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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protecting and respecting the rights of lesbian, gay, bisexual, transgender and intersex persons in the context of business activities: fulfilling obligations and responsibilities under the Guiding Principles on Business and Human Rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, in accordance with Human Rights Council resolutions [17/4](#) and [44/15](#).

* [A/79/150](#).



Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Protecting and respecting the rights of lesbian, gay, bisexual, transgender and intersex persons in the context of business activities: fulfilling obligations and responsibilities under the Guiding Principles on Business and Human Rights

Summary

In the present report, submitted to the General Assembly pursuant to Human Rights Council resolutions [17/4](#) and [53/3](#), the Working Group on the issue of human rights and transnational corporations and other business enterprises examines practices and policies to identify key challenges and develop concrete recommendations for States and businesses regarding the protection of and respect for the rights of LGBTI+ persons in the context of business activities, including with regard to access to effective remedy, in alignment with the Guiding Principles on Business and Human Rights and international human rights law.

I. Introduction

A. Context and objectives

1. In the present report, the Working Group on the issue of human rights and transnational corporations and other business enterprises seeks to provide States and business enterprises with concrete guidance to support them in upholding their respective international obligations and responsibilities to address business-related human rights abuses that LGBTI+ persons face.¹ Drawing on its previous report to the Human Rights Council on the gender dimensions of the Guiding Principles on Business and Human Rights in relation to the realization of the rights of women and girls, including transgender and intersex women (A/HRC/41/43), in the present report, the Working Group further clarifies what it means to fully implement the Guiding Principles with a gender lens by expanding the focus to the rights of LGBTI+ persons.

2. In the report, the Working Group examines practices and policies to identify key challenges and develop concrete recommendations for States and businesses regarding the protection of and respect for the rights of LGBTI+ persons in the context of business activities, in alignment with the Guiding Principles, international human rights law and other relevant standards and guidance.

3. Specifically, the report is intended to clarify what protecting and respecting the rights of LGBTI+ persons means under the three pillars of the Guiding Principles: the State's duty to protect against abuses; the responsibility of businesses, including investors, to respect the human rights of LGBTI+ persons; and access to effective remedy for LGBTI+ persons affected by abuses. The report concludes with recommendations, in which the Working Group emphasizes that collaboration between States and businesses, and close engagement with LGBTI+ persons and organizations that defend their rights, is crucial for achieving substantive and lasting improvements.

4. The human rights of LGBTI+ persons are disproportionately and differently affected by business activities, especially regarding equality and non-discrimination, leading to compounding violations of other human rights. LGBTI+ persons face discrimination, violence in the world of work,² harassment, attacks and stigmatization in the workplace, on social media, in advertising and in sports, affecting their physical and mental health.³ In addition, although sexual diversity and gender-variant roles and identities have been traditionally cherished and respected in many societies around the world and throughout history, LGBTI+ persons often face hostile cultural, social and legal environments, with adverse effects on the enjoyment of their human rights in the context of business activities.⁴ These risks are experienced in vastly different ways by people within the LGBTI+ community. Intersectional discrimination,⁵ with compounding factors such as race, ethnicity, disability, age, migratory status, family status, nationality, religion, health status, and class, further complicate the challenges that LGBTI+ persons face. For example, according to a 2018 survey carried out in the United Kingdom of Great Britain and Northern Ireland, 3 per cent of white LGBTI+ workers had experienced physical harassment or assault

¹ The present report considers all persons affected by violence and discrimination based on sexual orientation, gender identity, gender expression and/or sex characteristics.

² A/74/181, p. 5.

³ See A/HRC/53/37.

⁴ See A/78/227.

⁵ Intersectionality is a concept and theoretical framework that recognizes how overlapping social identities can compound experiences of discrimination and concurrent forms of oppression.

at work, compared with 10 per cent of LGBTI+ workers who were black or from minority ethnicities.⁶

5. On the basis of their sexual orientation, gender identity, gender expression and sex characteristics, LGBTI+ persons are more exposed to poverty, face difficulties accessing jobs and receive lower wages for the same work.⁷ Consequently, LGBTI+ persons are overrepresented in the informal economy,⁸ trapped in low-quality jobs and obliged to work in certain economic sectors in stereotyped roles.⁹ In addition, LGBTI+ persons face additional barriers to setting up their own businesses due to difficulties accessing credit and bias from potential customers.¹⁰ Persons whose gender expression differs from societal norms face higher rates of exclusion and violence in connection with business, being denied access to employment and financing, being victims of violence in health care, including forced psychiatric evaluation and sterilization, and facing humiliation accessing sex-segregated toilets and changing rooms or wearing gendered uniforms in business premises.¹¹ They are particularly at risk of human rights abuses when they are forced to disclose their names and gender without any protection measures.¹² LGBTI+ persons who work as sex workers are particularly at risk of violence, including killing, beating, mutilation and rape.¹³ According to a survey carried out in Canada, 73 per cent of transgender respondents experience harassment and violence at work, compared with 46 per cent of cisgender¹⁴ women and 38 per cent of cisgender men.¹⁵

6. The structural and intersectional discrimination that LGBTI+ persons face is often misunderstood or insufficiently addressed by States and businesses. Religious beliefs are often invoked to attack the rights of LGBTI+ persons. Nevertheless, the right to freedom of religion entails a person's freedom to possess and express beliefs, religious or not, and cannot be justified to perpetuate discrimination against LGBTI+ persons in the provision of goods or services.¹⁶ Despite positive actions taken by some businesses to promote equality, non-discrimination and inclusion, these efforts are rarely grounded in corporate responsibility to respect human rights. Multinational enterprises that have taken actions in favour of LGBTI+ persons have not always implemented the same approach when operating in jurisdictions where same-sex sexual acts are criminalized, often due to possible backlash, legal risks or reputational concerns. While positive actions have been adopted by many States to address discrimination on the grounds of gender identity and sexual orientation at work, less has been done to include an LGBTI+ lens into responsible business conduct-specific actions.

⁶ See www.stonewall.org.uk/resources/lgbt-britain-work-report-2018.

⁷ See www.ilo.org/resource/brief/discrimination-work-basis-sexual-orientation-and-gender-identity-results.

⁸ See <https://www.ilo.org/meetings-and-events/launch-ilo-document-inclusion-lesbian-gay-bisexual-transgender-intersex-and>.

⁹ See www.hrc.org/resources/understanding-poverty-in-the-lgbtq-community.

¹⁰ See www.ohchr.org/sites/default/files/documents/issues/business/cfis/lgbti/submissions/subm-wgs-resecting-ind-claude-baudoin.pdf and <https://lgbtq-economics.org/research/lgbtq-small-businesses-2021/>.

¹¹ See www.ohchr.org/sites/default/files/documents/issues/business/cfis/lgbti/submissions/subm-wgs-resecting-cso-minha-crianca-trans.pdf.

¹² See [A/HRC/56/55/Add.1](https://www.ohchr.org/sites/default/files/documents/issues/business/cfis/lgbti/submissions/subm-wgs-resecting-cso-minha-crianca-trans.pdf).

¹³ See www.nswp.org/sites/default/files/bp_homophobia_transphobia_mpaact_nswp_-_2018.pdf.

¹⁴ The word cisgender describes a person whose gender identity corresponds to their sex assigned at birth, i.e., someone who is not transgender.

¹⁵ See www.learningtoendabuse.ca/research/national_survey_on_harassment_and_violence_at_work_in_canada/index.html.

¹⁶ See [A/HRC/37/49](https://www.ohchr.org/sites/default/files/documents/issues/business/cfis/lgbti/submissions/subm-wgs-resecting-cso-minha-crianca-trans.pdf).

7. Protecting and respecting the rights of LGBTI+ persons in the context of business activities should be a priority for States and businesses, not only because LGBTI+ inclusion enhances economic growth and business performance,¹⁷ but also because all persons have the same internationally recognized human rights. The rights of LGBTI+ persons are not a separate category of “special rights”. Ensuring that LGBTI+ persons can fully enjoy their rights requires actions to eliminate the structural barriers that limit them and to uphold the entitlement of LGBTI+ persons to the same protections and freedoms as everyone else.

B. Methodology and scope

8. The present report draws on written submissions from over 20 States, businesses, civil society actors and academics in response to an open call for inputs issued by the Working Group.¹⁸ In addition, it relies on bilateral interviews, as well as eight regional consultations and eight separate targeted consultations with States, civil society organizations, businesses and trade unions.

9. The report builds on previous reports of the Working Group, as well as relevant work by the United Nations treaty bodies, the special procedures mandate holders,¹⁹ the Office of the United Nations High Commissioner for Human Rights²⁰ and regional human rights mechanisms,²¹ the United Nations Development Programme,²² the Organisation for Economic Co-operation and Development (OECD),²³ the International Labour Organization (ILO),²⁴ including the ILO Committee of Experts on the Application of Conventions and Recommendations,²⁵ the World Bank,²⁶ and civil society and business associations.

