

SEXUAL DIVERSITY AND GENDER IDENTITY RIGHTS POLICY



OXFAM

WHY DOES OXFAM CARE?

Oxfam's vision is a world in which people can influence decisions which affect their lives, enjoy their rights, and assume their responsibilities as full citizens of a world in which all human beings are valued and treated equally. This is core and central to our work and approach to eliminating injustice and poverty.

We firmly believe everyone has a right to realize their potential, and to have the opportunity to live free of poverty in a secure and more equitable world. Sexuality and gender identity is a positive, core part, of being human and experiencing wellbeing and fulfilment. And yet, when diversity of sexuality and gender identity is rendered invisible, or becomes the basis of discrimination, the rights to decisions over bodies, sexualities, identities and intimate consensual relations of one's own choosing are violated. Further, poverty and gender inequalities can be compounded, and development interventions can be inappropriate or fail to reach LGBTI people altogether, resulting in multiple marginalisation of LGBTI individuals.

Poverty is multi-dimensional and includes insufficient income and assets, and a lack of access to basic services and opportunities. But poverty is also deeply rooted in inequality, and can be exacerbated by abuse of power, human violence, oppression and discrimination. Sexuality can contribute to the way in which people experience poverty and in many cases results in poverty becoming more extreme - based on their status, legal rights and access to resources in society. Issues relating to sexuality are wide-ranging and encompass a diversity of elements from sexual orientation, to sexual reproductive health and rights, to sexual pleasure.

There are some grounds for optimism and hope. Over the past decades, many countries (both in the global South and in the North have experienced great leaps forward, abolishing laws that criminalized or discriminated against individuals based on their sexual orientation or gender identity¹. Some countries have gone further, and approved legal environments that promote equal rights and actively combat discrimination against individuals based on sexual orientation or gender identity. Likewise, civil society movements have been persevering: fighting and winning tremendous battles, gaining voice and ground in many contexts. In recent years, public opinion has also evolved in many contexts.

However, **today there are still 75 countries and 5 entities that criminalize homosexuality, and in 6 countries and parts of Nigeria and Somalia homosexuality is punishable by death. Discrimination, violence and exclusion on the grounds of sexual orientation and/or gender identity are a violation of human rights, a barrier to active citizenship and gender equality, and a contributing factor to the perpetuation of poverty and marginalisation.** Oxfam understands that issues of sexuality and gender identity exist on a spectrum, and envisions a world where every individual is able to affirm their sexual rights, because sexual rights are human rights.

Despite this, LGBTI people often have limited access to health care, education, employment, economic opportunities and justice in many contexts. This can be as a result of the challenges

¹ For reference see: http://old.ilga.org/Statehomophobia/ILGA_WorldMap_2015_ENG.pdf

LGBTI people present to heteronormative and patriarchal systems, as well as to traditions which restrict individuals to rigid gender roles.

As a result of the increasing violence and persecution of LGBTI people in many African contexts, especially in 2014, the international development sector has been challenged to surface from its own silences and blind spots, and asking relevant questions around what the harms are if we continue to be blind and silent towards discrimination, violence, and exclusion based on sexual orientation and gender identity in development and humanitarian practice? What the tensions and challenges are taking action in this field? How to better work in consultation with those affected activists and communities before making public announcements or defining program approaches that could actually be harmful to their efforts? The development of programme approaches which are LGBTI sensitive has increased, but are still falling short in relation to meeting the needs of LGBTI people, especially in emergency settings. This is in spite of recent guidance from UNHCR and others aimed at increasing the protection of displaced LGBTI people².

A critical part of Oxfam’s work, therefore must challenge the legal and social barriers which seek to regulate and control sexual lives, bodies and decisions of many individuals. This includes advocating for the rights of those identifying as LGBTI, positioning in solidarity with LGBTI groups, and challenging the stigma and discrimination related to sexual orientation and gender identity. It is also essential to acknowledge the links between sexual rights and women’s rights and that a key component of advocating for women’s rights is linked to issues of sexuality. This refers to the legal barriers and regulations that prevent women from affirming control over their bodies Recent cases in Kenya and Uganda of legislation around dress code for women, for example in the sphere of SRHR.

Likewise we need to pay attention to the need to decriminalise consensual sex work (“sex work that does not involve coercion, exploitation or abuse”³) “) in order to ensure sex workers are not discriminated and their fundamental rights are protected. This is very relevant to LGTBI collectives in the South, for example for transwomen, especially in Latin America & Asia. If we do deny this need we will continue supporting a system which keeps to those most vulnerable in their margins.

