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Information paper on protection against sexual orientation, gender identity and expression and sexual characteristics (SOGIESC) discrimination

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International Labour Standards Department

Information paper on protection against sexual orientation, gender identity and expression and sexual characteristics (SOGIESC) discrimination

Constance Thomas with Catherine Weber
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Executive summary

Over the last 20 years, in countries across the world, governments and courts have introduced non-discrimination protection in employment on one or more grounds of sexual orientation, gender identity, gender expression and sexual characteristics (SOGIESC), either through interpreting the ground of sex or gender to include these criteria of discrimination, or through the adoption of legislation containing specific SOGIESC grounds. The research undertaken for this paper reveals that protection against non-discrimination in employment on one or more SOGIESC grounds exists in: 18 countries in the Americas including North America, Latin America and the Caribbean, 17 countries in Asia and the Pacific, and Arab States, seven countries in Africa, and 42 countries in Europe, including 28 EU Member States. While this is a significant number of countries, it is far from universal coverage.

There are a number of legal, political, technical and social factors that appear to have influenced the expansion of protection. Among these factors is a growing knowledge base and a better understanding about lesbian, gay, bisexual, trans and intersex persons, and persons with other related characteristics (LGBTI+ persons) and the challenges they face. Research shows they continue to frequently experience forms of violence, exclusion, discrimination and harassment in society in general, and, in particular, throughout the employment cycle: from education, to access to employment, conditions of work and security of employment.

International law and its supervision, as well as regional instruments and their supervision and promotion, also play an important role in promoting greater protection against SOGIESC discrimination. The UN supervisory bodies of human rights Conventions have determined that discrimination against LGBTI+ persons violates the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC); and the Convention on the Rights of Persons with Disabilities (CRPD). Their supervisory comments on States' compliance with the Conventions are increasingly highlighting the importance of taking action to address and protect LGBTI+ persons against discrimination and abuse, which is a state obligation under the Conventions. The Inter-American Convention against All Forms of Discrimination and Intolerance, the Inter-American Court and the Organization of American States, prohibit and condemn discrimination on grounds of sexual orientation, sexual identity and sexual expression. The African Commission on Human and Peoples' Rights has affirmed the right to non-discrimination on grounds of sexual orientation and gender identity and has called for a climate of tolerance for sexual minorities at the national level. In the European Union, the Gender Recast Directive 2000/78/EC prohibits direct and indirect discrimination in employment on the ground of sexual orientation. The Court of Justice of the European Union has extended protection under the ground of sex discrimination to cover discrimination based on gender reassignment. The Council of Europe's European Convention for the Protection of Human Rights and Fundamental Freedoms has been interpreted by the European Court of Human Rights to provide protection to LGBTI+ persons, including against discrimination in employment.

The Committee of Experts on the Application of Conventions and Recommendations (CEACR) noted for many years information contained in governments' reports, and in observations by employers' and workers' organizations, concerning employment discrimination on SOGIESC grounds under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

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A. Introduction and terms of reference

1. This paper sets out and analyses the law and practice of ILO member States in relation to discrimination in employment and occupation on the basis of sexual orientation, gender identity and expression, and sexual characteristics (SOGIESC).
2. The primary focus of the paper is on the protection from discrimination in employment and occupation of lesbian, gay, bisexual, trans and intersex persons, and persons with other related characteristics (LGBTI+).¹ In accordance with the terms of reference, this paper provides an overview of relevant national laws and practices, international and regional human rights treaties and the supervisory observations of the treaty bodies, CEACR comments and General Surveys, and other UN and ILO action. It also sets out the state of criminalization of LGBTI+.
3. The review of the non-discrimination legislation covers the interpretation of the ground of sex, in general, and in relation to whether it encompasses protection of discrimination based on SOGIESC, particularly with regard to employment and occupation. It also reviews the specific grounds used to protect LGBTI+ persons from discrimination in employment and occupation. It considers some of the key elements of the legislation, such as the form and scope of the protection, exceptions, and relevant judicial decisions or guidance on the implementation of the legislation. A few remarks are made on the issue of law enforcement and access to justice issues.
4. It is noteworthy that there are a number of other significant legal protection issues which fall outside the terms of reference, and thus were not included systematically in the review. Some of these issues include: family leave laws for same-sex couples, marriage recognition for same-sex couples, adoption for married same-sex couples, the ability for transgender individuals to correct their name and gender marker on identity documents as well as discrimination in education, health insurance and other social security provisions, access to goods and services, credit and lending, and housing. Nevertheless, as some of these issues are related to, or impact, workplace discrimination, they are briefly mentioned in the national law review.
5. The table in Appendix II summarizing national laws is intended to be indicative rather than exhaustive, showing major relevant trends and issues. The information on protection in employment is based on primary research. The information on criminalization is based on credible secondary sources, and updated where appropriate. Information from the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) annual State-Sponsored Homophobia Report has been incorporated into relevant sections of this paper, including the review of national laws.² A glossary of relevant terminology is also set out in attachments.

¹ See the glossary in Appendix I. In this paper, the term LGBTI+ is used to refer to individuals' identities as part of these groups and SOGIESC is used to refer to the characteristics or grounds of discrimination and protection.

² The most recent ILGA report *State-sponsored homophobia – A world survey of sexual orientation laws: Criminalisation, protection and recognition*, is the 12th edition, issued in 2017. The 13th edition of the report will be published in March 2019. The purpose of the series is to produce a compilation of information on the world's laws that are relevant to SOGIESC. These publications detail a wide range of legal provisions, track progress in global and regional human rights settings, and offer insight

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6. Finally, this paper does not attempt to analyse the differing positions on the philosophical, political, social, religious and cultural dimensions of the protection of the LGBTI+ community within the human rights framework.³ Nor does it provide an analysis of the violations of human rights suffered by LGBTI+ persons or their exclusion from the labour market. Nevertheless, a brief contextual summary is provided to situate the issues under discussion.

B. Overview of discrimination faced by LGBTI+ persons

7. LGBTI+ persons experience violence, prejudice, harassment, bias and exclusion in various forms in all parts of the world. Global studies reveal a range of manifestations of direct and indirect discrimination in employment and occupation, such as bullying and harassment based on sex or gender-stereotypes, reduced job opportunities, reduced work-related benefits and dismissal.⁴ A recent European study indicated that violence and harassment against LGBTI workers is commonplace.⁵ Reactions by employers, co-workers and society at large to gender non-conformity are most often cited as being at the heart of the prejudice and harassment.⁶ In other words, because people often base their attitudes on males and females, biologically, aligning with socially constructed ideals of masculinity and femininity, heterosexuality is considered to be “normal”, and homosexuality is considered to be “abnormal”. It appears that when these reactions and attitudes, often called homophobic and transphobic, are coupled with a lack of legal protection against discrimination on SOGIESC grounds, LGBTI+ individuals are placed at risk of discrimination and violence.⁷ At the same time, in some countries, homosexuality and LGBTI+ individuals are perceived as having a mental illness, abnormality or impairment, despite the fact that the World Health Organization (WHO) has removed “homosexuality”, “sexual orientation” and “transgender”, from being mental disorders, in its International Classification of Diseases and Related Health Problems (ICD).⁸ In over 70 countries, LGBTI+ activities are

(and abundant sources) into the social conditions that LGBTI+ persons live in and experience. The information and data in the ILGA 2017 legal survey is organized under three headings: criminalization; protection; and recognition. The category of “protection” covers protection against discrimination in a number of areas, including employment.

³ A.T. Chase: “Human rights contestations: Sexual orientation and gender identity”, in *The International Journal of Human Rights*, Vol. 20, No. 6, 2016, pp. 703–723.

⁴ ILO: *Ending violence and harassment against women and men in the world of work*, Report V(1), International Labour Conference, 107th Session, Geneva, 2018. Data from Argentina, Costa Rica, France, Hungary, India, Indonesia, Montenegro, South Africa and Thailand indicate that LGBT persons frequently experience discrimination and harassment in education, access to employment and throughout the employment cycle.

⁵ See, for example, European Union Agency for Fundamental Rights (FRA): *EU LGBT survey: Results at a glance*, 2013; and A. Guasp: *Gay in Britain: Lesbian, gay and bisexual people’s experiences and expectations of discrimination* (London, Stonewall, 2012).

⁶ Goldberg Lecture, *Employment law and discrimination at work against LGBT*, Case University Law School, 2018.

⁷ ILO: PRIDE Project, Centre for Population and Policy Studies, Gadjah University, Indonesia, 2016.

⁸ WHO: ICD-10 and ICD-11. See also S.D. Cochran et al.: “Proposed declassification of disease categories related to sexual orientation in the *International Statistical Classification of Diseases and*

criminalized in some form. However, studies also show that attitudes in countries are changing and becoming more informed and open to the spectrum of sexuality (gender identity and expression).⁹

8. Even in countries where there is good legal protection, many LGBTI+ persons continue to face violence and harassment at work and in their private lives. An increasing number of non-governmental organizations (NGOs) representing SOGIESC issues are forming and fighting for their rights.¹⁰ A number of trade unions across the world are combating violence, harassment and discrimination through awareness-raising campaigns, advocacy for legal reform, training and collective bargaining.¹¹ There are employers' organizations such as the National Lesbian and Gay Chamber of Commerce (NGLCC), which have been established to promote and protect LGBTI+ businesses.¹² A 2017 survey shows that 91 per cent of Fortune 500 companies have non-discrimination policies that include sexual orientation, and 83 per cent have non-discrimination policies that include gender identity. Moreover, many companies also provide domestic partner benefits and transgender-inclusive benefits.¹³
9. It is important to note that the LGBTI+ community is not homogeneous, and research in many countries shows that lesbians, gays, bisexuals, transgender and intersex individuals have different experiences in the workplace. Although sex- or gender-based stigma is closely associated with LGBTI+ persons, the types and severity of the stigma faced vary. For example, LGBTI+ persons who conform to existing gender roles tend to face less sex-based stigma; whereas persons who visibly undergo gender transition are more often victims of discrimination and violence.¹⁴ Within the LGBTI+ community there are differing views on the preferred grounds to be used to combat discrimination, and on the best approaches to be taken to safeguard lives, security and lifestyles.
10. At the same time, it must be pointed out that political views on the protection and recognition of LGBTI+ rights and decriminalization of LGBTI+ activities continue to divide member States of the United Nations. Many countries still regard the promotion of LGBTI+ rights as unacceptable. The difference today, however, compared to 20 years ago, is that these issues

Related Health Problems (ICD-11), Bulletin of the World Health Organization, 2014; Vol. 92, No. 9, pp. 672–679.

⁹ ILO: *Gender identity and sexual orientation: Promoting rights, diversity and equality in the world of work – Results of the ILO's PRIDE Project*, Gender, Equality and Diversity Branch, Conditions of Work and Equality Department, undated.

¹⁰ ILO: *International Journal of Labour Research: Psychosocial risks, stress and violence in the world of work*, Vol. 8, Issue 1-2 (Geneva, 2016).

¹¹ J. Pillinger: *Violence and harassment against women and men in the world of work: Trade union perspectives and action*, Bureau for Workers' Activities (Geneva, ILO, 2017).

¹² See [National LGBT Chamber of Commerce \(NGLCC\)](#).

¹³ Human Rights Campaign Foundation: *Corporate Equality Index 2018: Rating workplaces on lesbian, gay, bisexual, transgender and queer equality* (2017), p. 6.

¹⁴ ILO: *PRIDE at work: A study on discrimination at work on the basis of sexual orientation and gender identity in Indonesia*, study based on research undertaken by Centre for Population and Policy Studies, Gadjah Mada University, on behalf of the ILO (Gender, Equality and Diversity Branch, 2016).

are being discussed in the political and human rights forums, even if to the dissatisfaction of some member States.¹⁵

C. Glossary of terminology

11. Appendix I contains a glossary of relevant terms and up-to-date usage.

D. International human rights law framework against discrimination

12. Convention No. 111 is among the most widely ratified Conventions in all regions of the world.¹⁶ The descriptive definition of discrimination contained in Article 1 has stood the test of time, and served to address the dynamic character of discrimination and principle of equality. It has inspired other international instruments on the subject, as well as most national laws. A coherent framework of international law on non-discrimination, equality before the law and equal protection of the law has been established through the general provisions of the Universal Declaration of Human Rights (UDHR), the nine core human rights treaties¹⁷ and Convention No. 111. Almost identical definitions of discrimination are contained in the ICERD, CEDAW, CRPD and ICMW,¹⁸ Convention No. 111 and other ILO instruments.¹⁹

13. While the principles of non-discrimination and equality are harmonized within the international human rights framework, the grounds of discrimination vary among the instruments. The UDHR, ICCPR and the ICESCR contain a long and open-ended list of grounds upon which discrimination is prohibited. For example, the ICCPR provides that:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present

¹⁵ D. McGoldrick: “The development and status of sexual orientation discrimination under international human rights law”, in *Human Rights Law Review*, 2016, Vol. 16, pp. 613–668.

¹⁶ Some 175 ratifications at the time of submission of this paper.

¹⁷ The nine core UN human rights treaties include: the International Covenant on Civil and Political Rights (ICCPR) (1966); the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1966); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT) (1984); the Convention on the Rights of the Child (CRC) (1989); the Convention on the Rights of Persons with Disabilities (CRPD) (2006); the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW) (1990); and the International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED) (2006).

¹⁸ Note that ILO Convention No. 111 defines discrimination as “any distinction, exclusion or preference”. In UN Conventions, the term “preference” has been substituted with the word “restriction”. See: Article 1, ICERD; Article 2, CRPD.

¹⁹ For example, the Workers with Family Responsibilities Convention, 1981 (No. 156), and the HIV and AIDS Recommendation, 2010 (No. 200).

Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (Article 2(1), ICCPR.)

14. Several of the human rights treaties aim at addressing discrimination against specific groups. The ICERD is targeted at prohibiting race discrimination based on grounds of race, colour, descent, or national or ethnic origin; CEDAW is targeted at prohibiting discrimination against women based on sex; and the CRPD is targeted at prohibiting discrimination against persons based on disability.
15. The provisions of Convention No. 111 are unique. It sets out a list of seven prohibited grounds in Article 1(1)(a) and, in Article 1(1)(b), it provides for the Convention to be applied to additional grounds designated at the national level. Specifically, the term “discrimination” includes:
 - (a) *any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;*
 - (b) *such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers’ and workers’ organizations, where such exist, and with other appropriate bodies.* (Article 1(1), ILO Convention No. 111.)
16. With respect to Article 1(1)(a), the preparatory work to the Convention shows that the list of grounds was initially taken from the Universal Declaration.²⁰ The CEACR has noted that the grounds listed in the Convention refer to individual qualities, characteristics and attributes which are immutable, such as race, or which stem from social categorizations, such as political opinion. The CEACR also commented that “in practice, the distinction between various grounds of discrimination may be a fine one in view of the fact that an individual may be subject to discrimination based on several grounds”.²¹ Indeed, all of the treaty bodies have underlined the importance of addressing multiple and intersecting grounds of discrimination.
17. Neither the UN Conventions nor Convention No. 111 (including their preparatory material) provide definitions of the grounds themselves. Over time, the understanding and application of the seven grounds listed in Article 1(1)(a) have grown and undergone conceptual evolution. For example, the concept of “social origin” has widened over the years mainly due to increased mobility of workers and changes in class structures. Moreover, the list of grounds on which discrimination is prohibited has expanded at both the national and international levels. These developments reflect the dynamic nature of the prohibition of discrimination and the promotion of equality. Indeed, in its most recent General Survey on the subject, the CEACR highlighted that discrimination in employment and occupation is constantly evolving, and that new forms of discrimination are arising, and others, which may be long-standing, have only recently been acknowledged. It underscored the fact that a range

²⁰ ILO: *Discrimination in the field of employment and occupation*, Report VII(1), International Labour Conference, 40th Session, Geneva, 1957.

²¹ ILO: *Equality in employment and occupation*, Report III (Part 4B), General Survey, International Labour Conference, 75th Session, Geneva, 1988, para. 31.

of measures are required to be adopted to effectively respond to the complex realities and varieties of ways in which discrimination occurs.²²

18. With respect to Article 1(1)(b), the CEACR clarified that *while the Convention does not set out a particular mechanism for States to extend the coverage of the Convention to additional grounds, the Committee has considered that when information received from governments and workers' and employers' organizations indicates that legislation or policies concerning discrimination based on additional grounds have been adopted after consultation with the social partners, the Government has availed itself of the possibility envisaged under Article 1(1)(b).*²³
19. None of the international human rights Conventions include SOGIESC grounds. However, it should be noted that the ILO has adopted two international labour Recommendations which call on States to prohibit and prevent discrimination on the ground of *sexual orientation*: the Private Employment Agencies Recommendation, 1997 (No. 188), and the HIV and AIDS Recommendation, 2010 (No. 200).
20. With respect to the development of soft law, many resolutions have been adopted at the international level, which have had some impact in framing the political and legal discussions on SOGIESC-related protection. However, by far, the most influential soft law comes in the form of the adoption of two sets of Yogyakarta Principles as set out below.
21. In 2006, a group of human rights experts adopted the Yogyakarta Principles which consolidated into one document 29 principles based on the interpretation of international human rights law as it applies to people of diverse *sexual orientations* and *gender identities*. The rights to equality and non-discrimination are highlighted as a key Principle (No. 2). In 2017, a second panel of experts on international human rights law adopted the Yogyakarta Principles plus 10, which added ten additional principles to the original ones. These new principles included reference to *gender expression* and *sex characteristics*, noting that *gender expression* is included in *gender identity* and that *sex characteristics* has evolved into an explicit ground for protection. Thus, it is now considered to be more correct and complete to refer to SOGIESC grounds instead of only SOGI. Although having the status of secondary or soft law, the Yogyakarta Principles are used as a benchmark for the protection of human rights of LGBTI+ persons, and often have been referenced at international, regional and national levels including courts.²⁴

Principle 2 of the Yogyakarta Principles calls on States to:

- (a) *Embody the principles of equality and non-discrimination on the basis of sexual orientation and gender identity in their national constitutions or other appropriate legislation, if not yet incorporated therein, including by means of amendment and interpretation, and ensure the effective realization of these principles;*
- (b) *repeal criminal and other legal provisions that prohibit or are, in effect, employed to prohibit consensual sexual activity among people of the same sex who are over the age of*

²² ILO: *Giving globalization a human face*, Report III (1B), International Labour Conference, 101st Session, Geneva, 2012, para. 731.

