



LGBTI Stakeholder Group

2020 High Level Political Forum Position Paper

“Accelerated action and transformative pathways: realizing the decade of action and delivery for sustainable development”.

EXECUTIVE SUMMARY

Extreme stigma, discrimination, and violence based on sexual orientation, gender identity, gender expression, and sex characteristics (SOGIESC), reinforced by criminalizing and punitive laws and policies in many countries, continue to be among the greatest barriers to progress towards achieving the Sustainable Development Goals (SDGs) for lesbian, gay, bisexual, trans and intersex (LGBTI) populations. These structural barriers prevent LGBTI individuals from enjoying their human rights, meaningfully participating in the implementation of the SDGs, and reaching their full potential. The possibility for LGBTI people to access their full economic rights, to be fully productive workers, business leaders, and entrepreneurs is limited due to exclusion from educational opportunities, discrimination in hiring and promotions, as well as harassment and ill-treatment in the workplace.

There is ample room, precedent, and creativity to include LGBTI people in SDG-related actions in order to Leave No One Behind, design effective development programs, and realize the SDGs. In light of the 2020 High-Level Political Forum Theme ‘*Accelerated action and transformative pathways: realizing the decade of action and delivery for sustainable development*’, activation of populations that are left furthest behind can accelerate future action and is crucial for transformation and realization of sustainable development.

Although there have been positive outcomes in the implementation of the SDGs, severe barriers for the inclusion of LGBTI populations around the globe remain. For instance, criminalizing, pathologizing, and discriminatory laws and policies make the realization of the SDGs impossible. Moreover, the lack of meaningful participation of LGBTI populations in decision-making and other political processes that affect them hinders their valuable contribution and results in ineffective policies not targeted to their unique development needs.

Patriarchy and heteronormativity are root causes of gender inequality and gender-based violence, harming women and girls, gender non-binary or gender non-conforming people, as well as men and boys. To eradicate inequalities in line with SDG10, States must forbid discrimination based on SOGIESC, introduce laws and policies that protect LGBTI people, and promote a culture

supportive of diverse sexual orientations, gender identities and expressions and sex characteristics.

69 United Nations Member States criminalize consensual same-sex behavior between adults. 31 have laws and regulations enacted to restrict the right to freedom of expression in relation to sexual orientation issues (known as “propaganda laws”). 41 have laws and regulations that limit the ability of sexual orientation-related civil society organizations to legally register. 68 have laws criminalizing HIV non-disclosure, exposure, or transmission. These laws exclude and target LGBTI populations and people living with and affected by HIV, effectively leaving them behind.

It is also important to highlight that while LGBTI people share common experiences of marginalization based on SOGIESC, many also face intersecting forms of discrimination based on gender, age, race, ethnicity, ability, class, socioeconomic status, migration status, and other factors that drive exclusion.

There is a need for accurate and complete data disaggregated based on SOGIESC. Proper data collection is one of the best ways to guide concrete accelerated action and deliver transformation. Such data will allow for the formation of evidence-based laws and policies that serve to promote and protect LGBTI people’s rights. LGBTI-led organizations should be consulted in the data disaggregation and collection process.

A human rights-based approach to achieving the SDGs anchors implementation in State obligations established by international law. For instance, the realization of the right to health relies on the fulfilment of corresponding rights which address root causes of exclusion.

Finally, enabling meaningful participation of LGBTI populations in the monitoring and implementation of the SDGs would ensure that policies, programs and administrative measures address their unique needs in an effective and informed manner.

Introduction

Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI)¹ populations and movements all over the world have collectively made some gains since the adoption of the 2030 Agenda and its Sustainable Development Goals (SDGs) in 2015. From decriminalizing consensual same-sex relations between adults to accessing gender affirming healthcare, to housing homeless LGBTI youth. The LGBTI movements have fought for more and better representation in media and culture, and are now leading various movements that intersect with LGBTI identities, such as in climate, labor, and youth movements. These advances, albeit few, demonstrate how the inclusion of LGBTI populations in the development processes creates a more just and sustainable world.

¹The acronym LGBTI refers to lesbian, gay, bisexual, transgender, and intersex people. It is very difficult to define terms related to sexual orientation, gender identity or expression, and sex characteristics across diverse cultural and national contexts. We use the collective term “LGBTI people” because they are a diverse group that nevertheless faces some common challenges: stigma, discrimination, and violence because of their sexual orientation, gender identity or expression, and sex characteristics. This definition is neither exclusive nor final; other concepts, terms, or identities may be relevant in different settings, and conceptions may evolve over time.

There is ample room, precedent, and creativity to include LGBTI people in SDG-related actions in order to leave no one behind, design effective development programs to implement the 2030 Agenda, and realize the Sustainable Development Goals. In light of the 2020 High-Level Political Forum Theme '*Accelerated action and transformative pathways: realizing the decade of action and delivery for sustainable development*', activation of populations that are left furthest behind can accelerate action and is crucial for transformation and realization of sustainable development.

Extreme stigma, discrimination, and violence based on sexual orientation, gender identity, gender expression, and sex characteristics (SOGIESC), reinforced by criminalizing and punitive laws and policies in many countries, continue to be among the greatest barriers to progress towards achieving the SDGs for LGBTI populations. Structural barriers, such as the privatization of health care and education, capitalism, inequality, climate change, and growing fundamentalism cause homelessness and forced displacement, which place LGBTI populations at further increased risk for violence and exclusion by society, humanitarian aid and State processes and institutions. These prevent LGBTI individuals from enjoying their full human rights, meaningfully participating in the implementation of the SDGs, and reaching their full potential. Specifically relating to economic development, the opportunities for LGBTI people to access their full economic potential and rights is limited due to exclusion from education, discrimination in hiring and promotions, as well as harassment and ill-treatment in the workplace.

