

ELIMINATING DISCRIMINATION AGAINST CHILDREN AND PARENTS BASED ON SEXUAL ORIENTATION AND/ OR GENDER IDENTITY

POSITION STATEMENT

All children, irrespective of their actual or perceived sexual orientation or gender identity, have the right to a safe and healthy childhood that is free from discrimination. The same principle applies to all children irrespective of their parents' sexual orientation or gender identity. Both the Convention on the Rights of the Child and the Universal Declaration of Human Rights make clear that human rights are universal. No person — child or adult — should suffer abuse, discrimination, exploitation, marginalization or violence of any kind for any reason, including on the basis of their real or perceived sexual orientation or gender identity. Similarly, no person should be denied any of their universal human rights, freedoms and basic opportunities.

In all regions of the world, children who are lesbian, gay, bisexual, transgender (LGBT) — or otherwise perceived to have different sexualities or gender identities than the norm — often suffer discrimination, intimidation, harassment and violence. Similar patterns of human rights abuses can be found against children whose parents are perceived to be LGBT. Too often, when real or perceived sexual orientation or gender identity does not conform to social norms, vulnerabilities increase. These include being exposed to discrimination at school, in hospitals, in sporting teams and in many other settings; to abandonment and rejection by family, community or society; to forced marriage; to hate motivated violence, including murder; and to increased health risks owing to lack of access to appropriate life-skills education and health services.

While the numbers of countries are changing, recent estimates suggest around 80 countries have laws that subject their citizens to criminal penalties linked to homosexuality. Such laws not only undermine human rights — they can also fuel discrimination, stigma, and even violence against people

on the basis of their perceived sexual orientation and gender identities. These laws can be even more harmful for children and adolescents, who are especially vulnerable to bullying, violence, and stigma. Any law which heightens the risk of harm to children is counter to the principles established in the Convention on the Right of the Child and the universal human instinct to protect children.

Further steps should be taken to change attitudes and protect children and families from discrimination based on their sexual orientation and gender identity. Positive social norms that recognize and welcome diversity in cultures around the world should be reinforced to include the recognition, protection and promotion of the human rights of all people, regardless of real or perceived sexual orientation or gender identity. Abuse based on real or perceived sexual orientation or gender identity should not be tolerated. All measures to protect LGBT children and LGBT parents should be enforced in a manner that truly is in the best interests of children, and does not simply silence the victim or drive the discussion underground.

UNICEF's mandate is to promote and protect the rights of all children. UNICEF will continue working to protect all children from discrimination, including those who identify as LGBT, and we urge governments to safeguard their youngest citizens from violence or threat of reprisal for exercising their rights. UNICEF's position is thus in line with and supports the position of the entire United Nations system, expressed by Secretary-General Ban Ki-moon: "Let me say this loud and clear: lesbian, gay, bi-sexual and transgender people are all entitled to the same rights as everyone else. They too are born free and equal and I stand shoulder-to-shoulder with them in their struggle for human rights." (July 2013). ■

Context and Considerations

BOX 1: TERMS AND DEFINITIONS

Sexual orientation, gender identity and intersex status, although frequently linked, are not the same and often present different challenges for the individual involved and for others. Yet while these three concepts are distinct, they raise many common issues related to the protection of children, adolescents and their parents.

Sexual orientation refers to a person's physical, romantic and/or emotional attraction towards other people. Most people have a sexual orientation, which forms an integral part of their identity. Homosexual people are attracted to individuals of the same sex as themselves. Heterosexual people are attracted to individuals of a different sex from themselves. Bisexual people may be attracted to individuals of the same or different sex. Sexual orientation is not related to gender identity.

Gender identity reflects a deeply felt sense of one's own gender, which is how a person identifies as being masculine or feminine, neither or both, or a combination. A person's gender identity is typically consistent with the sex assigned to them at birth, usually based on the presenting genitals. Transgender people have an inconsistency between their sense of their own gender and the sex they were assigned at birth. In some cases, their appearance, mannerisms and other outward characteristics may conflict with society's expectations of gender-normative behaviour.

An **intersex** person is born with sexual anatomy, reproductive organs, and/or chromosome patterns that do not fit the typical definition of male or female. This may be apparent at birth or become so later in life. An intersex person may identify as male or female or as neither. Intersex status is not about sexual orientation or gender identity: intersex people experience the same range of sexual orientations and gender identities as

non-intersex people. The UNICEF position outlined in this document also applies to intersex people. It is important to note that intersex people are also frequently subjected to other kinds of human rights violations that go beyond the scope of this document, such as non-medically necessary surgery in infancy, leading to sterility, without informed consent of either the person in question or their guardians.

