign**⁹ to raise awareness about violence, discrimination and other human rights violations affecting the LGBTI community and to promote equality for everyone regardless of sexual orientation and gender identity.

“*There are 17 sustainable development goals all based on a single, guiding principle: to leave no one behind. We will only realize this vision if we reach all people regardless of their sexual orientation or gender identity.*”

– United Nations Secretary-General Ban Ki-moon, remarks at the High Level LGBT Core Group Event, “Leaving No-One Behind: Equality & Inclusion in the Post-2015 Development Agenda,” New York, 29 September 2015

8 United Nations Human Rights Council, [Report of the United Nations High Commissioner for Human Rights on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity](#), UN Doc. A/HRC/19/41, (17 November 2011).

9 www.unfe.org.

- In September 2015, 12 United Nations entities issued a **Joint Statement** calling on States to act urgently to end violence and discrimination against LGBTI adults, adolescents and children. The entities stated: “[A]ll people have an equal right to live free from violence, persecution, discrimination and stigma. International human rights law establishes legal obligations on States to ensure that every person, without distinction, can enjoy these rights. While welcoming increasing efforts in many countries to protect the rights of LGBTI people, we remain seriously concerned that around the world, millions of LGBTI individuals, those perceived as LGBTI and their families face widespread human rights violations. This is cause for alarm – and action.”¹⁰

The United Nations entities pointed out in this Joint Statement that failures to uphold the human rights of LGBTI people and protect them against violence and discriminatory laws and practices constitute serious violations of international human rights law. These failures bring additional negative outcomes, like fostering ill health, including HIV, as well as social and economic exclusion.¹¹ The entities noted the negative impact of such exclusion on decent work, economic growth and progress towards achieving the Sustainable Development Goals (SDGs). Furthermore, they emphasized that States bear the primary duty under international law to protect everyone from discrimination and violence. These violations therefore require an urgent response by governments, parliaments, judiciaries and national human rights institutions. The recommendations in the Joint Statement (see Annex 4), focused on protecting LGBTI people from violence and discrimination and on repealing discriminatory laws. The Statement also offers the support of the signatories to Member States to achieve this progress.

10 “Ending Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender and Intersex People,” International Labour Organization, OHCHR, UNAIDS Secretariat, UNDP, United Nations Educational, Scientific and Cultural Organization, United Nations Population Fund, United Nations High Commissioner for Refugees, United Nations Children’s Emergency Fund, United Nations Office on Drugs and Crime, UN Women, United Nations World Food Programme and World Health Organization, 29 September 2015, www.ohchr.org/EN/Issues/Discrimination/Pages/JointLGBTIstatement.aspx.

11 UNDP, ‘Connecting the Dots: Strategy Note, HIV, Health and Development 2016–2021’, UNDP, New York, June 2016, <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/hiv--health-and-development-strategy-2016-2021.html>.

The Sustainable Development Goals and the pledge to leave no one behind



In September 2015, 193 Member States of the United Nations unanimously adopted the Sustainable Development Goals (SDGs) as the global framework for efforts to end poverty, fight inequality and injustice and tackle climate change by 2030. Central to this agenda is the pledge that no one should be left behind. Achieving these goals will be impossible if LGBTI people, like other marginalized people, are not included.

Achieving the SDGs requires good, solid data and evidence-based research to inform the legal, policy and programmatic frameworks needed to achieve results. Currently, however, there is a huge gap in the global data available on the inclusion of LGBTI people.

To fill this gap, and as a contribution to support the implementation of Agenda 2030, on 10 December 2015, UNDP announced its commitment to lead the development of an LGBTI Inclusion Index that can inform evidence-based development strategies to advance the inclusion of LGBTI people. Following extensive multisectoral and civil society consultations, the five priority dimensions that have been prioritized for measurement in the LGBTI Inclusion Index are: political and civic participation, economic well-being, personal security and violence, health and education.

–From the UNDP, LGBTI Inclusion Index Concept Note, June 2016.

The UNDP led LGBTI Inclusion Index



Actions that parliamentarians can take

The role of parliaments in supporting implementation of the SDGs “through their enactment of legislation and adoption of budgets and their role in ensuring accountability for the effective implementation of our commitments” is explicitly recognized in Agenda 2030.¹²

In the same vein that advancing gender equality and women’s empowerment is the responsibility of all parliamentarians regardless of their sex or gender, advancing the rights and inclusion of LGBTI people is the responsibility of all parliamentarians, regardless of the person’s sexual orientation or gender identity.

Through their representation, legislative and oversight functions, parliamentarians play a crucial role in shaping legal and policy frameworks and public opinion in their constituencies and countries.

Some of the many ways that parliamentarians can take action to safeguard LGBTI rights are listed below.



As Parliamentarians we need to create laws that safeguard the rights of all individuals, including LGBTI persons, and ensure that their life, physical integrity, morals, and freedoms are respected.

Parliamentarians for Global Action has an important task of sharing these experiences and lessons with other Parliaments around the world and I will continue actively supporting this key work on human rights in my country and abroad.

– Mario Tenorio, Chair of the Committee on Legislation and Constitutional Affairs, Legislative Assembly of El Salvador, and PGA Member

In the legislative role

- Enact comprehensive laws that specifically prohibit discrimination on the basis of sexual orientation, gender identity and sex characteristics.
- Prioritize access to justice, housing, employment, healthcare, education and legal recognition (i.e., official documentation) for LGBTI people.
- Repeal laws that criminalize same-sex activity between consenting adults and laws that criminalize transgender people on the basis of their gender identity and expression.
- Protect individuals from homophobic and transphobic violence by:
 - ✓ adopting hate crime laws that protect all individuals from violence, including those targeted on the grounds of their real or perceived sexual orientation and gender identity; and
 - ✓ strengthening legislation to incorporate mechanisms for monitoring and reporting hate-motivated acts of violence, asylum and police protection.

12 United Nations General Assembly, A/Res/70/1 Para 45, General Assembly Res 70/1 - Transforming our world: the 2030 Agenda for Sustainable Development, <https://sustainabledevelopment.un.org/post2015/transformingourworld>.

- End impunity for acts of violence, whether committed by state or non-state actors, through enacting laws that appropriately prohibit and punish all forms of violence and discrimination, including the targeting of persons based on their imputed or real sexual orientation and gender identities.
- Adopt adequate regulations that ensure proper investigation and diligent prosecution of perpetrators of human rights violations and establish judicial procedures that protect victims.
- Review domestic legislation regarding non-discrimination with the objective to harmonize with existing regional and international obligations.
- Advocate for executive support to ratify international human rights treaties and implement and harmonize these treaties in domestic law.
- Enact laws that establish National Human Rights Institutions that include sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) within their mandate and/or specific institutions with expertise on and a mandate to deal with LGBTI rights and inclusion.
- To gain wider support from broad based coalitions, include non-discrimination on the basis of SOGIESC in law reform efforts to also protect other vulnerable groups from discrimination including on the grounds of race, ethnicity, religion, gender, etc.

In the representation role

- Promote equality and non-discrimination and advocate for action on issues of concern and urgency for LGBTI people in the community and with constituents.
- Ensure, as an elected representative, that there are no barriers to LGBTI people accessing services on at least the same basis as other constituents.
- Reach out to and partner with civil society organizations and human rights defenders working in the country to learn about violations of human rights to LGBTI people and the best way to tackle them.
- Establish a dialogue with civil society organizations, including youth organizations, movements and networks that advocate for the rights of LGBTI persons and with groups of people living with HIV/AIDS to learn from their testimonies and experiences in accessing health, justice, housing, education, civil registrars, among other public services.
- Share best practices, lessons learned and other information about LGBTI rights in your country with colleagues worldwide and contribute to resources for global and regional parliamentary action in this field.
- Get to know LGBTI organizations, support their events, participate in PRIDE parades, speak publicly in support of the rights and inclusion of LGBTI people.
- Effectively use their access to mass media and social media to: disseminate positive messages about and encourage positive dialogue with LGBTI people and about their human rights and inclusion, counter discrimination and stigma in the media and the public dialogue and facilitate dialogue and actions between LGBTI groups and their allies and mass media.
- Ensure that issues and decisions that are important to LGBTI people are properly heard and action is taken.
- Increase awareness about the LGBTI community in all public sectors, including among law enforcement officials, so they are able to identify and respond to specific forms of discrimination experienced by LGBTI people.

In the oversight role

- Ensure that national budgets allocate adequate resources to programmes and policies that address the needs of LGBTI people in all their diversity.
- Include and promote the discussion of human rights, sexual orientation and gender identity within the framework of existing regional cooperation mechanisms and facilitate the exchange of information and best practices among member countries.
- Monitor the implementation of government policies and plans that advance equality and non-discrimination for all individuals and be sure they specifically address the needs of LGBTI people.
- Monitor and oversee public institutions (including the police) on their training and actions related to LGBTI rights and inclusion, and if significant concerns arise, consider calling for a parliamentary inquiry.
- Call on the governments to protect LGBTI activists facing threats of violence or death.
- Identify systemic barriers to equality created by the implementation of particular policies, plans, or laws.
- Guarantee the allocation of adequate resources for new and existing policies and laws that uphold respect for human rights of LGBTI people and ensure their effectiveness.
- Partner with National Human Rights Institutions to collaborate in bridging the gap between civil society and the government.
- Promote a culture of complying with reporting obligations under human rights treaties, protocols, special reviews, etc.
- Promote the inclusion of LGBTI people in national development plans and in SDG reporting, including by supporting the involvement on youth-led LGBTI organizations and movements in SDG implementation, monitoring and accountability.

Work with parliament

- Promote dialogue and tolerance, including sensitization campaigns, among fellow parliamentarians to address discrimination and exclusion on the basis of sexual orientation and gender identity.
- Support and respect the privacy of LGBTI parliamentarians who are often present in parliament in very small numbers and may themselves be experiencing discrimination, stigma and harassment and, therefore, may not be 'out.'
- Challenge other parliamentarians who advocate for discriminatory and exclusionary language or actions and take concrete steps to counter these actions.
- Ask organizations like Parliamentarians for Global Action, the United Nations Development Programme (UNDP) and other relevant agencies for technical assistance and facilitation of networking opportunities with parliamentarians in other countries who are also engaged in equality and non-discrimination work. Parliamentarians can draw from the experiences of neighbouring countries and those in their region to help build arguments and offer concrete examples of successful recognition of human rights for LGBTI people.

Work within and across political parties

- Influence the platform of your political party to ensure that LGBTI people are regularly consulted and take part in the design, implementation and monitoring of laws, policies and programmes that affect them and are encouraged to join the party, run as candidates and vie for leadership positions within the party.
- Ensure that political party affiliates support LGBTI candidates.
- Systematically invite LGBTI organizations and activists to be part of party consultations, hearings, etc.
- Establish or participate in cross party caucuses and committees to advance LGBTI rights and inclusion.

“
Our goal as Parliamentarians is not to demonize any sector of society, but rather to insist that Parliament formulates legislation in accordance with international law and obligations that our States have signed and ratified. This is a long and complex process where allies are needed in order to build empathy rather than confrontation.”

– Berta Sanseverino, Chair of the Human Rights Committee,
Chamber of Representatives of Uruguay,
and PGA Board Member

Reaching out to civil society

- Identify organizations that are working on equality and non-discrimination in your country and explore ways to collaborate and advance human rights for all individuals regardless of SOGI. For example, organize a meeting where activist can speak about their needs and challenges with other colleagues of your Committee.
- Build and maintain a working relationship with civil society organizations that serve LGBTI communities to facilitate the sharing of relevant information and increase cooperation among stakeholders.
- Use your leadership role to speak out against discrimination in the media and participate in activities hosted by LGBTI organizations.
- Advocate for open discussions, sensitization training and education campaigns on sexual orientation and gender identity with constituents to combat prejudice against LGBTI people.
- Become a public champion who advocates for the rights and inclusion of LGBTI people and encourage other popular figures and role models (from sports, the arts, public life) to do the same.
- Bring together and build broad-based civil society coalitions to promote dialogue and partnerships between parliaments and civil society, including but not limited to: LGBTI organizations, progressive and open faith-based organizations, youth led organizations, women’s groups and others to help break down taboos and challenge stigma and discrimination against LGBTI people.

The importance of engaging with civil society

Constructive dialogue with civil society organizations leads to trust-building on both sides, which is an essential pillar of information and data sharing in cases of violence and abuse. This includes testimonies from survivors, which parliamentarians can use to gather important feedback, develop inclusive laws and refine strategies and action plans on equality and non-discrimination.

Moreover, cooperation between parliamentarians and civil society organizations sends a powerful message to the broader public that representatives and constituents can work together to protect the human rights of all individuals regardless of their sexual orientation and gender identity.



María Rachid and Jorge Taiana, Members of the Legislature of the city of Buenos Aires, march together with LGBTI organizations and activists in the Pride Parade in Buenos Aires, Argentina, on 7 November 2015.

Some Practical Steps

Be prepared to address myths and offer realities about LGBTI people

Not infrequently, public opinions and comments are made that undermine the rights of LGBTI people. Use every opportunity in parliament and in day to day life to respect and uphold the human rights of all individuals, including LGBTI people. Below are some of the most common myths about LGBTI people and ways in which they are denigrated. Alongside the myths are some suggestions on how to respond to them from a human rights standpoint.

Myth

Reality

 *Homosexuality is a Western phenomenon.*



 Claims that same-sex attraction is a Western practice are false. LGBTI people exist everywhere, in all countries, among all ethnic groups, at all socioeconomic levels and in all communities and have for a very long time.

What is true is that many of the criminal laws that continue to be used today to punish LGBTI people in many countries are Western in origin and are a legacy of 19th Century colonial powers. This remains the case even though most former colonial powers no longer have these same discriminatory laws in place. Many have replaced them with legislation that promotes equality.

 *Depriving LGBTI people of their human rights can be justified on grounds of religion, culture or tradition.*



 Discrimination on the basis of sexual orientation or gender identity can never be justified on any basis. Human rights are universal: every human being is entitled to the same rights, no matter who they are or where they live. History, culture and religion are all very important, but all States, regardless of their political, economic and cultural systems, have a legal duty to promote and protect the human rights of all. This includes the rights of all LGBTI people.

Religious freedom means the right to our beliefs, but it does not give us the right to impose our views on others, including by discriminating against or otherwise harming them.

 *LGBTI people are “not normal,” they are a creation of the modern age; their identity is a “trend.”*



 Sexual orientation and gender identity are not “current trends.” Almost every country has a recorded history of people whose identities and behaviours bear close resemblance to what we call today heterosexuality, bisexuality, homosexuality and transgender identity.

 *LGBTI people are requesting “special rights.”*



 This is not true. There are no special rights being claimed by or for LGBTI people. They are entitled to enjoy the same human rights and fundamental freedoms to which every human being is entitled. Regretfully, these rights and freedoms are denied to millions of people around the world just because of their sexual orientation and gender identity. This is why there is a need to focus on ending discrimination on the basis of sexual orientation and gender identity and ensure the inclusion of all LGBTI people in development.

 *Criminalizing homosexuality is a good idea.*



 Criminalizing private sexual relationships between consenting adults, whether the relationships are homosexual or heterosexual, is a violation of the right to privacy, is discriminatory in nature and violates international human rights law. When enforced, these laws violate rights to freedom from arbitrary arrest and detention. Criminalization serves to legitimize hostile attitudes towards LGBTI people, feeding violence, discrimination, extortion and blackmail. Enforcing these laws costs a lot of money and brings no social value.

 *By repealing laws that criminalize same sex activity we are “promoting homosexuality.”*



 Promoting equal rights of lesbian, gay and bisexual people is not “promoting homosexuality” – it is promoting the same fundamental human rights for everyone. These are core values that all United Nations Member States have the obligation to uphold.

 *Parliamentarians should follow public opinion when there is overwhelming public support for punitive laws against lesbian, gay, bisexual and transgender people.*



 Parliamentarians have the responsibility to advance the human rights and inclusion of all people, no matter how unpopular this viewpoint might be.

Negative public attitudes can never justify human rights violations, including punitive laws and police harassment and brutality against lesbian, gay, bisexual and transgender people, any more than they can justify sexist, racist, xenophobic, sectarian and other discriminatory acts or policies.

When there are discriminatory attitudes against certain groups, it is the responsibility of parliamentarians and others to work to overcome such discriminatory attitudes through public education, awareness raising and other measures.


There is nothing in international human rights instruments about LGBTI people, so they do not apply.




Quite the contrary, international human rights law applies to every person. International human rights law establishes legal obligations on States to make sure that everyone, without distinction, can enjoy their human rights. A person's sexual orientation and gender identity is a status, like race, sex, colour and religion.

Many human rights treaty bodies, human rights mechanisms, special procedures, recommendations of the United Nations Human Rights Council, United Nations resolutions and reports have repeatedly confirmed that LGBTI people are entitled to all the same human rights as straight and cisgender people and that discrimination on the basis of sexual orientation and gender identity violate human rights law.


When our national legislation does not conform with human rights norms and standards, there is not much we can do about it.




