Over the Rainbow? The Road to LGBTI Inclusion

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Please cite this publication as:
OECD (2020), *Over the Rainbow? The Road to LGBTI Inclusion*, OECD Publishing, Paris, *https://doi.org/10.1787/8d2fd1a8-en*.

ISBN 978-92-64-35092-2 (print)
ISBN 978-92-64-52318-0 (pdf)

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Foreword

For more than a decade, the OECD Directorate for Employment, Labour and Social Affairs (ELS) has been deeply involved in helping OECD countries be more inclusive of their increasingly diverse components thanks to its work on gender equality, ageing and employment, the labour market integration of youth, the inclusion of disabled people, or the integration of immigrants and their families. Since 2016, following a Call to Action signed by 12 member countries, ELS is also spearheading the OECD work on the inclusion of LGBTI people, i.e. lesbians, gay men, bisexuals, transgender and intersex individuals.

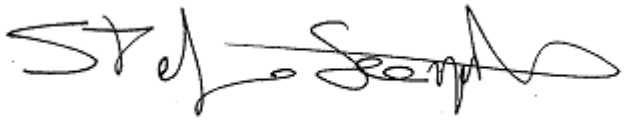
The first major output of this project was released in the 2019 edition of *Society at a Glance* whose special chapter provides an in-depth analysis of the size and the socio-economic situation of sexual and gender minorities in OECD countries. This analysis reveals that anti-LGBTI discrimination remains pervasive and hampers the economic prospects and mental health of millions. In order to address this issue that hurts, not only the LGBTI population directly, but also the society at large, it is critical to implement laws and policies aimed at ensuring equal treatment of LGBTI individuals. Supporting countries to progress in this direction is precisely the purpose of the present report *Over the Rainbow? The Road to LGBTI Inclusion*. By providing the first comprehensive overview of the extent to which laws in OECD countries ensure equal treatment of LGBTI people, and of the complementary policies that could help foster LGBTI inclusion, this report allows assessing achievements and remaining challenges.

The key findings are encouraging. The road to LGBTI inclusion is *not* over the rainbow: *all* OECD countries have been making progress over the last two decades, and even some countries that used to perform poorly have become much more inclusive of LGBTI people. That said, there is still a long way to go: on average, OECD countries have passed only half of the legal provisions critical for the inclusion of LGBTI people.

While advancing the LGBTI inclusion agenda may sometimes be challenging, this report provides new evidence of its association not only with acceptance and quality of life of LGBTI people themselves, but also with gender equality and economic development. Countries that have passed the most legal protections for LGBTI people also show, on average, more than double the share of women in parliament compared with countries where legal LGBTI inclusion is the lowest, a one-third increase in female labour force participation, and a 30% decrease in the gender wage gap. These top-performing countries are also characterised by a real GDP per capita that is more than USD 3 000 higher.

To help OECD countries continue making significant progress towards LGBTI inclusion, this report also identifies what can be done beyond passing LGBTI-inclusive laws. Analysis of good practices and nationwide action plans currently in force in one third of OECD countries highlights several complementary measures, including enforcement mechanisms to make LGBTI-inclusive antidiscrimination, hate crime/hate speech and asylum laws truly effective, policies aimed at fostering a culture of equal treatment in education, employment and health care, and actions to create and maintain popular support for LGBTI inclusion. In addition, LGBTI-inclusive laws should be accompanied by a strong push to make LGBTI individuals better represented and more visible in national statistics.

This report is not the end but, rather, a step in our continuous support to OECD countries in their journey towards full inclusion of LGBTI individuals. In a context where the current COVID-19 pandemic is disproportionally harming under-privileged people in our societies, its guidance is more essential than ever.



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Acknowledgements

This report was spearheaded by the OECD Directorate for Employment, Labour and Social Affairs (ELS). Chapters 2, 3 and 4 were written by Marie-Anne Valfort under the supervision of Stephane Carcillo (Head of the Jobs and Income Division) and Monika Queisser (Head of the Social Policy Division), and under the leadership of Stefano Scarpetta (Director of ELS) and Mark Pearson (Deputy Director of ELS). The overview chapter (Chapter 1) was jointly written by Stephane Carcillo, Monika Queisser and Marie-Anne Valfort. Caroline Medina provided valuable research assistance at an early stage of the report. Lucy Hulett and Maxime Ladaique together with Natalie Corry and Alastair Wood prepared the manuscript for publication.

We are very grateful to members of the Working Party on Social Policy and the Employment, Labour and Social Affairs Committee for reviewing the pre-filled questionnaire on LGBTI-inclusive laws and policies on which this report is based, and for their helpful comments and suggestions on a pre-publication version of this report.

We warmly thank the United Kingdom, Norway, Canada and Austria for their financial support.

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Infographic 1. Over the Rainbow? The Road to LGBTI Inclusion

Legal LGBTI inclusivity is on the rise

% of LGBTI-inclusive laws* that have been passed, between 1979 and 1999

OECD countries are only halfway to full legal inclusion of LGBTI people but legal LGBTI inclusivity has strongly improved over the last two decades.

* This basic set of laws is defined based on international human rights standards.

All countries are becoming more LGBTI inclusive

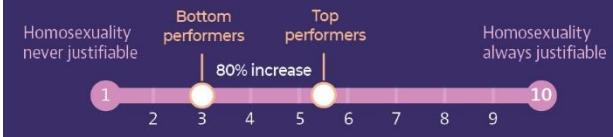
% of LGBTI-inclusive laws that have been passed, as of 1999 and 2019

Even some countries that used to perform poorly have become much more inclusive of LGBTI people.

Legal LGBTI inclusivity & social acceptance

Compared with the lowest-performing countries, those that have passed the most legal protections for LGBTI people also show:

- an 80% increase in acceptance of homosexuality among survey respondents



- a 3 times higher share of survey respondents who consider their area is a good place to live for lesbians & gay men

Legal LGBTI inclusivity & gender equality

Compared with the lowest-performing countries, those that have passed the most legal protections for LGBTI people also show:

- more than double the share of women in parliament (34% vs 15%)

- a 30% decrease in the gender wage gap

Beyond laws, policies are also crucial to make societies more inclusive of LGBTI people

Enforcing LGBTI-inclusive anti-discrimination, hate crime/hate speech and asylum laws

Fostering a culture of equal treatment in education, employment and healthcare

Creating and maintaining popular support for LGBTI inclusion

Collecting information on sexual orientation, gender identity and sex characteristics in censuses and other national surveys

Read more here: oe.cd/lgbti-2020.

Executive summary

Ensuring that LGBTI people – i.e. lesbians, gay men, bisexuals, transgender and intersex individuals – can live as who they are without being discriminated against or attacked should concern us all, for at least three reasons. The first and most important reason is obviously ethical. Sexual orientation, gender identity and sex characteristics are integral aspects of our selves. Guaranteeing that LGBTI people are not condemned to forced concealment or to retaliation when their identity is revealed is crucial for them to live their lives as themselves, without pretence. The second reason is economic. Discrimination against LGBTI people hinders economic development through a wide range of channels. For instance, it causes lower investment in human capital due to LGBTI-phobic bullying at school as well as poorer returns on educational investment in the labour market. Anti-LGBTI discrimination also reduces economic output by excluding LGBTI talents from the labour market and impairing their mental and physical health, hence their productivity. The third reason why LGBTI inclusion should constitute a top policy priority is social. LGBTI inclusion is viewed as conducive to the emergence of less restrictive gender norms that improve gender equality broadly speaking.

This report provides a comprehensive overview of the extent to which laws in OECD countries ensure equal treatment of LGBTI people, and of the complementary policies that could help foster LGBTI inclusion. The report first identifies the legislative and regulatory frameworks that are critical for the inclusion of sexual and gender minorities. The report then explores whether these laws are in force in OECD countries and examines the margin for further improvement. Finally, the report presents the broader policy measures that should accompany LGBTI-inclusive laws in order to strengthen the inclusion of LGBTI people.

Which laws are LGBTI-inclusive?

The protection of individuals on the basis of sexual orientation, gender identity and sex characteristics does not imply the creation of new or special rights for LGBTI people but, simply, extending the same rights to LGBTI persons as those enjoyed by everyone else by virtue of international human rights standards. These standards are at the core of treaties, conventions or charters issued by the European Union, the United Nations, the Council of Europe or the Organization of American States that have been signed and ratified by OECD countries.

Applying these standards to LGBTI issues points to two categories of LGBTI-inclusive laws:

- General provisions that are relevant for the inclusion of lesbian, gay, bisexual, transgender and intersex people altogether: (i) protection of LGBTI people against discrimination; (ii) protection of LGBTI people's civil liberties; (iii) protection of LGBTI people against violence; (iv) protection of LGBTI people fleeing persecution abroad; and (v) existence of an LGBTI-inclusive equality body, ombudsman or human rights commission;
- Group-specific provisions that aim to address the unique challenges faced by subgroups of the LGBTI population, and that can be further decomposed into:

- LGB-specific provisions: (i) equal treatment of same-sex and different-sex consensual sexual acts; (ii) ban on conversion therapy; (iii) legal recognition of same-sex partnerships; (iv) equal adoption rights; and (v) equal access to assisted reproductive technology;
- TI-specific provisions: (i) being transgender not categorised as a mental illness in national clinical classification; (ii) legal gender recognition; (iii) no medical requirement attached to legal gender recognition; (iv) availability of a non-binary gender option on birth certificates and other identity documents; and (v) postponing medically unnecessary sex-normalising treatment or surgery on intersex minors.

Are laws in OECD countries LGBTI-inclusive?

The road to LGBTI inclusion is *not* over the rainbow: although trends and levels remain unequal, *all* OECD countries have been making progress over the last two decades. On average, legal LGBTI-inclusivity, i.e. the share of laws that are in force in OECD countries among the set of LGBTI-inclusive provisions described above, was equal to 53% in 2019. OECD countries can be grouped in three performance tiers:

- A bottom-performing tier characterised by below-average performance regarding both level of legal LGBTI-inclusivity as of 2019 and progress in legal LGBTI-inclusivity since 1999 (14 countries) ;
- A middle-performing tier characterised by trends that suggest position relative to the OECD average may change in the near future, for better (1 country) or worse (3 countries) ;
- A top-performing tier characterised by above-average performance regarding both level of legal LGBTI-inclusivity as of 2019 and progress in legal LGBTI-inclusivity since 1999 (17 countries)

Legal LGBTI-inclusivity is positively associated with:

- Social acceptance of LGBTI people: while countries with greater social acceptance of sexual and gender minorities are more likely to pass LGBTI-inclusive laws, legal changes in favour of LGBTI people in turn improve attitudes towards this population;
- Gender equality – should it be measured by support for gender equality, the share of women in parliament, female labour force participation or gender wage gap;
- Economic development: an increase in legal LGBTI inclusivity from its average value among the three lowest-performing countries to its average value among the three highest-performing countries is related to an increase in real GDP per capita of approximately USD 3 200.

Even top-performing countries need to continue demonstrating leadership: many of the provisions critical for the inclusion of transgender and intersex people are in force in only a minority of these countries.

What else can be done beyond passing LGBTI-inclusive laws?

Analysis of nationwide action plans currently in force in one third of OECD countries highlights several complementary measures to strengthen LGBTI inclusion:

- Enforcement mechanisms to make LGBTI-inclusive antidiscrimination, hate crime/hate speech and asylum laws truly effective, e.g. training police officers on properly dealing with hate crimes targeting LGBTI people;
- Policies aimed at fostering a culture of equal treatment in education, employment and health care, beyond enforcing laws prohibiting discrimination in these fields ;
- Actions to create and maintain popular support for LGBTI inclusion, e.g. well-designed awareness-raising activities among the general public.

In addition, LGBTI-inclusive laws should come along significant efforts to make LGBTI individuals better represented and visible in national statistics. Without data on sexual orientation, gender identity and sex characteristics, policy makers aiming to improve LGBTI inclusion will continue to do so with little if any relevant information.

1 LGBTI-inclusive laws and policies in OECD countries: An overview

This introductory chapter summarises the report's findings on the extent to which laws in OECD countries ensure equal treatment of LGBTI people, and on the complementary policies that could help foster LGBTI inclusion. The report first defines the legislative and regulatory framework that is critical for the inclusion of sexual and gender minorities and then explores whether these laws are in force in OECD countries. It reveals that the road to LGBTI inclusion is *not* over the rainbow: *all* OECD countries have been making progress over the last two decades. But they are still only halfway to full legal inclusion of LGBTI individuals. Finally, the report sets out broader policy measures that should accompany LGBTI-inclusive laws in order to strengthen the inclusion of LGBTI people.