LGBT is an acronym that stands for lesbian, gay, bisexual, and transgender. It should be noted that the LGBT label is sometimes considered limited, and is not always considered to cover the full spectrum of minority sexual orientations, gender identities and/or intersex status. For the purposes of this paper, UNICEF uses the acronym LGBT as shorthand for children or parents with primary or significant same-sex attraction and/or non-conforming gender identity and/or intersex status. LGBT individuals do not necessarily self-identify as LGBT or present themselves as LGBT to others. Some prefer more culturally specific identities, such as "Third Gender" people in South Asia and "Two Spirited" people in many First Nations communities in North America. Others do not openly identify because of the prevalence of discrimination against LGBT individuals in many countries and societies, which often extends to criminal sanctions. Younger children typically do not have a clear view of their own sexuality or gender identity, even if others perceive them in certain ways.

Most demographic surveys of adults estimate that between 1% and 4% of the population has a primary or significant sexual attraction to their own sex and/or a non-traditional gender identity, with a larger proportion of the population experiencing same-sex contact over the course of their lifetime. Nevertheless, the lack of openness about sexual orientation and gender identity creates challenges for collection of accurate data.

The international community has stepped up its efforts to defend the rights of individuals and groups who face or have faced discrimination and exclusion.

Such efforts have resulted in the development of a series of international human rights treaties and other instruments and mechanisms seeking to promote the rights of and eliminate discrimination against ethnic minorities, girls and women, persons with disabilities and children, among others. The principle of non-discrimination is present in all the major human rights treaties and has been identified by the Committee on the Rights of the Child as a

general principle of fundamental importance for implementation of the whole CRC.

There are grounds for optimism: over the past decades, many countries have moved to strengthen laws to combat discrimination against individuals based on their sexual orientation and gender identity — tightening anti-discrimination legislation, including anti-LGBT actions within the scope of hate crimes where such legislation exists, and sensitizing public opinion.

More and more children are growing up in households and communities that seek to protect and promote their rights, irrespective of their sexual



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orientation and gender identity, or that of their parents and legal guardians. Growing up in a healthy and stable household and community, free from fear, safe from violence, exploitation and discrimination, encouraged by parents and guardians, heightens the chances that children will realize their full rights and reach their potential.

As yet, there is no binding international instrument that explicitly addresses discrimination against individuals based on their sexual orientation and gender identity. There is, however, a non-binding CRC Committee General Comment (GC15), where the Committee identifies sexual orientation and gender identity as a ground for discrimination.

CRC member states and signatories should report on discrimination on the basis of sexual orientation and gender identity, including discrimination and bullying in schools and educational establishments. Second, in reporting on efforts to realize the right to health, signatories may wish to consider relevant LGBT health education and service issues.

Despite significant progress, recent estimates suggest around 80 countries around the world have laws that subject their citizens to severe criminal penalties for homosexuality. Such laws institutionalize discrimination and can lead to violence. A small number of countries and territories have recently passed legislation or enacted administrative practices which further criminalize or stigmatize homosexuality. Such legislation is sometimes rationalized as an effort to protect children but there is considerable evidence that discrimination or criminalization of LGBT identity or behaviour actually harms rather than protects children. Fortunately, a larger number of countries and territories are moving in the opposite direction, repealing laws that criminalized homosexual acts between consenting adults.¹

Discrimination against children based on their sexual orientation or gender identity harms their chances of having their rights fulfilled and increases their risk of abuse, exploitation, violence and marginalization.

The discrimination and harm that lesbian, gay, bisexual, and transgender children and parents face stems from attitudes that do not accept all individuals as equal. This lack of respect for the rights of LGBT children can manifest itself in numerous ways. These include, but are certainly not limited to, isolation from peers at school, at home, or in the community; marginalization and exclusion from such essential services as education and health care; abandonment by family and community; bullying and intimidation; physical and sexual violence, and at the extreme, corrective rape — an abhorrent practice in which an individual is raped to supposedly 'cure' his or her of sexual orientation or gender identity. The effects of this discrimination, exclusion and violence can extend throughout childhood and into adulthood, with lifelong consequences. For example, there is robust evidence to suggest that LGBT children and youth exposed to discrimination are more likely to consider or attempt suicide than their peers.

The true depth of discrimination, abuse and violence against LGBT children and parents remains unknown, in large part because of the lack of knowledge and openness about sexual orientation and gender identity in many countries and societies.

Legislation that is non-discriminatory, a change in social norms and greater awareness and access to knowledge on the issue are critical components of an enabling environment to protect LGBT children and parents from discrimination and support the realization of their rights.

¹ A/HRC/19/41. United Nations General Assembly. Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity. Report of the United Nations High Commissioner for Human Rights.

In its work, UNICEF is guided by the Convention on the Rights of the Child and strives to establish children's rights as enduring ethical principles and international



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standards of behaviour towards children. Our mandate also specifies our commitment to ensuring special protection for the most disadvantaged children.

UNICEF considers that there are a range of measures required to create an enabling environment for eliminating discrimination against children and parents based on sexual orientation or gender identity. Chief among them is to repeal laws that entrench such discrimination, and in particular those that criminalize behaviours or ‘promotion’ of homosexuality, or the association of LGBT children and individuals.