This document contributes to on-going efforts to ensure gender and sexual identity is included as a core component of our work which seeks to end poverty and achieve equal rights for all. Gender and sexual identity should be central to OI research, programming, policy, advocacy and campaigning work as a means of strengthening our impact. There isn’t a ‘one size fits all’ approach, and LGBTI issues vary considerably from country to country, demanding context specific analysis and close dialogue with local LGBTI civil society organizations and other key stakeholders. Such dialogue is key if we are to develop an understanding of how Oxfam programmes may hinder or even harm progress towards equal rights for LGBTI people, and how we can develop approaches which enable, support and leverage positive change. .

The target audience is all Oxfam staff working within the confederation, as this document is intended to contribute towards greater policy coherence and increased clarity on OI’s external messaging related to gender and sexual identities. Oxfam also recognizes the critical importance of ‘walking the talk’ and reflecting the policy commitments herein in both our internal practice, as well as our workplace culture.

² See Human Rights First: “Persistent Needs and Gaps, the Protection of LGBT Refugees”: http://www.humanrightsfirst.org/wp-content/uploads/pdf/Persistent-Needs_LGBTI_Refugees_FINAL.pdf.

³ Sex worker Rights are Human Rights”, Amnesty International. <https://www.amnesty.org/en/latest/news/2015/08/sex-workers-rights-are-human-rights/>

As such, the policy proposals in this document will be reflected in the Oxfam Code of Conduct and other relevant internal documents. The full commitment and championship of Oxfam's senior leadership will be a central to our success in this regard.

Oxfam recognises that issues of sexual rights and gender identity have often failed to receive acknowledgment and as a result, there is a critical need to ensure 'buy-in' on sexual rights as well as gender identity issues. This requires a policy that understands the implications of intersectionality and therefore speaks broadly to the universality and interdependence of human rights, rather than isolating LGBTI issues as a separate category and addressing them in a stand-alone manner affecting only certain individuals with a particular identity. However, a twin track approach is needed to ensure that LGBTI people receive specific support and appropriate interventions.

Understanding the ways in which sexuality and gender identity impact on how people experience poverty and injustice is part of the expected intersectional analysis.⁴ Oxfam recognizes that the impact of poverty reduction strategies will be limited – and money will be wasted – if gender equality concerns are not holistically and effectively addressed which requires an intersectional lens and a power analysis be applied. The term sexuality is all encompassing and more than a health and violence issue. Oxfam is willing to play a role in progressing sexual orientation and gender identity as part of our work on fundamental rights across the globe.

SEXUAL DIVERSITY AND GENDER IDENTITY RIGHTS:

While some countries have legal protections around sexuality and gender identity, in many contexts, people perceived or known to be in same-sex relationships are criminalised, face imprisonment and sometimes the death penalty. A total of 75 countries have laws criminalising homosexual acts or 'sodomy'ⁱ. Both male and female homosexual acts are punishable with the death penalty in Mauritania, Sudan, 12 northern states in Nigeria, the southern parts of Somalia, Iran, Saudi Arabia and Yemen. Also in Iraq, judges and militias issue death sentences for same sex behaviours, and currently Brunei Darussalam is due to activate death penalty as well.

Anti-homosexuality propaganda laws, which prohibit the promotion of positive representation of LGBTI people and information about sexual identity and rights, became significantly more widespread in 2013. These laws present serious obstacles and risks for advocates and activists campaigning for rights related to same-sex sexuality, including in many countries where Oxfam works (e.g. Nigeria and Uganda).

Even when sexual and gender identity freedoms and expression are not legally proscribed, persecution on the grounds of sexual orientation and gender identity, as well as social (and sometimes economic) discrimination continues in most parts of the world, in cases with the complicity of state actors. **Sexual and gender non-conformity can be a barrier to employment, economic opportunities, social acceptance and education in many settings – highlighting the critical need for non-discrimination laws and policies. In many contexts, cruelty and hate speech related to sexual and gender diversity may be perpetrated by individuals and state authorities.** Notably, these problems also occur in countries that provide extensive legal protections, such as South Africa. Violent incidents or acts of discrimination frequently go unreported because victims do not trust the police, are afraid of reprisals and are unwilling to speak out, or fear that the police may talk to their families and communitiesⁱⁱ. Lesbians are especially at

⁴ Intersectional analysis is an analytical tool for understanding and responding to the ways in which gender intersects with other identities (race, colour, caste, age, ethnicity, sexual orientation, gender identity, religion, socio-economic class, ability, etc.) and how these intersections contribute to unique experiences of discrimination and denial of rights. See "Intersectionality: A tool for Gender and Economic Justice", *Facts&Issues, Women's Rights and Economic Change*, No.9, August 2004, AWID.

risk of “corrective rape”, forced marriage, female genital mutilation, or forcible impregnation due to the belief that this will change their sexual orientation.ⁱⁱⁱ

In many cases, these barriers and stigmas are reinforced by deeply rooted cultural norms and beliefs around masculinities (premised on superiority and control over women/girls); the concept of ‘traditional family’ (and associated discrimination against non-conforming families, including gay men or lesbian women with children, single mothers, women who do not marry and/or have children, etc.) or the role of women as a source of income in circumstances where there is great poverty (e.g. through early marriage of girls and sex work.). Likewise, the lack of information on sex and sexuality for young people, including information on equal, consensual intimate relationships, is a source for confusion and perpetuates discriminating discourses and practices.