10. The Working Group has decided to include intersex persons in the scope of the present report in consultation with civil society, as they face similar impacts arising from dominant societal sex and gender norms. However, it notes that intersex persons also have very specific and different needs; in particular, issues of concern for intersex persons include forced and coerced medical interventions, unequal access to health care and sport competitions, and lack of legal recognition of gender identities.²⁷

¹⁷ See www.morganstanley.com/ideas/sustainable-investing-lgbtq-opportunities-demand; www.forbes.com/sites/debtfreeguys/2018/08/14/the-1-trillion-marketing-executives-are-ignoring/?sh=144bd615a97f; www.worldbank.org/content/dam/Worldbank/document/SAR/economic-costs-homophobia-lgbt-exclusion-india.pdf; <https://williamsinstitute.law.ucla.edu/publications/lgbt-inclusion-economic-dev/>; and www.worldbank.org/en/region/eca/publication/economic-cost-of-exclusion-lgbti.

¹⁸ See www.ohchr.org/en/calls-for-input/2024/call-input-working-groups-report-respecting-rights-lgbti-people-context.

¹⁹ See <https://uhri.ohchr.org/en/search-human-rights-recommendations?affectedPersons=8d3aac99-4e87-42fc-b334-a945e1dc4fb3>.

²⁰ <https://www.ohchr.org/en/sexual-orientation-and-gender-identity>.

²¹ In particular, the Rapporteurship on the Rights of LGBTI Persons of the Inter-American Commission on Human Rights, and cases of the Inter-American Court of Human Rights and the European Court of Human Rights.

²² See www.undp.org/tag/lgbti.

²³ See www.oecd.org/en/publications/over-the-rainbow-the-road-to-lgbti-inclusion_8d2fd1a8-en.html.

²⁴ See www.ilo.org/publications/inclusion-lesbian-gay-bisexual-transgender-intersex-and-queer-lgbtq.

²⁵ See www.ilo.org/international-labour-standards/ilo-supervisory-system-regular-supervision/applying-and-promoting-international-labour-standards/committee-experts-application-conventions-and-recommendations-ceacr.

²⁶ See www.worldbank.org/en/topic/sexual-orientation-and-gender-identity.

²⁷ See [A/HRC/55/L.9](https://www.ohchr.org/en/documents/tools-and-resources/ohchr-technical-note-human-rights-intersex-people-human-rights) and www.ohchr.org/en/documents/tools-and-resources/ohchr-technical-note-human-rights-intersex-people-human-rights.

II. Progress and gaps in the implementation of the Guiding Principles

A. State duty to protect

11. The obligations of States to protect the human rights of LGBTI+ persons within their jurisdiction are well-established in international human rights law. Every person, irrespective of their sexual orientation, gender identity, gender expression or sex characteristics, is entitled to enjoy the protections provided by international human rights law.

12. In accordance with the Guiding Principles, States must take appropriate steps to ensure that all business enterprises operating within their territory or jurisdiction respect the rights of LGBTI+ persons. These obligations extend to refraining from interference in the enjoyment of rights; preventing abuses by State agencies and officials and business enterprises; and investigating, providing remedy to victims and combating such abuses when they occur. States' obligations also include having State policies, legislation, regulations, and adjudication mechanisms to prevent, investigate, punish and redress all forms of discrimination, harassment and violence against LGBTI+ persons. In addition, States should ensure that other laws and policies do not constrain but enable business respect for human rights, ensuring policy coherence. The latter requires that all government departments and State-based institutions, including at the subnational levels, are aware of the rights of LGBTI+ persons and act in a manner compatible with the State's human rights obligations.²⁸ Furthermore, States should provide effective guidance for businesses to respect the rights of LGBTI+ persons, including when they operate in other jurisdictions,²⁹ and take additional steps to protect LGBTI+ persons against abuses by businesses that they own or control, that receive substantial support and service from the State,³⁰ and with which they conduct commercial transactions.³¹

13. The present section of the report highlights significant gaps in protecting the rights of LGBTI+ persons, focusing on discriminatory laws and policies, such as those criminalizing consensual same-sex sexual acts or denying the legal right to self-identification. These frameworks undermine the rights of LGBTI+ persons, including in the business context. States can advance the rights of LGBTI+ persons through national action plans on business and human rights, human rights due diligence laws, business incentives, and economic diplomacy. The Working Group examines these challenges and opportunities to guide States in fulfilling their duty to protect the rights of LGBTI+ persons, in accordance with the Guiding Principles.

1. Discriminatory and non-inclusive laws and policies against LGBTI+ persons

14. Many constitutions contain broad non-discrimination clauses or enumerate certain protections, but only a few explicitly protect against discrimination based on sexual orientation (12 States), gender identity (5 States) or gender expression (1 State). No State constitutionally protects against discrimination on the basis of sex characteristics,³² although 18 States provide some form of legal protection against medical interventions without consent.³³

²⁸ Principle 8.

²⁹ Principles 2 and 3.

³⁰ Principle 4.

³¹ Principle 6.

³² See <https://database.ilga.org/constitutional-protection-lgbti>.

³³ See https://ilga.org/wp-content/uploads/2024/02/ILGA_World_Intersex_Legal_Mapping_Report_2023.pdf.

15. In many States, legal protections against discrimination in employment are lacking. Only 77 States have provisions against discrimination in employment based on sexual orientation. Among these States, and in a few additional ones, 46 have provisions against discrimination based on gender identity, 20 based on gender expression, and 17 based on sex characteristics.³⁴ The protection from discrimination for persons in same-sex relationships in accessing benefits that are available to persons in heterosexual couples can often only be satisfied by recognition of their unions;³⁵ however, approximately 85 per cent of Member States do not provide any legal recognition of such unions.³⁶

2. LGBTI+ persons and criminalization

16. Consensual same-sex sexual acts are criminalized in 61 States. LGBT persons are frequently targeted through other vague criminal laws, such as laws against “debauchery”, “pornography”, “immorality” or “prostitution”, despite the absence of explicit prohibitions.³⁷ Transgender women are often targeted and prosecuted under laws criminalizing sex work or “vagrancy”. Such laws not only heighten the risks for lesbian, gay, bisexual and transgender persons themselves, but they also expose businesses to legal liabilities and diminish their ability to respect the rights of LGBT persons.

17. Differences in how States recognize the rights of LGBTI+ persons pose challenges for businesses operating across various jurisdictions. In addition, in States where LGBT persons are the target of criminal sanctions, businesses may hesitate to implement their own policies and regulations from their home States.

18. Although decriminalization alone does not safeguard persons from violence and discrimination, legal reforms aimed at removing discriminatory legislation (particularly criminal laws) convey a powerful affirmation and have the potential to pave the way for broader institutional changes and a shift in societal perspectives, fostering greater acceptance of LGBTI+ persons and respect for their rights.³⁸

3. Protection against LGBTI+ discrimination in employment

19. Several States have taken some action to protect the rights of LGBTI+ persons in the context of business activities, although these efforts are mainly confined to combating discrimination in employment or to reducing exclusion. For example, in India, the Transgender Persons (Protection of Rights) Act of 2019 prohibits discrimination against transgender and intersex persons in the private sector. Australia has implemented anti-discrimination legislation that protects intersex persons from discrimination in employment and other areas of public life.³⁹ In France, the adoption of Law No. 2013-404 of 2013 led to a new article (Art. L1132-3-2) being added to the Labour Code, preventing any employee from being penalized or

³⁴ Ibid.

³⁵ See [CCPR/C/78/D/941/2000](#), para. 10.4; [CCPR/C/MUS/CO/5](#), para. 10; [CCPR/C/BGR/CO/4](#), para. 12 (a); [CCPR/C/HUN/CO/6](#), para. 20 (a); [CEDAW/C/VEN/CO/9](#), para. 54; [CEDAW/C/LTU/CO/6](#), para. 45 (a); [CEDAW/C/MCO/CO/1-3](#), para. 46 (b); [A/73/152](#), para. 77; and [A/HRC/41/33/Add.1](#), para. 24. See also principle 24 of the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity.

³⁶ See https://ilga.org/wp-content/uploads/2023/11/ILGA_World_State_Sponsored_Homophobia_report_global_legislation_overview_update_December_2020.pdf and <https://database.ilga.org/same-sex-marriage-civil-unions>.

³⁷ See <https://database.ilga.org/criminalisation-consensual-same-sex-sexual-acts>.

³⁸ See www.ohchr.org/sites/default/files/Documents/Publications/LivingFreeAndEqual.pdf.

³⁹ Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013.

discriminated against for refusing a transfer to a country that criminalizes homosexuality due to their sexual orientation.

20. Some States have adopted affirmative actions, with the aim of breaking the cycle of exclusion, especially of transgender persons.⁴⁰ In Argentina, Law No. 27.636 of 2021 established that transgender persons should occupy at least 1 per cent of posts in the public sector.⁴¹ Uruguay also uses labour quotas to advance the rights of transgender persons in the workforce.⁴²

21. The United States Securities and Exchange Commission requires Nasdaq-listed companies to have, or explain the absence of, at least two diverse board members, including one director who self-identifies as female and at least one director who self-identifies as an underrepresented minority or LGBTQ+.⁴³

22. States' initiatives to foster gender equality and non-discrimination that require employers to report on gender-related data in the workplace should always respect the principles of privacy and confidentiality, self-determination, "do no harm", participation, impartiality, transparency and accountability.