Second, UNICEF supports the enactment of laws which provide LGBT couples and their children with the legal recognition of their family ties. Legal ‘recognition’ (in addition to ‘protection’) of family relationships are important in fighting discrimination against LGBT parents and children, as parents without legal recognition are prevented from making decisions concerning fundamental aspects of their child’s life, such as education and health care. Moreover, they are often not eligible for State benefits and fiscal privileges which are specifically designed to support families. Further uncertainties arise if a child’s biological parent dies. In such circumstances and in the absence of legal recognition of family relationships, the surviving co-parent would not automatically be entrusted with the child’s custody; to the contrary, the child would become an orphan and, most probably, be placed in the care of a guardian or a foster family. Lack of recognition also causes problems in the case of parental separation: the child does not benefit from the safeguards ensured by divorce laws and, consequently, the position of each parent in relation to custody, contact and alimony remains totally undefined.

Third, children, irrespective of their sexual orientation and gender identity, require legal protection from abusive, violent and sexually exploitative adults, including those abusive adults who are entrusted to enforce laws — and those laws should apply equally to heterosexual or homosexual conduct.

Fourth, equalizing the age of consent for both heterosexual and homosexual conduct would help reduce discrimination against, and criminalization of LGBT children and individuals. It should be noted that while many LGBT children are not sexually active, they still often face discrimination and abuse based on the perception that they are.

Fifth, governments face the challenge of meeting their obligations to LGBT children under the Convention on the Rights of the Child by addressing social norms and practices that discriminate and marginalize children and adults based on real or perceived sexual orientation and gender identity. As in other areas of discrimination, such as on the basis of sex or race or disability, evidence and experience show that much can be done to both lower incidence of abuse and change attitudes through committed, bold leadership and innovative solutions.

Sixth, so that children have their voices and viewpoints heard and are able to participate fully and meaningfully in policy and discourse that affect their lives, UNICEF supports including children and youth in the discussion.

The points made above are not exhaustive, nor do they constitute an agenda for promoting any particular sexual orientation or gender identity. UNICEF is non-partisan and its cooperation is free of discrimination.

As part of the United Nations system, UNICEF aims to create a work environment free from discrimination against lesbian, gay, bisexual or transgendered employees. UNICEF programmes and operations also strive to be inclusive and free from discrimination. The organisation’s role is to promote and protect the rights of all children, including those who identify as LGBT; to proactively advocate against discrimination; and to promote policy options that contribute to eliminating such discrimination. We urge governments to safeguard their youngest citizens from violence or threat of reprisal for exercising their rights. ■



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BOX 2: INTERNATIONAL CONVENTIONS, COVENANTS AND DECLARATIONS RELATING TO THE RIGHTS OF LGBT PERSONS

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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 3: Everyone has the right to life, liberty and the security of person.

Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 9: No one shall be subjected to arbitrary arrest, detention or exile.

Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.

Article 19: Everyone has the right to freedom of thought and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas.

Article 20(1): Everyone has the right to freedom of peaceful assembly and association.

CONVENTION ON THE RIGHTS OF THE CHILD

Article 2: States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 2(1): 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 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 6: Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 9: Everyone has the right to liberty and security of person.

Article 17: No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Article 19(2): Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and

ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Article 21: The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22(1): Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

Article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Article 2: The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CONVENTION RELATING TO THE STATUS OF REFUGEES

Article 33(1): No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

CONVENTION AGAINST TORTURE

Article 1(1): For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Article 2(1): Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.



Sources

- Birkett M, Espelage DL, Koenig B. (2009) LGB and questioning students in schools: The moderating effects of homophobic bullying and school climate on negative outcomes. *Journal of Youth and Adolescence* 2009;38:989–1000.
- Gates, Gary J. (2011) How many people are lesbian, gay, bisexual, and transgender? The Williams Institute, UCLA School of Law. Los Angeles, California.
- Human Rights Watch. World Report 2013
- Russell ST, Joyner K. (2001) Adolescent sexual orientation and suicide risk: Evidence from a national study. *American Journal of Public Health* 2001;91:1276–1281.
- Secretary-General's remarks to special event on "Leadership in the Fight against Homophobia". New York, 11 December 2012
- United Kingdom Office for National Statistics (2012). Integrated Household Survey April 2011 to March 2012: Experimental Statistics.
- United Nations (1989) Convention on the Rights of the Child. Article 2: 'States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.'
- United Nations (1948) Universal Declaration of Human Rights. Article 2: 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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.'
- United Nations (1948) Universal Declaration of Human Rights. Article 7: 'All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.'
- United Nations (2012) Office of the High Commissioner for Human Rights. Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law. New York and Geneva.
- United Nations (2013) Office of the High Commissioner for Human Rights. Fact Sheet – LGBT Rights: Frequently Asked Questions.
- United Nations General Assembly (2012). Written statement submitted by Liberal International (World Liberal Union), a non-governmental organization in general consultative status. (A/HRC/21/NGO/62)

Consultations

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