Sometimes provisions of national laws and policies may conflict with fundamental rights enshrined in international law – whether it is in relation to the human rights of LGBTI persons or in relation to other groups or specific human rights standards.

All States have a duty to review and reform national legislation and policies in line with international human rights standards, including in relation to human rights treaty obligations. Parliament has the responsibility for lawmaking and therefore must also ensure that national legislation conforms with international human rights obligations.


There are more serious problems for parliamentarians to focus on rather than LGBTI rights – like education, health and security.




This is a common tactic to deflect attention away from and minimize or ignore State responsibilities to respect, protect and fulfil the rights of LGBTI people.

The human rights of LGBTI people, like all people, require serious and dedicated attention. LGBTI people are often the ones more likely to be denied equal access to education, health and security. Protecting, respecting and fulfilling the rights of LGBTI people in no way prevents, obstructs or delays the resolution of any other matters.


Homosexuality is an illness, or a health issue.




More than 20 years ago the World Health Organization explicitly clarified that homosexuality is neither a disorder nor a disease and has emphasized that homosexuality is a natural and non-pathological variation of human sexuality.


We can change a person's sexual orientation and gender identity.



 The World Health Organization has made clear that sexual orientation cannot be changed. Attempts to forcibly change the sexual orientation of lesbian, gay and bisexual persons are ineffective, harmful and may amount to torture.


All LGBTI people have HIV/AIDS.



 This is patently not true. HIV/AIDS affects heterosexual, cis-gender and LGBTI people, men and women, in varying degrees according to the characteristics of the epidemic. In some regions of the world it is primarily a problem among the heterosexual population.

What is true, however, is that stigma, discrimination and exclusion of LGBTI people leads to lack of access to information on HIV and safe sex practices, prevention, testing, treatment, care and support. This leaves LGBTI people (and in particular transgender women) at higher risk of contracting HIV. Reducing stigma, eliminating discrimination and exclusion and, consequently, increasing access to services, is the right way to address the HIV epidemic for all people, regardless of their sexual orientation or gender identity.


Being around LGBTI people or having access to information on homosexuality endangers the wellbeing of children.



 This is a myth. Learning about or spending time with people who are LGBTI does not influence the sexual orientation or gender identity of minors, nor does it harm their wellbeing.


Gay, lesbian, bisexual and transgender people are “dangerous to children.”



 No. There is no link whatsoever between being gay, lesbian, bisexual or transgender and child abuse. Evidence shows that LGBTI people all over the world, just like straight and cisgender people, are good parents, teachers and role models for young people.

Portraying lesbian, gay, bisexual or transgender people as paedophiles or as dangerous to children is wrong and offensive. It is a distraction from the need for serious and appropriate measures to protect all children, including those coming to terms with their sexual orientation and gender identity. All forms of sexual abuse, including against children, should be prevented and punished wherever they occur and whoever is involved.

Learn how to speak about LGBTI issues

Knowing how to speak about the rights of LGBTI people and the issues affecting them is important. Using appropriate terminology, including local and national terminology, and sensitive language is essential for a good parliamentarian, who not only represents constituents, but also the country at international and regional forums. Even if your political party does not yet champion LGBTI issues, demonstrating homophobia, transphobia and hate speech – even inadvertently – can quickly ruin your international reputation and is likely to preclude or substantially limit your ability to interact with global policy shapers. At the same time, a rights-driven, sensitive, and sensible approach to LGBTI issues can boost the international recognition of your political career and help you demonstrate leadership.

Below are suggestions on how to speak effectively about LGBTI issues.

- Frame the issues in authentic, emotionally compelling ways that resonate with all people's values. Make a point that this is about everyday people who want the same chance as everyone else to pursue health and happiness, earn a living, be safe in their communities, serve their country and take care of the people they love. Use the language of common values, hopes and beliefs: family; hard work; responsibility; commitment; sacrifice; duty; these are common values shared by all people regardless of their sexual orientation or gender identity.
- Assess the audience. Discussing enabling laws during parliamentary sessions requires a particular set of terminology, while talking to voters and constituents may require a completely different terminology. For example, focusing on complicated legal concepts and policy distinctions is not the best approach for engaging constituents at a local town hall meeting. Instead, emphasize, for example, that advancing the rights and inclusion of LGBTI people is about removing unfair barriers that prevent LGBTI people from getting an education or being able to find decent work where they are not harassed, as well as keeping them safe from violence, so that they are able to live in dignity and fulfil their obligations to others – to their loved ones, families, friends, neighbours, their community and country.
- Talk about people. Taking into account the environment and considering confidentiality issues, tell emotionally compelling stories that draw attention to committed couples who have taken care of each other in sickness and in health, or show how gay and transgender employees provide for their families and loved ones, or are exemplary members of their community.
- It is crucial to avoid attaching labels to persons for whom those labels are not comfortable. It is good practice to always ask individuals how they define themselves and to respect and use their preferred self-definitions and pronouns appropriate to their own gender identity and culture.
- Illustrate concrete harms that discriminate against and exclude LGBTI people. Focus on important injustices and try to illustrate them with compelling stories that show how existing laws or practices have unfairly targeted and hurt LGBTI people.
- Know the terminology.

Framing the discussion of LGBTI issues within the specific context is very important. Making contact with local LGBTI organizations and activists, where they exist, can be an excellent starting point to learn about the history of LGBTI issues in the community and country and the most appropriate terminology to use. The box below from Asia and the Pacific shows the kind of resource that parliamentarians can use to familiarize themselves with the terminology used in local cultures and traditions.

“*Growing up in the Republic of Korea, we didn't talk about sexual orientation or gender identity. But as Secretary-General of the United Nations, I learned to speak out because this is a matter of life and death. I stand with the gay teen who is bullied... the transgender woman denied work... the lesbian subjected to vicious sexual assault.*”

– United Nations Secretary-General Ban Ki-moon, remarks at the High Level LGBT Core Group Event, “Leaving No-One Behind: Equality & Inclusion in the Post-2015 Development Agenda,” New York, 29 September 2015

Sexual orientation and gender identity diversity within local cultures and traditions in Asia and the Pacific

Concepts of sexual orientation and gender identity vary greatly across the Asia and Pacific region. In most cases, these diverse communities, identities and expressions have origins in long-established local cultures and traditions. These communities experience varying degrees of acceptance by contemporary society. Examples of local identities are found below.

- Cross dressers, intersex and transgender women are referred to as *hijras* (India and Bangladesh), *thirunangais* (Tamil Nadu) and *khwaja siras* (Pakistan); they have been a part of South Asian cultures for centuries and have recently been recognized by law as a third gender.
- The Bugis people of Sulawesi, Indonesia, recognize five gender categories: male, female, *calalai* (female-born individuals who identify as neither woman nor man); *calabai* (male-born individuals who also identify as neither man nor woman); and *bissu* (shamans who embody female and male elements).
- Pacific island countries also have unique communities including people assigned a male sex at birth who identify as having a gender identity or expression that is either female or who exhibit both feminine and masculine traits. These include the *fa'afafine* in Samoa, *fakaleiti / leiti* in Tonga, *akava'ine* in Cook Islands, *vakasalewalewa* in Fiji, *pinapinaaine* in Tuvalu, and *mahu* in French Polynesia. Males who identify with these groups often assume female roles in the family, and are usually broadly accepted as part of society, although some may experience stigma.
- Indigenous populations in Australia and New Zealand also have culturally-specific gender identities, including *whakawahine* in New Zealand, 'sistagirls' and 'brother boys' in Australia, and *yimpininni* in Tiwi Islands (Australia). There are hundreds of local terms used to describe sexual and gender orientation subcultures in societies across the region. Terms typically have meanings that combine aspects of both sexual orientation and gender identity or gender expression. Sometimes these terms are considered derogatory, depending on the context, and are used to varying degrees within communities.

Alongside local identities, there are communities, concentrated mainly in urban areas, whose identities correspond more closely with Western subcultures of lesbians, gay men, bisexual and transgender people.

(Contributed by the UNDP programme 'Being LGBTI in Asia')

Make a rapid assessment of laws, policies and bills to understand where your country currently stands on LGBTI rights

The charts below can help you to do a stocktaking of where your country stands in terms of rights recognition, legal instruments protecting LGBTI rights and policies addressing sexual orientation and gender identity.

Does your country comply with international legal instruments?				
Legal Instrument	Signed	Ratified	Reservations	Implemented
Universal Declaration of Human Rights (1948): Art. 2, 3, 5, 7, 9, 12, 19, 20(1)				<input type="checkbox"/>
International Covenant on Civil and Political Rights (ICCPR), (1966) Art. 2(1), 6, 6(2), 7, 9, 17, 19(2), 21, 22(1), 26	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
International Covenant on Economic, Social and Cultural Rights (1976): Art. 2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Convention on the Rights of the Child (1989): Art. 2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987): Art. 1(1), 2(1)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Convention Relating to the Status of Refugees (1951): Art. 33(1).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
American Convention on Human Rights 'Pact of San Jose, Costa Rica' (1989): Art. 4, 5, 7, 11, 15, 16, 19, 24	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Inter-American Convention Against All Forms of Discrimination and Intolerance: Art. 1(1), 2, 3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Does your country comply with international legal instruments?	Yes	No
Does your country have a law that prohibits discrimination on the basis of sexual orientation?	<input type="checkbox"/>	<input type="checkbox"/>
Does your country have a law that prohibits discrimination on the basis of gender identity/expression?	<input type="checkbox"/>	<input type="checkbox"/>
Does your country have a law that prohibits discrimination on the basis of sex characteristics?	<input type="checkbox"/>	<input type="checkbox"/>
Does your country have a law that protects intersex infants and children against "sex adjustment/correction" surgeries and similar unnecessary medical interventions?	<input type="checkbox"/>	<input type="checkbox"/>
Does your country criminalize same sex relations between consenting adults?	<input type="checkbox"/>	<input type="checkbox"/>
Are LGBTI people targeted with other laws such as vagrancy, public nuisance, or public morals?	<input type="checkbox"/>	<input type="checkbox"/>
Does your country have public policies to prevent discrimination and stigmatization of LGBTI people?	<input type="checkbox"/>	<input type="checkbox"/>
Are there institutional policies and/or procedures that are implemented when LGBTI people submit complaints of harassment or discrimination?	<input type="checkbox"/>	<input type="checkbox"/>

Does your country provide equal access to healthcare, in law? In practice, do LGBTI people have equal access to healthcare?	<input type="checkbox"/>	<input type="checkbox"/>
Does your country provide equal access to justice, in law? In practice, do LGBTI people have equal access to justice?	<input type="checkbox"/>	<input type="checkbox"/>
Does your country provide equal access to housing, in law? In practice, do LGBTI people have equal access to housing?	<input type="checkbox"/>	<input type="checkbox"/>
Does your country provide equal access to education, in law? In practice, do LGBTI people have equal access to education?	<input type="checkbox"/>	<input type="checkbox"/>
Do LGBTI people have equal access to work, in law? Do LGBTI people have equal access to work, in practice?	<input type="checkbox"/>	<input type="checkbox"/>
Is there an annual national report to monitor the situation of LGBTI in your country?	<input type="checkbox"/>	<input type="checkbox"/>
Does your country give transgender people the right to legal recognition on identity documents (sex, gender, name)?	<input type="checkbox"/>	<input type="checkbox"/>
Does your country criminalize same sex activity between consenting adults?	<input type="checkbox"/>	<input type="checkbox"/>
Is the legal age for consensual sex the same for heterosexuals as for LGBTI people?	<input type="checkbox"/>	<input type="checkbox"/>
Does your country have hate crime provisions to identify and prosecute bias-motivated violence on the basis of real or perceived sexual orientation?	<input type="checkbox"/>	<input type="checkbox"/>
Is there training for law enforcement officers on non-discrimination and LGBTI issues?	<input type="checkbox"/>	<input type="checkbox"/>
Do you know if there are statistics available on cases of violence and discrimination and prosecutions against these cases?	<input type="checkbox"/>	<input type="checkbox"/>
Does your country recognize persecution based on sexual orientation and gender identity as one of the grounds for asylum?	<input type="checkbox"/>	<input type="checkbox"/>

Ask the right questions: Sample questions to pose in parliament, to ministers and other decision makers

Ask the government to provide information on your country's context:

- Does your Ministry and Cabinet have a specific policy to address equality and non-discrimination based on sexual orientation, gender identity and gender expression? Is there an accountability framework and policy; and, if yes, are there reports on implementation? Do line ministries cooperate on LGBTI issues?
- Are there official statistics documenting acts of violence and discrimination against LGBTI people?
- What is the prevalence rate of violence and discrimination against LGBTI people?
- Has research been conducted to learn about factors that incite and cause violence against LGBTI people in your country?
- What information is available on the specific types of violence exerted against LGBTI people?
- What is the rate of government compliance with the recommendations provided by the national human rights institution (if present in the country) for the prevention and investigation of acts of violence against LGBTI people, or those perceived as such? What about the Universal Periodic Review (UPR)?
- What kind of data is the government collecting on LGBTI issues?
- Is LGBTI disaggregated data being collected and reported on, including as part of the Voluntary National Review process established as part of the follow up and review mechanisms of the 2030 Agenda for Sustainable Development?

To the Ministry of Health:

- Do state health personnel receive compulsory training on non-discrimination?
- How does the Ministry ensure that all staff, not only medical professionals, but receptionists, janitors, security officers and others, are adequately trained and sensitized on equality and non-discrimination?
- Are there training requirements for health care practitioners to understand the health needs and risks of LGBTI people?
- Are there monitoring and evaluation mechanisms to ensure that such training, if present, contributes to improving the provision of services to LGBTI people?
- Are there any health services specifically designed to address the needs of transgender people? If so, how accessible are these services?
- Is there a mechanism by which LGBTI people can evaluate the quality of services and propose changes?
- Is there a national HIV strategy or plan, and, if so, does it include specific consideration of key populations?

To the Ministry of Justice:

- Is there an integrated approach to addressing LGBTI people who are victims of violence, including protocols for police, prosecutors, health care providers and other social service agencies?
- Are there prompt, independent and effective investigations into all allegations of acts of violence, including those that may be motivated on the grounds of sexual orientation or gender identity?
- Is the Ministry tracking murders and killings that may be motivated by homophobia and/or transphobia?
- What kind of training do law enforcement officials receive on non-discrimination and equality?
- Is specific training available in places of detention?
- How does the Ministry ensure that law enforcement officers know the laws and are aware of the human rights of peoples, particularly LGBTI people, and how to apply these in their work?
- Does the Ministry work with civil society organizations to undertake comprehensive public awareness-raising and sensitivity campaigns on sexual orientation and gender diversity?

To the Ministry of Education:

- Does the Ministry work with LGBTI organizations to develop curriculum and human rights training for teachers, parents and children?
- Is there a plan for comprehensive sexuality education programmes in schools and communities? Have sexual and gender diversity been incorporated into the curricula to help transform stereotypes against LGBTI people?
- Is there an anti-bullying initiative in schools to combat discrimination and violence against young people and children? If so, how does this initiative work?
- If there is not a specific anti-bullying initiative, how is bullying in schools and communities being addressed? Does this include the right of transgender people to go to school with the clothes they prefer or are more comfortable with?
- Does the Ministry support student-led Safe at School campaigns?
- Do text books used in school reflect a positive approach to LGBTI issues?

To the Ministry of Social Welfare:

- Is there a mandate for LGBTI awareness training for staff who work in child welfare and juvenile justice issues?
- Is there an inclusive, non-discriminatory policy that explicitly commits to addressing the needs of LGBTI youth, such as mental and physical health issues, substance abuse, risky sexual behaviour and livelihood opportunities?
- Does the Ministry allocate funds to developmental, preventive and intervention programmes involving or led by LGBTI youth? If so, please explain.
- Is there an estimate of the incidence and prevalence of homelessness among LGBTI youth?
- Is there dedicated shelter space and housing for LGBTI youth?

To Immigration Authorities:

- Are there any immigration laws, policies or practices that restrict, target or disadvantage LGBTI people, whether residents, visitors or migrants?

To the Judiciary:

- Have all members of the judiciary received training on human rights, including in relation to LGBTI people?
- Do all judges deal with hate crimes and violence and discrimination against LGBTI people?
- What is the degree of impartiality during trials in regards to the gender status of the protagonists?
- How are the human rights of LGBTI prisoners protected in jails and in all places of detention?
- What precedent and jurisprudence exist regarding LGBTI people?

To the Parliament itself:

- How are LGBTI communities reflected and represented in the legislature?
- What measures has the parliament taken to ensure that it is a safe place for LGBTI people to work?
- Has parliament developed a plan to implement the recommendations of the Global Commission on HIV and the Law, including undertaking law reform in relation to men who have sex with men and transgender people?

Get inspired: Examples of actions by parliamentarians

In every region of the world, parliamentarians are taking concrete steps and employing a range of strategies to advance the human rights and inclusion of LGBTI people. The following are short stories describing these actions. They vary in approach and style, as the strategies that individual parliamentarians have used are framed to suit their respective needs and contexts. Some of the examples may be relevant in a wide range of countries, while others may have a more limited applicability. Not all options would be possible, or appropriate, for every parliamentarian to try.

