

Minding the Corporate Gap

How Human Rights Defenders and
Companies Can Work Together to
Tackle Discrimination against Lesbian, Gay,
Bisexual, Transgender and Intersex Persons



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

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* In accordance with OHCHR policy, contributions to its publications are not attributed to those employed by the Office.

FOREWORD

It has been just over three years since OHCHR launched the Standards of Conduct for Business: Tackling Discrimination against Lesbian, Gay, Bi, Trans and Intersex (LGBTI) People. In that time, some 350 companies – including some of the world’s largest and best-known global brands – have expressed support for the Standards of Conduct and are now taking steps to apply them within their own businesses. More companies are expressing support for them every month.

The growth in corporate interest in this area is long awaited. Companies have an economic stake in curbing discrimination since, left unchecked, it drives away talent and acts as a drag on productivity. Moreover, many companies, especially large, international brands, are now coming under increasing consumer-led pressure to be socially responsible corporations and to live up to the values of diversity, inclusion and non-discrimination.

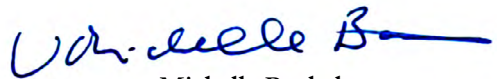
For most companies, the Standards of Conduct present two central challenges. The first is internal, namely to eliminate discrimination against LGBTI persons in the workplace. Achieving this goal requires, in most cases, an overhaul of staffing policies and procedures, training for managers and staff and the establishment of effective grievance mechanisms to express, handle and resolve complaints.

The second challenge is predominantly external, namely to actively champion the safety, equality and well-being of LGBTI persons in the community at large. Achieving this larger ambition requires companies, among other actions, to take into consideration the human rights impact of every business decision they make, to obtain commitments not to discriminate from their suppliers, service providers and business partners, to include LGBTI persons in their advertising campaigns and to help fund, sponsor and support initiatives that promote

equality. Being a champion also means speaking up when LGBTI persons are victimized, challenging discriminatory laws and calling on Governments and lawmakers to do more to protect LGBTI persons.

While the Standards of Conduct suggest practical steps that companies can take, they also acknowledge that there is no one-size-fits-all approach. It is up to companies to develop tailored strategies that reflect the particularities of the contexts in which they operate. As they do so, it is critical that they collaborate with those most directly affected – in this case, LGBTI persons themselves. The best way forward is to consult with LGBTI human rights defenders and civil society organizations at every stage of the process and listen to their advice. Otherwise, companies risk inadvertently creating a backlash against the very communities that they are trying to support.

This guide is aimed first and foremost at LGBTI human rights defenders looking to engage with companies on issues affecting LGBTI persons. But it could also provide useful reading for business leaders looking to build effective collaboration with human rights defenders. It maps out how defenders and companies can work together to tackle discrimination, with examples drawn from conversations with representatives of both the corporate world and civil society. I hope it proves a catalyst for many productive new partnerships in the future.



Michelle Bachelet
United Nations High Commissioner
for Human Rights

INTRODUCTION



**What is the purpose
of the present guide?**

The guide is intended to help human rights defenders approach, engage and enlist the backing of business for measures that promote equality and respect for the human rights of lesbian, gay, bi, transgender and intersex (LGBTI) persons.

It also offers companies – including human resource management professionals, those working to promote diversity and inclusion and on human rights and sustainability within companies – an overview of some areas of potential collaboration with LGBTI organizations, as well as some examples of such collaboration in practice in different parts of the world.

Companies have a responsibility to respect the human rights of LGBTI persons. Beyond that, companies have multiple opportunities to contribute positively to social change wherever they do business.

For human rights defenders, harnessing the power, influence and resources of business in the fight against discrimination offers a chance to achieve faster progress. For companies, partnering effectively with LGBTI human rights defenders is important to demonstrate their commitment to the values of diversity and inclusion, inform their own decision-making and achieve meaningful social impact. As the Executive Director of ILGA-Europe, Evelyne Paradis, and the Co-Founder and Executive Director of Workplace Pride, David Pollard, put it, “LGBTI activists and businesses fighting inequality together is a no-brainer.”¹

The guide should be read in conjunction with the Standards of Conduct for Business: Tackling Discrimination against Lesbian, Gay, Bi, Trans and Intersex People.²

The Standards of Conduct set out the steps that companies should take in order to meet their responsibility to respect the rights of LGBTI persons, as well as additional steps that they should consider taking with a view to addressing discrimination and related human rights abuses in society at large. In the first five years following their launch, the Standards of Conduct have attracted pledges of support from more than 350 of the world’s largest companies from every region of the world.³ Several organizations⁴ are now developing new tools

¹ Evelyne Paradis and David Pollard, “LGBTI activists and businesses fighting inequality together”, *EUobserver*, 6 June 2017, available at <https://euobserver.com/stakeholders/138098>.

² OHCHR, *Standards of Conduct for Business: Tackling Discrimination against Lesbian, Gay, Bi, Trans and Intersex People* (New York and Geneva, 2017), available at www.unfe.org/wp-content/uploads/2017/09/UN-Standards-of-Conduct.pdf.

³ For a list of the companies that have expressed support for the Standards of Conduct, see the website of the World Economic Forum Partnership for Global LGBTI Equality, in which OHCHR participates, at www.global-lgbti.org/the-supporters.

⁴ For example, in 2019, the World Economic Forum launched the Partnership for Global LGBTI Equality with the aim of mobilizing private sector actors to make actionable commitments based on the Standards of Conduct (see www.global-lgbti.org/).

designed to help companies apply the Standards of Conduct to their business practices, including in relation to human resources, supply chain management, sponsorship and marketing, and public affairs.

While the scale of support for the Standards of Conduct is encouraging, their effective implementation cannot be achieved without consultation and partnership with LGBTI civil society.

If companies act without local guidance, they risk overlooking vital community concerns, causing unintended consequences or inadvertently creating a backlash. If business is to realize fully the emerging opportunities to tackle discrimination against LGBTI persons and support local LGBTI communities, more concerted engagement with civil society is essential.

Creating effective collaboration between LGBTI human rights defenders and companies comes with its own risks and challenges.

The global LGBTI movement is diverse in terms of goals, priorities and capacities. Many civil society organizations in all regions of the world working on LGBTI issues lack adequate staff and resources – especially in the global South. Groups working on specific issues faced by lesbian and bi women, trans and intersex persons often have even fewer resources at their disposal.⁵ In many countries, LGBTI human rights defenders face the threat of criminal sanctions, including under so-called “anti-propaganda” laws, and targeted hate speech and violence. Companies need to know and understand the specific challenges affecting local LGBTI communities if they want to make a meaningful contribution to the well-being of LGBTI staff, suppliers, consumers and communities.

There is a long history of human rights organizations seeking to influence corporate decision-making and solicit support for community-led initiatives.

Levels of enthusiasm and engagement typically vary from sector to sector and from country to country. Some of those consulted in the course of developing the present guide expressed a degree of scepticism in relation to the motives and willingness of companies to take into account LGBTI community concerns meaningfully. LGBTI human rights defenders have legitimate questions about the authenticity and impact of the efforts made by companies to be socially

⁵ L. M. Kan, B. F. Maulbeck, & A. Wallace (2018), “Global Resources Report (2nd edition),” New York, Global Philanthropy Project (GPP), & Funders for LGBTQ Issues; Erin Howe and others, “The state of trans organizing: understanding the needs and priorities of a growing but under-resourced movement”, 2nd ed. (New York, American Jewish World Service, Astraea Lesbian Foundation for Justice and Global Action for Trans Equality, 2017); Dave Scamell, “The state of intersex funding: funder briefing” (New York, Global Philanthropy Project, American Jewish World Service, Astraea Lesbian Foundation for Justice and Global Action for Trans Equality, 2019).

responsible. Some point to examples of “pinkwashing”, by which companies seek to signal their commitment to the human rights of LGBTI persons as a way of burnishing their image among progressive consumers while distracting attention from serious shortcomings in other areas of human rights, labour standards or environmental protection.

How should LGBTI human rights defenders approach opportunities for collaboration with companies while guarding against such risks? What does effective corporate-civil society collaboration look like? What impact can such joint efforts realistically produce?

The guide seeks to answer these and related questions while also providing practical guidance to defenders on the process of engaging companies – where to start, who to approach, what to ask for and how to frame requests for support. It suggests appropriate entry points within companies, explores issues of tone and common language, and looks at some examples of successful collaboration between companies and defenders. Finally, the guide looks at what defenders can do to hold companies to account for their commitments to tackle discrimination in general and against LGBTI persons in particular.

By presenting both the potential opportunities and pitfalls of corporate engagement, the guide aims to provide individual defenders and civil society more broadly with the information needed to determine whether, when and how they can engage with the private sector.

Ultimately, much rests on enlisting more companies as allies in the fight to achieve legal and social equality for LGBTI persons. The interest of a growing number of companies in the rights of LGBTI persons opens up possibilities for genuine partnership and progress. The decisions that companies take today to promote greater diversity and inclusion and to leverage their global influence for socioeconomic progress could have a real and, in some cases, profound impact on the human rights of LGBTI persons tomorrow.

SECTION 1



Role of the private sector in tackling discrimination against LGBTI persons

Companies all over the world – whatever their size or structure or the sector in which they operate – have a responsibility to respect the rights of everyone – including LGBTI persons.

That responsibility, enshrined in the Guiding Principles on Business and Human Rights,⁶ includes taking all reasonable steps to ensure that all LGBTI staff are treated fairly and discrimination is eliminated in the workplace. To this end, companies should have policies in place to tackle discrimination against LGBTI persons, training to sensitize senior managers and the wider workforce, and a fair system of benefits and entitlements that treats staff equally, regardless of sexual orientation, gender identity and sex characteristics. Companies should also have robust internal mechanisms to deal with instances of mistreatment or bias. They should carry out due diligence across all their business activities to avoid causing or contributing, whether willingly or inadvertently, to discrimination or other abuses of the rights of LGBTI persons in the wider community. It is up to every company to discharge this responsibility – no matter where in the world they do business.

Respecting the rights of LGBTI persons is the baseline expectation of all companies. Companies can also take additional action to promote the rights of LGBTI persons.

As economic actors, companies exercise significant influence and in some cases leverage – whether with their staff, customers, competitors, suppliers or with national and local authorities. Some have large advertising budgets, giving their brand a voice that reaches a large, diverse audience. Many also have the capacity to lend support to the efforts of local LGBTI civil society – whether through the sponsorship of events and initiatives or funding for local organizations and activities. Inevitably, the scope for any company to take an initiative in any of these areas will depend, in large part, on the local context and on the specific challenges faced by each part of the local LGBTI community in the country concerned. But wherever they work and in whichever sector they operate, for companies committed to making a positive difference to the lives of LGBTI persons, the opportunities to contribute to change are many and varied.

⁶ See OHCHR, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework” (New York and Geneva, 2011).

The business case versus the human rights case

Most companies are motivated by profit and financial considerations. Over the past 20 to 30 years, those advocating for greater emphasis on diversity and inclusion within companies have leaned heavily on economic arguments, which emphasize that a diverse workforce has a strategic business value.⁷ Diversity strengthens corporate performance by maximizing talent and multiplying the different perspectives that staff bring to their work, which in turn improves business outcomes. These same arguments have helped convince companies of the importance of tackling discrimination against LGBTI persons at work and supporting their LGBTI employees in the workplace, irrespective of local laws and policies in the countries in which they operate.

Moreover, as consumers become increasingly savvy, businesses can find themselves under growing pressure in many markets to demonstrate their social and environmental credentials, to prove themselves a force for social good, not just monetary profit. By showing themselves to be active in the fight for social justice, human rights and a greener world, companies can maximize their appeal to certain segments of their customer base, thereby burnishing the brand and boosting profitability in the medium and longer term.

This line of reasoning has been used to help convince companies to do more to promote human rights both within and beyond the workplace. However, many LGBTI human rights defenders remain wary of framing the case for action in terms of economic costs and benefits. Their reluctance is based on three main arguments:

(a) The business case puts a price on human rights, which is wrong in principle.⁸ The language of most businesses is costs and benefits, and asserting that the benefits of diversity and inclusion outweigh the costs of implementation does not sit well within a human rights framework. Under the Guiding Principles on Business and Human Rights, companies have a responsibility to respect the human rights of all persons, without discrimination. That responsibility applies regardless of whether it is profitable for companies to do so. For human rights defenders, tackling discrimination has an intrinsic value that cannot be measured in monetary or financial terms.

⁷ Maureen Giovannini, "What gets measured gets done – achieving results through diversity and inclusion", *Journal for Quality and Participation*, vol. 27 (2004).

⁸ Rahul Rao, "Global homocapitalism", *Radical Philosophy*, No. 194 (2015).

The business case versus the human rights case

- (b) Companies should stand up for the rights of LGBTI persons, even when the economic costs outweigh the benefits.** Some LGBTI human rights defenders point out that the economic costs of standing up for LGBTI persons can outweigh the economic benefits, especially in the short term and in countries in which local laws, the authorities and public opinion are hostile towards LGBTI persons. In such circumstances, companies that speak up in defence of LGBTI persons could risk losing customers and contracts or face pushback or even legal/regulatory action from authorities. LGBTI human rights defenders fear that, while the business case might convince companies to do more to support LGBTI communities in some countries/contexts, in others it could work the other way, and result in companies doing nothing or waiting for others to act first.
- (c) The human rights case for promoting the rights of LGBTI persons is more effective with companies than the business case.** Some defenders point to the past to argue that relying on the business case to persuade companies to do more to promote the rights of LGBTI persons, both at work and in the community, has not resulted in significant progress. According to the findings of research published in the *Harvard Business Review*,⁹ “economic language was never significantly related to effectiveness” when making decisions about how to address social issues, such as sustainability or diversity and inclusion. As such, changing the narrative to include human rights or moral arguments “may be a more useful strategy for persuading managers to create social change”. A focus on purpose needs to accompany any business case.