²³ ILO: *Giving globalization a human face*, op. cit., para. 808.

²⁴ See 2017 ILGA report, op. cit.

consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity;

- (c) *adopt appropriate legislative and other measures to prohibit and eliminate discrimination in the public and private spheres on the basis of sexual orientation and gender identity;*

...

The Yogyakarta Principles plus 10 call on States to:

*Take all appropriate steps to ensure that reasonable accommodation is provided, where needed, in order to promote equality and eliminate discrimination on the basis of sexual orientation, gender identity, gender expression or sex characteristics, including in education, employment, and access to services.*²⁵

Thus, the Principles can be considered to call for non-discrimination on the basis of SOGIESC grounds through explicit inclusion in law, as well as through interpretation of existing grounds.

E. Application of human rights protection of SOGIESC discrimination by the international human rights treaty bodies

22. As indicated above, none of the core human rights instruments expressly include SOGIESC grounds. Nor do any of them define the ground of sex. Nevertheless, it is generally accepted that international human rights law applies to individuals discriminated against on the basis of SOGIESC grounds.²⁶ This application has been based on the treaty bodies' interpretation of the ground of sex, and their inclusion of some of the SOGIESC grounds under "other status" provisions contained in the UDHR, the ICCPR and the ICESCR.
23. In 2002, the **Human Rights Committee (HRC)** found, under its individual communication procedures, in *Toonen v. Australia*, that discrimination on the basis of *sexual orientation* was a form of discrimination on the basis of *sex*, and thus prohibited under Articles 2 and 26 of the ICCPR.²⁷ *Toonen* is considered to be the groundbreaking decision, within UN human rights mechanisms, on the protection of sexual orientation, and it was specifically based on the ground of *sex*. In subsequent cases, (*Young v. Australia*, 2003, and *X v. Colombia*, 2007), the HRC concluded that differences in treatment in the award of pension benefits to a same-sex partner were a violation of the right to be free from discrimination "on grounds of *sex* or

²⁵ See [Yogyakarta Principles](#).

²⁶ See also D. McGoldrick, *op. cit.*

²⁷ *Toonen v. Australia* (31 Mar. 1994) Human Rights Committee Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992 (1994). An interesting aspect of the *Toonen* case is that in its response, the Government of Australia referenced the fact that it had brought the ground of sexual orientation within its obligations under ILO Convention No. 111, and therefore found no objection to the jurisdiction of the UNHRC over a case based on sexual orientation discrimination.

sexual orientation".²⁸ The HRC did not provide any reasoning for its reliance on the ground of *sex* or its inclusion of sexual orientation under the criteria of "other status".

24. Since *Toonen*, in numerous concluding observations, the HRC has frequently welcomed the enactment of legislation that includes sexual orientation among the prohibited grounds of discrimination.²⁹ It has urged States parties to "guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation".³⁰ It has highlighted that States have a "legal obligation ... to ensure to everyone the rights recognized by the Covenant ... without discrimination on the basis of sexual orientation".³¹ In many observations, it has raised concern over criminalization, violence and prejudice against LGBT+ individuals. Recently, the HRC has more fully developed its concerns and views on state obligations under the Covenant. For example, in Pakistan, the HRC expressed concern that same-sex relations between consenting adults are criminalized. While it welcomed the information about progress made on the situation of intersex persons, the Committee regretted the lack of information on effective measures taken to prevent and punish all forms of discrimination against lesbian, gay, bisexual, transgender and intersex persons. The HRC concluded that:

12. The State party should take all necessary measures, including the adoption of comprehensive anti-discrimination legislation, to ensure that its legal framework:

- (a) provides full and effective protection against discrimination in all spheres, including the private sphere, and prohibits direct, indirect and multiple discrimination;*
- (b) includes a comprehensive list of grounds for discrimination, including colour, language, political or other opinion, national or social origin, property, disability, sexual orientation and gender identity or other status;*
- (c) provides for effective remedies in cases of violation. It should also decriminalize same-sex relations between consenting adults.*³²

25. The HRC observations also have addressed issues of access to justice, enforcement of anti-hate laws, stigmatization, removal of barriers and public education campaigns. For example, in expressing concern about social harassment and stigmatization of LGBT individuals, the HRC asked the Government of Japan to pass comprehensive legislation to prohibit discrimination on all grounds, including sexual orientation and gender identity, and emphasized the harmful link between prevailing social stereotypes and discrimination against LGBT individuals, noting that the Government has a responsibility to change cultural

²⁸ *Young v. Australia*, Human Rights Committee Communication No. 941/2000 (CCPR/C/78/D/941/2000), and *X v. Colombia*, Human Rights Committee Communication No. 1361/2005 (CCPR/C/89/D/1361/2005).

²⁹ Welcoming non-discrimination legislation: Concluding observations of the HRC on: Denmark (CCPR/C/DNK/CO/5), para. 4; Finland (CCPR/CO/82/FIN), para. 3; France (CCPR/C/FRA/CO/4), para. 8; Greece (CCPR/CO/83/GRC), para. 5; Slovakia (CCPR/CO/78/SVK), para. 4; and Sweden (CCPR/C/SWE/CO/6), para. 3.

³⁰ Guarantee equal rights to all regardless of sexual orientation: Concluding observations of the HRC on: Chile (CCPR/C/CHL/CO/5), para. 16. See also: Concluding observations of the HRC on: Austria (CCPR/C/AUT/CO/4), para. 8; and San Marino (CCPR/C/SMR/CO/2), para. 7.

³¹ Concluding observations of the HRC on: USA (CCPR/C/USA/CO/3/Rev.1), para. 25.

³² Concluding observations of the HRC on: Pakistan (CCPR/C/PAK/CO/1), 23 Aug. 2017.

norms in order to guarantee equal rights for all.³³ It has also expressed concern when States do not recognize a change in gender by issuing new identity documents, and it has noted with approval legislation that grants legal recognition to a change of gender identity.³⁴ In a recent concluding observation for Liberia, the HRC acknowledged “*the diversity of morality and cultures internationally*” and, nevertheless, recalled that State laws and practices must always conform to the principles of universality of human rights and non-discrimination. It concluded that Liberia should, “*as a matter of priority, decriminalize same-sex sexual conduct between consenting adults and explicitly reject any form of social stigmatization, discrimination or violence against persons based on their sexual orientation or gender identity*”.³⁵

26. A review of recent concluding observations of the HRC does not reveal on which ground of protection against discrimination the Committee is relying – *sex* or *other status*. Unlike the CESCR, it has not adopted a General Comment specifying the basis for the protection. In fact, in a 2012 concurring individual opinion, an expert referred to the protection of sexual orientation discrimination prohibitions on the grounds of *sex* and *sexual orientation* under the Covenant.³⁶ In framing the concluding observations, the HRC sometimes uses the heading *Discrimination on the grounds of sexual orientation and gender* and cites Articles 2, 6, 7, 9, 20, 22 and 26; sometimes it simply uses the heading of *Non-discrimination*. The HRC does not address this issue in every country, although the number of countries in which it does is increasing.

27. The **Committee on Economic, Social and Cultural Rights (CESCR)** clarified its interpretation of the basis for its protection of SOGIESC, in relation to various rights contained in the ICESCR, in its 2009 General Comment No. 20 on non-discrimination:

*“Other status” as recognized in article 2, paragraph 2, includes sexual orientation. States parties should ensure that a person’s sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor’s pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination, for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace.*³⁷

28. In previous General Comments on Health (14/2000) and Water (15/2002), the CESCR already had affirmed its position that the ICESCR proscribes any discrimination on the basis of sexual orientation that has the intention or effect of nullifying or impairing the equal enjoyment or exercise of rights protected therein. No mention could be found of the Committee discussing whether it considered this protection to be based on the ground of *sex* or *other status* at that time.

29. In its General Comment on Work (18/2005), the Committee called for non-discrimination and equal protection in employment, especially for disadvantaged and marginalized individuals and groups. However, no mention was made of SOGIESC grounds. It was not

³³ Concluding observations of the HRC on the sixth periodic report: Japan (CCPR/C/JPN/CO/6).

³⁴ Concluding observations of the HRC on: Ireland (CCPR/C/IRL/CO/3), para. 8; and United Kingdom of Great Britain and Northern Ireland (CCPR/C/GBR/CO/6), para. 5.

³⁵ Concluding observations of the HRC on: Liberia (CCPR/C/LBR/CO/1), 27 Aug. 2018.

³⁶ *C v. Australia*, CCPR/C/119/D/2216/2012 (Annex II).

³⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009 (E/C.12/GC/20).

until 2016, in its General Comment on Conditions of Work (23/2016), that the CESCR reaffirmed that core obligations under the Covenant include the legal guarantee of the right to non-discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, age, *sexual orientation, gender identity, intersex status*, health, nationality or any other status. It also recalled that the ICESCR provides for protection from physical and mental harassment, including sexual harassment. The CESCR called for national law to define harassment broadly, with specific reference to *sex, sexual orientation, gender identity* and *intersex status* as well as race and disability.

30. In its General Comment on Sexual and Reproductive Health (22/2016), the CESCR stated that non-discrimination encompasses the right of all persons, including lesbian, gay, bisexual, transgender and intersex persons to be fully respected for their *sexual orientation, gender identity* and *intersex status*. It further declared that criminalization of LGBTI activity, as well as regulations requiring LGBTI persons to undergo treatment as mental patients, are violations of the right to sexual and reproductive health under the ICESCR. Through these General Comments in 2016, it appears that the CESCR has considered “sex characteristics” as another prohibited ground of discrimination under the ICESCR.
31. In its concluding observations, the CESCR also has expressed concern about the prevalence of societal stigma and discrimination on grounds of, inter alia, *sexual orientation* and *gender identity*. For example, in its recent observation on the Russian Federation, the Committee urged the Government to take steps to: adopt comprehensive anti-discrimination legislation, inclusive of grounds of *sexual orientation* and *gender identity*; extend benefits to same-sex couples; put in place procedures for legal gender recognition to facilitate enjoyment of rights by transgender persons; and take steps to prevent and combat societal discrimination against lesbian, gay, bisexual and transgender persons.³⁸ The CESCR also is increasing the number of references to the protection against SOGIESC discrimination by welcoming positive developments at the national level, and referencing states’ obligations and positive duties.
32. The mandate of the **Committee on the Elimination of Discrimination against Women (CEDAW)** is to protect women against all forms of discrimination based on sex. CEDAW has interpreted discrimination on the ground of sex as being inextricably linked to other factors including sexual orientation and gender identity. This approach focuses on intersectional discrimination as noted in General Recommendation No. 28 of 2010, which provides that:

*The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences ...*³⁹

33. There is relatively little mention of SOGIESC grounds throughout the General Recommendations of CEDAW. When there is mention, it is related to the disadvantaged position of some women. In 2014, CEDAW adopted General Recommendation No. 35 on

³⁸ Concluding observations of the CESCR on the sixth periodic report of: Russian Federation (E/C.12/RUS/CO/6), 16 Oct. 2017.

³⁹ CEDAW: General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. (CEDAW/C/GC/28), 16 Dec. 2010, para. 18.

gender-based violence, which calls for the repeal of provisions that allow, tolerate or condone forms of gender-based violence against women. Included among such provisions are those affecting women due to their status of being lesbian, bisexual or transgender.

34. In its concluding observations on some countries, CEDAW is including SOGIESC issues. For example, in Fiji, it noted legislation to decriminalize same-sex relationships, and called for the State to *adopt an anti-bullying policy and introduce adequate awareness-raising measures in educational institutions to prevent all forms of harassment and violence against students, including lesbian, bisexual and transgender students*. It also concluded under a heading *Lesbian, bisexual and transgender women*, that the State should, “*make the necessary legislative changes and implement a policy to eliminate discrimination, hate speech and violence against lesbian, bisexual and transgender women, including by prosecuting and adequately punishing perpetrators, and conduct awareness-raising activities to address stigma within society*.”⁴⁰

35. After noting concerns on discrimination and violence in Malaysia, the Committee recommended that the State party:

... undertake awareness-raising measures to eliminate discrimination and negative stereotypes against lesbian, bisexual and transgender women and intersex persons. In particular, it recommends that the State party:

- (a) amend all laws that discriminate against lesbian, bisexual and transgender women and intersex persons, including the provisions of the Penal Code and Sariah laws that criminalize same-sex relations between women and cross-dressing;*
- (b) apply a policy of zero tolerance with regard to discrimination and violence against lesbian, bisexual and transgender women and intersex persons, including by prosecuting and adequately punishing perpetrators;*
- (c) expedite measures to discontinue all policies and activities aimed at “correcting” or “rehabilitating” lesbian, bisexual and transgender women and intersex persons.*⁴¹

36. While some NGO shadow reports advocate the view that Article 2(a), (c), (d) and (e) of the Convention calls for the enactment of anti-discrimination and other laws that protect sexuality minorities, including to guarantee non-discrimination based on sexual orientation or gender identity and expression in the workplace, it appears clear that CEDAW considers the Convention to offer important protection against discrimination and intolerance in relation to only women and SOGIESC, and not in relation to protection against SOGIESC discrimination in general.⁴²

37. The **Committee on the Rights of Persons with Disabilities (CRPD)** has addressed the protection on SOGIESC grounds in relation to their intersectionality with disabled persons, and with respect to the need for protection of intersex persons. In its General Comment No. 3 of 2016, the CRPD defined grounds of discrimination as including *gender identity, sex,*

⁴⁰ Concluding observations of CEDAW on the fifth periodic report of: Fiji (CEDAW/C/FJI/CO/5), 14 Mar. 2018, see Concluding observations of CEDAW: Montenegro (CEDAW/C/MNE/CO/1), 4 Nov. 2011.

⁴¹ Concluding observations of CEDAW on the combined third to fifth periodic reports of Malaysia (CEDAW/C/MYS/CO/3-5), 14 Mar. 2018.

⁴² For example, *The status of lesbian, bisexual women and transgender persons in Mongolia*, Shadow report for the 63rd CEDAW Session, prepared by the LGBT Centre (Mongolia), 2016.

and *sexual orientation*.⁴³ Under the right to freedom from exploitation and violence, the CRPD considered surgery or treatment performed on intersex children without their informed consent to be cruel, inhuman or degrading treatment in violation of human rights.⁴⁴ The CRPD called for awareness raising on issues affecting women with disabilities including stereotypes of having a sexual abnormality (i.e. asexual, inactive, overactive, incapable or sexually perverse).⁴⁵

38. The information provided above as regards treaty bodies' reference to protection on SOGIESC grounds is not exhaustive.⁴⁶ According to ILGA, there were quantifiable increases in authoritative references to SOGIESC across the treaty bodies in recent years: rising from 41 mentions in 2014 to 66 in 2015. It noted that the treaty bodies' observations referring to aspects of violence, hate speech, non-consensual medical procedures, and domestic violence along with government responses to these issues were the most prominent. With respect to specific grounds, ILGA found that the number of general comments which include the two grounds of sexual orientation and gender identity have increased.⁴⁷

F. Other UN action

39. UN action to promote and protect the human rights of LGBTI+ persons can be grouped generally under three headings: research and advocacy work; engagement and use of the Universal Periodic Review (UPR) mechanism; and the UN Human Rights Council political processes and special procedures. The attention given to the issues of violence and discrimination against LGBTI+ persons by the UN Human Rights Council has increased in recent years, especially following the development of the Yogyakarta Principles. Nevertheless, it remains a divisive issue among countries.
40. The ILGA report outlines the historical debates and outcomes which have taken place over the last 20 years in the United Nations, including the resolutions adopted. It emphasizes the importance of human rights law, treaty bodies' comments and the adoption of soft law such as the Yogyakarta Principles. In fact, ILGA uses these Principles to assess the UPR recommendations related to SOGIESC. Overall, the ILGA report finds a discrepancy between the growing consensus among courts and human rights mechanisms for a SOGIESC approach to human rights, on the one hand, and the slow international political progress towards the protection of LGBTI persons, on the other hand.

⁴³ CRPD: General Comment No. 3 (2016) on women and girls with disabilities, CRPD/C/GC/3, para. 4(c).

⁴⁴ CRPD, *idem*, paras 32 and 44.

⁴⁵ CRPD, *idem*, para. 47.

⁴⁶ See, also, comments made by the Committee on the Rights of the Child, especially its General Comment No. 20 of 6 Dec. 2016 (CRC/C/GC/20, paras 33 and 34). For other comments, see, for example: https://www.outrightinternational.org/sites/default/files/UNTreaty%20Bodies_RefSOGI.pdf, p. 39).

