

Tackling Discrimination against Lesbian, Gay, Bi, Trans, & Intersex People

STANDARDS OF CONDUCT FOR BUSINESS



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER



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"If we are to achieve faster global progress towards equality for lesbian, gay, bi, trans, and intersex people, businesses will not only have to meet their human rights responsibilities, they must become active agents of change."

Zeid Ra'ad Al Hussein
UN High Commissioner for Human Rights

A MESSAGE FROM THE HIGH COMMISSIONER

The UN Guiding Principles on Business and Human Rights set clear standards for the private sector to respect international human rights. The UN Global Compact provides a platform for companies to implement these standards and to advance them in the broader community.

The present Standards of Conduct build on both the UN Guiding Principles and on the UN Global Compact and offers guidance to companies on how to meet their responsibility to respect everyone's rights – including, in this case, the rights of lesbian, gay, bi, trans, and intersex (LGBTI) people. Meeting this benchmark means treating LGBTI people fairly in the workplace, as well as looking at business practice up and down the supply chain to seek to ensure that discrimination is tackled at every turn. But the Standards of Conduct also take the case for corporate engagement a step further – by pointing to the many opportunities companies have to contribute to positive social change more broadly in the communities where they do business.

The original idea for developing these Standards came from a panel discussion I was involved in at the World Economic Forum annual meeting in Davos in 2016. It was a turning point in a long-overdue conversation among prominent business leaders and activists about what practical measures companies can and should take to tackle LGBTI discrimination – beyond the kind of internal diversity and inclusion policies already in place in large corporations, vital though these are.

Over the past year, my Office, in conjunction with the Institute for Human Rights and Business, has held a series of region-wide consultative meetings with business and civil society representatives in Europe, Africa, Asia and the Americas. We listened to people's experiences and ideas, many of them reflected in the paper before you. I am grateful to all who took part and to many others who contributed electronically.

The influence of business can accelerate the pace of change. Companies all over the world – big and small, local and multinational – have the chance to use their leverage and their relationships with a variety of local stakeholders to help move the dial in the direction of greater equality for LGBTI people. We know from experience that every time discrimination is diminished, everyone benefits.

I see these Standards of Conduct as a step forward in helping companies translate their human rights commitments into practical action on the ground, and a potentially important opportunity to enlarge the role of business in tackling discriminatory practices in countries around the world.



UN High Commissioner for Human Rights
September 2017

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EXECUTIVE SUMMARY

The past decade has seen important progress in many parts of the world in the lives of millions of lesbian, gay, bi, trans, and intersex (LGBTI) people who have benefited from a raft of legal reforms and, in some cases, shifts in social attitudes.

But such progress has been partial and uneven, with major advances in some countries and for some communities offset by lack of progress, or even reversals, in others. Seventy-three countries still criminalize consensual same-sex relationships, very few countries legally recognize the identity of trans people and only a handful protect the rights of intersex people. In most countries, protection against discrimination based on sexual orientation and gender identity is inadequate at most. Even in countries that have made significant strides, LGBTI people face high hurdles, with studies suggesting that they are more likely than the general population to be bullied at school, treated unfairly at work, and denied access to basic services.

Companies have a responsibility to respect international human rights standards, to make sure they respect everyone's human rights, including the rights of LGBTI people. This applies regardless of the company size, structure, sector, or location. Companies also have important opportunities to foster diversity and promote a culture of respect and equality both in the workplace and in the communities where they and their business partners operate. Many firms have found that actively tackling discrimination and promoting diversity and inclusion also brings economic benefits — helping tap new talent, improving decisions and building loyalty with customers and investors alike.

In 2000, the United Nations launched the UN Global Compact, the world's largest corporate responsibility initiative, to encourage companies to respect universal principles and contribute to a more sustainable and inclusive global economy. A decade later, in 2011, the UN Human Rights Council endorsed the UN Guiding Principles on Business and Human Rights, affirming that every business bears responsibility to respect human rights, and calling on companies to avoid infringing upon human rights and to address adverse human rights impacts with which they are involved. In 2015, UN Member States agreed upon a set of 17 Sustainable Development Goals (SDGs) with a promise to “leave no one behind”. Fulfilment of these goals, which include tackling social and economic discrimination and marginalization, depends now on the collective efforts, not just of governments, but of civil society and businesses as well.

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Awareness of the role that companies can play in curbing discrimination and promoting diversity is growing, and many companies have already taken steps to translate a commitment to LGBTI inclusion into action. Even so, most are just beginning to grapple with these issues, and accumulated knowledge and best practices remain thin, particularly in environments that are hostile to LGBTI people. Overall, the corporate sector's approach has often been ad hoc and inconsistent. Some global companies do well in championing LGBTI equality at home, less well abroad. Others may find their voice in relatively supportive environments, but stay silent in contexts where rights protection for LGBTI individuals is weak or lacking. Some companies have policies in place to protect lesbian, gay and bisexual people, but have yet to take measures to protect trans and intersex people.

The Standards of Conduct summarized below, and set out in more detail later in this paper, offer practical guidance to companies on how to respect and support the rights of LGBTI people in the workplace, marketplace and community. They have been developed by the United Nations Human Rights Office in partnership with the Institute for Human Rights and Business, and build on the outcome of a series of regional consultations held in 2016 and 2017 in Mumbai, New York, Kampala and Brussels. The Standards are designed to support companies in reviewing existing policies and practices — and establishing new ones — to respect and promote the human rights of LGBTI people.

The Standards are grounded in existing international human rights law and are in line with the UN Guiding Principles on Business and Human Rights. They also have a strong empirical foundation, building on many of the good practices that responsible businesses have already adopted. They present measures that companies can and should take to align their policies and practices with existing human rights standards. They recognize the need for a nuanced and differentiated approach based on the diversity of contexts and of individuals making up the LGBTI spectrum. Finally, they are intended to support rights-affirming interactions between companies and a wide range of stakeholders — from staff to customers, suppliers, shareholders, communities, governments, lawmakers, and trade unions — since achieving progress in this area requires the participation of all actors at all levels.

The Standards are grounded in existing international human rights law and are in line with the *UN Guiding Principles on Business and Human Rights*.

The Five Standards

At All Times

- 1 RESPECT HUMAN RIGHTS.** All businesses have a responsibility to respect human rights — including the rights of LGBTI people — in their operations and business relationships. Businesses are expected to develop policies, exercise due diligence, and, in cases where their decisions or activities have adversely affected the enjoyment of human rights, remediate such impacts. Businesses should also establish mechanisms to monitor and communicate about their compliance with human rights standards. Where higher levels of human rights violations against LGBTI people have been documented, including in countries with discriminatory laws and practices, companies will need to undertake more extensive due diligence to ensure that they respect the rights of LGBTI people.

In the Workplace

- 2 ELIMINATE DISCRIMINATION.** Employees and other people with whom the business engages are entitled to freedom from discrimination. Businesses should ensure that there is no discrimination in their recruitment, employment, working conditions, benefits, respect for privacy, or treatment of harassment.
- 3 PROVIDE SUPPORT.** LGBTI individuals are employees, managers, business owners, customers, and community members, among others, and yet many face formidable obstacles to workplace acceptance and inclusion. Businesses are expected to provide a positive, affirmative environment within their organization so that LGBTI employees can work with dignity and without stigma. This standard requires businesses to go beyond equal benefits and take steps to ensure inclusion, including addressing the specific workplace needs of LGBTI people.

In the Marketplace

- 4 PREVENT OTHER HUMAN RIGHTS VIOLATIONS.** Businesses should ensure that they do not discriminate against LGBTI suppliers or distributors, or against LGBTI customers in accessing the company's products and/or services. In their business relationships, businesses should also ensure that business partners do not discriminate. Where a business partner discriminates against LGBTI people, businesses should use their leverage to seek to prevent that act of discrimination. This means looking beyond avoiding discrimination to address issues of violence, bullying, intimidation, ill-treatment, incitement to violence, or other abuses against LGBTI people that a company may be implicated in through their products, services, or business relationships. Companies should also ensure that they provide access to products and services to LGBTI customers.

In the Community

- 5 ACT IN THE PUBLIC SPHERE.** Businesses are encouraged to use their leverage to contribute to stopping human rights abuses in the countries in which they operate. In doing so, they should consult closely with local communities and organizations to identify what constructive approaches businesses can take in contexts where legal frameworks and existing practices violate the human rights of LGBTI people. Such steps can include public advocacy, collective action, social dialogue, financial, and in-kind support for organizations advancing LGBTI rights and challenging the validity or implementation of abusive government actions. Companies will need to undertake more extensive due diligence to ensure that they respect the rights of LGBTI people where higher levels of human rights violations have been documented, including in countries with discriminatory laws and practices.

The Standards outlined above are intended to provide a set of benchmarks for assessing the role of business in tackling discrimination and related human rights abuses affecting LGBTI people, and to support good practice by companies. The United Nations Human Rights Office encourages companies to endorse, use, and refer to these Standards and promote their use by others. It also encourages civil society and other stakeholders to use the Standards as a tool in assessing and reporting on companies' commitments, policies, and practices in respect to the rights of LGBTI people.

FIVE STANDARDS OF CONDUCT

AT ALL TIMES

1. Respect human rights

2. Eliminate discrimination

3. Provide support

4. Prevent other human
rights violations

5. Act in the public sphere

WORKPLACE

MARKETPLACE

COMMUNITY



**STANDARDS OF CONDUCT
FOR BUSINESS** FOR TACKLING
DISCRIMINATION AGAINST
LESBIAN, GAY, BI, TRANS,
AND INTERSEX PEOPLE



At All Times

1 RESPECT HUMAN RIGHTS

In line with the UN Guiding Principles on Business and Human Rights and in consultation with workers and their representatives and with LGBTI organizations, as well as other relevant stakeholders, companies should put in place policies and processes appropriate to their size and circumstances to ensure that they are respecting human rights, including the rights of LGBTI people:

a Policy commitment: Companies should develop policies to meet their responsibility to respect human rights, expressly including the rights of LGBTI people.

b Due Diligence: Companies should conduct due diligence to identify, prevent, mitigate and account for, any actual or potential negative impact on the enjoyment of human rights by LGBTI people that they have caused or contributed to or which are directly linked to their operations, products and services, and business relationships. The assessment of any such actual or potential adverse impacts should be done in consultation with relevant stakeholders in countries of operation, including, in this case, LGBTI organizations. Companies should account for how they address any actual or potential adverse impacts identified.

c Remedy: Companies should seek to resolve any adverse human rights impact they might have caused or contributed to, engaging actively in remediation mechanisms by itself or in cooperation with other legitimate processes, including establishing and participating in effective operational-level grievance mechanisms for individuals or communities concerned. Such mechanisms should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, enable continuous learning, and be based on

engagement and dialogue. They should not be used to undermine the role of legitimate trade unions in addressing labour-related disputes, nor preclude access to judicial or other non-judicial grievance mechanisms. Companies should ensure that grievance mechanisms address specific issues of concern to LGBTI people. An essential element of a robust grievance mechanism is protection for whistle-blowers. Companies should use their leverage to influence and change discriminatory policies and practices of business partners or suppliers who discriminate against LGBTI persons. Where such efforts do not meet relevant standards, they should consider and assess the impact of terminating business relationships with such business partners or suppliers, unless doing so might itself lead to adverse human rights impact.