Ultimately, the business case and the human rights case are not mutually exclusive; in different contexts, emphasis might be put on one over the other. To remind companies of the (sometimes hidden) costs of LGBTI exclusion or of staying silent in the face of human rights abuses is not to negate the principle that all people deserve to have their dignity and rights respected. The business case needs a foundation in human rights just as arguments based on human rights can be made more forcefully by underlining the cost of discrimination and lack of protection.

⁹ David Mayer and others, “To get companies to take action on social issues, emphasize morals, not the business case”, *Harvard Business Review*, 14 February 2019.

A. CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

As recently as the late 1990s, most companies were reluctant to recognize that they had human rights responsibilities, arguing that addressing human rights was only an obligation for Governments.

The Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council in 2011, explicitly emphasize that, while the State has obligations to respect, protect and fulfil human rights under international human rights law, businesses also have a responsibility to respect human rights, which is independent of the actions of the State. In addition, in many jurisdictions, companies are required to comply with human rights standards codified in national and regional legislation and regulations, which have steadily advanced in many countries. Many companies also have legal obligations related to human rights as part of their contractual obligations with other companies to which they provide goods or services.

All companies have an impact, whether positive or negative, across a range of human rights areas.

This impact extends from discrimination and sexual harassment to health and safety, freedom of association, labour rights, freedom of expression, privacy, poverty, food, water, the environment, education and housing. The outsourcing and privatization of basic services previously carried out by public authorities (e.g. security, education and child protection) have raised issues about accountability for human rights abuses, as people's ability to enjoy their rights becomes increasingly dependent on decisions made by private companies. More recently, the rights to privacy and to freedom of expression have become major areas of concern in relation to private Internet companies and the wider digital environment.

Companies must carry out due diligence to assess the human rights impact of any activities planned or under way and take responsibility and offer redress in cases in which such activities cause or contribute to harm.

The corporate responsibility to respect human rights requires companies to carry out due diligence to identify, prevent and address the human rights impact of their business practices. In situations in which companies identify that they have caused or contributed to harm, they should provide for remediation through legitimate processes. Companies should establish or participate in effective operational-level grievance mechanisms, and participate in good faith in the settlement of grievances through regular courts, labour tribunals,

ombudspersons, national human rights commissions, equality bodies or other complaints mechanisms. The State for its part has a vital role in effectively regulating corporate behaviour and enforcing human rights standards through relevant laws. It has a duty to protect individuals within its territory or jurisdiction from human rights abuses committed by companies and to take steps aimed at preventing, punishing and ensuring redress for such abuses. The State may also have some responsibility for abuse perpetrated by private actors in the case of State-owned enterprises or where it has delegated key responsibilities to private companies and in situations in which it has failed to take appropriate actions to regulate and monitor conduct by companies or to hold them accountable and ensure remedies for victims.

In the wake of major abuses in recent decades, civil society has increasingly called for companies to be held to higher human rights standards.

In the 1990s, non-governmental organizations campaigned against child labour and other abuses in the supply chains of prominent apparel and footwear companies. They also denounced alleged abuses by mining, oil and gas companies including complicity in violence by government security forces and pollution that damaged the health of people in nearby communities. Research conducted in 2014 highlighted the fact that many businesses had actually started to view themselves as important actors in respecting human rights.¹⁰ This is partly the result of intensive international and national efforts to clarify the human rights responsibilities of business. In the survey that was conducted as part of the research, 83 per cent of respondents agreed that human rights were a matter for business as well as Governments. However, only 44 per cent reported that human rights were an issue on which their chief executive officer currently took the lead, and only 22 per cent of those companies had a publicly available human rights policy.

¹⁰ Economist Intelligence Unit, "The road from principles to practice: today's challenges for business in respecting human rights" (London, 2015).

Guiding Principles on Business and Human Rights

In 2011, the Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights.¹¹ These principles are the first global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activities. They do not create new legal obligations, rather they elaborate on the implications of existing obligations and practices for States and businesses. The Guiding Principles apply to all States and all businesses worldwide.

The Guiding Principles affirm that States have a duty to respect, protect and fulfil human rights, while businesses have a responsibility to respect human rights, including acting with due diligence to avoid infringing on the human rights of others and addressing adverse impacts with which they are involved. Failure by States to meet their duty to respect, protect and fulfil human rights does not absolve companies from their responsibility to respect human rights.

The fundamental expectations of businesses in respecting human rights are set forth in Guiding Principle 11, which states that businesses should avoid infringing on the rights of others and should address adverse human rights impacts with which they are involved. The Guiding Principles recognize that, even with the best policies and processes in place to prevent potential negative human rights impacts from occurring, such negative impacts can still occur – whether because the impact was unexpected or because the business was unable to prevent it.¹² In those situations, a company should provide for or cooperate in remediation through legitimate processes.

According to the guiding principles, businesses have a “forward-looking” responsibility to identify the risks of human rights abuses and avoid infringements/adverse impacts through an appropriate corporate human rights due diligence process, and a “backward-looking” responsibility to address the negative human rights impacts that have already occurred (perhaps identified through the due diligence process) through remediation.¹³

¹¹ See www.ohchr.org/en/publications/reference-publications/guiding-principles-business-and-human-rights.

¹² Shift, “Remediation, grievance mechanisms and the corporate responsibility to respect human rights”, Shift Workshop Report No. 5 (New York, 2014), p. 3.

¹³ Ibid.

Guiding Principles on Business and Human Rights

Following the publication of the Guiding Principles, attention turned to raising awareness of those principles and their implementation across the corporate community. OHCHR and a wide range of non-profit organizations working globally at the intersection of business and human rights have developed resources and guidance for companies to use as they establish internal policies and processes for implementing the Guiding Principles across their global operations.¹⁴ In many parts of the world, Governments have worked with companies and civil society to develop national action plans for implementing the Guiding Principles.¹⁵

In some cases, companies have joined together with Governments, international organizations and/or non-governmental organizations in initiatives to address specific human rights issues – from modern slavery and corruption to fire safety standards, child labour and gender equality.

While much remains to be done, an increasing number of companies are working collaboratively with others to address human rights concerns. Notable initiatives include: the Equator Principles; the Extractive Industries Transparency Initiative; the Fair Labor Association; the Global Network Initiative; the Global Reporting Initiative; the Kimberley Process; the Responsible Minerals Initiative; and the Voluntary Principles on Security and Human Rights.

Some of the most successful sectoral initiatives involving companies have been led by the workers and communities directly impacted, such as the five-year accord on fire and building safety in Bangladesh and the Fair Foods Standards Council in the United States of America. Non-governmental organizations and others have also worked directly with companies on sectoral initiatives to drive change by ranking companies on human rights issues (e.g. the Access to Medicine Index for the pharmaceutical industry, Behind the Brands for food and beverage firms and Ranking Digital Rights for information and communications technology firms).

¹⁴ For resources developed by United Nations human rights mechanisms, see www.ohchr.org/EN/Issues/Business/Pages/Resources.aspx. Other resource providers include the United Nations Global Compact, the Business and Human Rights Resource Centre, the Global Business Initiative on Human Rights, the Institute for Human Rights and Business and Shift.

¹⁵ See www.ohchr.org/en/issues/business/pages/nationalactionplans.aspx or <https://globalnaps.org>.

Who triggers social change?

Most people would accept that companies can have a social impact that goes far beyond job creation, profit generation and tax contributions. While attention often focuses on potential negative impacts – whether in relation to labour standards, health and safety, or the environment – there is growing recognition that companies can and should play an active, positive role to support individuals and communities in the countries in which they do business.

While the Guiding Principles on Business and Human Rights emphasize the human rights responsibilities that companies have – namely to ensure that their business activities do not infringe on anyone’s human rights – they also recognize the wider role that companies can play and the potential positive contribution that companies can make to the promotion of human rights. The commentary to guiding principle 11, for example, states that “Business enterprises may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights.”

Advances in recent decades in the protection of the rights of LGBTI persons have resulted from grass-roots defenders organizing, advocating and mobilizing support and joining together with a range of allies in different countries. Corporate initiatives are no substitute for civil society activism but companies can play an important complementary role – both by tackling discrimination within their own workforces or operations and by lending vital support to civil society initiatives. The key to success is close collaboration between the corporate sector and civil society. Critically, before taking any initiatives in this area, companies need to consult with LGBTI human rights defenders and take into account the concerns of members of local LGBTI communities.

B. RIGHTS OF LGBTI PERSONS IN INTERNATIONAL HUMAN RIGHTS LAW

States are bound by international human rights law to respect, protect and fulfil the human rights of everyone within their jurisdiction, including LGBTI persons.¹⁶

Over the past 25 years, the United Nations treaty bodies have issued hundreds of recommendations aimed at tackling discrimination and violence against individuals based on their sexual orientation, gender identity and sex characteristics. Many of these are also reflected in recommendations emanating from the Human Rights Council’s universal periodic review, a peer-review process by which every State is subjected to a review of its human rights record every five years. In successive resolutions, the Human Rights Council has expressed concern at the continued violence and discrimination directed against people based on their sexual orientation and gender identity and called upon States to do more to address those issues.¹⁷

Among the core obligations that all States are expected to meet are the following:

- (a) Abolish any discriminatory criminal laws** that are or might be used to detain or punish people based on their sexual orientation and/or gender identity (this includes laws against same-sex relationships and cross-dressing);
- (b) Prohibit all discrimination** based on a person’s sexual orientation, gender identity and/or sex characteristics (through enacting effective anti-discrimination laws and adopting related policies) and ensure legal recognition of gender identity based on self-identification and without abusive requirements;
- (c) Protect all LGBTI persons from torture, ill-treatment and hate-motivated violence** (including through legislation on hate crime and hate speech, prison reforms and police training, the prohibition of so-called “conversion therapy”, “anal examinations”, medically unnecessary interventions on intersex children, forced/coerced sterilization of transgender and intersex persons, and public education to tackle stigma);

¹⁶ See A/HRC/29/23 and A/HRC/19/41.

¹⁷ See Human Rights Council resolutions 17/19, 27/32, 32/2 and 41/18.

(d) Ensure that LGBTI persons can exercise the rights to freedom of expression and association safely and without discriminatory restrictions (e.g. by ensuring the safety of Pride marches, making sure that LGBTI associations are free to operate and advocate for human rights, and registering their organizations if they wish to do so).

In recent years, countries in every region of the world have taken steps to address human rights violations against LGBTI persons, including by amending existing laws, enacting new laws and developing new policies and social programmes aimed at protecting individuals from discrimination and violence.

As at December 2021, more than 140 States Members of the United Nations had accepted at least one recommendation relating to the human rights of LGBTI persons made in the context of the universal periodic review. A 2016 report by OHCHR examined 200 legislative, policy and programmatic measures introduced in more than 60 countries to tackle violence and discrimination against LGBTI persons.¹⁸ Dozens of examples of good practice are highlighted in the report, ranging from decriminalization of same-sex relationships and legal recognition of the gender identity of transgender persons to revised anti-discrimination laws, new anti-bullying programmes in schools, support for homeless LGBTI youth and measures to protect LGBTI detainees in custody.

Despite such progress, legal protection of the rights of LGBTI persons remains very uneven.

Consensual same-sex relationships remain a criminal offence in close to 70 countries, including five countries in which the criminal code provides for the death penalty for those convicted of such offences. Only one in three countries has anti-discrimination laws that protect people from discrimination based on their sexual orientation, only 10 per cent protect transgender persons from discrimination, and fewer than 5 per cent protect intersex persons from discrimination. Hate-motivated violence against LGBTI persons is widespread and typically perpetrated with impunity, while verbal and sometimes brutal physical bullying of LGBTI children is commonplace in schools worldwide. In most countries, transgender persons are either denied legal recognition of their gender identity altogether or forced to submit to onerous, unfair and often abusive preconditions in order to obtain such recognition. Only a handful of countries have any legal measures in place to protect intersex infants and children from unnecessary and harmful surgery and other treatment.

¹⁸ OHCHR, *Living Free & Equal: What States are Doing to Tackle Violence and Discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex People* (New York and Geneva, 2016).

Among companies, especially those that operate internationally, awareness has been growing that business has both a responsibility to respect the rights of LGBTI persons and, potentially, an opportunity in practice to contribute actively to improving their human rights situation.

For these companies, the current patchwork of applicable legal frameworks and varying standards of protection in this area can be challenging to navigate. Many countries have adopted or upheld laws, policies and regulations that are inconsistent with international human rights standards. Depending on where they operate, companies can find themselves facing very different legal requirements and social climates.¹⁹ Nevertheless, companies bring to the task a wealth of relevant experience in operating in multiple jurisdictions with different tax laws and labour, health and safety, and environmental standards. It is up to companies to find ways to comply with international standards and with their own codes of conduct, even when doing so goes beyond what local regulations might require. The same approach applies in the context of respect for human rights, including the human rights of LGBTI persons.

Finding a voice: companies standing up for equality In Taiwan Province of China

In November 2018, voters in Taiwan Province of China approved, through a referendum, proposals to legalize marriage equality for same-sex couples and to expand school curriculums to include issues relating to the lesbian, gay, bisexual and transgender community. In the lead-up to the vote, 29 local and multinational companies and six non-governmental organizations released a joint statement in support of equality for lesbian, gay, bisexual and transgender persons. Noting that diversity and inclusion are good for business, the statement emphasized the cost of discrimination both for that community and for business, which has to bear a cost in terms of lost productivity. The companies that endorsed the statement represented thousands of local employees across a range of industries, from financial services and consumer products to professional services and technology.

¹⁹ Organizations, including the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) have compiled information and developed global indices and rankings on laws and policies that have a direct impact on LGBTI persons. These can serve as a useful resource for multinational companies in understanding the plethora of measures in force in the various countries in which they operate.