⁴⁷ Conversely, ILGA found that treaty bodies have only recently started to address sex characteristics, for example in the manner set out in the General Comments of the CRPD. See 2017 ILGA report, *op. cit.*

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41. In 2005, 32 States made the first-ever joint statement on sexual orientation and human rights in the UN Commission on Human Rights. In 2006, 2008 and 2011, three further joint statements were made on sexual orientation, gender identity and human rights, supported by 54, 67 and 85 States respectively. The first Human Rights Council resolution on protection on grounds of SOGI was adopted in 2011, and it was met with significant opposition. This was followed by the adoption of two more resolutions on the subject in 2014 and 2016.⁴⁸ The latter established the mandate of an Independent Expert on matters of protection against violence and discrimination on the basis of sexual orientation and gender identity.⁴⁹

The mandate of the Independent Expert has been summarized under five main areas as follows:

*Implementation of international instruments, with identification of good practices and gaps; awareness of the violence and discrimination issue, and linkage with root causes; engagement, consultation and cooperation with States and other stakeholders; addressing multiple, intersecting and aggravated forms of violence and discrimination; and support for international cooperation and related services to assist national efforts.*⁵⁰

42. The Independent Expert has issued two reports to the Human Rights Council.⁵¹ In his reports, the Independent Expert has clarified that his mandate is based on existing international human rights law and its interrelationship with sexual orientation and gender identity and that he is not engaging in advocacy for new rights for particular groups.⁵² He outlines the root causes of discrimination and violence suffered by LGBTI+ persons, in particular the need for decriminalization of consensual same-sex relations, adoption of effective anti-discrimination measures, legal recognition of gender identity, destigmatization linked with depathologization, sociocultural inclusion, promotion of education and empathy, and addressing negation and the resulting data gap. He also has issued several comments concerning developments in national legislation. For example, he commented on 8 April 2018 on attempts to weaken the protection against discrimination based on sexual orientation and gender identity in the Republic of Korea.⁵³
43. The **Universal Periodic Review (UPR)** is a process in the Human Rights Council by which States peer review national reports and provide questions and advisory recommendations to each other. It is based on the UN Charter, the UNDHR, and the international human rights instruments to which a State is a party. The ILGA report concludes, among other points, that more States are making SOGIESC recommendations and more States are receiving (meaning accepting) SOGIESC recommendations for the first time. In terms of impact on

⁴⁸ UN: Resolutions of the Human Rights Council A/HRC/RES/17/19, adopted 17 June 2011; A/HRC/RES/27/32, adopted 26 Sep. 2014; and A/HRC/RES/32/2, adopted 30 June 2016.

⁴⁹ See [OHCHR website](#). The first UN-appointed Independent Expert was Mr Vitit Muntarbhorn, a member of the CEACR.

⁵⁰ See UN General Assembly: Human Rights Council, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, A/HR/C/35/36 of 19 Apr. 2017, para. 11.

⁵¹ Report of the Independent Expert, 2017, *idem*, and A/HRC/38/43 of 11 May 2018.

⁵² Report of the Independent Expert, 2017, *idem*, para. 17.

⁵³ The Independent Expert has also made comments on Chile, Haiti and Peru in 2017. See [OHCHR website](#).

the ground, the ILGA found that the UPR has opened up dialogue on LGBTI issues and may have facilitated the adoption of new legislation at country level.

44. With regard to **research and advocacy**, a public information campaign was launched by the UN in 2013.⁵⁴ There are annual interagency advocacy events held in New York and Geneva to raise awareness and encourage better understanding and protection of LGBTI+ persons. The Office of the High Commissioner for Human Rights (OHCHR) led an intergovernmental panel discussion in March 2012 on the protection of persons based on sexual orientation and gender identity. A number of booklets and reports have been produced by the OHCHR and widely distributed, such as the report on *Discrimination and violence against individuals based on their sexual orientation and gender identity*⁵⁵ and the information booklets, *Born Free and Equal* and *Living Free and Equal*.⁵⁶
45. The OHCHR, along with the International Business Institute of Human Rights, issued *Guidance for business on tackling discrimination against lesbian, gay, bi, trans and intersex people: Background paper*, which calls for “companies to take active steps to eliminate discrimination, harassment, potential or actual violence, including bullying, directed against LGBTI individuals. The guidance refers to good practices including the French “Charte d’engagement LGBT”, which French companies can sign to publicly commit to equality for LGBT employees, and the Dutch “Declaration of Amsterdam”, whereby companies commit to ten steps aimed at addressing the unfair treatment of LGBT workers.”⁵⁷

G. Regional human rights treaties, human rights treaty bodies and other organizations’ protection of LGBTI+ persons against discrimination

46. At the regional level, the European and American regions provide significant protection against SOGIESC+ discrimination under their human rights frameworks. The African bodies provide limited protection, and are increasingly addressing the issue within their human rights framework. The Asia and the Pacific and Arab States instruments and institutions, which are generally weak, have been silent on SOGIESC discrimination.

Americas

47. The Americas human rights framework provides protection against SOGIESC discrimination. The American Convention on Human Rights (ACHR), Article 1, obliges States parties to ensure human rights and freedoms to all persons without any discrimination on grounds including *sex, birth, or any other social condition*. Article 24 provides that all persons are equal before the law.

⁵⁴ OHCHR: [Free and Equal, Stand up for equal rights and fair treatment for lesbian, gay, bi, trans and intersex people everywhere](#).

⁵⁵ HRC: *Discrimination and violence against individuals based on their sexual orientation and gender identity: Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/29/23*, 4 May 2015. Also see OHCHR: [Speak up, Stop discrimination](#).

⁵⁶ See [OHCHR website](#).

⁵⁷ OHCHR: [Tackling discrimination against lesbian, gay, bi, trans and intersex people](#).

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48. In 2013, the Inter-American Convention against All Forms of Discrimination and Intolerance was adopted. It explicitly includes in Article 1, *sex, sexual orientation, gender identity and expression* among the open-ended list of grounds of prohibited discrimination. The Convention obliges States parties to adopt legislation that clearly defines and prohibits discrimination and intolerance, applicable to all public authorities as well as to all individuals or natural and legal persons, both in the public and in the private sectors, particularly in the areas of employment; participation in professional organizations; education; training; housing; health; social protection; exercise of economic activity; access to public services and other areas; and to repeal or amend any legislation that constitutes or produces discrimination and intolerance (Article 7).
49. Until the adoption of the Inter-American Convention against All Forms of Discrimination and Intolerance, the Inter-American Court of Human Rights and the Inter-American Commission considered *sexual orientation and gender identity* to be protected grounds under Article 1.1 of the ACHR, within the expression “other social condition”. In the case of *Karen Atala and daughters v. Chile*, (2010), the Court specifically adjudicated on whether *sexual orientation* was protected or not under Article 1.1 of the ACHR, within “other social condition”. The Court noted that the expression “any other social condition” must be interpreted “in the perspective of the most favorable option for the person and in the evolution of fundamental rights in contemporary international law”. To support its decision, the Court referred to the European Court of Human Rights.⁵⁸ The Court also cited the resolutions of the Organization of American States (OAS), as well as various pronouncements of the committees of the United Nations, which in their decisions related *sexual orientation* with the expression “other condition”, or with “sex”. The Court concluded that “*sexual orientation and gender identity* of persons are categories protected by the Convention”.
50. In 2018, the Inter-American Court of Human Rights issued an advisory opinion on *gender identity*, and equality and non-discrimination of same-sex couples in reply to a request by Costa Rica.⁵⁹ The Court ruled that the countries under its jurisdiction must guarantee both equality in marriage and the right of *trans people* to the legal recognition of their gender identity. The Court reiterated its consistent jurisprudence that *sexual orientation and gender identity* are protected categories, and any rule, act or discriminatory practice based on these characteristics of the person is prohibited.⁶⁰
51. The OAS adopted a number of resolutions in 2013, 2014 and 2016, which condemn all forms of discrimination against persons by reason of their *sexual orientation and gender identity and expression*, and urge States to eliminate, where they exist, barriers faced by LGBTI+ persons in regard to equal access to political participation, and in all areas of public life, and to avoid interferences in their private lives. They also protect intersex people in regard to

⁵⁸ To support its decision, the Inter-American Court of Human Rights referred, inter alia, to the cases of the European Court of Human Rights, *Salgueiro da Silva Mouta v. Portugal* and *Clift v. United Kingdom*, according to which *sexual orientation* is another of the prohibited conditions of discrimination mentioned in Article 14 of the European Convention (Prohibition of discrimination) against characteristics considered innate or inherent to the person.

⁵⁹ Inter-American Court of Human Rights’ advisory opinion on gender identity and same-sex marriage, OC-24/17 of 9 Jan. 2018.

⁶⁰ The Inter-American Court of Human Rights’ advisory opinion did not set binding deadlines, but it did imply a defined roadmap. The Court’s ruling does not oblige countries where homosexual marriage is illegal to change their laws immediately.

provision of medical practices. The 2016 resolution encourages the adoption of policies against discrimination by reason of *sexual orientation* and *gender identity and expression*.⁶¹

Europe

52. Under EU law, the SOGIESC grounds are protected against discrimination through different approaches. The Charter of Fundamental Rights of the European Union (EU Charter), in Articles 20 and 21, declares everyone is equal before the law and prohibits any discrimination based on a number of grounds including *sex* and *sexual orientation*.⁶² This Charter has become legally binding by the Lisbon Treaty (Article 6, Treaty on the European Union). Article 19 of the Treaty on the Functioning of the European Union provides that the Council of the European Union (EC) may take appropriate action, in particular by the adoption of Directives, to combat discrimination based, inter alia, on *sexual orientation*.
53. The ground of *sexual orientation* is dealt with explicitly in the context of employment. The Employment Equality Directive 2000/78/EC⁶³ provides that the principle of equal treatment shall mean there shall be no direct or indirect discrimination in the field of employment based on the grounds of religion or belief, disability, age and *sexual orientation* within employment and related areas. In this regard, it covers access to employment, promotion, vocational training, working conditions, pay and dismissals as well as the membership of trade unions. The Directive does not define the term “sexual orientation”.
54. The Gender Recast Directive 2006/54/EC covers the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, and prohibits discrimination on the ground of sex in relation to access to employment, promotion, vocational training, working conditions, including harassment, pay and dismissals.
55. There are no EC Directives that contain an explicit prohibition of discrimination on the grounds of a person’s gender identity and gender expression, or sexual characteristics. Nevertheless, some protection against discrimination on these criteria has been established by the Court of Justice of the European Union (CJEU) interpreting the ground of *sex* to cover gender reassignment.⁶⁴
56. It is well-established in the case law of the CJEU (*P v. S and Cornwall County Council*, C-13/94 ECR I-2143) and subsequently also in Recital 3 of Recast Directive 2006/54, that discrimination arising from the gender reassignment of a person falls within the prohibition

⁶¹ [Organization of American States \(OAS\)](#). The ground of gender expression was added in the 2016 resolution.

⁶² [Official Journal of the European Communities: Charter of Fundamental Rights of the European Union \(2000/C 364/01\)](#).

⁶³ [Official Journal of the European Communities: Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation](#).

⁶⁴ Such rulings were originally based on the Equal Treatment Directive, which has been incorporated into the Gender Equality Directive (recast), Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

of sex discrimination, and, therefore, within the scope of the Recast Directive.⁶⁵ Other CJEU cases concerning gender identity and employment deal with a trans-sexual partner's eligibility for a survivor's pension, and post-operative trans-sexual women's eligibility for retirement at the same age as other women.⁶⁶ The CJEU also has ruled on a number of cases involving discrimination based on sexual orientation in employment in relation to a same-sex partner's eligibility for pension benefits.⁶⁷

57. The EC also has adopted the Gender Equal Access to Goods and Services Directive 2004/113/EC, which is deemed to cover gender reassignment discrimination based on the above referenced decisions interpreting protection under the ground of *sex*.
58. The Council of Europe has adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which in Article 14, provides that “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.⁶⁸ The “other status” provision has been held to include *sexual orientation*. Moreover, under Article 8 on the right to privacy, recognition of a person's new identity following gender reassignment and recognition of same-sex partnership has been established.⁶⁹ Indeed, many cases involving LGBTI+ rights are brought under the protection of privacy rights' provisions.
59. The European Court of Human Rights (ECtHR) has made numerous rulings on the right of association, as well as individual rights, of LGBTI+ persons under many Articles of the ECHR, including rights to privacy and non-discrimination in employment. In so doing, it has referred to changes in public attitudes, developments in scientific knowledge and legislative changes among the Member States of the Council of Europe. In *Smith & Grady v. UK*, Judgment, 2000, the ECtHR found a dismissal from the armed forces to be a violation of the ECHR. In its ruling, it held “to the extent that they represent a predisposed bias on the part of a heterosexual majority against a homosexual minority, these negative attitudes cannot of themselves be considered by the Court to amount to sufficient justification for the

⁶⁵ A. Timmer and L. Senden: *A comparative analysis of gender equality law in Europe 2017*, written for the European network of legal experts in gender equality and non-discrimination (European Commission, 2018); K. Monaghan: *Monaghan on Equality Law* (Oxford Press, 2013), second edition.

⁶⁶ See A. Timmer and L. Senden: *A comparative analysis of gender equality law in Europe 2017*, op. cit; R. Wintemute: “European law against discrimination on grounds of sexual orientation”, in K. Boele-Woelki and A. Fuchs (eds): *Same-sex relationships and beyond: Gender matters in the EU*, European Family Law, Vol. 42 (Intersentia, 2017), third edition.

⁶⁷ For example, *Jürgen Romer v. Frie und Hansestadt Hamburg*, Case C-147/08, 10 May 2011.

⁶⁸ [European Convention on Human Rights](#). It is noted that Article 14 has no independent existence, apart from the other rights and freedoms set out in the Convention, until the coming into force of the 12th Optional Protocol. See Explanatory Report to Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

⁶⁹ [European Convention on Human Rights](#). Decisions under Articles 2 (right to life), 3 (prohibition of torture and degrading treatment), 10 (freedom of expression) and 11 (freedom of assembly and association).

interferences with the [lesbian and gay] rights ... any more than similar negative attitudes towards those of a different race, origin or colour”.⁷⁰

60. The European Social Charter (Revised), of 1996, guarantees social and economic rights of all individuals and covers employment and social protection. Under Article 20, it provides similar protections to the ECHR, prohibiting discrimination on an open-ended list of grounds through the inclusion of “other status”.⁷¹ The EU Parliament and the Council of Europe have adopted numerous recommendations and resolutions to protect against SOGIESC discrimination.

Africa

61. Within the African region, human rights are anchored in the African Charter on Human and Peoples Rights, 1981. The Preamble confirms that the elimination of all forms of discrimination is an aim of the Charter. Article 2 provides an open-ended list of grounds upon which every individual shall be entitled to the enjoyment and rights and freedoms contained in the Charter. The list of grounds includes *sex* and *other status*. Article 28 states that: “Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.” Through its Resolutions, General Comments and individual observations, the African Commission on Human and Peoples’ Rights (African Commission) has affirmed the right to non-discrimination on SOGI grounds.
62. The African Commission, in its General Comments on the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa reaffirmed that: “... there are multiple forms of discrimination based on various grounds such as: race, *sex*, *sexuality*, *sexual orientation*, age, pregnancy, marital status, HIV status, social and economic status, disability, harmful customary practices and/or religion. In addition, the African Commission recognizes that these forms of discrimination, individually or collectively, prevent women from realizing their right to self-protection and to be protected.”⁷²
63. In its examination of state reports, submitted pursuant to Article 62 of the African Charter, the African Commission also has made reference to SOGI non-discrimination. For example, in its concluding observations on Mauritius, covering the period 1995–2008, the African Commission has commended the adoption of a law prohibiting discrimination on numerous grounds, including those of *sex* and *sexual orientation*.⁷³ In its concluding observations on Cameroon in 2014, the African Commission identified, among the factors that restrict the enjoyment of rights guaranteed by the African Charter, “judicial harassment, attacks on life and other rights of human rights defenders, particularly those working in the field of *sexual*

⁷⁰ See *Smith & Grady v. UK*, para. 97; also *Dudgeon v. the United Kingdom*, Application No. 7525/76 Judgment, 22 Oct. 1981.

⁷¹ [European Social Charter \(revised\)](#).

⁷² [General Comments on Article 14\(1\)\(d\) and \(e\) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa](#).

⁷³ « *Mettre fin à la violence et autres violations des droits de l’homme fondées sur l’orientation sexuelle et l’identité de genre : Un dialogue conjoint entre la Commission Africaine des Droits de l’Homme et des Peuples, la Commission Interaméricaine des Droits de l’Homme et les Nations Unies* », Pretoria University Law Press (PULP), 2016, p. 38.

orientation”. In its recommendations, the African Commission asked the Government to “take appropriate measures to ensure the safety and physical integrity of all individuals, regardless of their *sexual orientation*, and to maintain a climate of tolerance for *sexual minorities* in the country”.⁷⁴

64. The African Commission has reaffirmed, through its decisions on individual cases, that the Charter provides protection against discrimination based on *sexual orientation*. In Communication 245/02, *Zimbabwe Human Rights NGO Forum v. Zimbabwe* (2006), the Commission cited “sexual orientation” as a ground of non-discrimination, finding that the purpose of the principle of non-discrimination in Article 2 of the Charter is to ensure equal treatment of individuals on a number of grounds, including *sexual orientation*.⁷⁵ In Communication 284/03, *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v. Zimbabwe*⁷⁶ (2009), the Commission stated that “Article 3 guarantees fair and just treatment of individuals within the legal system of a given country. The aim of this principle is to ensure equality of treatment for individuals irrespective of nationality, *sex*, racial or ethnic origin, political opinion, religion or belief, disability, age or *sexual orientation*.”
65. In 2014, the African Commission adopted a “Resolution on Protection against Violence and Other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity” (Resolution 275). Resolution 275 condemned “the increasing incidences of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment and other forms of persecution of persons on the basis of their real or imputed *sexual orientation* or *gender identity*”. It specifically condemned the situation of systematic attacks by state and non-state actors against persons on said basis. It called on all States to ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities. It strongly urged States to end all acts of violence and abuse, whether committed by State or non-State actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence, including those targeting persons on the basis of their *sexual orientation* or *gender identities*.⁷⁷ Based on Resolution 275, the African Commission included discussions points into its future agendas regarding violations against persons on the basis of their real or imputed *sexual orientation* or *gender identity*.⁷⁸
66. Some domestic courts in Africa have relied on the African Charter and African Commission’s case law to find violations of human rights, including cases of discrimination on the basis of sexual orientation.

⁷⁴ ACHPR: [Cameroon, Concluding observations on the 3rd Periodic Report](#), paras 84, 85 and xxxvi.

⁷⁵ ACHPR: [Zimbabwe](#).

⁷⁶ ACHPR: [Zimbabwe](#).

⁷⁷ See the 2017 ILGA report, *op. cit.*, p. 151.