In the Workplace

2 ELIMINATE DISCRIMINATION

Companies should not discriminate among individuals or groups as potential or current employees based on sexual orientation, gender identity, gender expression, or sex characteristics:

a Employment: Companies should recruit staff and extend each individual the same benefits, salaries, opportunities for training or promotion regardless of a candidate's sexual orientation, gender identity, gender expression or sex characteristics, and include reference to non-discrimination on these grounds in vacancy announcements where legally feasible. Companies should take steps to ensure that LGBTI staff feel fully included in the workforce and avoid them from being forced to either reveal or conceal their identity/status within the workforce.¹ The role of top and middle management in ensuring effective compliance with fair recruiting practices is critical in this regard.

b Harassment and discrimination:*

Companies should take active steps to prevent, protect against, and eliminate discrimination, harassment (external or internal) and violence directed against LGBTI individuals. Companies should offer reporting processes to prevent and address harassment and discrimination in the workplace while protecting those who report such abuses from retaliation. Companies should take steps to protect LGBTI staff from external harassment by identifying and addressing security issues in consultation with employees, including the safety of staff traveling to and from work and on company-related business.

c Diversity awareness: Companies should train staff and in particular, managers, to raise awareness of human rights concerns faced by LGBTI people and ensure that they are aware of their responsibility under company policy to respect and uphold the rights of LGBTI people, including colleagues. In particular, organizations should ensure that relocation policies and practices for all staff (regardless of their sexual orientation, gender identity or sex characteristics) deliver awareness of any risks or other reduced rights considerations for LGBTI people.

d Extend benefits: Companies should extend the same benefits to partners, spouses, children or other dependents of staff members, regardless of sexual orientation, gender identity and expression, or sex characteristics.

e Respect privacy: Companies should respect and support the right to privacy of all persons, including by keeping any information relating to the sexual orientation, gender identity, gender expression, or sex characteristics of individuals confidential and secure, and not revealing such information to third

parties, including authorities, without the express authorization of the individual concerned. Data encryption is critical in this regard.

In their efforts to eliminate discrimination in the workplace, companies should ensure that they address the specific rights of trans people and intersex people at work. States and companies tend to lag behind on these two components within the LGBTI community.

Companies should adopt policies for trans inclusion, including recognizing the gender identity of trans staff, customers and other stakeholders based on the self-identification of the person, regardless of whether this is reflected in official documents. This also includes establishing policies that require company staff to respect the name, pronouns, terms and gender used by the person concerned.

Companies should adopt policies to support and protect the rights of trans staff who are transitioning, including those relating to modification of company records, and provide training and guidance to managers and colleagues in respect to gender identity and expression.

Companies should ensure that gender-affirming surgery, treatment and support are covered by company health insurance policies. Other important aspects of trans inclusion include safe and non-discriminatory access to bathrooms and other single-sex facilities for trans people, and non-discriminatory dress codes.

Companies should adopt policies to respect the rights of intersex people at work, including in relation to accessing personal services and changing rooms, dress codes, health care and medical attention.

*Some concrete steps companies may consider include: analyzing travel exposures, developing commuting policies, and educating employees on safety risks. In exceptional cases, companies may consider arranging for escorts to accompany targeted LGBTI employees.

3 PROVIDE SUPPORT

In addition to policies to eliminate discrimination and other human rights violations, companies should take proactive positive measures to create a positive, affirmative environment within their organization so that LGBTI employees can work with dignity. Companies should support efforts by LGBTI employees to create their own informal staff groups and extend the same opportunities to them for extra-curricular activities as they would to any other group. Pro-LGBTI policies are critical but for them to be effective, in order to attract or retain LGBTI staff, companies should have a proactive approach with high visibility.

In the Marketplace

4 PREVENT OTHER HUMAN RIGHTS VIOLATIONS

Companies should identify, prevent, and mitigate other risks to the human rights of LGBTI people that may be specific to their industry, local context, or set of partners and stakeholders. In that area too, companies should provide employees and other stakeholders with the ability to safely register complaints, with both an identified complainant and those delivered anonymously. Violence, torture and ill treatment against LGBTI people have been documented inter alia in schools, clinics and hospitals, in detention, and in the context of law enforcement or security operations, while incitement to hatred and violence has been documented in the media sector.

All companies, and particularly those within the aforementioned sectors or those who interact with partners and stakeholders in

these sectors, should assess whether through their operations or business relations they are causing or contributing to violence, bullying, intimidation, ill-treatment, incitement to violence or other abuses against LGBTI people, and take concrete measures to prevent and mitigate such risks. The company should use its leverage to stop abuses in instances where its business partner is engaged in abuse that the company has not caused or contributed to, but which is nevertheless linked to its operations, products, or services through a business relationship. However, the appropriate action will depend on a range of factors including: the degree of leverage over the entity concerned; how crucial the relationship is to the enterprise, the severity of the abuse, and whether terminating the relationship with the entity itself would have adverse human rights consequences.

Employees should also be held accountable if their conduct abuses others' human rights. Companies should not withhold products or services from individuals or groups based on sexual orientation, gender identity and sex characteristics. Companies should use their leverage to influence the behaviour of suppliers and partners, whose practices may, intentionally or not, discriminate against or otherwise violate the rights of LGBTI people. In some cases, it may be appropriate for companies to take public advocacy positions. As an important corollary, companies should actively support partners and suppliers who extend opportunities, products and services on a non-discriminatory basis to LGBTI people and those who recruit them, including in jurisdictions where the rights of LGBTI people are not respected.

In the Community

5 ACT IN PUBLIC SPHERE

Companies cannot alone transform societies in which they operate. Even so, it is important for companies to take positive, affirmative steps to respect and, where there are opportunities to do so, promote human rights, using their influence to champion rights through words and deeds.



PUBLIC ADVOCACY

Companies should communicate their policies effectively in appropriate contexts, in consultation with local stakeholders. Companies should also exchange their experiences in this area in relevant forums such as the annual Forum on Business and Human Rights, guided by the UN Working Group on Business and Human Rights, with the support of the UN Human Rights Office.



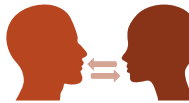
COLLECTIVE ACTION

Companies should, together with other companies, consult with local organizations working to promote the rights of LGBTI persons as to appropriate steps that they could collectively take to challenge discriminatory laws and practices. They should sponsor and partner with local LGBTI groups, including youth centres, community centres, advocacy groups and charities.



QUESTION & DELAY IMPLEMENTING ABUSIVE ORDERS

Companies should take every available legal step to question, challenge, delay, and resist implementing government orders that might lead to human rights violations, including human rights violations against LGBTI people.

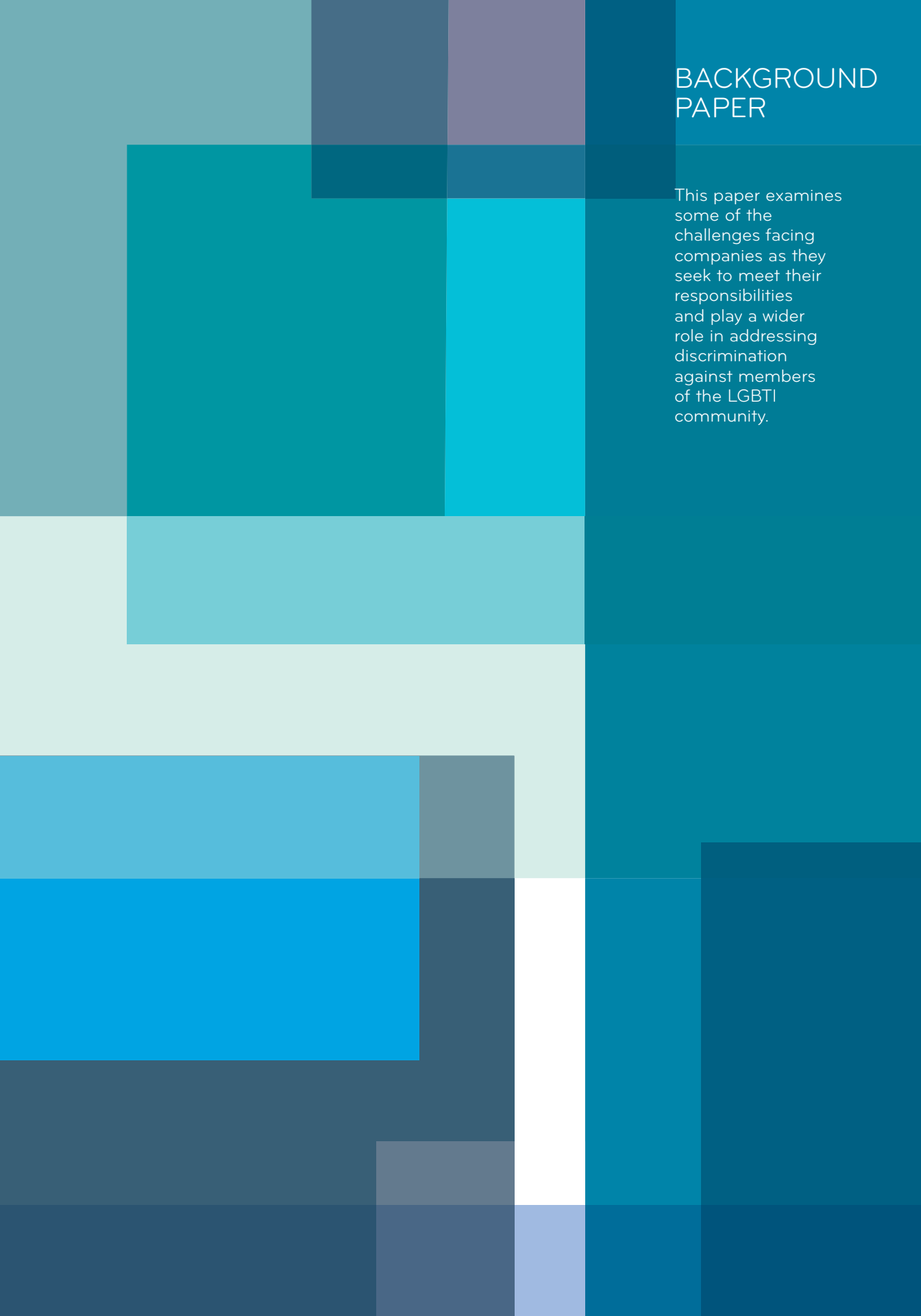


SOCIAL DIALOGUE

Companies and their organizations should engage in negotiation, consultation, and information exchange with trade unions at the sectoral, regional and national levels on issues of common interest relating to rights of LGBTI workers.