The report *Over the Rainbow? The Road to LGBTI Inclusion* is part of the *OECD LGBTI inclusiveness project*[1] that was launched in 2016 following a Call to Action signed by 12 OECD Member countries[2] in order to foster the inclusion of sexual and gender minorities. LGBTI-inclusive laws are particularly critical for creating a culture of equal treatment of LGBTI individuals. One cannot expect to improve the situation of sexual and gender minorities if, to begin with, the law does not protect them against abuses or excludes them from social institutions. Enacting equality laws also improves LGBTI inclusion by shaping social norms (Valfort, 2017[1]).

In this respect, this report shows that the inclusion of LGBTI people in our societies has steadily improved over the past decades. Twenty years ago, no OECD country was allowing same-sex partners to marry. Same-sex marriage is now possible in 20 countries. The same holds for adoption rights and access to assisted reproductive technology by same-sex partners. In parallel, discrimination explicitly based on sexual orientation has become prohibited almost everywhere in the OECD area. Still, the road ahead to full LGBTI inclusion is long. Anti-LGBTI discrimination continues to hamper the economic prospects and mental health of millions in OECD countries, as revealed in the 2019 edition of *Society at a Glance*, the first major report of the OECD LGBTI inclusiveness project (OECD, 2019[2]). This finding is worrisome in a context where the share of people who self-identify as LGBTI is on the rise and may continue to increase with this trend being driven by younger cohorts: in the United States for instance, only 1.4% of respondents born before 1945 considered themselves as LGBT in 2017, compared to 8.2% among millennials, i.e. individuals born between 1980 and 1999.

Ensuring that LGBTI people can live as who they are without being discriminated against or attacked should be a concern for at least three reasons. The first and most important reason is obviously ethical. Sexual orientation, gender identity and sex characteristics are integral aspects of our selves. Guaranteeing that LGBTI people are not condemned to living in hiding or to retaliation when their identity is revealed is crucial for them to live their lives as they are, without pretence. The second reason is economic. Discrimination against LGBTI people hinders economic development through a wide range of channels. For instance, it causes lower investment in human capital due to LGBTI-phobic bullying at school, as well as poorer returns on educational investment in the labour market. Anti-LGBTI discrimination also reduces economic output by excluding LGBTI talents from the labour market and impairing their mental and physical health, hence their productivity. The third reason why LGBTI inclusion should constitute a top policy priority is social. LGBTI-inclusive laws tend to improve the overall acceptance of LGBTI people in society. Besides, LGBTI inclusion is viewed as conducive to the emergence of less restrictive gender norms that improve gender equality broadly speaking.

This report provides the first comprehensive overview of the extent to which laws in OECD countries ensure equal treatment of LGBTI people, and of the complementary policies that could help foster LGBTI inclusion. It identifies the legislative and regulatory framework that is critical for the inclusion of sexual and gender minorities, and explores whether these laws are in force, based on a unique questionnaire reviewed by OECD countries. By going beyond laws and regulations, the report also sets out the broader policy measures that should accompany LGBTI-inclusive legal provisions in order to strengthen the inclusion of LGBTI people.

The report reveals that:

- The road to LGBTI inclusion is *not* out of reach: although they are still only halfway to full legal inclusion of LGBTI individuals, *all* OECD countries have been making progress over the last two decades, notably thanks to the legal recognition of same-sex partnerships, equal adoption rights and better protection of LGBTI people against discrimination;
- Even some countries that used to perform poorly have become much more inclusive of LGBTI people;

- Still, even top-performing countries need to continue demonstrating leadership. In particular, many of the provisions critical for the inclusion of transgender and intersex people are in force in only a minority of these countries.

While advancing the LGBTI inclusion agenda may sometimes be challenging, this report also provides new evidence of its association not only with acceptance and quality of life of LGBTI people themselves, but also with gender equality and economic development. An increase in the share of LGBTI-inclusive laws that have been passed from its average value (25%) among the three lowest-performing OECD countries (Turkey, Japan and Korea) to its average value (79%) among the three highest-performing OECD countries (Canada, Portugal and France) is associated with:

- A rise in social acceptance of LGBTI people that is reflected in a 2.5 point increase in the score on a 1-to-10 scale measuring acceptance of homosexuality (from 3 to 5.5), a nearly three-fold increase in the share of respondents who consider their area of residence is a good place to live for lesbians and gay men (from 28% to 75%), a more than 25% increase in the share of respondents who support transgender people (from 34% to 43%), and a more than 50% increase in the share of respondents who support intersex people (from 28% to 43%);
- An improvement in gender equality that translates into a one-point increase on a 1-to-4 scale measuring support for gender equality (from 2 to 3), a more than two-fold increase in the share of women in parliament (from 15% to 34%), a one-third increase in female labour force participation (from 64% to 85%), and a 30% decrease in the gender wage gap (from 22% to 15%);
- An increase in real GDP per capita of approximately USD 3 200.

Finally, the report identifies what can be done, beyond passing LGBTI-inclusive laws, in order to strengthen the inclusion of LGBTI people. Analysis of good practices and nationwide action plans currently in force in one third of OECD countries highlights several complementary measures to make significant progress towards LGBTI inclusion:

- Enforcement mechanisms to make LGBTI-inclusive antidiscrimination, hate crime/hate speech and asylum laws truly effective, which entails (i) overcoming non-reporting, the default response of people facing discrimination; (ii) training police officers on properly dealing with hate crime targeting LGBTI people, and tackling the most challenging forms of hate speech, such as online hate speech; (iii) helping asylum officials process LGBTI asylum claims, and ensuring safety of LGBTI people in asylum detention and reception facilities.
- Policies aimed at fostering a culture of equal treatment in education, employment and health care, beyond enforcing laws prohibiting discrimination in these fields, which includes (i) guiding school staff on implementing an LGBTI-inclusive curriculum, and adopting a whole-school approach to combat LGBTI-phobic bullying; (ii) incentivising employers to embrace LGBTI-inclusive workplace equality policies through standards and benchmarks; (iii) including compulsory modules in the initial education and career-long learning of health care staff, that will teach them about the specific health needs of LGBTI people, and how to approach LGBTI people, chief of which elderly LGBTI people, in an inclusive way.
- Actions to create and maintain popular support for LGBTI inclusion, such as (i) implementing well-designed awareness-raising activities that resonate with the general public and, hence, positively impact individual attitudes and behaviours, or (ii) encouraging government and public authorities to lead through exemplary official and individual conduct.

In addition, LGBTI-inclusive laws should be accompanied by a strong push to make LGBTI individuals better represented and more visible in national statistics.

1.1. Which laws are LGBTI-inclusive?

The protection of individuals on the basis of sexual orientation, gender identity and sex characteristics should not imply the creation of new or special rights for LGBTI people. It should rather stem from extending the same rights to LGBTI persons as those enjoyed by everyone else by virtue of international human rights standards. These standards are at the core of treaties, conventions or charters issued by the European Union, the United Nations, the Council of Europe or the Organization of American States that have been signed and ratified by OECD countries.

Applying these standards to LGBTI issues points to two broad categories of LGBTI-inclusive laws: (i) general provisions that are relevant for the inclusion of lesbian, gay, bisexual, transgender and intersex people altogether, and (ii) group-specific provisions that seek to address the unique challenges faced by subgroups of the LGBTI population. The analysis of the policy stance of countries in this report is based on these categories.

1.1.1. General provisions

General provisions consist in protecting LGBTI people against violence and persecution, but also discrimination and more generally ensuring their civil liberties. In a nutshell:

- The duty to safeguard the right to be free from violence requires governments to pass “hate crime laws” which permit authorities to deem acts motivated by bias against a protected list of grounds as an aggravating circumstance, either by defining such an act as a distinct crime or by enhancing punishment of an existing offense. To fully deter hate crimes, it is important to concomitantly combat severe forms of “hate speech” − while avoiding inappropriate restrictions on freedom of expression.
- Ensuring protection against discrimination of LGBTI people entails extending existing regulations for religious, ethnic or other protected categories to sexual and gender minorities. Similarly to other groups, protection of LGBTI people against discrimination should embrace the workplace, but also other fields where unequal treatment can emerge such as education, health care, or access to various goods and services, including housing.
- Protecting LGBTI asylum seekers living in one of the 68 countries where same-sex conduct is still criminalised requires to explicitly recognise persecution based on sexual orientation, gender identity or sex characteristics as a valid ground for granting asylum.
- The universal guarantee of the rights to freedom of expression, peaceful assembly and association implies that no legal provision hinders expression promoting LGBTI people’s rights, erects barriers to the organisation of peaceful LGBTI public events such as pride parades, or impedes the registration, operation and access to funding of LGBTI human rights associations.
- In order to implement equal treatment legislation, international human rights stakeholders have also stressed the need for independent national human rights institutions, e.g. equality bodies, ombudspersons or human rights commissions, which should explicitly protect LGBTI people.

1.1.2. Group-specific provisions

Group-specific provisions aim at more specifically fostering equal treatment of lesbians, gay men and bisexuals, relative to heterosexual individuals:

- Same-sex and different-sex consensual sexual acts should be treated on an equal footing. This objective entails first and foremost decriminalising homosexual consensual acts. It also requires abrogating laws setting a higher age of consent for homosexual consensual acts. Otherwise, young

persons engaging in homosexual conduct would be subject to criminal penalties that do not apply to young persons of the same age who engage in heterosexual conduct.

- Legal recognition of same-sex partnerships is necessary to ensure equal treatment of same-sex and different-sex couples. This recognition entails passing registered partnership laws which grant same-sex couples with the same pecuniary rights as married couples. Equal treatment of same-sex and different-sex couples should also be conducive to the passage of same-sex marriage laws to guarantee that same-sex partnerships are endowed with the same social significance as that attached to heterosexual marriage.
- It is also important to give same-sex couples the same adoption rights. This objective requires opening to same-sex partners second-parent adoption, by which one of the two partners adopts her/his partner's biological or adopted children, without terminating the legal parent status of her/his partner. Equal treatment of same-sex couples also entails giving them access to joint adoption.
- Removing discriminatory restrictions in access to parenthood should also lead to equal access to assisted reproductive technology. In many countries, infertile different-sex couples can rely on medically assisted techniques using donated sperm and/or egg. In a few countries, infertile couples in which the woman is unable to carry children on her own can also access surrogacy. The principle of non-discrimination requires equal treatment across different-sex and same-sex couples in access to such technology, as well as equal treatment regarding automatic co-parent recognition: the same-sex partner of the parent who gives birth through medically assisted techniques should be automatically recognised as the second legal parent.
- Equal treatment of LGB and heterosexual individuals is obviously incompatible with conversion therapies, i.e. practices that aim to change an individual's sexual orientation from homosexual to heterosexual based on the false assumption that LGB people are suffering from a pathological condition which could be cured. Such therapies should be banned altogether.

Group-specific provisions also seek to address the unique challenges faced by transgender and intersex individuals in their battle to live as who they are. They entail:

- Depathologising being transgender. This objective requires three policy actions:
  - Not categorising being transgender as a mental illness in national clinical classifications.
  - Permitting transgender people to change their gender marker, i.e. sex and first name revealing an individual's gender, in the civil registry. To the extent that being transgender is *not* a mental disorder, a person whose gender identity is at odds with their sex a birth should not receive psychiatric therapy for the purpose of re-aligning their self-perceived gender with their body. Rather, transgender individuals should be entitled to legal gender recognition.
  - Not conditioning legal gender recognition on medical requirements, including sterilisation, sex-reassignment surgery and/or treatment, or psychiatric diagnosis.
- Allowing a non-binary gender option on birth certificates and other identity documents: this step is critical to ensure recognition of intersex and non-binary transgender people who do not self-identify as either male or female.
- Postponing medically unnecessary sex-normalising treatment or surgery on intersex minors until they can provide informed consent: this policy is crucial to avoid the physical and psychological sufferings of forced procedures which often outweigh the negative effects of being potentially exposed to stigma for not having external genitals that look "normal" enough to pass as female or male.

1.2. Are the laws in OECD countries LGBTI-inclusive?

Based on this policy framework, a questionnaire was designed to investigate whether the above-mentioned LGBTI-inclusive laws and regulations have been passed in OECD countries as of 30 June 2019. For LGBTI-inclusive provisions that are in force, the questionnaire also provides the year when these provisions first came into effect. This information was collected by the OECD, based on an analysis of national laws and their amendments that was vetted by a large majority of the countries covered in this report (33/35).