As many of the examples reflect, parliamentarians can benefit from establishing ongoing communication with civil society organizations that serve LGBTI communities. Their knowledge and direct experience of discrimination is essential to understanding the LGBTI population's challenges and needs and the particular context – thereby enabling parliamentarians to legislate accordingly.

The examples aim to stimulate ideas and give inspiration to parliamentarians who can frame their own actions within the local context and seek the most strategic partners for making real progress.

Pursuing constitutional protections for LGBTI people

Nepal: Enshrining the rights of sexual and gender minorities in the Constitution of Nepal¹³

In a historic victory for Nepal's sexual and gender minorities, the country's new Constitution explicitly protects them against discrimination. The inclusion of progressive protections was secured thanks in large part to a coordinated advocacy effort of civil society groups, such as the Blue Diamond Society, whose work is supported by the Multi-Country South Asia Global Fund HIV Programme and UNDP.

After more than seven years of struggles and anticipation, the new Constitution was formally endorsed by Nepal's Parliament on 16 September 2015 and promulgated four days later. Article 18 of the Constitution, on the Right to Equality, specifically states that marginalized groups, which includes sexual and gender minorities, will not face discrimination by the state and judiciary.

Furthermore, the Constitution contains articles that specify that citizens of Nepal are permitted to decide what preferred gender identity appears on their citizenship document and that gender and sexual minority groups have the right to full participation in state mechanisms and public service "on the basis of the principle of inclusion."¹⁴

How did the advocacy efforts that helped make this a reality unfold? Over several months, the Blue Diamond Society, under the Multi-Country South Asia Global Fund HIV Programme, organized a series of sensitization and advocacy efforts with key individuals involved in the Constitution drafting process. The Blue Diamond Society provided information on specific technical language and data on the human rights of sexual and gender minorities. Activities in which parliamentarians participated included:

13 This example is also available on the website of UNDP in Asia and the Pacific: www.asia-pacific.undp.org/content/rbap/en/home/presscenter/articles/2015/09/28/enshrining-the-rights-of-sexual-and-gender-minorities-in-the-constitution-of-nepal.html.

14 "The sexual and gender minority groups of Nepal have been granted full and equal constitutional rights. No longer can we be excluded from social services such as housing, education, employment and health care," proclaimed Manisha Dhakal, Executive Director of the Blue Diamond Society. "We will continue to advocate policymakers to ensure that the provisions are properly implemented, and that further laws and policies that address the needs of our community are formulated."

- In July 2015, five regional workshops were organized – one in each development district of Nepal – to engage communities in the Constitution drafting process. The workshops were attended by more than 100 representatives of the sexual and gender minority community and produced a set of community recommendations. Over 100 Constituent Assembly members from across the country were then approached with these recommendations through a coordinated advocacy effort.¹⁵
- In February 2015, a South Asia regional consultation on transgender and hijra rights and health provided an important forum for the transgender and hijra community to articulate their struggles and to engage in constructive discussion with lawmakers and policymakers. The consultation was inaugurated by the Minister of Information and Communication and two members of the Constituent Assembly served as panelists.¹⁶
- In August 2014, a national consultation examined barriers and challenges faced by community groups in achieving equal access to health services, employment and education. More than 200 participants from across the country attended, including representatives from the Ministry of Women, Children and Social Welfare, the National Human Rights Commission, Home Ministry, the Ministry of Health, members of the Constituent Assembly, civil society and local government authorities.¹⁷
- In February 2014, a workshop on the inclusion of sexual and gender minority rights in the Constitution was held with officials from the National Human Rights Commission, including representatives from regional and sub-regional offices.



“
We can now say that it is a modern Constitution. We are bound to fulfil our national and international obligations. The Constitution guarantees equality and non-discrimination in the case of gender and sexual orientation but also in other grounds such as religion, race, caste, tribe, origin, language, physical status, disability, and many more. Nepal has big socio, cultural, ethnic, religious diversity. We have to ensure and protect the rights of all and to give the opportunity to empower all communities. I must underscore the important role of national and international organizations (including NGOs and INGOs) in the process.”

– Ramesh Lekhak, Member of Parliament, Nepal,
 and PGA Member, 1 October 2015

These efforts were reinforced by evidence from a 2014 study¹⁸ by the Blue Diamond Society, UNDP and The Williams Institute, which found that discrimination was widespread in Nepal and that existing anti-discrimination provisions were failing to sufficiently protect sexual and gender minorities.

Keeping the issues in the public eye was also central to the Blue Diamond Society advocacy efforts. For several years they organized large annual ‘Pride’ festivals to openly express the demand for the rights of sexual and gender minorities to be guaranteed in the Constitution.

15 www.asia-pacific.undp.org/content/rbap/en/home/presscenter/articles/2015/09/28/enshrining-the-rights-of-sexual-and-gender-minorities-in-the-constitution-of-nepal.html.

16 www.asia-pacific.undp.org/content/rbap/en/home/presscenter/pressreleases/2015/02/05/transgender-and-hijra-activists-call-for-improved-health-living-conditions-and-enabling-legal-environment/.

17 <http://bds.org.np/wp-content/uploads/2014/09/Press-Release-National-Consultation-Meeting-FINAL-140903.pdf>.

18 Surveying Nepal’s Sexual and Gender Minorities: An Inclusive Approach. Available at: www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/hiv_aids/surveying-nepal-s-sexual-and-gender-minorities--an-inclusive-app.html.

Tunisia: Constitutional rights forge a pathway for civil society to advance legal and social reforms

The discussion of LGBTI issues and rights remains sensitive in Tunisia for many people. Yet, members of the National Constituent Assembly, government representatives and non-governmental organizations have all recently made significant contributions to an emerging public debate on protecting the rights and advancing the inclusion of LGBTI people. These debates broadened following the adoption of a new Constitution in 2014.

The National Constituent Assembly undertook a widely consultative process to inform the drafting of the Constitution. As a result, the Constitution includes a range of rights and freedoms, including the protection of “privacy” (Article 24) and of “dignity and physical integrity” and prohibits discrimination between citizens (Article 21) and “all forms of physical and moral torture” (Article 23).

In September 2015, during a media interview, the then Minister of Justice (who was later dismissed) discussed the importance of individual freedoms and privacy. He mentioned the potential for legislative repeal of Article 230 of the Tunisian Penal Code, which pre-dates the 2014 Constitution, and criminalizes various sex acts, including sodomy and lesbianism.

While Article 230 has not yet been repealed, in other areas some progress has been achieved. For example, in 2015 a new non-governmental organization, the Shams Association, was created. Their focus includes advocating for the decriminalization of homosexuality in Tunisia. When an order was issued in 2016 suspending the activities of the Shams Association, national and international civil society representatives protested, challenging the suspension as a serious threat to freedom of association in Tunisia. The Shams Association appealed the decision, won the case and was able to resume operations. The targeting of the Shams Association attracted media attention and generated many public statements and, although not all were supportive, a large contingent of Tunisian civil society mobilized to support the Shams Association and its ongoing efforts to repeal Article 230.

Fiji: Civil society activism to secure the recognition of gender identity through constitutional and legal reform

In 1997, less than three decades after gaining independence, Fiji became the second country in the world (after South Africa) to prohibit discrimination on the grounds of sexual orientation in its Constitution. However, like for many other former British colonies, “carnal knowledge against the order of nature” and “acts of gross indecency” between males remained criminal offenses and, in 2005, two men were convicted for having consensual sex.¹⁹ These convictions were subsequently overturned by the high court on the basis that they violated the constitutional guarantee to personal privacy and the decision effectively decriminalized homosexuality in Fiji.

In the aftermath of the 2006 coup, the parliament was suspended, the Constitution was later abrogated and the ‘interim’ government introduced a number of decrees to pursue a series of legal reforms. These included: 1) a 2009 Crime Decree that removed the discriminatory ‘sodomy laws’ and recognized male-on-male rape as a criminal offense; and 2) a Human Rights Commission decree which provided for claims of discrimination on the basis of gender, sexual orientation and disability (these same protections were included in the Employment Relation Act). In 2011, an ‘HIV/AIDS Decree’ provided further protection against discrimination and decree 57 of 2012 mandated the drafting of a new Constitution.

The Constitution drafting commission called for submissions from all segments of society and savvy networks of human rights and LGBTI activists, academics and lawyers worked together to use that political space to prepare submissions to the constitutional drafting committee. Civil society demands included the reinstatement of the anti-discrimination provision of the 1997 Constitution, as well as the addition of gender identity and expression as protected grounds. The United Nations supported an inclusive constitutional consultation process and many advocates were engaged. Submissions to the process referred to and relied on the growing body of evidence

19 Nadan v The State and McCoskar v The State.

and policy recommendations generated by the United Nations, civil society and other partners, including the Yogyakarta Principles, recommendations of the Global Commission on HIV and the Law, statements made by the United Nations Secretary-General, Ban Ki-moon, and international human rights treaties, along with evidence of discrimination and human rights violations (violence) and their impacts on health risks (particularly HIV and mental health).

These broad and collective efforts bore fruit in 2013 as the promulgated Constitution included an expansive anti-discrimination provision that specifically mentions, "sexual orientation, gender identity and expression." Following the promulgation of the Constitution, open discussion and debates on LGBTI issues become easier in Fiji. In late 2014, LGBTI activists, together with United Nations officials, were invited to host a session on 'Gender Identity and the Law' at the annual Attorney General's Conference. There, a transgender activist, Shivana Singh, spoke about persistent discrimination and abuse, including some perpetrated by government officials, but also referred to the new Constitution as a "victory for all Fijians," and stressed the importance of transgender people needing the right to legal recognition of their gender identity.

The following year (2015), prominent public figures, including the President, the acting Prime Minister and leaders of the powerful Methodist Church of Fiji, made bold and persuasive statements at the Pacific launch of the United Nations Free & Equal campaign. President Ratu Epeli Nailatikau declared: "Laws alone are not enough. I ask everyone in the Pacific to take action for equality. Together we can stop bullying, violence and other forms of discrimination against people simply because of who they are or whom they love."

Progress is being made and a more accepting attitude towards equal rights of LGBTI people is slowly emerging, as evidenced in media and surveys undertaken among the younger generations. However, tensions remain and discrimination and homophobia continue to occur, as reflected in the cancellation of a 'Gay Pride' style parade by the police in 2015 and the rejection by the High Court of a case brought by a transgender woman to have her birth certificate changed to reflect her gender identity.

The developments in Fiji reflect that advancing the rights of LGBTI people does not happen instantly, rather broad coalitions with a range of sustained strategies are required supporting the cause.

Parliamentarians driving progressive law reform

Argentina: From the equal marriage law to the gender identity law – the pride of a country

Key national developments in the early years of the twenty-first century convinced a group of LGBTI organizations in Argentina that the time had come to advance the civil rights of the LGBTI community in the country. These included: a) the adoption of the National Plan to Combat Discrimination, which contained a chapter on sexual diversity and progressive public policies, including the recognition of the rights of same-sex families as equal to those of traditional families; b) the repeal of laws that promoted impunity for acts that occurred during the dictatorship; and c) approval of equal marriage and gender identity laws in Spain, a country, which like Argentina, has a strong presence of the Catholic Church.



It was in this context that in 2005 the Argentinian LGBT Federation was born. The Federation, together with the Argentinian Association of Transvestites, Transsexuals and Transgender (ATTTA) called for: a) approval of a gender identity and an equal marriage law; b) repeal of laws criminalizing homosexuality and cross-dressing; c) inclusion of sexual diversity issues in curricula for comprehensive sexual education; and d) adoption of a new anti-discrimination law. The strategy planned for these actions was as great as it was simple: to advance from all possible fronts.

The equal marriage law was the item met with the least opposition and was selected to spearhead the public campaign that served as a gateway for the proposal and approval of the gender identity law. Civil society tactically defined strategies customized for each state power, as well as for the mass media and other social actors.

The strategy, focused on legislative powers, included the drafting of proposals on equal marriage and gender identity. The first draft bill on equal marriage was presented in 2005 and the first one on gender identity in 2007. Both propositions had the signature of at least one delegate of each political bloc represented in the parliament.

Targeting Cabinet Ministers, the objective was to secure the support and active involvement of all ministers. Several meetings were organized with ministers and secretaries closest to the cause; through them other ministers were reached in a snowball effect leading to a meeting with the Chief of the Cabinet of Ministers.

Two working groups were established to ensure a continuous dialogue among parliamentarians: the Political Parties Working Group and the Parliamentary Working Group in Favor of the Equal Marriage and the Gender Identity laws. Both aimed to gather support for the bills among parliamentarians representing different political parties. The latter group was mainly attended by young politicians and feminists, who became strategic allies in encouraging members of parliament from their respective parties to support the cause.

Another angle was an advocacy plan that was agreed with LGBTI organizations based in other countries. When the President of Argentina was on official missions, these organizations requested hearings with the President, taking the opportunity to advocate for the equal marriage and gender identity laws in Argentina.



After a deep social, economic and political crisis, which promoted intense discussions on social issues and rights, the Argentinian society was more open to question traditional institutions in lieu of the recognition of rights.

Progress in the recognition of equal marriage was experienced as a matter of national pride that resulted in many politicians changing their own political positions on diversity, so the gender identity law had virtually no opposition.

– María Rachid, Legislator for the city of Buenos Aires, Argentina

The strategy for the Judiciary was mainly directed towards strategic litigation. More than 100 cases related to equal marriage and more than 100 cases on gender identity were brought to court. Judicial authorities were called to decide on whether the denial to identity for transgender people violated two deeply rooted jurisprudential provisions in Argentina: the right to autonomy and the right to an identity, a concept that had been defined by Argentinian jurisprudence as the “right to be oneself and not another.”

The court cases triggered numerous debates in Congress. At the same time, they provided an opportunity to share the unique, “real life” stories of citizens seeking the recognition of their marriages or their gender identities. Consistently, judicial authorities stated that the right of individuals to their identity should be based merely on the expression of will and not on evidences or external elements, such as medical reports, witness testimonies, etc. These judicial statements further stressed the message that the legal change of gender identity should be a simple and streamlined administrative process, requiring only the expression of will of the interested party. This view was later maintained in the approved law.

Both the LGBTI Federation and ATTTA established a successful alliance with the mass media. A group of journalists and reporters supportive to the cause were consistently given first priority to cover the news and the stories of the individuals who executed legal actions. A journalist’s guide on the gender identity law was produced as a mechanism to promote positive messages directed to the general population. Building close relationships with members of the media was pivotal in creating a favourable environment for the equal marriage law and gender identity law within the public discourse.

Over the years of intense activism, the LGBT Federation and ATTTA incorporated more strategic allies and actors into the fight: workers’ unions, universities, members of academia, student centres, public personalities, journalists, musicians, artists and members of various faith-based organizations (including the Catholic, evangelical and Candomblé²⁰ religions). Representatives of all these segments of society publically supported the bill, coming together for the same cause, in a single voice.

Success was finally achieved when the Equal Marriage Law was passed in July 2010. Preparations for a legislative campaign for the approval of a Gender Identity Law started right away, as the first signature in support for the bill came directly from the Chief of the Cabinet of Ministers. Once again, success was achieved and the Gender Identity Law was passed by the Senate in May 2012. In this case it was approved almost unanimously.

The two laws have dramatically changed the lives of many people. A study showed that after the adoption of the new gender identity law, 70 percent of transgender women reported that they did not experience stigma and discrimination in health services; 1 out of 10 transgender women and 3 out of 10 transgender men returned to school to complete their studies; 3 out of 10 trans women and 6 out of 10 trans men started searching for a job. But, most importantly, all of them reported increased self-esteem and a sense of happiness at being “oneself and not another.”

Federation of Bosnia and Herzegovina: The Women’s Caucus works with non-governmental organizations to drive the adoption of amendments to the Criminal Code using emergency procedures

In 2014, the Federation of Bosnia and Herzegovina (FBiH)²¹ remained the only administrative unit in Bosnia and Herzegovina that did not address hate crimes in its Criminal Code.

The Women’s Caucus of Parliamentarians of the House of Representatives in FBiH worked actively with the Sarajevo Open Centre on behalf of a coalition that was fighting against hate speech and hate crimes to draft an amendment to the criminal code that would include provisions on hate crimes²² committed on the basis of sexual orientation and gender identity. The advocates aimed to harmonize the Criminal Code with the Federation’s Law on Gender Equality, Law on Prohibition of Discrimination and the Brcko District Criminal Code.

20 Candomblé is a religion based on African beliefs popular in several Latin American countries.

21 The Federation of Bosnia and Herzegovina (FBiH) is one of two political entities that make up Bosnia and Herzegovina. The other is Republika Srpska.

In 2014, the Women's Caucus cooperated with the FBiH Ministry of Justice and submitted to the FBiH parliament a comprehensive Draft Law of Amendments to the Criminal Code. The FBiH House of Representatives adopted the Draft Law of Amendments that year, but the session of the FBiH House of Peoples that would have had to adopt the same draft law was not scheduled during 2014. General elections were held in FBiH in 2014, leaving the procedure for adopting the amendments to be resumed in 2015. Finally on 23 February 2016, during the eighth regular session of the House of Representatives of the Legislature in Sarajevo, the Draft Law on Amendments to the Criminal Code was adopted in an emergency procedure.