STANDARDS OF CONDUCT FOR BUSINESS: EXPLANATORY NOTE

- 1 These Standards reflect already existing international human rights norms.** The standards are intended to serve as guidance for companies — large and small, state-owned and privately-owned, operating only in one country or in many — on how existing international human rights standards, including those derived from the Universal Declaration of Human Rights and reflected in the UN Guiding Principles on Business and Human Rights, may be applied in respect to the rights of LGBTI people.
- 2 These Standards stem from internationally-recognized human rights to which LGBTI people are entitled by virtue of existing international human rights treaties.** Companies have a responsibility to respect all human rights of all people and in all circumstances, and should fulfil all of their human rights responsibilities as articulated in the *UN Guiding Principles*. Because LGBTI people disproportionately experience discrimination, violence, and related human rights violations, particular attention is needed in order to ensure that they are able to exercise their rights.
- 3 These Standards apply to all business enterprises, regardless of size, sector, location, ownership, and structure.** While multinational and other companies operating in jurisdictions where the law is discriminatory towards LGBTI people face specific challenges in discharging their responsibility to respect rights, violence, and discriminatory practices against LGBTI people take place in every region and country in the world, and international standards apply in all cases.
- 4 For the Standards to be effective, each industry sector will have to assess the risks and impacts in specific contexts and countries and adapt their approach to implementation accordingly.** The Standards describe in broad terms the kind of measures that companies should consider in order to align their policies and practices with international human rights standards. They also include suggested optional measures to promote equality and combat stigma that are advisable, circumstances permitting.
- 5 The application of the Standards should be guided by local stakeholders.** Respecting and understanding local parameters in applying these standards will reduce the likelihood of companies taking ineffective or counter-productive initiatives. This can be achieved by actively promoting the involvement in and ownership by local stakeholders, including LGBTI civil society organizations.
- 6 In applying these Standards, companies should adopt a nuanced and differentiated approach, taking into account the different human rights challenges faced by lesbian, gay, bi, trans, and intersex people respectively.** LGBTI people face both common and distinct human rights concerns. In some cases, some may be specifically targeted by violence and discriminatory laws and practices. While in many countries, all LGBTI people suffer from gaps in the legal framework and related protection challenges, trans, and intersex people are often especially exposed — given the scant attention given in most cases to their human rights concerns. As companies elaborate and implement policies, they should be mindful of these specificities and the diversity of the LGBTI population, which will frequently require taking differentiated approaches to each segment of the LGBTI population. Companies should also take into account that LGBTI individuals may be affected by multiple forms of discrimination — including racial discrimination, and discrimination based on sex, age, ethnicity, indigenous origin, religion, health, disabilities, and socio-economic status.
- 7 While companies are encouraged to support, endorse, and refer to these Standards in reporting on their actions to respect and promote human rights, the Standards do not come with a mechanism to monitor their application.** The UN Human Rights Office encourages companies themselves, as well as trade unions, civil society organizations, academic institutions, and other stakeholders to monitor and evaluate performance, set benchmarks, identify and share good practices, and engage in dialogue on further steps that might be taken in line with these Standards.



BACKGROUND PAPER

This paper examines some of the challenges facing companies as they seek to meet their responsibilities and play a wider role in addressing discrimination against members of the LGBTI community.

Why Standards of Conduct?

Awareness has grown throughout the world in the past decade of the gravity and extent of violence and discrimination directed at LGBTI people. Ending these abuses is increasingly the focus of discussion in many countries and at the United Nations. More than a hundred Member States have accepted UN recommendations to reform their national laws and take other measures to protect the rights of LGBTI people, and in recent years many have enacted important legal reforms: from repealing discriminatory criminal laws to amending anti-discrimination legislation to protect LGBTI individuals from unfair treatment.

Nevertheless, standards of legal protection for members of the LGBTI community still vary dramatically from country to country.

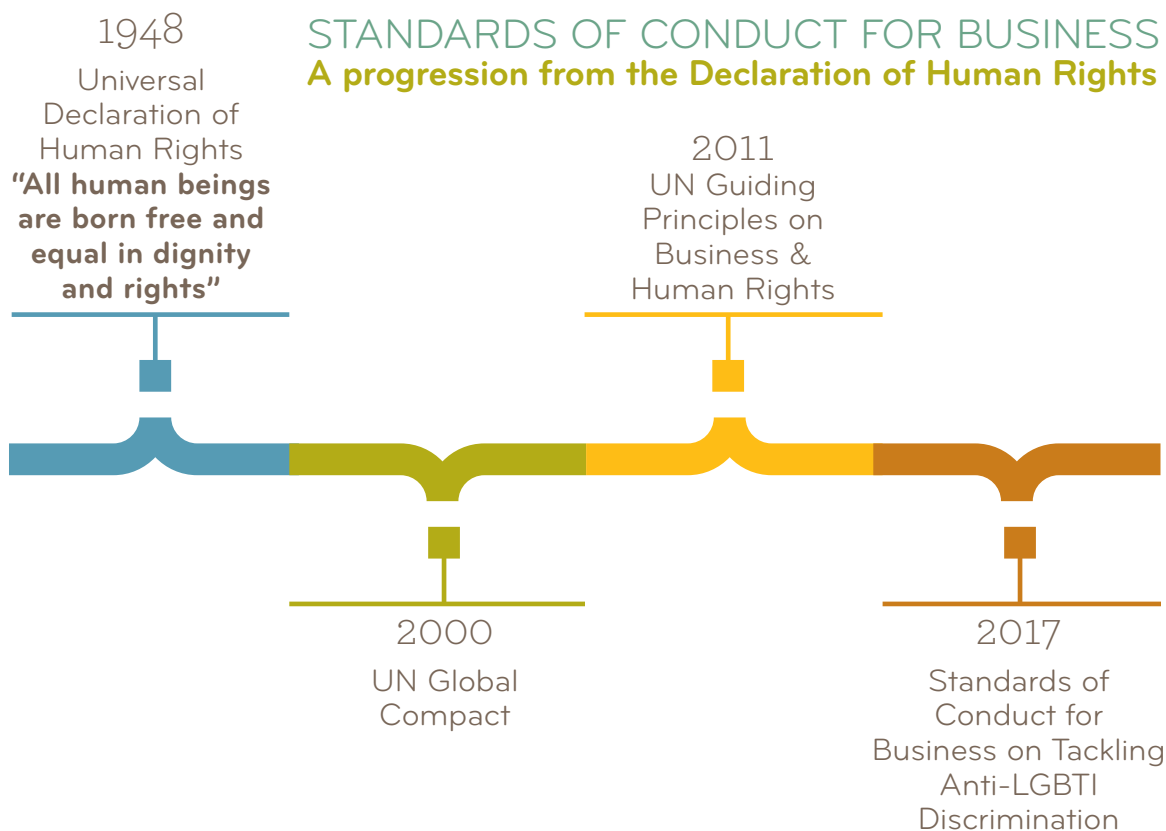
Seventy-three UN Member States continue to criminalize same-sex relationships and many criminalize trans people. Most Member States lack effective protection from discrimination on grounds of sexual orientation, fewer still protect the rights of trans people and very few have taken measures to protect intersex people. In a handful of countries, governments are actively pursuing measures that would further restrict the rights of LGBTI people – including curbing activism and banning cultural events. Such stark differences in legal frameworks and practices pose particular problems for companies committed to respecting and supporting human rights – whether those companies operate in one jurisdiction, with international partners, or across multiple jurisdictions.

Even in countries with more progressive legal frameworks, deep-rooted stigma and negative stereotypes perpetuate discrimination against LGBTI people, including in the workplace, marketplace, and community. Beyond legal reforms, achieving social acceptance and equality requires the engagement of the broader community crucially including the corporate sector.

While governments have the primary obligation to respect, protect and fulfil human rights, companies also have an independent and complementary responsibility to respect human rights in their own operations and business relationships.

The Universal Declaration of Human Rights⁴ explicitly states that “every individual and every organ of society” should strive to promote respect for human rights. Tackling discrimination is not the sole preserve of the State: as organs of society, companies have both a responsibility to respect human rights and tremendous economic power and influence to bring about positive change.

Throughout this paper the terms lesbian, gay, bisexual (or bi) are used to indicate individuals with same-sex attraction; transgender (or trans) is used to indicate individuals whose gender identity differs from the sex assigned at birth, and intersex is used to indicate individuals whose sex characteristics do not fit typical binary notions of male or female bodies. While these terms are increasingly widely understood, different terms may be used in different regions and/or cultures.



In 1948, the Universal Declaration of Human Rights was adopted and today forms a key plank of international human rights law. Since the Declaration entered into force, Member States have adopted two major Covenants (on Civil and Political Rights, and on Economic, Social, and Cultural Rights), as well as a number of conventions that safeguard human rights in specific cases and circumstances.