In a related initiative, the Open for Business coalition drafted an economic brief for marriage equality, which was endorsed by 15 companies. Open for Business worked with local defenders to present the brief to legislators. As a result, several additional legislators announced their intention to vote in favour of the bill giving effect to marriage equality. The initiative also generated some positive coverage in local media and helped to persuade additional local companies to voice their support for marriage equality.

C. TACKLING DISCRIMINATION AGAINST LGBTI PERSONS: GLOBAL STANDARDS FOR BUSINESS

Companies looking to make a positive difference in this area face an array of challenging questions.

What should companies be doing now and in the future to meet their responsibility, under international human rights law, to respect the human rights of LGBTI persons? What policies and procedures should they put in place as a company and how much flexibility is appropriate in applying these, especially within companies that straddle multiple jurisdictions? How should companies handle situations in which local laws and regulations, with which they must comply, conflict with international human rights standards? What instruments do companies have at their disposal, beyond reviewing and improving internal staffing-related policies, if they wish to tackle discrimination in the wider marketplace? For those companies that wish to take on a more public advocacy role, what opportunities do they have to contribute to positive social and legal change and what are the related pitfalls?

In 2016, in response to these and related questions, OHCHR announced that it would work with the Institute for Human Rights and Business and with business and civil society to develop guidance for companies on tackling discrimination against LGBTI persons.

A year later, following extensive regional consultations held in Africa, Asia, Europe and the Americas, OHCHR launched the Standards of Conduct.²⁰ The Standards of Conduct provide a road map for companies looking to both meet their core responsibilities as well as make a positive contribution to eliminating discrimination, both in the workplace and beyond. They encompass the things

²⁰ OHCHR, "Tackling Discrimination against Lesbian, Gay, Bi, Trans and Intersex People: Corporate Standards of Conduct" (2017).

that all companies should be doing in order to meet the minimum requirements of the Guiding Principles on Business and Human Rights, as well as additional measures that companies may wish to consider taking in order to support wider improvements in the human rights situation of LGBTI persons.

A key objective of the Standards of Conduct is to help companies to bring greater consistency and coherence to their approach to the issue of discrimination against LGBTI persons and to develop more effective policies.

As the Standards of Conduct note, “Overall, the corporate sector’s approach has often been ad hoc and inconsistent. Some global companies do well in championing LGBTI equality at home, less well abroad. Others may find their voice in relatively supportive environments but stay silent in contexts where rights protection for LGBTI individuals is weak or lacking.”²¹

The Standards of Conduct are built around five types of actions that companies should and can take to help tackle discrimination and ensure respect for the rights of LGBTI persons.

While the first standard – respecting rights – is cross-cutting and applies at every level and in every area of corporate activity, others apply in the specific context of the workplace, the marketplace or the wider community (see the below text box).

**Tackling discrimination against LGBTI persons:
the five standards of conduct**

- 1) **Respect human rights.** This minimum, base-level requirement to respect human rights – including the rights of LGBTI persons – cuts across all areas of corporate activity. It requires all companies to undertake due diligence and develop policies to make sure their business activities are not adversely affecting the ability of LGBTI persons to exercise their human rights. Wherever LGBTI persons have suffered as a consequence of corporate decisions or policies, they should be provided with appropriate remedies.

²¹ Ibid., p. 4.

- 2) **Eliminate discrimination.** This includes ending discrimination in the workplace against LGBTI staff (and applicants), reviewing and, where necessary, improving recruitment processes, sensitizing managers and adjusting, as appropriate, working conditions, benefits and allowances, as well as looking at the treatment of privacy-related issues, and workplace harassment and bullying.
- 3) **Provide support.** This includes providing support to LGBTI staff in the workplace, confronting and eliminating stigma and making sure that the workplace is a welcoming, affirming and inclusive environment for LGBTI staff.
- 4) **Prevent other human rights violations.** Beyond fixing their own houses, companies should work with their business partners, including their own suppliers, to tackle discrimination against LGBTI persons up and down the value chain. Companies often have significant leverage in such discussions and should be prepared to utilize it.
- 5) **Act in the public sphere.** Companies often have opportunities to speak up – sometimes publicly, and at other times in private in the context of sensitive discussions with government officials – in defence of the rights of LGBTI persons. The Standards of Conduct encourage companies to take such opportunities, albeit with guidance from local LGBTI civil society organizations. Beyond, or in addition to, undertaking their own advocacy, companies can also help strengthen grass-roots advocacy by providing financial or in-kind support to LGBTI civil society organizations and sponsoring and supporting LGBTI community events.

The Standards of Conduct do not impose any new obligations on business. They are grounded in existing international human rights instruments, incorporate existing corporate responsibilities and are fully aligned and consistent with the Guiding Principles on Business and Human Rights.

They necessarily reflect the reality that business is diverse and that companies operating in different sectors and, crucially, in different parts of the world will face their own set of challenges in tackling discrimination against LGBTI persons. Rather than prescribing a one-size-fits-all model, the Standards of Conduct provide companies with a tool for meeting their human rights responsibilities and turning their commitments into practical action, wherever they do business. If applied effectively, the Standards of Conduct open up a

potentially important opportunity to enlarge the role of business in tackling discriminatory practices in countries around the world.

That so many of the world's leading companies were quick to express support for the Standards of Conduct reflects to some extent growth in awareness and ambition among many in the corporate world in relation to tackling discrimination against LGBTI persons.

It may also reflect a desire on the part of some companies to signal as visibly as possible their equality credentials to younger, self-identified progressive consumers. But getting companies to express support for the Standards of Conduct was only ever intended as a first step. The Standards of Conduct themselves will only have an impact in so far as they are applied effectively to change existing corporate policies and practice.

The Standards of Conduct themselves do not come with a built-in monitoring or enforcement mechanism.

It is up to the companies concerned, in conjunction with trade unions, civil society organizations, industrial entities, multi-stakeholder initiatives, academic institutions and others, to develop benchmarks, monitor and evaluate performance, share good practices and reflect on further steps that might be taken in line with the Standards of Conduct.

OHCHR has urged companies that have pledged their support for the Standards of Conduct to work closely with their LGBTI staff and with LGBTI human rights defenders and others in civil society as they move forward with plans to apply the Standards of Conduct in practice.

In particular, companies should look to civil society to guide them, particularly in applying the fifth standard – i.e. acting in the public sphere by speaking out on LGBTI issues and supporting LGBTI activism and advocacy. Advancing meaningful conversations and partnerships between companies and often-embattled LGBTI communities will be the key to successful implementation.

Role of the private sector: a summary

As the Guiding Principles on Business and Human Rights reaffirm, every company has a responsibility to make sure its business activities do not negatively affect anybody's enjoyment of their human rights. Corporate responsibility in this area exists independently of a State's duty to protect the human rights of everyone within its jurisdiction.

In most countries, LGBTI persons are disproportionately at risk of violence, discrimination and other human rights abuses; in some they are actively persecuted by the State, including through the criminalization of same-sex relationships and of trans persons. The failure of the State in such circumstances to adequately protect the rights of LGBTI persons does not absolve companies of their responsibility to respect the rights of LGBTI persons – whether they are staff, customers or members of the community. OHCHR has developed the Standards of Conduct to help companies to discharge their responsibility in relation to the rights of LGBTI persons. The Standards of Conduct set out actions that companies can and should take, depending on the local context, to tackle discrimination against LGBTI persons in the workplace and beyond. By taking these actions, companies will also be serving their own interests by making it easier to attract and retain diverse talent.

The actions of companies in this area should be developed in close consultation and in collaboration with LGBTI human rights defenders and other members of local LGBTI communities. The present guide, which may be used by human rights defenders and business leaders alike, is intended to support such collaboration.

SECTION 2



**Engaging companies
on LGBTI issues:
where to start?**

A threshold question for any human rights defender looking to engage a company is where to start and who to contact.

Corporate structures can be complicated and difficult to navigate, even for a company's own employees. For those approaching from outside, finding the right point of entry can be a daunting process. Where to start will depend in most cases on the specific issue at hand, as well as how big a company is, how many countries it operates in and how it organizes itself internally.

LGBTI-related issues are rarely handled by a designated single manager or team within a company but may be relevant to the work of staff in multiple divisions and at various levels of responsibility.

Depending on the subject, LGBTI questions might be dealt with by staff responsible for human resource management and diversity and inclusion (for workforce-related issues), legal or public policy (for issues of compliance), corporate social responsibility and sustainability (for policy-related and operational issues), public affairs (in relation to a company's public stance) and philanthropy (for sponsorship and funding decisions), as well as, in some cases, by a company-affiliated foundation (where such a body exists).

The sections below address issues that defenders commonly wish to raise with companies, from staffing and training to corporate sponsorship and support for LGBTI events.

For present purposes, issues are divided between internal-facing issues (i.e. tackling discrimination within the workplace and among the workforce) and external-facing issues (i.e. tackling discrimination in the marketplace and wider community). In each case, potential entry points and interlocutors are identified, albeit with the caveat that corporate structures and therefore points of entry will vary from one company to another and according to size and sector.

Who's who

- **Chief executive officer and senior management team:** the chief executive officer and senior executives are uniquely positioned to promote and realize equality in their company at the local, national and international levels. The stance they take on social issues sets the tone for the company and can lead to formal changes of position and policy.
- **Diversity and inclusion focal point(s):** typically found in larger companies and often located within a company's human resource management team, diversity and inclusion focal points play an important role in reviewing and improving recruitment and other staffing-related policies, as well as in the levels of training and staff support.

- **Corporate social responsibility department/focal points:** many larger companies have a dedicated corporate social responsibility department that mobilizes staff from the relevant departments for specific projects. Even if relatively few companies explicitly reference LGBTI issues in frameworks on corporate social responsibility, staff working on such issues should be encouraged to support initiatives in this area.
- **Legal counsel/legal affairs:** legal staff may be involved in cases in which, for example, local discriminatory laws create issues of compliance or procurement rules are being reviewed in order to apply higher anti-discrimination standards on prospective partners and contractors.
- **Public affairs and communications teams:** a company's public affairs team may be involved in cases in which a company is pressing government officials or lawmakers to change laws, policies, regulations or decisions. In cases in which such advocacy becomes part of a public communications strategy, the company's communications director and/or media manager will also be involved.
- **Marketing manager and team:** a company's marketing team will be involved in any decision to include LGBTI representation and messaging in advertising campaigns and/or related materials. In cases in which doing so raises issues of legal compliance, the legal counsel/legal team will also be involved.
- **Procurement and logistics managers:** any decision to engage a company's suppliers, service providers and other business partners on issues related to discrimination against LGBTI persons will likely involve the firm's procurement manager, as well as logistics, technology and other business managers (depending on context).
- **Head of corporate giving/philanthropy:** many larger companies have a staffer or team responsible for corporate giving; some have created a separate corporate foundation. Staff involved in corporate giving play a key role in advising senior management or board members on grant making. They may also be involved, together with colleagues in marketing and communications, in decisions on sponsorship.
- **LGBTI employee resource groups:** typically found in larger, multinational companies, LGBTI employee resource groups bring together LGBTI staff working at different levels of responsibility and across different areas of corporate activity. Beyond workplace issues, members of employee resource groups may have influence in respect of broader, external-facing issues of interest to defenders.

A. WITHIN THE WORKPLACE: SUPPORTING LGBTI STAFF

In most cases, a company's initial focus in relation to LGBTI issues will be on tackling discrimination internally, that is within the workplace.

Companies increasingly see the benefits of promoting diversity and inclusion in the workplace,²² and many are keen to improve their internal policies and practices to this end. Addressing discrimination internally is also a prerequisite for companies looking to cultivate a progressive image in the minds of the wider public. Consumers will likely look with scepticism at any company that advertises its support for equality by, for example, sponsoring Pride events while failing to ensure that its own LGBTI staff are treated fairly.

Workplace discrimination-related issues can be an effective entry point for human rights defenders looking to engage with businesses.

LGBTI human rights defenders may be well placed to work with corporate management and human resource professionals to review existing policies and propose changes. They may also be able to help sensitize senior managers and other employees and advise management on what more they might do to ensure that LGBTI employees feel comfortable at work.

Addressing discrimination against LGBTI persons internally can be a stepping stone for many companies towards addressing LGBTI issues more broadly.

Companies may come under pressure to align their internal policies and external actions. Being a champion of diversity and inclusion cannot be restricted to the workplace; ideally, it should be demonstrated in everything a company says and does, from its dealings with business partners and the supply chain to its public advertising, communications and marketing, public affairs and support for civil society.

²² For a short summary, see Tracy Morley, "Making the business case for diversity and inclusion: short case studies and research papers that demonstrate best practice in HR", *Strategic HR Review*, vol. 17, No. 1 (2018).

From the inside out: what companies can do to tackle discrimination against LGBTI persons at work

It is in every company's interest to attract and retain the best talent, recruit from the broadest pool of people, and build and sustain diverse teams, bringing together diverse skill sets. Many companies recognize the need to provide a welcoming, supportive, inclusive environment, including for LGBTI persons. In relation to LGBTI staff, key actions that companies should undertake include:

- (a) Review and amend current human resource management policies** to ensure that LGBTI employees and potential employees are treated in a fair and equal manner. Areas to examine include anti-discrimination and harassment policies, recruitment, appointment and promotion procedures, access to visas and dependency benefits for same-sex partners, policies on gender recognition and documentation, family and adoption leave, and staff transfers to countries in which discriminatory laws and attitudes place LGBTI staff at disproportionate risk;
- (b) Take steps to tackle stigma and support LGBTI staff**, including through demonstrated leadership from the chief executive officer and senior managers, in-house communications and support for LGBTI employee resource groups and allyship programmes;
- (c) Sensitize and train senior managers and staff.** Unconscious bias typically affects decisions taken at work across a range of areas. Sensitizing managers and staff and providing training in fair employment practices is one way of overcoming such bias and tackling discrimination, including in relation to recruitment, promotion and related matters;
- (d) Establish effective grievance mechanisms and remedies.** LGBTI staff who experience discriminatory treatment at work should have access to effective means of redress. Grievance mechanisms should provide independent assessments of any claims of discrimination and remedies to victims.