India: Transgender rights bill

The Upper House of Parliament in India unanimously approved a private member's bill in April 2015 protecting and providing rights for transgender people. Introduced by parliamentarian Tiruchi Siva, the bill has 58 clauses and guarantees reservations in education, jobs, financial aid and social inclusion. It establishes an Employment Exchange, National and State Commissions for Transgender Persons and Special Transgender Rights Courts. Speaking to The Indian Express on 25 April 2015, Siva noted, "I am very happy and excited. I have seen them, how they are being discriminated against and the way they are abused. I thought the only remedy was by way of legislation."

UNDP actively supported the process along with civil society partners, such as the Voluntary Health Services (a sub-recipient of the Multi-Country South Asia HIV Programme funded by the Global Fund). Actions included consultations with community representatives and parliamentarians at state and national levels. UNDP and Voluntary Health Services are continuing to uphold the process by supporting discussions and advocacy on the bill in the Lower House of Parliament.

Mozambique: Modernization of the penal code removes colonial-era laws criminalizing homosexuality

Cultural notions about homosexuality being 'un-African' were successfully challenged in July 2015 when the Parliament of Mozambique passed a new Penal Code that decriminalized homosexuality.

This was seen by some parliamentarians as critical, since criminalization of consensual same-sex conduct among adults violates rights to privacy and freedom from discrimination, both protected under international law and places States in material breach of their obligation to protect the human rights of all people and the principle of equality of all before the law.



“*As a longstanding member of PGA, I am pleased to have contributed to the drafting and revision of the Penal Code in Mozambique that has been in place since 1886 during the colonial era. Moreover, I believe that the criminalization of people based on their sexual orientation goes against all international and regional human rights treaties. The New Penal Code introduces changes adjusted to the actual political, economic and social reality in Mozambique. Through such changes in the new Penal Code, Mozambique makes a strong statement and reinforces the fight against the discrimination based on sexual orientation and gender identity. It serves to send the message that it is the duty of all nations to secure and provide human and equal rights to all of its people.*”

– Antonio Niquice, Member of Parliament, Mozambique, and PGA Member

22 This coalition brought together 10 non-governmental organizations from Bosnia and Herzegovina.

Those involved in the process in Mozambique shared a few lessons learned on how change can be achieved:

- Collaborate and form partnerships. Parliamentarians can ask organizations like PGA, or relevant agencies, including multilateral agencies, for technical assistance and networking opportunities with parliamentarians in other countries engaged in equality and non-discrimination work.
- Parliamentarians can draw from the experience of neighbouring countries to help build arguments and provide concrete examples of the recognition of human rights for LGBTI people.
- Parliamentarians can initiate parliamentary questions, motions, resolutions and statements in support of legislative reform (e.g., protective measures, hate crimes) and depenalization, especially in respect to laws that are antiquated and inconsistent with human rights law.

El Salvador: Dialogue between members of parliament and LGBTI civil society leads to increasing sanctions for crimes motivated by hatred based on sexual orientation and gender identity

Violence against LGBTI community members and impunity of the attacks perpetrated by private actors, particularly gangs and the police, are an ongoing issue in El Salvador. The criminal justice system has failed to recognize and investigate LGBTI hate crimes, thereby rendering individuals vulnerable to attack and without redress. In particular, transgender individuals have been the targets of brutal murders. Most of these cases are not investigated and none have resulted in a successful prosecution.



PGA's Seminar on Equality and Non-Discrimination for Latin American and Caribbean Parliamentarians held in El Salvador on 3 November 2014 called for an open dialogue among legislators, NHRIs and LGBTI civil society to review national legislation on gender identity, hate crimes and non-discrimination. The San Salvador Statement of Commitment was adopted shortly thereafter.

In September 2015, the Legislative Assembly of El Salvador approved a reform to the Penal Code increasing sanctions against murders (article 129) and threats (article 155) motivated by hate, including on the basis of race, ethnicity, political views, religion, gender, gender identity and expression, sexual orientation or any other equivalent.

According to Karla Avelar, the Executive Director of COMCAVIS TRANS, a Salvadoran LGBTI rights organization, "This is the beginning of all the other reforms that we have to achieve in this small country."

The Salvadoran case shows that protecting the rights of all vulnerable groups, and including sexual orientation and gender identity and expression as one of a range of categories, can be a good method for ensuring protections. Including an array of grounds for protection, such as race, ethnicity, religion and gender, can help gain more support from other sectors of society and gather the necessary majority for passing reforms.

Uruguay: LGBTI rights promoted in a country embracing wider democracy

In Uruguay, a civil union law passed in 2007 had a very low vote count in both chambers. Two years later, a new children's protection law was approved, making adoption for gay couples a possibility. In the same year, the Gender Identity Law (law No. 18,620) was also sanctioned.

Six years later, in April 2013, Uruguay approved the equal marriage law. The law received 71 votes in favour in the Chamber of Deputies and 23 votes in favour and eight against in the Senate. This law had been promoted since 2011 by civil society groups, with the first text being drafted by Ovejas Negras (Black Sheep), the national LGBTI collective.



“***This reform is a very significant step in advancing an open dialogue on rights of LGBTI people and is a commanding tool to guarantee equality and respect for all individuals. It also highlights that violence, in any instance, but especially on the basis of these criteria, is strongly condemned. I am very pleased that PGA’s recent meetings with LGBTI representatives, and Salvadoran MPs, among them the Coordinators of the three largest political parties, FMLN, GANA, and ARENA, to advocate towards the approval of this reform had such a fantastic result. This opening brings parliamentarians closer to their constituents and their needs.***”

– Berta Sanseverino, Chair of the Human Rights Committee,
Chamber of Representatives of Uruguay,
and PGA Board Member

and the most conservative sectors of Uruguay did not try to negatively influence the press in relation to same sex marriage, many were very outspoken when the bill on voluntary interruption of pregnancy was presented.

The passing of the Equal Marriage Law had a downstream effect on other legal changes in the country. For example, the outdated Civil Code was reformed, establishing parental obligations to children (both natural and adopted) and improving parental authority roles, and enshrining civil equality between men and women.²³

The approval of the equal marriage law took more than three years, as it underwent a very thorough revision by a group of lawyers who were part of the Constitutional and Civil Code Commission. The lawyers revised the proposed law, which originated from civil society, to be sure that the proposed bill was aligned with existing rules and constitutional standards.

Several factors influenced the positive outcome. First of all, the bill presented by civil society was technically sound and well documented, having been developed by legal professionals with extensive knowledge of human rights law. Secondly, Uruguay has a very organized and knowledgeable civil society movement. Thirdly, there are a large number of young politicians who promote progressive and innovative legal reforms and that are members of parliament and political parties. And finally, the more conservative segments of society, despite being opposed to the recognition of same sex marriage, did not express similar opposition in recognizing civil unions for same sex couples.

The aforementioned factors created a receptive environment for protecting LGBTI rights in Uruguay. The approval of the law also benefited from favourable regional and international contexts, in particular, the positive experiences of other countries like Argentina and Spain. Lastly, the government agenda itself was supporting progressive laws, such as a law on voluntary termination of pregnancy (2012) and the Assisted Reproduction Act (2013).

Likewise, the general population and the mass media were claiming a more democratic national agenda. Public surveys carried out among the general population demonstrated strong support for the new laws and for reforms to implement these changes. The majority of mass media supported legislative progresses and did not express negative opinions about the equal marriage bill. On the contrary, the first gay wedding in Uruguay was covered by over 100 media outlets. While high level political powers

23 For example, in Uruguay, before the reform only women could file for a unilateral divorce. With the new code both spouses can request divorce unilaterally.

Thanks to the new Civil Code, the Ministry of Education and Culture created a commission against homophobia. The Equal Marriage Law also led to the creation of human rights offices, such as the Secretary of Sexual Diversity in the Ministry of Social Development and a similar office in the municipality of Montevideo. The Ministry of Social Development now has a Policy on Social Protection for Vulnerable Groups, including LGBTI persons and sex workers. Agreements have been established between a faculty of psychology and the Ministry of Social Development to provide psychological support to the LGBTI community.

Still pending is a proposal for employment quotas for LGBTI people, as are in place for the Afro-descendant community, and the granting of scholarships to the neediest sectors of the country. While this latter programme has benefited eight percent of the most disadvantaged economically, it is not sensitive to LGBTI people.

Affirmative action takes time to generate significant changes and directly impact people's lives, but certainly Uruguay remains firmly on its way to sustainable development with equity, through the actions both of its government and its citizens.

Malta and Chile: Leading the way in legislating protections for intersex people

- In April 2015, the Maltese Parliament adopted the Gender Identity, Gender Expression and Sex Characteristics Act. The Act prohibits 'normalizing' genital surgeries on intersex children, introduces a fast gender recognition procedure based on self-determination, allows parents and guardians to postpone the inclusion of gender markers on birth certificates until the child's gender identity is determined and contains various other provisions in the area of health and non-discrimination.
- In 2014, the President of Chile established a National Council for Children to harmonize relevant laws and policies with the requirements of the Convention on the Rights of the Child. The Council includes representatives of all ministries, parliamentarians, the judiciary branch and civil society. Intersex activists provided training and materials to this Council. The Minister of Health created a working group on intersex issues, which resulted in the development of Circular Order N18, dated 22 December 2015, entitled "On certain aspects of health care of intersex children." The Circular Order stops "unnecessary treatments for 'normalization' of intersex children, including irreversible genital surgery until they are old enough to decide on their bodies." In 2016, the category 'sex characteristics' was added to Article 8 of the draft anti-discrimination law on guarantees to the Rights of the Child.

Viet Nam: A step forward for the rights of transgender people

On 24 November 2015, the Vietnamese National Assembly voted unanimously to protect the rights of transgender persons by enshrining in the Civil Code the right of those that have undergone sex-reassignment surgery to have their gender recognized. The new provision is a big step towards protecting the human rights of transgender people and was made possible following the advocacy and campaigning efforts of LGBTI civil society organizations with the direct support of UNDP.

From the outset, a multi-stakeholder approach was adopted and a coalition of partners was developed leveraging UNDP's existing relationship with the Government of Viet Nam on a broad range of issues, including some rights issues which are viewed as sensitive. Discussion was facilitated between National Assembly members and LGBTI community representatives on the human impact of legislation which denied rights to transgender people. Before the project was initiated, lawmakers were either yet to be convinced of the need for legislative change or lacked awareness of the specific issues faced by members of the LGBTI community. The focus on creating direct relationships between National Assembly members and members of the LGBTI community had a noticeable impact in changing attitudes that ultimately led to over 86 percent of the National Assembly voting to pass into law the provision on gender reassignment recognition.

A tailored approach towards capacity building for civil society organizations was another key component of the project. Instead of approaching capacity building as a series of stand-alone events, UNDP nurtured participants of the programme for the duration of the project, concentrating on ensuring sustainable LGBTI leadership and advocacy beyond the project's life cycle. This included a mentor relationship between more experienced LGBTI

activists and those with less experience and capacity building for parents by strengthening their abilities to conduct outreach and, most importantly, engage in public demonstrations of support and love for their children, sending clear and powerful messages about acceptance. Strong national partner organizations, such as the Institute for Studies of Society, Economics and Environment (ISEE) and Information Connecting and Sharing (ICS), played a crucial role in delivering results.

Finally, UNDP linked the objective of the project and the work of national civil society organizations to existing international practice in this area, taking a rights-based and equality approach, to provide members of the National Assembly with an international framework and standard for eliminating discrimination against LGBTI persons. The combination of these approaches resulted in achieving outcomes beyond what was expected from the outset of the project.

The project was part of UNDP's wider LGBTI regional programme, which included the Being LGBTI in Asia regional study and in-country partnerships between UNDP and USAID to support LGBTI civil society organizations with capacity building, research, advocacy and engagement in legal reform.

The 'sex change' article of Viet Nam's new Civil Code (Article 37) applies to those wishing to change their sex from that assigned at birth and assures the right of transgender people who have undergone sex reassignment therapy to modify their gender marker on identification documents. Despite this achievement, examination of the body remains a condition to gender reassignment, thus disqualifying many transgender people who are unwilling or unable to access intrusive medical interventions to modify their body. These challenges remain and UNDP continues to advocate for transgender individuals to have the right to reassign gender markers in line with their identity, irrespective of surgery.

Parliamentarians opposing regressive law reform that targets LGBTI people

Russian Federation: Parliamentarian defies party and supports LGBTI people

In 2014, when amendments to the Russian Federal Law "against propaganda of non-traditional sexual relations among minors" were discussed, although her party supported the law, parliamentarian Maria Maksakova proposed that the discriminatory term 'non-traditional' be removed. Maksakova, who is also a well-known opera singer, delivered a speech at a meeting of the ruling party which was widely televised, reprinted and shared through social media.

"From now on," said Maksakova, "'homosexual propaganda' will mean mentioning non-straight people in any context, other than negative. The intolerable situation leads to an increase in the number of suicides among people who find they have gay inclinations, especially teenagers... They can neither receive counselling, nor share experiences – as this is considered 'propaganda.' But the law does not deprive their persecutors from their 'right' to oppress, abuse and make human lives miserable."²⁴

Democratic Republic of the Congo: Working with civil society to prevent the introduction of a new anti-homosexuality bill

In 2014, a campaign spreading homophobic messages and sentiments was organized in the Democratic Republic of the Congo and found support in a significant part of the population in post-conflict areas, particularly the eastern part of the country. The campaign focused on efforts to introduce a law similar to the Ugandan Anti-Homosexuality Act that was passed by the Ugandan Parliament in December 2013.²⁵ In addition, an anti-gay Facebook page was made which people started joining on 6 March 2014.

As a Member of Parliament from the opposition party was about to introduce an anti-homosexuality bill, members of civil society sprang into action, including representatives from LGBTI organizations, the Support Group of PLHIV,

24 Мария Максакова: «Закон о гей-пропаганде опасен для общества», www.mk.ru/politics/russia/interview/2014/02/06/981425-mariya-maksakova-zakon-ogeypropagande-opasen-dlya-obschestva.html.

25 The law was signed by the Ugandan President on 24 February 2014, but by August the Constitutional Court of Uganda had ruled it invalid.

the Working Group on HIV and Human Rights and the Centre for Human Rights of the University of Kinshasa. Civil society actors identified two members of government – who were also part of the Social and Cultural Commission of the Congolese Parliament under which the SOGI portfolio falls – to work with to stop the proposed bill.

To sensitize parliamentarians and others, an advocacy tool called *Argumentaire Technique Contre la Criminalisation de Certaines Poulations Clés* was developed with the support of UNDP.²⁶ The advocacy tool gave like-minded parliamentarians and their supporters the technical arguments and terminology they needed to argue against the rationale behind the proposed bill. The *Argumentaire* was circulated among many parliamentarians, including Dr. Mokako, a member of the Francophone Parliament who had previously worked with UNDP on the amendment of the HIV Act, as well as other parliamentarians who had participated in the National Dialogues and were allies. Representatives from a number of agencies met with senior members of the Congolese Parliament to informally discuss this issue. The strength of the technical document, the capacity building provided to members of parliament on 'sensitive' issues and the identification of key decision makers, such as the President of the parliament, all had the desired impacts and the bill was not introduced.

The *Argumentaire Technique Contre la Criminalisation de Certaines Poulations Clés* continues to be circulated beyond the parliament and is widely used by civil society, government representatives and others, including the Congolese Country Coordinating Mechanism of The Global Fund to Fight AIDS, Tuberculosis and Malaria, the working group on HIV and Human Rights, the national multisectoral programme to fight against AIDS (PNMLS), HIV focal persons and relevant officials within the Congolese Ministry of Justice.

Sectoral approaches to parliamentary action

Maharashtra State, India: Leaving no one behind means including the transgender community in policy consultations and frameworks

Maharashtra has become the second state in India to set up a Welfare Board and the first to set up a cultural institute (in process) dedicated to the transgender community. These positive developments came after a 2013 public consultation, supported by UNDP, which brought thousands of transgender people to interact directly with the Chief Minister and other government representatives to discuss the specific welfare needs of the transgender community.²⁷

The transgender community, a visible gender minority in India, continues to remain on the fringes of development and welfare programmes, with little access to public goods and services. The Maharashtra state government is attempting to address these gaps through the Welfare Board, which will provide avenues for formal education, expand employment and self-employment opportunities, run health programmes and provide free legal help to the community.

Professor Varsha Gaikwad, a sitting Member of the Maharashtra Legislative Assembly, played an important role by including sex workers and transgender people in the deliberations for the proposed Women's Policy in Maharashtra. When Professor Gaikwad was the Women and Child Development Minister for the State, representatives of the transgender community prepared a detailed presentation for the minister that highlighted the lack of health and education facilities for the transgender community. She formed a committee that included members of parliament, the legislative assembly and non-governmental organizations to undertake a review exercise. Professor Gaikwad directed that the committee should include three representatives from the transgender and sex worker community so their concerns would be fully reflected in the policy document.²⁸ The Maharashtra Woman's Policy was finalized and approved by the state cabinet on International Women's Day on 8 March 2015.²⁹

26 *Argumentaire Technique Contre la Criminalisation de Certaines Poulations Clés* can be found here: www.cd.undp.org/content/rdc/fr/home/library/hiv_aids/analyse-technique-criminalite.html

27 www.indiatvnews.com/news/india/development-board-for-transgender-community-in-maharashtra-28763.html.