Discrimination, stigmatization and exclusion intersect with poverty in both broad and specific ways. LGBTI people may be thrown out of their homes and lack support from their communities, which leaves many homeless and vulnerable. These circumstances can lead to some LGBTI people turning to sex work in order to make a living. Those who engage in sex work suffer increased vulnerability to harassment, violence, arrest and HIV/AIDS, often lacking protection as a result of their sexual orientation or gender identity. Many transgender, lesbian and gay individuals drop out (or are kicked out) of school, and find themselves without education and few earning options, which condemns them to poverty. Challenges and obstacles often exist when LGBTI people in some contexts try to access health care, including treatment for HIV/AIDS. In some countries, governments and donors have focused only on male-to-female sexual transmission of HIV to the exclusion of individuals engaging in same-sex practices^{iv}. In humanitarian settings LGBTI people suffering sexual violence can face problems in convincing security forces that sexual violence against them was non-consensual and in the case of male victims can be counter-prosecuted under sodomy laws if they report sexual violence perpetrated against them by a man^v.

Children and adults who experience discrimination on the basis of their sexuality or gender identity, or that of their parents or other family members, have a significant need for psychosocial support and health care. However, in many developing countries, people seeking healthcare who do not conform to sexual and gender norms can encounter rejection, humiliation, derision, or sub-standard services. This can result in significant health related disparities. Even where health workers do not intend to discriminate, they often lack basic information or training about specific health concerns and appropriate medical and counselling practices^v.

The lack of legal recognition of transgender people in many countries also leaves trans people vulnerable to anti-homosexuality laws when involved in sexual relationships with people of the same biological sex. Cross-dressing or debauchery laws are also used; but the biggest problem facing trans people is the extremely high rates of violence they can experience, partly because they are more visible than LGB people. In general, trans people have limited legal protection in countries around the world which leads to serious human rights abuses on a regular basis. In countries where legal protection does exist, requirements for eligibility may include sterilization and other hormonal and surgical procedures, divorce, and psychiatric diagnosis.^{vi}

The needs and rights of people who do not conform to sexual and gender norms are rarely represented in other civil society organizations (CSOs), which can compound the problem of limited access to services for these individuals. In some countries, a climate of homophobia can result in human rights organisations and human rights defenders refusing to support LGBTI communities or activists.

^v Guidelines for Integrating Gender-based Violence Interventions in Humanitarian Action, page 9.

Many social protection policies and programmes, whether they are run by the state or NGOs, are not adequately sensitive to issues related to sexual and gender diversity. The right to social protection is recognised in the 1948 United Nations' Universal Declaration of Human Rights^{vii} regardless of sexual orientation or gender identity, but this is rarely implemented in practice. People who do not conform to sexual and gender norms are therefore often unable to claim their rights to inheritance, pensions, social welfare programmes and insurance policies. ^{viii}Lastly, the sexual and gender identity rights of people with disabilities are often neglected, undermining the bodily autonomy of people with disabilities.

POLICY:

Oxfam affirms^x

- The right of all persons, free of coercion, discrimination and violence, to seek, receive and impart credible, evidence-based information related to sexuality; to live their sexual orientation and choose their sexual partner or partners; to decide to be sexually active or not; to participate in consensual sexual relations; and to pursue a satisfying, safe and pleasurable sexual life.
- The right of all persons, free of coercion, discrimination and violence, to freedom of gender identity and expression.
- The right of all persons to live free from violence, including sexual violence.
- The right to equality, equal protection of the law and freedom from all forms of discrimination based on sex, sexuality or gender.
- The right to participation in civil, economic, social, cultural and political spheres for all persons, regardless of sex, sexual orientation or gender identity.
- The right of all persons to privacy regarding matters of sexuality.
- The right to personal autonomy and recognition before the law.
- The right to freedom of thought, opinion, expression and association regarding issues of sexuality, gender identity and sexual rights, without arbitrary intrusions or limitations based on dominant cultural beliefs or political ideology, or discriminatory notions of public order, public morality, public health or public security.
- The right to health care, including sexual health care for prevention, diagnosis and treatment of all sexually related concerns, problems and disorders.
- The right to comprehensive sex education and information necessary and useful to exercise full citizenship and equality in the private, public and political domains.
- The right to choose whether or not to marry and to found and plan a family, and to decide whether or not, how and when, to have children.
- The centrality of sexual rights to 'active citizenship', being human, well-being, fulfillment, liberty, and life chances.