⁷⁸ Report of the Independent Expert, 2018, *op. cit.*

Asia and the Pacific and the Arab States

67. The Asian Human Rights Commission is considered more of a political than a legal body. The Association of Southeast Asian Nations (ASEAN) has established a Commission on Human Rights, and adopted a Declaration on Human Rights in 2012. The Declaration provides that “every person is entitled to rights and freedoms set forth herein, without distinction of any kind, such as race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status” (Article 2). Further, Article 27(1) provides that “every person has the right to work and to enjoy just and decent and favourable conditions of work”. However, Articles 7 and 8 set out some limitations on the realization of human rights.⁷⁹ While some consider this Declaration to provide grounds for advocacy, many consider sexual orientation and gender identity non-discrimination to be excluded from the Declaration.⁸⁰
68. The Arab Charter on Human Rights of 2004 ensures all individuals “the right to enjoy the rights and freedoms set forth herein, without distinction on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability” (Article 3). There is no explicit mention of any SOGIESC grounds, and no information on the use of the ground of *sex* to provide any protection.

H. Review of national law

69. The rights of LGBTI+ persons have developed at different rates, in different forms, and met with different levels of acceptance and resistance in different parts of the world. The research shows a clear trend at the national level to recognize the existence of discrimination, harassment, prejudice and violence against LGBTI+ persons, and to take steps and adopt measures to address it. Legal reforms in different jurisdictions have included decriminalization of same-sex sexual practice, criminalization of hate crimes against LGBTI+ individuals, protection against discrimination of LGBTI+ individuals in society, and legal recognition of same-sex relationships in the form of civil union or same-sex marriage, and adoption rights. In some jurisdictions, rights to privacy serve to establish or reinforce non-discrimination provisions. Protection against discrimination in employment features prominently within the non-discrimination protections. In fact, in Europe, LGBTI+ individuals are better protected against discrimination in employment than in other areas, such as housing.
70. The earliest protection against discrimination of LGBTI+ individuals emerged in the 1970s. Over the last 20 years, in all regions of the world, an increasing number of jurisdictions have introduced non-discrimination protection on the grounds of *sexual orientation, gender identity and expression*, and to a lesser extent *intersex status* or *sexual characteristics*, either through interpreting the ground of *sex* or *gender* to include these criteria of discrimination, or through the adoption of legislation containing specific SOGIESC grounds. In most countries, this protection has developed incrementally. There are a number of legal, political,

⁷⁹ [ASEAN Human Rights Declaration](#).

⁸⁰ [Statement delivered by Ging Cristobal, International Gay and Lesbian Human Rights Commission, Project Coordinator, Asia and Pacific Islands, Sixth Regional Consultation on ASEAN and Human Rights](#).

technical and social factors that appear to have influenced the expansion of protection, including international law and its supervision.

1. Constitutional and legislative protection

71. Most constitutions have included the general principle of equal treatment and non-discrimination that apply to all persons, without listing specific grounds. A number of countries, however, do include a list of grounds upon which discrimination is prohibited. There are ten States that provide constitutional prohibition of discrimination based explicitly on *sexual orientation* (Plurinational State of Bolivia, Ecuador, Fiji, Kosovo,⁸¹ Malta, Mexico, Nepal, Portugal, South Africa and Sweden). In several other countries, courts have interpreted their Constitution as providing such protection (i.e. Andorra, Belize, Canada, Colombia, India, Switzerland, Thailand and Turkey).⁸²
72. In a majority of countries, constitutions do not directly confer individual rights or they are limited to binding state actors. However, where they are able to be invoked, they have provided some protection against SOGIESC discrimination. For example, a court in Turkey found a dismissal of a referee from a football federation due to his sexual orientation to be in violation of the general constitutional non-discrimination provision.⁸³
73. Most countries have adopted specific legislation to promote equality and prohibit discrimination. They either have adopted comprehensive equality and non-discrimination legislation that applies to employment and occupation, or they have adopted non-discrimination provisions within specific labour laws such as labour codes, labour contract laws, employment promotion laws, labour relations laws and criminal codes.
74. With respect to national equality and non-discrimination legislation, there is a trend to consolidate laws aimed at different groups, for example women and racial minorities, into one comprehensive law. For example, Norway recently consolidated four separate acts of non-discrimination (gender, disability, race and SOGI) into one Equality Act.⁸⁴ These comprehensive laws include a list of grounds including *sex* and/or *gender*, as well as *sexual orientation* and *gender identity*. In some countries, this list of grounds is long and continues to expand with each amendment. An emerging trend, which follows the international human rights instruments, is to leave the designated grounds of discrimination open-ended. In most countries, the development of non-discrimination legislation to cover SOGIESC has been incremental, following the introduction of non-discrimination laws to protect other groups such as women and racial minorities.

⁸¹ As defined in United Nations Security Council Resolution No. 1244 of 1999.

⁸² A. Raub, A. Cassola, I. Latz and J. Heymann: “Protections of equal rights across sexual orientation and gender identity: An analysis of 193 national constitutions”, in *Yale Journal of Law & Feminism*, Vol. 28, Issue 1, 2017.

⁸³ Civil Court of First Instance in Istanbul, Dec. 2015. This is the first court judgment finding employment discrimination on the basis of sexual orientation in the private sector and the first awards of compensation under private law on the basis of discrimination on the ground of sexual orientation, BBC News, “[Turkish Football Federation fined for sacking gay referee](#)”, 29 Dec. 2015.

⁸⁴ Some States have not consolidated their laws on equality and non-discrimination, i.e. the Netherlands and Spain.

75. In some countries, such as Australia, Canada and the United States, the dual federal and state systems of governance mean that both federal and state anti-discrimination legislation and judicial interpretation have evolved and influenced one another over time.

2. Use of the ground of sex to protect against SOGIESC discrimination

76. Almost all countries have adopted laws that prohibit sex discrimination. At the national level, most countries do not define the terms of *sex* or *gender* within the national non-discrimination laws. However, some do.⁸⁵ As recognition for the need to protect LBGTI+ persons from discrimination grew, a number of jurisdictions have used the ground of *sex* in non-discrimination laws to provide such SOGIESC protection.

77. The ground of *sex* has been interpreted in some countries, through law, administrative regulation and/or judicial decision-making to include various SOGIESC grounds or characteristics, such as *sexual orientation*, *sex or gender identity*, *sex transformation*, *gender reassignment*, and/or *gender expression*. In Europe, the majority of countries follow the EU legal framework. For example, in Luxemburg, an amendment to the Labour Code specified that “discrimination on the basis of a *change of sex* shall be deemed equivalent to discrimination on the basis of *sex*”.⁸⁶

78. Within the Americas, the most extensive analysis underpinning the use of the ground of sex is found in administrative and judicial interpretation. In the United States, the Equal Employment Opportunity Commission (EEOC) is the administrative agency which enforces the prohibitions against employment discrimination on grounds of, inter alia, sex, set out in Title VII of the Civil Rights Act of 1964. The EEOC specifically determined that a complaint of discrimination based on gender identity, change of sex and/or transgender status is cognizable under Title VII on the ground of sex discrimination. The EEOC based its decision on the understanding that the term “sex” encompasses both the biological differences between women and men, and gender.⁸⁷ The EEOC noted the steady stream of district court decisions recognizing that discrimination against transgender individuals constituted discrimination on the basis of sex. It underlined the importance of the understanding that the ground of sex covered gender because gender encompassed not only a person’s biological sex but also the cultural and social aspects associated with masculinity and femininity. Thus, it found that gender discrimination occurs any time an employer treats an employee differently for failing to conform to any gender-based expectations or norms (unless a bona fide occupational qualification exists).⁸⁸

⁸⁵ See, for example, Romania, which introduced definitions of sex and gender, as well as “gender stereotypes” in the Gender Equality Law of 2002, as amended in 2015, whereby gender is understood to mean the combination of roles, behaviours, features and activities that society considers to be appropriate for women and for men. All of these characteristics constitute prohibited discrimination.

⁸⁶ See CEACR – Luxemburg, observation, 2018.

⁸⁷ In this regard it cited the US Supreme Court Case of *Price Waterhouse v. Hopkins*, 490 U.S. 228, 239 (1989) which held that Title VII barred “not just discrimination because of biological sex, but also gender stereotyping-failing to act and appear according to expectations defined by gender”.

⁸⁸ EEOC: *Preventing discrimination against lesbian, gay, bisexual or transgender workers*. Available at: <http://www.eeoc.gov/>.

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79. The EEOC acknowledged that the drafters of Title VII probably did not have in mind transgender persons when they drafted the law, nevertheless the EEOC decided that the terms of the Act must extend to cover all sex-based discriminatory conduct. It likened it to the understanding that the Act covered men, as well as women, even though it was women that the drafters had in mind at the time of enactment.⁸⁹
80. In 2015, the EEOC similarly directly addressed the issue of whether discrimination based on sexual orientation constituted sex discrimination within the meaning of Title VII.⁹⁰ The EEOC concluded that sexual orientation is inherently a “sex-based consideration”, thus an allegation of discrimination based on sexual orientation is necessarily an allegation of sex discrimination under Title VII. The EEOC reasoned that discrimination on the basis of sexual orientation is premised on sex-based preferences, assumptions, expectations, stereotypes or norms. “Sexual orientation” as a concept cannot be defined or understood without reference to sex. The EEOC also explained that sexual orientation discrimination may take the form of many types of sex discrimination such as sex-based associational discrimination and sex discrimination based on sex stereotypes. The EEOC indicated that its own understanding of Title VII’s application to sexual orientation discrimination had developed over time, and even had been inconsistent in the past. It concluded that, in making this determination, it was not creating an additional subset or classification of protection under Title VII. Within the United States, state-level decisions also have followed the above reasoning. In addition, two federal courts of appeals have recently held that Title VII’s prohibition against sex discrimination applies to sexual orientation discrimination.⁹¹ They have done so in part by reasoning in parallel ways to the EEOC reasoning summarized above. In addition, the appeals courts relied on a series of Supreme Court decisions that have expanded the scope and meaning of sex discrimination starting in the 1980s to cover concepts the drafters of Title VII would not have had in mind – including hostile environment sexual harassment, sexual discrimination based on male or female stereotypes, and same-sex sexual discrimination.
81. In Canada, before the Canadian Human Rights Act was amended to specifically include sexual orientation as one of the prohibited grounds of discrimination, the prohibition of discrimination on the ground of sexual orientation was based on the Canadian Charter of Rights and Freedom, which, in section 15, states that every individual is to be considered equal regardless of religion, race, national or ethnic origin, colour, sex, age, or physical or mental disability. In the case of *Egan v. Canada*,⁹² the Supreme Court of Canada found that discrimination of same-sex couples’ qualification for receipt of social security benefits was prohibited under the Charter even though the ground of sexual orientation is not included in the Charter. However, the Court did not explicitly hold that the ground of sex was the basis for the ruling, although it followed the reasoning as if it had used it as a basis. The Court found that, “the distinction in the Act is based on a personal characteristic, namely sexual orientation. Sexual orientation is analogous to the grounds of discrimination enumerated in s. 15(1)”. Thus, the Canadian Court actually used what they call the *analogous* grounds

⁸⁹ EEOC, *idem*.

⁹⁰ EEOC: *Baldwin v. Foxx*, Appeal No. 0120133080, Agency No. 2012-24738-FAA-03.

⁹¹ *Hively v. Ivy Tech*, 853 F.3d 339 (7th Cir. en banc, 2017) and *Zarda v. Altitude Express*, 883 F.3d 100 (2d Cir. en banc 2018).

⁹² Supreme Court of Canada, *Egan v. Canada* (1995) 2 SCR 513.

extension of protections in the Charter. The Canadian Human Rights Commission considered sex discrimination to cover transgender persons.

- 82.** In another part of the Americas, the Supreme Court of Justice of Belize declared section 53 of the Criminal Code, which criminalizes “carnal access against the order of nature”, unconstitutional. The Supreme Court ruled that the provision violated the right to human dignity, intimacy, freedom of expression, non-discrimination and equality, and that the definition of “sex” contemplated in article 16.3 of the Constitution of Belize includes “sexual orientation”. The Supreme Court noted that its interpretation was in accord with the international obligations taken up by the country.⁹³ For its part, the Colombian Constitutional Court, in judgment T-141 of 2015, pointed out that the prohibition of discrimination based on sex not only prohibits considering sexual and gender identity but also prohibits considering people’s sexual orientation (point 5.5.3).⁹⁴
- 83.** Within Asia and the Pacific, in Thailand, the constitutional prohibition of sex discrimination has been considered to cover SOGIESC. The Constitutional Drafting Assembly’s *Intentions of the Constitution* provides that the differences on the ground of sex in section 30(3) refer not only to the differences between men and women, but also to the differences between individuals of “sexual identity, gender or sexual diversity that is inconsistent with their birth”. It states that these differences are not specifically prescribed because the term “sex” is already inclusive of them, and, thus, there shall be no discrimination against these individuals. The statement of intentions has been used as a basis to revoke an order by a municipal governor.⁹⁵ Thailand also recently enacted the Gender Equality Act, which defines unfair gender discrimination as “any act or omission of the act which causes division, discrimination or limitation of any right and benefit either directly or indirectly without justification due to the fact that the person is male or female or of a different appearance from his/her own sex by birth.”⁹⁶ In New Zealand, both a Crown Law opinion and the New Zealand Human Rights Commission confirmed that sex discrimination may also include discrimination on the basis of gender identity.⁹⁷
- 84.** In Europe, most EU Member States follow the rulings of the CJEU, which interprets the ground of sex in the EU Sex Equality Law to cover gender reassignment and gender identity issues of transsexuals. For example, in Austria and the Netherlands, discrimination based on transsexuality and transvestism are regarded as sex discrimination. In contrast, the United Kingdom adopted a separate law against discrimination based on gender reassignment, and its courts do not regard sexual orientation or expression or other related characteristics to be attributable to socially constructed gender roles or the ground of sex within the equality

⁹³ Aug. 2016.

⁹⁴ <http://www.corteconstitucional.gov.co/relatoria/2015/t-141-15.htm>

⁹⁵ B. Suriyasarn: *Gender identity and sexual orientation in Thailand* (Bangkok, ILO, 2014), pp. 20–21.

⁹⁶ Section 3 of this Act.

⁹⁷ Crown Law opinion on transgender discrimination, ATT395/9, 2 Aug. 2006, citing court decisions from Canada, the United Kingdom and South Africa.

legislation.⁹⁸ Even in a non-EU European country, sex has been interpreted to cover sexual orientation discrimination.⁹⁹

85. Thus, there are a number of jurisdictions that base the protection of some or all of the SOGIESC grounds on the ground of sex in non-discrimination laws. In some places, this is the first step taken to protect LGBTI+ persons from discrimination. Once legislation is adopted that specifies SOGIESC grounds upon which discrimination is prohibited, then little use is made of the ground of sex. There is a paucity of research on the evolution or effectiveness of this approach. The ILGA survey, for example, does not specify use of the ground of sex for protection. Indeed, in its list of protections, it only counts countries that specify SOGIESC grounds. Given the rationale used in the administrative and judicial interpretation set out above, the potential to make an argument for SOGIESC protection would exist in any country where discrimination is prohibited on the ground of sex. The Yogyakarta Principles, set out above, acknowledge the importance of both legislative amendment and interpretation to cover SOGIESC grounds. Nevertheless, it appears to be the clear preference on the part of many LGBTI+ advocacy groups that the protection against discrimination be as explicitly stated as possible.¹⁰⁰

3. Protected SOGIESC grounds

86. At the national level, there is a trend to include the specific grounds of SOGIESC in non-discrimination legislation and provisions. In many jurisdictions, the amendment of laws to include these grounds has been incremental, starting with sexual preference¹⁰¹ or orientation, and later expanding to include gender identity and expression. Recently, a few have included intersex or sex characteristics. This same pattern is seen in a number of countries in all regions. In many jurisdictions, in particular in common law countries, the protection and extension of grounds of protection has been established through jurisprudence. Within the EU countries, the SOGIESC grounds are protected against discrimination through different approaches, and there is variance in the grounds used and the extent of protection of LGBTI+ persons. Within the Americas, North America has followed an incremental approach to extend the grounds protected. In Latin America, where many of the countries implement the American Convention of Human Rights, legislation has been adopted including *sexual orientation, gender identity and expression* at the same time. In Africa and Asia, approaches vary from the adoption of a comprehensive list of SOGIESC grounds, such as in South Africa, to the protection of transsexuals only, such as in Nepal. In fact, the specific grounds included in the laws and jurisprudence are varied and dynamic, and admittedly confusing at times. It appears that the Yogyakarta Principles have had some positive effect on the development and recognition of the specific grounds contained in non-discrimination protection.

87. Protection against discrimination in employment on one or more SOGIESC grounds exists in 18 countries in the Americas including North America and Latin America and the Caribbean, 17 countries in Asia and the Pacific and the Arab States, seven countries in Africa, and 42 countries in Europe, including 28 EU member States.

⁹⁸ K. Monaghan: *Monaghan on Equality Law*, op. cit.

⁹⁹ Civil Court of First Instance in Istanbul, Turkey, Dec. 2015, op. cit.

¹⁰⁰ There are some groups who object to rigid definitions as being too exclusionary and restrictive.

¹⁰¹ Sexual preference is no longer a ground used in non-discrimination legislation or LGBTI advocacy as sexual orientation is considered to be implicitly innate, and not a choice.

Sexual orientation

88. A majority of countries that prohibit discrimination against LGBTI+ persons include the ground of sexual orientation. In most countries, this was the first ground used to provide such protection. For example, most of the EU Member States specifically include the ground of *sexual orientation* in legislation pursuant to the Employment Equality Framework Directive (2000/78/EC). Indeed, it appears that a significant number of countries incorporate the language of the Directive into their national law. In some countries of all regions, it remains the only ground protected. (i.e. Andorra, Belize, Colombia, Cuba, Kiribati, Latvia, Mexico, Mauritius, Mozambique, New Zealand, Panama, Philippines, Saint Lucia, Samoa, Seychelles and Suriname).
89. Definitions of the ground of *sexual orientation* are fairly consistent, although they may vary slightly in their scope of typologies covered. In many countries, the term is not defined at all. In Bulgaria, “sexual orientation” is defined under the Protection against Discrimination Act as “heterosexual, homosexual or bisexual orientation”. Similarly, British legislation refers to “a sexual orientation towards (a) persons of the same sex, (b) persons of the opposite sex, or (c) persons of either sex”.