Besides these structural barriers, there are specific sustainable development challenges based on diverse SOGIESC, such as related to good health and well-being. Intersex babies and infants - born with sex characteristics that do not fit the typical definition of male or female - still face unnecessary and harmful medical procedures in most countries with the aim to "normalize" their bodies, at the detriment to their general health and well-being in all stages of their lives and in violation of their right to bodily integrity. The health, both mental and physical, and well-being of trans persons is negatively impacted by forced, coercive and otherwise involuntary treatments and procedures, lack of quick, accessible, and transparent procedures for legal gender recognition, instead of receiving the highest quality standard of care.² This in its turn affects their access to education, social security, the labor market, and finding housing, among others.³

A human rights-based approach to achieving SDGs anchors their implementation in State obligations established by International Law. Realization of the right to health relies on the fulfilment of corresponding rights which address root causes of exclusion. The Yogyakarta Principles⁴ provide a strong analysis of what international human rights law obliges Member States to do in promoting and protecting the rights of people of diverse SOGIESC.

Crucial to the success of the 2030 Agenda will be strong government systems, and in particular strong statistical systems that can measure and inform progress across the goals. Lack of data specifically targeting the experiences and lived realities of LGBTI populations, also in intersection

² OHCHR. "Pathologization: being lesbian, gay, bisexual and/or trans is not an illness", 2016. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19956&LangID=E>.

³ OHCHR, "Living free and equal". Geneva, 2016, HR/PUB/16/3. p. 94.

⁴ The Yogyakarta Principles, Available at: <https://yogyakartaprinciples.org/>

with other personal circumstances and background, is an obstacle for creating comprehensive policy and programs addressing the needs of LGBTI people. Disaggregation of data by SOGIESC by State driven or community-based research is essential in identifying gaps and needs for sustainable development. The integration of SOGIESC data should be considered as a means to accelerated action and transformation. Community generated data should be the core of any analysis. However, it is critical that the collection of data does not put at risk the lives or safety of LGBTI persons, especially in higher-risk environments.

This position paper will start with outlining the biggest challenges towards achieving sustainable development goals for LGBTI populations, including health and well-being (SDG3), education (SDG4) and justice (SDG16). Further, this paper will address the need for data and disaggregation, the need and measures for protection and inclusion, and access to socio- and economic rights. The paper will conclude with recommendations for involving LGBTI populations in the implementation of Agenda 2030 and its SDGs.

The biggest challenges towards making progress in achieving SDGs for LGBTI populations

Although there have been positive outcomes in the implementation of the SDGs, there remain severe barriers for the inclusion of LGBTI populations around the globe. For instance, criminalizing, pathologizing, and discriminatory laws and policies with regard to SOGIESC make the realization of the SDGs impossible. Moreover, the lack of meaningful participation of LGBTI populations in decision-making and other political processes that affect them consequently hinders their valuable contribution and results in policies that are not targeted and effective to their unique development needs.

At the time of this position paper's publication, 69 United Nations (UN) Member States criminalize consensual same-sex behavior between adults. 31 UN Member States have laws and regulations that have been enacted to restrict the right to freedom of expression in relation to sexual orientation issues (known as "propaganda laws," for example, censorship of same-sex intimacy in media). 41 UN Member States contain laws and regulations that limit the ability of sexual orientation-related civil society organizations from legally registering.⁵ 68 countries have laws criminalizing HIV non-disclosure, exposure, or transmission, and 33 countries have applied other criminal laws to HIV non-disclosure, exposure, or transmission.⁶ These laws exclude and target LGBTI populations and people living with and affected by HIV, effectively leaving them behind.

It is also important to highlight that while LGBTI people share common experiences of marginalization based on sexual orientation, gender identity and expression, and sex characteristics, many also face intersecting forms of discrimination based on gender, age, race,

⁵ International Lesbian, Gay, Bisexual, Transgender, and Intersex Association (ILGA) World: Lucas Ramon Mendos, State-Sponsored Homophobia 2019: Global Legislation Overview Update, 2019.

⁶ UN Development Programme (UNDP). 2018. *Global Commission on HIV and the Law: Risks, Rights and Health: Supplement*. p. 5.

ethnicity, ability, class, socioeconomic status, migration status, and other factors that drive exclusion.

Good health and well-being

Goal 3 in the 2030 Agenda enumerates 13 targets by which States can measure the commitment to ensuring healthy lives and promoting well-being for all. Realization of SDG3 in ensuring healthy lives and promote well-being at all ages relies on addressing the root causes of exclusion from access to health care and the fulfilment of the right to health and corresponding rights. Principle 17 of the Yogyakarta Principles states, “Everyone has the right to the highest attainable standard of physical and mental health, without discrimination on the basis of sexual orientation or gender identity.” This Principle outlines States’ responsibilities to “take all necessary legislative, administrative and other measures to ensure enjoyment of the right to the highest attainable standard of health, without discrimination on the basis of sexual orientation or gender identity.”⁷

Access to health care for LGBTI populations is marked by pervasive stigma, discrimination, and violence, which causes delays, refusal, and deferral of health service provisions. In the absence of public healthcare facilities that are safe and accessible to all and that provide sensitive, quality, and tailored healthcare for LGBTI populations, community-based organizations and civil society-led clinics are essential to deliver sensitized, tailored, and targeted quality care to LGBTI people.