Oxfam joins other development actors in calling upon governments and the international community to:

- Decriminalize all forms of consensual sexual activity between adults.
- Recognize diverse gender identities, including non-binary identities.

- Ensure the enactment and implementation of legislation to prohibit violence and discrimination on the grounds of sexual orientation or gender identity
- Promote access to necessary health care, including sexual health care, mental health support and gender affirming surgery.
- Implement the right to social protection regardless of sexual or gender identity as per the 1948 UN Universal Declaration of Human Rights, which states that laws which discriminate based on sexual orientation are in violation of human rights law.

Oxfam commits to:

- Assessing the potential harms – both intentional and unintentional – which may arise from general programs for people marginalized based on their sexual or gender difference, especially where being LGBTI is criminalized or society is particularly violent towards LGBTI people. This includes addressing factors which may marginalize LGBTI people from our programs, including where appropriate through addressing staff attitudes and perceptions of LGBTI people.
- Look for practices in Oxfam's program work to protect and promote human rights of LGBTI people as well as practices that support the transformation of the underlying factors that generate violence and or oppression, thus encompassing a benefit for all people who differ from mainstream conceptions of sexual or gender normality in particular communities, not just LGBTI-identified people.
- Ensuring all of our work applies an intersectional lens, which incorporates considerations of gender and sexuality in terms of diversity, power and privilege in analysis, programming, policies and campaigns.
- Ensuring context specific analysis and closer work with local LGBTI civil society to understand development priorities and challenges in relation to LGBTI people and how Oxfam's work might hinder, harm or on the contrary enable and leverage positive change for LGBTI people.
- Support civil society organizations that are working towards sexual rights and build the capacity of current partners to develop their work so it is more inclusive of sexual rights.
- Speak out publicly and actively for the rights of individuals and groups whose sexual rights are threatened or violated. Celebration and affirmation of sexual and gender diversity is key to the realization of broader human rights for every individual.
- Reflecting our external policies in our internal commitments and practices, including in our Code of Conduct and employee non-discrimination and human resource policies (including extending social and legal privileges to same sex partners of all staff). We want to operationalize and live our values. This requires us to ensure that our workplaces promote and celebrate inclusivity and diversity.
- Ensuring that all staff are made aware of the policies herein, are adequately trained and are held accountable for integrating the policies into their work and their workplace.

OXFAM ON SEXUAL AND GENDER DIVERSITY RIGHTS

SUPPORTING BACKGROUND TO THE POLICY

1. Introduction.....	8
2. Oxfam’s Vision.....	9
3. Note about language	9
4. Problems and Challenges.....	10
4.1 <i>Criminalisation, Inequality and Lack of Protection in Law:</i>	11
4.1.1 Same-Sex Sexuality and Legal Barriers.....	11
4.1.2 Same-Sex Sexuality and Limited Legal Protection and Equality.....	11
4.1.3 Gender Identity and Limited Legal Protection and Equality	11
4.2 <i>Cultures of Violence and Hate Speech</i>	12
4.3 <i>Political and Community Participation and Influencing State Legislation, Policies and Service Provision</i>	12
4.4 <i>Health Care Provision</i>	13
4.5 <i>Education</i>	13
4.6 <i>Social Protection</i>	14
4.7 <i>Disability</i>	14

1. INTRODUCTION

One person in three in the world lives in poverty. Oxfam is determined to change that world by mobilizing the power of people against poverty. Around the globe, Oxfam works to find practical, innovative ways for people to lift themselves out of poverty and prosper. We save lives and help rebuild livelihoods when crisis strikes. And we campaign so that the voices of the poor influence the local and global decisions that affect them. In all we do, Oxfam works with partner organizations and alongside vulnerable women and men to end the injustices that cause poverty.

Central to this work is our commitment to challenging and overcoming all forms of inequality and injustice, through a commitment to supporting every person's right to dignity and sustainable development. Our rights-based approach aims to overcome the injustices that prevent people from claiming their rights to; decent livelihoods, essential services, safety and security, recognition and respect, and participation in decision-making at all levels.

For many years Oxfam has been committed to overcoming discrimination based on gender, ethnicity, race, religion, class, disability, or health status such as HIV, with a special focus on people living in poverty. Oxfam believes that a person's ability to fully exercise their rights and responsibilities is critical to their wellbeing in all spheres of daily life. Respect, care, solidarity and freedom from discrimination are integral to inclusive development around the globe.

Discrimination, violence and exclusion on the grounds of sexual and/or gender identity are a violation of human rights and a barrier to active citizenship. This discrimination perpetuates poverty and marginalisation among LGBTI (lesbian, gay, bisexual, transgender and intersex) individuals. These factors limit access to health care, education, employment, justice, community support and access to humanitarian aid. Addressing legal and social obstacles to the acceptance and equal treatment of LGBTI persons around the world therefore represents a significant means of enabling these individuals to claim their rights.