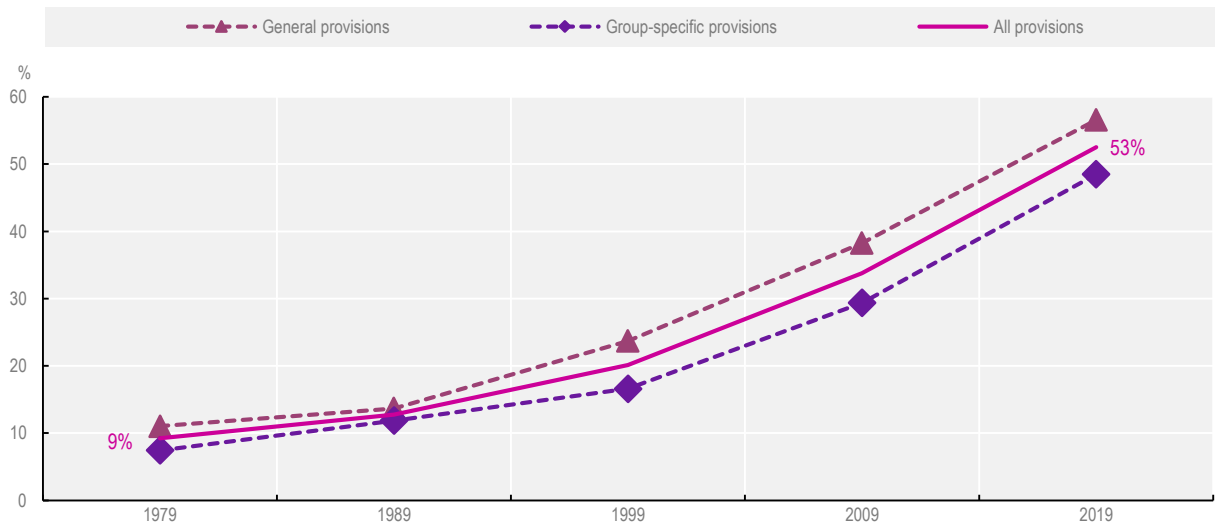
This information is used to compute legal LGBTI inclusivity, defined as the share of LGBTI-inclusive laws that are in force in a given OECD country among the set of legal provisions defined in Section 1.1. The measure is constructed by weighting general and group-specific provisions the same, and within the latter category, LGB- and TI-specific provisions the same as well (see Figure 1.2).

1.2.1. Moderate legal LGBTI inclusivity OECD-wide, but rising

OECD countries are slightly more than halfway to full legal acceptance of LGBTI people: legal LGBTI inclusivity is equal to 53% as of 2019. But legal LGBTI inclusivity is strongly improving: it has risen nearly six fold since the late 1970s, when less than 10% of laws critical for LGBTI inclusion were passed. The bulk of this increase occurred in the past 20 years and is driven by passage of both general and group-specific provisions (Figure 1.1).

Figure 1.1. Legal LGBTI inclusivity in OECD countries is on the rise

Evolution of legal LGBTI inclusivity between 1979 and 2019, OECD-wide (all provisions, general provisions and group-specific provisions)



Note: This figure reports the share of legal provisions highlighted in Section 1.1 that are in force in OECD countries, between 1979 and 2019. It distinguishes between all provisions, general provisions and group-specific provisions.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

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Figure 1.2 provides additional insights. It reports legal LGBTI-inclusivity attached to each of the 15 components of the OECD questionnaire on LGBTI-inclusive laws and policies as of 2019, and its variation between 1999 and 2019. The figure reveals that the component that provides the strongest contribution to legal LGBTI-inclusivity as of 2019 relates to the protection of civil liberties of LGBTI individuals. No legal provision in OECD countries explicitly restricts the rights to freedom of expression, peaceful assembly, and association of sexual and gender minorities. However, attempts to pass anti-gay propaganda laws have occurred in some OECD countries. Moreover, in some instances, public authorities erected barriers to the organisation of peaceful LGBTI public events such as pride parades, or threatened the registration, operation and access to funding of LGBTI human rights associations.

Figure 1.2. Legal LGBTI inclusivity varies significantly over time and across components

Legal LGBTI inclusivity attached to each of the 15 components of the OECD questionnaire on LGBTI-inclusive laws and policies (level as of 2019 in percentage and variation between 1999 and 2019 in percentage points)

Note: This figure reports legal LGBTI-inclusivity attached to each of the 15 components of the OECD questionnaire on LGBTI-inclusive laws and policies as of 2019 (in percentage), and its variation between 1999 and 2019 (in percentage points). The variation in legal LGBTI inclusivity is computed between 1999 and 2019 for two reasons: (i) the bulk of the increase in legal LGBTI inclusivity occurred in the past 20 years (Figure 1.1); (ii) 1999-2009 is the decade when all OECD countries were enjoying political independence for the first time, following the collapse of the Communist regimes in Eastern Europe in the early 1990s. The abbreviation "wgt" in the figure refers to "weight". It recalls that general and group-specific provisions are given equal weight when computing level of legal LGBTI inclusivity across all 15 components, meaning that each of the five components of general provisions is assigned a 10% weight, while each of the ten components of group-specific provisions is assigned a 5% weight.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

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Figure 1.2 also unveils that, between 1999 and 2019, OECD countries made the greatest strides with respect to the following five components:

- *Legal recognition of same-sex partnerships*: same-sex marriage is legal in 20 OECD countries (at least in some parts of their national territory) in 2019, while no OECD country was allowing same-sex partners to marry in 1999;
- *Equal adoption rights*: both second-parent adoption and joint adoption by same-sex partners is legal in 20 OECD countries in 2019, up from only one OECD country in 1999;
- *Protection of LGBTI people against discrimination*: e.g. discrimination explicitly based on sexual orientation is prohibited in employment in 32 OECD countries in 2019, up from 11 OECD countries in 1999;
- *Existence of an LGBTI-inclusive equality body, ombudsman or human rights commission*: e.g. a human rights institution in charge of supporting victims of discrimination explicitly based on sexual orientation is present in 29 OECD countries in 2019, up from six OECD countries in 1999;
- *Protection of LGBTI people fleeing persecution abroad*: e.g. persecution (or a well-founded fear of persecution) explicitly based on sexual orientation is recognised as a valid ground for granting asylum in 24 OECD countries in 2019, up from four OECD countries in 1999.

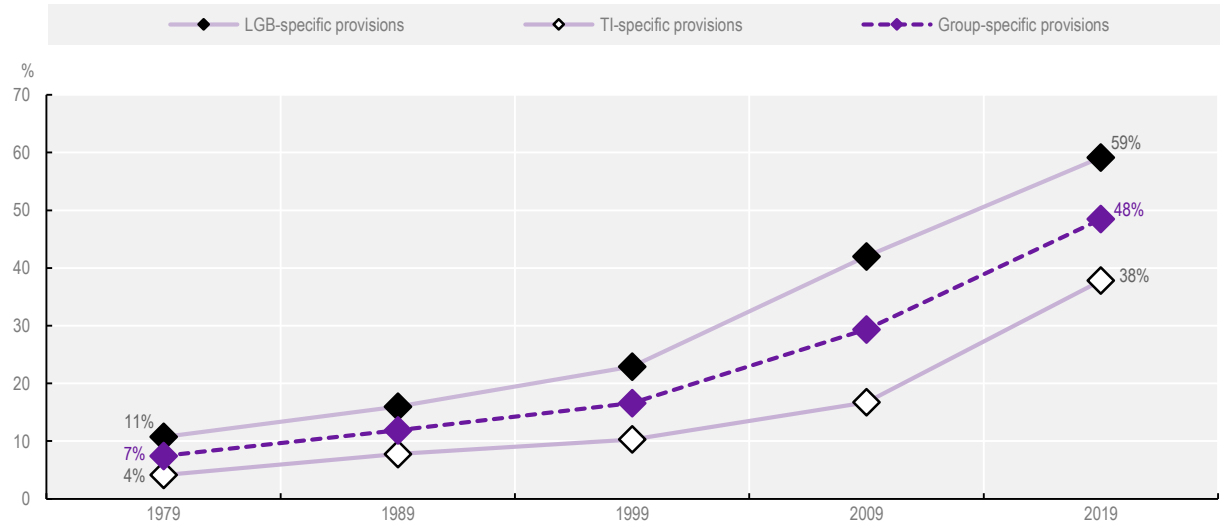
Although general and group-specific provisions contribute almost equally to the rise in legal LGBTI inclusivity, OECD countries are less active with respect to group-specific provisions. Figure 1.3 reveals a lack of laws to advance the rights of transgender and intersex people. In 2019, although 59% of LGB-specific provisions were in force, this was the case of only 38% of the provisions critical for the inclusion of transgender and intersex persons. However, OECD countries are catching up: in the past 10 years, TI-specific provisions were passed at a faster pace. OECD countries have made particularly strong progress in depathologising legal gender recognition. In 2019, 15 OECD countries allow transgender people to change their gender marker on birth certificate and other identity documents without attaching medical requirement to this process (at least in some parts of their national territory), while *no* OECD country was allowing legal gender recognition without sterilisation, gender-reassignment surgery and/or treatment, or mental health diagnosis in 2009.

1.2.2. Unequal levels and trends across countries but progress everywhere

Legal LGBTI inclusivity varies significantly by country, ranging from 25% among the three least active countries – Japan, Turkey and Korea – to 79% among the three most active countries – Canada, Portugal and France (Figure 1.4). EU Members are overrepresented among OECD countries whose legal LGBTI inclusivity is above the OECD average as of 2019, which reflects the strong normative framework in favour of LGBTI equality required by EU institutions.

Figure 1.3. OECD countries are lagging behind on the legal inclusion of transgender and intersex people, but slowly catching up

Evolution of legal LGBTI inclusivity between 1979 and 2019, OECD-wide (group-specific provisions, LGB-specific provisions and TI-specific provisions)



Note: This figure reports the share of legal provisions highlighted in Section 1.1 that are in force in OECD countries, between 1979 and 2019. It distinguishes between group-specific provisions, LGB-specific provisions and TI-specific provisions.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

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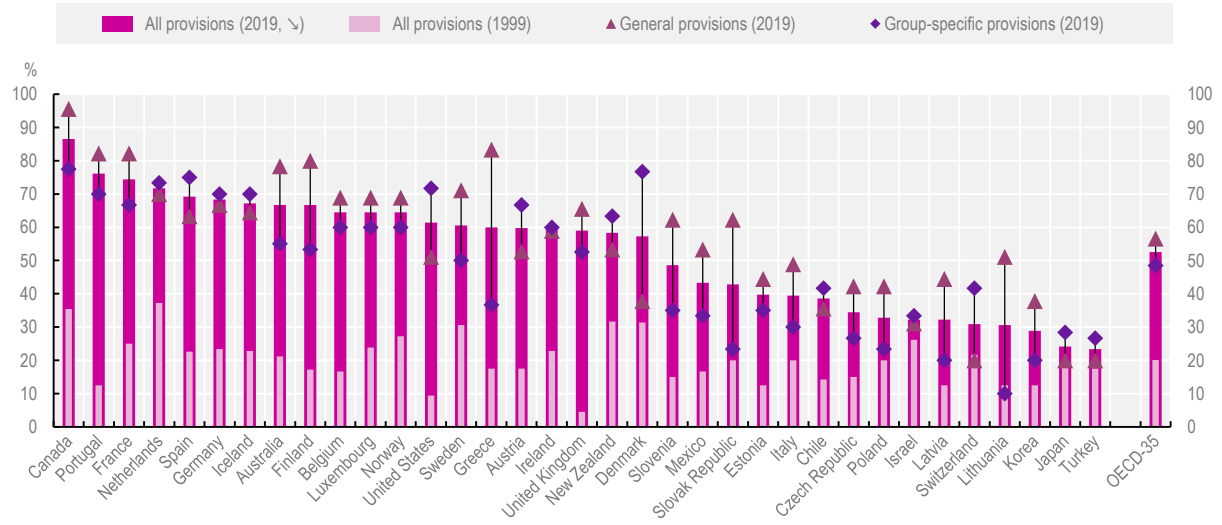
Figure 1.4. Legal LGBTI inclusivity is improving in *all* OECD countries

Legal LGBTI inclusivity as of 1999 and 2019, by OECD country (all provisions, general provisions and group-specific provisions)



Note: This figure reports the share of provisions highlighted in Section 1.1 that are in force in OECD countries, as of 1999 and 2019. For year 1999, it focuses on all provisions. For year 2019, it distinguishes between all provisions, general provisions and group-specific provisions. (↘) in the legend relates to the variable for which countries are ranked from left to right in decreasing order.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

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Overall, OECD countries can be grouped into three performance tiers:

- A bottom-performing tier characterised by below-average performance regarding both level of legal LGBTI-inclusivity as of 2019 and progress in legal LGBTI-inclusivity since 1999 (14 countries: Chile, Czech Republic, Estonia, Israel, Italy, Japan, Korea, Latvia, Lithuania, Mexico, Poland, Slovak Republic, Switzerland and Turkey) ;
- A middle-performing tier characterised by trends that suggest position relative to the OECD average may change in the near future, for better (Slovenia) or worse (Denmark, New Zealand and Sweden) ;
- A top-performing tier characterised by above-average performance regarding both level of legal LGBTI-inclusivity as of 2019 and progress in legal LGBTI-inclusivity since 1999 (17 countries: Australia, Austria, Belgium, Canada, Finland, France, Germany, Greece, Iceland, Ireland, Luxembourg, Netherlands, Norway, Portugal, Spain, United Kingdom and United States).