LGBTI communities are not homogenous, and the health needs of lesbian, gay, bisexual, transgender, and intersex people are diverse. While LGBTI people share common experiences of discrimination based on SOGIESC, many also face intersections of gender, age, race, ethnicity, ability, class, socioeconomic status, migration status, and other factors that drive exclusion. The amelioration of some health disparities faced by segments of LGBTI communities does not mean that the health concerns of all LGBTI people have been addressed.

A growing global trend is the privatization of healthcare, which often limits access to healthcare and the fundamental right to health of LGBTI people. Without universal health care, sectors of the LGBTI population that are poor will continue to face health disparities that in turn affect their participation in society. Countries need to prioritize budgets that are people-centered and account for SOGIESC status, to meet the social needs of LGBTI populations and State obligations. Healthcare is a public need and good, which should not be treated as a corporation in the business of prioritizing profit over people.

Self-determined gender is a fundamental part of a person’s free and autonomous choice in relation to roles, feelings, forms of expression and behaviors, and a cornerstone of a person’s identity.⁸ In his 2018 report, the United Nations Independent Expert on SOGI (Independent

⁷ The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, 2006. Available at www.yogyakartaprinciples.org.

⁸ Inter-American Commission on Human Rights, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, 2015, para. 16.

Expert) states that “*The right to equal recognition before the law, [...] is connected to entitlements in relation to health, education, housing, access to social security and employment insofar as the actualization by the State bureaucracy of all of these entitlements depends on the identification of the individual*”.⁹ The Independent Expert emphasizes that “*states must [e]nact gender recognition systems concerning the rights of trans persons to change their name and gender markers [having] due respect for free and informed choice and bodily autonomy*”.¹⁰

In fact, the vast majority of trans and gender-diverse persons in the world do not have access to legal gender recognition; or if available, is only with prohibitive or unclear requirements.¹¹ For instance in several parts of the globe, transgender individuals still have to get diagnosed with gender dysphoria in order to access medical services related to their gender transition.¹² This allows psychiatrists to be able to order the suspension of services, or even subject them to lengthy processes in order to achieve such diagnoses. In other countries, trans people are subjected to forced sterilization and other practices that harm their development and violate their human rights, including the right to one's own bodily autonomy.¹³

Another important issue is that, across the globe, intersex persons are not visible in society and are not recognized and legally protected. In almost all States, there are no specific medical protocols dealing with intersex conditions in the way that do not violate their rights. The situation is particularly dire in rural areas and medium and smaller cities with limited resources where there are no healthcare specialists who have knowledge or training related to intersex patients. Lack of quality care is a key challenge throughout the lifetime of LGBTI people in achieving sustainable development.

Among the 13 targets in Goal 3, States have committed to ending the epidemics of AIDS, tuberculosis, malaria, and other communicable diseases, as articulated in Target 3.3. To achieve this target, the 2016 Political Declaration to End AIDS committed States to embark on the “fast-track” strategy,¹⁴ which aims to ensure that by 2020 90% of people living with HIV know their status, 90% of people living with HIV have access to antiretroviral medication, and 90% of people on antiretroviral medication are virally suppressed. These goals include key populations (KPs),¹⁵ However, the criminalization of KPs and of sex work in many countries is an obstacle for these goals and the 2030 Agenda to be reached.¹⁶ Criminalization drives sex workers underground,

⁹ UN Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity, A/73/152, para. 22.

¹⁰ UN Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity, A/73/152, para. 47.

¹¹ Zhan Chiam, Sandra Duffy and Matilda González Gil, “Trans legal mapping report: recognition before the law”, 2nd ed. 2017, ILGA International Lesbian, Gay, Bisexual, Trans and Intersex Association.

¹² LGBTI Enlargement Review 2019, ILGA Europe, ERA and others, January 2020, available at: <https://www.lgbti-era.org/sites/default/files/pdfdocs/Annual%20LGBTI%20Enlargement%20Review%202019.pdf>

¹³ Zhan Chiam, Sandra Duffy and Matilda González Gil, “Trans legal mapping report: recognition before the law”, 2nd ed. 2017. ILGA, International Lesbian, Gay, Bisexual, Trans and Intersex Association.

¹⁴ UN General Assembly (2016) Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030, A/RES/70/266.

¹⁵ According to UNAIDS, the term key population contains five population groups that are particularly vulnerable to HIV and frequently lack adequate access to services. These population groups are gay men and other men who have sex with men, sex workers, transgender people, people who inject drugs and prisoners, and other incarcerated people.

¹⁶ Global Mapping of Sex work Laws as of January 2019. Available at: <https://www.nswp.org/sex-work-laws-map>.

where their vulnerability to sexually transmitted infections increases and the ability to protect themselves from physical, sexual, or psychological violence committed by clients decreases.¹⁷ It creates legal obstacles to report the violence and abuse as well.¹⁸ Furthermore, criminalization leads to having a fear of detention or being subjected to fines and creates severe barriers for sex workers to have health check-ups, and uptake state-sponsored tests, prevention, and treatment programs.¹⁹ Likewise, LGBTI people in criminalized settings may not feel comfortable to disclose their sexual risk to providers, causing insufficient testing, care, treatment and support.

In addition, it is important to secure provision of psychological support and family support to LGBTI individuals and their families, especially to LGBTI youth and victims of harassment, hate speech and violence, in order to protect and promote their health and wellbeing in line with SDG 3 and particularly target 3.4.