28 A video documenting the process can be accessed at: www.youtube.com/watch?v=QjOM1tCOE0.

29 Maharashtra State women and child policy, link: https://womenchild.maharashtra.gov.in/Sitemap/womenchild/pdf/cover%20page_1.pdf.

Dominican Republic: Legislating on HIV/AIDS offers a sectoral approach to advance non-discrimination

In 2011, the National Congress of the Dominican Republic approved a Law on HIV and AIDS (No.135-11), which represented a milestone in the history of the country. The law created the National Council for HIV and AIDS (CONAVIHSIDA), a multisectoral body responsible for coordinating and conducting the national response to HIV. Civil society and representatives of key populations, in particular people living with HIV, had worked side by side with the standing committees of the Senate and the Chamber of Deputies (women, health, financial, etc.) to realize this outcome. People living with HIV and vulnerable groups, such as women, youth and LGBTI persons, gained a voice and a vote via CONAVIHSIDA.

In 2012, a progressive politician, Víctor Terrero, was appointed Executive Director of CONAVIHSIDA. In June 2013, led by Terrero, CONAVIHSIDA held a National Dialogue on HIV and the Law, with support from UNDP and UNAIDS. One of the recommendations of the dialogue was to create an Equality and Non-discrimination Act.

Such a law would prevent social exclusion, stigma and discrimination in line with Article 39 of the Dominican Constitution, which recognizes the equality of all persons before the law. The law would be in line with international instruments, as well as with the Organic Law of the National Development Strategy 2030 (No.1-12) of 2012 that recognizes as a strategic area of public policy building, “a society with equal rights and opportunities in the entire population guaranteeing access to education, health, decent housing and quality basic services and promoting the progressive reduction of poverty and social and territorial inequality.”

Terrero coordinated the establishment of a multisectoral working committee for the preparation of the draft Equality and Anti-discrimination Act, which became a permanent group now called the National Group for the Elimination of All Forms of Stigma and Discrimination (or GRUNEED in the Spanish acronym). GRUNEED has a mission to promote, design and implement comprehensive policies and regulations to foster equality and non-discrimination. GRUNEED is representative of all stakeholders and sectors engaged in the national response to HIV and those actors working on stigma, discrimination and human rights in the country.

Following adoption of the Santo Domingo Plan of Action³⁰ by legislators at a PGA seminar on “Protecting Human Rights, Combating Discrimination and Addressing HIV/AIDS of Persons with Diverse Sexual Orientation and Gender Identities,” and to create synergies with the Legislature, Terrero encouraged lawmakers known for their work on human rights and protection of the most vulnerable to participate in GRUNEED. PGA is also providing technical assistance to GRUNEED.



“***Prejudices, marginalization and hostility must be a thing of the past, making way for inclusion and the attainment of human rights for vulnerable groups. This will be a victory for the Dominican people, towards which we should all strive. This is the best time.***”

– Víctor Terrero, Executive Director of the National Council on HIV and AIDS, (CONAVIHSIDA in Spanish), Dominican Republic

30 The Santo Domingo Plan of Action can be found here: www.pgaction.org/pdf/2013-10-11-Santo-Domingo-Plan-of-Action.pdf

Public engagement and advocacy efforts surrounding the proposed Law on Equality and Non-discrimination has opened up space for representatives of the LGBTI community to be involved in decision-making. The proposed law is a goal of both the National Human Rights Plan 2015-2020 and the Government Plan for 2016-2020. This proposal for the first law in the Dominican Republic that includes articles on sexual orientation and gender identity marks a great national achievement.

Scotland: A civic campaign focuses on the education sector

Scotland's track record on LGBTI issues in education presents sobering statistics. Recent reports indicate that 54 percent of LGBTI pupils do not feel part of their school communities, with 71 percent regularly skipping school. 54 percent of those who experience direct homophobic bullying are self-harming and a shocking 26 percent have attempted suicide.

Riding a wave of political activism in the wake of the 2014 Scottish referendum, two activists, Jordan Daly and Liam Stevenson, launched the Time for Inclusive Education (TIE) Campaign that set out to make LGBTI education a requirement in the curriculum of Scottish schools. This would keep schools from opting out of LGBTI programmes, as they are currently free to do, and would establish a firm ground for more inclusive, safe and supportive environments for LGBTI pupils.

To secure nationwide political action, the TIE Campaign turned to parliament. It submitted an e-petition to Scotland's Public Petitions Committee that called on the Scottish Parliament to "urge the Scottish Government to make the teaching of LGBTI+ issues and topics statutory in all schools, with the introduction of a diverse and fully inclusive education programme that addresses, acknowledges and highlights such matters relating to the LGBTI+ community in a positive and progressive manner."

While the petition gained widespread public support and was warmly received by the Members of the Public Petitions Committee, it was ultimately rejected. The Committee explained its decision by stating that: "although there is a lot of sympathy for the petition, the petitioner is asking for something to be set in stone in the curriculum, and that does not happen. However, the issues were raised and the committee took forward the issue and asked for a comprehensive analysis of the situation."

Realizing that curriculum changes were not possible at that time, the TIE Campaign shifted its approach. To affect policy changes, it needed swift and sustainable action in parliament and other avenues that remained open. Building on the widespread grassroots support the TIE Campaign enjoyed – including the unanimous backing of public sector unions and Scotland's biggest teachers' union – TIE turned to political parties. It encouraged them to adopt LGBTI teacher training in their manifestos ahead of the 5 May 2014 elections, convincing candidates vying for parliamentary seats that this would resonate with the electorate. Today, the political party manifestos of Scotland's leading parties have included the TIE Campaign's LGBTI teacher training proposal in their campaign promises. Going forward, this secures a strong parliamentary platform for action on LGBTI issues in education.

Including LGBTI Issues in gender mainstreaming

The European Parliament: Integrating LGBTI issues into the parliament's gender mainstreaming efforts

The European Parliament has distinctly embraced LGBTI issues under its gender mainstreaming rubric. *The Report on Gender Mainstreaming in the Work of the European Parliament*³¹ states, "gender mainstreaming must include the rights, perspectives and well-being of LGBTIQ people and people of all gender identities." The report reviews how the European Parliament has tackled these questions and offers recommendations going forward. Anchoring its findings within the European Union's wider development agenda, the report reiterates that "achieving gender equality is central to the protection of human rights, the functioning of democracy, respect for the rule of law, and economic growth, social inclusion and sustainability." It laments the poor pace of progress in recent years, stating that "progress in achieving gender equality in the European Union is stagnating and at this pace will not be

31 Report on Gender Mainstreaming in the Work of the European Parliament is found here: www.agora-parl.org/resources/library/report-gender-mainstreaming-work-european-parliament.

achieved for some time yet." Gender mainstreaming, it asserts, "should be a proactive and reactive tool to achieve gender equality."

The report defines gender mainstreaming as "the integration of a gender perspective into every aspect of European Union policy – preparation, design, implementation, monitoring and evaluation of policies, legal measures and spending programmes – with a view to achieving equality between women and men." It further specifies that "gender mainstreaming must include the rights, perspectives and well-being of LGBTIQ people and people of all gender identities." It also reviews some concrete steps that have been taken in this direction, including the contribution of gender mainstreaming amendments and the appointment of a 'gender mainstreaming focal point' for each committee. These focal points form a gender mainstreaming network, further supported by committee secretariats.

Including LGBTI issues in the gender mainstreaming agenda means that LGBTI concerns should be integrated across parliament's work and operations and that all staff and structures are geared towards building an LGBTI-responsive institution. Doing so can have an invaluable impact on the speed and scope of parliamentary action, because to properly address the needs of the LGBTI community, every parliamentary committee and parliamentary group must play its part. Costs can be kept down by sharing specialized staff across different services and committees. Staff profiles could be revised for future recruitments to ensure that those who join the institution, when possible and appropriate, are familiar with the subject. Budget and finance committees and public account committees should ideally be stacked with parliamentarians who, at a minimum, have a reasonable awareness of LGBTI issues and initiatives. Committee mandates, agendas and rules and regulations should similarly secure appropriate time and attention.

While these steps are laudable, more mainstreaming is urgently needed. The report notes some persisting gaps that should be addressed, such as gender mainstreaming training for parliamentarians and staff, appropriate allocation of budgets and more consistent gender budgeting across the European Union institutions. Notably, it also calls for more qualitative research to be carried out, "in order to establish the significance and impact of gender mainstreaming tools on policy outcomes, resolutions and legislative texts." Much ground has been covered – but much more is yet to be done.

Political party manifestos: Critical routes to parliamentary action

Parliamentarians generally require the support of their parties and parliamentary groups to get issues on the parliamentary agenda, and the support of their peers to make legislative changes. Ensuring that the rights and inclusion of LGBTI people is on everyone's radar, rather than being the concern of only a few individuals, is critical to effective action.

Integrating the rights and inclusion of LGBTI people and related issues into political party manifestos gives parliamentarians some much-needed political ammunition for parliamentary action. Political party manifestos outline a party's political promises, listing the policy changes it will seek to make. Once in parliament, members can refer back to the party manifesto in working towards policy promises that were endorsed by voters. They will have the backing of their constituents to demand action on the part of government and to engage with groups and experts that can advise on policy.

Many activist groups are turning towards political party manifestos as a means of securing political support for action on LGBTI issues. This strategy has huge potential for breaking political ground, but it is difficult when public perceptions of LGBTI issues remain poor. While not every attempt to integrate LGBTI issues in political party manifestos has been successful, it remains encouraging that efforts have been made within political parties, including in Jamaica and Northern Ireland, and that in Scotland success was achieved in encouraging parties to publicly commit to taking action on LGBTI issues.

While urging political parties to include LGBTI initiatives in their political party manifestos is a highly effective strategy, it is not easily achieved. To increase their chances of success, activist groups may turn to building grass-roots campaigns that make LGBTI issues politically interesting to those seeking election. Support (or at the very least sympathy) for the LGBTI community is growing in a large number of countries, and politicians are not blind to those trends. Persuading politicians and political parties of the potential electoral gains from supporting LGBTI rights and their concerns could help secure much-needed parliamentary action.

Annexes

ANNEX 1: The Yogyakarta Principles

Introduction to the Yogyakarta Principles

All human beings are born free and equal in dignity and rights. All human rights are universal, interdependent, indivisible and interrelated. Sexual orientation [1] and gender identity [2] are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse.

Many advances have been made toward ensuring that people of all sexual orientations and gender identities can live with the equal dignity and respect to which all persons are entitled. Many States now have laws and constitutions that guarantee the rights of equality and non-discrimination without distinction on the basis of sex, sexual orientation or gender identity.

Nevertheless, human rights violations targeted toward persons because of their actual or perceived sexual orientation or gender identity constitute a global and entrenched pattern of serious concern. They include extra-judicial killings, torture and ill-treatment, sexual assault and rape, invasions of privacy, arbitrary detention, denial of employment and education opportunities, and serious discrimination in relation to the enjoyment of other human rights. These violations are often compounded by experiences of other forms of violence, hatred, discrimination and exclusion, such as those based on race, age, religion, disability, or economic, social or other status.

Many States and societies impose gender and sexual orientation norms on individuals through custom, law and violence and seek to control how they experience personal relationships and how they identify themselves. The policing of sexuality remains a major force behind continuing gender-based violence and gender inequality.

The international system has seen great strides toward gender equality and protections against violence in society, community and in the family. In addition, key human rights mechanisms of the United Nations have affirmed States' obligation to ensure effective protection of all persons from discrimination based on sexual orientation or gender identity. However, the international response to human rights violations based on sexual orientation and gender identity has been fragmented and inconsistent.

To address these deficiencies a consistent understanding of the comprehensive regime of international human rights law and its application to issues of sexual orientation and gender identity is necessary. It is critical to collate and clarify State obligations under existing international human rights law, in order to promote and protect all human rights for all persons on the basis of equality and without discrimination.

The International Commission of Jurists and the International Service for Human Rights, on behalf of a coalition of human rights organisations, have undertaken a project to develop a set of international legal principles on the application of international law to human rights violations based on sexual orientation and gender identity to bring greater clarity and coherence to States' human rights obligations.

A distinguished group of human rights experts has drafted, developed, discussed and refined these Principles. Following an experts' meeting held at Gadjah Mada University in Yogyakarta, Indonesia from 6 to 9 November 2006, 29 distinguished experts from 25 countries with diverse backgrounds and expertise relevant to issues of human rights law unanimously adopted the Yogyakarta Principles on the *Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*.

The rapporteur of the meeting, Professor Michael O'Flaherty, has made immense contributions to the drafting and revision of the Yogyakarta Principles. His commitment and tireless efforts have been critical to the successful outcome of the process.

The Yogyakarta Principles address a broad range of human rights standards and their application to issues of sexual orientation and gender identity. The Principles affirm the primary obligation of States to implement human rights. Each Principle is accompanied by detailed recommendations to States. The experts also emphasise, though, that all actors have responsibilities to promote and protect human rights. Additional recommendations are addressed to other actors, including the UN human rights system, national human rights institutions, the media, non-governmental organisations, and funders.

The experts agree that the Yogyakarta Principles reflect the existing state of international human rights law in relation to issues of sexual orientation and gender identity. They also recognise that States may incur additional obligations as human rights law continues to evolve.

The Yogyakarta Principles affirm binding international legal standards with which all States must comply. They promise a different future where all people born free and equal in dignity and rights can fulfil that precious birthright.

Sonia Onufer Corrêa
Co-Chairperson

Vitit Muntarbhorn
Co-Chairperson

We, the International Panel of Experts in International Human Rights Law and on Sexual Orientation and Gender Identity:

PREAMBLE

RECALLING that all human beings are born free and equal in dignity and rights, and that everyone is entitled to the enjoyment of human rights without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

DISTURBED that violence, harassment, discrimination, exclusion, stigmatisation and prejudice are directed against persons in all regions of the world because of their sexual orientation or gender identity, that these experiences are compounded by discrimination on grounds including gender, race, age, religion, disability, health and economic status, and that such violence, harassment, discrimination, exclusion, stigmatisation and prejudice undermine the integrity and dignity of those subjected to these abuses, may weaken their sense of self-worth and belonging to their community, and lead many to conceal or suppress their identity and to live lives of fear and invisibility;

AWARE that historically people have experienced these human rights violations because they are or are perceived to be lesbian, gay or bisexual, because of their consensual sexual conduct with persons of the same gender or because they are or are perceived to be transsexual, transgender or intersex or belong to social groups identified in particular societies by sexual orientation or gender identity;

UNDERSTANDING 'sexual orientation' to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender;

UNDERSTANDING 'gender identity' to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms;

OBSERVING that international human rights law affirms that all persons, regardless of sexual orientation or gender identity, are entitled to the full enjoyment of all human rights, that the application of existing human rights entitlements should take account of the specific situations and experiences of people of diverse sexual orientations and gender identities, and that in all actions concerning children the best interests of the child shall be a primary consideration and a child who is capable of forming personal views has the right to express those views freely, such views being given due weight in accordance with the age and maturity of the child;

NOTING that international human rights law imposes an absolute prohibition of discrimination in regard to the full enjoyment of all human rights, civil, cultural, economic, political and social, that respect for sexual rights, sexual orientation and gender identity is integral to the realisation of equality between men and women and that States must take measures to seek to eliminate prejudices and customs based on the idea of the inferiority or the superiority of one sex or on stereotyped roles for men and women, and noting further that the international community has recognised the right of persons to decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free from coercion, discrimination, and violence;

RECOGNISING that there is significant value in articulating in a systematic manner international human rights law as applicable to the lives and experiences of persons of diverse sexual orientations and gender identities;

ACKNOWLEDGING that this articulation must rely on the current state of international human rights law and will require revision on a regular basis in order to take account of developments in that law and its application to the particular lives and experiences of persons of diverse sexual orientations and gender identities over time and in diverse regions and countries

FOLLOWING AN EXPERTS' MEETING HELD IN YOGYAKARTA, INDONESIA, FROM 6 TO 9 NOVEMBER 2006, HEREBY ADOPT THESE PRINCIPLES:

PRINCIPLE 1. The Right to the Universal Enjoyment of Human Rights

All human beings are born free and equal in dignity and rights. Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights.

States shall:

- a) Embody the principles of the universality, interrelatedness, interdependence and indivisibility of all human rights in their national constitutions or other appropriate legislation and ensure the practical realisation of the universal enjoyment of all human rights;
- b) Amend any legislation, including criminal law, to ensure its consistency with the universal enjoyment of all human rights;
- c) Undertake programmes of education and awareness to promote and enhance the full enjoyment of all human rights by all persons, irrespective of sexual orientation or gender identity;
- d) Integrate within State policy and decision-making a pluralistic approach that recognises and affirms the interrelatedness and indivisibility of all aspects of human identity including sexual orientation and gender identity.