Growing emphasis on diversity and inclusion across the corporate sector is based on a large body of research that suggests that companies with a diverse workforce perform better than those without.²³

The most successful diversity and inclusion programmes address the full spectrum of inherent diversity traits, including gender, ethnicity, language, faith, sexual orientation, gender identity and sex characteristics. In this context, LGBTI inclusion is just one facet of a broader approach to recruiting and retaining diverse talent. As Doreen Chow of Procter & Gamble put it, LGBTI inclusion is a “value statement” that benefits not just a company’s LGBTI staff but all its employees, customers and shareholders.²⁴

Arguably, supporting LGBTI inclusion is especially important given the unique combination of social and legal barriers that many LGBTI persons still experience in the workplace and in society at large.

Many LGBTI persons are forced to conceal their sexual orientation, gender identity or sex characteristics for fear of hostile reactions from their colleagues or supervisors, and high levels of violence and discrimination in and out of the workplace. As a result, they may be under-engaged, suffer negative impacts on their mental health and be passed over for roles in which they might excel, leading to a loss of productivity for the company and disparities in the life and work experiences of LGBTI persons compared with the wider population.²⁵

There is some evidence of support for LGBTI inclusion programmes among non-LGBTI staff working for multinational companies, including in countries in which attitudes towards LGBTI persons are generally hostile.

A 2015 survey of staff working for multinational companies based in Kenya found that two thirds of respondents agreed with the suggestion that tackling discrimination against lesbian, gay, bisexual and transgender employees would result in improvements in a company’s performance, and 40 per cent wanted to see their employer do more for them.²⁶ The survey covered more than 100 Kenyan and Kenya-based employees at 10 multinational corporations active in the country.

²³ For a short summary, see Tracy Morley (2018) “Making the business case for diversity and inclusion”, *Strategic HR Review*, vol. 17, No. 1, pp. 58-60.

²⁴ Speaking at the Forum on Business and Human Rights during the session entitled “When Governments fail to protect: LGBTI rights and the role of the private sector”, Geneva, 25 November 2019.

²⁵ See, as an example, Catalyst, “Lesbian, gay, bisexual, and transgender workplace issues: quick take”, 15 June 2020.

²⁶ Levis Maina Nderitu, “Colourful workplaces? LGBT inclusive multinational businesses in Kenya” (Hivos, Sullivan Marketing and Workplace Pride, 2015). Available from <https://hivos.org/assets/2020/10/Colourful-workplaces-Sullivan-Hivos.pdf>.

Tackling discrimination in the workplace: entry points and talking points

Potential entry points

Internal staffing and workplace issues may be handled by multiple employees working in different parts of any given company, depending largely on the size and structure of the company concerned. Where relevant, a company's **diversity and inclusion focal point(s)** may be the best entry point. In smaller companies, the **heads of human resources** may take on this role themselves. A company's **legal team** may also be involved, in situations in which discriminatory national and local laws and regulations are negatively affecting LGBTI staff. LGBTI **employee resource groups**, where these exist, are another potential contact point, since they will have an immediate interest in tackling discrimination and improving internal policies and practices.

Suggested talking points

A large body of evidence supports the business case for diversity and inclusion. The more diverse a company's workforce and the more inclusive a workplace, the more creative, productive and successful the company.

LGBTI persons are critical in this context. Companies can make an enormous difference by creating a welcoming, supportive environment for LGBTI persons at work, fighting stigma and promoting the rights and equality of LGBTI persons in the community.

By working together, human rights defenders and company managers can help a company achieve its goals in respect of diversity and inclusion of LGBTI staff. An effective strategy should include a review of recruitment and staffing policies, sensitization and training for staff and managers, and effective grievance procedures.

In countries in which national or local laws and regulations are discriminatory towards LGBTI staff, companies should be mindful of their responsibility to respect the rights of all, including LGBTI persons.

In such cases, companies should be looking for ways to comply with their human rights responsibilities to the maximum extent possible within the national legal context, ensure that they do not contribute to discrimination, and take remedial action to protect people from the negative effects of discriminatory national laws and policies.

Tackling workplace discrimination: entry points and talking points

Beyond protecting and supporting their staff, the larger challenge for companies is to “live” diversity and inclusion, that is to align internal policies and external communications. Both staff and consumers are increasingly looking to companies to visibly demonstrate their commitment to LGBTI diversity and inclusion – in the workplace, in the marketplace and in the community at large.

The Standards of Conduct provide a template for companies looking to do more, including, critically, the fifth standard, which involves companies speaking up for the rights of LGBTI persons. This means companies committing to uphold the Standards of Conduct and working with human rights defenders to maximize their contributions in this area.

B. BEYOND THE WORKPLACE: SUPPORTING LGBTI COMMUNITIES

As the Guiding Principles on Business and Human Rights make clear, a company’s human rights responsibilities are not confined to the workplace.

All companies have a responsibility to respect everyone’s rights – including the rights of LGBTI persons, be they staff, customers, suppliers, investors or simply members of the community. Meeting this standard requires more than clear and effective workplace policies and procedures; it requires due diligence and attention to the human rights impact of every decision a company takes. Put simply, it is a requirement to “do no harm” to the human rights of those potentially affected by a company’s activities.

Many companies have committed themselves to becoming a force for social good and to contributing actively to positive change in the communities in which they do business.

This growing focus on corporate social responsibility is in part a product of pressure from consumers, community groups, shareholders and other stakeholders. Many companies now issue periodic reports on corporate social responsibility that summarize their commitments, strategies and long-term visions for improving their impact on the world around them.

Relatively few companies have embedded respect for the rights of LGBTI persons and support for LGBTI communities across their operations – a point that human rights defenders may wish to raise.

Respect for the human rights of LGBTI persons should be fully embedded in a company's efforts to identify and prevent all human rights risks, alongside other possible risks, such as those associated with child labour, trafficking in persons, discrimination against other groups of persons, gender-based violence, environmental degradation and climate change, among others. Including LGBTI issues in human rights-related policies and processes is one way for a company to signal its ambition to address patterns of discrimination against LGBTI persons beyond the realm of the workplace. Without such a reference, there is a risk that LGBTI issues are seen as a purely internal workplace matter and left to human resource professionals to resolve alone.

Companies interested in maximizing their contribution to the safety and well-being of LGBTI persons beyond the workplace have multiple options available.

These include obtaining commitments from suppliers, distributors and other business partners, including positive portrayals of the LGBTI community in advertising campaigns and related materials, sponsoring and supporting local LGBTI community events, and speaking up for the rights of LGBTI persons, including in dialogue with the authorities. The paragraphs, below, explore some of these and provide suggestions about potential entry points in each case, as well as some suggested talking points to help get the conversation started.

1. Engaging suppliers and other business partners

Companies are in a strong position to insist that their suppliers and other business partners tackle discrimination against LGBTI persons.

This is particularly the case of companies that have already taken measures to address discrimination internally within their own workforces. In this context, the networks of business relationships that companies have with one another are a potential point of leverage, enabling a company to have a significant influence on the treatment of LGBTI workers up and down its supply chains.

To be effective, such a strategy should have the support of senior company management, including the chief executive officer, and be led by relevant business and procurement managers.

The legal affairs department may also need to be involved, since anti-discrimination language may need to be integrated into contracts, tenders and other legal documents, while maintaining compliance with relevant local laws.

Supply chain reactions: companies leveraging commitments from suppliers

Speaking at the global launch of the Standards of Conduct in September 2017, senior Accenture executive Sander van't Noordende announced plans to hold meetings with business partners and competitors in regional centres across the United States of America, with the aim of mobilizing support for the Standards of Conduct. The initiative helped to increase awareness of the potential role that companies can play in addressing discrimination against LGBTI persons and led to several additional companies expressing support for the Standards.

Another early supporter of the Standards of Conduct, Vodafone, also hosted several round tables with executives from other companies in the sector and in 2019 announced that it would strengthen its requirements regarding discrimination against LGBTI persons in its procurement rules, in effect obliging its suppliers to follow its example in providing support to LGBTI employees.

Engaging business partners: entry points and talking points

Potential entry points:

The potential entry points are the **chief executive officer** and **senior management team**, relevant **business, logistics and procurement managers**, and the **legal counsel/legal team**. Where relevant, **corporate social responsibility** and **diversity and inclusion** focal points may also be involved, as well as members of the **LGBTI employee resource group** (where relevant).

Suggested talking points

In addition to the steps that every company needs to take in order to tackle discrimination internally, there is plenty more it can and should do to encourage other companies to follow suit.

Every company has an array of business relationships, whether with suppliers, distributors, wholesalers, retailers, service providers or other businesses. These relationships are key as they represent an opportunity to engage other companies and encourage – or in some cases require – them to put in place measures to address discrimination against LGBTI persons.

There are many examples of companies adopting this approach, including by rewriting their own procurement rules so that potential contractors must meet certain anti-discrimination standards in order to bid for contracts.

Ultimately, this is a cost-free way for a company to “export” its values up and down its supply chains and, by doing so, multiply the impact of whatever measures it has taken internally to support LGBTI workers, consumers and members of the public.

2. The power of advertising

Inclusion is increasingly something that companies are looking to project in their marketing, not just reflect in their internal policies and practices.

Marketing can encompass many activities that a company does to recruit and retain customers. Components of marketing include advertising, sales, public relations and brand marketing, together with cause marketing, which relates directly to a company’s efforts to connect its products to social, environmental or other causes.

Some retail and consumer-facing companies have large marketing and advertising budgets and a capacity to reach mass audiences through sophisticated online, television, radio and print campaigns.

One practical way that companies can contribute to positive social change is simply by including positive and representative portrayals of LGBTI persons in their advertising. This should always be done in close collaboration with organizations and advocates with expertise on LGBTI issues, who are best placed to advise on sensitivities and flag potential risks.

The impact that LGBTI-inclusive marketing can have is considerable, including by sparking conversations in the press and at community level.

Pressure to be “LGBTI friendly” is starting to be felt by companies not just in North America and Europe, but also in parts of Latin America, Africa and in Asia, including in Brazil, India and South Africa. Over the last decade, there has been an expanding list of brands creating smart, creative and inclusive campaigns.²⁷

Achieving an authentic tone: The Procter & Gamble “Touch of Care” campaign versus the post-World Pride controversy

The Procter & Gamble “Touch of Care” campaign in India, featuring a transgender Indian mother and her daughter, has been seen by more than 10 million people on YouTube and has been widely discussed in the Indian media. The video provided a conversation starter for a debate on the acceptance of transgender persons in a country of 1.3 billion people, illustrating how the private sector can use advertising to affect people’s “hearts and minds” on LGBTI issues.

The Procter & Gamble spot, which was made to promote Vicks products in India, featured Gauri Sawant, a 37-year-old Mumbai-based transgender woman and social activist. By working with a transgender woman who is also a human rights defender, the company benefited from her advice, helping to ensure the tone was authentic and consistent with the way the community wants to be portrayed.

In contrast, a number of prominent companies came under attack from LGBTI activists in 2019 after media reports revealed that their political donations in the 2018 election cycle in the United States of America had gone to candidates who opposed banning anti-gay “conversion” therapies and supported a ban on transgender persons serving in the military. Headlines in various news outlets included “Don’t Let That Rainbow Logo Fool You: These 9 Corporations Donated Millions to Anti-Gay Politicians”.

For defenders, this trend represents an important opportunity.

In many cases, a company’s staff may be natural allies for LGBTI human rights defenders looking to engage a company and encourage it to do more

²⁷ Examples include “Proud Whopper” by Burger King, “Touch of Care” by Procter & Gamble, “This Is Wholesome” by Honey Maid to “Clio at 30” by Renault, “We Are Family” by McCain, “GAYTM” by the Australia and New Zealand Bank, and a short film on travelling and tolerance by Airbnb.

to promote equality in the workplace and beyond. Companies keen to attract talented candidates are discovering that prospective employees at campuses often ask about diversity and inclusion policies. Even in markets where social attitudes are less receptive on LGBTI issues, companies can play an important role by bridging gaps in understanding by stressing universal values.

One reason the private sector has shown interest in marketing that is inclusive of the lesbian, gay, bisexual and transgender community is the latter’s purchasing power in some countries and, crucially, its allies in the straight community.

This is especially true in countries that have seen a shift in social attitudes towards LGBT persons, same-sex relationships and gender diversity; for example, the disposable personal income of adult members of this community in the United States in 2015 was estimated at \$917 billion.²⁸ Even more striking, other studies found that more than 54 per cent of all consumers in the United States under the age of 34 would choose a brand friendly to the lesbian, gay, bisexual and transgender community over a competitor and that 45 per cent were more likely to do repeat business with it.²⁹ These findings point to the way that younger consumers – especially millennials, who are reputed to be the most LGBTI-inclusive generation to date – are positively reshaping market behaviour in the United States and, possibly, beyond.

Companies looking to associate themselves with LGBTI causes purely for marketing purposes need to be alert to the potential pitfalls.

Savvy consumers are typically quick to see through attempts by companies to engage in “pinkwashing” as a way of currying favour with certain segments of the market and possibly distracting attention from other areas of their operations that cause social harm. Younger consumers in particular are alert to tokenism – for example, coopting rainbow images in marketing materials during Pride days or months while not following through with effective actions that demonstrate a deeper commitment to the values of Pride. Authenticity is crucial; companies should be clear and consistent in their marketing and advertising as well as their lobbying and in any collective action. It is not enough to speak out when it is easy and to be silent when it is not or to adopt dramatically inconsistent messaging depending on local context.