Education

Discrimination in schools and other educational settings can severely impair the ability of young people perceived as lesbian, gay, bisexual, transgender or intersex to access and enjoy quality education and lifelong learning as outlined in SDG 4. In some cases, education authorities and schools actively discriminate against young people because of their sexual orientation or gender expression. This includes refusing admission or expelling such youth.²⁰ In addition, LGBT and intersex youth frequently experience violence and harassment from classmates and teachers.²¹ Confronting this kind of prejudice and intimidation requires concerted efforts from school and education authorities and integration of principles of non-discrimination and diversity in school curricula and discourse.

According to UNESCO,

“it is often in the primary school playground that boys deemed by others to be too effeminate or young girls seen as tomboys endure teasing and sometimes the first blows linked to their appearance and behavior, perceived as failing to fit in with the hetero-normative gender identity.”²²

Isolation and stigma generate depression and other (mental) health problems and contribute to truancy, absenteeism, children being forced out of school and, in extreme cases, attempted or

¹⁷ Sex Workers' Rights Advocacy Network (2015) Failures of Justice, State and Non-State Violence Against Sex Workers and the Search for Safety and Redress, Budapest. Available at: <https://www.nswp.org/sites/nswp.org/files/Failures%20of%20Justice%20State%20and%20Non-State%20Violence%2C%20SWAN%20-%20September%202015.pdf>

¹⁸ Decker, M. R., Crago, A. L., et al. (2015) 'Human rights violations against sex workers: burden and effect on HIV', *Lancet*, vol. 385, no. 9963, pp. 186–199. DOI: 10.1016/S0140-6736(14)60800-X

¹⁹ UNAIDS, *The Gap Report*, vol. JC2656, ISBN 978-92-9253-062-4. 2014. Available at: https://www.unaids.org/sites/default/files/media_asset/UNAIDS_Gap_report_en.pdf.

²⁰ OHCHR, *Free and Equal, Bullying and Violence in Schools*. Available at: <https://www.unfe.org/wp-content/uploads/2017/05/Bullying-and-Violence-in-School.pdf>.

²¹ Ibid.

²² UNESCO, “International consultation on homophobic bullying and harassment in educational institutions”, 2011.

actual suicide. This is especially severe for effeminate boys and transgender adolescents, causing exponential levels of depression, out casting and drop-out from secondary and vocational schools. This affects academic achievement and the mental and physical health²³ of LGBTI students, who consequentially are deprived of economic and social positions in life and drawn to poverty.

SDG target 5.6 outlines the aim to ensure universal access to sexual and reproductive health and rights, with the corresponding indicator measuring the access to sexual and reproductive health information and education. To achieve goal 4 and 5 and equip young people to lead healthy lives, make informed decisions, and protect themselves and others from sexually transmitted infections, young people need to receive comprehensive, accurate and age-appropriate information regarding sexuality. The Special Rapporteur on the right to education noted that *“in order to be comprehensive, sexual education must pay special attention to diversity, since everyone has the right to deal with his or her own sexuality.”*²⁴

Schools remain one of the key settings where LGBTI students are still harassed through disciplinary actions, or school staff remain neutral or complicit in situations of bullying and harassment against LGBTI students. In order to fully achieve SDG 4 and ensure inclusive and equitable quality education and promote lifelong learning opportunities for all, the education system must guarantee the access to education without discrimination and harassment to those who are marginalized, such as the LGBTI population. Transgender students in particular end up leaving school due to the lack of support from peers, teachers, parents and school staff. This pressure affects the capacity of LGBTI students to perform to their full potential in school, or do so in climates of hostility, as higher drop-out rates condemn LGBTI people to precarious situations in terms of labor.

States should ensure a broader participation of LGBTI persons, especially transgender persons, in academic settings, as this opens broader opportunities that can have a direct impact and accelerate achieving SDG 4 and the Agenda 2030 as a whole. To this end, higher education institutions should provide measures of affirmative action to ensure the access of transgender individuals to universities. All LGBTI people should be able to access education and educational institutions in a safe environment that affirms their SOGIESC, and to that end governments should prioritize public education through adequate public budgets. Oftentimes, poor LGBTI youth and students are further exposed to risks when they cannot afford school fees, including for higher education. Additionally, public schools can be held accountable for abiding by public standards that are inclusive and scientific-based, decreasing practices of exclusion, bullying and violence that negatively impact LGBTI students such as conversion therapy.

²³ UNESCO, Education sector responses to violence based on sexual orientation and gender identity/expression. 2016, Paris. doi: 10.15718/discog.2010.17.3.111; World Bank Group, DISCRIMINATION AGAINST SEXUAL MINORITIES IN EDUCATION AND HOUSING: EVIDENCE FROM TWO FIELD EXPERIMENTS IN SERBIA, Available at: <https://www.lgbti-era.org/sites/default/files/pdffdocs/0351-124587-WP-P156209-DISCRIMINATION-AGAINST-SEXUAL-MINORITIES-IN-EDUCATION-AND-HOUSING-EVIDENCE-FROM-TWO-FIELD-EXPERIMENTS-IN-SERBIA-PUBLIC-ENGLISH.pdf>.

²⁴ General Assembly. Report of the United Nations Special Rapporteur on the right to education A/65/162, para. 23

Justice system

Stigma, discrimination, and the promotion of hatred by the media and religious fundamentalists creates an adverse social context for LGBTI people, resulting in attacks and murders that are frequent in many parts of the world. In Honduras, for instance, 350 LGBTI people have been murdered since 2009: 199 gay-, 40 lesbian-, 111 trans people and one missing person²⁵. In these contexts, access to justice is oftentimes also negatively impacted.