PRINCIPLE 2. The Rights to Equality and Non-discrimination

Everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation or gender identity. Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination whether or not the enjoyment of another human right is also affected. The law shall prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination.

Discrimination on the basis of sexual orientation or gender identity includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms. Discrimination based on sexual orientation or gender identity may be, and commonly is, compounded by discrimination on other grounds including gender, race, age, religion, disability, health and economic status.

States shall:

- a) Embody the principles of equality and non-discrimination on the basis of sexual orientation and gender identity in their national constitutions or other appropriate legislation, if not yet incorporated therein, including by means of amendment and interpretation, and ensure the effective realisation of these principles;
- b) Repeal criminal and other legal provisions that prohibit or are, in effect, employed to prohibit consensual sexual

activity among people of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity;

- c) Adopt appropriate legislative and other measures to prohibit and eliminate discrimination in the public and private spheres on the basis of sexual orientation and gender identity;
- d) Take appropriate measures to secure adequate advancement of persons of diverse sexual orientations and gender identities as may be necessary to ensure such groups or individuals equal enjoyment or exercise of human rights. Such measures shall not be deemed to be discriminatory;
- e) In all their responses to discrimination on the basis of sexual orientation or gender identity, take account of the manner in which such discrimination may intersect with other forms of discrimination;
- f) Take all appropriate action, including programmes of education and training, with a view to achieving the elimination of prejudicial or discriminatory attitudes or behaviours which are related to the idea of the inferiority or the superiority of any sexual orientation or gender identity or gender expression.

PRINCIPLE 3. THE RIGHT TO RECOGNITION BEFORE THE LAW

Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity.

States shall:

- a) Ensure that all persons are accorded legal capacity in civil matters, without discrimination on the basis of sexual orientation or gender identity, and the opportunity to exercise that capacity, including equal rights to conclude contracts, and to administer, own, acquire (including through inheritance), manage, enjoy and dispose of property;
- b) Take all necessary legislative, administrative and other measures to fully respect and legally recognise each person's self-defined gender identity;
- c) Take all necessary legislative, administrative and other measures to ensure that procedures exist whereby all State-issued identity papers which indicate a person's gender/sex – including birth certificates, passports, electoral records and other documents – reflect the person's profound self-defined gender identity;
- d) Ensure that such procedures are efficient, fair and non-discriminatory, and respect the dignity and privacy of the person concerned;
- e) Ensure that changes to identity documents will be recognised in all contexts where the identification or disaggregation of persons by gender is required by law or policy;
- f) Undertake targeted programmes to provide social support for all persons experiencing gender transitioning or reassignment.

PRINCIPLE 4. THE RIGHT TO LIFE

Everyone has the right to life. No one shall be arbitrarily deprived of life, including by reference to considerations of sexual orientation or gender identity. The death penalty shall not be imposed on any person on the basis of consensual sexual activity among persons who are over the age of consent or on the basis of sexual orientation or gender identity.

States shall:

- a) Repeal all forms of crime that have the purpose or effect of prohibiting consensual sexual activity among persons of the same sex who are over the age of consent and, until such provisions are repealed, never impose the death penalty on any person convicted under them;
- b) Remit sentences of death and release all those currently awaiting execution for crimes relating to consensual sexual activity among persons who are over the age of consent;
- c) Cease any State-sponsored or State-condoned attacks on the lives of persons based on sexual orientation or gender identity, and ensure that all such attacks, whether by government officials or by any individual or group, are

vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished.

PRINCIPLE 5. THE RIGHT TO SECURITY OF THE PERSON

Everyone, regardless of sexual orientation or gender identity, has the right to security of the person and to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group.

States shall:

- a) Take all necessary policing and other measures to prevent and provide protection from all forms of violence and harassment related to sexual orientation and gender identity;
- b) Take all necessary legislative measures to impose appropriate criminal penalties for violence, threats of violence, incitement to violence and related harassment, based on the sexual orientation or gender identity of any person or group of persons, in all spheres of life, including the family;
- c) Take all necessary legislative, administrative and other measures to ensure that the sexual orientation or gender identity of the victim may not be advanced to justify, excuse or mitigate such violence;
- d) Ensure that perpetration of such violence is vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished, and that victims are provided with appropriate remedies and redress, including compensation;
- e) Undertake campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence, in order to combat the prejudices that underlie violence related to sexual orientation and gender identity.

PRINCIPLE 6. THE RIGHT TO PRIVACY

Everyone, regardless of sexual orientation or gender identity, is entitled to the enjoyment of privacy without arbitrary or unlawful interference, including with regard to their family, home or correspondence as well as to protection from unlawful attacks on their honour and reputation. The right to privacy ordinarily includes the choice to disclose or not to disclose information relating to one's sexual orientation or gender identity, as well as decisions and choices regarding both one's own body and consensual sexual and other relations with others.

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure the right of each person, regardless of sexual orientation or gender identity, to enjoy the private sphere, intimate decisions, and human relations, including consensual sexual activity among persons who are over the age of consent, without arbitrary interference;
- b) Repeal all laws that criminalise consensual sexual activity among persons of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity;
- c) Ensure that criminal and other legal provisions of general application are not applied de facto to criminalise consensual sexual activity among persons of the same sex who are over the age of consent;
- d) Repeal any law that prohibits or criminalises the expression of gender identity, including through dress, speech or mannerisms, or that denies to individuals the opportunity to change their bodies as a means of expressing their gender identity;
- e) Release all those held on remand or on the basis of a criminal conviction, if their detention is related to consensual sexual activity among persons who are over the age of consent, or is related to gender identity;
- f) Ensure the right of all persons ordinarily to choose when, to whom and how to disclose information pertaining to their sexual orientation or gender identity, and protect all persons from arbitrary or unwanted disclosure, or threat of disclosure of such information by others.

PRINCIPLE 7. THE RIGHT TO FREEDOM FROM ARBITRARY DEPRIVATION OF LIBERTY

No one shall be subjected to arbitrary arrest or detention. Arrest or detention on the basis of sexual orientation or gender identity, whether pursuant to a court order or otherwise, is arbitrary. All persons under arrest, regardless of their sexual orientation or gender identity, are entitled, on the basis of equality, to be informed of the reasons for arrest and the nature of any charges against them, to be brought promptly before a judicial

officer and to bring court proceedings to determine the lawfulness of detention, whether or not charged with any offence.

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure that sexual orientation or gender identity may under no circumstances be the basis for arrest or detention, including the elimination of vaguely worded criminal law provisions that invite discriminatory application or otherwise provide scope for arrests based on prejudice;
- b) Take all necessary legislative, administrative and other measures to ensure that all persons under arrest, regardless of their sexual orientation or gender identity, are entitled, on the basis of equality, to be informed of the reasons for arrest and the nature of any charges against them, and whether charged or not, to be brought promptly before a judicial officer and to bring court proceedings to determine the lawfulness of detention;
- c) Undertake programmes of training and awareness-raising to educate police and other law enforcement personnel regarding the arbitrariness of arrest and detention based on a person's sexual orientation or gender identity;
- d) Maintain accurate and up to date records of all arrests and detentions, indicating the date, location and reason for detention, and ensure independent oversight of all places of detention by bodies that are adequately mandated and equipped to identify arrests and detentions that may be motivated by the sexual orientation or gender identity of a person.

PRINCIPLE 8. THE RIGHT TO A FAIR TRIAL

Everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, in the determination of their rights and obligations in a suit at law and of any criminal charge against them, without prejudice or discrimination on the basis of sexual orientation or gender identity.

States shall:

- a) Take all necessary legislative, administrative and other measures to prohibit and eliminate prejudicial treatment on the basis of sexual orientation or gender identity at every stage of the judicial process, in civil and criminal proceedings and all other judicial and administrative proceedings which determine rights and obligations, and to ensure that no one's credibility or character as a party, witness, advocate or decision-maker is impugned by reason of their sexual orientation or gender identity;
- b) Take all necessary and reasonable steps to protect persons from criminal prosecutions or civil proceedings that are motivated wholly or in part by prejudice regarding sexual orientation or gender identity;
- c) Undertake programmes of training and awareness-raising for judges, court personnel, prosecutors, lawyers and others regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity.

PRINCIPLE 9. THE RIGHT TO TREATMENT WITH HUMANITY WHILE IN DETENTION

Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Sexual orientation and gender identity are integral to each person's dignity.

States shall:

- a) Ensure that placement in detention avoids further marginalising persons on the basis of sexual orientation or gender identity or subjecting them to risk of violence, ill-treatment or physical, mental or sexual abuse;
- b) Provide adequate access to medical care and counselling appropriate to the needs of those in custody, recognising any particular needs of persons on the basis of their sexual orientation or gender identity, including with regard to reproductive health, access to HIV/AIDS information and therapy and access to hormonal or other therapy as well as to gender-reassignment treatments where desired;
- c) Ensure, to the extent possible, that all prisoners participate in decisions regarding the place of detention appropriate to their sexual orientation and gender identity;
- d) Put protective measures in place for all prisoners vulnerable to violence or abuse on the basis of their sexual orientation, gender identity or gender expression and ensure, so far as is reasonably practicable, that such protective measures involve no greater restriction of their rights than is experienced by the general prison population;

- e) Ensure that conjugal visits, where permitted, are granted on an equal basis to all prisoners and detainees, regardless of the gender of their partner;
- f) Provide for the independent monitoring of detention facilities by the State as well as by non-governmental organisations including organisations working in the spheres of sexual orientation and gender identity;
- g) Undertake programmes of training and awareness-raising for prison personnel and all other officials in the public and private sector who are engaged in detention facilities, regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity.

PRINCIPLE 10. THE RIGHT TO FREEDOM FROM TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Everyone has the right to be free from torture and from cruel, inhuman or degrading treatment or punishment, including for reasons relating to sexual orientation or gender identity.

States shall:

- a) Take all necessary legislative, administrative and other measures to prevent and provide protection from torture and cruel, inhuman or degrading treatment or punishment, perpetrated for reasons relating to the sexual orientation or gender identity of the victim, as well as the incitement of such acts;
- b) Take all reasonable steps to identify victims of torture and cruel, inhuman or degrading treatment or punishment, perpetrated for reasons relating to sexual orientation or gender identity, and offer appropriate remedies including redress and reparation and, where appropriate, medical and psychological support;
- c) Undertake programmes of training and awareness-raising for police, prison personnel and all other officials in the public and private sector who are in a position to perpetrate or to prevent such acts.

PRINCIPLE 11. THE RIGHT TO PROTECTION FROM ALL FORMS OF EXPLOITATION, SALE AND TRAFFICKING OF HUMAN BEINGS

Everyone is entitled to protection from trafficking, sale and all forms of exploitation, including but not limited to sexual exploitation, on the grounds of actual or perceived sexual orientation or gender identity. Measures designed to prevent trafficking shall address the factors that increase vulnerability, including various forms of inequality and discrimination on the grounds of actual or perceived sexual orientation or gender identity, or the expression of these or other identities. Such measures must not be inconsistent with the human rights of persons at risk of being trafficked.

States shall:

- a) Take all necessary legislative, administrative and other measures of a preventive and protective nature regarding the trafficking, sale and all forms of exploitation of human beings, including but not limited to sexual exploitation, on the grounds of actual or perceived sexual orientation or gender identity;
- b) Ensure that any such legislation or measures do not criminalise the behaviour of, stigmatise, or in any other way, exacerbate the disadvantage of those vulnerable to such practices;
- c) Establish legal, educational and social measures, services and programmes to address factors that increase vulnerability to trafficking, sale and all forms of exploitation, including but not limited to sexual exploitation, on the grounds of actual or perceived sexual orientation or gender identity, including such factors as social exclusion, discrimination, rejection by families or cultural communities, lack of financial independence, homelessness, discriminatory social attitudes leading to low self-esteem, and lack of protection from discrimination in access to housing accommodation, employment and social services.

PRINCIPLE 12. THE RIGHT TO WORK

Everyone has the right to decent and productive work, to just and favourable conditions of work and to protection against unemployment, without discrimination on the basis of sexual orientation or gender identity.

States shall:

- a) 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, including in relation to vocational training, recruitment, promotion, dismissal, conditions of employment and remuneration;
- b) Eliminate any discrimination on the basis of sexual orientation or gender identity to ensure equal employment and advancement opportunities in all areas of public service, including all levels of government service and employment in public functions, including serving in the police and military, and provide appropriate training and awareness-raising programmes to counter discriminatory attitudes.

PRINCIPLE 13. THE RIGHT TO SOCIAL SECURITY AND TO OTHER SOCIAL PROTECTION MEASURES

Everyone has the right to social security and other social protection measures, without discrimination on the basis of sexual orientation or gender identity.

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure equal access, without discrimination on the basis of sexual orientation or gender identity, to social security and other social protection measures, including employment benefits, parental leave, unemployment benefits, health insurance or care or benefits (including for body modifications related to gender identity), other social insurance, family benefits, funeral benefits, pensions and benefits with regard to the loss of support for spouses or partners as the result of illness or death;
- b) Ensure that children are not subject to any form of discriminatory treatment within the social security system or in the provision of social or welfare benefits on the basis of their sexual orientation or gender identity, or that of any member of their family;
- c) Take all necessary legislative, administrative and other measures to ensure access to poverty reduction strategies and programmes, without discrimination on the basis of sexual orientation or gender identity.

PRINCIPLE 14. THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

Everyone has the right to an adequate standard of living, including adequate food, safe drinking water, adequate sanitation and clothing, and to the continuous improvement of living conditions, without discrimination on the basis of sexual orientation or gender identity.

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure equal access, without discrimination on the basis of sexual orientation or gender identity, to adequate food, safe drinking water, adequate sanitation and clothing.

PRINCIPLE 15. THE RIGHT TO ADEQUATE HOUSING

Everyone has the right to adequate housing, including protection from eviction, without discrimination on the basis of sexual orientation or gender identity.

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure security of tenure and access to affordable, habitable, accessible, culturally appropriate and safe housing, including shelters and other emergency accommodation, without discrimination on the basis of sexual orientation, gender identity or marital or family status;
- b) Take all necessary legislative, administrative and other measures to prohibit the execution of evictions that are not in conformity with their international human rights obligations; and ensure that adequate and effective legal or other appropriate remedies are available to any person claiming that a right to protection against forced evictions has been violated or is under threat of violation, including the right to resettlement, which includes the right to alternative land of better or equal quality and to adequate housing, without discrimination on the basis of sexual orientation, gender identity or marital or family status;
- c) Ensure equal rights to land and home ownership and inheritance without discrimination on the basis of sexual orientation or gender identity;
- d) Establish social programmes, including support programmes, to address factors relating to sexual orientation

and gender identity that increase vulnerability to homelessness, especially for children and young people, including social exclusion, domestic and other forms of violence, discrimination, lack of financial independence, and rejection by families or cultural communities, as well as to promote schemes of neighbourhood support and security;

- e) Provide training and awareness-raising programmes to ensure that all relevant agencies are aware of and sensitive to the needs of those facing homelessness or social disadvantage as a result of sexual orientation or gender identity.

PRINCIPLE 16. THE RIGHT TO EDUCATION

Everyone has the right to education, without discrimination on the basis of, and taking into account, their sexual orientation and gender identity.

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure equal access to education, and equal treatment of students, staff and teachers within the education system, without discrimination on the basis of sexual orientation or gender identity;
- b) Ensure that education is directed to the development of each student's personality, talents, and mental and physical abilities to their fullest potential, and responds to the needs of students of all sexual orientations and gender identities;
- c) Ensure that education is directed to the development of respect for human rights, and of respect for each child's parents and family members, cultural identity, language and values, in a spirit of understanding, peace, tolerance and equality, taking into account and respecting diverse sexual orientations and gender identities;
- d) Ensure that education methods, curricula and resources serve to enhance understanding of and respect for, inter alia, diverse sexual orientations and gender identities, including the particular needs of students, their parents and family members related to these grounds;
- e) Ensure that laws and policies provide adequate protection for students, staff and teachers of different sexual orientations and gender identities against all forms of social exclusion and violence within the school environment, including bullying and harassment;
- f) Ensure that students subjected to such exclusion or violence are not marginalised or segregated for reasons of protection, and that their best interests are identified and respected in a participatory manner;
- g) Take all necessary legislative, administrative and other measures to ensure that discipline in educational institutions is administered in a manner consistent with human dignity, without discrimination or penalty on the basis of a student's sexual orientation or gender identity, or the expression thereof;
- h) Ensure that everyone has access to opportunities and resources for lifelong learning without discrimination on the basis of sexual orientation or gender identity, including adults who have already suffered such forms of discrimination in the educational system.

PRINCIPLE 17. THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH

Everyone has the right to the highest attainable standard of physical and mental health, without discrimination on the basis of sexual orientation or gender identity. Sexual and reproductive health is a fundamental aspect of this right.