4. National action plans on business and human rights

23. National action plans on business and human rights should prioritize the inclusion of the most at-risk and marginalized groups, including LGBTI+ persons. To date, many national action plans have fallen short of adequately addressing the rights of LGBTI+ persons. However, some States, including Argentina⁴⁴ and Peru,⁴⁵ have integrated explicit commitments to the rights of LGBTI+ persons in their national action plans. The national action plan of Italy also stands out for the targeted measures to be implemented between 2021 and 2026 to encourage Italian companies to adopt policies that prevent discriminatory behaviour against LGBTI+ persons.⁴⁶

5. Legislation on human rights due diligence

24. Governments and regional organizations are increasingly introducing legislative regimes to encourage or require businesses to carry out human rights due diligence. This represents a significant opportunity to regulate explicitly that a gender lens should be applied with the inclusion of LGBTI+ persons. In the Kingdom of the Netherlands, the bill on Responsible and Sustainable International Business Conduct includes discrimination, together with other harms, as an adverse impact on human rights and labour rights when it occurs in the supply chain.⁴⁷ The German Act on Corporate Due Diligence Obligations in Supply Chains provides that a human rights risk may occur when there is a sufficient probability of a violation of the prohibition of unequal treatment in employment, for example on the grounds of sexual orientation, age and gender (section 2 (2) (7)).⁴⁸ Meanwhile, the European Union directive on corporate sustainability due diligence provides that companies may need

⁴⁰ See www.oas.org/en/iachr/reports/pdfs/transdesca-en.pdf.

⁴¹ See www.ohchr.org/sites/default/files/documents/issues/business/cfis/lgbti/submissions/subm-wgs-resecting-sta-argentina.docx.

⁴² See www.ohchr.org/sites/default/files/documents/issues/business/cfis/lgbti/submissions/subm-wgs-resecting-cso-international-commission-jurists.pdf.

⁴³ See www.sec.gov/files/rules/sro/nasdaq/2021/34-92590.pdf.

⁴⁴ See www.dpn.gob.ar/documentos/LNB_informe_final_2023.pdf.

⁴⁵ See <https://globalnaps.org/wp-content/uploads/2024/01/NAP-Peru-2021-2025-English.pdf>.

⁴⁶ See www.ohchr.org/sites/default/files/documents/issues/business/cfis/lgbti/submissions/subm-wgs-resecting-sta-italy.pdf.

⁴⁷ See www.mvoplatfom.nl/en/wp-content/uploads/sites/6/2021/03/Bill-for-Responsible-and-Sustainable-International-Business-Conduct-unofficial-translation-MVO-Platform.pdf.

⁴⁸ See www.csr-in-deutschland.de/SharedDocs/Downloads/EN/act-corporate-due-diligence-obligations-supply-chains.pdf?__blob=publicationFile.

to consider additional standards to take into account intersecting factors, including gender, and pay special attention to any particular adverse impacts on individuals who may be at heightened risk due to marginalization, vulnerability or other circumstances.⁴⁹

6. Guidance and incentives for businesses

25. States should also provide guidance to businesses on how to respect human rights, including when operating in discriminatory contexts. In response to the enactment by Uganda of the Anti-Homosexuality Act, the United States issued a business advisory, warning of the legal and operational risks of doing business in Uganda and highlighting United States anti-discrimination laws in federal contracting.⁵⁰ In Japan, in response to recent developments, local governments have been actively engaging with the private sector to encourage the use of partnership certificates for same-sex couples.⁵¹

26. States are encouraged to incentivize businesses to fulfil their responsibility of respecting the rights of LGBTI+ persons. In Mexico, the Ministry of Labour and Social Welfare presents inclusive business awards to workplaces that uphold equal job opportunities, inclusion and non-discrimination for people in situations of vulnerability.⁵²

7. Economic diplomacy

27. Trade missions are an important tool for export promotion and commercial diplomacy, giving potential exporters insights into foreign markets and connecting them with overseas buyers. Some States have sought to integrate LGBTI+ business promotion into official trade missions. For instance, in Canada, with the support of the Trade Commissioner Service, businesses owned by two-spirit,⁵³ lesbian, gay, bisexual, transgender, queer and intersex persons are finding opportunities through supplier diversity programmes and trade missions.⁵⁴ In 2019, the Foreign, Commonwealth and Development Office of the United Kingdom organized a trade mission for LGBT business founders, bringing United Kingdom companies to the United States to boost business growth for LGBT founders.⁵⁵

8. State-business nexus

28. When acting as an economic actor, including through public procurement, in State-owned and State-controlled enterprises or when providing substantial support and services to business enterprises, States should take additional steps to ensure that the rights of LGBTI+ persons are protected and respected, including by requiring these businesses to conduct human rights due diligence. In Argentina, Law No. 27.636 mandates that the State prioritizes purchasing inputs and supplies from businesses that employ transgender persons. In the United States, California passed a public mandate requiring the intentional inclusion of certified LGBT businesses in

⁴⁹ See <https://eur-lex.europa.eu/eli/dir/2024/1760/oj>.

⁵⁰ See www.state.gov/uganda-business-advisory.

⁵¹ See www.ohchr.org/en/documents/country-reports/ahrc5655add1-visit-japan-report-working-group-issue-human-rights-and.

⁵² See www.ohchr.org/sites/default/files/documents/issues/business/cfis/lgbti/submissions/subm-wgs-resecting-cso-international-commission-jurists.pdf.

⁵³ Some Indigenous Peoples use the term “two-spirit” to refer to a person embodying both male and female spirits in gender, spiritual or sexual identity.

⁵⁴ See www.international.gc.ca/world-monde/stories-histoires/2018/diversification-success.aspx?lang=eng.

⁵⁵ See www.gov.uk/government/news/uks-first-lgbtq-founders-trade-mission-kicks-off-americas-wide-love-is-great-campaign.

contracting with its Public Utilities Commission.⁵⁶ Massachusetts has set a goal for its State agencies to purchase \$18 million from businesses owned by LGBTI+ persons,⁵⁷ complemented by the development of an interactive online map⁵⁸ to facilitate the identification of certified diverse business partners for State agencies, cities, towns, prime bidders and contractors.

B. Corporate responsibility to respect

29. Through their direct activities or business relationships, businesses should avoid causing, contributing or being directly linked to human rights abuses against LGBTI+ persons.⁵⁹ The following examples demonstrate how businesses can be involved in human rights abuses against LGBTI+ persons:

(a) Requiring LGBTI+ workers to perform their job in a location where their rights are not recognized, or where violence and/or discrimination may be heightened, including if they want to get promoted;

(b) Failing to consider the circumstances of a same-sex household when determining sufficient parental leave and benefits;

(c) Collecting and storing sensitive or personal information beyond what is legally required or in a way that may expose LGBTI+ persons to persecution from Governments;

(d) Sharing data with law enforcement and government agencies without requiring a legal basis;

(e) Engaging in business activities with a Government or another company that has adopted and/or implements discriminatory policies in relation to LGBTI+ persons.

30. There has been some progress within business enterprises, which can be seen in the adoption of non-discriminatory policies with explicit mention of sexual orientation, gender identity, gender expression and sex characteristics, the allocation of inclusive benefits for same and different sex partners,⁶⁰ and the creation of LGBTI+ employee resource groups within enterprises. This progress has been greatly supported by several multistakeholder initiatives.⁶¹ In addition, LGBTI+ national chambers of commerce have helped in expanding economic opportunities and advancement for LGBTI+ persons and their businesses.⁶²

31. Many corporate initiatives tend to focus on the positive impact that business can have on LGBTI+ persons, rather than on the corporate responsibility to respect the rights of LGBTI+ persons. Most actions are confined to the workplace; less has been

⁵⁶ See <https://nglcc.org/programs-initiatives/policy-advocacy/statewide-local-lgbt-supplier-diversity-initiatives/>.

⁵⁷ See www.mass.gov/news/healey-driscoll-administration-expands-state-spending-benchmarks-to-lgbt-and-disability-owned-businesses.

⁵⁸ See www.mass.gov/info-details/sdo-certified-diverse-business-dashboard.

⁵⁹ See www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

⁶⁰ See www.reuters.com/article/us-global-lgbt-parentalleave/gay-fathers-receive-less-parental-leave-than-other-couples-study-idUSKCN1VQ0EX/.

⁶¹ The Partnership for Global LGBTIQ+ Equality, the International Lesbian, Gay, Bisexual, Trans and Intersex Association, Open For Business, The Human Rights Campaign, Outright International, Stonewall, UN Free & Equal national campaigns, the Philippine Financial & Inter Industry Pride, the Community Business in Hong Kong, The Other Foundation and the South African LGBT+ Management Forum.