Access to justice is hindered by a variety of factors, including the lack of legal recognition of LGBTI individuals on equal terms. Violence against LGBTI persons continues to remain in impunity, and the lack of proper training for judges, prosecutors, defenders, and even technical teams such as forensics undermine most efforts to use the judicial system to provide legal recourse and aid to LGBTI persons. This is especially strong in criminal cases, where the prosecutors barely indict individuals as possible suspects, and in most cases where this happens, the process expires, preventing any judicial decisions in the future.²⁶

The ongoing creation and implementation of legislation on hate crimes or the inclusion of sexual orientation and gender identity as aggravating circumstances of the crime in several countries is a positive development.²⁷ However, in almost all States, there are no provisions specifically addressing sex characteristics as possible grounds of discrimination.²⁸ In the States that do have such provisions, like the Netherlands, often these grounds are not applied and LGBTI-phobic violence and discrimination continues to be ignored, normalized, or without proportionate punishment.

Throughout the world, LGBTI people continue to experience discrimination in the exercise of their rights through official bias, corruption, impunity, stigma, indifference and systematic failures. This leads to lack of trust in the Judicial System, resulting in a high level of underreporting of cases of violence and lack of proper disaggregated data on the issue.²⁹ To reverse such trends, there is a necessity of effective laws and justice systems, mechanisms that shape societies through enforcement, the elimination of the abuse of power and the creation of a clear pathway for sustainable development and achieving rights.³⁰

States must act with due diligence to prevent, investigate, prosecute, punish and redress human rights violations perpetrated by state or private actors against LGBTI persons, through

²⁵ Red Lésbica Cattrachas (2019). Available at: <http://www.cattrachas.org/index.php/es/observatorio>.

²⁶ Colombia Diversa Human Rights Reports. Available at: <https://colombiadiversa.org/publicaciones/>.

²⁷ Inter-American Commission on Human Rights, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, November 12, 2015, para. 412.

²⁸ LGBTI Enlargement Review 2019, ILGA Europe, ERA and others, January 2020, available at: <https://www.lgbti-era.org/sites/default/files/pdffdocs/Annual%20LGBTI%20Enlargement%20Review%202019.pdf>.

²⁹ See: Life on the margins: Survey Results of the experiences of LGBTI people in Southeastern Europe, World Bank, IPSOS, ERA, The Williams Institute, September 2018, available at: <https://www.lgbti-era.org/sites/default/files/pdffdocs/0354%20Life%20on%20the%20Margins%20Survey%20results%20of%20the%20living%20experiences%20of%20lgbti%20people%20in%20south%20eastern%20europe-ilovepdf-compressed.pdf>.

³⁰ United Nations A Practitioner's Toolkit on Women's Access to Justice Programming, 2018, p 10.

comprehensive and effective measures that promote rigorous investigation, and ensure effective access to justice for the LGBTI population, including the adoption of specific protocols for the officers in charge of the administration of justice, particularly when there have been instances of violence and discrimination

Combating root causes of exclusion

There will not be a fulfillment of the SDGs unless States and other stakeholders commit themselves to building a world with gender equality, the recognition of the rights of women and LGBTI persons, and the elimination of normative gender roles and stereotypes. Patriarchy and heteronormativity are root causes of gender inequality and gender-based violence, which harm women and girls, gender non-binary or gender non-conforming people, as well as men and boys. To eradicate inequalities in line with SDG10, States must forbid discrimination based on sexual orientation, gender identity and expression, and sex characteristics, introduce laws and policies that protect LGBTI people, and promote a culture in support of diverse sexual orientations, gender identities and expressions and sex characteristics.

States should invest resources on research about the extent and gravity of violence and discrimination against LGBTI persons, including the economic cost that exists as a consequence of this violence and discrimination. According to a pilot study conducted for the World Bank in 2014, discrimination against LGBT people in India could be costing the country's economy up to \$32 billion a year in lost economic output.³¹ When States and other stakeholders invite LGBTI organizations to policy and development planning meetings, they can effectively contribute recommendations for budget allocation, strategic development and creation and implementation of social services in order to not leave LGBTI people behind and accelerate transformation.

As a best practice, sex workers and LGBTI human rights defenders in Zambia were invited to work together with United Nations Agencies, such as UNDP, UNFPA and UNAIDS. They were present in meetings, debates, fora and discussions, achieving change in the public health approach in the national HIV response. This also ensured that Zambia took on a human rights-based approach to the national HIV response and raised awareness amongst stakeholders on the lived realities and experiences of the sex workers and LGBTI citizens. There is also a need and opportunity to engage at the regional level where the politicization of sexual orientation and gender identity remains strong and restrictive. Regional civil society organizations such as have continued to use the voices of parliamentarians to engage and dialogue with the members of SADC Parliamentary Forum. This resulted in the development of the SADC Key Populations Strategy, which was used by NAC to argue for a human rights-based approach to the national HIV response.

³¹ World Bank, The Economic Cost of Stigma and the Exclusion of LGBT People: A Case Study of India. Available at: <http://documents.worldbank.org/curated/en/527261468035379692/pdf/940400WP0Box380usion0of0LGBT0People.pdf>.