Yet, despite this strong cross-country variation, *all* OECD countries are making progress (Figure 1.4). The strongest growth occurred in Portugal (+63 percentage points, from 13% to 76%), while the weakest growth occurred in Turkey (+5 percentage points from 18% to 23%).

Past performance of OECD countries regarding legal inclusion of LGBTI people does not fully predict current performance, and both positive and negative shifts have occurred between 1999 and 2019. Seven countries that were below the OECD average in 1999 have managed to emerge above this average in 2019: Austria, Belgium, Finland, Greece, Portugal, United Kingdom and the United States. The strides made between 1999 and 2019 by Portugal and the United Kingdom have been tremendous. For instance, legal LGBTI inclusivity increased by 55 percentage points in the United Kingdom, from 16 percentage points below the OECD average in 1999 to 6 percentage points above this average in 2019. By contrast, two countries, Israel and Switzerland, have fallen below the OECD average as of 2019 while they were above this average in 1999. Their decline is significant. For instance, Israel was 6 percentage points above the OECD average in 1999 but 21 percentage points below this average in 2019. These drops are not due to steps backward. Instead, they reflect that these countries have made progress at a much slower pace than other OECD countries.

1.2.3. There is still a long way to go before reaching full legal LGBTI inclusion, including in top-performing countries

Table 1.1 analyses the prevalence of LGBTI-inclusive provisions among the various OECD performance tiers and reveals that even top-performing countries are still far from full legal LGBTI inclusion. The table classifies the various types of legal provisions along whether they have been passed among bottom-, middle- and high-performing countries.

Several top-performing countries haven't passed all the provisions that are in force in a majority of bottom- and middle-performing countries. Moreover, there are many provisions that only a minority of countries have implemented. For instance, hate crime and hate speech laws based on sex characteristics are in force in only one OECD country nationwide (Canada), while conversion therapy is illegal in a very limited number of OECD countries (three) and only at the subnational level. It is important that top-performing countries continue demonstrating their leadership by passing those ground-breaking provisions, so that they progressively become standard equality measures.

Table 1.1. Legal provisions fostering the inclusion of transgender and intersex people are overrepresented among those that are high-hanging and ground-breaking

Prevalence of LGBTI-inclusive provisions among the various OECD performance tiers as of 30 June 2019

	Share of countries where the legal provision(s) is(are) in force throughout the national territory among…		
	… bottom-performing countries	… middle-performing countries	… top-performing countries
LOW-HANGING LEGAL PROVISIONS			
Protection of LGBTI people's civil liberties: *Freedom of expression, assembly and association*	all	all	all
Equal treatment of same-sex (SS) and different-sex (DS) consensual sexual acts: *No criminalisation of SS consensual sexual acts; Equal age of consent across SS and DS sexual acts*	majority:93%	all	all
Legal gender recognition	majority:86%	all	all
Protection of LGBTI people against discrimination: *Prohibition of discrimination in employment and a broad range of others fields based on SO*	majority:64%	all	majority:94%
Existence of an LGBTI-inclusive human rights institution (HRI): *HRI in charge of supporting victims of discrimination based on SO*	majority:64%	all	majority:94%
MIDDLE-HANGING LEGAL PROVISIONS			
Existence of an LGBTI-inclusive human rights institution (HRI): *HRI in charge of supporting victims of discrimination based on GI*	minority:50%	majority:75%	majority:82%
Protection of LGBTI people against violence: *Hate crime and hate speech laws based on SO*	minority:29%	majority:75%	majority:59%
Equal adoption rights: *Second-parent adoption (SPA) and joint adoption (JA) legal for SS partners*	none	majority:75%	majority:94%
Legal recognition of same-sex partnerships: *Same-sex marriage legal*	none	majority:75%	majority:88%
Equal access to assisted reproductive technology: *Equal treatment in access to medically assisted insemination (MAI) and/or in vitro fertilisation (IVF) across same-sex and different-sex partners; If MAI and/or IVF are legal for same-sex partners, automatic co-parent recognition is legal; Equal treatment in access to surrogacy*	minority:7%	majority:75%	majority:71%
HIGH-HANGING LEGAL PROVISIONS			
Protection of LGBTI people fleeing persecution abroad: *Persecution based on SO explicitly recognised as a valid ground for granting asylum*	minority:36%	minority:50%	all
Protection of LGBTI people fleeing persecution abroad: *Persecution based on GI explicitly recognised as a valid ground for granting asylum*	minority:29%	minority:50%	majority:88%
Protection of LGBTI people against discrimination: *Prohibition of discrimination in employment and a broad range of others fields based on GI*	minority:21%	minority:50%	majority:88%
Existence of an LGBTI-inclusive human rights institution (HRI): *HRI in charge of supporting victims of discrimination based on SC*	minority:7%	minority:25%	majority:59%
No medical requirement attached to legal gender recognition	minority:7%	minority:25%	majority:59%
Postponing medically unnecessary sex-normalising treatment or surgery on intersex minors	minority:29%	minority:50%	majority:53%
GROUND-BREAKING LEGAL PROVISIONS			
Protection of LGBTI people against discrimination: *Prohibition of discrimination in employment and a broad range of others fields based on SC*	none	none	minority:47%
Protection of LGBTI people against violence: *Hate crime and hate speech laws based on GI*	none	minority:25%	minority:35%
Protection of LGBTI people fleeing persecution abroad: *Persecution based on SC explicitly recognised as a valid ground for granting asylum*	none	minority:25%	minority:29%
Being transgender not categorised as a mental illness in national clinical classification	none	minority:25%	minority:24%
Availability of a non-binary gender option on birth certificates and other identity documents	none	minority:25%	minority:24%
Protection of LGBTI people against discrimination: *Prohibition of discrimination based on SO, GI and/or SC in the Constitution*	minority:7%	minority:50%	minority:12%
Protection of LGBTI people against violence: *Hate crime and hate speech laws based on SC*	none	none	minority:6%
Ban on conversion therapy	none	none	none

Note: "Low-hanging legal provisions" refers to legal provisions that are low-hanging fruits, i.e. passed by a majority of countries in all performance tiers, including the bottom-performing category. "Middle-hanging legal provisions" refers to legal provisions that are middle-hanging fruits, i.e. passed by a majority of countries, but only in the middle- and top-performing category. "High-hanging legal provisions" refers to legal provisions that are high-hanging fruits, i.e. passed by a majority of countries, but only in the top-performing category. "Ground-breaking provisions" are the legal provisions passed by only a minority of countries in all performance tiers, including the top-performing category. "SO" refers to "sexual orientation", "GI" to "gender identity" and "SC" to "sex characteristics. Cells in pink refer to a situation where the legal provision(s) analysed is(are) in force in a majority of countries among the performance tier under consideration.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

1.3. Why improving the inclusion of LGBTI people in society matters?

While advancing the LGBTI inclusion agenda may sometimes be challenging, this report provides new evidence of its association not only with acceptance and quality of life of LGBTI people themselves, but also with gender equality and economic development.

1.3.1. Legal LGBTI inclusivity and social acceptance of LGBTI people

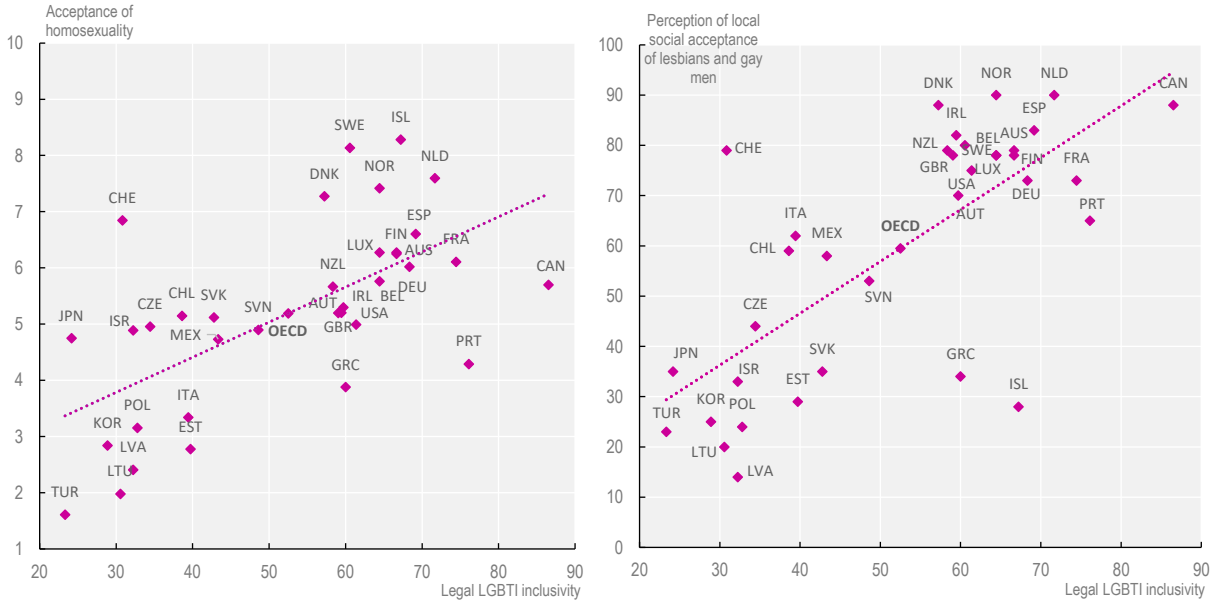
While countries with greater acceptance of sexual and gender minorities are more likely to pass LGBTI-inclusive laws, evidence shows that legal changes in favour of LGBTI people in turn do cause changes in attitudes towards this population. Indeed, individuals perceive legal changes as reflections of advancements in what is socially acceptable and many are willing to conform to these shifts (Tankard and Paluck, 2017[3]). For instance, in European countries where same-sex marriage is legal, acceptance of homosexuality increased much faster after those countries adopted same-sex relationship recognition policies (Aksoy et al., 2020[4]). Similarly, same-sex marriage legalisation across U.S. states led to an increase in employment of people in same-sex couples, a change driven by improvements in attitudes towards homosexuality and, hence, lower discrimination against LGB individuals (Sansone, 2019[5]).

Figure 1.5 and Figure 1.6 confirm a significant positive relationship between legal LGBTI inclusivity and acceptance of LGB, transgender and intersex people. An increase in legal LGBTI inclusivity from its average value (25%) among the three lowest-performing OECD countries (Turkey, Japan and Korea) to its average value (79%) among the three highest-performing OECD countries (Canada, Portugal and France) is associated with:

- A 2.5 point increase in the score on a 1-to-10 scale measuring acceptance of homosexuality, from 3 to 5.5 (left panel of Figure 1.5);
- A nearly three-fold increase in the share of respondents who consider their area of residence is a good place to live for lesbians and gay men, from 28% to 75% (right panel of Figure 1.5);
- A more than 25% increase in the share of respondents who support transgender people, from 34% to 43% (left panel of Figure 1.6);
- A more than 50% increase in the share of respondents who support intersex people, from 28% to 43% (right panel of Figure 1.6).