In 2000, the UN Global Compact was unveiled, which specified nine principles by which business should abide (later a tenth principle was added) – among them human rights, labour rights, environmental protection and anti-corruption.

In 2005, John Ruggie was appointed UN Secretary General's Special Representative on Human Rights and Transnational Corporations and other Business Enterprises.

In 2011, the UN Human Rights Council endorsed the UN Guiding Principles on Business and Human Rights. The Guiding Principles created the Protect-Respect-Remedy framework, under which the State has the obligation to protect human rights; companies have the responsibility to respect human rights; and access to remedy is essential when rights are violated.

UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: IMPLICATIONS FOR COMPANIES

The UN Guiding Principles on Business and Human Rights,⁵ endorsed by the UN Human Rights Council in June 2011, are the global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity. They provide companies with a framework to better understand their human rights responsibilities, including the responsibility to prevent and mitigate harm to human rights due to the adverse impact of their activities. The responsibility to respect human rights is a global standard of expected conduct for all enterprises, wherever they operate and whatever their size, ownership and structure, or industry.

According to the UN Guiding Principles, the responsibility to respect has a number of implications. Companies should:

- Have in place a human rights policy⁶ informed by relevant internal and external expertise, which should be reflected in operational policies and procedures. It should be publicly available, approved at the most senior level, and refer to the human rights expectations of personnel and business partners;
- Conduct human rights due diligence:
 - To identify actual and potential adverse human rights impacts
 - To integrate the findings across relevant internal functions and processes
 - To use its leverage in business relationships to reduce human rights risks
 - To track the effectiveness of responses to adverse human rights impacts
 - To account for how it addresses its human rights impacts
 - To take corrective action to mitigate or eliminate adverse impacts that it has caused or to which it has contributed, and
 - To build internal processes and procedures that are known to all staff, including incentives to promote appropriate conduct and disincentives against taking steps that might harm human rights;
- Provide for or cooperate in remediation through legitimate processes where they may have caused or contributed to adverse human rights impact;
- Establish or participate in effective operational-level grievance mechanisms so that grievances can be addressed early and affected parties can access a remedy directly;⁷ and
- Develop operational-level mechanisms that are based on engagement and dialogue with affected stakeholders and affected communities. Begin by gaining an understanding of the situation of LGBTI persons in countries where they carry out their business activities.

IS THE CORPORATE RESPONSIBILITY TO RESPECT A LEGAL DUTY?

The UN Guiding Principles do not constitute an international instrument creating legal obligations for companies. Under the UN Guiding Principles on Business and Human Rights, the corporate responsibility to respect is a norm of expected conduct based on existing international law and conventions. However, this does not mean the corporate responsibility to respect is unrelated to legal obligations. The responsibility to respect may be reflected in domestic law regulating business activities or in binding contractual requirement between companies and their corporate and private clients and suppliers which can then be enforced through judicial means. Companies may also be subject to duties under international humanitarian and international criminal law in certain circumstances.

Companies that want to better understand their potential impact on LGBTI persons could begin by gaining an understanding of the situation of LGBTI persons in countries where they carry out their business activities.⁸ In addition, companies should review their own non-discrimination policies to see whether LGBTI individuals are specifically included. In particular, companies that have non-discrimination policies and which operate in multiple jurisdictions, including some where the law offers no protection to LGBTI persons, should extend such protection from discrimination throughout their operations. Such policies should be global and cover all offices and worldwide employees, irrespective of the country of operation.

In its narrowest sense, this approach requires strict adherence to the principle of “do no harm.” It means ensuring that the company’s conduct, including acting on its business relationships, does not infringe upon the exercise of anyone’s human rights. Respect for human rights also has significant positive impacts on people’s lives and on communities. It is an important contribution towards achievement of the Sustainable Development Goals.

In addition to committing themselves to meet their responsibility to respect human rights by way of a policy commitment, enterprises should establish a process to conduct ongoing human rights due diligence. Such a process will enable enterprises to identify, prevent, mitigate, and account for how they address their impacts on human rights. Where discrimination and other human rights abuses are identified, enterprises should provide access to effectively remedy or cooperate with legitimate remediation processes. The UN Guiding Principles make clear⁹ that in any context, the corporate responsibility to respect human rights exists independently of the willingness or capacity of States to meet their own human rights obligations in this regard, and does not diminish those obligations. The actions that need to be taken by States and businesses are distinct but complementary.

Beyond discharging their responsibility to respect human rights, companies also have important opportunities to support human rights — including the rights of LGBTI people — in the countries where they do business. The role that companies can play and the approaches that might be deployed will vary depending on the social and legal context. But in all parts of the world, and irrespective of local laws and political dynamics, there are actions that companies can take to promote inclusion and empowerment of LGBTI people, protect them from unfair treatment and challenge discriminatory practices within the workplace, in the marketplace and community. Business can make a vital contribution to reducing levels of stigma and prejudice directed at LGBTI employees, customers, and communities.

THE BUSINESS AND ECONOMIC CASE FOR TACKLING LGBTI DISCRIMINATION

Companies have a responsibility to respect human rights regardless of perceived or actual economic benefits or costs. Just as companies must comply with health and safety regulations, environmental protection standards, and minimum wage provisions, they should adhere to international human rights standards – even if doing so has cost implications. As the International Labour Organization's 2008 Social Justice Declaration states: "the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage".¹²

But, in addition to this, there is also a business and economic case for inclusion that bolsters the human rights case. Discrimination, including against LGBTI people, affects productivity and undermines social and economic development, with negative consequences for both companies and communities. It also leads to loss of market share. In numerous studies, diversity and inclusion is associated with business success.¹³

MACRO-ECONOMIC COSTS

All discrimination against specific groups of people carries a heavy cost: shrinking the talent pool, constricting markets and acting as a drag on economic growth. A 2015 World Bank study focused on India found that discrimination against the country's LGBT community cost the country up to 1.7 per cent in potential gross domestic product: the equivalent of \$32 billion. In 2017, UNAIDS released a study estimating the global cost at \$100 billion per year.¹⁴ The Williams Institute found a positive correlation between per capita GDP and legal rights for LGBT people.¹⁵

CORPORATE COSTS

- **Recruitment.** When employers pass over talented individuals based on characteristics with no bearing or relevance for the job, such as their sexual orientation, gender identity and sex characteristics, businesses are left with a sub-optimal workforce, diminishing their ability to deliver. A recent US study found that women whose résumés suggested that they are LBT received about 30 per cent fewer callbacks.¹⁶
- **Retention.** Discrimination forces otherwise qualified LGBTI employees to quit their jobs, creating unnecessary turnover-related costs and loss of talent. In the US, closeted LGBT employees who feel isolated at work are 73 per cent more likely than "out" employees to leave their job.¹⁷
- **Job performance.** Discrimination and prejudice in the workplace impair productivity, contribute to absenteeism, and undercut motivation, entrepreneurship, and company loyalty. In the US, 27 per cent of LGBT employees who are not out said in a study that hiding their identity at work had held them back from speaking up or sharing an idea.¹⁸ Studies have shown that overall employee engagement – not just of LGBT staff – improves when workplaces are perceived as being inclusive.

THE "DIVERSITY DIVIDEND"

Analysis by the *Harvard Business Review* shows that companies with a high level of diversity perform better. Employees at more diverse companies in the US were 45 per cent more likely to report that their firm's market share grew over the previous year and 70 per cent more likely to report that the firm had entered a new market. A recent Credit Suisse study also showed that companies that embraced LGBT employees outperformed in average return on equity, cash flow return on investment, and an increase in profit.¹⁹

THE LGBT & ALLY COMMUNITY PURCHASING POWER

In 2015, Global Spending Power of the LGBT consumer segment was estimated at \$ USD 3.7 trillion per annum, excluding the purchasing power of friends and families of LGBT individuals that make up the ally community.²⁰ In 2007, a national survey of US adults revealed that 88 per cent of gay and lesbian self-identified adults were likely to consider brands that are known to provide equal workplace benefits for all employees, 77 per cent were likely to consider brands that support non-profits or causes that are important to the LGBT community, and 58 per cent were likely to purchase products, including food and beverages, and services from companies that market directly to them.²¹ The trend of LGBT consumer preference has only been on the rise, and has also increased brand preference among LGBT allies. In 2011, the survey revealed that 87 per cent (an increase of 10% since 2007) of US LGBT adults were likely to consider brands that support non-profits or causes that are important to the LGBT community, and that 75 per cent of heterosexual adults were likely to consider a brand that is known to provide equal workplace benefits for all of their employees.²²

Workplace, Marketplace, Community: Challenges & Opportunities

Across the workplace, the marketplace and in the community, businesses typically engage with a range of stakeholders on LGBT and intersex issues, including workers and trade unions in the workplace, customers, suppliers and shareholders in the marketplace, and civil society, governments and lawmakers in the community. In this chapter, challenges and opportunities related to engaging these various stakeholders are explored.



The starting point for the present Standards of Conduct is the responsibility that businesses already have under the UN Guiding Principles not to be involved in adverse human rights impacts – including the rights of LGBTI people. This represents the minimum standard with which all companies should comply. It extends to not discriminating or otherwise causing or contributing to human rights violations against any individual on the basis of their sexual orientation, gender identity, and sex characteristics. Commitments in this regard should be accompanied by action to ensure that changes in policy are reflected in changes in practice.

But beyond meeting these responsibilities, companies also have an opportunity to make a wider contribution to countering discrimination against members of the LGBTI community at large: by engaging with other stakeholders, providing support and, in some circumstances, taking a public stand in favour of equal rights and fair treatment of LGBTI people.

The aim is not to prescribe one course of action over another but rather provide possible responses, drawing from applicable international human rights standards and observed corporate practice.