⁶² See <https://nglcc.org/our-network/nglcc-global/>.

done to respect the rights of LGBTI+ persons in the labour market, in the communities where they operate and in their supply chains.⁶³ During the consultations, the Working Group heard concerns about the double standards of some transnational corporations that have failed to implement the policies adopted at headquarters to respect the rights of LGBTI+ persons when operating in locations where the legal or cultural environment is hostile towards LGBTI+ persons. Another concern relates to the lack of distinction between different groups within the LGBTI+ community to address their specific issues, and the lack of tracking to measure the effectiveness of actions or commitments adopted to respect the rights of LGBTI+ persons. In addition, actions to respect the rights of LGBTI+ persons are generally the responsibility of the diversity, equity and inclusion team, which is often located outside strategic departments, meaning that actions taken are not implemented across the entire business.

32. During consultations, businesses shared some of the challenges they face to support actions to respect LGBTI+ persons, including potential conflicts with “traditional values” in places where they operate, creating risks of retaliation and backlash. Small- and medium-sized enterprises face additional challenges, including in terms of understanding and capacities. At the same time, such enterprises can be more flexible and less sensitive to government pressure, so they have been taking more action in settings such as Africa, as shared with the Working Group during consultations.

33. In its gender guidance, the Working Group urged businesses to commit publicly to respect the human rights of women, including trans women, intersex women and lesbians, and to explicitly integrate a gender perspective in carrying out all steps of human rights due diligence. The Standards of Conduct for Business for tackling discrimination against LGBTI+ persons⁶⁴ identify five actions for businesses: respect human rights in their own activities and operations, products and services and business relationships, including through human rights due diligence, human rights policies and providing remediation; eliminate discrimination in the workplace; provide an affirmative and positive environment in the workplace; prevent human rights abuses against LGBTI+ persons in the marketplace, including LGBTI+ suppliers, distributors or customers; and act in the public sphere using their leverage to contribute to stopping human rights abuses in the countries in which they operate. The LGBTIQ+ Standards Gap Analysis Tool helps businesses to self-assess their progress in implementing the Standards.⁶⁵

34. To address shortcomings, avoid “rainbow washing”⁶⁶ and fully respect the rights of LGBTI+ persons across their activities, businesses should adopt or update human rights and anti-discrimination policies; conduct a comprehensive process of gender-responsive human rights due diligence; and provide for remediation if they have caused or contributed to adverse impacts (see section C below on access to remedy). Given the complexity for businesses to operate in jurisdictions that discriminate against LGBTI+ persons, while still respecting their rights, specific actions should be taken.

⁶³ See www.sumarse.org.pa/wp-content/uploads/2023/Recursos/Diagn%C3%B3stico%20de%20la%20situaci%C3%B3n%20actual%20sobre%20pol%C3%ADticas%20de%20inclusi%C3%B3n%20y%20no%20discriminaci%C3%B3n.pdf.

⁶⁴ See www.unfe.org/sites/default/files/documents/UN-Standards-of-Conduct_0.pdf.

⁶⁵ See www.global-lgbti.org/gapanalysistool.

⁶⁶ Also known as “pink washing”, refers to the instrumentalization of LGBTI+ issues as a marketing opportunity without meaningfully and comprehensively respecting the rights of LGBTI+ persons.

1. Public commitment from business enterprises

35. Public commitment to respect the rights of LGBTI+ persons at the highest level is critical to ensure appropriate actions are taken at the operational level. While more businesses are adopting human rights policies, few specifically mention LGBTI+ persons. Businesses have increasingly developed diversity, equity and inclusion policies, but have largely failed to mention human rights and the Guiding Principles. For example, the Orange Group adopted a global framework for the protection of LGBTI+ employees, which was then used locally by Orange Poland to sign a declaration of support for the LGBTQ+ community in the country and take concrete actions to respect the rights of LGBTI+ persons and act publicly in their promotion.

2. Gender-responsive human rights due diligence through a LGBTI+ lens

36. The Working Group received little information regarding comprehensive processes of human rights due diligence incorporating a focus on the impacts suffered by LGBTI+ persons in their activities. The process for carrying out human rights due diligence entails an ongoing risk management process to identify, prevent, mitigate and account for how a company addresses its adverse human rights impacts.

37. To ensure adequate inclusion of an LGBTI+ focus, the human rights due diligence process should be gender-responsive, with specific attention to the following steps, among others:

(a) Undertaking meaningful consultation

38. Engaging with LGBTI+ persons potentially affected by business activities and with organizations that defend their rights is critical, including when consulting specific groups, such as Indigenous communities. These consultations require involving a wide range of diverse stakeholders to identify priority issues and differentiated impacts related to LGBTI+ persons. However, LGBTI+ persons and workers may feel intimidated or be put at risk through such consultations. Therefore, it is recommended to get support from organizations that defend the rights of LGBTI+ persons to identify the best way to gather and safeguard information – such as through anonymized surveys, questionnaires, virtual or in-person meetings – and who to engage with, including at the community level where the business operates. Businesses could also appoint third-party facilitators to moderate spaces with LGBTI+ persons.⁶⁷ For example, when Procter & Gamble ran an advertising campaign in India featuring a transgender Indian mother and her daughter, it engaged closely with transgender persons to ensure that the tone was authentic and consistent with the way the community wants to be portrayed.

(b) Understanding the context

39. It is important to conduct widespread assessments of the impact of business activities on LGBTI+ persons at regular intervals, including prior to entering a new market and on an ongoing basis. Such assessments should identify laws and regulations that may inhibit the ability of the business to respect the rights of LGBTI+ persons, as well as the trends of societal discrimination due to, for example, public opinion, cultural norms and religion, to take into account the lived realities of LGBTI+ persons on the ground.⁶⁸ A heightened level of human rights due diligence is warranted when regressive legislation is compounded by high rates of violence, hostility and exclusion, as may be reflected in local surveys or data collection

⁶⁷ See <https://shiftproject.org/resource/lgbt-prioritize/>.

⁶⁸ Ibid.

initiatives. Human Rights Watch country profiles,⁶⁹ the International Lesbian and Gay Association World Database⁷⁰ and Stonewall Global Workplace Briefings⁷¹ help to understand the context in some countries. Collaboration among businesses or with business associations may be critical to undertake jointly those assessments.

(c) Collecting and managing data in a safe and confidential way

40. Data are key to understand the differentiated impacts felt by different groups in the LGBTI+ community and from an intersectional perspective, and to map stakeholders. However, poor management of data can lead to surveillance, harassment and persecution by governments and result in more stigmatization and discrimination.⁷² Businesses should therefore collect and manage data with a human rights-based approach, in line with the principles of self-identification, participation, transparency, privacy, confidentiality and accountability.⁷³ Businesses should have clear non-discrimination and confidentiality policies and mechanisms that indicate what protections are in place and how data collected will be used and kept confidential.⁷⁴ The data collection process should be done in a way that allows business to understand the specific needs and lived experiences of the wide diversity of groups, but only necessary information should be requested. Where there is a risk that data gathered may be requested by governments, businesses should exceptionally consider not collecting such information. IBM uses a voluntary self-identification practice for employees in more than 40 countries to provide their own self-identified sexual orientation and gender identity on their human resources record.⁷⁵ A similar practice has been adopted by Freshfields Bruckhaus Deringer, for more diverse representation within the firm and also to address the LGBTQ+ pay gap.⁷⁶

(d) Consulting trade unions

41. Some trade unions have done significant work to support the rights of LGBTI+ workers.⁷⁷ For example, the International Trade Union Confederation endorsed the Global Unions Solidarity Charter for LGBTI Workers,⁷⁸ which enshrines a worldwide commitment to ensure that LGBTI+ workers enjoy their fundamental human rights in society and in the world of work. However, the Working Group observed that LGBTI+ persons are often underrepresented in trade unions. Businesses should engage with trade unions⁷⁹ and implement specific agreements to respect the rights and needs of LGBTI+ workers, including through collective bargaining and in line

⁶⁹ See www.hrw.org/video-photos/interactive/2021/04/23/country-profiles-sexual-orientation-and-gender-identity.

⁷⁰ See <https://database.ilga.org/>.

⁷¹ See www.stonewall.org.uk/resources-creating-lgbtq-inclusive-workplace/resources-global-lgbtq-workplace-inclusion/global-workplace-briefings.

⁷² See A/HRC/41/45.

⁷³ See www.ohchr.org/sites/default/files/2022-01/Report_on_data_summary.pdf and www.ohchr.org/sites/default/files/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf.

⁷⁴ See www.americanprogress.org/article/how-to-collect-data-about-lgbt-communities/.

⁷⁵ See www.umass.edu/employmentequity/collecting-lgbt-data-diversity-initiating-self-id-ibm.

⁷⁶ See www.freshfields.de/unsere-kanzlei/responsible-business/diversity-and-inclusion/our-five-year-diversity-plan/ and www.freshfields.com/495ed6/globalassets/about-us/rb/report-pdfs/gender-pay-gap-report-2024.pdf.

⁷⁷ See www.ilo.org/meetings-and-events/launch-ilo-document-inclusion-lesbian-gay-bisexual-transgender-intersex-and.

⁷⁸ See www.ituc-csi.org/IMG/pdf/global_unions_lgbti_charter_en.pdf.