Figure 1.5. Legal LGBTI inclusivity is positively associated with acceptance of lesbians and gay men

Relationship between legal LGBTI inclusivity, acceptance of homosexuality (left panel) and perception of local social inclusion of lesbians and gay men (right panel)



Note: Legal LGBTI inclusivity refers to the share of provisions highlighted in Section 1.1 that are in force in OECD countries as of 2019. In the left panel, acceptance of homosexuality is measured on a scale from 1 to 10, where 1 means that homosexuality is never justified and 10 means that it is always justified. It is based on the following question: *Please tell me whether you think homosexuality can always be justified, never be justified, or something in between using this card*. This question is part of a battery of several questions about controversial behaviours and issues (e.g. abortion, divorce, euthanasia, prostitution, etc.) that have been asked in the following cross-country surveys: the AsiaBarometer, the European Values Survey, the Latinobarometro and the World Values Survey. Only survey rounds that occurred after 2001 are used. In the right panel, the perception of local social acceptance of lesbians and gay men refers to the share of respondents to the 2018 Gallup World Poll who consider that their area of residence is a good place to live for gay men or lesbians. It is based on the following question: *Is the city or area where you live a good place or not a good place to live for gay or lesbian people?*.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019), OECD compilation based on AsiaBarometer, European Values Survey, Latinobarometro and World Values Survey, and Gallup World Poll.

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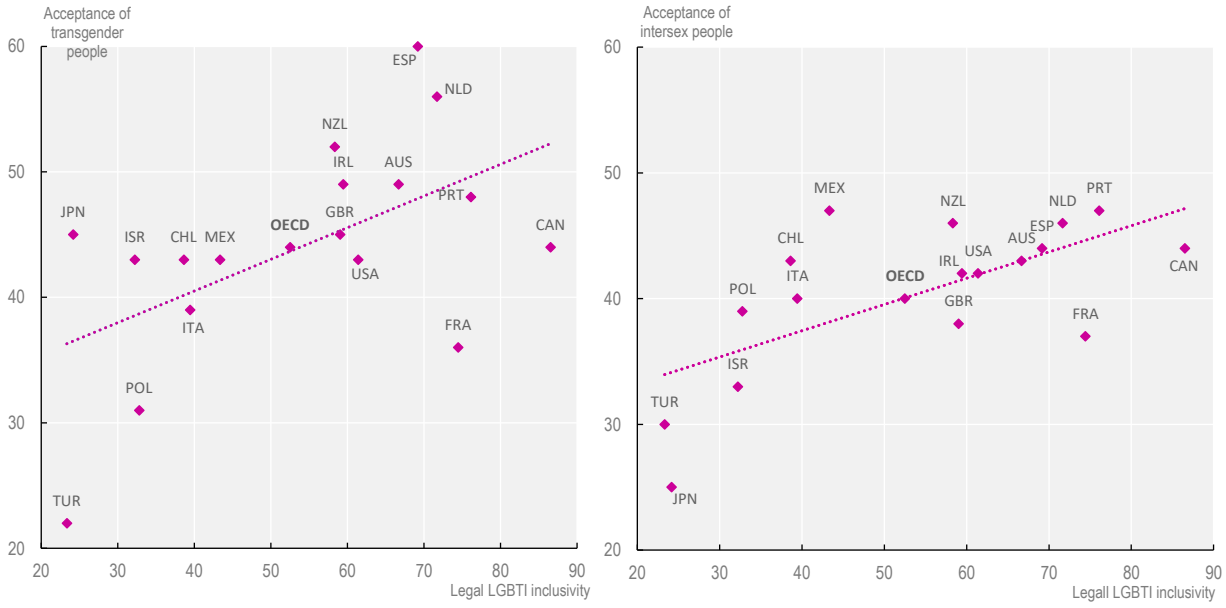
Figure 1.6. Legal LGBTI inclusivity is positively associated with acceptance of transgender and intersex people

Relationship between legal LGBTI inclusivity, acceptance of transgender people (left panel) and acceptance of intersex people (right panel)



Note: Legal LGBTI inclusivity refers to the share of provisions highlighted in Section 1.1 that are in force in OECD countries as of 2019. In the left panel, acceptance of transgender people refers to the average share of respondents to the 2016 ILGA survey who answer "Yes" to the following two questions: (i) *If a male child always dressed and expressed himself as a girl, would you find that acceptable?*; (ii) *If a female child always dressed and expressed herself as a boy, would you find that acceptable?* In the right panel, acceptance of intersex people refers to the share of respondents to the 2016 ILGA survey who answer "No" to the following question: *Do you think that children whose genitals are unclear at birth should be surgically assigned a gender by medical professionals?*
Source: 2016 ILGA survey.

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1.3.2. Legal LGBTI inclusivity and gender equality

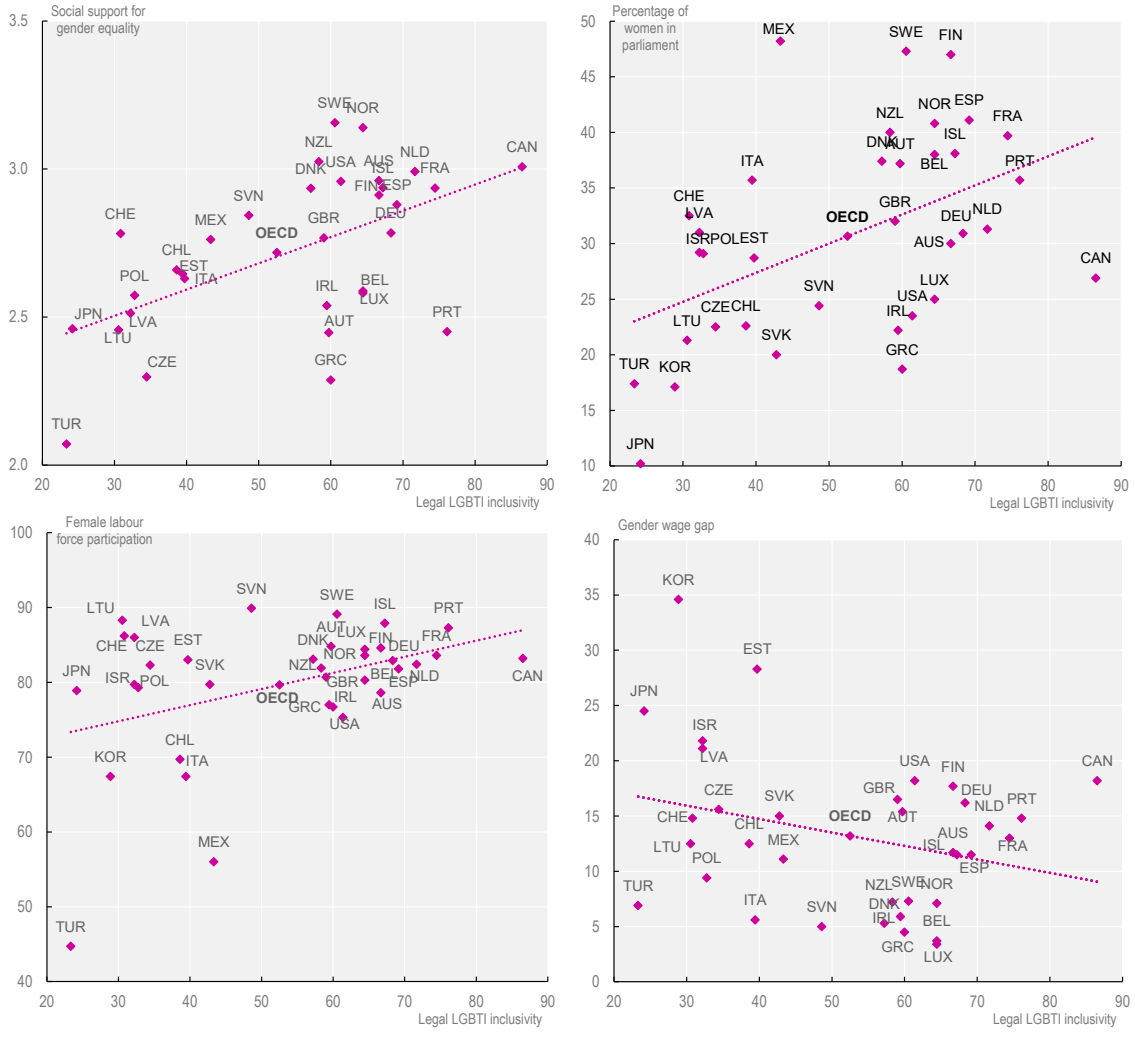
Both exclusion of LGBTI people and endorsement of traditional gender norms derive from the mistaken view that (i) individuals fall into only two distinct biological sexes at birth (male and female) that perfectly match their gender identity; (ii) men and women unequivocally feel sexual attraction to one another; (iii) within these couples, men and women fulfil biologically determined roles. One can therefore expect a strong association between legal LGBTI inclusivity and gender equality which moves away from traditional norms.

Figure 1.7 indeed reveals a significant positive relationship between legal LGBTI inclusivity and gender equality. An increase in legal LGBTI inclusivity from its average value among the three lowest-performing OECD countries to its average value among the three highest-performing OECD countries is associated with:

- A one-point increase on a 1-to-4 scale measuring support for gender equality, from 2 to 3 (upper left panel of Figure 1.7);
- A more than two-fold increase in the share of women in parliament, from 15% to 34% (upper right panel of Figure 1.7);
- A one-third increase in female labour force participation, from 64% to 85% (lower left panel of Figure 1.7);
- A 30% decrease in the gender wage gap, from 22% to 15% (lower right panel of Figure 1.7).

Figure 1.7. Legal LGBTI inclusivity is positively associated with gender equality

Relationship between legal LGBTI inclusivity, support for gender equality (upper left panel), percentage of women in parliament (upper right panel), female labour force participation (lower left panel) and gender wage gap (lower right panel)



Note: Legal LGBTI inclusivity refers to the share of provisions highlighted in Section 1.1 that are in force in OECD countries as of 2019. In the upper left panel, social support for gender equality is an average of responses to the following three questions taken from the European Values Survey and World Values Survey: (i) *When jobs are scarce, men should have more right to a job than women* (=1 if strongly agree, =2 if agree, =3 if disagree, =4 if strongly disagree); (ii) *On the whole, men make better political leaders than women do* (=1 if strongly agree, =2 agree, =3 if disagree, =4 if strongly disagree); (iii) *A university education is more important for a boy than for a girl* (=1 if strongly agree, =2 agree, =3 if disagree, =4 if strongly disagree). Only survey rounds that occurred after 2001 are used. In the upper right panel, the percentage of women in parliament is computed as of 2019 and stems from the OECD Government at a Glance database. In the lower left panel, female labour force participation is computed as of 2018 for the 25-54 age group and stems from the OECD Employment database. In the lower right panel, gender wage gap is defined as the difference between male and female median wages divided by the male median wages (expressed in percentage), among full-time employees. It is computed as of 2017 or earlier and stems from the OECD Employment database.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019), OECD compilation based on European Values Survey and World Values Survey, OECD Government at a Glance database, and OECD Employment database.

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1.3.3. Legal LGBTI inclusivity and economic development

Economic development is conducive to education (Chevalier et al., 2013[6]) and, hence, legal LGBTI inclusivity. Education plays a major role in explaining differences in attitudes towards sexual and gender minorities. For instance, the score of individuals with a college education on a 1-to-10 scale measuring acceptance of homosexuality (6.1) is two points higher than that of individuals who have, at most, a lower-secondary education (4.1) (OECD, 2019[2]). This result may be in part due to education's correlation with complex reasoning that increases individuals' tolerance to nonconformity (Ohlander, Batalova and Treas, 2005[7]).