The Center for Talent Innovation has proposed three models²³ to describe the ways that companies interact with various stakeholders to protect their workers and contribute to local LGBTI communities in different legal and cultural environments. These models apply equally to national and global companies:



WHEN IN ROME



EMBASSY



ADVOCATE

- **“When in Rome” approach:** allows a company to create exceptions to certain global pro-LGBTI corporate policies, taking into account local conditions. By being transparent about these exceptions and by allowing individual employees to “opt out” of certain postings, companies signal their vigilance on behalf of employees. For example, an ICT company and an international law firm allow LGBT employees to refuse, without any negative career repercussions, to travel to particular countries where they might face risks. While this approach may shield some international staff from risk of abuse, it does little to protect the rights of local LGBTI staff and other LGBTI people that might be impacted by the company in the countries concerned, and nothing to change wider patterns of discrimination in those countries. In some situations it might even contribute towards perpetuating discrimination and fail the company’s responsibility to avoid infringing upon human rights and addressing their adverse human rights impacts under the UN Guiding Principles.
- **“Embassy” approach:** enforces corporate policies regardless of local context, creating safe space in jurisdictions where the rights of LGBTI people are not otherwise respected or protected, while arguably helping promote greater tolerance among local staff. A large financial corporation, for example, enforces global anti-discrimination policies everywhere it has offices; effectively raising the bar in jurisdictions where those protections are absent from domestic law. It should be noted that with the “Embassy” approach employees are typically protected only within the workplace.
- **“Advocate” approach:** attempts to influence local labour regulations and other local laws affecting LGBTI people in order to strengthen legal protections and contribute to a more-accepting environment for LGBTI workers in the country concerned. Such advocacy need not be public and loud; it can be through private conversations and quiet diplomacy. Many governments may be less willing to change existing law or practices if it might appear that they are doing so in response to external pressure or advocacy.

A company can utilize all three models at once, depending on prevailing local conditions in the jurisdictions where it operates, bearing in mind that in any given context, legal and social attitudes are not uniformly the same towards lesbian, gay, bi, trans, and intersex people.²⁴ For example, a company could adopt an embassy stance in one locale that is legally welcoming but culturally hostile to LGBTI individuals, while simultaneously pushing more forcefully for equal rights for LGBTI people in another location where the law and norms lag behind.

The virtue of an adaptable approach is flexibility. The risk is inconsistency, potentially undermining global policies, and in some cases, perpetuating discrimination and falling short of the corporate responsibility to respect human rights enshrined in the UN Guiding Principles and the Standards of Conduct and possibly also legal/contractual responsibilities, depending on context. For example, a company that took a strong stance against a law in the US state of North Carolina that denies LGBT people protection from discrimination was accused of hypocrisy because it also operates in Malaysia, where gay and trans people are criminalized. Another risk is to hide behind an “Embassy” policy with no active education program, implementation or enforcement. These risks should be examined and analysed as part of any human rights due diligence process and appropriate steps taken to eliminate or mitigate harm.

A company may have good reason not to opt for a public advocacy model (such as safety of its staff), and in certain societies quiet diplomacy and support for diversity and inclusion generally may yield more effective results than public statements. Where it is deployed, public advocacy, which should always be developed in consultation with local civil society, does not necessarily need to be critical of the authorities; it may be affirmative in backing positive initiatives that enhance protection and promotion of human rights, while urging further steps.

Notwithstanding the need for a certain degree of flexibility in the approach that companies take from one country to another, companies must meet the minimum standard of not infringing human rights and of addressing their adverse human rights impacts — and the objective should be to create improvements wherever a company operates. Ultimately, human rights are universal, indivisible, inalienable, interdependent, interrelated, and complementary, and creating exceptions for certain rights or groups of people in particular contexts risks undermining human rights and should be avoided wherever possible. “When in Rome” may have pragmatic utility as a last resort, but it risks legitimizing and reinforcing injustice and discrimination and in some cases may fall short of international standards and other legal/contractual obligations. Where it is applied, as a minimum, the company should ensure that it is not causing or contributing to human rights abuses, including against LGBTI employees and other LGBTI people, and protective/remedial measures should be in place to address any adverse impacts that the company causes or contributes to.

In applying these three models to the specific contexts in which they operate, companies should be aware of the challenges with regard to each stakeholder and the practical approaches available to them.

The following section looks at how companies can discharge their responsibilities towards LGBTI people and support their rights through engagement with seven categories of stakeholders: workers and their representatives, customers, suppliers, shareholders, communities, trade unions, and governments and lawmakers. While these stakeholders interrelate with each other, this paper treats each category separately. Each sub-section highlights the challenges and potential benefits of engagement with each category of stakeholder and some practical approaches.

In the Workplace

STAFF

Extending LGBTI-inclusive workplace policies and practices and ensuring the safety and security of LGBTI workers and their representatives can raise a number of legal, cultural and organizational challenges for business. There may be specific legal implications in countries where same-sex relationships, trans people, and/or public discussion of sexual orientation or gender identity are criminalized. In addition, companies must navigate and manage different cultural and corporate environments.

In many countries, for example, lesbian, gay and bisexual employees in a same-sex relationship, and trans employees may be at heightened risk of prosecution. This is a risk for any business — and for heavily regulated sectors there are additional complexities. In financial services, for example, terms of employment may require that criminal conviction must result in termination of employment. In addition, systemic violence and discrimination against LGBTI people may have a negative impact on their health, their educational opportunities, and employment options. While this issue is a global one, companies can and should play a proactive role in contributing to addressing such structural inequalities.

In working to align their own practices and operational policies with international human rights standards, companies need to consider the local landscape carefully. This includes taking into account potential lack of legal protection from discrimination and harassment in the workplace and beyond, lack of legal recognition of the gender identity of trans people or onerous and abusive restrictions on such recognition, and lack of legal recognition of same-sex couples and of their parental duties. Other factors include restrictions on freedom of speech or association, risk of hate-motivated violence, risk of parental or family rejection, and the impact on employees in a hostile social environment.

Practical Approaches

The first step in addressing concerns related to staff is an effective corporate diversity and inclusion policy that states specific desired outcomes and establishes a framework for determining whether those outcomes have been met. An effective policy should articulate the company's commitment to diversity and inclusion and clearly and specifically reference sexual orientation, gender identity and expression, and sex characteristics/intersex status. It should explain the company's responsibilities and employees' responsibilities, and consequences of contravening the policy.

The next step is to ensure buy-in from key internal stakeholders, including employees, unions, and management, along with sponsorship and commitment to take the diversity and inclusion strategy forward.

Some companies even have this commitment hard-coded into senior executives' bonuses and performance frameworks. Another step is to have a global implementation strategy — mindful that many companies are expanding in markets where concepts of equal rights and fair treatment of LGBTI people may not be well-institutionalized or be seen as a threat to local culture and beliefs. It is critical for companies to engage with stakeholders, particularly local stakeholders, to better understand the local context.

Building a support network for LGBTI employees globally is recommended — even if in certain country contexts this may exist as a virtual network only (due to legitimate concerns for privacy and safety of the concerned workers and their representatives).

Monitoring and maintenance of these diversity and inclusion efforts is crucial. Senior management and/or the board should receive regular progress reports. A senior level officer should oversee and direct diversity and inclusion initiatives and ensure that there is regular diversity and inclusion education and training. Finally, companies should take proactive steps to promote a diverse pool of candidates for senior leadership and board positions.

These recruitment and promotion efforts should not be limited to senior management. In order to address issues of structural discrimination and violence against LGBTI people, companies can take proactive steps to contribute to combating the inequalities that they face, including exercising targeted outreach and specific training and recruitment schemes, particularly for more marginalised members of LGBTI communities.

LGBTI organizations in different countries have produced guidance for employers on inclusive workplace policies and practices. Resources from HRC, Stonewall, Community Business, Workplace Pride, or ACON provide concrete strategies and best practices to recruit, hire, include, develop, retain, engage and motivate a diverse workforce.²⁵

TRADE UNIONS

In dealing with discrimination, many companies have found natural allies among trade unions.

²⁶ In Northern Ireland, for example, unions have played a positive role in bridging religious or sectarian divides. Similarly, unions can make an important contribution to tackling discrimination, given a natural alignment between their objective of fair treatment of workers and their representatives and corporate compliance with the highest international standards.

As early as 1981, the Canadian Union of Postal Workers (CUPW) became the first union in Canada to include language in a collective agreement prohibiting discrimination on the basis of sexual orientation. Following the example of the CUPW, other unions soon added non-discrimination as a bargaining priority, and in 1985, a union representing library employees won domestic partner benefits for its members. In the 1980s,

alliances between gay and lesbian activists and British mining unions played a role in broadening support for the gay and lesbian community in the United Kingdom. These included the participation of miners' labour groups in various gay pride marches and events, and the adoption of an unprecedented resolution at the 1985 Labour Party conference committing the Labour Party to support equal rights for members of the gay and lesbian community.²⁷ Miners' groups were also among the most outspoken allies of the UK's gay and lesbian community in the 1988 campaign against Section 28 of the Local Government Act, which restricted the so-called "promotion" of homosexuality by local authorities.

Wherever unions are independently constituted and able to operate freely, such alliances can be beneficial to all concerned and create synergies in contributing to social change in countries, industries and among workers.

Practical Approaches

Companies can, as a starting point, support and coordinate with trade unions in their efforts to develop specific union policies to combat discrimination against LGBTI individuals. Union policies can have the effect of creating a positive climate and increase visibility of LGBTI issues. As employers themselves, unions should model good practice by having in place explicit policies to ensure equal rights, benefits, and entitlements of their own LGBTI workers and their representatives. They should also support the efforts of LGBTI union members to meet and organize and provide resources for LGBTI outreach, networking, and conferences.

Unions also have an opportunity to engage with the wider LGBTI community. This can translate into a public commitment by the union and joint work with LGBTI civil society organizations at LGBTI events. When the British union UNISON first sponsored the London Pride March there was significant union opposition to spending money on what appeared to some to be an irrelevant activity. However, the union's visible commitment was well received by members and had a positive impact on other labour organizations.

Critically, employers need to work with unions to develop comprehensive equality action plans. Central to this, there should be an equal opportunities statement with specific reference to sexual orientation, gender identity, gender expression, and sex characteristics in companies' policies. Unions should negotiate guidance on implementation of the plans leaving as little as possible to the attitudes and judgement of individual managers. Plans need to include publicity campaigns and monitoring of implementation.

An example of this type of engagement is the way the Confederazione Generale Italiana del Lavoro, a large union in Italy, has promoted the introduction of codes of conduct in Italian enterprises that provide people with protection from discrimination and recourse in cases where discrimination occurs. In the region of Emilia Romagna, the union has an agreement with Arcigay, an LGBT non-governmental organization, aimed at changing perceptions of LGBT people among union members and in the workplace.