⁷⁹ See www.ilo.org/publications/inclusion-lesbian-gay-bisexual-transgender-intersex-and-queer-lgbtq.

with guidance developed by trade unions.⁸⁰ For example, IKEA reached an inclusive collective bargaining agreement with the Netherlands Trade Union Confederation to reduce differences between employees within the company, including providing paid leave for transgender persons undergoing gender-related surgery, in line with the Confederation's rainbow checklist for collective labour agreements.⁸¹

(e) Analysing how salient human rights impacts are disproportionately suffered by groups facing discrimination and inequality

42. The Working Group was informed through its consultations that LGBTI+ issues may be disregarded in human rights due diligence processes because they are not prioritized as severe impacts. The Guiding Principles make clear that a business should not focus exclusively on the most salient human rights issues and ignore others that might arise; businesses should ensure adequate attention for LGBTI+ issues. A vulnerability and systemic inequality lens should be brought to each of the human rights issues prioritized, where the specific and different impacts on LGBTI+ persons are analysed.⁸²

(f) Seeking collaboration and partnership

43. Businesses should seek to collaborate with other businesses and business associations, to exchange practices and exercise joint leverage, including on governments and suppliers. In particular, small- and medium-sized enterprises should seek support from clients and industry associations to learn about LGBTI+-related international standards and practical tools to comply with supplier diversity policies and contractual clauses on respecting the rights of LGBTI+ persons. Businesses should also seek help from experts in the field, such as organizations that defend the rights of LGBTI+ persons and academics.⁸³ Such partnerships and collaborations are also critical to address any retaliation or backlash businesses may face for supporting the rights of LGBTI+ persons. For example, Grindr has partnered with Article 19 to better protect LGBTI+ users in the Middle East, the Gulf and North Africa against police harassment and imprisonment.⁸⁴

(g) Exercising leverage over investees

44. Financial entities should assess where the rights of LGBTI+ persons are most at risk in their portfolios, and exercise leverage over investees, notably ensuring that the topic is on the agenda of the board and voting against remuneration and/or nomination of board members if the topic is not sufficiently addressed.⁸⁵ For example, through a shareholder proposal, Trillium Asset Management managed to get an invested company to amend its equal employment opportunity policy to protect all employees, including LGTBI+ employees.⁸⁶

⁸⁰ See www.iuf.org/wp-content/uploads/2021/09/2021-Bargaining-demands-for-LGBTI-workers-rights-and-Glossary.pdf and <https://canadianlabour.ca/lgbtq2si-collective-bargaining-guide/>.

⁸¹ See www.fnv.nl/getmedia/72cd5ccf-808a-4567-9aed-1bc610b00195/230182-fnv-rb-checklist-web-corENG.pdf.

⁸² See www.biicl.org/documents/151_hrdd_and_systemic_inequalities_event_report_final_v3.pdf and <https://shiftproject.org/resource/lgbt-prioritize/>.

⁸³ See www.ohchr.org/sites/default/files/2022-05/Minding-Corporate-Gap.pdf.

⁸⁴ See www.article19.org/resources/article-19-partners-grindr-improve-protection-lgbt-users/.

⁸⁵ See <https://static1.squarespace.com/static/5bba53a8ab1a62771504d1dd/t/65c65f7345660d2da9686d12/170>.

⁸⁶ See www.ohchr.org/sites/default/files/documents/issues/business/cfis/lgbti/submissions/subm-wgs-resecting-inv-trillium-asset-management.pdf.

Illustrative actions that could be envisaged as a result of a human rights due diligence exercise

1. Engage with the supply chain to ensure that the rights of LGBTI+ persons are respected through their business relationships, including enhancing the understanding of suppliers regarding the rights of LGBTI+ persons, adopting a supplier diversity policy, and incorporating the rights of LGBTI+ persons into supplier contracts.
2. Ensure that services and products are accessible to diverse communities, including transgender and non-binary persons.
3. Ensure equitable access to health care, such as providing health insurance that includes comprehensive care for LGBTI+-related needs, gender-affirming care and access to fertility and family-building care for same-sex couples, and audit the availability of gender-affirming care within provided networks.
4. Enable flexible working arrangements where necessary to facilitate alternative arrangements for employees at heightened risk.
5. Promote the hiring of LGBTI+ persons, including by establishing employment quotas, leaving it up to employees to disclose their sexual identities, orientation and sex characteristics.
6. Provide training for employees, board members and suppliers on LGBTI+ issues and the importance of diversity and inclusion.
7. Create an LGBTI+ employee resource group and ensure it closely works with the human rights staff and is supported by senior management. For multinational enterprises, when possible, such groups should be created at the local level as well.

3. Respecting LGBTI+ rights in operational contexts that discriminate against LGBTI+ persons

45. Discriminatory laws, including criminalization of same-sex consensual acts, and social environments of discrimination and violence against LGBTI+ persons present challenges for businesses, including being associated with, causing or contributing to human rights abuses against LGBTI+ persons. Businesses have a responsibility to respect human rights, independent of States' abilities and willingness to fulfil their own human rights obligations. Guiding Principle 23 and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct make clear that where national laws conflict with international human rights, businesses should seek ways to honour the principles of internationally recognized human rights. Businesses may consider some of the following actions:

(a) **Act publicly and engage with national Governments** to influence local regulations negatively affecting LGBTI+ persons, to strengthen legal protections and contribute to a more accepting environment for the LGBTI+ community. For more leverage, this can be done together with other businesses and business associations, as well as with civil society organizations.⁸⁷ Actions that can be taken include silent diplomacy and public statements.⁸⁸ Businesses could also exhaust local judicial

⁸⁷ See workplacepride.org/download/a-call-to-action-lgbt-international-corporate-advocacy-guide/?wpdmdl=10719&refresh=6673e1c18298b1718870465.

⁸⁸ See https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1205&context=sustainable_investment_staffpubs.

remedies to challenge local laws that conflict with human rights, following formal procedures for requests to comply with local law.⁸⁹ These activities to influence Governments should be conducted in a responsible manner.⁹⁰ For example, the LGBT Chamber of Commerce in India submitted an amicus brief to the Supreme Court of India on the depenalization of all consensual sexual relationships. Through the Open for Business coalition, businesses have prepared briefs to legislators in relation to bills on the criminalization of LGBTI+ persons in various countries.⁹¹ In 2023, Hamburger Mary's, a restaurant that regularly hosts drag shows, filed a lawsuit against the State of Florida less than a week after a law was signed banning drag performances in the State.⁹²

(b) **Enforce policies protecting LGBTI+ persons regardless of local context** and create safe space in jurisdictions where the rights of LGBTI+ persons are not otherwise respected or protected.⁹³ The protection of LGBTI+ persons should apply not only to employees but also to the community where the business operates. For instance, the then chief executive officer of MTN, the largest cell phone operator in Africa, set out a clear position when he told the media that MTN would respect the laws of the States in which it operates, but would not discriminate against employees on the basis of sexual orientation.⁹⁴

(c) **Address the potential conflict contractually**, such as by including language in a host government agreement that requires compliance with specific human rights standards or by specifying to suppliers that they should respect the rights of LGBTI+ persons.⁹⁵

(d) **Challenge, circumvent and limit compliance with local requirements**, either through narrow interpretation of the relevant law or by limiting compliance. For example, several global Internet service providers have implemented a strict policy for handling requests for information from authorities.⁹⁶ The Global Network Initiative recommends obtaining clear written communications from the Government that explain the legal basis for government restrictions to freedom of expression, including the name of the requesting government entity and the name, title and signature of the authorized official.

(e) **Do not support lawmakers that promote discriminatory bills or policies or influential third parties that indirectly support such developments.** Owing to the human rights due diligence process that duly covers corporate political engagement,⁹⁷ businesses should be able to identify the risk and ensure they do not support lawmakers or third parties that support policies or bills that discriminate against LGBTI+ persons. Fortune 500 businesses donated almost \$3 million from 2019 to 2022 to politicians in the United States who supported anti-LGBTI+ laws.⁹⁸

⁸⁹ See www.bsr.org/reports/BSR-Navigating-the-Rollbacks-in-Protection-of-Reproductive-and-LGBTQI%2B-Rights-in-the-US-Financial-Institutions.pdf.

⁹⁰ See A/77/201.

⁹¹ See <https://open-for-business.org/channels-of-influence>.

⁹² See www.npr.org/2023/06/27/1184561373/hamburger-marys-orlando-anti-drag-law-blocked-florida.

⁹³ Sylvia Ann Hewlett and Kenji Yoshino, *Out in the World: Securing LGBT Rights in the Global Marketplace* (New York: Center for Talent Innovation, 2016).

⁹⁴ See www.business-humanrights.org/fr/derni%C3%A8res-actualit%C3%A9s/sa-companies-ill-prepared-for-african-homophobia-so-africa/.

⁹⁵ See <https://unglobalcompact.org/library/1001>.

⁹⁶ See www.biicl.org/documents/17_1930_biicl_bn_report_web.pdf.

⁹⁷ See the commentary to Guiding Principle 19 and www.ohchr.org/sites/default/files/documents/issues/business/bhr-in-challenging-contexts.pdf.