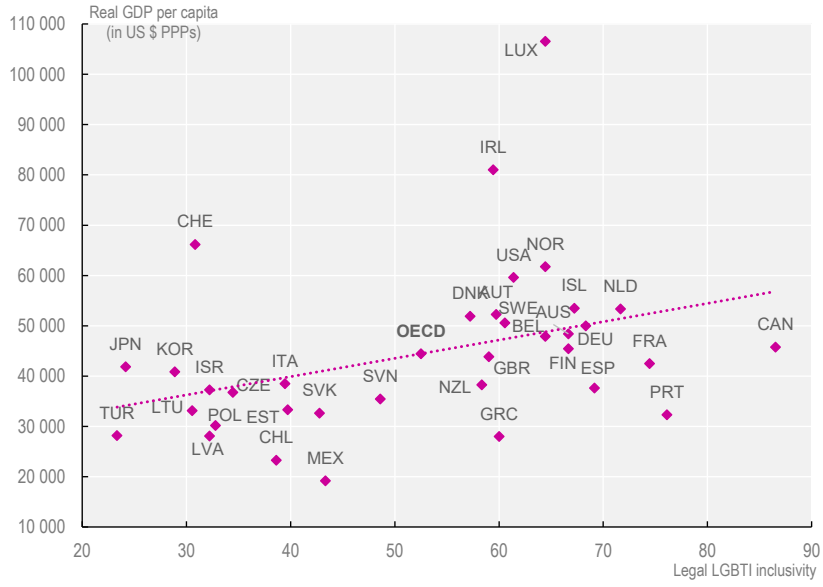
Legal LGBTI inclusivity also contributes to economic development by reducing the massive cost of anti-LGBTI discrimination (Carcillo and Valfort, 2018[8]). Anti-LGBTI discrimination reduces demand for labour of LGBTI people, which reduces their wages, their access to employment and confines sexual and gender minorities to less qualified positions than they might otherwise occupy. These negative consequences are magnified by reactions of the labour supply. Reduced wages undermine incentives to work. The discrimination-induced decrease in the demand for labour also reduces the productivity of LGBTI people who invest less in education and life-long learning because they anticipate low returns. This negative spiral results in production losses that in turn affect public finances. Lower production and wage levels reduce state revenue from income tax, corporation tax, and social security contributions. At the same time, discrimination in access to employment increases public expenditure due to unemployment benefits and social transfers to those who are discriminated against.

Yet, these immediate negative effects of discrimination represent only a fraction of the harmful spill-overs resulting from excluding LGBTI people from the labour market and the wider society. Notably, representative survey data point to widespread psychological distress among LGBTI individuals due to – at least partly – stigma (OECD, 2019[2])). Sexual and gender minorities mostly live in social environments that largely view heterosexuality and cisgender identity, i.e. congruence between sex at birth and gender identity, as the only way of being normal. LGBTI people therefore experience stress not undergone by heterosexual and cisgender individuals, the so-called minority stress (Meyer, 2003[9]). This stress has been shown to seriously hamper mental health, by generating anxiety, depression, suicide ideation, substance use and abuse. In the United States for instance, the reduction in the number of suicide attempts between LGB and heterosexual youth was substantially higher in states that adopted same-sex marriage before its legalisation by the Supreme Court in 2015, than in others – a trend that was not apparent before the implementation of LGB-inclusive policies. Overall, it is estimated that same-sex marriage policies caused a reduction by nearly 15% of suicide attempts among adolescents who self-identify as gay, lesbian or bisexual (Raifman et al., 2017[10]). Lower mental health in turn has the potential to impair LGBTI people's physical health by providing a fertile ground to other pathologies, such as cardiovascular diseases. Overall, the detrimental effect of discrimination on LGBTI people's mental health further contributes to eroding a country's human capital, as well as public finances through significant spending on social and health services in order to address the consequences of LGBTI people's marginalisation.

Consistent with these mechanisms, Figure 1.8 unveils a positive relationship between legal LGBTI inclusivity and economic development. An increase in legal LGBTI inclusivity from its average value among the three lowest-performing OECD countries to its average value among the three highest-performing OECD countries is associated with an increase in real GDP per capita of approximately USD 3 200.

Figure 1.8. Legal LGBTI inclusivity is positively associated with economic development

Relationship between legal LGBTI inclusivity and real GDP per capita (in USD PPPs)



Note: Legal LGBTI inclusivity refers to the share of provisions highlighted in Section 1.1 that are in force in OECD countries as of 2019. Real GDP per capita (in US $ PPPs) is computed as of 2019 using 2015 as the reference year and stems from the OECD Main Economic Indicators database.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019) and OECD Main Economic Indicators database.

StatLink https://stat.link/t7v0c5

1.4. What else can be done beyond passing LGBTI-inclusive laws?

LGBTI-inclusive laws should be accompanied by a strong push to make LGBTI individuals better represented and more visible in national statistics (OECD, 2019[2]). Without data on sexual orientation, gender identity and sex characteristics, policy makers aiming to improve LGBTI inclusion will continue to do so with little if any relevant information.

No census in OECD countries has ever asked questions on sexual orientation and/or gender identity to identify LGB and transgender people, and representative data on individuals' intersex status are absent. Yet, as of 2018, some countries have included a question allowing respondents to self-define their sexual orientation[3] and gender identity[4] (15 and 3, respectively), in at least one of their nationally representative surveys conducted by national statistical offices or other public institutions (OECD, 2019[2]). Moreover, improving data collection to identify trends and patterns of stigmatisation, discrimination and violence against LGBTI individuals is a key objective of 10 of the 13 ongoing nationwide action plans. Subject to Parliamentary approval, Great Britain (England, Scotland and Wales) should become the first OECD region in 2021 to include both a question on sexual orientation and a question on gender identity in its census. These initiatives constitute helpful precedents in order to disseminate good practices on how to best implement this data collection.

Analysis of good practices and nationwide action plans currently in force in one third of OECD countries highlights several additional measures to make significant progress towards LGBTI inclusion, beyond passing LGBTI-inclusive laws: (i) enforcement mechanisms to make LGBTI-inclusive antidiscrimination, hate crime/hate speech and asylum laws truly effective; (ii) policies aimed at fostering a culture of equal treatment in education, employment and health care, beyond enforcing laws prohibiting discrimination in these fields; (iii) measures to create and maintain popular support for LGBTI inclusion.

1.4.1. Enforcing LGBTI-inclusive anti-discrimination, hate crime/hate speech and asylum laws

Prohibiting discrimination on the grounds of actual or perceived sexual orientation, gender identity, and sex characteristics is an essential protection to ensure the human rights of LGBTI persons, as is the passage of LGBTI-inclusive hate crime/hate speech and asylum laws. However, true effectiveness can only be achieved through sound enforcement mechanisms.

Enforcing LGBTI-inclusive anti-discrimination laws

Non-reporting is the default response of people facing discrimination, irrespective of the protected ground considered (Equinet, 2012[11]). While more than one third (38%) of LGBT individuals in the EU affirmed in 2012 having personally felt discriminated against because of being L, G, B or T in the 12 months prior to the survey, only 10% declared that they (or anyone else) reported this incident of discrimination (European Union Agency for Fundamental Rights, 2014[12]). Unfortunately, the situation is not improving: the share of LGBTI individuals in the EU who stress having been discriminated against because of their sexual orientation, gender identity or sex characteristics in the past 12 months reaches 41% in 2019, while the proportion who reported this incident (11%) has remained virtually unchanged compared to 2012 (European Union Agency for Fundamental Rights, 2020[13]).

National human rights institutions have an important role to play to overcome under-reporting and, hence, ensure that the threat of sanction entrenched in antidiscrimination laws is credible (Equinet, 2012[11]; 2013[14]; UNDP, 2016[15]; ECRI and Council of Europe, 2017[16]). Maintaining well-designed interactive websites encouraging users to actively engage with their content as it is done by the Equality Commission for Northern Ireland is a critical step towards enforcing LGBTI-inclusive anti-discrimination laws. Such websites allow:

- Delivering clear information about who and what is protected by antidiscrimination laws;
- Providing users with concrete guidance on how to compile the discrimination case;
- Enabling victims to submit a claim even when they are reluctant to personally sue their discriminators so that the national human rights institution may bring the case in its own name.

These resources to combat under-reporting of discrimination should be accompanied by efforts to consistently remind people of their existence, accessibility and effectiveness (Equinet, 2015[17]; 2017[18]). Specific attention is needed to get the message through to groups at risk of discrimination, by building and maintaining collaborative relationships with “connectors” who are trusted as messengers by these groups, including LGBTI organisations and networks. Regularly showcasing the national human rights institution’s commitment is also essential to strengthening a trust relationship with sexual and gender minorities. This objective can be achieved in several ways, including attending pride events − as it is the case in Greece where the Ombudsman has been participating in the Athens Pride every year since 2007 (Equinet, 2015[17]). Finally, the national human rights institution should evaluate its communication strategy and the perception of its work among key stakeholders, following the example from the Office of the Ombudsman for Equality in Finland.

Enforcing LGBTI-inclusive hate crime and hate speech laws

Governments must take action to legally recognise sexual orientation, gender identity and sex characteristics as grounds for hate crime and hate speech. But successful implementation of LGBTI-inclusive hate crime and hate speech laws is critical. Achieving this objective entails (i) training police officers on properly dealing with hate crime targeting LGBTI people and (ii) effectively combating hate speech online.

Training police officers on properly dealing with hate crime targeting LGBTI people

Failure to appropriately prosecute crimes motivated by hatred against LGBTI people creates a sense of impunity among perpetrators and can result in increasing levels of violence against sexual and gender minorities. Training police officers to properly handle hate crime incidents can help prevent this troubling cycle from emerging. The police are at the frontline of the criminal justice system and the first point of contact for many victims. A fair application of national hate crime laws is out of reach if they are not equipped with the skills to take a detailed victim statement and to identify when a criminal offence is a hate crime (ILGA Europe, 2008[19]; OSCE, 2009[20]; 2014[21]; CoE, 2017[22]; European Commission, 2017[23]; European Union Agency for Fundamental Rights, 2018[24]). Training police officers is all the more important since their presumed reluctance and/or incapacity to deal with violence targeted at LGBTI people is often the main reason why LGBTI people refuse to report abuse (European Union Agency for Fundamental Rights, 2020[13]).

To further improve the reporting of hate crimes by LGBTI people, this training could be complemented by creating close partnerships between the police and civil society organisations, as it is done by the Metropolitan Police Service responsible for law enforcement in the 32 London boroughs. Civil society organisations are often the first entities contacted by victims of hate crime and can therefore become invaluable intermediaries between the police and victims by increasing the chances of victims cooperating with the investigation and remaining engaged in the criminal justice process.

Effectively combating hate speech online

To fully deter hate crime, governments should also prohibit severe forms of hate speech. Passing LGBTI-inclusive hate speech laws is a critical first step in that direction. But this step should be complemented by strategies to tackle the most challenging forms of hate speech, such as online hate speech (UNESCO, 2015[25]).

One option is for international and/or regional stakeholders to set up standards with social media companies, as illustrated by the Code of Conduct agreement these companies and the European Union entered into (European Commission, 2016[26]). To push social media companies to regulate content more forcefully and to crack down on hate speech more quickly, some countries have passed (Germany) or are considering passing (Australia, France, or New Zealand) laws that impose obligations on private companies to regulate hate speech online and provide high fines for non-compliance.

Since delegating censorship measures to private entities entails a risk of illegitimate restrictions on freedom of expression (OHCHR, 2017[27]), a more decentralised approach consists in fostering the creation of organised counter-speech groups. Such groups coordinate their efforts to respond to hateful comments online (e.g. by providing new piece of information to debunk hateful comment). In Germany, their action has proven to help dissuade internet users from engaging into hate speech (Sonntag, 2019[28]).

Enforcing LGBTI-inclusive asylum laws

Recognising persecution based on sexual orientation, gender identity or sex characteristics as a valid ground for granting asylum is governments' responsibility. Yet, processing LGBTI asylum claims remains a challenge. Over the years, stakeholders have issued thorough guidelines (UNHCR, 2010[29]; 2011[30]; 2012[31]; 2015[32]; COC Nederland, 2011[33]; ILGA Europe, 2014[34]). Milestone documents emphasise the need for governments (i) to help asylum officials (e.g. interviewers, interpreters or adjudicators) determine refugee status and (ii) to ensure safety of LGBTI people in asylum detention and reception facilities. To increase their effectiveness, these actions could be complemented by resettlement policies directed at LGBTI individuals who were granted refugee status so that they successfully integrate in their host society, as it is the case in Canada or Norway.

Helping asylum officials determine refugee status

Empowering asylum officials to assess the credibility of LGBTI asylum applicants implies that they easily access precise, up-to-date and reliable information on the status of LGBTI persons in the country of origin. Insights on this status can be derived from reports of human rights organisations, the United Nations and local LGBTI organisations (COC Nederland, 2011[33]). In this process, asylum authorities should be reminded that applicants are entitled to live as who they are, including in their country of origin and, hence, that the "discretion" argument does not apply: they should not reject the applications of LGBTI asylum seekers on the basis that they could avoid persecution by concealing their sexual orientation, gender identity or sex characteristics, as ruled in 2013 by the Court of Justice of the European Union in the case of Minister voor Immigratie en Asiel v. X and Y and Z v.Minister voor Immigratie en Asiel.