As another positive example, in Quezon City, Philippines, OutRight Action International, EnGendeRights, Inc. and the Office of the Vice Mayor of Quezon City did a project to ensure that LGBTI persons are not only recipients of services provided by the city, but are also partners in creating an inclusive city where everyone is an active player in development. The project's aim was to improve and broaden the service and intervention on domestic violence and family violence of barangays, which are the smallest government unit in the community. This included creating a protocol to standardize SOGIESC-inclusive services in handling domestic violence/family violence cases experienced by LGBTI persons. It meant educating barangay service providers and staff and the community about LGBTI issues and strengthening the partnership and support of barangays to LGBTI organizations in their community. In this way, Barangay services started to be LGBTI friendly, and at the same time capacitate LGBTI persons in the community to be part of the Barangay's initiatives and the wider community the Barangay service. Quezon City is an example of Sustainable Development Goal 11, which promotes sustainable states and communities. Under SDG 11 and the "leave no one behind" principle, all members of society should be given the opportunity to contribute meaningfully to their communities and to a movement for sustainable development.³²

To effectively improve the sustainable development of LGBTI people, Member States must adhere to international obligations, including recommendations made through United Nations Treaty Bodies and the Universal Periodic Review. It is also necessary that the progress and challenges derived from the recommendations are thoroughly evaluated by several governing bodies, including the peer States that suggest them, the Human Rights Council, and the Office of the High Commissioner, including regional human rights mechanisms.

Laws and policies that protect and promote inclusion

Protective laws and policies have the ability to accelerate progress for the achievement of the SDGs and fulfilment of human rights. While 52 United Nations Member States provide explicit legal protections against discrimination based on sexual orientation, only nine Member States contain constitutional protection against discrimination based on sexual orientation. Only 42 Member States contain criminal liability for offences committed on the basis of sexual orientation, and 39 Member States explicitly prohibit the incitement to hatred, violence or discrimination on the basis of sexual orientation.

The existence of laws that protect LGBTI persons work as the foundation for policies and programs. Without an enabling legal framework, the promises of sustainable development and realization of rights ring hollow. An affirmative legal system can help address the societal stigma and provides an enabling and empowering environment to marginalized communities. Legal gender recognition and depathologization of diverse gender identities is the first step towards the protection of transgender people. Recognizing a trans person's gender requires respecting the right of that person to identify – irrespective of the sex assigned at birth – as male, female, or as

³² OutRight Action International. Quezon City: an example of SDG 11 in practice.
<https://outrightinternational.org/content/quezon-city-example-sdg-11-practice>.

other gender that is outside of the gender binary, as for instance in many traditionally existing trans communities, such as hijras in India.

The lack of legal framework for the recognition of gender identity of trans persons exacerbates the stigmatization of people with diverse gender identities and puts them at the margins of the society. Lack of legal gender recognition also renders transgender and gender diverse people invisible in social services structures and institutions and puts them at increased risks of abuse and discrimination. Collection of disaggregated data using an intersectional approach is critical to understand the lived experiences of transgender and gender diverse people and to inform the policy and programmatic measures to address the multiple and intersecting forms of discriminations they face. Further, data should be collected using gender-sensitive approaches to ensure accurate representation of the communities.

Data collection and disaggregation

The key challenge towards making progress on the SDGs for LGBTI populations is the lack of sociologic, health, and economic data disaggregated by sexual orientation, gender identity and expression, and sex characteristics. None of the agreed upon indicators in the 2030 Agenda explicitly call for data that is disaggregated by SOGIESC, and the majority of Member States are not in a position to safely and accurately collect these data.

As the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity stated,

“[I]lack of data about lesbian, gay, bisexual, trans and gender-diverse persons renders the community invisible to policymakers and government duty bearers, and will reinforce patterns of negation and the adoption of irrational State policies. In a context of negation, perpetrators feel motivated and enabled to suppress or punish diversity. Negation further enables violence and discrimination against persons in this group to go unchallenged, fueling a vicious circle that leaves no one unaffected. Even where States collect data, negation can result in data that is unreliable, unsystematic and biased; all State measures to address violence and discrimination, be they public policy, access to justice, law reform or administrative actions, will be therefore hindered by this fact.”⁸³

It is essential to remember that in countries where sexual orientation and gender identity and expression are criminalized, disaggregation of data could potentially put LGBTI individuals at risk of violence, persecution, blackmail, and other adverse events. While we need to strive for further disaggregation in order to ensure development programs are tailored, safety and security of data is paramount.

³³ UN Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity, A/HRC/41/45, p.7.

Without disaggregated data by SOGIESC, the needs of LGBTI people will continue to be rendered invisible. Proper data collection is one of the best ways to guide the concrete acceleration on action and deliver transformation. To the best extent possible, Member States should disaggregate data, so that development interventions can be targeted to the unique needs of LGBTI people. LGBTI-led organizations should be consulted in the data disaggregation and collection process, while their security is safeguarded in the process.

Collecting accurate and complete data disaggregated by SOGIESC will allow for the formation of evidence-based laws and policies that serve to promote and protect LGBTI people's rights. Community-based and LGBTI-led organizations are crucial in collecting this data. Community-based organizations are also best positioned to provide safe, non-judgmental health care to LGBTI people. Laws, policies, and practices that directly or indirectly criminalize consensual same-sex behavior and self-determination of gender identity must be repealed to eliminate barriers to LGBTI people realizing their right to health.³⁴

A good example of domestic practices is the national census of trans people carried out by Uruguay in 2016.³⁵ Recently, intersex people were included in the national census of Kenya after the creation of an intersex task-force of which intersex people are part. In addition, two data collection initiatives specifically focused on the trans population were implemented in Argentina, although on a smaller scale: a pilot survey of a trans population survey in the Municipality of La Matanza in 2012 and a census of the transgender female population out in the Province of Jujuy.³⁶

Monitoring and Implementation

Finally, enabling meaningful participation of LGBTI populations in the monitoring and implementation mechanisms around the SDGs would ensure that policies, programs, and administrative measures towards the sustainable development of LGBTI people address their unique needs and demands in an effective and informed manner. It is even more important to include those who are mostly marginalized from these processes such as trans and gender non-conforming people.³⁷

³⁴ OutRight Action International, AGENDA 2030 FOR LGBTI HEALTH AND WELL-BEING.