In the Marketplace

CUSTOMERS

Discrimination can have an adverse impact on companies in terms of consumer demand.

Many consumers now also expect businesses to speak up and advocate for the rights of LGBTI people around the world. A company operating in countries where the rights of LGBTI people are systematically violated may feel under pressure in those countries to take a position inconsistent with the values of consumers in the company's home and other markets. While businesses should always assess the human rights impact of their conduct and act in ways to mitigate and eliminate harm, many find that actively challenging discrimination also brings some commercial benefits. There is a trend towards socially responsible consumption in many countries, where consumers identify with and reward companies committed to meeting environmental, labour, social, and human rights standards. These market segments vary in size but are influential and often use social media to mobilize support across continents.

Similarly, when companies discriminate or otherwise cause or contribute to human rights abuses, consumers in some countries increasingly react by actively choosing to take their business elsewhere. Industries dealing with diamonds, chocolates, soft drinks containing sugar, foods containing genetically-modified ingredients, coffee bought from fair trade farmers, coalitions that demand apparel not made under sweatshop conditions, are all examples of sectors that have seen such consumer mobilization.

This is certainly true of LGBTI consumers who are especially responsive to evidence of corporate social responsibility. As an example, a recent survey showed that 68 per cent of Polish LGBT consumers prefer to choose

LGBT-friendly brands and 91 per cent of Polish LGBT consumers would stop buying brands perceived as “homophobic” or protest against them publicly.²⁸ Perhaps not surprisingly, brand-driven companies are more likely than others to adopt socially-driven policies and more likely than others to set standards.

Consumer pressure can cut both ways. Purpose-driven buying can be adopted by civil society organizations that oppose human rights for LGBTI people. Some companies have experienced online campaigns seeking commitments from consumers to boycott their products as a result of their stance on these issues.

Practical approaches

Many companies have invested in building brands that convey social purpose built on respect for human rights and a commitment to contribute to positive social change. This can leverage a company's power and influence for positive social impact — including, in this case, ending discrimination against LGBTI persons. At the same time, it requires companies to make sure company policies relating to staff, suppliers and other stakeholders respect human rights, including those of LGBTI people, and are coherent with marketing messages.

Companies increasingly rely on LGBTI Business Resource Groups (BRGs) designed to increase employee engagement in these efforts. Some companies also call them Employee Resource Groups (ERGs) or associate networks. LGBTI BRGs are voluntary groups of LGBTI employees who join together in their workplace and serve as a resource for members and organizations by fostering a diverse, inclusive workplace aligned with organizational goals. They are an established means of building peer group support. People who experience similar issues can offer much more authentic and knowledgeable support to others. These groups, which often started as informal forums to connect LGBTI colleagues, have in many companies become more formalized and receive support from the company. Companies tap into BRGs to ensure their marketing messages are in line with their customer communities, gain market insights, and further access market segments they have not traditionally been engaged in. This helps the customers and the brand, and keeps employees engaged.

SUPPLIERS

The UN Guiding Principles on Business and Human Rights point out that besides a company's own activities, it is important to identify and assess any adverse human rights impacts that might occur as a result of their business relationships with associates, suppliers, partners, and subsidiaries. As set out in the UN Guiding Principles, a company should consider within its human rights due diligence “adverse human rights impacts that may be directly linked to its operations, products or services by its business relationships.”

This is important because companies increasingly rely on workers who may not be their direct employees. According to one trade union study, only six per cent of multinational companies' global workforce work directly for multinational companies; the rest — 94 per cent — work for the firms' suppliers.²⁹ Globalization has led to ever-more complex corporate structures and relationships³⁰ but those structures do not diminish the corporate responsibility to respect human rights. Companies are expected not only to avoid causing or contributing to human rights abuses but also to use leverage to address adverse human rights impacts with which they are directly linked through their business relationships, including with suppliers.

Adverse human rights impacts affecting LGBTI people can occur across the supply chain. The corporate responsibility to respect human rights includes not only striving to ensure respect for the rights for LGBTI people within one's own organization but also paying attention to the way the suppliers and business partners behave.

Practical Approaches

A company can use its leverage in its relationship with a supplier, including the commercial or reputational importance of the business relationship, to push for LGBTI people to be treated fairly and to have their rights respected — for example through binding human rights and non-discrimination contractual clauses. Sometimes the company has leverage through its purchasing power: suppliers want to maintain commercial business relationships, and will take actions required by their clients in order to maintain that business. Integrating such requirements in the procurement process, explaining them to suppliers and supporting suppliers to effectively implement such policies are critical steps to achieving impact.

Many companies' diversity teams partner with their procurement department to expand contract-bidding opportunities to LGBTI-owned enterprises. A financial services company, as an example, has built a database of LGBT-owned suppliers and opens up contract opportunities to these vendors for products and services.

In the United States, the Human Rights Campaign Foundation's annual Corporate Equality Index evaluates supplier diversity programs under the Public Engagement section in their survey. In the 2013 Index, 50 per cent of employers reported having supplier diversity programs. Of these, 57 per cent reported that their diversity programs include LGBTI-owned businesses. The Index's next set of criteria will focus more explicitly on supplier diversity.

SHAREHOLDERS

Companies that fail to stand up for LGBTI inclusion may risk losing investment, including from socially-responsible funds.

Since the late 1990s, investors have increasingly recognized the role that companies play in contributing to – and potentially bettering – the societies in which they operate. Increasingly, corporations find themselves facing activist investors who expect companies to demonstrate their respect for human rights. The development of the UN Guiding Principles on Business and Human Rights is both reflective of this shift and contributes to its further development.

In some cases, shareholder pressure can help move the dial from policy to practice. Whereas in the past, pressure on companies to abide by human rights standards might have elicited a general commitment in the form of a corporate statement, today there is an increased expectation that companies will put in place the policies and safeguards needed to operationalize such commitments.

While it is difficult to assess the collective position that shareholders might have in respect to discrimination against LGBTI people or any other group, shareholder activism in favour of LGBTI inclusion is increasingly visible.³¹ Shareholders influence company decision-making on these issues in a variety of ways, including through shareholder proposals or resolutions. In 2014, for example, a shareholder group collectively owning or managing \$210 billion in assets filed resolutions at more than 20 publicly traded corporations in the US urging an extension of LGBT non-discrimination policies and equal benefits policies abroad. Investors expressed concern about the highly varied and often harsh legal and cultural environments faced by LGBT individuals in some parts of the world and the related risks for companies operating in these environments. The letter³² also sought clarity on corporate preparedness to deal with threats or persecution faced by such workers and their representatives.

Shareholders have also on some occasions used investors meetings to voice their concerns over decisions by corporations to support the human rights of LGBTI people and the ensuing calls for boycott. Such decisions included taking a public stance on LGBTI equality or offering bathroom facilities to transgender individuals in accordance with their gender identity. In 2013, the CEO of Starbucks responded to such a shareholder's question by asserting that: "not every decision is an economic decision. [...] The lens in which we are making that decision is through the lens of our people. We employ over 200,000 people in this company, and we want to embrace diversity. Of all kinds."³³ When shareholders challenge the management and oppose corporate policies that extend non-discrimination towards LGBTI employees, companies have the responsibility to respect human rights, which include adhering to national laws or international standards. A company would not normally accept a resolution saying women should be paid less than men; by the same principle, companies should not accede to resolutions from shareholders which might restrict the rights of LGBTI employees

Practical Approaches



A growing body of evidence suggests that businesses that commit themselves to diversity and inclusion are rewarded by the markets.³⁴ Investors and businesses seeking partners committed to respecting human rights are turning increasingly to companies that act in accordance with the UN Guiding Principles. Such market pressure will encourage many companies to take further steps to operationalize the UN Guiding Principles, and to present an accurate account of their performance and adherence to international standards in their annual reports. With standards emerging on reporting³⁵ and more companies looking for benchmarks³⁶ to measure their performance, investors likely seek out companies whose record matches their claims and whose actions are consistent with international standards.

A corporate culture that values diversity and inclusion bolsters a company's reputation as a fair employer, attracts a broader pool of well-qualified candidates, boosts employee morale and productivity, drives innovation, and reduces risks of discrimination and harassment. Initiatives taken in this respect may be communicated clearly – both to shareholders and the general public – including in a company's annual report, sustainability reports and shareholder newsletters.

In the Community

COMMUNITIES

The global human rights landscape for LGBTI people is highly varied and constantly changing.³⁷ Conditions on the ground are evolving rapidly: in most places improving, although in some instances, deteriorating. There may be significant differences in the treatment of LGBTI persons within countries and even within communities — with lesbians, gay and bisexual people, trans, and intersex people, all experiencing distinct kinds of violence, discrimination, and other human rights violations. In addition, progress in the law and in policies may bear little resemblance to the reality of people’s lives. Prejudice remains present at some level in all societies long after necessary legal reforms have been achieved.

Companies need to understand the wider challenges that many LGBTI individuals face in the community, such as family rejection, abuses, and challenges in accessing healthcare, housing and education, lack of protection from violence and harassment, and limits on freedom of expression, association and assembly. Increasingly LGBTI communities are adopting the notion of “nothing about us without us”³⁸ which points

to the importance of first voice inclusion in all endeavours to tackle discrimination against LGBTI people. This is true of any social issue — the people who are living it usually have the best understanding of the problem and how best to address it.

Practical Approaches



Partnerships with local LGBTI groups demonstrate long-term commitment to the LGBTI community and can help companies better understand the challenges faced by members of the community. Such partnerships can inform corporate policy-making and provide a way for companies to foster and support positive social change.

In societies where discriminatory attitudes against LGBTI people are especially prevalent, financial support for community organizations and events may be the most practical way for a company to contribute to change — and in some circumstances could be more effective than taking a visible public stance. In these settings, the importance of being guided by local stakeholders is even stronger.

Organizations that can benefit from such corporate sponsorship include LGBTI youth centres, community centres, advocacy groups and charities. In addition to providing direct support and other forms of assistance, companies may encourage staff to volunteer in such organizations and/or offer to match staff donations to these groups. Companies may also establish or support awards, which can help protect and legitimize the work of human rights defenders by raising their public profile and giving them a platform. The risk for domestic LGBTI groups receiving foreign assistance to be perceived as so-called “foreign agents” should be considered and mitigated to the extent possible.