²⁸ See Witeck Communications, “America’s LGBT 2015 buying power estimated at \$917 billion”, 20 July 2016.

²⁹ See Brendan Snyder, “LGBT advertising: how brands are taking a stance on issues”, *Consumer Insights*, March 2015.

Learning from your mistakes: Offending South African audiences

In 2013, a brand released a local advertising campaign in South Africa that compared absorbing the news that your child was gay to being shot in the heart. Amid widespread criticism, the owner of the brand pulled the advertisement from circulation and released an official apology. Later that year, the company ran an advertisement in Australia in support of marriage equality. Since then, the company Unilever has consistently scored very highly on LGBTI workplace equality indices, including the Human Rights Campaign Foundation's Corporate Equality Index.

Marketing and advertising: entry points and talking points

Potential entry points

The principal point of contact would be the **head of marketing/communication**, who is typically responsible for making sure that a company's public position on issues relating to human rights and equality align with "brand values" and the expectations of corporate stakeholders.

Suggested talking points

Ensuring LGBTI representation in marketing, including in advertising campaigns, is one practical way a company can use its market presence and profile to promote positive social change and contribute to tackling discrimination. It is also an efficient way of signalling its commitment as a company to the values of equality, diversity and inclusion and of meeting the expectations of staff and stakeholders. Members of the public who are themselves LGBTI, have LGBTI friends or family members and/or consider themselves to be allies of the LGBTI community will immediately notice and give credit to companies that include positive, accurate representations of LGBTI persons in advertising.

In some markets, being seen as LGBTI friendly can give a company a clear commercial advantage over rivals. Studies show that millennial consumers in the United States (currently in their 20s and 30s) are far more likely to buy products from companies and brands that are seen as LGBTI inclusive – a trend that is also growing elsewhere. Given the stigma that many LGBTI persons experience, a company's willingness to stand up for LGBTI inclusion is seen by many as a litmus test of its values.

Whenever and wherever a company is considering integrating LGBTI characters or themes into its marketing outputs, it is important to consult with representatives of local LGBTI communities, who will be best placed to advise on local sensitivities, risks and opportunities, and ensuring authenticity and diversity and inclusiveness of representation.

3. Supporting local communities through funding and sponsorship

Many larger companies have a corporate giving programme through which they donate a portion of their profits or resources to various causes and/or non-profit organizations.

The most common resource that corporations donate is cash; however, corporations also donate the use of their corporate facilities; property (such as used computers, buildings or land); gifts of products, services and equipment; advertising support; or executive loans. Many corporations also have employee volunteer groups that donate their time.

Corporations give to a variety of non-profit organizations, including in the fields of education, the arts, human services, health, human rights and the environment.

While corporate philanthropy is often associated with businesses in North America and Europe, business support for civil society is widespread in all regions, with notable examples including South Africa, where the business community has long supported black entrepreneurship programmes, and the Philippines, where business investment in anti-poverty programmes has supplemented government efforts. Companies in all parts of the world have given money to organizations working on LGBTI issues, including in Australia, Brazil, Canada, China, Europe, India, the Philippines, South Africa and the United States.

Giving by corporations for work on issues affecting LGBT persons has been increasing.

The amount that companies give to support LGBTQ causes in the United States has been steadily increasing, with the overall amount doubling between 2012 and 2016.³⁰ *Newsweek*, in an article in July 2019, compiled a list of more than

³⁰ See Andrew Wallace, Ben Francisco Maulbeck and Lyle Matthew Kan, *2016 Tracking Report: LGBTQ Grantmaking by U.S. Foundations* (New York, Funders for LGBTQ Issues, 2018) and Philip Rojc, "Carrying on the fight: what's the state of LGBTQ funding?", *Inside Philanthropy*, 5 May 2018.

50 retailers, restaurants and other companies in the United States with Pride offerings benefiting LGBT non-profit organizations.³¹

In contrast to many independent foundation donors, corporations have tended to steer away from funding advocacy and grassroots organizing groups.

Instead, they have tended to focus on issues such as public health (including HIV/AIDS) and the provision of services (such as support to homeless LGBTI youth). Philanthropy as a whole – whether that of companies, foundations or individuals – has largely failed to provide sufficient support for or to include transgender and intersex persons in grant making. A 2017 study showed that more than half of transgender groups and three quarters of intersex groups globally had an annual budget of less than \$10,000.³² Funding in support of advancing the human rights of lesbian, bisexual and queer women also continues to be low as a proportion of overall funding going to LGBTI organizations.³³

For human rights defenders looking to solicit support from companies, a key challenge is to demonstrate the impact of their work on the lived experiences of members of the LGBTI community.

Showing the impact of programmes in terms of supporting people rather than only changing a law or policy will more easily form the basis for partnerships. A related challenge is to be able to show effective governance and project management capabilities, as well as, ideally, a track record of achieving results.

Many LGBTI civil society organizations have found that having a member of the business community on their boards can be an effective way to leverage corporate cash or in-kind resources.

Beyond funding, a corporate board member can help by sharing knowledge of the inner workings, language and culture of the business community, developing proposals directed at building corporate partnerships or making introductions to others in the business community.

³¹ Daniel Avery, “These 50+ brands are celebrating Pride by giving back to the LGBT community”, *Newsweek*, 3 June 2019.

³² See Howe and others, “The state of trans organizing” and Erin Howe and others, “The state of intersex organizing: understanding the needs and priorities of a growing but under-resourced movement”, 2nd ed. (New York, American Jewish World Service, Astraea Lesbian Foundation for Justice and Global Action for Trans Equality, 2017).

³³ Ezra Nepon, *Global Resources Report 2017/2018: Government and Philanthropic Support for Lesbian, Gay, Bisexual, Transgender, and Intersex Communities* (Global Philanthropy Project and Funders for LGBTQ Issues, 2020).

Funding and sponsorship: entry points and talking points

Potential entry points

Staff members responsible for **corporate giving, sponsorship and marketing** and/or the **company foundation** are **potential entry points**. The **chief executive officer** and other senior executives may also be involved, as well as the **LGBTI employee resource group** (where applicable).

Suggested talking points

Corporate funding for LGBTI community-led initiatives is the most practical, tangible way for a company to demonstrate its commitment to the local LGBTI community and to the values of LGBTI diversity and inclusion. It is a way to show its own staff, consumers and other stakeholders that the company is “walking the walk” when it comes to equality.

Supporting LGBTI civil society is also a way that companies can leverage their presence, profile and resources in a country to contribute actively to tackling stigma and discrimination against LGBTI persons – as the Standards of Conduct encourage them to do.

Support can take many forms. It may be visible or low-key, cash or in-kind, and take the form of direct grants, challenge grants or corporate sponsorship of events. In some cases, such arrangements also provide opportunities for employee mobilization and participation.

4. Speaking out in support of LGBTI equality

Companies can have an important voice when it comes to social issues, including in respect of the rights, safety and well-being of LGBTI workers, customers and members of the public.

Whether, when and how they choose to use that voice is a key question. There will be times when companies can play a vital role by speaking out in support of the LGBTI community and others when more discreet, behind-the-scenes dialogue may be more effective. In some cases, companies have found value in collective advocacy, amplifying their voices and reducing the risk to their own positions through the power of numbers. In all cases, collaboration and dialogue between company executives and civil society actors is critical to avoid mistakes.

Speaking out: The “fifth standard”

When OHCHR launched its Standards of Conduct, much of the initial reaction focused on the so-called fifth standard. The fifth standard deals with the actions that companies can take to influence public policy by challenging discriminatory laws, engaging with Governments at all levels and advocating for change – sometimes in the context of their private dialogue with the relevant authorities, sometimes by publicly speaking out. The Standards of Conduct provide further guidance on the kinds of interventions that companies should consider, while acknowledging that the appropriate strategy will depend on the local context and must be informed by local civil society stakeholders.

In addition to any commitment to the values of equality and non-discrimination, companies also have an inherent commercial interest in using their influence to oppose discriminatory laws and regulations.

They must take into account the negative impact that existing and proposed legislation can have on their own LGBTI staff and on prospective employees, customers and members of the community at large – from criminalization of same-sex relationships and trans persons and restrictions on the use of public facilities by trans persons to lack of legal recognition of same-sex relationships, restrictions on the legal recognition of the gender identity of trans persons and lack of legal protections against discrimination, including in housing, education, insurance and access to public services. Just as most companies want to build safe and inclusive workspaces internally, so most also strive for the same freedoms for their LGBTI employees outside of the workplace.

Some companies take national and local legislation and policies regarding LGBTI persons into consideration when making business decisions.

This includes decisions on expansion plans, the location of new plants and offices, and the marketing of new products and services. A 2017 national survey carried out for the United States Chamber of Commerce found that respondents were influenced in making such decisions in part by the degree to which local and State policies protected the rights of LGBT persons.³⁴ As an illustration, one municipality in Illinois was opposed to trans persons accessing public bathrooms and would not deviate from its position. A multinational company had been contemplating expansion of its operations in the area and

³⁴ United States Chamber of Commerce Foundation, “Business success and growth through LGBT-inclusive culture” (Washington, D.C., 2019).

ultimately decided not to proceed because it could not reach an agreement with civic leaders on equal access to bathrooms.

The choice for companies is not always a binary one – that is, whether to stay or withdraw from countries or municipalities that adopt anti-LGBTI measures. For many companies, a better solution could be to remain but use their leverage to advocate for change.

Either way, it is critical that companies engage with local LGBTI human rights defenders in order to understand the impact of possible decisions and to take an approach that offers the best prospect of protection for members of local LGBTI communities. One of the most consistent findings of the survey was that standing up for employees and the community in the face of anti-LGBTI legislation was seen as critical to being inclusive. For example, a company’s public account of their decision – made in consultation with LGBT community organizations – not to proceed with expansion plans in North Carolina as a result of the state government’s decision to restrict the use of public bathrooms by transgender persons, is one such example (see below).

Companies unite against “bathroom bills” restricting the rights of transgender persons

In recent years, several states in the United States saw initiatives by legislators to enact so-called bathroom bills aimed at restricting access to single-sex toilets to individuals based on the sex assigned to them at birth – in effect preventing transgender women using female restrooms and transgender men using male ones.

The most notorious bathroom bill to date has been North Carolina’s House Bill 2 (HB2), passed by the state legislature in 2016. It prevents transgender persons using restrooms that match their gender identity in government-run buildings, while also striking down local ordinances aimed at protecting transgender persons from discrimination.

Passage of the bill provoked widespread criticism from the business community, with several firms taking high-profile action in consultation with LGBTI advocacy groups. For instance, PayPal cancelled \$3.6 million worth of investment plans in the state; Deutsche Bank scrapped plans to hire 250 new personnel in their North Carolina office; and nearly 70 other companies signed an amicus brief expressing opposition to the bill – an initiative coordinated by the Human Rights Campaign.³⁵

³⁵ See Sarah McBride, “68 companies sign HRC’s amicus brief supporting DOJ effort to block NC’s discriminatory HB2”, Human Rights Campaign press release, 8 July 2016.

Companies unite against “bathroom bills” restricting the rights of transgender persons

In 2017, state lawmakers backed a partial repeal of the bill, removing some of its original provisions relating to the use of public restrooms, although leaving in place restrictions on anti-discrimination ordinances. While concerns remain, the actions taken by the business community in North Carolina have already had an impact, both in the state and in other states that had initially been considering similar legislation. The cost to North Carolina’s economy as a result of the controversy illustrates the leverage that companies can have when they act collectively in opposing restrictions on rights.

When companies speak out in support of LGBTI equality: entry points and talking points

Potential entry points

In most large companies, corporate engagement on legislative, regulatory and public policy matters is handled by staff in the **public affairs** and **legal affairs** teams and the **chief executive officer**, with the involvement in cases of public advocacy of the **communications** team. If relevant, members of the **LGBTI employee resource group** may also play a supportive role in this context.

Suggested talking points

It is in every company’s interest not only to address discrimination against LGBTI persons within its own workforce, in so far as it can, but for Governments, lawmakers and other relevant authorities to provide a robust legal framework that protects LGBTI persons from discrimination at work, at home and in the community.

While companies are not the same as non-governmental organizations, they have a potentially critical role to play in challenging unjust laws, policies, regulations and decisions by government authorities and in advocating for effective legal protections for LGBTI workers, consumers and members of the public.

Speaking out in support for equality can be done in various ways and need not always involve a public statement. Many companies rely primarily on their own channels of communication with government at all levels to express concerns over discriminatory laws and other measures. In some cases, it may be more effective for multiple companies to approach the authorities jointly and express their collective position.

Many companies take into account the adequacy of existing anti-discrimination laws when making business decisions about the location of future investment or expansion. Governments and lawmakers should be made aware of the potential negative implications for local economies of failing to repeal discriminatory measures and/or put in place effective anti-discrimination protection.

In cases where private dialogue with the authorities fails to produce a change in policy, companies may want to consider making the case publicly. This step, and all others referenced above, should only be taken after consultation with representatives of local LGBTI communities to assess the potential impacts, benefits and risks of such measures.

The Standards of Conduct suggest further ways for companies to speak up for the rights of LGBTI persons and contribute positively to social change, without falling foul of local laws.

Engaging companies on LGBTI issues: a summary

The Standards of Conduct challenge companies to take steps to tackle discrimination against LGBTI persons at work and beyond. They can be used by human rights defenders as a tool for engaging with companies and developing proposals for collaboration.

In order to eradicate discrimination at work, companies are expected to review and overhaul their own anti-discrimination, harassment, recruitment, staffing and training policies and procedures, sensitize managers and staff, provide support for LGBTI employees, and establish robust grievance mechanisms for handling and resolving complaints of unfair treatment, bullying and intimidation. The present guide provides suggestions regarding the role that LGBTI human rights defenders can play in encouraging business action in each of these areas, as well as potential entry points for engagement.