Gender identity and gender expression

90. The ground of *gender identity* is protected, and perhaps even understood, in different ways. It is the second ground upon which the Yogyakarta Principles called for protection. In the Yogyakarta Principles plus 10, *gender expression* was stated as being included in the definition of *gender identity*. As stated above, in a number of countries, in particular those in Europe, these criteria are covered under the grounds of sex or gender discrimination. South Africa also follows this practice.
91. However, increasingly, even in Europe, the grounds of *gender identity*, and to some extent *gender expression*, are being explicitly included in the non-discrimination laws and provisions in addition to sexual orientation (i.e. Belgium, Bosnia and Herzegovina, Finland, France, Greece, Montenegro, Norway and Ukraine). As stated above, most countries in Latin America include the grounds of *gender identity and expression* in their non-discrimination laws. In many Latin American countries, in addition to the protection of non-discrimination on SOGI grounds, specific laws on gender identity are adopted. For example, in Argentina, the aim of the Gender Identity Law (2012) is to confirm the right to recognition and free development of an individual’s gender identity and to be treated according to this self-determined identity.
92. In Africa, a few countries prohibit discrimination on grounds of *sex, gender and sexual orientation*, and thus cover *gender identity and expression* under these grounds (i.e. Seychelles, South Africa, Uganda). Cabo Verde provides an example of protection of LGBTI+ persons through a Labour Code provision which prohibits employers to seek any information on an employee’s sex life.
93. In Asia and the Pacific, some countries are including protection on all SOGIESC grounds in their non-discrimination laws. For example, the Fijian Constitution prohibits discrimination on the grounds of *sex, gender, sexual orientation, gender identity and expression*. The Australian non-discrimination law protects people on the grounds of *sexual orientation, gender identity and intersex status*. The Indian Supreme Court has recognized non-discrimination protection based on *sexual orientation and gender identity*. Hong Kong, China, is engaging in preparatory surveying and comparative studies with a view towards adopting “hard law” against discrimination on *sexual orientation, gender identity and intersex status*, in place of the “soft guidance” on sexual orientation.

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94. The UN Independent Expert noted that in some countries, particularly those in southern Asia, the rights of transgender people are protected, even when the rights of gays, lesbians and bisexuals are less protected¹⁰² (i.e. India, Nepal, Pakistan). In Taiwan, China, the Gender Equity Education Act 2003, prohibits discrimination on the grounds of *gender, gender temperaments, gender identity or sexual orientation*.
95. The definitions of these grounds in non-discrimination laws vary to a much larger extent than the definitions of sexual orientation. Accordingly, the scope of the protection afforded to LGBTI+ individuals may vary. Nevertheless, it is generally considered to include, but not be limited to, instances where gender or sex reassignment surgery has taken place. Some countries are providing broader protection and recognizing the importance of self-identification unrelated to surgery. In Finland, for example, the Act on Equality defines gender identity as “the person’s own experience of (his or her) gender”, and expression of gender as “articulating one’s gender by clothing, behaviour or in some other similar manner”. The Finnish Act on Equality also introduced the concept of *lived gender*, which is defined as referring to each person’s gender identity and its public expression over a sustained period of time. Similarly, in Argentina, the Law on Gender Identity (2012) states that *gender identity* is understood as “the internal and individual experience of the gender as each person feels it, which may or may not correspond to the sex assigned at the time of birth ...”. France recently replaced the term “*sexual identity*” by that of “*gender identity*”, which is now one of the protected grounds under French law. On the other hand, the Explanatory Report of the Greek Equal Treatment Law clarifies the terms “*gender identity*” as referring to transgender persons, and “*gender characteristics*” as referring to intersex persons. The 2006 German General Equal Treatment Act adopts the term “*sexual identity*” while the Federal German Constitutional Court refers to both “*sexual identity*” and “*sexual orientation*” as being part of each individual’s autonomous personality. Swedish anti-discrimination law protects the ground of “*transgender identity or expression*” in addition to that of “*sexual orientation*”.¹⁰³

Sexual characteristics

96. Not only are definitions changing, grounds additional to SOGI are also emerging – thus the recent usage of SOGIESC. The Yogyakarta Principles plus 10 called for States to prohibit discrimination on the additional ground of *sex characteristics*. In Malta, for example, there is a new Gender Identity, Gender Expression and Sex Characteristics Act. The Thailand Policy perhaps provides the most detailed set of relevant grounds and definitions contained in a government policy document.¹⁰⁴
97. In Asia and the Pacific, *intersex status* is provided through many of the same provisions listed above for *gender identity*. Australia protects the status of intersex persons against discrimination in the Sex Discrimination Act. Several states in Australia use the term “*sexuality*” which is defined as sexual characteristics or imputed sexual characteristics of heterosexuality, homosexuality, bisexuality or transsexuality.
98. In Africa, *intersex status* is explicitly protected in non-discrimination legislation in South Africa and Uganda. South Africa is a good example of legislation that deals specifically with *gender characteristics* and *intersex status*. The definition of “*intersex*” and also “*sex*” to

¹⁰² Report of the Independent Expert, 2017, op. cit.

¹⁰³ A. Timmer and L. Senden: *A comparative analysis of gender equality law in Europe 2017*, op. cit.

¹⁰⁴ ILO: *PRIDE at work: A study on discrimination at work on the basis of sexual orientation and gender identity in Thailand*, Gender, Equality and Diversity Branch, 2015.

include “*intersex*” were included in the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000, by an amendment in 2005. The Alteration of Sex Description and Sex Status Act (2003), which relates to health, provides detailed definitions for the terms “*gender characteristics*”, “*gender reassignment*”, “*intersexed*”, “*secondary sexual characteristics*” and “*sexual characteristics*”.

99. Although the number of countries in which anti-discrimination protection exists is growing, there remain more countries in which no current protection in employment for LGBTI+ persons has been identified. In some of these countries, local-level regulations, or human rights institutions provide some protection against discrimination. However, even in countries that provide protection, gaps exist in the protection – for example for intersex persons. *Gender characteristics* is the ground least protected across all regions.

4. Scope of protection

100. The number of countries that provide legal protection against discrimination of LGBTI+ persons is greater than the number that provide for recognition of same-sex partners and gender identity, or that criminalize hate crimes against LGBTI+ victims. Of all the areas of public and private life, the protection of discrimination on SOGIESC+ grounds in employment appears to be the best established.

101. Within the employment sphere, the grounds of discrimination usually extend to cover access to employment, promotion, conditions of work and security of employment. There appears to be less protection in the engagement of occupational activities. In most countries, private as well as public sector employment is covered.

102. In some countries, the legislation or judicial interpretation includes protection against discrimination by perception, as well as discrimination by association.¹⁰⁵ Such provisions offer important protection to LGBTI+ persons who often experience discrimination due to misperceptions, stigma and related phobias.

103. As with other grounds of discrimination, legal protection in terms of the scope of prohibited conduct varies. The main forms of prohibited conduct include direct and indirect discrimination, victimization and harassment. Some also prohibit vilification. In the majority of laws examined, the SOGIESC grounds are covered to the same extent as other grounds of prohibited discrimination in employment. But there are some exceptions, in particular the protection from harassment. For example, in New Zealand, there is protection from direct as well as indirect discrimination, but not harassment or vilification on the grounds of *sexual orientation* or *gender identity*. In the United Kingdom, protection from indirect discrimination does not appear to apply to gender reassignment discrimination.

104. In a number of countries, personal data and the right to change their name and all documentation linked to their identity are protected by various laws including gender identity laws, penal and labour codes, and data protection laws (i.e. Argentina, Plurinational State of Bolivia, Brazil, Cabo Verde, Equator, Honduras, Luxembourg, Malta, Panama, South Africa).

Exceptions to the prohibition of discrimination

105. In most countries, laws on non-discrimination are in accordance with Convention No. 111 and do not consider disparate treatment or effect, based on inherent requirements of the job

¹⁰⁵ For example, the UK Equality Act, 2010.

(or genuine occupational qualifications or reasonable justification), to be discrimination. Such exceptions apply to all grounds. In most jurisdictions, faith-based exceptions to discrimination prohibitions exist, and these may be raised, in particular, in relation to the SOGIESC grounds. Typically, the application of such exceptions has more often been raised in service provision, and not in employment cases outside of religious contexts. Within religious institutions, discrimination based on belief or membership may constitute inherent requirements of the job in a mosque or a religious educational institution. In Canada, such exemptions in employment are based on the concept of reasonable accommodation for religious groups. Beyond the religious institutions, the ECtHR has stated that where non-discrimination legislation exists, the ECtHR does not require exemptions be granted to religious individuals serving LGBTI persons or same-sex couples in non-religious contexts.¹⁰⁶

- 106.** In many discrimination laws, there are also exemptions relating to employment in domestic situations that may particularly affect LGBTI+ persons. In these cases, the issue is one of privacy and whether employers should have the right to choose who works in their home and who tends to their children.

5. A few remarks on enforcement

- 107.** The ILO PRIDE project research showed that even where laws exist to protect against SOGIESC discrimination, they often are poorly applied. Confusing terminologies, lack of understanding and stigmatization have had chilling effects on the implementation and enforcement of protection of LGBTI+ persons in practice. Issues around confidentiality or fear of victimization also appear to deter some individual victims from initiating proceedings. Moreover, in some States, the wider political climate remains unfriendly or openly hostile to equality for lesbian, gay, bisexual, transsexual and intersex individuals.¹⁰⁷

6. Recognition

- 108.** With respect to laws concerning recognition of same-sex marriage or partnership or other family-related issues, the ILGA survey indicates that there are 22 States in the world that recognize and provide for same-sex marriage; there are 28 States where laws protect same-sex partnership relationships; and 26 States have introduced joint adoption laws. Moreover, the report lists 27 States which allow for same-sex second parent adoption.¹⁰⁸ It is noteworthy that the legal status on recognition has a direct effect on many employment-related rights and entitlements such as family leave, dependency allowance, medical coverage and pension entitlements. In fact, many of the employment-related discrimination cases, cited throughout this paper as establishing rights of non-discrimination for LGBTI+ persons in employment, were based on lack of recognition of same-sex partner entitlements or benefits.

¹⁰⁶ See A. Timmer and L. Senden: *A comparative analysis of gender equality law in Europe 2017*, op. cit.

¹⁰⁷ See the 2017 ILGA report, op. cit.

¹⁰⁸ See the 2017 ILGA report, op. cit., pp. 68–77.

7. Criminalization

- 109.** The information in the ILGA report, along with research on recent developments, show that criminalization of LGBTI+ practices is decreasing slowly. The types of practices that are criminalized include sexual activity, LGBTI+ identity, LGBTI+ relationships and indecent practices.¹⁰⁹ At this point, it appears that there are approximately 125 States, and several territories, where there are no legal penalties levied for consenting same-sex sexual activity between adults in private. However, there are 69 States in which law, or other measures, criminalize LGBTI+ practices, in particular sexual activity. In 43 of these States (24 in Africa, 14 in Asia and the Pacific and five in the Americas), the law is applied to women as well as men. In the other 26, it is applied to only men. In many of these countries, the criminalization of LGBTI+ practices is a holdover from colonial times and often not enforced in practice. However, there are a few countries in which moves are under way to strengthen criminalization of such activity. With respect to the death penalty, ILGA indicates that, as of May 2017, four countries, and regions within four others, apply it for same-sex sexual acts.¹¹⁰
- 110.** The ILGA survey also lists 19 States in North Africa and the Middle East (and the United Republic of Tanzania) where “morality” laws or “promotion” laws actively target public promotion or expression of same-sex and trans realities. The 2017 ILGA report also includes information on barriers to the formation, establishment or registration of sexual orientation-related NGOs. In this regard, they recorded 25 States in total: 11 in Africa, 13 in Asia and one in Europe where such barriers exist.
- 111.** It is interesting to note that four countries (Cook Islands, Kiribati, Mauritius and Saint Lucia) have adopted laws providing for protection against discrimination in employment on SOGI-related grounds, while the laws criminalizing LGBTI+ practices (same-sex activity and indecent practices) remain on the books.
- 112.** The other aspect of criminalization concerns the adoption of laws that protect the LGBTI+ community from hate crimes and which impose penal sanctions on discrimination, including SOGIESC grounds. The 2017 ILGA report and additional research show that specific legislation that protects LGBTI+ individuals from discrimination and violence, and vilification, is expanding significantly in recent years. For example, in Mongolia, the only protection of LGBTI+ persons is found in the recent amendment of the Criminal Code in 2017 to penalize discrimination on grounds including sexual orientation and gender identity.

8. Policies promoting equality on SOGIESC grounds

- 113.** A number of countries have included SOGI grounds in promotional policies and programmes (Belgium, Denmark and the Netherlands). A review of studies, NGO+ advocacy material and a few examples of national policies demonstrate that measures needed to promote equality and non-discrimination on SOGIESC+ grounds are similar to those of other grounds. In addition to ensuring protection in law, measures of advocacy, awareness raising, training outreach and targeting, widening employment and occupation opportunities, preventing and prohibiting harassment and violence, ensuring equality in conditions of work,

¹⁰⁹ Belize, India, Seychelles and Trinidad and Tobago (on appeal) are the most recent to repeal criminal laws.

¹¹⁰ Islamic Republic of Iran, Saudi Arabia, Sudan and Yemen. There are other countries where it is codified in law but has not been implemented. See the 2017 ILGA report, *op. cit.*, p. 40.

pay and benefits, strengthening application of the law in practice, and enhancing enforcement and victim protection and access to justice, are all relevant and essential to the promotion of the rights against discrimination in employment and occupation for LGBT+ persons.

114. Among the measures listed above, priority attention is given to awareness raising and education to address the causes of prejudices, fear and hatred. A number of initiatives, particularly in the field of education, have been identified to address stigma and prejudice. For example, in 2017, in Cambodia, a plan was introduced for new school courses on LGBT issues and gender-based violence.¹¹¹

I. The Committee on the Application of Conventions and Recommendations (CEACR)

1. Protection under the ground of sex

115. As discussed earlier in this paper, the CEACR has emphasized the dynamic character and changing nature of discrimination and legal responses to it. Nowhere has this been more evident than in relation to the conceptual changes in understanding and protection against discrimination on the ground of *sex*. A few examples of this conceptual evolution include: whether the ground of *sex* covered both men and women or only protected women; whether *sex* covered pregnancy; whether *sex* covered sexual harassment; and whether it covered gender. The CEACR responded to these issues by providing conceptual clarity. In its General Survey on non-discrimination and equality in employment and occupation in 1988, noting the lack of definition of the ground of *sex*, the CEACR stated that the ground of *sex* should cover both men and women and not be restricted to prohibiting discrimination to only women. The CEACR considered that it was clear that the ground of *sex* should be interpreted to include maternity and pregnancy.¹¹² By 1996, the CEACR had determined that “sex-based discrimination also includes that based on marital status or, more specifically, family situation”.¹¹³

116. With respect to sexual harassment, the CEACR, in its 1988 General Survey, recognized that some governments and social partners were addressing sexual harassment as a form of *sex* discrimination. However, at that point in time, the CEACR did not indicate its views on whether sexual harassment came within the application of the Convention. In its 2002 general observation, the CEACR confirmed sexual harassment as a serious manifestation of *sex* discrimination falling within the scope of Convention No. 111. It highlighted the importance of taking effective measures to prevent and prohibit sexual harassment, and asked ratifying States to provide information on action taken in this regard.¹¹⁴ When a State

¹¹¹ Report of the Independent Expert, 2018, op. cit., para. 74.

¹¹² ILO: *Equality in employment and occupation*, op. cit., para. 65.

¹¹³ ILO: *Special Survey on Equality in Employment and Occupation in respect of Convention No. 111*, 1996, op. cit., paras 37 and 38.

¹¹⁴ General observation on Convention No. 111, adopted 2002, International Labour Conference, 2003.

adopted legislation in reply to the general observation, the Committee noted this with satisfaction.¹¹⁵ A heading of *sexual harassment* came into use in the comments. In 2017, in the preparation of the first discussion on the standard-setting item on harassment and violence in the world of work, the views expressed in the CEACR's general observation and comments were taken into account.¹¹⁶ For example, referring to its 2002 general observation, the CEACR, in a 2014 observation on Uruguay, noted with satisfaction the adoption of an act concerning sexual harassment at work which contained standards relating to prevention and penalties for such acts, and covered both quid pro quo and hostile environment sexual harassment.

- 117.** The ground of *sex* also evolved to capture the concept of gender, which was developed in response to the marked shortcomings in the promotion of equality in terms of approaches, understanding and results. These identified gaps led to the emergence of a body of work to develop a gender-based analytical and planning framework to address not only the biological, but the socio-cultural aspects of the treatment of men and women based on their actual or perceived sex and gender roles. This analytical framework has over time seeped into legal arguments, laws and regulations. In some instances, non-discrimination laws have added *gender* to the list of grounds along with *sex* or in place of it.¹¹⁷ Where the ground of *sex* remains, such as in the international human rights treaties, it has come to include the gender analytical framework.
- 118.** The CEACR has addressed the importance of gender within the application of the ground of *sex*. It stated that “under the Convention, sex discrimination includes distinctions based on the biological characteristics, as well as unequal treatment arising from socially constructed roles and responsibilities assigned to a particular *sex* (*gender*). Gender roles and responsibilities are affected by age, race, class, ethnicity and religion, and by the geographical, economic and political environment.” The CEACR affirmed that the use of the concept of “*gender*” as a socio-economic variable to analyse roles, responsibilities, constraints, opportunities and needs of men and women is an essential component to promote equality of opportunity and treatment under the Convention,¹¹⁸ and it has reflected this understanding in its comments. The UN treaty bodies, in particular CEDAW, have made similar conceptual clarifications to their understanding of the ground of *sex*.
- 119.** It does not appear that the CEACR has ever directly addressed or expressed its view on whether the ground of *sex* in Convention No. 111 provides protection against SOGIESC+

¹¹⁵ See, for example, the 2012 CEACR observation, on Costa Rica, where the Committee refers to its previous comment “in which it noted the existence of problems regarding the effectiveness of procedures for handling complaints of sexual harassment and the reluctance of victims to bring complaints for fear of reprisals. In this regard, the Committee notes with **satisfaction** the adoption of Act No. 8805, amending Act No. 7476 against sexual harassment in employment and teaching, which came into force on 28 Apr. 2010.”