⁹⁸ See www.dataforprogress.org/accountable-allies-pride.

(f) **Responsibly disengage** where the use of leverage fails and if other options would not be enough to prevent and mitigate the human rights harms connected to operating in certain contexts that discriminate against LGBTI+ persons. This decision involves assessing the possible negative consequences of leaving the States for rights holders who may be left behind.⁹⁹ For example, after Uganda enacted the Anti-Homosexuality Act, the World Bank assessed how its portfolio could be implemented in alignment with its social and environmental standards under these new circumstances, and decided to deny any new public financing to Uganda until additional measures were taken to ensure that projects were implemented in a manner that respected those standards.¹⁰⁰

(g) **Ensure that professional development of employees can occur without requiring them to be stationed in high-risk areas for LGBTI+ persons.** For example, Cisco has amended its company travel policy to ensure the safety of LGBT employees while on business travel. The revised policy permits employees to refuse travel to a specific country if they feel they will be endangered.

C. Access to remedy

46. In the following section, the Working Group examines positive practices of State-based judicial and non-judicial mechanisms, as well as operational-level mechanisms. It also addresses the challenges LGBTI+ persons face in accessing those mechanisms.

1. State-based judicial mechanisms

47. Effective judicial mechanisms are at the core of ensuring access to remedy. States should ensure that barriers are removed and that remedies are effective and gender-transformative.¹⁰¹

48. In alignment with the Guiding Principles, courts have occasionally propelled the rights of LGBTI+ persons forward. The Hong Kong Court of Final Appeal recognized a same-sex couple's marriage abroad for the purposes of civil servant spousal benefits, such as medical and dental benefits, while the Supreme Court of India affirmed self-identification for transgender persons.¹⁰² That decision set an important precedent and even directed the State to take affirmative action to give transgender communities "due representation in public services". At the local level, the Tokyo High Court held that the local government had violated rights to free association, equality and education when it prohibited an LGBT youth group from staying at a government-owned hostel.¹⁰³ The Tokyo High Court also ruled that a golf course had impermissibly discriminated against a trans woman by rejecting her membership application.

49. In addition to the costs and operating times of judicial mechanisms, many of these spaces are not gender-sensitive. This discourages LGBTI+ persons, especially transgender persons, from presenting themselves before the justice system. In

⁹⁹ See the commentary to Guiding Principle 19 and www.ohchr.org/sites/default/files/documents/issues/business/bhr-in-challenging-contexts.pdf.

¹⁰⁰ See www.worldbank.org/en/news/statement/2023/08/08/world-bank-group-statement-on-uganda#:~:text=%E2%80%9CUganda's%20Anti%2DHomosexuality%20Act%20fundamentally,rate%2C%20gender%2C%20or%20sexuality.

¹⁰¹ See A/HRC/41/43.

¹⁰² See <https://translaw.clpr.org.in/wp-content/uploads/2018/09/Nalsa.pdf>.

¹⁰³ See www.icj.org/sogicasebook/in-re-futyu-hostel-tokyo-high-court-civil-4th-division-japan-16-september-1997/.

accordance with Law No. 27.299, the Supreme Court of Argentina provided training on gender and sexual orientation to 95.5 per cent of its personnel.¹⁰⁴

50. Due to the additional barriers LGBTI+ persons face, only a few cases are brought by LGBTI+ victims to court, and the regressions in court systems could exacerbate the situation. Notably, in Uganda, the Constitutional Court recently upheld the discriminatory Anti-Homosexuality Act.¹⁰⁵ While the Court decided to nullify sections criminalizing the renting of premises to LGBTI+ persons and mandating the reporting of alleged homosexual acts, it upheld penalties of up to 20 years imprisonment for the “promotion of homosexuality”, which could apply to anyone advocating the rights of LGBTI+ persons.¹⁰⁶ The rulings of the Supreme Court of the United States allowing businesses to refuse services to same-sex couples¹⁰⁷ likewise challenge the progress made in marriage equality.

51. There have been a small number of court cases on the medical treatments of intersex persons.¹⁰⁸ However, concerns have been raised about how court processes may not always be well-suited to effectively oversee medical interventions involving intersex persons due to the complexity and sensitivity of these cases. This not only highlights the distinct situations faced by intersex persons, but also the importance of courts having access to specialized knowledge necessary to fully understand the medical, psychological and social dimensions of intersex issues. One proposed reform, for example, aims to protect the interests of intersex children by mandating the appointment of an independent children’s lawyer, who can evaluate whether a proposed medical intervention for an intersex child is medically necessary.¹⁰⁹

2. State-based non-judicial mechanisms

(a) Grievance mechanisms within government ministries

52. Some States have established their own grievance mechanisms for LGBTI+ persons within specific ministries. In Thailand, instances of gender-based discrimination are handled by the Committee on Consideration of Unfair Gender Discrimination, attached to the Ministry of Social Development and Human Security. While this Committee has received praise for addressing numerous cases from the LGBTI+ community, very few cases involve complaints against employers for sexual harassment, abuse or workplace discrimination.¹¹⁰ In Mexico, the Office for the Defence of Workers provides a range of services, including advisory services, support in conciliation processes, and filing of lawsuits before labour courts.¹¹¹ In Peru, the National Commission against Discrimination, attached to the Ministry of Justice and the Ombudsperson’s Office, is a multisectoral body responsible for monitoring, inspection, issuing opinions and providing technical advice to the Government on policies and programmes regarding equality and non-discrimination. In a recent case regarding the bathroom signs at the airport in Lima, which indicated that all persons with a female identity could use them, the Commission ruled that the measure adopted

¹⁰⁴ See www.csjn.gov.ar/om/verNoticia?idNoticia=7797.

¹⁰⁵ See www.nytimes.com/2024/04/03/world/africa/uganda-anti-gay-law.html.

¹⁰⁶ See www.hrw.org/news/2024/04/04/uganda-court-upholds-anti-homosexuality-act.

¹⁰⁷ See, for example, www.supremecourt.gov/opinions/22pdf/21-476_c185.pdf.

¹⁰⁸ See, for example, [https://database.ilga.org/api/downloader/download/1/BE%20-%20JUD%20-%20LA%20S.A.%20Ethias%20Assurances%20v%20Huderf%20\(2023\)%20-%20OR%20\(fr\).pdf](https://database.ilga.org/api/downloader/download/1/BE%20-%20JUD%20-%20LA%20S.A.%20Ethias%20Assurances%20v%20Huderf%20(2023)%20-%20OR%20(fr).pdf).

¹⁰⁹ See <https://humanrights.gov.au/intersex-report-2021>.

¹¹⁰ See <https://winrock.org/wp-content/uploads/2020/05/Thailand-CTIP-Assessment-of-Complaint-Mechanisms.pdf>.

¹¹¹ See www.ohchr.org/sites/default/files/documents/issues/business/cfis/lgbti/submissions/subm-wgs-resecting-sta-mexico.docx.

by the airport to guarantee equal treatment of trans persons had constitutional and international normative support, citing the Guiding Principles.¹¹²

(b) Equality bodies

53. Certain States in the European Union have established a single equality body competent to address all grounds of discrimination. Although it has yet to do so in support of the LGBTI+ community, the Commission for Protection against Discrimination of Bulgaria has powers to initiate proceedings *ex officio*.¹¹³ Some equality bodies also emphasize addressing multiple forms of discrimination, as in the case of the Irish Human Rights and Equality Commission, which compiles detailed statistics of cases involving more than one ground of discrimination, and the National Council for Combating Discrimination of Romania, which considers it an aggravating circumstance if discrimination occurs on multiple grounds.¹¹⁴

54. Some equality bodies assist employers and service providers through training, guidance materials and practical support, such as the Gender Equality and Equal Treatment Commissioner in Estonia.¹¹⁵ In France, the High Authority for the Fight Against Discrimination and for Equality has taken a proactive approach by distributing the French diversity charter to hundreds of French companies, raising awareness and encouraging stakeholders to review their diversity and inclusion practices.¹¹⁶

(c) National human rights institutions

55. National human rights institutions could provide foundational, direct and indirect contributions towards providing remedy to LGBTI+ persons.¹¹⁷ Foundational contributions of such institutions include conducting evidence-based research to make informed recommendations to States for the implementation of business and human rights-related international standards tailored to local contexts. For instance, the Australian Human Rights Commission conducted a national inquiry into same-sex entitlements to identify federal laws that discriminate against same-sex couples in financial and work-related benefits, resulting in recommendations adopted by the Government.¹¹⁸ In Argentina, the national human rights institution embedded a focus on the situation of LGBTI+ persons in the business dimension in the national baseline assessment it developed for the national action plan on business and human rights.¹¹⁹

56. National human rights institutions also play an important role in issuing reports on specific business and human rights issues, guiding States on applicable legal standards. For instance, the New Zealand Human Rights Commission collaborated with government agencies to produce resources such as the Department of Labour's policy on transgender persons at work, bolstering awareness and enforcement of rights.

57. Furthermore, national human rights institutions can facilitate access to remedy by raising awareness of human rights and remedy mechanisms. The National Human

¹¹² See www.scribd.com/document/676438527/Informe-004-2023-CONACOD.