Beyond high level statements and specific efforts and projects on these issues, Oxfam needs to make sure that this work links to Oxfam's other areas of work, including gender equality and active citizenship. **Oxfam needs to ensure that program work protects and promotes human rights of LGBT people. Oxfam must also assess the potential harms - intentional and unintentional - arising from general programs for people marginalised or excluded because of their sexual or gender difference. We must look for practices in Oxfam's program work that can transform the underlying factors which generate violence and oppression. This would bring benefit all people who differ from mainstream conceptions of sexual or gender normality in any community, not just LGBTI-identified people.**

In the past decade Oxfam has provided specific support to organizations committed to challenging discrimination on the basis of sexual orientation and gender identity. More recently questions of sexual and gender identity rights have gained greater attention in development work in the global South. Groups and networks defining and claiming LGBTI identities and rights are gaining greater profile, as are the efforts to control them both legislatively and socially.

LGBTI discrimination constitutes a denial of LGBTI individual's fundamental human rights. The current combination of legislative and social discrimination in different contexts around the world requires our systematic attention and action in terms of demonstrating solidarity with LGBTI individuals, learning from and engaging with current initiatives and exploring new approaches to overcoming the related problems of stigmatisation, inequality and violence. Oxfam is fully committed to this, especially at the grassroots, as a reflection of our support of international covenants that recognize that all human rights have equal status, are interdependent and interrelated, and that all human beings are born free and equal in dignity and rights.

2. OXFAM'S VISION

Oxfam's mission and work are based on rights-based aims. As Oxfam works towards 'a just world without poverty', it is essential to ensure that all individuals can claim and exercise these rights. As such, it is necessary to challenge discrimination, violence and injustice on the ground of sexual orientation and/or gender identity and the power imbalances which prevent LGBTI people from enjoying their rights.

3. NOTE ABOUT LANGUAGE

Bisexual: An individual of any gender who is emotionally, romantically and or sexually attracted to both males and females and varying sexual and gender identities^x

Discrimination: Discrimination against any individual/set of individuals can take many forms and be both violent and non-violent. Examples of violent discrimination are physical attack and execution, whereas examples of non-violent discrimination may range to include verbal abuse to employment termination.

Gay: A male who is emotionally, romantically and or sexually attracted to other males, often called a male homosexual. The word 'gay' is frequently used by Lesbians and other sexualities that choose to associate with a non-mainstream sexuality or gender norm, but has been largely understood to refer to homosexual men.

Gender: Gender refers to the characteristics and roles that societies attribute to women and men respectively. Gender is not 'natural' – it is constructed by societies.

Gender Binary: The categorisation of gender into two different categories. This is a social practice which highlights the biological differences between men and women^{xi}. This has resulted in historical and ongoing separation of the sexes in western society in terms of marketing to public services and gender roles. In other cultures there are more than two genders which would not be a gender binary.

Gender Identity: An individual's experience of their own gender and how they wish to convey this externally and personally. Gender identity is a result of an individual's personal experiences with biological and social gender attributes^{xii}. Gender binaries exist in many western nations, and as such an individual who is establishing their gender identity could choose to convey a different outward perception of their gender than which they were either biologically born as/socially assigned either within or outside the gender binary, (as is the case with the Hijras of Southern Asia).

Intersexed: The definition of this is an individual who has a variation of sex characteristics which leads to the ambiguity of their gender at birth thus a gender identity crisis could occur as the binary conceptions of gender do not provide for non-binary Intersexed individuals

Lesbian: A female who is emotionally, romantically and or sexually attracted to other females, Often called a female homosexual^{xiii}.

Sex workers: Sex workers are female, male, or transgender adults who receive money or goods in exchange for consensual sexual services or erotic performances, either regularly or occasionally^{xiv}

Sexual Diversity/Sexual orientation: This is where individuals are sexually, romantically and or emotionally attracted to a member of the same or different genders. This sexual diversity may manifest itself in romantic, sexual and varying emotional behaviour between a range of sexes and gender identities^{xv}.

Sexual rights: 'Sexual rights embrace human rights that are already recognized in national laws, international human rights documents and other consensus statements. They include the right of all persons, free of coercion, discrimination and violence, to: the highest attainable standard of sexual

health, including access to sexual and reproductive health care services; seek, receive and impart information related to sexuality; sexuality education; respect for bodily integrity; choose their partner; decide to be sexually active or not; consensual sexual relations; consensual marriage; decide whether or not, and when, to have children; and pursue a satisfying, safe and pleasurable sexual life. The responsible exercise of human rights requires that all persons respect the rights of others.^{6xvi}

Transgender: Sometimes known as 'trans' individuals. These are individuals whose gender identity does not correlate with their socially and/or biologically assigned gender. Each individual may choose how to respond to this on a personal level. Some individuals may wish to undergo gender reassignment surgery or hormone replacement therapy (HRT) to alter their biologically assigned gender.