¹¹⁶ ILO: *Ending violence and harassment against women and men in the world of work*, Report V(1), International Labour Conference, 107th Session, Geneva, 2018.

¹¹⁷ ILO: *Giving globalization a human face*, Report III (Part 1B), General Survey, International Labour Conference, 101st Session, Geneva, 2012, para. 782. See, for example, Romania, which introduced definitions of sex and gender, as well as “gender stereotypes” in its 2002 Gender Equality Law, as amended in 2015, whereby gender is understood to mean the combination of roles, behaviours, features and activities that society considers to be appropriate for women and for men.

¹¹⁸ ILO: *Giving globalization a human face*, 2012, op. cit., para. 782.

discrimination. However, it has recognized that *sexual orientation* is covered under the ground of *sex* or *gender* in legislation in some States.¹¹⁹

2. Protection of SOGIESC grounds of discrimination

- 120.** As early as 1988, the CEACR had noted that a few countries had adopted legislation prohibiting discrimination on the ground of *sexual orientation*.¹²⁰ By the time of its Special Survey of 1996 on equality of opportunity and treatment, the CEACR concluded that a Protocol to Convention No. 111 should be adopted in order to harmonize the ILO Convention with other human rights instruments, and to allow account to be taken of changes that had taken place in the field of discrimination at the national level. The Committee specifically recommended to the ILO Governing Body and the International Labour Conference the adoption of a Protocol to Convention No. 111 to expand the grounds of discrimination which could be accepted by ratifying States. The Committee suggested the inclusion of the following grounds: age, disability, family responsibilities, language, matrimonial status, nationality, property, sexual orientation, state of health and trade union affiliation. The ILO followed up on this recommendation and the ILO Governing Body considered placing the adoption of a Protocol to Convention No. 111 on the agenda of the International Labour Conference. However, this item was never selected.¹²¹
- 121.** At the same time, in the Special Survey of 1996, the CEACR requested “governments which have ratified the Convention to indicate from time to time their position concerning the application of Article 1(1)(b) of the Convention, and to indicate the criteria not covered by paragraph 1(a) of this Article which would extend the application of the Convention.” The CEACR further proposed “to include in future comments a request in this connection in appropriate cases, particularly to States which have included in their legislation one or more criteria in addition to those specifically provided for in paragraph 1(a) of Article 1 of the Convention”.¹²²
- 122.** While the CEACR had previously, on occasion, been noting information provided by States on additional grounds, it more systematically requested, received and commented on information provided under Article 1(1)(b) following its concluding position set out above. The Committee noted the relevance and importance of the addition of new grounds under the Convention, however it stopped short of encouraging or urging States to take action to expand grounds covered under Article 1(1)(b).
- 123.** By 2012, the CEACR noted a clear trend towards the inclusion in national legislation of a broad range of prohibited grounds of discrimination. It welcomed the increasing use of the possibility provided under Article 1(1)(b) to address discrimination based on additional grounds, such as age, health, disability, HIV and AIDS, employment status, nationality,

¹¹⁹ ILO: *Giving globalization a human face*, 2012, op. cit., para. 824.

¹²⁰ ILO: *Equality in employment and occupation*, 1988, op. cit.

¹²¹ ILO: *Special Survey on Equality in Employment and Occupation*, 1996, op. cit., paras 294–297. The CEACR proposed two possibilities – providing a long list which could be accepted one by one or setting out a core list of grounds which would be accepted by ratification of the Protocol. The CEACR also proposed the addition of the burden of proof in the proposed Protocol (see the section on Other ILO action in this paper).

¹²² ILO: *Special Survey on Equality in Employment and Occupation*, 1996, op. cit., para. 302.

sexual orientation, and gender identity. The CEACR found that the number and type of additional grounds that had been added varied considerably among countries. In contrast to its 1998 position, it found it “impossible to draw up an exhaustive list of grounds that might result in discrimination, and new grounds likely to emerge and become widespread in future”.¹²³

- 124.** With respect to the application of Article 1(1)(b), in 2012, the CEACR clarified that while the Convention does not set out a particular mechanism for States to extend the coverage of the Convention to additional grounds, the Committee has considered that when information received from governments and workers’ and employers’ organizations indicates that legislation or policies concerning discrimination based on additional grounds have been adopted after consultation with the social partners, the government has availed itself of the possibility envisaged under *Article 1(1)(b)*.¹²⁴
- 125.** A review of CEACR comments reveals that it has noted action taken to prohibit discrimination on grounds of sexual orientation or gender identity, and to promote equality of opportunity and treatment in employment of lesbian, gay, bisexual, transgender and intersex people in over 212 comments.¹²⁵ The CEACR has used a range of expressions to note such action, including expressing satisfaction,¹²⁶ interest,¹²⁷ welcoming, or taking note¹²⁸ of the additional grounds, and/or strengthened protection against discrimination on those grounds. In almost all comments referring to SOGIESC+ grounds, the CEACR responds to the information contained in the government’s reports or the observations of workers’ organizations. In this regard, it often asks for follow-up information following the adoption of a law or policy.
- 126.** In most comments, the CEACR notes the SOGIESC+ grounds as part of a list of grounds contained in non-discrimination legislation. For example, in its 2011 observation on Albania, the CEACR “notes with *interest* the adoption of the Protection from Discrimination Law (No. 10221, 4 February 2010) which prohibits discrimination in a range of areas, including employment, education and the provision of services. The Committee notes in particular that discrimination is prohibited on a wide range of grounds, namely gender, race, colour, ethnicity, language, *gender identity, sexual orientation*, political, religious or philosophical beliefs, economic, education or social situation, pregnancy, parentage, parental responsibility, age, family or marital condition, civil status, residence, health status, genetic predispositions, restricted ability, affiliation with particular group or ‘any other reason’ (section 1), many of which are additional grounds, as foreseen in *Article 1(1)(b) of the*

¹²³ ILO: *Giving globalization a human face*, 2012, op. cit., para. 807.

¹²⁴ *ibid.*, para. 808.

¹²⁵ This includes repetitions or repeated references.

¹²⁶ In such cases SOGIESC grounds were included in a list containing the grounds set out in Article 1(1)(a) (i.e. CEACR – Luxembourg, observation, 2008).

¹²⁷ For example, CEACR – South Africa, observation, 2005; Argentina, observations, 2009 and 2017; Albania, observation, 2014; United Kingdom, observation, 2014; Republic of Moldova, observation, 2015; Canada, direct request, 2018; France, observation, 2018; India, direct request, 2018.

¹²⁸ For example, CEACR – Italy, direct request, 2009; Mexico, direct request, 2011; Brazil, direct requests, 2013, 2014 and 2018; Costa Rica, direct request, 2012; Chile, observation, 2013; Croatia, observation, 2014; Australia, direct request, 2018; Norway, direct request, 2018.

Convention.” In its 2014 observation on Croatia, the CEACR simply noted the long list of grounds under Article 1(1)(a) and (b) of the Convention, which included sexual orientation, gender identity or expression.

- 127.** The CEACR comments reflect a number of different SOGIESC grounds contained in national legislation. In addition to the ground of *sexual orientation*, which is the most common, and *gender identity*, which is the next most common, comments have been made on legislation including the grounds of *gender reassignment* (United Kingdom), gender expression (Georgia) and *sex characteristics* (Malta).
- 128.** The CEACR has expressed concern when protection against discrimination based on additional grounds has been withdrawn, following the government’s reporting of the ground under Article 1(1)(b).¹²⁹ In such cases, the Committee has asked governments to hold consultations with the representative employers’ and workers’ organizations, and other appropriate bodies, concerning these additional grounds with a view to maintaining the previous level of protection.¹³⁰
- 129.** Trade unions have made observations on the importance of prohibiting discrimination against LGBTI persons in a few countries. (i.e. Australia, Canada, Fiji, Haiti, Namibia, Papua New Guinea). For example, in Canada the Public Service Alliance Canada (PSAC) called for the Canadian Human Rights Act to prohibit discrimination based on *gender identity*. The CEACR asked the Government to report on the measures taken “to extend the prohibited grounds to include discrimination based on *gender identity* in employment and occupation”.¹³¹ The International Trade Union Confederation (ITUC) made comments concerning lack of protection against discrimination in Papua New Guinea, indicating that lesbian, gay, bisexual and transgender persons face discrimination in employment. In its 2011 and 2014 observations, under the heading *Sexual orientation*, the CEACR “asked the Government to reply to the issues set out in the communication of the ITUC regarding discrimination faced by lesbian, gay, bisexual and transgender people, and to indicate any steps taken to address these matters”.¹³²
- 130.** The CEACR also has issued a number of comments noting with *interest* the strengthening of non-discrimination protection against LGBTI+ persons as well as the extension of prohibited grounds of discrimination beyond *sexual orientation*. For example, in Canada, the CEACR noted with *interest* that sexual identity was added, along with sexual orientation, as a prohibited ground of discrimination in employment, and that both grounds were protected under the prohibition of sexual harassment.¹³³ In India, under the heading *Enforcement*, the CEACR noted with *interest* the judgment delivered in 2014 by the Supreme Court, in which the Court recognized that discrimination, violence and prejudice based on a person’s gender identity violates India’s constitutional provisions relating to equality. It also noted that the Court ordered the State to include transgender persons within the categories eligible for various affirmative action schemes. It further noted from the

¹²⁹ For example, see CEACR observations on the Czech Republic and Namibia, 2014.

¹³⁰ CEACR – Namibia, observation, 2014.

¹³¹ CEACR – Canada, direct request, 2018.

¹³² CEACR – Papua New Guinea, observations 2011 and 2014.

¹³³ CEACR – Canada, direct request, 2018; Australia, direct request, 2018; Norway, direct request, 2018.

Government's report to the United Nations Working Group on the Universal Periodic Review that, in 2016, the Transgender Persons (Protection of Rights) Bill, 2016, was introduced in *Lok Sabha* and that the Bill aims to protect transgender persons from violence and discrimination and provides for equal opportunities in education, employment and residence. The CEACR asked the Government to provide information on any action taken to follow up on the judgment of the Supreme Court and to indicate any developments concerning the Transgender Persons (Protection of Rights) Bill.¹³⁴ The CEACR noted that in Honduras, under Articles 2 and 3 of the Convention, the National Equality Policy calls for non-discrimination on grounds of sexual orientation and gender identity.¹³⁵

- 131.** The CEACR also has noted that the progressive legal recognition in a number of countries of marriage or cohabitation of same-sex couples reflects a growing awareness of the need to provide employment rights and benefits derived from legally recognized marriage or partnership.¹³⁶ It has noted concern over violence and intolerance against LGBTI persons.¹³⁷
- 132.** The focus of the comments has been largely on the inclusion of grounds in national legislative provisions prohibiting discrimination.

J. Other ILO action

- 133.** Over the years, the ILO has covered discrimination against LGBTI+ persons in research activities and reports, such as the 2003, 2007 and 2011 Global Reports on discrimination prepared under the ILO Declaration on Fundamental Principles and Rights and its Follow-up, 1998. The most extensive research was undertaken through the *Gender identity and sexual orientation: Promoting rights, diversity and equality in the world of work (PRIDE) project* funded by the Norwegian Ministry of Foreign Affairs. The project sought to identify discrimination that LGBTI+ workers may face, and to report good law and practice in preventing and eliminating discrimination and inequalities facing them. Extensive research was carried out at the national level in nine countries (Argentina, Costa Rica, France, Hungary, India, Indonesia, Montenegro, South Africa and Thailand). The research confirmed that LGBT persons frequently experience discrimination and harassment throughout the employment cycle from education, to access to employment, conditions of work and security of employment. It found that those who do not conform to traditional gender stereotypes, like effeminate men and masculine women, often experience more discrimination than LGBT persons who can “pass” as heterosexual. In order to avoid the discrimination and harassment, many if not most individuals stay in the closet, which creates its own stress and anxiety for those individuals. Additional studies in Asia have been

¹³⁴ CEACR – India, direct request, 2018; also see information on labour inspection in Nicaragua, direct request, 2017.

¹³⁵ CEACR – Honduras, direct request, 2017.

¹³⁶ ILO: *Giving globalization a human face*, 2012, op. cit., para. 824.

¹³⁷ CEACR – Jamaica, direct request, 2018.

undertaken by the ILO jointly with the UNDP.¹³⁸ More research on additional grounds of discrimination (to those listed in Article 1(1)(a) of Convention No. 111) is planned for 2019.

K. Concluding remarks

- 134.** The research reveals that within the dynamic area of discrimination and the promotion of equality, the protection of LGBTI+ persons against discrimination and exploitation based on their SOGIESC is receiving increasing attention. There are currently approximately 80 countries that have taken some form of action at the national or state levels to prohibit employment discrimination based on SOGIESC grounds. The human rights of the LGBTI+ community is increasingly taken up by the UN and its treaty bodies, national- and state-level parliaments and administrative bodies, the judiciary, human rights institutions and advocacy groups. The judiciary and human rights mechanisms are often in the forefront of establishing the rights for non-discrimination and equality.
- 135.** The UN supervisory bodies of human rights Conventions have determined that discrimination against LGBTI+ persons violates the ICCPR, ICESCR, CAT, ICERD, CEDAW, ICRC and the CRPD. Their supervisory comments on States' compliance with the Conventions are increasingly highlighting the importance of taking action to address and protect against discrimination and abuse of LGBTI+ persons as States' obligation under the Conventions. They have gone beyond noting the information they receive to calling for specific action to be taken in a number of countries as part of their concluding observations. This is particularly true for the HRC and the CESCR where they address SOGIESC discrimination under the *other status* criteria in the non-discrimination Articles of the Covenants. However, notwithstanding the use of the *other status* criteria, the HRC also continues to use the ground of *sex* as a basis for calling for non-discrimination of LGBTI+ persons. The CERD, CEDAW and the CRPD address SOGIESC in relation to how it intersects and multiplies the discrimination and marginalization of racial minorities, women and disabled persons. Thus, they do not address discrimination against LGBTI+ individuals as such but only in relation to the target group of each Convention.
- 136.** The situation of the ILO CEACR is unique given the manner in which the non-discrimination provisions are formulated in Convention No. 111. The review of the comments of the CEACR under Convention No. 111 reveals that for a number of years the Committee has been noting information contained in the governments' reports, and in observations by workers' organizations, concerning employment discrimination on SOGIESC grounds.

¹³⁸ ILO: *Discrimination at work on the basis of sexual orientation and gender identity: Results of pilot research*, Governing Body, 319th Session, Geneva, Oct. 2013, GB.319/LILS/INF/1; ILO: *Gender Identity and Sexual Orientation: Promoting Rights, Diversity and Equality in the World of Work*, Results of the PRIDE Project, Geneva, 2018.

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Appendix I

Glossary

The definitions in this glossary were drawn from or informed by the Yogyakarta Principles, Yogyakarta Principles +10, the Guidelines of the International Organization for Migration (IOM) and the Office of the United Nations High Commissioner for Refugees (UNHCR) on “Working with Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons in Forced Displacement and the Humanitarian Context”, the publication of the Office of the High Commissioner for Human Rights “Living Free and Equal” and the Inter-American Commission on Human Rights.

Term	Definition
Asexual	A person who may experience romantic or emotional attraction, but generally not sexual attraction.
Assigned/legal sex	Refers to the sex recorded when a child’s birth is registered. Typically, this will be written on hospital records, on a birth certificate or on another form of identification. Usually the sex assigned at birth is also used in social interactions.
Biphobia	Biphobia is an irrational fear, hatred or aversion towards bisexual people.
Bisexual	An adjective that describes people who have the capacity for romantic, emotional and/or physical attraction to person(s) of the same sex and/or gender, as well as to person(s) of a different sex and/or gender. Note the term “pansexual” describes individuals who have the capacity for attraction to persons of all gender identities.
Coming out	A process of self-acceptance. People may acknowledge their identity first to themselves and then share it with others. Publicly identifying one’s identity may or may not be part of coming out, and the concept of coming out is not specific to every culture. For some, coming out can be a lifelong process.
Gender	Whereas “sex” refers to biological and physiological characteristics, “gender” refers to the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for individuals based on the sex they were assigned at birth.
Gender confirmation/affirming treatment	Gender confirmation, or gender affirming, treatment, refers to various medical interventions that may be one part of transition. Not all transgender people choose or can afford medical interventions such as hormone therapy or surgery. The terms “pre-operative” (or pre-op), “post-operative” (or post-op), “sex reassignment surgery” and “sex change operation” should be avoided. Problematically, in many States, gender confirmation/affirming treatment is a requirement for legal gender recognition.
Gender dysphoria	A diagnosis contained in the fifth edition of the <i>American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (DSM-V)</i> . It refers to a feeling of discomfort with one’s assigned sex. It replaced “gender identity disorder”, but is controversial as it classifies being transgender as a medical condition.

Term	Definition
Gender expression ¹	Gender expression is each person's presentation of the person's gender through physical appearance – including dress, hairstyles, accessories, cosmetics – and mannerisms, speech, behavioural patterns, names and personal references. Gender expression may or may not conform to a person's gender identity.
Gender identity ²	Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.
Gender non-conforming	Persons who do not agree or follow ideas or social stereotypes about how should they act or express themselves according to the sex assigned at birth.
Gender-queer	"Gender-queer" is a general term for persons whose gender identity is not included or transcends the male/female binary.
Third gender/non-binary	Terms used to describe people whose gender identity falls outside the male–female binary; can also describe persons who identify as both male and female (bigender), do not identify with any gender (agender) or identify as a mix of different genders (e.g. male, female and agender on different days).
Intersex	An umbrella term describing a wide range of natural bodily variations related to sex characteristics (including genitals, gonads, reproductive organs and chromosome patterns) that do not fit typical binary notions of male or female bodies. Intersex people are typically assigned a sex of male or female at birth, and the majority of intersex people identify as male or female. Like all people, intersex people may identify with any sexual orientation and with any gender or with no gender.
Heteronormativity	Refers to the cultural bias in favour of heterosexual relationships, under which such relationships are deemed "normal, natural and ideal", and are preferred over same-gender or same-sex relationships. It is composed of legal, social, and cultural rules that require individuals to act according to dominant and ruling heterosexual patterns.
Heterosexual	An adjective that describes persons whose romantic, emotional and/or physical attraction is to person(s) of a different sex and/or gender (also referred to as "straight").
Heterosexism	Promoting heterosexuality as superior or assuming that all people are heterosexual.
Homophobia	Homophobia is an irrational fear of, hatred or aversion towards, lesbian, gay or bisexual people.
Homosexual	An adjective that describes persons whose romantic, emotional and/or physical attraction is to person(s) of the same sex and/or gender (also referred to as "gay"). Note that, in English, many

¹ Yogyakarta Principles +10 2017, p. 6.