Engaging companies on LGBTI issues: a summary

Beyond the workplace, companies are encouraged to look for opportunities to tackle discrimination against LGBTI persons in the marketplace and community at large. Steps include working with suppliers, distributors, service providers and other business partners to replicate anti-discrimination standards across the sector concerned. Companies should also look for ways to lend support to local LGBTI communities, including through funding and sponsorship of LGBTI cultural and community events, and to integrate positive and accurate representations of the LGBTI community in advertising campaigns and related marketing materials. Finally, companies should be ready, in coordination with local LGBTI human rights defenders, to speak up when the rights of LGBTI persons are threatened by discriminatory laws, policies or decisions. Again, civil society has a vital role to play in each of these areas, and the guide suggests potential entry points for defenders looking to engage, as well as examples of collaboration in different parts of the world.

SECTION 3



**Encouraging companies
to go further**

A. FRAMING THE ARGUMENT

Having found a receptive interlocutor within a company, the next challenge for defenders looking to engage a company on LGBTI issues will be to frame their arguments, tailoring them as needed according to the size, sector and location of the company concerned, its relationships with other businesses in the marketplace and, where relevant, any specific areas of interest demonstrated by its management and employees in the past.

While there's no one-size-fits-all approach that will work for everyone, the following suggestions provide advice and some suggestions to defenders looking to build a convincing case for engagement with a potential corporate partner:

- (a) The economic and business case needs to be incorporated in the case for engagement.** As discussed in earlier sections, companies remain sensitive to the economic and business case for diversity and inclusion, as well as for demonstrating a positive social impact. These arguments need to be incorporated when making the case for corporate-civil society partnerships;
- (b) A civil society organization needs to be seen as a potential ally in improving a company's performance.** If a company believes that a human rights defender wishes only to attack it, the company will likely be defensive and collaboration will be challenging to achieve. Civil society has an important role to play in holding all actors to account, including business. Where it is possible to do so in a constructive manner, identifying possible solutions to gaps and making proposals that are win-win are actions more likely to win over companies, with companies identifying civil society as potential allies in helping them to do better. LGBTI human rights defenders can help companies in implementing the Standards of Conduct across the board, both internally and externally;
- (c) A wide range of other stakeholders need to be involved.** The most effective examples of collaboration between an LGBTI organization and a company have typically involved a much broader range of stakeholders and have been based on a wide-ranging consultative process. In-depth dialogues should be held to identify the priority issues in relation to the human rights of LGBTI persons that corporations can support. As an example, the successful partnership between PepsiCo and PFLAG came together after more than a year of searching for partners and solutions,

spearheaded by the PepsiCo Foundation, the human resources division and PepsiCo's employee resource group, EQUAL. The corporate team held a series of round-table meetings with pre-eminent LGBTI groups;

(d) Human rights defenders need to offer a long-term commitment.

Productive partnerships tend to have a long-term mindset backed up by solid promises and measurable commitments and actions. Whatever the initiative that is being pitched, it needs to demonstrate added value to the company's leadership over time. Companies are thinking about strategic partnerships, creative collaborations and other ways to better leverage limited resources and maximize their own unique assets. LGBTI organizations should keep this in mind as they look to build relationships with corporations and think through opportunities to bring in other non-profit organizations, companies or government agencies;

(e) The engagement should not be based on money alone.

Corporations increasingly want to move away from purely monetary support. This highlights the need for more thinking about developing strategic partnerships that leverage assets other than cash, such as volunteerism, collective action, pro bono services, product donations and employee engagement. Even so, the nascent global LGBTI equality movement is in dire need of funding, so it needs to be made clear where corporate money is needed;

(f) The entire workforce needs to be engaged.

Increasingly, employees are choosing to work for organizations whose values resonate with their own. Attracting and retaining talent will be a growing challenge in the future, so companies are looking for activities that build on core values and are capable of inspiring employees. Given that one of the weightiest factors for determining corporate philanthropic programmes is improving employee recruitment and retention, LGBTI human rights defenders and organizations should always consider – and address – how their particular programmes, partnerships or proposals engage a company's staff. In one such case, Unilever reported that actively engaging its employees in such initiatives led to improved motivation, loyalty and ability to attract and retain talent;

(g) Projects that align with a company's own products can increase the possibility of support.

Companies are more likely to support projects that align with their products. The box below describes how the Trevor Project leveraged more than \$2.5 million in 2019 by engaging AT&T and Google around services that could be built on their

technological capacity. Similarly, many successful partnerships with clothing retailers have involved development of Pride-themed clothing lines that have been sold in-store and online, raising funds for LGBTI-related organizations while at the same time visibly aligning the brands concerned with the cause;

- (h) Advice and guidance should be offered.** The Standards of Conduct reiterate that companies should consult with employees and employee groups and with external stakeholder groups and organizations, in particular local LGBTI organizations, before taking steps in the public sphere. For example, any external advocacy should always be conducted in consultation with local LGBTI non-governmental organizations to ensure that a company's approach takes into account local needs and challenges and the local movement's goals;
- (i) Limitations need to be clearly explained.** Just as the business community has expectations that non-profit organizations understand the corporate philanthropy landscape, LGBTI human rights defenders need the business community to understand their context. Many local LGBTI organizations lack the financial and human resources necessary to build and maintain strategic partnerships with companies. LGBTI organizations operating in more challenging contexts highlight the fact that, as nascent or understaffed organizations, they should not be held to the same standards on reporting and direct results as more established and well-resourced peers;
- (j) Support should be acknowledged.** It should never be underestimated how important it is for companies and for senior executives within companies to be seen to be doing the right thing. Corporate leadership in this area should be recognized and applauded as this can help rally wider support for the cause within the company and beyond. Ways should be sought to acknowledge the support received, both from companies as a whole and from the individuals involved.

Linking the “ask” with a company’s core products: the example of the Trevor Project

The Trevor Project based in the United States is the world’s largest suicide prevention and crisis intervention organization for young LGBTI persons. It was founded in 1998 by the filmmakers behind *Trevor*, which won an Academy Award in 1995. The project is aimed at saving young lives by providing support through free and confidential suicide prevention and crisis intervention programmes: these include 24/7 telephone lifeline, chat and text services. The organization also operates TrevorSpace, a safe space social networking site for lesbian, gay, bisexual, trans, queer and questioning young persons, and runs education, research and advocacy programmes across the United States.

In 2019, the Trevor Project added two large donors, AT&T and Google – in the case of both, linking support to the core business/products of the respective companies.

The partnership with AT&T allowed the Trevor Project to make its chat and text services available around the clock. This expansion was in alignment with the findings of the Trevor Project’s national survey of over 24,000 young persons, of whom more than 70 per cent said they were somewhat or very likely to reach out using chat or text when they needed help. AT&T committed \$1 million in addition to \$675,000 in-kind services to power the expansion, highlighting the fact that the grant would allow the Trevor Project to increase the number of young persons served by its digital platforms by a factor of four.

Google’s commitment of \$1.5 million was to help the efforts of the Trevor Project to bring artificial intelligence into the organization’s work, allowing their trained crisis counsellors to better serve young persons in need, building on the company’s Impact Challenge on artificial intelligence.

While suicide prevention is likely seen by many companies in the United States as less controversial than the rights of LGBTI persons globally, there is a lesson here on the advantages of aligning support with the products and/or services that the target company provides.

B. TAILORING TO FIT: ENGAGING SMALL AND MEDIUM-SIZED ENTERPRISES

Following the roll-out of the Standards of Conduct at regional launches and business events around the world in 2017 and 2018, more than 350 companies – including companies behind some of the world’s best known brands – expressed support for them.

Many of these companies have in turn become advocates for the Standards of Conduct, setting up meetings with their business partners – and, in some cases, with their own competitors – to enlist support for the Standards of Conduct.

Notably underrepresented in the list of companies that expressed support for the Standards of Conduct are small and medium-sized enterprises (SMEs) and companies that operate in only one jurisdiction.

Most of the companies that have expressed support for the Standards of Conduct to date have been large multinational companies that operate in multiple jurisdictions and face the challenge of developing effective, consistent and legally compliant approaches to tackling discrimination that overcome significant differences in local laws and regulations. Encouraging more SMEs to use the Standards of Conduct as a tool for improving their own policies and practices is therefore a potential area of priority in pushing to extend the role of the private sector in tackling discrimination against LGBTI persons.

The SME challenge

As the Guiding Principles on Business and Human Rights make clear, all companies, irrespective of size, structure and location, share a common responsibility to respect human rights, including the human rights of LGBTI persons. This responsibility applies just as much to SMEs as it does to large multinational companies.³⁶

SMEs, which the World Bank defines as firms employing less than 300 people, are a hugely important part of the global economy: they make up some 90 per cent of all economic activity, more than half of all employment and some 40 per cent of economic output worldwide.³⁷ If discrimination against LGBTI persons is to be curbed and the private sector is to play a larger role in tackling stigma and marginalization around the world, SMEs will need to do their part.

³⁶ See guiding principle 14.

³⁷ See www.worldbank.org/en/topic/sme/finance.

To date, large companies have tended to be more prominent than SMEs in speaking publicly about their LGBTI inclusion efforts. They attract more media attention and are more high profile, and concerned in particular about protecting and enhancing their reputations with the broader public and key stakeholders. They are also often better resourced and more able to invest in efforts to enhance diversity and inclusion.

Even so, in some instances, SMEs may be better placed to stand up in support of local LGBTI communities than multinational companies. In Singapore, for example, when foreign and multinational companies were barred by the authorities from supporting the country's Pink Dot Pride festival, 120 local companies, many of them family-owned enterprises, came forward to fill the gap with sponsorship and other forms of support.³⁸

SMEs often have deep and complex relationships with larger companies – although they may be required to adhere to the standards set by large companies, they may also be in a position to influence the decisions that large companies take. It would be incorrect to assume that large companies always or necessarily have superior anti-discrimination standards compared with smaller companies; indeed, sometimes the opposite is the case.

Different approaches to engaging with SMEs on LGBTI issues

Make it personal: the personality and level of personal commitment of the founder, owner or manager of an SME often has an outsized influence on company culture, including in relation to diversity and inclusion and corporate social responsibility.³⁹ The close involvement of founders and owners can make it easier to engender a corporate commitment than in a large, publicly owned corporation. While they may not use terms such as corporate social responsibility, SMEs can, through their actions, be more socially responsible than their much larger counterparts.⁴⁰ SMEs often have a closer relationship with their local communities, generating local employment and depending heavily upon relationships with local customers and suppliers. Being more embedded in local communities means that some SMEs are more willing than larger firms to invest in those communities. In the context of LGBTI issues, that might involve supporting local LGBTI non-governmental organizations, sponsoring LGBTI-related cultural events or providing in-kind access to facilities.

³⁸ See <https://reddotforpinkdot.sg>.

³⁹ See Heledd Jenkins, "Small business champions for corporate social responsibility", *Journal of Business Ethics*, vol. 67, No. 3 (2006).

⁴⁰ See Heledd Jenkins, "A critique of conventional CSR theory: an SME perspective", *Journal of General Management*, vol. 29, No. 4 (2004).

The SME challenge

Keep the “ask” proportionate: SMEs are likely to be less well resourced than large companies, meaning that less funds are likely to be available to invest in initiatives that might be socially or environmentally beneficial but lack any obvious short-term business benefit. Equally, with fewer people and leaner operating structures, SMEs may struggle to free up staff capacity to devote time to supporting projects. On the other hand, when SMEs do engage on social issues, they may be more likely to focus on realistic projects with clear deliverables and outputs rather than on press and communications, which do not have a direct impact.

Focus less on reputational issues: some elements of the business case for taking up LGBTI issues may seem less relevant to some SMEs, which do not typically face the same kind of consumer pressures as larger firms and are more likely to be focused on local markets and local consumers than broader global trends. While reputation is important for any business, reputational risks are likely to be more of a concern for large companies. Even so, pressures on the larger corporations will inevitably translate into pressures on their suppliers, including SMEs.

C. STEP BY STEP: THE CASE FOR A GRADUALIST APPROACH

While the walls between human resources, corporate social responsibility, marketing and other corporate functions, described above, are starting to shift as companies look to integrate sustainable business practices across their businesses, for most human rights defenders the starting point for engaging companies remains diversity and inclusion. This in turn implies that the conversation will initially focus mostly on how companies can better respect and promote the rights of their own LGBTI employees, before widening out to include the scope for tackling patterns of discrimination in the marketplace and community at large.

A gradualist approach is often the most effective path to long-term partnerships, especially in the case of companies that have not integrated human rights issues in their corporate social responsibility programmes previously.

Proceeding in this way also has the advantage of authenticity – allowing a company to first establish its credentials by tackling issues internally before turning its attention to what might be achieved beyond the company’s walls.

For companies setting out on the journey, the first steps in improving respect for and promoting the human rights of their LGBTI employees can be described as follows:

(a) Engaging local LGBTI organizations and corporate associations.

Before tackling policies and practices, request the support of local LGBTI civil society organizations as well as any local LGBTI corporate or multi-stakeholder network or associations. They may have accompanied other companies on a similar journey and will be invaluable advisers;

(b) Use available tools. An increasing range of guidance and tools are being developed to support companies on the journey. The gap analysis tool developed under the auspices of the World Economic Forum Partnership for LGBTI Equality⁴¹ and the United Nations Global Compact, for example, provides companies with a confidential self-assessment tool that can help them gauge their current performance against the Standards of Conduct and point them in the right direction. The Global Partnership for LGBTI Equality, and many other organizations, have also published case studies of how companies have advanced respect for LGBTI persons, in partnership with civil society. Civil society organizations can use these and other resources to point companies in the right direction to advance their journey.⁴²

(c) Communicating internally about being a diversity-friendly employer. It needs to be stated clearly that diversity policies are inclusive in the widest sense, covering gender, minorities, skin colour, faith, persons with disabilities and LGBTI persons, among others. Potential occasions for such communications include the International Day against Homophobia, Transphobia and Biphobia on 17 May, the International Transgender Day of Visibility on 31 March, Lesbian Day of Visibility on 26 April, Bi Day of Visibility on 23 September, Intersex Awareness Day on 26 October, Pride events, Human Rights Day on 10 December, and other relevant dates;

⁴¹ The Global Partnership for LGBTI Equality, “Gap analysis tool”, available at www.global-lgbti.org/gapanalysistool.