Ensuring safety of LGBTI people in asylum detention and reception facilities

Ensuring safety of LGBTI people in asylum detention and reception facilities equally constitutes a major challenge. Although international human rights bodies insist that placing migrants and asylum seekers in detention should be seen as a last resort, the use of detention of migrants remains a worldwide and growing practice (UN Working Group on Arbitrary Detention, 2018[35]). In these settings, LGBTI persons face unique risks and challenges: they typically occupy the bottom of the informal hierarchy that characterises places of incarceration and are therefore disproportionately exposed to violence (UNHCR, 2012[36]). Studies report that non-heterosexual inmates are 10 times more likely than heterosexual inmates to be sexually assaulted by other inmates (13 times more likely for a transgender person) (UN Committee against Torture, 2016[37]). Similarly, reception centres are all too often characterised by significant hostility against LGBTI residents, mainly coming from their countrymen/-women (ILGA Europe, 2014[34]).

To protect LGBTI persons in asylum detention and reception facilities, special consideration should be devoted to their place of accommodation. LGBTI asylum seekers typically fled alone and they have neither the support of family members nor a network of fellow expatriates (ILGA Europe, 2014[34]). To ensure their safety, it is important to create spaces where they can live without fearing retaliation. A good practice in this regard consists of transferring them to smaller reception facilities, and/or to centres with fewer countrymen/-women (ILGA Europe, 2014[34]). In Austria, female transgender asylum seekers are mostly placed in facilities devoted to unaccompanied women.

1.4.2. Fostering a culture of equal treatment in education, employment and health care

It is unlikely that reducing under-reporting of discrimination alone will be enough to eliminate anti-LGBTI discrimination. To effectively combat this discrimination, it is essential to concomitantly create a culture of equal treatment by educating people to counter and control their bias against LGBTI individuals. Indeed, consciously or not, people tend to be biased *in favour* of their in-group (the social group with which they identify as being a member) and/or to be biased *against* their out-group (the social group with which they do not identify) (Kahneman, 2013[38]). This bias leads them to judge positively, even before they get to know them, people who are similar to them, and to "prejudge" negatively the others. This bias also largely accounts for stereotypes' inaccuracy. Individuals tend to overestimate the weaknesses of dissimilar others and to underestimate their strengths, while they are prone to the opposite in face of similar others. Overall, in-group and out-group bias contributes to minority groups, LGBTI people included, being discriminated against by the majority.

Countering bias against sexual and gender minorities is particularly essential in the fields of education, employment and health care. Although these fields are viewed by the International Bill of Human Rights as critical for individuals to flourish, they are fraught with discrimination against LGBTI people.

LGBTI-phobic bullying at school is a worldwide problem (UNESCO, 2016[39]). Across the EU, nearly 60% of LGBTI respondents declare in 2019 they have hidden being LGBTI at school, and 4 in 10 report having always or often experienced negative comments or conduct in the school setting because of being L, G, B, T or I (European Union Agency for Fundamental Rights, 2020[13]). Yet, these numbers underestimate the actual prevalence of LGBTI-phobic bullying. Evidence shows that pupils do not necessarily have to be lesbian, gay, bisexual, transgender or intersex to be bullied: not fitting in with the gender expectations of their peers – boys judged as being not masculine enough, girls judged as being not feminine enough – is often sufficient for them to experience rejection. Hostile school settings are detrimental to the mental and physical health of LGBTI youth and negatively affect educational attainment including through lower participation in class or school activities, poorer academic performance and lower rates of attendance, or dropping out of school altogether (OECD, 2019[2]; Sansone, 2019[40]). Ultimately, school environments where children and youth are subject to LGBTI-phobic behaviour are factors that contribute to high rates of social exclusion and lack of higher education and employment prospects, adversely impacting LGBTI persons and society at large.

There are three key policy options to prevent and tackle bullying on account of sexual orientation, gender identity and sex characteristics: (i) introducing a mandatory, objective-oriented and enforceable LGBTI-inclusive school subject; (ii) guiding school staff on implementing an LGBTI-inclusive curriculum; (iii) adopting a whole-school approach to deal with LGBTI-phobic language and behaviour every time they occur (UNESCO, 2012[41]; 2016[39]; GLSEN, 2016[42]; CoE, 2018[43]; IGLYO, 2018[44]; ILGA Europe and OII Europe, 2019[45])..

While implementing these policies, it is critical that parents understand why the school is preventing and tackling LGBTI-phobic bullying, to avoid backlash. Schools should clarify that their efforts aim to look after the welfare and safety of all young people in the school, not to talk about sex or try to turn children gay − two pervasive worries among parents. It is also important to provide parents with the option to discuss their concerns with senior leadership – a way to reassure them that their concerns are taken seriously, but also to send a strong message that the commitment to prevent and tackle LGBTI-phobic bullying extends across the school (Stonewall, 2015[46]).

Introducing a mandatory, objective-oriented and enforceable LGBTI-inclusive school subject

Introducing a school subject that promotes the inclusion of LGBTI identities, among other groups at risk of discrimination, constitutes a crucial front in the battle for LGBTI equality. Early interventions should be given special attention while ensuring of course that the subject's content is age-appropriate: values and attitudes are formed early and are likely to be highly resistant to change in later life. This LGBTI-inclusive subject should ideally be mandatory, as will be the case in England starting from September 2020. It should also be grounded in a set of clear objectives so that school staff understand expectations. Finally, actual implementation of this curriculum should be closely monitored by school inspectors to ensure enforcement.

Guiding school staff on implementing an LGBTI-inclusive curriculum

School staff should also receive help on how to teach this subject, especially at early stages. This ambition implies giving teachers access to detailed lesson plans, as it is done by the "No Outsiders" project directed at primary schools in and outside the United Kingdom.

Teachers should also be given insights on how to embed LGBTI families, people and themes throughout the curriculum. Confining the mention of LGBTI issues to a specific area of the curriculum entails a risk that LGBTI issues be viewed as something marginal or even something to hide or be ashamed of.

Finally, teachers should be given assistance in managing parental concerns about the teaching of LGBTI content, especially in primary schools. Setting up partnerships with LGBTI organisations and faith schools having already shown best practice in combating LGBTI-phobic bullying constitutes a promising approach.

Adopting a whole-school approach to deal with LGBTI-phobic language and behaviour every time they occur

A whole-school approach is also needed to deal with LGBTI-phobic language and behaviour every time they occur. Such language is widespread but often goes unchallenged by school staff, firstly because they lack the confidence to do but also because they consider this language to just be harmless banter (Stonewall, 2017[47]). Creating a zero-tolerance school policy that clearly states LGBTI-phobic language and behaviour are wrong and will not be tolerated from any member of the school community – students, staff or parents and carers – is often viewed as the best way to start addressing the problem.

Alongside adopting a sound school policy, it is important to train school staff on why and how LGBTI-phobic language should be challenged – even when they consider the bully did not mean to be LGBTI-phobic. For instance, Scotland plans to make such training compulsory in a near future in the framework of both Initial Teacher Education and Career Long Professional Learning (LGBTI Inclusive Education Working Group, 2018[48]).

An alternative to school staff training is for schools to partner with LGBTI NGOs that directly intervene among pupils to discuss about their representations of sexual and gender minorities, challenge those who are prejudiced and stereotypical, and create awareness about the harmful consequences of LGBTI-phobic bullying and activate empathy. In France for instance, the Ministry of Education has accredited several civil society organisations (e.g. SOS homophobie) to complement public education.

Promoting LGBTI equality in employment

Survey and experimental data demonstrate the pervasiveness of discrimination against LGBTI job seekers and employees. Across the EU, more than one fourth of LGBTI respondents in 2019 declare they hide being LGBTI at work, and more than one fifth report having personally felt discriminated against in the labour market in the 12 months prior to the survey because of being L, G, B, T or I (European Union Agency for Fundamental Rights, 2020[13]). Comparison of labour market outcomes of LGBT and non-LGBT adults based on representative survey data provides a consistent picture. They reveal that LGBT people are 7% less likely to be employed than non-LGBT people and their labour earnings are 4% lower (OECD, 2019[2]).[5] Labour market discrimination can also be measured by comparing the rate at which two fictitious candidates are invited to a job interview: one that employers perceive as LGBT and one that employers perceive as non-LGBT. Such experiments indicate that homosexual applicants are, on average, 1.5 times less likely to be invited when their sexual orientation is conveyed through volunteer work in a gay and lesbian organisation. Experimental data also reveal significant discrimination against transgender job applicants (OECD, 2019[2]).

Creating a culture of equal treatment in employment implies that private and public employers adopt a comprehensive workplace equality policy with an explicit LGBTI-specific component. A first step is to publicise employers' commitment to recruit staff and extend to each individual the same benefits, salaries, opportunities for training or promotion regardless of sexual orientation, gender identity or sex characteristics. A second – more ambitious – step, is to undertake a set of actions to ensure non-discrimination, chief of which staff training, human resource management strategies that deny conscious and unconscious bias the chance to operate, and an advanced benefit and leave policy (ILO/UNAIDS/UNDP, 2015[49]; European Commission, 2016[50]; OHCHR, 2017[51]; TGEU, 2017[52]; ILGA Europe and OII Europe, 2019[45]).

Adopting a comprehensive workplace equality policy with an explicit LGBTI-specific component

This objective notably entails training staff on being open and supportive of LGBT inclusion at the workplace. Following the good practice implemented by several large companies (Sodexo, 2012[53]), a starting point is disseminating a guide to familiarise the staff with what being LGBTI means, to explain why combating discrimination is a priority and to promote LGBTI inclusion in everyday interactions at the workplace. This guide can then be complemented by an advanced training, notably for managers and people in charge of human resources, to learn how to counter their conscious and unconscious bias against specific groups. Rigorous evaluation suggests that, in order to effectively combat biases, such training should include participants to take implicit association tests and learn techniques to foster empathy (Devine et al., 2012[54]).

Firms could also invest in objective human resources practices (Carcillo and Valfort, 2018[8]). Special attention should be devoted to the interview stage: this is when recruiters can infer the sexual orientation, gender identity and/or sex characteristics of job candidates, notably based on their physical appearance. To help objectivise the interview process, its structure, questions, interviewers should be the same from one candidate to another. Without a consistent protocol, recruiters tend to let their stereotypes become self-fulfilling: when their bias is positive, they are more likely to begin the interview with the candidates' strengths, this increasing the chances of excelling, and *vice versa* (Bohnet, 2016[55]).

Incentivising employers to embrace LGBTI-inclusive workplace equality policies through standards and benchmarks

Employers have an economic interest in creating the conditions for their workplace to be inclusive of LGBTI individuals (OHCHR, 2017[51]). Anti-LGBTI discrimination may lead to market share losses: in 2018, the global spending power of the LGBT consumer segment was estimated at USD 3.6 trillion per annum, excluding the purchasing power of friends and families of LGBT individuals that make up the ally community.[6] Further, anti-LGBTI discrimination undermines productivity through several channels, including worse-quality hires (passing over talented individuals in the recruitment process), weaker employee engagement, lower employee retention, and lost diversity dividend – a growing body of research reveals that a more diverse employee pool tends to boost the company's intellectual potential.

However, establishing a workplace equality policy also entails costs. In this context, it is important to provide employers with additional incentives to embrace LGBTI inclusion by allowing them to showcase their achievements and, hence, improve their reputation and attractiveness among job candidates, employees, customers and suppliers.

To date, several not-for-profit organisations have developed standards to rate employers' implementation of LGBTI-inclusive workplace equality policies. There are ways for governments to improve the outreach and take-up of these indices among national employers. First, they could sponsor the creation of standards at the national level in countries where these standards haven't emerged yet, and publicly support these standards in countries where they already exist. Moreover, governments could exemplify and generate peer pressure by encouraging the public sector to participate in the benchmarking process, as is the case in Australia and the United Kingdom.

Promoting LGBTI equality in health care

Legally prohibiting discrimination on the grounds of sexual orientation, gender identity and sex characteristics in health care, barring conversion therapies on LGBTI minors, banning medical mandates for legal gender recognition, or postponing medically unnecessary sex-normalising treatment or surgery on intersex babies, are all actions that can contribute to ingraining a culture of equal treatment in health care settings.

But more can be done. LGBTI people indeed face specific health needs and risks that must be properly addressed by health care staff. Focus groups conducted among LGBTI participants across the EU reveal that LGBTI people identify a lack of knowledge on the part of health care staff around their health issues. This situation is compounded by the fact that a large share of LGBTI people do not disclose their sexual orientation, gender identity and/or sex characteristics in health care settings for fear of discrimination (Health4LGBTI, 2017[56]).