² Yogyakarta Principles 2006, p. 6.

Term	Definition
	people consider homosexual an outdated clinical term that should be avoided.
Lesbian	A woman whose enduring romantic, emotional and/or physical attraction is to other women.
LGBTI+ ³	An acronym for lesbian, gay, bisexual, transgender and intersex persons that is also used as shorthand for “persons of diverse sex, sexual orientation and gender identity”. Sometimes intersex is not included and the acronym is LGBT. Sometimes “queer” or “questioning” is included and the acronym is LGBTQ or LGBTIQ. Sometimes “aromantic” or “asexual” is included, and the acronym is “LGBTQA” or “LGBTIQA.” The + is intended to cover all these possible uses.
Outed/public outing	Describes an individual’s sex, sexual orientation or gender identity being made public against their will or without their knowledge, often for malicious purposes.
Personal pronouns	A pronoun is a word that refers to either the person talking (me or you) or someone being talked about (her, him, them or this). Trans and gender non-conforming people, like everyone else, want to be addressed with the correct pronoun as well as name, gender and title. Commonly used gender-neutral pronouns in English are they, them and theirs. Less common are ze, hir and hirs (pronounced zee, here and heres). Some languages do not require pronouns to indicate gender or have a gender-neutral option, including Japanese, Swahili, Swedish and Turkish. Sweden has added to their language the gender-neutral pronoun “hen” to complement “han” (he) and “hon” (she). Other languages do not mark gender at all, including Armenian, Finnish, Hungarian, Persian and Yoruba.
Persons of diverse sex, sexual orientation and gender identity	Umbrella term for all people whose sex characteristics, sexual orientation or gender identity places them outside the mainstream, and people whose gender identity does not correspond with the sex they were assigned at birth.
Queer	Traditionally a negative term, queer has been re-appropriated by some LGBTI persons to describe themselves. It is considered inclusive of a wide range of sexual orientations and gender identities.
Questioning	People who are uncertain of their sex, sexual orientation or gender identity.
Sexual behaviour	What we do sexually, and with whom; not always an accurate indicator of sexual orientation.
Sex/biological sex	The classification of a person as having female, male and/or intersex characteristics. Infants are usually assigned the sex of male or female at birth based on the appearance of their external anatomy. A person’s sex is a combination of bodily characteristics, including chromosomes (typically XY chromosome = male, XX chromosome = female), reproductive organs and secondary sex characteristics.

³ IOM–UNHCR: *Working with lesbian, gay, bisexual, transgender and intersex (LGBTI) persons in forced displacement and the humanitarian context.*

Term	Definition
Sex characteristics ⁴	Sex characteristics are each person's physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones and secondary physical features emerging from puberty.
Sexual orientation	Sexual orientation is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender. ⁵
Sodomy laws	Laws that prohibit adult, consensual, private, non-commercial anal sex. While sodomy laws may also prohibit anal sex between a man and a woman, they are typically disproportionately applied against persons of diverse sexual orientations and gender identities who engage in same-sex sexual acts.
SOGIESC	An acronym for sexual orientation, gender identity and expression, and sexual characteristics.
Third gender/third sex	The term "third gender" is in some contexts used in relation to a gender identity that describes someone who considers themselves, or is considered, neither male nor female by societal definition; in other contexts, it is used to describe individuals whose gender identity does not match the sex they were assigned at birth.
Transgender	Transgender is used by some people whose gender identity and, in some cases, gender expression, differs from what is typically associated with the sex they were assigned at birth. Trans, transgender, gender diverse and gender non-conforming may be used as "umbrella terms" representing a variety of words that describe an internal sense of gender differing from the sex assigned at birth, whether one feels male, female, another gender or no gender.
Transition	The process of changing one's external gender presentation to be more in line with one's gender identity. Transition typically occurs over a long period of time and includes some or all of the following personal, medical and legal steps: telling one's family, friends and co-workers; using a different name, pronoun and/or title; dressing differently; changing one's name and/or sex on legal documents; and possibly (though not always) undergoing hormone therapy and/or one or more other types of treatment. The steps involved in transition vary from person to person. In some countries, surgery is a requirement for legal gender recognition, in violation of UN human rights norms.
Transphobia	Transphobia is an irrational fear, hatred or aversion towards transgender people.
Transsexual	An older term still preferred by some whose gender identity differs from their assigned sex. Transsexual persons may take steps to alter their bodies through medical interventions, such as hormones, implants and surgery.

⁴ Yogyakarta Principles +10 2017, p. 6.

⁵ Yogyakarta Principles 2006, p. 6.

Appendix II

Summary table of national framework on SOGIESC

States	Constitutional protection against SOGIESC discrimination	National law protection against SOGIESC discrimination in employment	Other legal protection against SOGIESC discrimination in employment	Criminalization of same-sex sexual acts
American States				
Latin America and the Caribbean				
Argentina			✓ ¹	
Bahamas				
Belize	X ²			
Bolivia, Plurinational State of	✓ ³	✓ ⁴		
Brazil		✓ ⁵	✓ ⁶	
Chile		✓ ⁷	✓ ⁸	
Colombia	X ⁹	✓ ¹⁰	✓ ¹¹	
Costa Rica		✓ ¹²	✓ ¹³	
Cuba		✓ ¹⁴		
Ecuador	✓ ¹⁵	✓ ¹⁶		
El Salvador		✓ ¹⁷	✓ ¹⁸	
Honduras		✓ ¹⁹		
Jamaica				✓ ²⁰
Mexico	✓ ²¹	✓ ²²		
Nicaragua		✓ ²³		
Panama				

States	Constitutional protection against SOGIESC discrimination	National law protection against SOGIESC discrimination in employment	Other legal protection against SOGIESC discrimination in employment	Criminalization of same-sex sexual acts
Peru		✓ ²⁴		
Saint Lucia		✓ ²⁵		✓
Suriname		✓ ²⁶		
Trinidad and Tobago				X ²⁷
Uruguay		✓ ²⁸		
North America				
United States			✓ ²⁹	
Canada	X	✓ ³⁰	✓ ³¹	
African States				
Algeria				✓
Angola		✓ ³²		
Benin				
Botswana		✓ ³³		✓
Burkina Faso				
Burundi				✓
Cameroon				✓
Cabo Verde		✓ ³⁴		
Central African Republic				
Chad				✓ ³⁵
Comoros				✓
Côte d'Ivoire				
Democratic Republic of the Congo				
Madagascar				

States	Constitutional protection against SOGIESC discrimination	National law protection against SOGIESC discrimination in employment	Other legal protection against SOGIESC discrimination in employment	Criminalization of same-sex sexual acts
Mauritius		✓ ³⁶	✓ ³⁷	✓ ³⁸
Morocco				✓
Mozambique		✓ ³⁹		
Seychelles		✓ ⁴⁰		
South Africa	✓ ⁴¹	✓ ⁴²	✓ ⁴³	
Uganda				✓
Zimbabwe				✓ ⁴⁴
Asia and the Pacific Region				
Australia		✓ ⁴⁵	✓ ⁴⁶	
Bangladesh			✓ ⁴⁷	✓
China			✓ ⁴⁸	
Cook Islands		✓ ⁴⁹		✓ ⁵⁰
Fiji	✓ ⁵¹	✓ ⁵²	✓ ⁵³	
India	X ⁵⁴		✓ ⁵⁵	
Indonesia			✓ ⁵⁶	X ⁵⁷
Japan			? ⁵⁸	
Kiribati		✓ ⁵⁹		✓
Malaysia				✓

States	Constitutional protection against SOGIESC discrimination	National law protection against SOGIESC discrimination in employment	Other legal protection against SOGIESC discrimination in employment	Criminalization of same-sex sexual acts
Mongolia		✓ ⁶⁰		
Nepal	✓ ⁶¹			
New Zealand		✓ ⁶²	✓ ⁶³	
Philippines		✓ ⁶⁴	✓ ⁶⁵	
South Korea		?		
Samoa		✓ ⁶⁶		✓ ⁶⁷
Thailand	X ⁶⁸	✓ ⁶⁹		
Vanuatu		✓ ⁷⁰		
Arab States				
Lebanon				? ⁷¹
Jordan				
European States				
Albania		✓ ⁷²		
Andorra	X ⁷³	✓ ⁷⁴	✓ ⁷⁵	
Austria		✓ ⁷⁶	✓ ⁷⁷	
Belgium		✓ ⁷⁸		
Bosnia and Herzegovina		✓ ⁷⁹		
Bulgaria		✓ ⁸⁰		
Croatia		✓ ⁸¹		
Cyprus		✓ ⁸²		
Czech Republic		✓ ⁸³		

States	Constitutional protection against SOGIESC discrimination	National law protection against SOGIESC discrimination in employment	Other legal protection against SOGIESC discrimination in employment	Criminalization of same-sex sexual acts
Denmark		✓ 84	✓ 85	
Estonia		✓ 86		
Finland		✓ 87		
France		✓ 88	✓ 89	
Georgia		✓ 90		
Germany		✓ 91	✓ 92	
Greece		✓ 93	✓ 94	
Hungary		✓ 95	✓ 96	
Ireland		✓ 97	✓ 98	
Israel		✓ 99	✓ 100	
Italy		✓ 101		
Kosovo *	✓ 102	✓ 103	✓ 104	
Latvia		✓ 105		
Lithuania		✓ 106	✓ 107	
Luxembourg		✓ 108		
Malta	✓ 109	✓ 110	✓ 111	
Moldova, Republic of		✓ 112	✓ 113	
Montenegro		✓ 114	✓ 115	
Netherlands		✓ 116	117	

* As defined in United Nations Security Council Resolution No. 1244 of 1999.

States	Constitutional protection against SOGIESC discrimination	National law protection against SOGIESC discrimination in Employment	Other legal protection against SOGIESC discrimination in Employment	Criminalization of same-sex sexual acts
North Macedonia		✓ ¹¹⁸		
Norway		✓ ¹¹⁹	✓ ¹²⁰	
Poland		✓ ¹²¹	✓ ¹²²	
Portugal	✓ ¹²³	✓ ¹²⁴	✓ ¹²⁵	
Romania		✓ ¹²⁶	✓ ¹²⁷	
Russian Federation				
Serbia		✓ ¹²⁸	✓ ¹²⁹	
Slovakia		✓ ¹³⁰	✓ ¹³¹	
Slovenia		✓ ¹³²	✓ ¹³³	
Spain		✓ ¹³⁴	✓ ¹³⁵	
Sweden	✓ ¹³⁶	✓ ¹³⁷		
Switzerland	X ¹³⁸	✓ ¹³⁹	✓ ¹⁴⁰	
Turkey	X			
Ukraine		✓	✓	
United Kingdom		✓ ¹⁴¹		

¹ Discrimination on grounds of gender and SO are prohibited in the Constitution of the Autonomous City of Buenos Aires; Federal laws provide for non-discrimination on grounds of SOGI; Local laws provide for non-discrimination on grounds of GI and / or its expression, SO; Rulings; Executive Order provides for non-discrimination on grounds of gender, SO, physical characteristics, psychophysical condition.

² Supreme Court of Belize ruled that the definition of “sex” contemplated in non-discrimination provision (article 16.3) of the Constitution of Belize includes SO.

³ The Constitution of Bolivia prohibits all forms discrimination based on SOGI.

⁴ Penal Code: Art. 281 *sexies* criminalises any act of discrimination based on SOGI. It applies to employment; Law on Criminal Enforcement provides for non-discrimination on grounds of “gender and SO”; Specific laws provides for non-discrimination on grounds of SOGIESC.

⁵ Several jurisdictions have enacted local laws which prohibit discrimination based on SO with varying levels of protections.

⁶ Discrimination on grounds of SO is prohibited in several State' Constitutions; Specific laws provide for non-discrimination on grounds of SOGI; Local Laws provide for non-discrimination on ground of SO; The Executive Order No. 41/2007 issued by the Ministry of Labour and Employment prohibits employers to request documents or information related to the employee's sexuality.

⁷ Labour Code provides for non-discrimination on grounds of SOGI; Law on Measures against Discrimination provides for non-discrimination on ground of SOGI and applies to employment.

⁸ In 2015, the Labour Court condemned the Municipality of Talca for labour homophobia, in particular for dismissing three workers; In 2007, the Labour Directorate. In 2004 the Ministry of Labour issued an opinion where it expressly recognizes that the principles of non-discrimination guaranteed in the Labour Code and the Constitution are applicable to sexual minorities.

⁹ Race and sex are suspected categories of discrimination, which implies that any differential treatment based on these criteria is presumed to be discriminatory unless it can be justified by a strict proportionality test. The Constitutional Court has consolidated an important body of jurisprudence aimed at proscribing discrimination based on SO and, consequently, to protect the rights of homosexual persons and same-sex couples based on the Constitution.

¹⁰ Penal Code provides for non-discrimination on grounds of SO.

¹¹ The Colombian Constitutional Court (2007) decided on a case of employment discrimination in which SO was considered a prohibited ground of discrimination. In 2015 the Court explicitly prohibited discrimination in employment due to sexual orientation in relation to the right to education; In 2009 the Constitutional Court ruled that normative provisions contained in 26 laws, which recognized rights, benefits and imposed burdens for heterosexual couples, excluding same-sex couples, were discriminatory.

¹² Labour Code prohibits any discrimination at work for reasons of SO; Specific laws provides for non-discrimination on grounds of SO.

¹³ Executive Order guarantee equality and non-discrimination of sexually diverse persons, officials of the Executive Branch; The Constitutional Chamber, issued in 2010, explicitly established the prohibition of discrimination based on SO; In the cases of the Ministry of Labour and Social Security, the Services Network of the CCSS and the Supreme Court of Justice, some actions such as training or the promotion of affirmative action measures are detailed. All these agreements, guidelines or declarations cover the workplace.

¹⁴ Labour Code provides for non-discrimination on ground of SO and any other distinction.

¹⁵ The Constitution of Ecuador provides for non-discrimination on grounds of SOGI or any other distinction.

¹⁶ Labour Code established establishes the right to equal remuneration without discrimination based on SO or difference of any other nature; The Organic Law on Labour Justice and the Recognition of Domestic Work provides for special compensation in cases of discriminatory dismissal based on SO.

¹⁷ Decree 56 prohibits any form of discrimination based on GI and / or SO in the activity of the Public Administration.

¹⁸ Administrative Decrees provide for non-discrimination on grounds of SOGI; LGB people are allowed to serve openly in the Armed Forces.

¹⁹ Penal Code provides protection on grounds of SOGI in employment.

²⁰ Same-sex sexual activity for males is illegal.

²¹ Federal Constitution and State Constitutions prohibit discrimination based on sexual preferences.

²² Penal Code include labour discrimination based on SO; Federal Law to Prevent and Eliminate Discrimination provides for non-discrimination on grounds of Sexual preferences or any other reason.

²³ Penal Code provides for non-discrimination on grounds of SO, Gender or any other condition in employment.

²⁴ The Constitutional Procedural Code establishes that the writ of amparo is the adequate remedy in cases of discrimination based on SO.

²⁵ Labour Code provides for non-discrimination on grounds of SO.

²⁶ Penal Code includes SO on grounds for non-discrimination complaints.

²⁷ On 12 April 2018, the High Court of Trinidad and Tobago ruled that Sections 13 and 16 of the Sexual Offences Act are unconstitutional as applied to adult consensual acts. This judgment was confirmed on 20 September 2018, the High Court ordering that Sections 13 and 16 be modified so as to apply only in cases where there is no consent and without targeting same-sex relations.

²⁸ Law 17.817 of 2004 (Combat Racism, Xenophobia and Discrimination) provides for non-discrimination on grounds of SOGI. This law applies to employment; Law on Youth Employment provides for non-discrimination on ground of SO.

²⁹ Local laws provide for non-discrimination on grounds of SOGI; Federal Court decisions; EEOC rulings; Executive Order.

³⁰ The Canadian Human Rights Act provides for non-discrimination on grounds of SOGI or expression.

³¹ Local laws provide for non-discrimination on grounds of GI, gender expression and SO; the Supreme Court of Canada held that although “sexual orientation” is not listed as a ground for discrimination in section 15(1) of the Charter, it constitutes an equivalent ground on which claims of discrimination may be based. In *Vriend v. Alberta*, [1998] 1 S.C.R. 493, the Court held that provincial human rights legislation that left out the ground of SO violated section 15(1); Human Rights Commission policy.

³² The new Penal Code, adopted on 23 January 2019, decriminalised consensual same-sex acts between adults in private and makes discrimination against people on the basis of SO an offence with punishment up to two years’ imprisonment.

³³ Employment Act provides added SO as a prohibited ground for discrimination regarding contracts of employment.

³⁴ Labour Code provides for non-discrimination on ground of Sexual life.

³⁵ In 2017 there was a modification of the Penal Code establishing sexual relations between adults of the same sex as illegal. Therefore there has been a backtracking in the protection. The former article 272 of the Penal Code only penalized those who committed "unjust or unnatural acts" with people under 21.

³⁶ Equal Opportunities Act provide for non-discrimination on grounds of SO or other status.

³⁷ Code of Ethics for Public Officers include SO as a ground of non-discrimination in employment.

³⁸ Sodomy, whether practiced in heterosexual or homosexual relationships is prohibited.