4. PROBLEMS AND CHALLENGES

To date, efforts to overcome inequality, discrimination and exclusion related to sexual and gender identity have been spearheaded by individuals and organizations that have adopted the concepts of 'LGBT rights' and 'non-discrimination on the basis of sexual orientation and gender identity' (SOGI).⁶ Campaigns to date have focused mainly on legal obstacles, criminalisation and violations of human rights by states and their institutions, as well as violence and insecurity in everyday life and unequal access to state service provision.

As the rest of this section will explore in greater detail, LGBTI persons around the world face discrimination and challenges related to;

- Criminalization, inequality and lack of rights within the law and insufficient protection of the law where laws exist;
- Violence and hate speech;
- Political and community participation;
- Health care provision; and
- Education;
- Social protection;
- Disability.

These factors contribute to the on-going marginalisation of LGBTI persons and act as barriers to active citizenship.

The disproportionate impact of poverty on LGBTI persons in many countries around the world is closely related to the systematic denial of LGBTI human rights. Many LGBTI persons face rejection by their families and communities, while access to education and employment may be limited, especially in contexts where homosexuality is criminalized and/or there are no legal protections against discrimination on the grounds of sexuality or gender identity and expression. Discrimination and stigma may prevent LGBTI individuals from accessing essential health care, and violence and hate speech are widespread. These factors restrict individuals' choices and limit their ability to earn a living and participate in political and public life. The situation of LGBTI people in emergencies is particularly grave, as identified by a range of human rights and humanitarian agencies, including UNHCR and others.

⁶ According to the *Yogyakarta Principles*, sexual orientation is understood to refer to each person's capacity for profound emotional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender. Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms. ('The Yogyakarta Principles (2007): Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity'. http://www.yogyakartaprinciples.org/principles_en.pdf)

4.1 Criminalisation, Inequality and Lack of Protection in Law:

Many governments use legislation to attempt to control adults in consensual same-sex relationships and/or expressing gender identities, masculinities and femininities which are seen as non-normative. A lack of legal protection contributes to the exclusion and marginalisation of these individuals, increasing their vulnerability to abuse by state actors, limiting access to social services and providing no or limited protection against discrimination in employment and other spheres.

In South Africa, for example, the police have been denounced for a range of issues ranging from insensitivity to arbitrarily arresting and detaining LGBTI individuals, demanding money from their captives, using violence and rape to punish them, and/or working with organized gangs to entrap individuals (usually married men) for the purpose of blackmail^{xvii}.

4.1.1 Same-Sex Sexuality and Legal Barriers

In many contexts, people perceived or known to be in same-sex sexual relationships are criminalised, often under colonial-era laws, face imprisonment and sometimes the death penalty. In 2015 a total of 76 countries have laws criminalising homosexual acts or 'sodomy'^{xviii}. Of these 76 countries, 35 are in the African continent. Both male and female homosexual acts are punishable by the death penalty in; Mauritania, Sudan, 12 northern states in Nigeria, the southern parts of Somalia, Iran, Saudi Arabia and Yemen. Also in Iraq, judges and militias issue death sentences for same sex behaviours. Brunei Darussalam is due to activate death penalty as well.

Anti-homosexuality laws became significantly more widespread in 2013 and 2014^{xix}. These laws prohibit the promotion of positive representation and information about sexual diversity and rights relating to same-sex sexuality. These laws present serious obstacles and risks for advocates and activists campaigning for rights related to same-sex sexuality in the affected territories. Where homosexuality is not criminalised, the unequal age of consent for homosexual acts exists in law in 14 countries around the globe.^{xx}

4.1.2 Same-Sex Sexuality and Limited Legal Protection and Equality

Discrimination on the basis of sexual orientation is prohibited in the constitutions of only 6 countries in the global South, including South Africa, Mexico, Bolivia, Ecuador, and some parts of Argentina and Brazil. Discrimination on the basis of sexual orientation in the workplace is prohibited in 61 countries, including only 7 in Africa, 3 in Asia/Middle East, and 13 in Latin America and the Caribbean.^{xxi}

Despite the fact that over 2.7 billion people live in countries where being gay is a crime^{xxii}, marriage is legal for same-sex couples in only 20^{xxiii} countries around the world including South Africa, Argentina, Uruguay, Ireland and some parts of Mexico^{xxiv}. Other countries taking steps towards marriage equality are Colombia, Slovenia and Australia^{xxv}.

Joint adoption by same-sex couples is legal in only 15 countries globally, including South Africa, Argentina, Brazil, Uruguay, Ireland and some parts of Brazil.