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure enjoyment of the right to the highest attainable standard of health, without discrimination on the basis of sexual orientation or gender identity;
- b) Take all necessary legislative, administrative and other measures to ensure that all persons have access to healthcare facilities, goods and services, including in relation to sexual and reproductive health, and to their own medical records, without discrimination on the basis of sexual orientation or gender identity;
- c) Ensure that healthcare facilities, goods and services are designed to improve the health status of, and respond to the needs of, all persons without discrimination on the basis of, and taking into account, sexual orientation and gender identity, and that medical records in this respect are treated with confidentiality;
- d) Develop and implement programmes to address discrimination, prejudice and other social factors which undermine the health of persons because of their sexual orientation or gender identity;
- e) Ensure that all persons are informed and empowered to make their own decisions regarding medical treatment and care, on the basis of genuinely informed consent, without discrimination on the basis of sexual orientation or gender identity;

- f) Ensure that all sexual and reproductive health, education, prevention, care and treatment programmes and services respect the diversity of sexual orientations and gender identities, and are equally available to all without discrimination;
- g) Facilitate access by those seeking body modifications related to gender reassignment to competent, non-discriminatory treatment, care and support;
- h) Ensure that all health service providers treat clients and their partners without discrimination on the basis of sexual orientation or gender identity, including with regard to recognition as next of kin;
- i) Adopt the policies, and programmes of education and training, necessary to enable persons working in the healthcare sector to deliver the highest attainable standard of healthcare to all persons, with full respect for each person's sexual orientation and gender identity.

PRINCIPLE 18. PROTECTION FROM MEDICAL ABUSES

No person may be forced to undergo any form of medical or psychological treatment, procedure, testing, or be confined to a medical facility, based on sexual orientation or gender identity. Notwithstanding any classifications to the contrary, a person's sexual orientation and gender identity are not, in and of themselves, medical conditions and are not to be treated, cured or suppressed.

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure full protection against harmful medical practices based on sexual orientation or gender identity, including on the basis of stereotypes, whether derived from culture or otherwise, regarding conduct, physical appearance or perceived gender norms;
- b) Take all necessary legislative, administrative and other measures to ensure that no child's body is irreversibly altered by medical procedures in an attempt to impose a gender identity without the full, free and informed consent of the child in accordance with the age and maturity of the child and guided by the principle that in all actions concerning children, the best interests of the child shall be a primary consideration;
- c) Establish child protection mechanisms whereby no child is at risk of, or subjected to, medical abuse;
- d) Ensure protection of persons of diverse sexual orientations and gender identities against unethical or involuntary medical procedures or research, including in relation to vaccines, treatments or microbicides for HIV/AIDS or other diseases;
- e) Review and amend any health funding provisions or programmes, including those of a development-assistance nature, which may promote, facilitate or in any other way render possible such abuses;
- f) Ensure that any medical or psychological treatment or counselling does not, explicitly or implicitly, treat sexual orientation and gender identity as medical conditions to be treated, cured or suppressed.

PRINCIPLE 19. THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION

Everyone has the right to freedom of opinion and expression, regardless of sexual orientation or gender identity. This includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers.

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure full enjoyment of freedom of opinion and expression, while respecting the rights and freedoms of others, without discrimination on the basis of sexual orientation or gender identity, including the receipt and imparting of information and ideas concerning sexual orientation and gender identity, as well as related advocacy for legal rights, publication of materials, broadcasting, organisation of or participation in conferences, and dissemination of and access to safer-sex information;
- b) Ensure that the outputs and the organisation of media that is State-regulated is pluralistic and non-discriminatory in respect of issues of sexual orientation and gender identity and that the personnel recruitment and promotion policies of such organisations are non-discriminatory on the basis of sexual orientation or gender identity;
- c) Take all necessary legislative, administrative and other measures to ensure the full enjoyment of the right to express identity or personhood, including through speech, deportment, dress, bodily characteristics, choice of

- name or any other means;
- d) Ensure that notions of public order, public morality, public health and public security are not employed to restrict, in a discriminatory manner, any exercise of freedom of opinion and expression that affirms diverse sexual orientations or gender identities;
 - e) Ensure that the exercise of freedom of opinion and expression does not violate the rights and freedoms of persons of diverse sexual orientations and gender identities;
 - f) Ensure that all persons, regardless of sexual orientation or gender identity, enjoy equal access to information and ideas, as well as to participation in public debate.

PRINCIPLE 20. THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION

Everyone has the right to freedom of peaceful assembly and association, including for the purposes of peaceful demonstrations, regardless of sexual orientation or gender identity. Persons may form and have recognised, without discrimination, associations based on sexual orientation or gender identity, and associations that distribute information to or about, facilitate communication among, or advocate for the rights of, persons of diverse sexual orientations and gender identities.

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure the rights to peacefully organise, associate, assemble and advocate around issues of sexual orientation and gender identity, and to obtain legal recognition for such associations and groups, without discrimination on the basis of sexual orientation or gender identity;
- b) Ensure in particular that notions of public order, public morality, public health and public security are not employed to restrict any exercise of the rights to peaceful assembly and association solely on the basis that it affirms diverse sexual orientations or gender identities;
- c) Under no circumstances impede the exercise of the rights to peaceful assembly and association on grounds relating to sexual orientation or gender identity, and ensure that adequate police and other physical protection against violence or harassment is afforded to persons exercising these rights;
- d) Provide training and awareness-raising programmes to law enforcement authorities and other relevant officials to enable them to provide such protection;
- e) Ensure that information disclosure rules for voluntary associations and groups do not, in practice, have discriminatory effects for such associations and groups addressing issues of sexual orientation or gender identity, or for their members.

PRINCIPLE 21. THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

Everyone has the right to freedom of thought, conscience and religion, regardless of sexual orientation or gender identity. These rights may not be invoked by the State to justify laws, policies or practices which deny equal protection of the law, or discriminate, on the basis of sexual orientation or gender identity.

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure the right of persons, regardless of sexual orientation or gender identity, to hold and practise religious and non-religious beliefs, alone or in association with others, to be free from interference with their beliefs and to be free from coercion or the imposition of beliefs;
- b) Ensure that the expression, practice and promotion of different opinions, convictions and beliefs with regard to issues of sexual orientation or gender identity is not undertaken in a manner incompatible with human rights.

PRINCIPLE 22. THE RIGHT TO FREEDOM OF MOVEMENT

Everyone lawfully within a State has the right to freedom of movement and residence within the borders of the State, regardless of sexual orientation or gender identity. Sexual orientation and gender identity may never be invoked to limit or impede a person's entry, egress or return to or from any State, including that person's own State.

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure that the right to freedom of movement and residence is guaranteed regardless of sexual orientation or gender identity.

PRINCIPLE 23. THE RIGHT TO SEEK ASYLUM

Everyone has the right to seek and enjoy in other countries asylum from persecution, including persecution related to sexual orientation or gender identity. A State may not remove, expel or extradite a person to any State where that person may face a well-founded fear of torture, persecution, or any other form of cruel, inhuman or degrading treatment or punishment, on the basis of sexual orientation or gender identity.

States shall:

- a) Review, amend and enact legislation to ensure that a well-founded fear of persecution on the basis of sexual orientation or gender identity is accepted as a ground for the recognition of refugee status and asylum;
- b) Ensure that no policy or practice discriminates against asylum seekers on the basis of sexual orientation or gender identity;
- c) Ensure that no person is removed, expelled or extradited to any State where that person may face a well-founded fear of torture, persecution, or any other form of cruel, inhuman or degrading treatment or punishment, on the basis of that person's sexual orientation or gender identity.

PRINCIPLE 24. THE RIGHT TO FOUND A FAMILY

Everyone has the right to found a family, regardless of sexual orientation or gender identity. Families exist in diverse forms. No family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members.

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure the right to found a family, including through access to adoption or assisted procreation (including donor insemination), without discrimination on the basis of sexual orientation or gender identity;
- b) Ensure that laws and policies recognise the diversity of family forms, including those not defined by descent or marriage, and take all necessary legislative, administrative and other measures to ensure that no family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members, including with regard to family-related social welfare and other public benefits, employment, and immigration;
- c) Take all necessary legislative, administrative and other measures to ensure that in all actions or decisions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration, and that the sexual orientation or gender identity of the child or of any family member or other person may not be considered incompatible with such best interests;
- d) In all actions or decisions concerning children, ensure that a child who is capable of forming personal views can exercise the right to express those views freely, and that such views are given due weight in accordance with the age and maturity of the child;
- e) Take all necessary legislative, administrative and other measures to ensure that in States that recognise same-sex marriages or registered partnerships, any entitlement, privilege, obligation or benefit available to different-sex married or registered partners is equally available to same-sex married or registered partners;
- f) Take all necessary legislative, administrative and other measures to ensure that any obligation, entitlement, privilege or benefit available to different-sex unmarried partners is equally available to same-sex unmarried partners;
- g) Ensure that marriages and other legally-recognised partnerships may be entered into only with the free and full consent of the intending spouses or partners.

PRINCIPLE 25. THE RIGHT TO PARTICIPATE IN PUBLIC LIFE

Every citizen has the right to take part in the conduct of public affairs, including the right to stand for elected office, to participate in the formulation of policies affecting their welfare, and to have equal access to all levels of public service and employment in public functions, including serving in the police and military, without discrimination on the basis of sexual orientation or gender identity.

States should:

- a) Review, amend and enact legislation to ensure the full enjoyment of the right to participate in public and political life and affairs, embracing all levels of government service and employment in public functions, including

serving in the police and military, without discrimination on the basis of, and with full respect for, each person's sexual orientation and gender identity;

- b) Take all appropriate measures to eliminate stereotypes and prejudices regarding sexual orientation and gender identity that prevent or restrict participation in public life;
- c) Ensure the right of each person to participate in the formulation of policies affecting their welfare, without discrimination on the basis of, and with full respect for, their sexual orientation and gender identity.

PRINCIPLE 26. THE RIGHT TO PARTICIPATE IN CULTURAL LIFE

Everyone has the right to participate freely in cultural life, regardless of sexual orientation or gender identity, and to express, through cultural participation, the diversity of sexual orientation and gender identity.

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure opportunities for the participation in cultural life of all persons, regardless of, and with full respect for, their sexual orientations and gender identities;
- b) Foster dialogue between, and mutual respect among, proponents of the various cultural groups present within the State, including among groups that hold different views on matters of sexual orientation and gender identity, consistently with respect for the human rights referred to in these Principles.

PRINCIPLE 27. THE RIGHT TO PROMOTE HUMAN RIGHTS

Everyone has the right, individually and in association with others, to promote the protection and realisation of human rights at the national and international levels, without discrimination on the basis of sexual orientation or gender identity. This includes activities directed towards the promotion and protection of the rights of persons of diverse sexual orientations and gender identities, as well as the right to develop and discuss new human rights norms and to advocate their acceptance.

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure a favourable environment for activities directed towards the promotion, protection and realisation of human rights, including rights relevant to sexual orientation and gender identity;
- b) Take all appropriate measures to combat actions or campaigns targeting human rights defenders working on issues of sexual orientation and gender identity, as well as those targeting human rights defenders of diverse sexual orientations and gender identities;
- c) Ensure that human rights defenders, regardless of their sexual orientation or gender identity, and regardless of the human rights issues they advocate, enjoy non-discriminatory access to, participation in, and communication with, national and international human rights organisations and bodies;
- d) Ensure the protection of human rights defenders, working on issues of sexual orientation and gender identity, against any violence, threat, retaliation, de facto or de jure discrimination, pressure, or any other arbitrary action perpetrated by the State, or by non-State actors, in response to their human rights activities. The same protection should be ensured, to human rights defenders working on any issue, against any such treatment based on their sexual orientation or gender identity;
- e) Support the recognition and accreditation of organisations that promote and protect the human rights of persons of diverse sexual orientations and gender identities at the national and international levels.

PRINCIPLE 28. THE RIGHT TO EFFECTIVE REMEDIES AND REDRESS

Every victim of a human rights violation, including of a violation based on sexual orientation or gender identity, has the right to effective, adequate and appropriate remedies. Measures taken for the purpose of providing reparation to, or securing adequate advancement of, persons of diverse sexual orientations and gender identities are integral to the right to effective remedies and redress.

States shall:

- a) Establish the necessary legal procedures, including through the revision of legislation and policies, to ensure that victims of human rights violations on the basis of sexual orientation or gender identity have access to full redress through restitution, compensation, rehabilitation, satisfaction, guarantee of non-repetition, and/or any other means as appropriate;

- b) Ensure that remedies are enforced and implemented in a timely manner;
- c) Ensure that effective institutions and standards for the provision of remedies and redress are established, and that all personnel are trained in issues of human rights violations based on sexual orientation and gender identity;
- d) Ensure that all persons have access to all necessary information about the processes for seeking remedies and redress;
- e) Ensure that financial aid is provided to those who are unable to afford the cost of securing redress, and that any other obstacles to securing such redress, financial or otherwise, are removed;
- f) Ensure training and awareness-raising programmes, including measures aimed at teachers and students at all levels of public education, at professional bodies, and at potential violators of human rights, to promote respect for and adherence to international human rights standards in accordance with these Principles, as well as to counter discriminatory attitudes based on sexual orientation or gender identity.

PRINCIPLE 29. ACCOUNTABILITY

Everyone whose human rights, including rights addressed in these Principles, are violated is entitled to have those directly or indirectly responsible for the violation, whether they are government officials or not, held accountable for their actions in a manner that is proportionate to the seriousness of the violation. There should be no impunity for perpetrators of human rights violations related to sexual orientation or gender identity.

States shall:

- a) Establish appropriate, accessible and effective criminal, civil, administrative and other procedures, as well as monitoring mechanisms, to ensure the accountability of perpetrators for human rights violations related to sexual orientation or gender identity;
- b) Ensure that all allegations of crimes perpetrated on the basis of the actual or perceived sexual orientation or gender identity of the victim, including such crimes described in these Principles, are investigated promptly and thoroughly, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished;
- c) Establish independent and effective institutions and procedures to monitor the formulation and enforcement of laws and policies to ensure the elimination of discrimination on the basis of sexual orientation or gender identity;
- d) Remove any obstacles preventing persons responsible for human rights violations based on sexual orientation or gender identity from being held accountable.

ADDITIONAL RECOMMENDATIONS

All members of society and of the international community have responsibilities regarding the realisation of human rights. We therefore recommend that:

- a) The United Nations High Commissioner for Human Rights endorse these Principles, promote their implementation worldwide, and integrate them into the work of the Office of the High Commissioner for Human Rights, including at the field-level;
- b) The United Nations Human Rights Council endorse these Principles and give substantive consideration to human rights violations based on sexual orientation or gender identity, with a view to promoting State compliance with these Principles;
- c) The United Nations Human Rights Special Procedures pay due attention to human rights violations based on sexual orientation or gender identity, and integrate these Principles into the implementation of their respective mandates;
- d) The United Nations Economic and Social Council recognise and accredit non-governmental organisations whose aim is to promote and protect the human rights of persons of diverse sexual orientations and gender identities, in accordance with its Resolution 1996/31;
- e) The United Nations Human Rights Treaty Bodies vigorously integrate these Principles into the implementation of their respective mandates, including their case law and the examination of State reports, and, where

appropriate, adopt General Comments or other interpretive texts on the application of human rights law to persons of diverse sexual orientations and gender identities;

- f) The World Health Organization and UNAIDS develop guidelines on the provision of appropriate health services and care, responding to the health needs of persons related to their sexual orientation or gender identity, with full respect for their human rights and dignity;
- g) The UN High Commissioner for Refugees integrate these Principles in efforts to protect persons who experience, or have a well-founded fear of, persecution on the basis of sexual orientation or gender identity, and ensure that no person is discriminated against on the basis of sexual orientation or gender identity in relation to the receipt of humanitarian assistance or other services, or the determination of refugee status;
- h) Regional and sub-regional inter-governmental organisations with a commitment to human rights, as well as regional human rights treaty bodies, ensure that the promotion of these Principles is integral to the implementation of the mandates of their various human rights mechanisms, procedures and other arrangements and initiatives;
- i) Regional human rights courts vigorously integrate those Principles that are relevant to the human rights treaties they interpret into their developing case law on sexual orientation and gender identity;
- j) Non-governmental organisations working on human rights at the national, regional and international levels promote respect for these Principles within the framework of their specific mandates;
- k) Humanitarian organisations incorporate these Principles into any humanitarian or relief operations, and refrain from discriminating against persons on the basis of sexual orientation or gender identity in the provision of aid and other services;
- l) National human rights institutions promote respect for these Principles by State and non-State actors, and integrate into their work the promotion and protection of the human rights of persons of diverse sexual orientations or gender identities;
- m) Professional organisations, including those in the medical, criminal or civil justice, and educational sectors, review their practices and guidelines to ensure that they vigorously promote the implementation of these Principles;
- n) Commercial organisations acknowledge and act upon the important role they have in both ensuring respect for these Principles with regard to their own workforces and in promoting these Principles nationally and internationally;
- o) The mass media avoid the use of stereotypes in relation to sexual orientation and gender identity, and promote tolerance and the acceptance of diversity of human sexual orientation and gender identity, and raise awareness around these issues;
- p) Governmental and private funders provide financial assistance, to non-governmental and other organisations, for the promotion and protection of the human rights of persons of diverse sexual orientations and gender identities.