<https://outrightinternational.org/content/agenda-2030-lgbti-health-and-well-being>

³⁵ Ministerio de Desarrollo Social (Uruguay), Transforma 2016: "Visibilizando realidades: Avances a partir del Primer Censo de personas trans" (2016), p. 8.

³⁶ Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo (Argentina). Primera Encuesta sobre Población Trans 2012: Travestis, Transexuales, Transgéneros y Hombres Trans. Informe técnico de la Prueba Piloto Municipio de La Matanza, de la Provincia de Buenos Aires). Dirección Provincial de Estadística y Censos (Provincia de Jujuy), Censo de Población Trans Femenina (2018).

³⁷ Health Policy Project, Asia Pacific Transgender Network, United Nations Development Programme. 2015. Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities. Washington, DC: Futures Group, Health Policy Project and CMAJ 2019 Month X;191:Exxx. doi: 10.1503/cmaj.180954; UNDP, USAID. 2014. Being LGBT in Asia: Indonesia Country Report. Bangkok. Available at:

https://www.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2014-bli-indonesia-country-report-english.pdf; APTN, UNDP. 2018. From barriers to bridges: Increasing access to HIV and other health services for trans people in Asia; William's Institute. 2014. Surveying Nepal's Sexual and Gender Minorities: An Inclusive Approach. Available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Nepal-Survey-Oct-2014.pdf>.

In the same way, it is crucial to delve into the successes and failures in implementation, such as auditing the existing policies and mechanisms that have been created to address the problems faced by the LGBTI community but have poor functionality. In the specific case of LGBTI violent deaths, the State must analyze what has been the real impact of condemnatory sentences and in those perpetrators of crimes based on prejudice.

To alleviate and offset the burden of civil organizations in monitoring the process of complying with the recommendations, both at the national and regional levels, strategies must be created to approve protocols and build joint actions among the States that seek to improve the quality of life of the LGBTI populations.

Tools, such as the database created by the Danish Institute for Human Rights³⁸, can assist UN Member States and civil society to understand recommendations from treaty bodies, special procedures and the UPR, and how they are linked to the SDGs. Reporting on SDGs and recommendations from human rights mechanisms should mutually reinforce each other to ensure, not only, stronger accountability, but also the creation and implementation of effective laws and policies.

Recommendations for the implementation of the 2030 Agenda

Despite the fact that the following recommendations do not specifically mention individually all of the SDGs, the LGBTI Stakeholder Group calls for the highest human rights standards to be applied by all stakeholders all across the 17 SDGs. Guaranteeing that nothing about us happens without us is the best way for States and other stakeholders to move towards achieving the implementation of the SDGs.

SDG 3:

1. Adopt and implement the elements in the eleventh revision of the International Classification of Diseases that relate to the removal of the trans categories from the chapter on mental and behavioral disorders, including the adoption of all measures conducive to eradicating the conception of gender diversity as a pathology from all aspects of everyday life.³⁹
2. Review, amend, and/or repeal existing health laws and policies that adversely affect the health and well-being of LGBTI people and commit to ending stigma and discrimination based on SOGIESC in the provision of healthcare services, including prevention, promotion, and treatment.
3. Ensure that health care policies, ethical standards and standards of care focus on eliminating stigma, discrimination, and violence based on SOGIESC in healthcare settings.
4. Ensure resource allocation through adequate budget allocations that would enable the provision of universal access to sexual and reproductive healthcare for LGBTI people.

³⁸ <https://sdgdata.humanrights.dk/>

³⁹ UN Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity, A/73/152, para. 77 (a).

5. Ensure that sexual and reproductive health programs are tailored to the specific needs of LGBTI people, including hormone therapy, gender-affirmative care, routine sexual and reproductive health screenings, sexually transmitted infection testing and treatment, and family planning services responsive to diverse family forms.
6. Review policies and programming on comprehensive sexuality education implemented in educational institutions to integrate rights-based content, including the rights of LGBTI people into such material. Further, invest in rights-based sexuality education programs and outreach interventions for LGBTI populations to educate and equip them with the necessary knowledge and skills to promote healthy lifestyle and health-seeking behaviors.
7. Invest in disaggregated evidence generation and research programs with an intersectional approach to improve the understanding of disparities in health outcomes, provider attitudes and education, indicators for social determinants of health and ways to improve the environment for LGBTI individuals seeking care.
8. Ensure that LGBTI people are actively and meaningfully participating in framing health policy that is responsive and respectful to the needs of LGBTI people and promote the Greater Involvement of People living with HIV and AIDS (GIPA) principle.
9. Fund community-based and LGBTI-led organizations and service providers, which are typically better positioned to reach LGBTI people and gather data about their health.
10. Eliminate barriers to affordable medicines linked to essential services for LGBTI people by implementing Trade-Related Aspects of Intellectual Property Rights (TRIPS) flexibilities in accordance with the Doha Declaration, and other price containment mechanisms.

SDG 4:⁴⁰

1. Federal and local education policies as well as institution-level regulations should clearly provide protection from SOGIESC-based discrimination for learners and educators. Such policies should be regularly communicated, reinforced and monitored. Other affirmative measures, such as not gendered uniforms and bathrooms, should be encouraged.
2. Invest in affirmative action to reach out to LGBTI youth who are not able to access formal education institutions due to other social determinants such as financial vulnerability, location, etc.
3. Fully implement evidence-based and scientifically sound sexuality education in both in-school and out-of-school learning environments. These sexuality education programs should promote recognition and acceptance of diversity in sex, sexuality and gender and address the specific life-skills needs of LGBTI adolescents and youth.
4. Implement training programs for teachers to enable them to deliver inclusive education and respond effectively to bullying and violence and additional care for drop-out cases.
5. Invest in research and documentation of factors that contribute to more inclusive and safe learning environments to inform relevant policies, programs and regulations. Government should also invest in evaluation of interventions and best practices to improve the efficacy of existing policies, programs and regulations.