⁴² See www.global-lgbti.org/best-practices-library.

(d) Issuing a clear statement of support from senior management.

It is crucial that the message come from the top, and not only from the head of diversity or the head of human resources – it has to come from the chief executive or someone in the executive committee and it has to come across as authentic and genuine;

(e) Setting up an internal LGBTI network. This step is probably the most effective in ensuring a sustainable engagement by the company on LGBTI issues. The network should have high visibility, a budget and the time and premises for it to meet regularly;**(f) Engaging LGBTI executives and connecting with allies.** While engaging LGBTI executives is important, companies that have actively sought out allies who can publicly champion inclusiveness are of enormous value internally and externally, and companies should actively seek them out;**(g) Sponsoring external LGBTI groups.** Corporate sponsorship of events by LGBTI human rights organizations, participation in initiatives organized by LGBTI groups and sponsorship of events can demonstrate that a company is a diversity champion and serious about the agenda;**(h) Reviewing employee policies and benefits.** Does the company offer the same parental leave to same-sex couples who adopt as it does for different-sex couples? Does it offer the same health-care benefits to same-sex couples as it does to different-sex couples? Does it recognize the gender identity of transgender employees and provide them and their dependants with benefits without discrimination? Do health care benefits cover the needs of LGBTI employees?;**(i) Protecting whistle-blowers.** Employees should be encouraged to use anonymous helplines to raise complaints about bullying, harassment or any other forms of discrimination.**D. ENCOURAGING A RACE TO THE TOP****Most companies like to be “highly-rated”.**

Over the past 20 years or so, several different indices have been developed to rank companies according to their efforts to tackle discrimination against LGBTI persons. The aim has been to encourage companies to compete with one another for a high rating, an outcome that they can then point to as evidence of their commitment to diversity and inclusion. LGBTI human rights defenders should see these indices as potentially important tools of engagement

and as a means of mobilizing companies to make and subsequently implement their commitments to take action. They can also be used to hold companies to account.

A number of indices are used around the world. Examples include the Corporate Equality Index, released annually since 2002 by the Human Rights Campaign;⁴³ Stonewall's Workplace Equality Index and Global Workplace Equality Index, first released in 2004 and 2011, respectively. Many other indices have been developed at national level, in a number of countries.

When engaging with companies, defenders should be mindful of the timing, process and methodology used to develop each of these indices and ensure that companies' policies and practices are accurately reflected.

The scope, reach and cohort of each rating/ranking/index are different, leading to a variation in rankings when compared across indices.

There is scope to strengthen and extend the existing indices, including by expanding the criteria used to gauge progress and introducing better differentiation of initiatives aimed at particular parts of the LGBTI community.

It should be emphasized that at present there has been very little focus on actions taken by companies to address the rights of intersex persons, and that initiatives to address the exclusion and discrimination of lesbian and bi women and transgender persons often lag behind other measures.

At the regional meetings held to launch the Standards of Conduct, the idea was discussed of civil society collaborating with other stakeholders, including companies, to develop a new performance monitoring mechanism or to align existing ones with the Standards of Conduct. This could help fill gaps in and encourage greater alignment between existing indices, while also paying more attention to areas that are presently not covered – for example in respect of the first standard (which requires due diligence to prevent violations of human rights) or the fifth (speaking up for LGBTI equality).

⁴³ See Human Rights Campaign Foundation, "Corporate Equality Index: FAQ", 6 May 2020, available at www.hrc.org/resources/corporate-equality-index-faq. In 2020, the Corporate Equality Index saw a record 686 employers earn a top rating of 100 per cent.

LGBTI equality: raising the bar

The bar for determining what constitutes authentic support for equality, and opposition to discrimination, continues to be raised. In many contexts, companies are increasingly criticized if they support pro-equality efforts and organizations in some countries and on some issues while remaining silent on other issues or in other parts of the world.

The Standards of Conduct highlight specific steps that companies can take in consultation with local organizations to speak up for and support local LGBTI communities, including on issues or in parts of the world where the social and legal climate for LGBTI persons may be hostile.

In the United States, the Human Rights Campaign Foundation, which compiles the Corporate Equality Index, has incrementally raised the bar for participating companies by adjusting the criteria on which the Index is based, while providing the tools for employers to meet them. Many other indices have done the same, raising the bar for companies and integrating assessments that also cover, for example, global operations of companies and supply chains, and other areas that were not previously covered, such as corporate giving.

E. ESCAPING THE NICHE

A recurrent challenge for LGBTI human rights defenders is to encourage companies to view LGBTI issues not as a niche area of relevance only in certain markets but as one element in a broader approach to improving a company's impact on society and its contribution to social and economic development.

A useful reference in this context may be the Sustainable Development Goals, which all countries are committed to achieving by 2030.

Business has an important role to play alongside States and civil society in ensuring the achievement of those goals. Among the agreed goals is a commitment to address discrimination, which in turn implies a particular focus on those groups that are most at risk of being left behind in development efforts and who face high levels of social and economic exclusion and marginalization in society, which includes LGBTI persons. By addressing LGBTI inclusion, companies can actively contribute towards the wider objective of inclusive and equitable sustainable development for all.

By approaching LGBTI issues from this angle, human rights defenders may be able to persuade companies to move beyond a narrow focus on LGBTI employees and related issues of diversity and inclusion and to embrace a more ambitious agenda.

That agenda could include using a company's marketplace presence, business relationships and human and financial resources to leverage wider social change, whether through advertising, advocacy, requirements for suppliers and distributors, sponsorship of events, funding for LGBTI causes or other means. It also provides a basis for more sustained engagement between companies and civil society, since such collaboration is central to most companies' approaches to corporate social responsibility.

This approach depends in part on LGBTI human rights defenders breaking into wider discussions on social and economic sustainability and striking up good working relationships with human rights defenders and civil society organizations working in other areas of sustainable and inclusive development and human rights.

In recent years, civil society organizations have worked hard to bring an LGBTI perspective to discussions at the United Nations high-level political forum on sustainable development, including the need for LGBTI persons to be included in data collection and in reporting on implementation of the 2030 Agenda at the national level. Similarly, civil society organizations have also taken part in the Forum on Business and Human Rights to present and advocate for business action in support of LGBTI inclusion and to build partnerships with other stakeholders in the broader conversation on business and human rights.

There are also opportunities at the national level to influence discussions both on sustainable development and on business and human rights.

In many countries, voluntary national reviews⁴⁴ have been established to oversee progress in implementing work for attaining the Sustainable Development Goals. Similarly, in some countries, national action plans have been drawn up to promote implementation of the Guiding Principles on Business and Human Rights. LGBTI human rights defenders may find new allies among those working to encourage business to develop more effective approaches to fulfilling their human rights responsibilities, including among specialist non-governmental organizations working on business and human rights, national

⁴⁴ As part of its follow-up and review mechanisms, the 2030 Agenda for Sustainable Development encourages Member States to "conduct regular and inclusive reviews of progress at the national and subnational levels which are country-led and country-driven". See General Assembly resolution 70/1, para. 79. See also <https://sustainabledevelopment.un.org/vnrs/>.

human rights institutions and academia. Platforms such as the Business and Human Rights Resource Centre⁴⁵ can provide access to documentation on specific companies and industries.

Local networks within the United Nations Global Compact⁴⁶ are another potential entry point for companies looking to develop their approach on this issue. These have been established in many countries to support local firms and subsidiaries of multinational corporations in applying the 10 principles and meeting associated reporting requirements of the Global Compact.

How companies prioritize public policy advocacy

While companies are becoming more aware of opportunities to contribute to the social good by engaging their stakeholders on issues of interest, most are still wary of taking on too many commitments. As a result, they tend to be highly selective about which issues they take up as a priority.

For many executives, there needs to be a link to the business concerned and an alignment with corporate values. Demonstrable interest from and impact on staff, customers and the wider community are also relevant. A good example of a company taking up an issue that meets these criteria is Johnson & Johnson's advocacy on HIV/AIDS.

One corporate supporter of the Standards of Conduct pointed out that it prioritized firstly what had the greatest impact on the portfolio, secondly, what would drive most meaningful change in the industry, and thirdly, how it could set an example for others. It highlighted the importance of being consistent, methodical and deliberate in engagement in order to build trust. Engagement was not possible on all issues, so was targeted.

These elements can be useful to human rights defenders in terms of framing their approach to companies, including in terms of the Sustainable Development Goals, which every country has committed to achieving by 2030. The goals include every commitments on poverty (Goal 1), health (Goal 3), education (Goal 4), gender equality and women's empowerment (Goal 5), economic growth and employment (Goal 8), inequalities (Goal 10) and justice (Goal 16), all of which depend upon progress in tackling discrimination against LGBTI persons and achieving greater diversity and inclusion within the workplace and beyond.

⁴⁵ See www.business-humanrights.org/.

⁴⁶ See www.unglobalcompact.org/engage-locally.

F. HOLDING COMPANIES ACCOUNTABLE

Up until now, the focus in the present guide has been on how defenders can use constructive engagement with companies.

Such efforts would be to encourage business to do more, go further and invest more resources to tackle discrimination against LGBTI persons. The emphasis has been entirely on what can be achieved – both within a company and in the wider world – through mutually beneficial collaboration and partnership.

Nevertheless, some situations demand a different approach.

In situations in which companies have ignored their responsibility to respect the rights of LGBTI persons, contributed to human rights abuses, or have failed to meet commitments they have made, human rights defenders have a role to play in holding such companies accountable.

The avenues available to human rights defenders in such cases will depend upon the local context and the legal framework of the country concerned and the mandate of specific institutions.

In many countries, civil society organizations and individual defenders may lodge complaints concerning discrimination or abuse of rights through either the courts or more accessible and less formal mechanisms, such as an ombudsperson or a national human rights institution. In the case of non-legally-binding commitments, civil society organizations can raise concerns through other channels, including allies, to apply pressure on the company to meet its commitments.

Applying pressure for political change

In 2014, the World Bank announced that it was delaying approval of a loan to Uganda in response to a new law providing for longer jail terms for same-sex conduct – including, in some cases, life imprisonment – and curbing any form of activism that might be construed as “promotion of homosexuality”.

The Bank’s decision faced pushback from a number of human rights defenders in Uganda, who were concerned that the decision could potentially cause a backlash against the very people that it was intended to support, stressing that aid cuts would mainly affect poor Ugandans, including LGBT Ugandans, generate animosity against LGBT groups, and have no impact on the proponents of hate speech and discrimination against the LGBT community, who could appear as patriots protecting the country from foreign influence. They therefore urged international institutions to assess the risks of their decisions prior to carrying them out.

Applying pressure for political change

Nonetheless, the principle of using leverage to advance protection of rights was taken up by many human rights defenders, some of whom urged companies, especially multinational companies with operations in Uganda, to go public about their concerns over the new anti-gay legislation. Many companies expressed their support for the LGBTI community, and a number took the issue up directly with the Government, making the case that such laws made Uganda less attractive for foreign investors and threatened the image of companies that do business in the country.

The law in question was subsequently struck down in the courts on procedural grounds and to date has not been reinstated. The President of Uganda has cited the risk of deterring foreign investment as a reason for not supporting the bill's return to Parliament.

SECTION 4



Key risks

Encouraging companies to go further: A summary

The most effective type of advocacy is well targeted and tailored to a specific audience. In approaching any company with a view to engagement and collaboration, human rights defenders should take into account the size and structure of a company and the context of the sector in which it operates.

In most cases, a constructive approach will work, and human rights defenders should consider putting forward proposals for long-term collaboration. Projects that tie in with a company's existing products tend to work well. A gradualist approach can also be an effective way forward – possibly starting by focusing on changes in internal policies, procedures and training to address discrimination and stigma in the workplace, before moving on to more external-facing actions that a company could take to provide support to the LGBTI community beyond the workplace.

Ultimately, securing commitments from companies is one thing; making sure they deliver on them is another. The best way to ensure delivery is typically through maintaining effective, constructive partnerships between human rights defenders and companies. In some countries, indices that rank companies based on the actions that they have taken to eradicate discrimination against LGBTI persons have proven an effective way of encouraging companies to go further and faster than they might otherwise. In situations in which communication and collaboration break down, other forms of accountability, including greater public scrutiny, may be required.

A. PINKWASHING AND BLUEWASHING

Some human rights groups are sceptical about what drives corporate interest in human rights, including in the human rights of LGBTI persons.

What are the company's motives? What is in it for them? Are they doing it to boost their profits or is the commitment deeper?

Some companies stand accused of emphasizing their commitment to LGBTI issues as a way of distracting attention from a poor record in other areas of human rights, labour standards or environmental protection.

This practice is known as reputational pinkwashing. Similarly, some companies have been criticized for displaying a mainly cosmetic commitment to LGBTI issues in an attempt to reap the benefits of appearing LGBTI friendly

by sponsoring events, while not taking adequate substantive action to tackle discrimination against LGBTI persons, either internally or externally.

A related concern is that companies might try to associate themselves with the United Nations as a way of burnishing their image as champions of human rights, while not taking any meaningful actions to meet their human rights commitments in practice.