These Principles and Recommendations reflect the application of international human rights law to the lives and experiences of persons of diverse sexual orientations and gender identities, and nothing herein should be interpreted as restricting or in any way limiting the rights and freedoms of such persons as recognised in international, regional or national law or standards.³²

32 Copied from the following webpage: www.yogyakartaprinciples.org/principles_en.htm.

ANNEX 2: Recommendations from treaty bodies

HUMAN RIGHT AT STAKE	TREATY BODY	OPINION/RECOMMENDATION
<p>CRIMINALIZATION OF HOMOSEXUALITY, CROSS-DRESSING AND TRANSGENDER EXPRESSION</p>	<p>Human Rights Committee</p>	<p>Laws criminalizing homosexuality or sexual conduct between partners of the same sex, laws criminalizing cross-dressing, and other laws that criminalize transgender expression violate international human rights norms and must be repealed.</p> <p>Even if never enforced, such criminal laws are a breach of State obligations under international human rights law.</p> <p>The Committee affirmed that laws criminalizing homosexuality violate rights to privacy and non-discrimination in breach of States' legal obligations under the International Covenant on Civil and Political Rights (ICCPR).</p>
<p>DISCRIMINATION BASED ON SEXUAL ORIENTATION</p>	<p>Human Rights Committee</p>	<p>The ICCPR prohibits discrimination based on sexual orientation. States have an obligation to protect individuals from discrimination based on sexual orientation. Additionally, the Human Rights Committee has expressed concern over the lack of laws prohibiting discrimination.</p>
<p>RIGHT TO HEALTH</p>	<p>Committee on Economic, Social and Cultural Rights, Committee Against Torture, Committee on the Rights of the Child, and the Committee on the Elimination of Discrimination Against Women</p> <p>Committee on Economic, Social and Cultural Rights</p>	<p>These treaty bodies have confirmed that discrimination based on sexual orientation is prohibited under the human rights treaties that are binding to the ratifying States.</p> <p>It has been stated that "health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population". The Committee has affirmed that "the Covenant proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of sexual orientation" and has also expressed concern at discrimination against transgender and intersex people in health care.</p>
	<p>Special Rapporteur on the Right to Health</p>	<p>The Special Rapporteur on the Right to Health has stated that "sanctioned punishment by States reinforces existing prejudices, and legitimizes community violence and police brutality directed at affected individuals".</p>

		<p>The right to be protected from discrimination applies to the enjoyment of all civil, political, economic, social and cultural rights, including the right to work, to education, and to the highest attainable standard of physical and mental health, including sexual and reproductive health.</p>
<p>DISCRIMINATION BASED ON SEXUAL ORIENTATION</p>	<p>Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography</p>	<p>The 2004 report of the Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography reported that transgender young people are among the most marginalized and vulnerable because of the degree of discrimination they experience in housing, education, employment, and health. Their situation is further exacerbated when they are alone and unsupported by family and friends, leaving them especially vulnerable to prostitution.</p>
	<p>Special Rapporteur on the Right to Education</p>	<p>In 2001, the Special Rapporteur on the Right to Education reported that in most countries children who do not conform to accepted gender norms experience abuse and discrimination by school officials and bullying by other students. The result, for many children whose gender identity or gender expression does not conform, is a basic violation of the right to education. Such abuses lead to serious mental and physical harm and to dropping school early.</p>
<p>TORTURE, INHUMAN AND DEGRADING TREATMENT</p>	<p>World Health Organization</p>	<p>The Committee against Torture in a General Comment (2008) noted the particular risk of torture faced by people of diverse sexual orientations and gender identities. The Committee advised that in order to ensure protection to minority groups, States Parties should ensure that acts of violence and abuse against members of minority groups should be fully prosecuted and punished.</p>
	<p>World Health Organization</p>	<p>Attempts to forcibly change the sexual orientation of lesbian, gay and bisexual persons are ineffective, harmful and may amount to torture. In May 17, 1990, the General Assembly of World Health Organization removed homosexuality from its list of diseases. There were no scientific reasons that led to its consideration as a mental disorder in the first place.</p>
	<p>The Council on Human Rights and the Human Rights Committee</p>	<p>The Council on Human Rights and the Human Rights Committee have confirmed that use of the death penalty for non-violent acts, including sexual relations between consenting adults, constitutes a violation of international human rights law.</p>

Annex 3: Relevant regional human rights frameworks

Africa

Resolution 275 of the African Commission of Human and Peoples' Rights

In May 2014, the African Commission on Human and Peoples' Rights adopted **Resolution 275** on the Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity.

The Resolution **condemns** the increasing incidence of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment and other forms of persecution of persons, on the basis of their imputed or real sexual orientation or gender identity.

It **specifically condemns** the situation of systematic attacks by State and non-state actors against persons on the basis of their imputed or real sexual orientation or gender identity.

It **calls on** State Parties to ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities.

The Resolution **strongly urges** States to end all acts of violence and abuse, whether committed by State or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.



In Africa, one of the most fundamental ideals we have fought for is that of non-discrimination on the grounds of skin colour, gender, religious orientation and other beliefs. We uphold this ideal passionately. Yet ironically, discrimination against LGBT people is still upheld and justified by our same nations and laws.

- Festus Mogae, former President of Botswana

Europe

The Council of Europe

The Council of Europe³³ has taken positive steps to identify and respond to discrimination, violence and other issues affecting the LGBTI community. A Sexual Orientation and Gender Identity Unit is responsible for working with relevant stakeholders on issues of sexual orientation and gender identity.³⁴

In March 2010, the Council of Europe adopted Recommendation CM/Rec (2010)5 on measures to combat discrimination based on sexual orientation or gender identity. Emphasizing the universality of human rights

33 The Council of Europe (founded in 1949) has 47 member states with approximately 820 million citizens.

34 Council of Europe Commissioner for Human Rights, [Issue Paper on Human Rights and Gender Identity](#) (2009).

and the importance of non-discrimination, the recommendation called upon Member States to take positive steps to protect the rights of the LGBTI community.³⁵

The Council of Europe also published a report, *Discrimination on grounds of sexual orientation and gender identity in Europe* (second edition 2011), that addresses homophobia, transphobia and discrimination within the 47 Member States of the Council of Europe and makes recommendations for their prevention.³⁶ Moreover, the Commissioner for Human Rights published an issue paper, *Human Rights and Gender Identity*, in 2009.

The European Union

The principle of equality and the prohibition of discrimination on the basis of sexual orientation are now part of the European Union Treaties (e.g., Article 10 Treaty on the Functioning of the European Union, Articles 2 and 3 Treaty on European Union).³⁷

The European Union Charter of Fundamental Rights, which now has the same legal force as the Treaties, explicitly prohibits discrimination on the grounds of religion or belief, disability, age or sexual orientation. Sexual orientation acquired this status relatively recently.

The Framework Employment Directive also prohibits discrimination based on sexual orientation (Article 21(1)). It must be noted, though, that this Directive is restricted to employment, occupation and vocational training. Nevertheless, when implementing the Framework Employment Directive, some Member States already extend protection on the basis of sexual orientation to cover some or all fields to which the European Union Race Equality Directive applies.

Additionally, the European Commission has made a proposal for a new “horizontal directive” that would extend the prohibition of discrimination on the grounds of religion or belief, disability, age or sexual orientation outside of employment.

Further, the European Union Fundamental Rights Agency monitors the right situation of LGBTI people in the European Union, and has provided numerous analyses and reports on these matters.

European Union Member States are also discussing the creation of a single equality body that would deal with all grounds of discrimination.

The Americas

In recent years, the Organization of American States (OAS) and the Inter-American Commission on Human Rights (IACHR) have taken steps to address patterns of violence and other human rights abuses affecting LGBTI persons within the Americas.

Between 2008 and 2013, the OAS General Assembly approved six resolutions concerning human rights, sexual orientation and gender identity.³⁸ These resolutions acknowledge and condemn discrimination and acts of violence against members of the LGBTI community. They also call upon States, the IACHR and other bodies to take appropriate measures to address the problem.

The OAS General Assembly requested that the IACHR and the Inter-American Juridical Committee prepare reports on the “legal implications and conceptual and terminological developments as regards sexual orientation, gender identity, and gender expression.”³⁹ In response, IACHR issued a document entitled *Sexual Orientation, Gender Identity*,

35 Council of Europe: Committee of Ministers, [Recommendation CM/Rec\(2010\)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity](#), 31 March 2010.

36 Council of Europe, [Discrimination on grounds of sexual orientation or gender identity in Europe](#) (2011).

37 The European Union is a political and economic union of 28 members in Europe, with an estimated population of over 508 million.

38 OAS, General Assembly Res. AG/RES. 2807 (XLIII-O/13), [Human Rights, Sexual Orientation and Gender Identity](#) (6 June 6 2013).

39 OAS, [General Assembly Res. AG/RES. 2653 \(XLI-O/11\)](#), Human Rights, Sexual Orientation and Gender Identity (7 June 7 2011), para 6.

and Gender Expression: Key Terms and Standards, and the Inter-American Juridical Committee released its Report on Sexual Orientation, Gender Identity, and Gender Expression.⁴⁰ In addition, IACHR developed an Action Plan to address the ongoing issue of discrimination and violence against the LGBTI people and proposed to “establish legal standards, rule on cases, and issue reports on the situation of members of the LGBTI communities in the American States.”⁴¹

In November 2011, IACHR also created a rapporteur on the rights of LGBTI people.⁴² The rapporteurs are tasked with: advising IACHR on petitions and cases concerning sexual orientation, gender identity and gender expression; providing technical support to Member States; preparing reports on the rights of LGBTI persons; and monitoring the human rights violations against LGBTI persons in the Americas.

OAS adopted The Inter-American Convention against All Forms of Discrimination and Intolerance on 5 June 2013. The Convention calls on States to prevent, eliminate, prohibit and punish all acts and manifestations of discrimination and intolerance. Sexual orientation and gender identity and expression are explicitly included as protected grounds within the Convention. As of May 2016, there are nine signatory States to the Convention and thus far no ratifications. The Convention enters into force thirty days after the second instrument of ratification or accession to the Convention is deposited with the OAS General Secretariat.



LGBTI people are disproportionately affected by violence and poverty in the Americas. They find themselves at higher risk of illiteracy and homelessness due to discrimination in private and public spaces. They face increased barriers to accessing education and employment which result in high levels of poverty and criminalization.

States’ legislative interventions should be premised on full respect for LGBTI people and aimed at preventing and addressing violence and ending discrimination.

The Organization of American States has taken important steps in the protection of the human rights of LGBTI people across the Americas. The creation of the Rapporteurship on the Rights of LGBTI Persons at the Inter-American Commission on Human Rights is a positive step forward. When it comes into force, the recent ‘Inter-American Convention against All Forms of Discrimination and Intolerance’ will become an important tool for protecting the human rights of LGBTI people across the diverse countries and cultures that constitute our region. ”

- Tracy Robinson, former Rapporteur for the Rights of LGBTI Persons, Inter-American Commission on Human Rights

40 IACHR, [Sexual Orientation, Gender Identity, and Gender Expression: Key Terms and Standards](#), CP/CAAP-INF. 166/12, 23 April 2012; Inter-American Juridical Committee, [Report on Sexual Orientation, Gender Identity, and Gender Expression](#), CP/doc.4846/13, 17 March 2013.

41 IACHR, [Action Plan 4.6.i \(2011-2012\) LGBTI Persons](#), para. 2.

42 IACHR, [Press Release No. 115/11: IACHR Creates Unit on the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex Persons](#), 3 November 2011, available at: www.oas.org/en/iachr/media_center/PReleases/2011/115.asp.

Annex 4: Joint Statement of UN entities: Ending Violence and Discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex People



United Nations entities call on States to act urgently to end violence and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI)⁴³ adults, adolescents and children.

All people have an equal right to live free from violence, persecution, discrimination and stigma. International human rights law establishes legal obligations on States to ensure that every person, without distinction, can enjoy these rights. While welcoming increasing efforts in many countries to protect the rights of LGBTI people, we remain seriously concerned that around the world, millions of LGBTI individuals, those perceived as LGBTI and their families face widespread human rights violations. This is cause for alarm – and action.

Failure to uphold the human rights of LGBTI people and protect them against abuses such as violence and discriminatory laws and practices, constitute serious violations of international human rights law and have a far-reaching impact on society – contributing to increased vulnerability to ill health including HIV infection, social and economic exclusion, putting strain on families and communities, and impacting negatively on economic growth, decent work and progress towards achievement of the future Sustainable Development Goals. States bear the primary duty under international law to protect everyone from discrimination and violence. These violations therefore require an urgent response by governments, parliaments, judiciaries and NHRIs. Community, religious and political leaders, workers' organizations, the private sector, health providers, civil society organizations and the media also have important roles to play. Human rights are universal – cultural, religious and moral practices and beliefs and social attitudes cannot be invoked to justify human rights violations against any group, including LGBTI persons.

Protecting Individuals from Violence

States should protect LGBTI persons from violence, torture and ill-treatment, including by:

- Investigating, prosecuting and providing remedy for acts of violence, torture and ill-treatment against LGBTI adults, adolescents and children, and those who defend their human rights;
- Strengthening efforts to prevent, monitor and report such violence;
- Incorporating homophobia and transphobia as aggravating factors in laws against hate crime and hate speech;

⁴³ While this statement refers to LGBTI people, it should also be read to refer to other people who face violence and discrimination on the basis of their actual or perceived sexual orientation, gender identity and sex characteristics, including those who may identify with other terms.

- Recognizing that persecution of people because they are (or are perceived to be) LGBTI may constitute a valid ground for asylum, and not returning such refugees to a place where their life or freedom might be threatened.

The United Nations and others have documented widespread physical and psychological violence against LGBTI persons in all regions - including murder, assault, kidnapping, rape, sexual violence, as well as torture and ill-treatment in institutional and other settings. LGBTI youth and lesbian, bisexual and transgender women are at particular risk of physical, psychological and sexual violence in family and community settings. LGBTI persons often face violence and discrimination when seeking refuge from persecution and in humanitarian emergencies. They may also face abuse in medical settings, including unethical and harmful so-called "therapies" to change sexual orientation, forced or coercive sterilization, forced genital and anal examinations, and unnecessary surgery and treatment on intersex children without their consent. In many countries, the response to these violations is inadequate. Violations are underreported and often not properly investigated and prosecuted, leading to widespread impunity and lack of justice, remedies and support for victims. Human rights defenders combatting these violations are frequently persecuted and face discriminatory restrictions on their activities.

Repealing Discriminatory Laws

States should respect international human rights standards, including by reviewing, repealing and establishing a moratorium on the application of:

- Laws that criminalize same-sex conduct between consenting adults;
- Laws that criminalize transgender people on the basis of their gender expression;
- Other laws used to arrest, punish or discriminate against people on the basis of their sexual orientation, gender identity or gender expression.

In 76 countries, laws still criminalize consensual same-sex relationships between adults, exposing individuals to the risk of arbitrary arrest, prosecution, imprisonment – even the death penalty, in at least five countries. Laws criminalizing cross-dressing are used to arrest and punish transgender people. Other laws are used to harass, detain, discriminate or place restrictions on the freedom of expression, association and peaceful assembly of lesbian, gay, bisexual and transgender people. These discriminatory laws contribute to perpetuating stigma and discrimination, as well as hate crime, police abuse, torture and ill-treatment, family and community violence, and negatively affect public health by impeding access to health and HIV services.

Protecting Individuals from Discrimination

States should uphold international human rights standards on non-discrimination, including by:

- Prohibiting discrimination against LGBTI adults, adolescents and children in all contexts – including in education, employment, healthcare, housing, social protection, criminal justice and in asylum and detention settings;
- Ensuring legal recognition of the gender identity of transgender people without abusive requirements;
- Combating prejudice against LGBTI people through dialogue, public education and training;
- Ensuring that LGBTI people are consulted and participate in the design, implementation and monitoring of laws, policies and programmes that affect them, including development and humanitarian initiatives.

LGBTI people face widespread discrimination and exclusion in all contexts - including multiple forms of discrimination based on other factors such as sex, race, ethnicity, age, religion, poverty, migration, disability and health status. Children face bullying, discrimination or expulsion from schools on the basis of their actual

or perceived sexual orientation or gender identity, or that of their parents. LGBTI youth rejected by their families experience disproportionate levels of suicide, homelessness and food insecurity. Discrimination and violence contribute to the marginalization of LGBTI people and their vulnerability to ill health including HIV infection, yet they face denial of care, discriminatory attitudes and pathologization in medical and other settings. Transgender people are frequently denied legal recognition of their preferred gender or face abusive requirements such as forced sterilization, treatment or divorce to obtain it, without which they suffer exclusion and marginalization. The exclusion of LGBTI people from the design, implementation and monitoring of laws and policies that affect them perpetuates their social and economic marginalization.

United Nations Support

Our organizations stand ready to support and assist Member States and other stakeholders as they work to address the challenges outlined in this statement including through constitutional, legislative and policy changes, strengthening of national institutions, and education, training and other initiatives to respect, protect, promote and fulfil the human rights of all LGBTI people.

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