⁴⁰ UNESCO. 2015. *From insult to inclusion: Asia-Pacific report on school bullying, violence and discrimination on the basis of sexual orientation and gender identity*. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000235414>

SDG 8:⁴¹

1. Introduce comprehensive laws and policies and reform existing labor laws to provide protection against discrimination on the basis of SOGIESC and should regularly communicate and reinforce such laws. This includes ensuring that the gender marker on identity cards enables transgender and intersex people to have their preferred social gender properly recognized to ensure equal access to employment.
2. Ensure that anti-discrimination laws, regulations and policies fully encompass and address pre-employment and workplace discrimination that LGBTI people experience based on their sexuality, gender identity or expression, and sex characteristics.
3. Governments should establish an advisory and monitoring committee with effective mechanisms to ensure equal opportunity treatment for all workers regardless of SOGIESC. It shall also oversee effective implementation of labor laws and ensure access to the redressal of grievances.
4. Sensitization and awareness raising programs on LGBTI inclusion and labor rights of LGBTI people should be encouraged for the leadership of private business entities.
5. Build on existing good policies and practices in multinational companies and share experiences with and promote similar policies in local companies.
6. Invest in documentation of lived experiences of LGBTI people in relation to right to decent work to address the data gap, and document and promote best practices to address discrimination.
7. Empower LGBTI people with information and knowledge of their rights at work so they can stand up for their rights and fight against discrimination.

SDG 10:

1. Adopt legislative and administrative reforms aimed to eliminate legal obstacles that undermine the rights of LGBTI individuals for the effective realization of the principle of non-discrimination and the principle of equality, the recognition of their legal personality, and the full exercise of all fundamental rights.
2. Undertake public awareness and stakeholder targeted campaigns to address the stigma and to reject the assertion that “transgenderism” and “homosexuality” is a mental health condition.
3. Monitor and publicly critique the practice of “conversion” or “rehabilitation/reparative” therapies (that try to change a person’s gender identity or expression or sexual orientation), highlighting that such treatment is unethical and should be banned.

SDG 16:

1. States should repeal laws that criminalize consensual same-sex relations, gender identity or expression, and statements, publications or actions that discuss or refer to the identity

⁴¹ UNDP, ILO (2018). *LGBTI People and Employment: Discrimination Based on Sexual Orientation, Gender Identity and Expression, and Sex Characteristics in China, the Philippines and Thailand*. Available at: https://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/hiv_aids/lgbti-people-and-employment--discrimination-based-on-sexual-orie.html

or expression of lesbian, gay, bisexual, trans and gender non-conforming persons (so-called “anti-propaganda” laws).⁴²

2. States should review other laws and policies that exacerbate police abuse and harassment, extortion and acts of violence against people based on their actual or perceived sexual orientation or gender identity, in particular, laws based on public decency, morals, health and security, including beggary and loitering laws; and laws criminalizing conduct seen as “indecent” or “provocative”, including laws criminalizing sex work.⁴³
3. Take all necessary legislative, policy, administrative, and other measures to fully recognize each person’s self-defined gender identity, with no medical requirements or discrimination on any grounds.
4. Ensure that definitions in laws and policies of terms such as ‘gender’, ‘gender identity’, ‘gender expression’, ‘transgender’, or specific transgender identities are inclusive of diverse genders, gender identities and expressions, and are based on self-determination.
5. Ensure that the right to legal gender recognition is not undermined through eligibility criteria that violate human rights including, but not limited to, criteria that discriminate on any grounds including marital or family status, age, or criminal record or that require a mental health diagnosis, medical treatment, or family or community approval.
6. Legally prohibit non-consensual medical procedures, including intersex genital mutilation, forced sterilization, and anal examinations.
7. Promote and support national dialogues on how human rights obligations apply to LGBTI people, including through endorsing efforts targeting transphobia and homophobia and all forms of verbal and physical abuse, hatred, exclusion, and intolerance.

Evidence-generation and Data Collection:

1. States should conduct public, decentralized and transparent consultations directed at LGBTI persons, within the framework of the design and implementation of measures to achieve SDGs. The participation of a great diversity of identity groups should be guaranteed, considering the unique needs of different population groups. Overall, an intersectional approach should be adopted in data collection measures.
2. Collect and disaggregate data by SOGIESC for all indicators where possible.
3. Carefully review the reasoning behind the gathering of available data, and the rules governing data management. They must adhere to rigorous risk assessment and management considerations under the “do no harm” principle. The participation of the affected populations and communities in the design, implementation and evaluation of the data-gathering systems is crucial.

⁴² UN Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity, [A/HRC/38/43](#), para. 90.

⁴³ UN Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity, [A/73/152](#), para. 78 (b).

4. States must refrain from gathering and exhibiting data without a legitimate, proportionate and necessary purpose and ensure that, when data must be collected, it should be done on the basis of self-determination, while respecting privacy and confidentiality.⁴⁴

Monitoring and Implementation of SDGs:

1. Create spaces so that LGBTI persons can engage with state actors and policymakers meaningfully to share their experiences and realities to ensure the state interventions truly and effectively address their needs.

⁴⁴ UN Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity, A/73/152, para. 81 (c).