¹¹³ See https://fra.europa.eu/sites/default/files/fra_uploads/314-fra-hdgs-nr_bg.pdf.

¹¹⁴ See https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=2507.

¹¹⁵ See <https://equineteurope.org/author/estoniageetc/>.

¹¹⁶ See https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=2507.

¹¹⁷ See A/HRC/47/39/Add.3.

¹¹⁸ See www.nhrnepal.org/uploads/law/APF_LGBTI_Manual_for_NHRIs_SOGI_and_Sex_Characteristics_Manual_Final.pdf.

¹¹⁹ See www.dpn.gob.ar/documentos/Estudio_Tecnico_LNB.pdf and www.kas.de/documents/271408/16552318/POLITICAS+PUBLICAS+LATINOAMERICA+MARZO+7+DE+2023+-+DIGITAL_compressed.pdf/93c2a58c-d89e-e9cc-877f-5bc77b656764?version=1.0&t=1678484300129.

Rights Commission of Bangladesh produced a manual to inform and assist LGBTI+ persons about their rights, including information on discrimination in housing and employment.¹²⁰

58. Direct contributions of national human rights institutions to providing remedy to LGBTI+ persons include accepting complaints, investigating abuses, conducting public inquiries, mediating disputes and making orders regarding compensation. Indirect contributions include bolstering the capacity of stakeholders, providing legal assistance, intervening in remediation processes, supporting LGBTI+ rights defenders and monitoring the effectiveness of corporate grievance mechanisms.

(d) National contact points for responsible business conduct

59. The national contact points under the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct could be a valuable mechanism for LGBTI+ persons to lodge grievances related to business activities, but to date, no cases addressing LGBTI+ issues have been handled by national contact points. Stakeholders shared that more awareness needs to be raised with respect to this mechanism, together with the systematic adoption of a gender lens by the mechanism in handling cases.

(e) Alternative grievance mechanisms

60. Alternative mechanisms, such as specialized tribunals or independent panels, could offer more suitable oversight of medical interventions for intersex persons. The Australian Human Rights Commission recommends independent panels to oversee decisions about medical interventions for persons under 18.¹²¹

61. In Argentina, consumers and users can file administrative claims for abusive practices by companies that violate their right to decent and equitable treatment.

3. Challenges in accessing State-based judicial and non-judicial mechanisms

62. In line with the Guiding Principles, States should address the additional and specific barriers faced by LGBTI+ persons in accessing effective remedies for business-related human rights abuses.

63. Lack of trust in State-based grievance mechanisms is a significant issue for LGBTI+ persons.¹²² In States where same-sex sexual acts are criminalized, fear of retaliation prevents victims from reporting rights violations, as “coming out” in such environments can be dangerous. LGBTI+ persons often do not trust courts and national human rights institutions to safeguard their identities, deterring them from seeking justice. In the Russian Federation, a transgender person faced public exposure of their personal data during legal proceedings after the press office of Saint Petersburg City Court published the person’s full pre-transition and post-transition names in its newsletter, violating their right to privacy.¹²³ To address these challenges, States should ensure that grievance mechanisms are accessible and legitimate for LGBTI+ persons. This entails protecting the privacy of complainants, providing clear

¹²⁰ See www.nhrnepal.org/uploads/law/APF_LGBTI_Manual_for_NHRIs_SOGI_and_Sex_Characteristics_Manual_Final.pdf.

¹²¹ See <https://humanrights.gov.au/intersex-report-2021>.

¹²² See <https://documents1.worldbank.org/curated/en/099010012162221165/pdf/P175715083a7e40630af970cae452bf723c.pdf>.

¹²³ See https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=etHc8a2HDhWgFttbH51v96K4K5k6cNSquvE3wFEzedZ1uS/G7z5v0O4bWunq1ewPPM7x9TdToRlxKTfG8ucMHA==.

explanations of confidentiality laws, and offering options for data disclosure. Potential risks should be communicated transparently.

64. Consultations conducted by the Working Group reveal that law enforcement authorities and judiciary officials sometimes dismiss the complaints of LGBTI+ persons and do not take them seriously. In addition, officials often lack capacity to handle cases involving LGBTI+ persons appropriately and, in certain cases, they might exert discrimination or violence against plaintiffs.¹²⁴ In fact, there have been instances where LGBTI+ persons who reported incidents to the police ended up being arrested themselves.¹²⁵ To address this problem, some States have created specialized units within ministries dedicated to addressing cases of violence and discrimination against LGBTI+ persons.

65. Consultations conducted by the Working Group also reveal that even in instances where there are laws protecting against discrimination, obtaining an effective remedy through State-based judicial and non-judicial mechanisms remains difficult. Courts and national human rights institutions often place the burden of proof entirely on the claimant, demanding concrete evidence of discrimination. Compounding this challenge is the nature of discrimination against LGBTI+ persons, which frequently occurs without witnesses or with witnesses who tolerate such discriminatory practices. Addressing the inherent disadvantage faced by claimants, who often lack the resources and information available to well-resourced corporate defendants, requires changes in the system. One effective approach involves shifting the burden of proof after an initial case has been established, placing the burden on the defendant business or State to substantiate why it should not be held legally liable based on the available facts and evidence.¹²⁶ A positive example is the *Olivera Fuentes v. Peru* case, in which the Inter-American Court of Human Rights acknowledged that the American Convention on Human Rights requires a reversal of the burden of proof on the concerned company to ensure the effectiveness of the principle of equality and non-discrimination.

66. LGBTI+ persons also report facing challenges in accessing legal representation. Discrimination, stigma and lack of awareness among lawyers often deter LGBTI+ persons from seeking legal assistance. The lack of adequate protections for the rights of LGBTI+ persons in many legal frameworks further complicate their ability to find a lawyer. States can address this issue by providing training to legal professionals on the rights of LGBTI+ persons.

4. Non-State-based mechanisms

(a) Operational-level grievance mechanisms

67. Operational-level grievance mechanisms must address the specific challenges faced by LGBTI+ persons and must comply with the effectiveness criteria outlined in Guiding Principle 31. The consultations showed that LGBTI+ persons often encounter barriers when using operational-level grievance mechanisms, such as fear of “outing” themselves. There is also a pervasive lack of trust among LGBTI+ employees in such mechanisms, exacerbated by the perception that complaints are not taken seriously and may even lead to further marginalization.

68. In consultations conducted by the Working Group, business enterprises also reported struggling to cultivate trust in their grievance mechanisms among LGBTI+

¹²⁴ See www.ohchr.org/sites/default/files/Documents/Publications/Born_Free_and_Equal_WEB.pdf.

¹²⁵ See, for example, <https://crd.org/2022/06/10/uganda-lgbti-rights-defenders-arrested-after-turning-to-the-police-for-help>.

¹²⁶ See www.ohchr.org/sites/default/files/documents/issues/business/access-to-remedy-bhr-interpretive-guide-advance-version.pdf.

employees. However, some proactive measures have been observed to address this issue. Some businesses have established anonymous hotlines to encourage LGBTI+ employees to voice their concerns without fear of reprisal. Thus, the absence of complaints does not necessarily indicate the absence of issues but may instead reflect a reluctance or discomfort with the grievance mechanisms. Some businesses address this by partnering with third-party organizations that provide secure reporting channels, impartial investigations and swift resolutions, effectively not involving the employer in the investigation and intake of grievances. Others conduct internal campaigns to educate employees about non-retaliation policies. It is important to note that workplace transfers could be considered as superficial solutions, as they fail to address the root cause of discrimination and conflict and may perpetuate a culture of silence.

69. A grievance mechanism is effective only when those it is designed for are aware of it, have confidence in it, and can readily access it. In line with the Guiding Principles, businesses should have various stakeholders, including LGBTI+ employees, participate in the design of the operational-level grievance mechanisms. It is important to note, however, that the participation of one person with a certain identity within the LGBTI+ community may not represent the voice of all.

70. Business enterprises should regularly review the effectiveness of their grievance mechanisms, soliciting feedback from stakeholders, including LGBTI+ employees, to identify areas of improvement and implement necessary changes. Some businesses conduct regular surveys to help gauge the level of trust in these mechanisms, gain insights into the concerns of LGBTI+ persons, and assess the business' familiarity with and responsiveness to those concerns.¹²⁷ Finally, operational-level grievance mechanisms should be accessible not only to employees but also to all affected stakeholders, in accordance with the Guiding Principles. This ensures that everyone affected by a business' activities can seek remedy for their grievances.