4.1.3 Gender Identity and Limited Legal Protection and Equality

Legal matters pertaining to gender identity are characterized by low levels of protection and unequal rights before the law. In countries where legal protection does exist, requirements for eligibility may include sterilization and other hormonal and surgical procedures, divorce, and psychiatric diagnosis.^{xxvi} In the global South the ability to change gender on official documents such as passports and birth certificates without these requirements has only been enshrined in law by South Africa and Argentina, and only after sex reassignment surgery in China and Indonesia. The Indian national government has introduced some legal rights pertaining to gender identity change related

to access to passports and voting cards. As has Pakistan, in part due to the advocacy of one of Oxfam's partners.

The lack of legal recognition of transgender people in many countries also leaves them vulnerable to anti-homosexuality laws when involved in sexual relationships with people of the same biological sex.

Looking in the global South, laws prohibiting discrimination on the basis of gender identity, including in social services, currently exist in countries like Ecuador, Peru and Argentina, and in India, in which the government policies in the state of Tamil Nadu recognize transgender as a third sex grouping called 'Hijra', and grant them certain preferences^{xxvii}. Other Indian states have also started some welfare programmes targeted at transgender people.

4.2 Cultures of Violence and Hate Speech

Oxfam has joined growing number of human rights and international development agencies that have documented and denounced high levels of violence, cruelty and hate speech related to sexual and gender identity.^{xxviii} They may be perpetrated by the police, the military or other state authorities, by strangers in public places, and by members of families, neighbourhoods and communities.

Some religious authorities condemn homosexuality, and have great influence through their followers, including politicians, even where the state is secular and/or formally separate from religion. Some politicians' use the tactic of "scapegoating" LGBTI individuals as a means to bolster popularity and detract attention from pressing economic and political problems. The media often features and amplifies state and religious anti-homosexual and anti-transgender positions, a dynamic that we've seen recently happening on a ranging scale. in countries like Uganda, Gambia or Chad to the UK

Legal protection does not automatically afford societal protection or immunity from organisational/community based prejudices, violence and hate speech. Although the law of countries with favourable LGBTI policies can respond reactionary to cases of discrimination, this does not mitigate against entrenched community/organisational prejudices of varying forms.

People perceived or known to be in same-sex relationships are also subject to harassment, threats, expulsion, violence and extortion by members of their own families, neighbourhoods and communities, and in educational, religious and recreational institutions.^{xxix} Lesbian and bisexual women are especially at risk of being raped or forcibly impregnated due to the belief that this will change their sexual orientation to conform to heterosexual societal expectations.^{xxx} Notably, these problems also occur in countries that provide extensive legal protections, such as South Africa.

4.3 Political and Community Participation and Influencing State Legislation, Policies and Service Provision

Many people around the world have also suffered violent attacks in response to peaceful political action and advocacy campaigns related to sexual and gender diversity, often under the banner of 'LGBT rights'.⁷ Violent incidents or acts of discrimination frequently go unreported because victims do not trust the police, are afraid of reprisals, are unwilling to speak out, or fear that the police may talk to their families and communities.^{xxxi}

⁷ Recent examples include the murder of transgender teen Dwayne Jones in Jamaica, LGBT activist David Kato in Uganda, and the torture and murder of Eric Ohena Lembembe, the director of Cameroonian Foundation for AIDS in Cameroon.

Moreover, the needs and rights of people who do not conform to sexual and gender norms are rarely represented in other civil society organizations (CSOs), which can compound the problem of limited access to services for these individuals. Many CSO members hold the misconceptions and prejudices that exist in their social and cultural context. Where same-sex sexuality is criminalised in law, staff may fear attracting stigma and the attention of state authorities by working with people who are stigmatized because of their gender identity or their actual or perceived sexuality, as this may jeopardize their organization's legal registration and funding. To a lesser degree, this might be the case also for INGO or large organizations. ^{xxxii}

4.4 Health Care Provision

Across the globe, responses to the HIV pandemic have increasingly incorporated investment into culturally-sensitive grassroots research and learning about the complexity and diversity of human sexuality and gender identities. This has resulted, in some cases, in the inclusion of people whom has been historically marginalized by health programmes and service providers due to their sexuality or gender identity.

However, many challenges and obstacles still exist. In some countries, the response of governments and donors has been to focus only on male-to-female sexual transmission of HIV to the exclusion of individuals engaging in same-sex practices. ^{xxxiii} Within the HIV/AIDS framework, little attention has been paid to sexual and gender identity rights, particularly those of women. Within this framework women's same-sex sexuality – and women's sexual rights as a whole – are rendered invisible, and thus has received insufficient attention.