AMONG 193 COUNTRIES...



ban discrimination
based on sexual orientation
in employment



ban discrimination
based on gender identity



ban discrimination
against intersex persons

GOVERNMENTS AND LAWMAKERS

Lack of adequate legal protection from violence and discrimination exposes LGBTI people in countries around the world to egregious violations of their human rights and denies recourse and remedy to victims³⁹ of such violations.

LGBTI people are often discriminated against in the labour market, as well as in accessing education, healthcare, housing, and public services. They are at disproportionate risk of hate-motivated violence: including verbal and physical aggression, sexual assault, torture and killings, as well as ill treatment and abuse in doctors' offices, hospitals, and clinics. In some 73 countries⁴⁰ the law criminalizes consensual same-sex relationships,⁴¹ at least eight criminalize so-called "cross-dressing", and in many more, other, often vaguely defined, laws are used to punish trans people.⁴²

These laws have a tremendous, negative impact on the lives of LGBTI people – in effect, legitimizing discriminatory treatment, entrenching stigma and forcing many LGBTI people to hide their identities and relationships. According to the European Union Fundamental Rights Agency, one-third of trans job-seekers in the EU have experienced discrimination when they seek employment and a third report unfair treatment at work because they are trans.⁴³

As of the start of 2017, only 67 out of 193 countries ban discrimination in employment on grounds of sexual orientation, while only 20 offer explicit protection on grounds of gender identity or expression. Only three countries protect intersex persons against discrimination and only one bans medically unnecessary surgery to which many intersex children are subjected.⁴⁴ Thirty-nine States – or 20 per cent of the world's countries – legally recognize same-sex partnerships, of which 21 recognize marriage for same-sex couples on an equal basis to different-sex couples. A number of countries, notably in Asia, Latin

America and Europe, have taken steps to extend legal recognition and protection to trans people, although often with preconditions that violate human rights norms.

Companies can and should support necessary legal reforms, where local stakeholders indicate that this would be helpful and contribute to positive change. Inclusive workplace policies are not sufficient by themselves to protect LGBTI workers and their representatives and other stakeholders in countries with anti-LGBTI laws. Where helpful and called for by local actors, companies also have an opportunity to support local communities by directly engaging with governments and lawmakers in the countries where they operate. Global corporate support for local LGBTI equality movements in many countries in Europe, Americas, and Asia are contributing towards building a more inclusive environment society-wide.

Practical Approaches

The "Advocate" approach, described earlier, seeks to encourage and support change at the national level. Such advocacy can take many forms, ranging from direct lobbying to support for local advocacy and symbolic actions that signal solidarity with the local LGBTI community, (see page 21).

In the past, companies have adopted an "Advocate" approach to challenge both existing and proposed criminal and so called "anti-propaganda" laws, as well as other efforts to curtail the rights of LGBTI people. Integrating criticism of such proposals in a broader push for greater respect and protection has sometimes proven effective, particularly in difficult contexts. For example, companies can encourage governments to protect free speech for all minority communities, including the LGBTI community, and promote the value of diversity and inclusion more generally. Companies can also play a role in educating counterparts on LGBTI issues.

Companies are encouraged to work closely with local civil society groups and affected communities. They should follow the advice of such groups in deciding when to speak out, when to work more quietly and on how to offer support in the most effective way possible.

ASSESSING POLICIES ON TACKLING DISCRIMINATION AGAINST LGBT WORKERS

UNITED STATES

In 2002, the **Human Rights Campaign** found that only 61 per cent of companies surveyed had policies banning discrimination based on sexual orientation and only 5 per cent based on gender identity. By 2015, those numbers had increased to 93 per cent and 87 per cent respectively. During that period, the proportion of companies offering trans-inclusive health insurance rose from zero to 60 per cent; over 300 major companies now have gender transition guidelines in place. Every year, new criteria are added, making the qualification process more stringent. In February 2016, the **Human Rights Campaign** released the first global edition of its *Corporate Equality Index*. The best score is 100 per cent and while many companies reach it, a number of Fortune 1000 companies still have very low scores.

UNITED KINGDOM

Stonewall has produced an annual index of top 100 companies since 2005, ranking companies on ten criteria, including employee policies, employee engagement, staff training, supplier policy, and community engagement. Since 2011, **Stonewall** also offers a global index, measuring and benchmarking the performance of multinational organizations and their approach to LGBT equality globally.

HONG KONG SAR, CHINA

A new index created by **Community Business** ranks companies with reference to corporate policies and practices that support an LGBT inclusive workplace. In 2010, the organization carried out a survey of LGBT employees and allies regarding the workplace culture in Hong Kong.

AUSTRALIA

The Australian Workplace Equality Index produced by the **AIDS Council of New South Wales (ACON)** provides a national benchmark for LGBTI workplace inclusion and comprises the largest and only national employee survey designed to gauge the overall impact of inclusion initiatives on organizational culture and employees.

GLOBAL

Amsterdam-based **Workplace Pride** launched *The Global Benchmark*, an international LGBT workplace index in 2014, designed to address cross-border aspects of LGBT workplace inclusion. In 2016, it encompassed 30 multinationals and more than three million employees. The **Human Rights Campaign** and **Stonewall** have also introduced an international dimension to their surveys, enabling companies to benchmark their global commitments to LGBT equality. These indices can form the basis of an effective benchmarking system.

THE EXPERIENCE OF THE SULLIVAN PRINCIPLES IN SOUTH AFRICA

During the apartheid years in South Africa, many US companies adopted the Sullivan Principles, under which they promoted on merit and provided equal pay for equal work, regardless of local laws that discriminated on the basis of race. These principles required:

- Non-segregation of races in all eating, comfort, and work facilities;
 - Equal and fair employment practices for all employees;
 - Equal pay for all employees doing equal or comparable work for the same period of time;
 - Initiation of and development of training programmes that will prepare, in substantial numbers, black and other non-whites for supervisory, administrative, clerical, and technical jobs;
 - Increasing the number of blacks and other non-whites in management and supervisory positions;
 - Improving the quality of life for blacks and other non-whites outside the work environment in such areas as housing, transportation, school, recreation, and health facilities; and
 - Working to eliminate laws and customs that impede social, economic, and political justice (added later).
- Without exaggerating their importance, the Sullivan Principles helped to create a climate in which white and non-white employees operated as equals, and implementation of the Principles among companies that continued to operate in South Africa helped prepare a cadre of managerial talent that South Africa would later draw on when apartheid eventually ended in 1991.

EXISTING LGBT BUSINESS PRINCIPLES

In France, **L'Autre Cercle** has created a "Charte d'engagement LGBT" which companies can sign in order to demonstrate publicly their commitment to equality for LGBT employees. Companies signing up to the Charter commit to:

- Create an inclusive workplace for LGBT staff;
- Ensure equality in law and treatment for all staff irrespective of their sexual orientation or gender identity;
- Support any staff members who are victims of discriminatory words or acts; and
- Monitor career advancement and share good practice to ensure an evolution of the general working environment.

Similarly, in the Netherlands, the Declaration of Amsterdam created by **Workplace Pride** in 2011, signed by many large corporations, commits companies to ten steps aimed at addressing unfair treatment of LGBT people in the workplace. One step urges employers to identify and support leaders and decision-makers (gay and straight, trans, and cis-gender⁴⁵) that actively strive to create LGBT-inclusive working environments; another step advocates support of employee resource groups and training programs, such as LGBT diversity training for managers.



APPENDIX CASE STUDIES

This section discusses concrete examples of challenges met by corporate stakeholders as they seek to meet their responsibilities and play a wider role in addressing discrimination against members of the LGBTI community, as well as practical approaches they have adopted.

Dealing with so-called anti-gay propaganda laws

In November 2013, **IKEA Group**, the global home furnishing retailer, removed from its online Russian magazine an article that portrayed a same-sex couple and their baby at home. The piece had been included in the company's global publication that showed diverse families enjoying their homes. The decision not to feature same-sex parents in the Russian edition was motivated by Russia's so-called "anti-gay propaganda" law that prohibits promoting "non-traditional" relationships. The company took the decision to comply with the law in order to protect its co-workers and their families, and faced some criticism from customers and other stakeholders, including LGBT+ groups and human rights groups abroad. The case illustrated how companies' global policies can come up against local realities.

This episode, however, represented a turning point in IKEA's approach to LGBT+ inclusion in the workplace and led the company to develop and launch a global systematic LGBT+ inclusion plan. The plan, now in place, aims at creating a fully inclusive work environment and it is contributing to a positive change for LGBT+ co-workers. Such plans, accompanied by efforts to explore collective advocacy avenues, have the potential to bring about positive long-term change.

Ad-hoc solutions to discriminatory legislation

When posted abroad, some LGBT diplomats and their partners have been able to arrive at informal arrangements with host countries which may have laws restricting LGBT rights or criminalizing LGBT people. Private sector employees wanting to take their partners with them on their overseas posting sometimes face challenges. Some companies have developed policies so that employees who decide not to move to places where the regulatory framework is discriminatory towards LGBT people are not penalized. Others have developed ad hoc solutions to work around difficult legislation often benefiting non-local workers.

Baker McKenzie translates its “not neutral” stance on LGBT issues by having, in every office, a partner responsible for LGBT inclusion who leads on enforcing anti-discrimination policies and enacting diversity and inclusion commitments. Another company covers rent and cleaning fees for a two-bedroom apartment to maintain the appearance that same-sex partners are living in separate rooms. One multinational avoids making informal agreements with host governments where these may be subject to being overturned when the government, or its attitude, changes. If same-sex relationships are illegal in a country and the country will deny a visa or residency permit to the same-sex spouse of an employee, the same company assists the employee in question by providing additional leave to return home and maintain the familial relationship.

Purpose-driven Brands

In India, firms such as **Godrej, Genpact, Intuit, ThoughtWorks, Microsoft,** and **Google** have taken a public stance against Section 377 of the country’s penal code, which criminalizes same-sex relationships. Examples of brands that have run ads against Section 377 include: jewellery brand Tanishq—owned by **Titan, a Tata Group** company—which posted an ad on Twitter that showed a pair of diamond earrings with the tagline “Two of a kind always make a beautiful pair! #sec 377”; **Fastrack**, a popular youth fashion brand in India, ran a campaign called “Move On” in favour of repealing Section 377; and luxury goods brand **Hidesign** tweeted in support of repealing Section 377.