³⁹ Labour law provides for non-discrimination on ground of SO.

⁴⁰ Employment Act provides for non-discrimination on grounds of gender and SO.

⁴¹ The Constitution of South Africa provides for non-discrimination on grounds of SO.

⁴² Labour Relations Act provides for non-discrimination on ground of SO; Employment Equity Act provides for non-discrimination on grounds of gender, sex and SO; Specific laws provide for non-discrimination on grounds of SOGIESC.

⁴³ Court decisions protected non-discrimination on the grounds of SO in the workplace; the Government adopted the White Paper on National Defence (1996), the South African National Defence Force (SANDF) shall not discriminate against any of its members on the grounds of SO. In 2002, the SANDF extended spousal medical and pension benefits to partners in a permanent life-partnership.

⁴⁴ Only homosexual acts are illegal.

⁴⁵ Fair Work Act provides discrimination on the ground of SO; Sex Discrimination Act prohibits discrimination on the grounds of SOGI and intersex status in employment; Local Laws provides discrimination on the grounds of GI and intersex status.

⁴⁶ Local laws provide protection against discrimination on grounds of sexuality or gender history or sexual identity, sexual expression or SO.

⁴⁷ National Cabinet decision (2014), Bangladesh National Human Rights Commission action, declared legal recognition of a third gender category for hijras, however did not define term.

⁴⁸ In February 2018, it was reported that on the trans man's second appeal of the district court's decision, the Guiyang Intermediate People's Court made a statement that: "An individual's GI and gender expression falls within the protection of general personality rights, [everyone] should respect others' rights to GI and expression." It also said that systemic obstacles and discrimination that prevent equal employment for all should be abolished, and that employers practising gender-based discrimination should bear legal responsibility. It was reported as the first time that a court in China has made the recommendation that workers should not experience differential treatment based on their GI and expression; Local laws provide protection against discrimination on grounds of SO or gender orientation in employment; According to the *Leung TC William Roy v. Secretary for Justice* (2005) case, government sponsored discrimination on the ground of SO is prohibited.

⁴⁹ Employment Relation Act and Disability Act prohibits discrimination based on gender or sexual preference in employment.

⁵⁰ Homosexuality is illegal for men in the Cook Islands.

⁵¹ The Constitution of Fiji prohibited discrimination based on a person's "actual or supposed personal characteristics or circumstances" including sex, gender, SOGI and expression.

⁵² The Employment Relations Promulgation prohibits discrimination based on SO.

⁵³ The Public Service (Amendment) Decree No 36 of 2011, prohibits discrimination based on SO within public service.

⁵⁴ Supreme Court case of *National Legal Authority v. Union of India* (See 438).

⁵⁵ Supreme Court in the case *National Legal Services Authority v. Union of India* (SCC 438), in which the Court recognized that discrimination, violence and prejudice based on a person's gender identity violates India's constitutional provisions relating to equality. The Committee notes that the Court ordered the State to include transgender persons within the categories eligible for various affirmative action schemes. It further notes from the Government's report to the United Nations Working Group on the Universal Periodic Review that, in 2016 the Transgender Persons (Protection of Rights) Bill, 2016, was introduced in the Lok Sabha. The Bill aims to protect transgender persons from violence and discrimination and provides for equal opportunities in education, employment and residence; The National Human Rights Commission of India (NHRCI) produced a report on the right to health and SOGI in 2013, received and processed complaints from LGBT persons who had experienced employment discrimination, illegal detention and police abuses. The NHRCI took up a complaint filed by the Association of Tamil Nadu about denial of social welfare assistance to transgender applicants, resulting in approval of monthly pensions for transgender persons as of April 2014 in the Coimbatore district.

⁵⁶ The Indonesia National Commission on Human Rights (Komnas HAM) conducted a training on LGBTI issues for government officials in 2011. From 2010 to 2012, Komnas HAM investigated a total of 23 cases related to police abuse of LGBT people, denial of freedom of expression, personal security and liberty, and one case of child rights violation; Indonesia Report to the Regional Human Rights Institution Project on Inclusion, the Right to Health and Sexual orientation and Gender Identity (2013).

⁵⁷ In two provinces there are local and municipal regulations that penalize same sexual relations.

⁵⁸ The current guidelines set up under the Equal Employment Opportunity Law stipulate that any language or actions that are sexual in nature and directed toward or between employees should be regarded as sexual harassment; Gay and bisexual men can openly serve in the military.

⁵⁹ The Employment and Industrial Relations Code prohibits discrimination based on SO.

⁶⁰ Criminal Law Amendment 2017 “Article 143.1. Discrimination, use of force or threat with such, oppression or restriction of one’s rights in other forms on the religious ground shall be punishable (...).

⁶¹ The Constitution of Nepal provides for non-discrimination on ground of SO and also protects minority groups, marginalized groups, gender and sexual minorities.

⁶² The Employment Relations Act prohibits discrimination on the grounds of SO; The Human Rights Act prohibits discrimination on the grounds of SO. It applies all aspects of employment.

⁶³ New Zealand Human Rights Commission publically promotes equality and for all members of the LGBTQI+ community and to end violence and discrimination against people on the basis of their SOGIESC. The Commission considers sex within the Human Rights Act to include discrimination against transgender and intersex people because of their sex or GI. Based on this understanding they accept complaints on these grounds as well as on SO.

⁶⁴ The RA 9433 (The Magna Carta for Public Social Workers 2007) protects public social workers from discrimination on various grounds including SO.

⁶⁵ In the Philippines, some limited legal protection for LGBT people exists at the local level. Local ordinances that protect people against discrimination based on SO and/ or GI along with other grounds only exist in 5 provinces, 15 cities, 1 municipality and 3 villages, covering just over one tenth of the population; The country’s first Comprehensive Anti-discrimination Bill, inclusive of SOGIE, was filed 2016 in the 17th Congress, backed by a coalition of stakeholders. In September 2017, the House in the Philippines approved the SOGIE Equality Act. However, it is not clear whether the Senate, where Bill is pending second reading, will pass. The Commission on Human Rights Philippines. CHRP lobbied for the above anti-discrimination legislation, inclusive of sexual orientation and gender identity, and has begun developing Gender Ombudsperson Guidelines for human rights violations.

⁶⁶ The Labour & Employment Relations Act prohibits discrimination on the ground of SO.

⁶⁷ Same-sex sexual activity for males is illegal.

⁶⁸ In the Constitution Drafting Assembly’s “Intentions of the Constitution” The differences on the found of sex in Section 30(3) refer not only to the differences between men and women, but also the differences between individuals of “sexual identity, gender or sexual diversity that is inconsistent with their birth. These differences are not specifically prescribed because the term “sex” is already inclusive and there shall be no discrimination against these individuals.

⁶⁹ Ministry of Labour Regulation on Thai Labor Standards, Corporate Social Responsibility of Thai Business, B.E. 2547 prohibits discrimination against workers on the ground of SO.

⁷⁰ The Teaching Service Act 2013 establishes the obligation of the Vanuatu Teaching Service Commission provides for non-discrimination on ground of SO in employment under the teaching.

⁷¹ In January 2016, the Court of Appeals of Beirut confirmed the right of a transgender man to change his official papers, granting him access to necessary treatment and privacy; In March of 2014, court in the municipality of Jdeideh ruled that sex between a transgender individual, previously a man, and another man could not be perceived as unnatural. It was the first ruling on a transgender individual. In January 2017 the highest court in Lebanon looked at the reasoning of the lower court and found in favour of it. The question of what comprises ‘natural’ in human sexuality was central to the issue. The judge of first instance drew on a similar case from 2009, which ruled that homosexuality cannot be against human nature since man “is part of nature”.

⁷² Labour Code provides for non-discrimination on ground of SO; Penal Code provides for non-discrimination on grounds of SOGI in employment; Law on protection from Discrimination provides for non-discrimination on grounds of SOGI in employment.

⁷³ The Constitutional Court ruled that sexual orientation is included in “any other ground” in article 6 of the Constitution.

⁷⁴ The Labour Relations Code and the Law on the employment contract, both provide for non-discrimination on grounds of SO or any other personal or social condition.

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- ⁷⁵ In 2014 Austria allowed transgender people to serve openly in its military forces.
- ⁷⁶ The Equal Treatment Act is a federal, comprehensive anti-discrimination measure that is inclusive of sexual orientation. Chapter 2 deals with employment.
- ⁷⁷ Specific laws provides for non-discrimination on ground of SO in employment; Austria allowed transgender people to serve openly in its military forces.
- ⁷⁸ Anti-Discrimination Law provides for non-discrimination on ground of SO. This law applies to employment.
- ⁷⁹ Labour Law provides for non-discrimination on grounds of gender and SO; Law on Prohibition of Discrimination provides for non-discrimination on grounds of Sexual expression or SO, and every other circumstance; Law on Gender Equality specifies that discrimination based on SO is prohibited. These laws applies to employment.
- ⁸⁰ The Protection Against Discrimination Act applies to SO in employment.
- ⁸¹ The Labour Act names gender and SO as protected grounds; The Anti-Discrimination Act provides for non-discrimination on grounds of gender, expression or SO and it applies to employment.
- ⁸² The Equal Treatment in Employment and Occupation Act provides for non-discrimination on ground of SO; The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law, specifies non-discrimination in employment based on SO.
- ⁸³ The Labour Code, the Employment Act and the Anti-Discrimination Act, all specify SO in employment.
- ⁸⁴ The Act on prohibition against discrimination in respect of employment provides for non-discrimination on ground of SO.
- ⁸⁵ Discrimination against LGB soldiers in recruitment, placement and promotion is prohibited.
- ⁸⁶ Employment Contracts Act provides for non-discrimination on ground of SO; The Equal Treatment Act is inclusive of SO in employment.
- ⁸⁷ Penal Code provides for non-discrimination on ground of SO or another corresponding grounds in employment; Non-Discrimination Act applies to SO or other personal characteristics in employment; Act on Equality between Women and Men provides for non-discrimination on grounds of GI or gender expression. Moreover, the Government indicates that these additional grounds secure the protection of trans and intersex persons against discrimination in line with the Constitution.
- ⁸⁸ Labour Code provides for non-discrimination on grounds of SOGI. Law on the Rights and Obligations of Public Servants provides for non-discrimination on grounds of orientation or sexual identity; The Law No. 2012-954 on sexual harassment added the criterion of sexual identity; French legislation give the possibility to the judges to pronounce nullity of any act which would be based on one of the criteria of the article L1132-1 of the Labour Code. In addition, it has prescription periods that are derogatory to labour law (five years instead of three years), and incorporates the reversal of the burden of proof in accordance with the European Directive 2000/78.
- ⁸⁹ Various sections of French law contains equal treatment legislation on the ground of SO and these are overseen by the *Haute autorité de lutte contre les discriminations et pour l'égalité*, or HALDE; On October 2012, the Council of Ministers adopted a government action program against violence and discrimination on grounds of SOGI.
- ⁹⁰ Law on the Elimination of All Forms of Discrimination explicitly prohibits discrimination based on SOGI and expression. It applies to employment.
- ⁹¹ The Works Constitution Act provides for non-discrimination on grounds of gender or Sexual Identity; The General Law on Equal Treatment has combined previous labour legislation, streamlining non-discrimination, inter alia, based on SO.
- ⁹² Some state constitutions have anti-discrimination laws that include SOGI; LGBTI people are allowed to serve in the Armed forces.
- ⁹³ Equal Treatment Law (amended Law 3304/2005) provides for non-discrimination on grounds of SOGI or characteristics. Its scope applies to employment.

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- ⁹⁴ LGBT people are allowed to serve openly in the Hellenic Armed Forces.
- ⁹⁵ Act on Equal Treatment and Promotion of Equal Opportunities provides for non-discrimination on grounds of SO, Sexual Identity, any other status, characteristic feature or attribute.
- ⁹⁶ On 2000, the Constitutional Court recognized that the constitutional ban on discrimination based on “other status” covers sexual orientation as well. Its scope applies to employment.
- ⁹⁷ The Employment Equality Act ensures non-discrimination in the workplace on the basis of SO.
- ⁹⁸ LGBT people are allowed to serve openly in the military.
- ⁹⁹ The Labour Code provides for non-discrimination on ground of Sexual tendency.
- ¹⁰⁰ Supreme Court decision; Discrimination against LGB soldiers in recruitment, placement and promotion is prohibited.
- ¹⁰¹ Legislative Decree n°216 instituted SO as a protected ground within employment.
- ¹⁰² The Constitution of Kosovo provides for non-discrimination on grounds of gender, SO or other personal status
- ¹⁰³ The Anti-Discrimination Law (2004) and Law on the Protection from Discrimination (2015) provide for non-discrimination on grounds of sex, SOGI or any other status. These laws apply to employment.
- ¹⁰⁴ LGB people are allowed to serve openly in the military.
- ¹⁰⁵ The Labour Law and the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators include SO as a prohibited ground.
- ¹⁰⁶ The Law on Equal Treatment lists the non-discrimination duties of employers regarding SO. The Criminal Code specifies that discrimination on grounds of SO can be prosecuted with three years’ imprisonment. It applies to employment.
- ¹⁰⁷ LGB are allowed to serve openly in the military.
- ¹⁰⁸ Labour Code provides for non-discrimination on grounds of SO; The Penal Code envisage SO and sex change discrimination violations regarding employment and the rights of employees.
- ¹⁰⁹ The Constitution of Malta provides for non-discrimination on grounds of SOGI.
- ¹¹⁰ Equal Treatment in Employment Regulations sets out SO as a named ground of protection against discrimination; The Equality Act clarifies that direct or indirect discrimination (“ordinary or intersectional”), on the basis of SOGIESC. This law applies to employment.
- ¹¹¹ Malta allows people to serve openly in the armed forces regardless of their sexual orientation.
- ¹¹² The Law on Ensuring Equality specifies that the law apply to SO in employment only.
- ¹¹³ LGB are allowed to serve openly in the military.
- ¹¹⁴ Law on Prohibition of Discrimination specifies discrimination in employment on the basis of SOGI.
- ¹¹⁵ LGB people are allowed to serve in the military.
- ¹¹⁶ The Equal Treatment Act defines direct discrimination including homosexual orientation. It applies to employment.
- ¹¹⁷ Since 1973 LGBT people are allowed to serve openly in the military.
- ¹¹⁸ The Law on the Prevention and Protection against Discrimination, adopted on 11 March 2019, prohibits discrimination based, inter alia, on sexual orientation and gender identity.
- ¹¹⁹ The Working Environment Act protects SOGI from direct and indirect discrimination; The Sexual Orientation Anti-Discrimination Act prohibits discrimination on the basis of SOGI and gender expression; The new Equality Act (2018) provides for non-discrimination on grounds of SOGI, gender expression or other significant characteristics of a person.

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- ¹²⁰ The Act on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal promote equal treatment irrespective of SO.
- ¹²¹ Labour Code prohibits direct or indirect discrimination on the basis of SO; The Act on Equal Treatment specifies that SO is within the scope of the law protecting against discrimination in employment.
- ¹²² The Polish Supreme Court ruled that SO, race or other features of a person cannot be the basis for refusal to offer a service; LGBT people are allowed to serve openly in the military.
- ¹²³ The Constitution of Portugal provides for non-discrimination on ground of SO.
- ¹²⁴ Labour Code provides for non-discrimination on grounds of SOGI; Law No 38/2018 (2018) Right to self-determination of gender identity and expression of gender and protection of the sexual characteristics of each person, prohibits both direct and indirect discrimination based on SOGIESC. This law applies to employment
- ¹²⁵ Portugal allows all citizens to serve openly in the military regardless of SO.
- ¹²⁶ The Anti-Discrimination Law stipulates the various conditions in which discrimination on the grounds of gender and SO in employment is forbidden; Gender Equality Law introduced definitions of sex and gender, as well as ‘gender stereotypes’.
- ¹²⁷ The National Council for Combating Discrimination (CNCD), Romania's equality body, fined an international firm, for discriminating on the basis of SO; LGB are allowed to serve in the military.
- ¹²⁸ The Law on the Prohibition of Discrimination applies to SOGI in the sphere of employment.
- ¹²⁹ LGB are allowed to serve in the military.
- ¹³⁰ The Act on Equal Treatment in Certain Areas and Protection against Discrimination determines SO as within the scope of this law. Sections 7 and 13 concern employer’s duties.
- ¹³¹ LGB people are allowed to serve openly in the military.
- ¹³² The Law on Protection against Discrimination provides for non-discrimination on grounds of SOGIE in employment; The Penal Code provides a wide ranging non-discrimination provision on grounds of SO. It applies to employment.
- ¹³³ In July 2009, the Constitutional Court held that Article 14(1) of the Slovenian Constitution bans discrimination based on SO; LGBT people are allowed to serve openly in the military.
- ¹³⁴ The Law of the Statute of autonomous work protects SO or any other condition or personal circumstance from direct and indirect discrimination; Law 62/2003 is a comprehensive anti-discrimination measure that covers many aspects of employment that applies to SO; The Penal Code penalises "serious discrimination in public employment" or private, expressly contemplating SO as a protected category.
- ¹³⁵ The Military Penal Code punishes the superior who, in relation to a subordinate, performs acts that involve serious discrimination because of SO or any other condition or personal circumstance.
- ¹³⁶ The Constitution of Sweden provides for non-discrimination on grounds of SO or other circumstance.
- ¹³⁷ Discrimination Act provides for non-discrimination on grounds of transgender identity or expression and SO, among others. Sections 1-4 directly address employment; the Penal Code penalises a “businessman” who discriminates against another on the ground that the latter has a homosexual disposition in provision of services.
- ¹³⁸ It is understood that sexual orientation has been read into numerous laws because of the protections afforded to that status in the country’s Constitution, where the words “way of life” at Article 8 have been interpreted to include SOGI.
- ¹³⁹ Since registered partnerships became a possibility in 2007, there are various employment protections based on SO in the amendments to the 1911 Code of Obligations.
- ¹⁴⁰ There is no prohibition for LGBTI people to serve in the army.
- ¹⁴¹ Equality Act provides for non-discrimination on grounds of SO. Chapter 1 deals with employment.