Many other challenges remain in the field of health beyond HIV/AIDS. Individuals who experience discrimination on the basis of their sexuality or gender identity have a significant need for psychosocial support and health care, as discrimination on individual, familial, and societal levels is correlated with long-lasting physical and mental health problems, including high rates of psychiatric disorders, substance and alcohol abuse, depression, self-destructive behaviour and suicide ^{xxxiv}. However, in many countries people who do not conform to sexual and gender norms who seek health care encounter rejection, humiliation, derision, or sub-standard services, leading in some cases to pronounced health deficits.

Transgender people are subjected to medical pathologisation and sterilization in many nations, and face limited or no access to gender affirming procedures. As a consequence they often resort to high-risk body modifications and the consumption of unregulated hormones. Intersex people face genetic de-selection, infanticide, coerced sterilization and enforced genital surgery. ^{xxxv} Even where health workers do not intend to discriminate, they often lack basic information or training about distinct health concerns and appropriate medical and counselling practices. ^{xxxvi}

4.5 Education

In many contexts, learners and teachers are subject to verbal and physical bullying and violence for perceived failures to conform to norms around gender and sexuality. ^{xxxvii} Different forms of discrimination and violence related to class, race, ethnicity, sexuality, gender and disability are all interconnected and have a detrimental effect on the learning process and the quality of teaching. Data shows that this is often more severe for transgender people because they are more visible; they tend to leave school earlier and to be abused more severely.

School staff, educational systems and policies generally fail to respond to the diverse needs of students in ways that hamper their ability to receive and education. There are few studies of the ways in which schooling might reinforce harmful norms related to gender and sexuality, for example

through formal and informal rules and practices. Development policy on education has yet to investigate, recognize or address these forms of discrimination and exclusion.

4.6 Social Protection

Sexual and gender non-conformity are a barrier to employment in many settings – particularly those where non-discrimination law and policies are not in place. This includes the informal sector where non-conformity may also make it more difficult to take advantage of informal networks and cooperatives, which often provide material and emotional support and paid work. Income-generating and community support opportunities are therefore constrained for many individuals, particularly those who are unwilling or unable to conceal their sexuality and/or gender identity. This is linked to the reality that many sex workers are LGBTI individuals and, given the few measures of social protection available to sex workers in most countries, face greater risks as a result of their sexuality/gender identity and employment.

Many social protection policies and programmes, whether they are run by the state or NGOs, are not adequately sensitive nor adequately equipped to respond to issues related to sexual and gender identity. The right to social protection has been recognised in the United Nations' Universal Declaration of Human Rights regardless of sexual orientation or gender identity, but this is rarely implemented. People not conforming to sexual and gender norms are therefore often unable to claim their rights to inheritance, pensions, social welfare programmes and insurance policies, for example.^{xxxviii}

4.7 Disability

The links between disability, poverty and sexual and gender diversity are various and multifaceted. People with disabilities are usually poorer due to prejudice and other physical and psychological barriers, reducing their ability to earn an income when they may need extra resources to function fully in daily life. The sexual and gender identity rights of people with disabilities are often neglected, undermining the bodily autonomy of people with disabilities.

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ⁱⁱⁱ Action Aid (2009): 'Hate crimes: The rise of 'corrective' rape in South Africa.

http://www.actionaid.org.uk/sites/default/files/publications/hate_crimes_the_rise_of_corrective_rape_in_south_africa_september_2009.pdf

^{iv} Oxfam (2010): 'Break another silence: understanding sexual minorities and taking action for sexual rights in Africa'.

^v USAID (2013) 'LGBT Vision for Action: Promoting and Supporting the Inclusion of Lesbian, Gay, Bisexual and Transgender Individuals'. [http://www.usaid.gov/sites/default/files/documents/1874/LGBT% 20 Vision.pdf](http://www.usaid.gov/sites/default/files/documents/1874/LGBT%20Vision.pdf)

^{vi} http://www.safraproject.org/Reports/SP_Country_Information_Report_Iran.pdf

^{vii} UN.org. 1948. The Universal Declaration of Human Rights. [ONLINE] Available at:

<http://www.un.org/en/documents/udhr/>. [Accessed 15 July 15].

^{viii} Kate Hawkins, Stephen Wood, Tanya Charles, Xiaopei He, Zhen Li, Anne Lim, Ilana Mountian, and Jaya Sharma (2014) 'Sexuality and Poverty Synthesis Report'. Institute of Development Studies, Sussex, February 2014.

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^{xi} GLBTQ. 2013. The Binary Model of Gender. [ONLINE] Available at: <http://www.glbtq.com/literature/gender.html>. [Accessed 05 July 15].

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- xvii Human Rights Watch HRW. 2011. South Africa: LGBT Rights in Name Only? Violence, Discrimination Against Black Lesbians and Transgender Men. [ONLINE] Available at: <https://www.hrw.org/news/2011/12/05/south-africa-lgbt-rights-name-only>. [Accessed 15 July 15].
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