Taking a public stance can impact positively on a company’s business, particularly with young consumers. **Colgate Mexico’s** recent ad featuring a gay couple as part of the #SmileWithPride campaign had a positive response. In the US, **Google** recently studied two LGBT marketing⁴⁶ campaigns and published the following findings:

- 47 per cent of under-24-year-olds in the US are more likely to support a brand after seeing an LGBT equality-themed advertisement (compared with 30 per cent of over-24-year olds);
- **Burger King’s** “Proud Whopper” ad reached 20 per cent of the US population. Millennials (born between the early 1980s and early 2000s) were reached 4.8 times more frequently than the rest of the population;
- With their LGBT-affirmative advertising campaign, **Honey Maid** met its objective to ignite conversation and engagement: Google searches for the brand rose 400 per cent during the campaign.

Facing backlash

With a presence in 74 countries and nearly 200,000 employees worldwide, the French bank **BNP Paribas** is a major bank in the euro zone and one of the largest banks in the world. When it decided to sign the charter of l'Autre Cercle in 2015, it faced a significant backlash from a group strongly opposed to same-sex relationships, and the bank's executive committee received some 12,000 external emails protesting its decision. Even if the bank had not anticipated such a backlash, it did not change its decision but decided that in the future it would have a deeper internal communication policy in order to better involve employees and facilitate a better understanding of the Group purpose.

Reputational risk across the supply chain

French Telecom company **Orange** faced a reputational risk when it emerged that it was advertising in a newspaper in Uganda, *Red Pepper*, that had publicly exposed the names and photos of 200 individuals it alleged were gay. An online petition calling on the company to cancel its contract with the paper attracted 77,000 signatures. The company later announced that it would not be renewing its advertising contract with the newspaper.

Embedding LGBT equality into procurement practices and supply chain management

Simmons & Simmons LLP, an international legal practice with over 1,500 staff and 21 offices in Europe, the Middle East, and Asia, has a well-established programme of engagement with suppliers and has proactively embedded LGBT equality principles into procurement practices.

Simmons & Simmons requires potential suppliers to answer a prescribed set of questions during the tender process. This involves completing a corporate responsibility audit, which includes specific questions about equality and diversity. They also require potential suppliers to submit a copy of their diversity and inclusion policy.

As part of their annual supplier audit, the firm asks suppliers to provide evidence of how their employees are made aware of their company's diversity and inclusion policy which, to comply with the firm's own, must include all protected characteristics. This audit is sent annually to the firm's top suppliers and all new suppliers are required to complete it.

The firm continues to work with suppliers who do not run their own diversity and inclusion training sessions and supports them through briefing sessions and sharing best practices. It has developed a practical guide,⁴⁷ providing tools for companies looking to implement a similar approach, including sample audit questionnaires and event programmes, tips on measuring impact and other useful resources.

Working with affected communities

IBM has a team of employees dedicated to building partnerships with LGBT nonprofit organizations in many of the 170 countries in which they operate. In the past decade, IBM has donated to a wide variety of organizations, including LGBT organizations.

Similarly, in the United Kingdom, an advertising firm donated advertising space on billboards, bus shelters, and railway platforms to the LGBT advocacy organization Stonewall for its iconic 2007 campaign “Some People are Gay. Get Over It!” Stonewall also receives probono legal and policy advice from various corporate partners.

In Singapore, large companies sponsor Pink Dot, a day-long gathering of thousands of LGBT individuals and allies in the city’s Hong Lim Park, where public speeches are permitted.⁴⁸ After Singapore asked multinationals not to support the Pink Dot celebrations in 2016, two multinational firms have applied to the government so that gay pride events may take place at Hong Lim Park in 2017. Local companies with a majority Singaporean ownership have already stepped forward to fill the vacuum left by multinational sponsors.

In 2013, a global institution announced it was indefinitely delaying a major project in Uganda to improve health care, in response to the passing of the discriminatory Anti-Homosexuality Bill. The move was criticized by some activists who felt it ultimately gave a political boost to the sponsor of the bill, pitted LGBTI people against the rest of the population and gave credence to the idea that LGBTI equality is a Western-sponsored agenda. They expressed their wish to be consulted on such decisions in future.

Using collective influence with governments and lawmakers

In Uganda, a few companies actively discouraged lawmakers from adopting new discriminatory laws and restrictions on freedom of expression, association, and assembly by highlighting potential negative repercussions, including for businesses. Others did so under pressure from international customers. In Northern Ireland, several unions and companies worked together to counter discrimination on religious grounds during the period of violent sectarian tensions. In other instances, companies have either spoken out or lobbied privately to support human rights defenders, or to address social or human rights challenges. In Singapore, in September 2015, a dozen multinational companies formed a coalition to push for LGBT equality in the global workplace.

When small business owners come together to oppose anti-LGBT legislation

In Texas in the United States, several hundred small business owners, ranging from coffee houses to bicycle shops, signed an open letter in 2016 opposing any efforts to pass laws in the state that would single out the LGBT community for discriminatory treatment in the aftermath of the passing of anti-LGBTI legislation in North Carolina.

Through their website “Texas Equality” and several other joint actions, these small businesses spanning every region of the state, came together around a single message: “Keep Texas Open for Business” and against anti-LGBTI legislation to be filed in the 2017 legislative session, calling it “an attack on Small Businesses and an attack on the Texas economy”.

When a company withdraws plan for expansion over discrimination law

PayPal, one of the largest providers of payment services globally, with over 180 million accountholders, made plans in April 2016 to open a new service centre in Charlotte, in the US state of North Carolina. Just a month after announcing the decision, new legislation, known as HB2, was passed in North Carolina invalidating protections of the rights of LGBT citizens and denying these members of the community equal rights under the law.

Despite many major corporations, like PayPal, objecting to the new legislation, the new law was upheld. As a result, PayPal reversed its expansion plan to locate a new facility in Charlotte. PayPal was planning to start with between 400 and 600 employees, with the potential to expand the number. **Deutsche Bank** too decided not to expand in North Carolina.

The cost to North Carolina’s economy of discrimination against members of the LGBT community has been estimated⁴⁹ at some \$5 billion a year, and

the HB2 legislation has already resulted in the loss of over \$40 million in business investment and the loss of more than 1,250 jobs. PayPal’s CEO, Dan Schulman wrote at the time: “This decision reflects PayPal’s deepest values and our strong belief that every person has the right to be treated equally, and with dignity and respect. These principles of fairness, inclusion and equality are at the heart of everything we seek to achieve and stand for as a company. And they compel us to take action to oppose discrimination.”

In early 2017, the North Carolina legislature passed a new law overturning elements of the HB2 legislation, largely because of the corporate backlash and its economic impact. On this occasion, the Governor shared his view that HB2 had been “a dark cloud hanging over our great state ... It stained our reputation, it has discriminated against our people and it has caused great economic harm in many of our communities”.

ENDNOTES

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- ¹ According to one study in the United States by the Human Rights Campaign, some 62 per cent of new lesbian, gay, and bisexual graduates at university go “back in the closet” when they start their first job. Another survey shows that 23 European countries require trans people to be sterilized as a precondition of obtaining legal recognition of their preferred gender, while 8 countries do not provide any means by which trans people can obtain legal identity documents that reflect their preferred name and gender. (“Closeted” and “in the closet” are adjectives for LGBT people who have not disclosed their sexual orientation or gender identity and aspects thereof.)
- ² In 2009, in India, the Delhi High Court decriminalised same-sex relationships. In 2013, that ruling was overturned by the Supreme Court. Many Indian companies published advertisements that were critical of the Supreme Court decision, which is now under review.

Tanseem Nashrulla, “15 Heartening Ways Indian Brands and Bollywood Are Fighting,” BuzzFeed, December 2013, <http://www.buzzfeed.com/regajha/heartbreaking-responses-to-indias-ban-on-same-sex-interco>.
- ³ Deutsche Bank was among several organizations that decided to freeze their plans to create 250 new positions in North Carolina after the passage of a state law that eliminated antidiscrimination protections based on sexual orientation. https://www.db.com/newsroom_news/2016/medien/deutsche-bank-freezes-job-expansion-plans-in-north-carolina-en-11535.htm.
- ⁴ Adopted 10 December 1948, UNGA Res. 217 (A/RES/3/217A).
- ⁵ The UN Guiding Principles call upon the State to *protect* human rights and on companies to *respect* human rights in their business operations and, where protection and other gaps exist, provide *remedies*. Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights* (Geneva: United Nations, January 2012), http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.
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- ⁸ Companies seeking information on specific country conditions should consult resources including local LGBTI organizations as well as online resources such as the Stonewall’s country briefings.

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- ⁹ The Office of the High Commissioner for Human Rights has also published an interpretive guide on the corporate responsibility to respect human rights as set out in the UN Guiding Principles: The Office of the High Commissioner for Human Rights (OHCHR), *The corporate responsibility to respect human rights: an interpretive Guide*, (Geneva: United Nations, June, 2012), <http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf>.
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The International Commission of Jurists and the International Service for Human Rights, “The Yogyakarta Principles”; The international panel of experts in international human rights law and on sexual orientation and gender identity, March, 2007, http://www.yogyakartaprinciples.org/wp/wp-content/uploads/2016/08/principles_en.pdf.

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³⁹ In one case in Africa, a manager was terminated by her employer after her partner, a well-known celebrity, was outed in the local media. The former manager, now an activist, was asked to resign the same day and found she had no legal recourse to fight her dismissal. "The kind of person you are is not good for the public perception of the company," she was told, although the company has progressive anti-discrimination policies in place. (OHCHR consultations on Standards of Conduct, 2016).

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The UN Human Rights Office's UN Free & Equal campaign is working to combat stigma and discrimination against LGBTI people globally. To learn more and sign up, please visit unfe.org.

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THE FIVE STANDARDS OF CONDUCT FOR BUSINESS

1 **respect**
HUMAN RIGHTS

2 **eliminate**
DISCRIMINATION

3 **provide**
SUPPORT

4 **prevent**
OTHER HUMAN
RIGHTS VIOLATIONS

5 **act**
IN THE PUBLIC
SPHERE