71. In the technology sector, digital platforms have served as hubs for abusive content.¹²⁸ Worse, these platforms rely heavily on automated content moderation systems that overlook both human rights considerations and linguistic diversity. The algorithms used by social media platforms fail to identify hate speech terms in different dialects, rendering the company-based grievance mechanisms ineffective in addressing these issues. To ensure that grievance mechanisms effectively address the barriers to remedy that users routinely face, consulting LGBTI+ persons is crucial.¹²⁹

(b) International courts

72. In the field of sports, international courts have grappled with complexities in protecting the rights of LGBTI+ persons. The consideration by the European Court of Human Rights of the case of Caster Semenya, challenging discriminatory regulations in athletics, highlights the ongoing struggle of LGBTI+ persons for equitable treatment. While mechanisms within sports, such as the Court of Arbitration for Sport, have decided in favour of World Athletics, arguing that the extent to which the rules might be discriminatory is justified, the European Court ruled in favour of Caster Semenya in a chamber judgment, arguing that Switzerland had breached the Convention for the Protection of Human Rights and Fundamental Freedoms

¹²⁷ See, for example, www.ibm.com/downloads/cas/WVRO4E5Z.

¹²⁸ See, for example, www.hrw.org/news/2023/02/21/middle-east-north-africa-digital-targeting-lgbt-people.

¹²⁹ See www.ohchr.org/sites/default/files/Documents/Issues/Business/B-Tech/access-to-remedy-company-based-grievance-mechanisms.pdf and www.ohchr.org/sites/default/files/documents/issues/business/b-tech/btech-stakeholder-engagement-paper.pdf.

(European Convention on Human Rights) by not ensuring sufficient safeguards for Caster Semenya to challenge these rules. The case is currently pending before the Grand Chamber.¹³⁰

73. The Working Group is concerned about the trend to implement restrictive legislative and policy measures by States and sporting bodies, often categorically excluding trans and intersex women and girls from women's sports. The Working Group urges international courts and elite sporting bodies to consider the broader implications of their decisions, not only for LGBTI+ athletes but also for all trans and intersex persons and the ideal of inclusive sport. Importantly, rules to ensure fairness in competition should not be based on assumptions about an individual's physical ability or performance related to their transgender status or sex variations.

III. Conclusions and recommendations

74. LGBTI+ persons continue to face alarmingly high rates of discrimination, harassment and violence in the context of business activities. While some States are increasingly taking action to protect persons against discrimination based on sexual orientation and gender identity, particularly in employment, such action is too fragmented to comprehensively address the situation. National action plans on business and human rights, mandatory human rights due diligence, policy guidance, and incentives for business, including when operating abroad, are critical means to embed LGBTI+ considerations in business activities. When acting as an economic actor, States have great means to harness the protection of LGBTI+ persons. In many States, legal restrictions affecting LGBTI+ persons (including the criminalization of same-sex activity and the failure to legally recognize gender identity), often reinforced by societal hostility towards the community, remain the largest obstacle for LGBTI+ persons to have their rights respected, including in the business dimension.

75. Business repeatedly raised concerns to the Working Group on how to operate in such jurisdictions and at the same time uphold their responsibility to respect the rights of LGBTI+ persons, notwithstanding increasing positive practices of businesses advocating to Governments to repeal or reform such laws, including with the support of civil society. However, to ensure that the human rights of LGBTI+ persons are respected, including in those discriminatory settings, business should use gender-responsive human rights due diligence, engaging closely with LGBTI+ persons and organizations defending their rights, trade unions and other business peers and associations. Actions need to respond to different needs and challenges faced by groups within the LGBTI+ community, with an intersectional approach. LGBTI+ persons continue to feel unprotected and disrespected, as they face significant barriers to accessing remedy, including fear of retaliation. Strengthening grievance mechanisms is crucial for the protection and promotion of the human rights of LGBTI+ persons, ultimately contributing to a more just and equitable society for all. Urgent and coordinated responses are required from both State and non-State actors, which must work collaboratively to address the pervasive and systemic issues faced by LGBTI+ persons.

76. The Working Group reiterates its previous recommendations stated in its gender guidance¹³¹ and offers the following recommendations, in addition to those mentioned earlier in the report.

¹³⁰ See www.echr.coe.int/w/judgment-concerning-switzerland.

¹³¹ See A/HRC/41/43.

77. The Working Group recommends that States:

- (a) **Recognize the intersectional nature of discrimination against LGBTI+ persons and examine ways in which LGBTI+ persons can participate in decision-making processes to address the root causes of discrimination;**
- (b) **Repeal laws criminalizing LGBTI+ persons and reform those indirectly doing so, in line with international human rights law;**
- (c) **Enact anti-discrimination laws explicitly covering sexual orientation, gender identity, gender expression and sex characteristics;**
- (d) **Provide guidance and incentives to businesses on upholding the rights of LGBTI+ persons across their activities, particularly when operating in discriminatory environments;**
- (e) **Lead by example through State-owned enterprises that develop anti-discrimination policies and mechanisms to address the impacts on LGBTI+ persons;**
- (f) **Launch awareness campaigns to combat stigma, discriminatory attitudes and harmful stereotypes, targeting officials and the general public;**
- (g) **Implement comprehensive data collection on violence and discrimination against LGBTI+ persons;**
- (h) **Monitor and evaluate programmes against LGBTI+ discrimination, with data disaggregated by relevant characteristics, in partnership with LGBTI+ organizations;**
- (i) **Formalize channels for addressing violence and discrimination concerns, either by assigning an existing State institution or creating a new one, such as an equality body, and ensure the participation of LGBTI+ persons in the design, implementation and monitoring of grievance mechanisms;**
- (j) **Ensure systematic investigation of human rights abuses against LGBTI+ persons in the context of business activities, prosecute perpetrators, and provide victims with effective remedies;**
- (k) **Ensure remedies are accessible and appropriate to rights holders by strengthening institutions and training officials in judicial and non-judicial mechanisms;**
- (l) **Foster partnerships with civil society and businesses to exchange best practices and resources in addressing discrimination and violence against LGBTI+ persons;**
- (m) **Incorporate a gender lens, including LGBTI+ issues, in their national action plans on business and human rights and all related laws and regulations;**
- (n) **Ensure policy coherence within domestic legal frameworks, both at the local and national levels.**

78. The Working Group recommends that businesses:

- (a) **Ensure that actions intended to promote the inclusion of LGBTI+ persons are in line with businesses' responsibility to respect human rights, and that such actions are extended to all LGBTI+ persons they may have adverse impacts on, including through their operations, products and services, and via their supply chains and business relationships;**
- (b) **Ensure the coherence of existing policies and processes so that they are applied consistently across all activities, wherever their operations may be;**

- (c) **Make a public commitment to respect the rights of LGBTI+ persons at the highest level;**
- (d) **Ensure that the board of directors has oversight and accountability for human rights risk management;**
- (e) **Ensure that the diversity, equity and inclusion team works closely with the human rights, procurement, legal affairs, compliance, government affairs and public policy, and social performance departments, and mainstream their actions across all relevant functions;**
- (f) **Adopt and update internal policies on human rights, with an explicit mention of businesses' responsibility to respect the human rights of LGBTI+ persons in their own activities and across the supply chain, and explicitly prohibit discrimination based on sexual orientation, gender identity, gender expression and sex characteristics. Update diversity, equity and inclusion policies in the light of human rights standards and the Guiding Principles. Adopt those policies at the highest level with adequate resources and implement them across the different relevant social performance functions;**
- (g) **Implement gender-responsive human rights due diligence, including an LGBTI+ lens, with a sound understanding of the context of the operations, services and business relationships and through meaningful engagement with LGBTI+ persons, organizations defending their rights and trade unions;**
- (h) **Seek collaboration and partnership, including with other businesses, business organisations, organizations working on LGBTI+ rights and other experts, on how to navigate discriminatory environments, understand the context and impact, and exert leverage;**
- (i) **Take differentiated and tailored actions recognizing the diversity of the LGBTI+ community and the intersecting discrimination LGBTI+ persons may face, in the context of businesses' human rights due diligence process;**
- (j) **Collect and manage data about LGBTI+ persons in a safe and confidential way, in line with existing guidance from the United Nations human rights mechanisms;**
- (k) **Use the Guiding Principles, in particular the human rights due diligence framework, to identify a suitable approach to uphold businesses' responsibility to respect human rights while navigating conflicting legal requirements when operating in contexts that discriminate against LGBTI+ persons;**
- (l) **Seek to resolve any adverse human rights impacts they may have caused or contributed to by actively engaging in remediation mechanisms, either alone or in cooperation with other legitimate processes. This includes establishing effective operational-level grievance mechanisms that are open to all affected stakeholders and that address the specific challenges faced by LGBTI+ persons. These mechanisms should comply with the effectiveness criteria outlined in Guiding Principle 31 and should be designed in collaboration with relevant stakeholders;**
- (m) **Support and invest in capacity-building programmes to ensure that their workers, officers and business relationships respect the human rights of LGBTI+ persons;**
- (n) **Support the work of LGBTI+ human rights defenders and demonstrate zero tolerance towards reprisals and attacks against these actors.**

79. **In addition, the Working Group recommends that:**

(a) **Business associations support members with analysis and joint policies, and act when business enterprises are retaliated against for acting in favour of the rights of LGBTI+ persons;**

(b) **Business associations support small- and medium-sized enterprises to understand LGBTI+ related international standards and practical tools to comply with supply diversity policy and contractual clauses regarding the human rights of LGBTI+ persons;**

(c) **Trade unions ensure that LGBTI+ workers are adequately represented and their rights and needs advocated.**