This practice is sometimes referred to as “bluewashing”.⁴⁷ In the present context, companies that publicly support the Standards of Conduct might see an opportunity to earn double plaudits: for aligning themselves with a United Nations initiative and for signalling their commitment to the LGBTI cause. The onus should be on such companies to demonstrate seriousness in applying the Standards of Conduct in practice and doing so in consultation with LGBTI staff, human rights defenders and communities on the ground.

While it would be unfair to tarnish all or even most companies with accusations of pinkwashing or bluewashing, the risks are genuine.

Some multinational companies have in the past been criticized for paying lip-service to LGBTI issues, while simultaneously turning a blind eye to discrimination against LGBTI persons within their own workforces and in the communities in which they do business. Such risks are best mitigated by civil society engaging with business and playing its part, as a watchdog, an informed critic and as a constant reminder to companies of their human rights responsibilities. In addition, defenders should look to situate engagement with companies on LGBTI issues in the context of a broader human rights agenda that includes other critical human rights issues, including gender equality, labour rights, the rights of migrants, the rights of persons with disabilities, non-discrimination, the fight against racism, environmental protection, anti-corruption and sustainable development.

⁴⁷ See, for example, Carlos Fortin and Richard Jolly, “The United Nations and business: towards new modes of global governance?”, *IDS Bulletin*, vol. 46, No. 3 (2015).

Pride and pinkwashing

In many countries, Pride festivals and parades are organized in many towns and cities; an opportunity to be visible, to celebrate progress and to demand greater protection where needed.

The involvement of corporations in Pride has come under increased scrutiny by several LGBTI advocacy organizations. Many defenders denounce what they see as the hypocrisy of those companies that drape their social media accounts, and in some cases their stores, with rainbow symbols during Pride for commercial gain, while making no contribution to the well-being of LGBTI communities or to addressing human rights abuses affecting LGBTI persons.

Notably, many global companies headquartered in Western countries go to considerable lengths to associate themselves with Pride for marketing purposes in their home countries, while remaining silent on the subject abroad, where there is less or no commercial benefit in being seen as LGBTI friendly. In other cases, companies that provide equal benefits to LGBTI staff, have robust anti-discrimination procedures internally and pride themselves on being LGBTI-inclusive, have also been known to make substantial donations to political candidates and organizations that actively oppose LGBTI equality.⁴⁸ In recent years, protests against corporate pinkwashing have been held during Pride parades in London, New York, Paris and Washington, D.C.

B. DUE DILIGENCE

Before entering into any partnership with a company, non-governmental organizations should take reasonable care to assess whether the activities, reputation, ethics and social and environmental impact of the potential partner are compatible with their missions.

As part of this process, which is known as “due diligence”, the non-governmental organization will need to weigh the risk that the proposed collaboration might be viewed as an endorsement of the company with which it is thinking about partnering. Such checks are the best means of mitigating the risks of pinkwashing and avoiding charges of hypocrisy.

⁴⁸ Judd Legum, “These rainbow flag-waving corporations donated millions to anti-gay members of Congress”, Popular Information, 17 June 2019.

The process for carrying out human rights due diligence is summarized in the Guiding Principles Reporting Framework.

This framework was produced by the non-profit organization Shift and business services firm Mazars as part of the Human Rights Reporting and Assurance Frameworks Initiative. The Reporting Framework, which is used by hundreds of companies as the basis for their own human rights due diligence work, defines due diligence in this context as: “An ongoing risk management process ... in order to identify, prevent, mitigate and account for how [a company] addresses its adverse human rights impacts. It includes four key steps: assessing actual and potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating about how impacts are addressed.”⁴⁹ While these steps are expected of companies, they also provide useful channel markers for non-governmental organizations looking to carry out due diligence in preparation for a potential partnership with a company. Further guidance and related resources are available from Shift and Mazars, as well as on the OHCHR website.⁵⁰

The scope and depth of a non-governmental organization’s due diligence process will likely depend on the significance of the proposed partnership and the size, nature and complexity of the potential partner’s business.

Available capacity and expertise within the non-governmental organization concerned may also be a factor, but it is important to bear in mind that the partnership may also carry significant risk to the organization, and warrants it exercising reasonable care when evaluating potential partners and identifying commonalities and risks – reputational and otherwise – that might result.

Often, the first step is to rule out companies identified as off-limits for partnerships.

It might not be in the form of a blacklist, but many organizations have identified a set of industries that they will not partner with under any circumstances on the basis that the activities of the companies involved are deemed harmful and/or incompatible with the missions of the organization.

Common examples include companies involved in:

- (a) The manufacture, sale or distribution of certain **weapons** or their components in general or more specifically cluster bombs, anti-personnel mines, biological and chemical weapons and nuclear weapons;

⁴⁹ Shift and Mazars, *UN Guiding Principles Reporting Framework with Implementation Guide* (2015), p. 110.

⁵⁰ See www.shiftproject.org, www.mazars.co.uk and www.ohchr.org/EN/Issues/Business/Pages/CorporateHRDueDiligence.aspx.

- (b) The manufacture, sale or distribution of **tobacco** or tobacco products;
- (c) Activities that **violate United Nations sanctions** and relevant conventions, treaties and resolutions, and companies included on the United Nations Ineligibility List or sanctions list;
- (d) The manufacture, sale or distribution of substances subject to an international ban or phase-out, and **wildlife** or products regulated under the Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- (e) **Gambling**, including casinos and betting (excluding lotteries with charitable objectives);
- (f) Violation of human rights or complicity in **human rights violations**;
- (g) The use or toleration of **forced or compulsory labour**;
- (h) The use or toleration of **child labour**.

Beyond this first step, procedures vary. A researcher may be tasked with evaluating the risks and downsides of each opportunity, including reputational considerations.

The process typically looks at three different facets of a potential partner – relational, financial and contextual – and tries to identify any past or future issues that could damage the organization or its beneficiaries. It should include as a central element an examination of the potential corporate partner’s business activities and its business relationships. Its business activities should not have any demonstrable, negative impact on the enjoyment of human rights. Likewise, its business relationships should be with partners whose activities do not have a demonstrable, negative impact on the enjoyment of human rights. In any case, the company concerned should have effective policies and procedures in place to guard against such outcomes now and in future.

Due diligence at Oxfam

Oxfam has an ethical checking committee, which evaluates any potential major relationship to see if what the partner is doing in any way “substantially or wilfully undermines our mission”. The committee investigates a company’s operations, evaluates media reports, reads company policies, identifies value matches and screens out any company that may harm the issues the organization is working to address. That process can take anywhere from 3 to 12 months because it takes considerable effort to ensure a partnership is mutually beneficial. Global partnerships undergo a rigorous process, while smaller ones face less intense examination.

The evaluation process should not stop with the initial due diligence.

It is important to have clear objectives around what the partners plan to do together and to assess the relationship and regularly evaluate how the partnership is meeting its goals. In common with many non-governmental organizations, World Vision drafts formal agreements to include a clause that allows either partner to withdraw at any time in case of serious concerns. Effective partnership and collaboration between civil society and companies are long-term endeavours. In time, circumstances can change and non-governmental organizations should be alert to evolving risks, prompt in engaging corporate partners in relation to any emerging areas of concern and willing, ultimately, to withdraw in case effective solutions are not agreed.

SECTION 5



Conclusion and next steps

Key risks: a summary

Growth in the number of global brands looking to publicize their support for LGBTI equality has led to concerns among some defenders and consumer groups of so-called pinkwashing, by which companies allegedly use sponsorship of Pride events, rainbow imagery and other gestures to cultivate a progressive brand image, while at the same time drawing attention away from shortcomings in other areas, such as poor labour standards and environmental degradation.

Defenders seeking to partner with a company on LGBTI issues should be alert to such risks and be prepared to carry out their own due diligence on the company's policies, practices and past record. The Guiding Principles Reporting Framework provides guidance for civil society organizations on conducting due diligence. Some companies may be regarded as off-limits on the grounds that their core business is arguably detrimental to the enjoyment of human rights. For those companies that pass this threshold, further research should be carried out into the firm's activities and business partners, its handling of past allegations and the adequacy of policies and procedures in place to prevent problems arising in the future. The scope and depth of any due diligence process will likely depend on the significance of the proposed partnership and the size, nature and complexity of the potential partner's business.

When there are genuine concerns about a company's conduct, these may form part of ongoing engagement with corporate executives. Where sufficient reassurances are made concerning remedial measures in place, these may need to be verified and monitored. When the concerns cannot be satisfactorily resolved in this way, withdrawal from collaboration may become necessary.

Companies find themselves under increasing pressure to meet their responsibility to respect human rights and growing consumer expectations to act as “good corporate citizens”.

A recent Edelman study that looked at consumer sentiment in Brazil, China, France, Germany, India, Japan, the United Kingdom and the United States found that nearly two thirds (64 per cent) of those surveyed said that they would buy or boycott a particular brand based solely on its position on social or political issues.⁵¹

There are some signs that this shift in consumer perspectives is being increasingly reflected in corporate decision-making.

Some examples in the United States include Starbucks closing 8,000 locations to hold racial bias training following an incident of discriminatory treatment of a black customer; Uber’s chief executive officer quitting the Economic Advisory Council over the Government’s immigration policies; and Google dropping a \$10 billion bid for a Pentagon contract after extensive protests against the company working with the military.

Some companies have used marketing and advertising campaigns to align their brand with a set of core human rights-based values.

Recent examples include the Nike advertising campaign featuring Colin Kaepernick and Caster Semenya; Gillette advertising targeting toxic masculinity; a coalition of companies making a commitment to hire refugees; advertising campaigns by the Tata Group in support of the LGBTQ community in India; the Godrej Industries India Culture Lab; and Nando’s #RightMyName campaign in South Africa to force online spell-checking software to stop marking more than 70,000 African names as incorrect.

Growing consciousness of corporate responsibility for human rights has been matched to some extent by greater awareness of discrimination against LGBTI persons and its costs, both for companies and for communities more generally.

The speed at which some of the world’s largest companies have moved to express support for the Standards of Conduct highlights the growing corporate interest in this area. Many of the companies that have expressed support for the Standards of Conduct, as well as many that have yet to do so, have moved or are moving to integrate an LGBTI perspective into their approaches to diversity and inclusion and corporate social responsibility. These are all welcome developments.

⁵¹ Edelman, “2018 Edelman Earned Brand study: brands take a stand” (2018).

Even so, more needs to be done if companies are to do their part in confronting and eradicating discrimination against LGBTI persons both at work and beyond.

Greater scrutiny, more transparency, access to remedies for victims and other mechanisms for accountability are still urgently needed. The onus to act is on companies but others have a role to play as well, including Governments and regulatory authorities, civil society, national human rights institutions, regional organizations and the United Nations. The present guide has focused on the role that LGBTI human rights defenders and others in civil society can play in encouraging companies to do more to tackle discrimination and stand up for the rights of LGBTI persons, using the Standards of Conduct as a tool for this purpose.

In the past, many civil society organizations have tended to focus on criticizing corporate conduct and calling out instances of corporate hypocrisy or double standards.

In many circumstances, public criticism will continue to be warranted and will remain as an option for human rights defenders. In addition, the Standards of Conduct can also provide an entry point for possible partnerships, cooperation and constructive engagement between companies and civil society, in support of efforts for change.

For human rights defenders, the approach outlined in the preceding sections of the guide may be summarized as “engage, expect, encourage and hold accountable”.

Engage

Many companies stand to benefit from the support and guidance of LGBTI human rights defenders and civil society organizations in sensitizing managers and staff and reviewing, improving and implementing new policies and procedures to tackle discrimination against LGBTI persons. Receptive entry points within companies may include human resources teams, corporate social responsibility officers, legal advisers or senior management. The objectives of engagement should be mutually agreed and may include improved corporate compliance with legal requirements to respect rights and eliminate discrimination, as well as greater efforts to support LGBTI staff, consumers and communities and to tackle social discrimination, including discriminatory laws and policies. The Standards of Conduct may provide a useful template for corporate action and serve as a useful tool in any dialogue between civil society and companies. Sustained engagement and collaboration may be required

to achieve the desired outcomes. Companies – and, sometimes, civil society organizations – may prefer, at least initially, a confidential dialogue before committing to any public partnership or action.

Expect

Defenders should expect companies to follow through on their commitments, including meeting their pre-existing responsibility to respect human rights for all persons, including staff, consumers and members of the public at large. This requires, inter alia, due diligence, fair and inclusive policies, support for LGBTI employees, diversity and inclusion sensitization and training for staff and managers, effective grievance procedures, access to remedy for anyone adversely affected by discrimination and transparency in decision-making. Companies that commit to applying the Standards of Conduct should be expected to report on the efforts made and the progress recorded in relation to each of the five standards therein.

Encourage

Defenders should encourage companies to go further in tackling discrimination against LGBTI persons, including addressing discriminatory laws, policies, attitudes and practices in the communities in which they do business. Respect for the human rights of LGBTI persons may be integrated into a company's broader approach to corporate social responsibility and human rights. Companies have opportunities to use their presence in the marketplace to engage their suppliers and other business partners on the steps that they can take to tackle discrimination and to reflect their commitment to LGBTI equality and inclusion in their public messaging, advertising, advocacy and support for civil society.

Hold accountable

Companies should be accountable for meeting their responsibility to respect human rights, including the rights of LGBTI persons. They should be accountable for eliminating discrimination in the workplace and expected to take remedial action in so far as they fail to do so. Companies should also be accountable for meeting their human rights commitments, including in relation to LGBTI equality and inclusion. In some cases, companies may be unwilling

or unable to act; some may claim that they cannot act as a result of local laws or attitudes. By engaging with companies, human rights defenders will have opportunities to raise concerns directly and to propose corrective action. In cases in which engagement is either rebuffed or not productive, civil society organizations may wish to consider using the range of tactics at their disposal to bring about change. These may include reports, public appeals, vigils, more direct campaigns and activism.



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