To remove these barriers, authorities could include compulsory modules in the initial education and career-long learning of health care staff, that will teach them about the specific health needs of LGBTI people, and how to approach LGBTI people in an inclusive way (Gay and Lesbian Medical Association, 2006[57]; 2010[58]; Health4LGBTI, 2018[59]). Such training has proven to be successful in an EU-funded impact evaluation conducted in Belgium, Bulgaria, Italy, Lithuania, Poland and the United Kingdom (Health4LGBTI, 2018[60]; Donisi et al., 2019[61]).

Increasing knowledge on LGBTI people's health needs

LGBTI people are at greater risk of mental health disorders. The general tendency of health systems not to prioritise mental health disproportionately affects the LGBTI population. It is critical that health care staff be informed of this reality to better address LGBTI people's health needs.

Lower mental health is only one of the many health inequalities faced by LGBTI individuals about which health care staff should be informed (Health4LGBTI, 2017[62]):

- Lesbian and bisexual women are less likely to attend cervical screening;
- Gay and bisexual men have a higher anal cancer rate and are at greater risk of contracting a sexually transmitted infections such as syphilis and human immunodeficiency virus;
- Transgender people are also at greater risk of sexually transmitted infections, in a context where stigma both within and outside the family compels some to engage in sex work;
- Intersex people who were subject to unconsented sex normalising surgery or treatment in their early life are at greater risk of long term conditions.

Increasing knowledge on how to approach LGBTI people in an inclusive way

When entering health care facilities, many LGBTI people report looking for clues that signal whether it is an LGBTI-inclusive setting. According to LGBTI patients, language used in health care settings causes discomfort and offense because it assumes all patients are heterosexual, cisgender and non-intersex, and is at times judgmental (Health4LGBTI, 2018[59]) To encourage LGBTI people to access health care and be open to disclose their identity where appropriate, it is essential that health care staff be trained on providing them with a welcoming environment.

Compliance with these guidelines is especially important when health care staff interact with elderly LGBTI people. This group has greater needs for health care and is much less likely to be out than the younger generation, having spent lives marked by histories of greater marginalisation, discrimination and even persecution. In this context, the priority could be put on training staff working with seniors, such as long-term care facilities. This strategy is all the more critical since older LGBTI people are more likely to reside in these settings: they are less often provided home care by a partner and/or children (MAP and SAGE, 2017[63]).

Since older LGBTI people living in long-term care facilities face frequent anti-social behaviours from other residents – leading many to stay in or retreat back to the closet (SAGE, 2018[64]) – an alternative strategy consists in supporting the development of co-housing inclusive of LGBTI seniors, as it is done for instance in France, Germany and Spain.

1.4.3. Creating and maintaining popular support for LGBTI inclusion

Social acceptance of LGBTI people has improved but remains limited in OECD countries (OECD, 2019[2]). Popular support for LGBTI inclusion is critical for countries to pass the legal provisions defined and analysed in Section 1.1 and Section 1.2, and avoid backlash against those already in force. Creating and maintaining this support first entails implementing well-designed awareness-raising activities among the general public. It is also important that government and public officials behave, collectively and individually, in a way that fosters equal treatment of LGBTI individuals.

Implementing well-designed awareness-raising activities among the general public

Effectively communicating human rights is challenging. Comprehensive guidelines published by key stakeholders identify a set of conditions to ensure that campaigns promoting LGBTI equality resonate with the general public and, hence, positively impact individual attitudes and behaviours (Equinet and PIRC, 2017[65]; ILGA-Europe and PIRC, 2017[66]; European Union Agency for Fundamental Rights, 2018[67])

Telling a human story

To promote LGBTI equality, any communication strategy should seek to tell human stories about LGBTI individuals. Rather than statistics on the pervasiveness of stigmatisation, discrimination and violence endured by LGBTI individuals, advocacy and awareness-raising campaigns should rely on personal testimonies and anecdotes that provide a human face to the problem. This strategy was notably implemented by the European Union's "We all share the same dreams" initiative that was launched in 2016 to increase awareness and acceptance of LGBTI persons.

Identifying issues of broader interest to the general public

It is critical that the campaign does not focus on topics viewed as too specific to sexual and gender minorities but concentrate instead on issues of broader interest to the general public. A successful communication strategy should go beyond appealing only to people's compassion for minorities. This objective entails identifying the values underlying LGBTI rights that matter for non-LGBTI people, that they hold dear in their everyday life and are willing to fight for. These are the lessons learned by the Freedom to Marry campaign in the United States where numerous popular votes on marriage equality were lost until the organisation began to use "values based campaigning" in 2010 (Freedom to Marry, 2016[68]).

Taking the public on a journey

A well-designed campaign to promote LGBTI equality should take the public on a journey by showing them how other people's thinking evolved. It is important to include among messengers individuals to whom the public can relate. People telling stories should not always be role models, experts, activists and survivors of abuses, but everyday people just like the public who have gone on a journey that the audience can also take. Finding "unlikely" messengers, such as faith leaders, is also critical because these messengers are viewed as "permission givers" by the undecided. This capacity to build alliances with a broad range of messengers to take the public on a journey was one key ingredient of the successful "Yes Equality" campaign in Ireland (Council of Europe, 2017[69]).

Setting an example through government and public authorities

Building and sustaining popular support for LGBTI inclusion also requires that government and public authorities lead through exemplary official and individual conduct.

Exemplifying through official conduct

Reparation is an important tool that government and public authorities can collectively use to acknowledge past state-sponsored discrimination, oppression and violence against LGBTI people. This official strategy is conducive to beginning a healing process, while also familiarising and sensitising the public about historical injustices suffered by LGBTI persons at the hands of the state, to avoid repetition of those acts. Reparation policies are gaining ground in countries at the forefront of the battle for LGBTI inclusion such as Canada, Germany, the Netherlands or the United Kingdom.

Moreover, government and public officials representing countries that have made strides to protect and promote the inclusion of LGBTI rights in their home countries are in a position to positively advocate for the expansion of those rights in other countries through international relations and foreign diplomacy. For instance, US diplomatic officials have shown commitment to denounce human rights violations based on sexual orientation following the US global initiative to decriminalise homosexuality that was launched early 2019.

Exemplifying through individual conduct

In addition to advocating for legal advancements, members of parliament play a crucial role in fostering inclusion, acceptance and support for LGBTI person through their individual conduct, as illustrated by the Global LGBT+ Caucus, an international network of parliamentarians and elected representatives launched in 2019 aiming to tackle discrimination against LGBT+ people. Effectively intervening and demonstrating leadership to condemn discrimination and promote the human rights of LGBTI persons within parliaments and constituencies can serve to deter some from engaging in negative conduct against LGBTI persons, while emboldening others to positively defend their rights (European Union Agency for Fundamental Rights, 2016[70]).

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Notes

[1] See oe.cd/lgbti.

[2] These 12 member countries are Australia, Chile, Denmark, Finland, France, Iceland, Ireland, Netherlands, Norway, Sweden, Switzerland, and the United States.

[3] These countries are Australia, Canada, Chile, Denmark, France, Germany, Iceland, Ireland, Italy, Mexico, New Zealand, Norway, Sweden, the United Kingdom and the United States.

[4] These countries are Chile, Denmark and the United States.

[5] These estimates presumably constitute a lower bound of the actual penalty faced by sexual and gender minorities since LGBT people who accept to disclose their sexual orientation and gender identity in surveys tend to be economically advantaged.

[6] See http://www.lgbt-capital.com/index.php?menu_id=2.

2 Which laws are LGBTI-inclusive?

OECD Member countries have signed and ratified many treaties, conventions and charters which embody international human rights standards relevant for LGBTI people. They are also influenced by the many non-binding recommendations and reports on LGBTI equality published by key human rights stakeholders. This chapter first presents these stakeholders, i.e. the European Union, the United Nations, the Council of Europe and the Organisation of American States. The chapter then focuses on the LGBTI-inclusive laws that result from applying international human rights standards to LGBTI issues. It deals with general provisions that are relevant for the inclusion of lesbian, gay, bisexual, transgender and intersex people altogether, before turning to group-specific provisions that aim to address the unique challenges faced by subgroups of the LGBTI population.

Who are LGBTI+ individuals?

LGBTI is the acronym for "lesbian, gay, bisexual, transgender and intersex". LGBTI people are defined with respect to three distinct features: sexual orientation, gender identity and sex characteristics. Sexual orientation refers to a person's capacity for profound emotional and/or sexual attraction to, and intimate or sexual relations with different-sex individuals, same-sex individuals, or both different- and same-sex individuals. Sexual orientation allows for differentiating between heterosexuals, lesbians, gay men and bisexuals. Gender identity refers to a person's internal sense of being masculine, feminine or androgynous or neither. Gender identity permits distinguishing between transgender and cisgender individuals, a transgender (resp. cisgender) person being one whose gender identity differs from (resp. matches) her/his biological sex at birth. Sex characteristics refer to chromosomal patterns, hormonal structure, reproductive organs and sexual anatomy that determine an individual's sex. Sex characteristics sometimes do not match strict medical definitions of male or female. An individual whose sex characteristics are neither wholly female nor wholly male is called "intersex". Although these variations concern a minority of individuals, they are not pathological. Only a small proportion have medical conditions which might be life-threatening if not treated promptly (Fundamental Rights Agency, 2015[1]). Because they differ to the majority in terms of sexual orientation, gender identity and sex characteristics, LGBTI people are also referred to as "sexual and gender minorities".

While the size of a group should have no bearing on their access to human rights, it is important to note that the share of people who self-identify as LGBTI is substantial and on the rise. In the United States for instance, the percentage of people who come out as LGBT to survey interviewers has risen from 3.5% in 2012 to 4.5% in 2017. This trend is likely to continue in the future since it is driven by younger cohorts: in 2017, only 1.4% of US respondents born before 1945 considered themselves as LGBT, compared to 8.2% among millennials, i.e. individuals born between 1980 and 1999 (OECD, 2019[2]). The group of intersex people does not only include individuals born with atypical genitalia that are immediately detectable at birth or even before. It also comprises individuals born with subtler forms of physical, hormonal or genetic features that make them intersex and will be "discovered", if at any time, only later in life, e.g. during puberty[1]. To date, two studies have tried to provide a comprehensive estimate of the intersex population, based on a meta-analysis of medical research articles. Their measures vary from 0.5% (van Lisdonk, 2014[3]) to 1.7% (Blackless et al., 2000[4]) of the total population.

A "+" is often added to the LGBTI acronym to include people who do not self-identify as heterosexual and/or cisgender but who would not apply the LGBTI label to themselves either. These people include questioning individuals (individuals who are unsure about their sexual orientation and/or gender identity), pansexual individuals (individuals for whom sex and gender are irrelevant in determining whether they will be emotionally or sexually attracted to others), or asexual individuals (individuals who lack sexual attraction to anyone or show low or no interest in sexual activity).

Ensuring that lesbians, gay men, bisexuals, transgender and intersex individuals – commonly referred to as "LGBTI people" – can live as who they are without being stigmatised, discriminated against or attacked should be a concern for OECD governments, for at least three reasons. The first and most important reason is obviously ethical. Sexual orientation, gender identity and sex characteristics are integral aspects of our selves. Guaranteeing that LGBTI people are not condemned to forced concealment or retaliation when their identity is revealed is necessary for them to live their lives as themselves, without pretence. The second reason is economic. Exclusion of LGBTI people impedes economic development through a wide range of channels. For instance, it causes lower investment in human capital due to LGBTI-phobic bullying at school as well as poorer returns on educational investment in the labour market. Anti-LGBTI discrimination also reduces economic output by excluding LGBTI talents from the labour market and impairing their mental and physical health, hence their productivity. The third reason why LGBTI inclusion

should constitute a top policy priority is social. LGBTI inclusion is viewed as conducive to the emergence of less restrictive gender norms that improve gender equality broadly speaking and, consequently, expand social and economic roles, especially for women. Indeed LGBTI inclusion may prompt a departure from the mistaken views that (i) individuals fall into only two distinct biological sexes at birth (male and female) that perfectly match their gender identity; (ii) men and women unequivocally feel sexual attraction to one another; (iii) within these couples, men and women fulfil biologically determined roles. Evidence confirms that acceptance of homosexuality is strongly correlated with support for gender equality worldwide (OECD, 2019[2]).

Ensuring equal rights for LGBTI individuals is particularly critical for their inclusion into the wider society. One cannot expect to improve the situation of sexual and gender minorities if, to begin with, the law does not protect them against unequal treatment. Passing equality laws also improves LGBTI inclusion by shaping social norms. Individuals perceive legal changes as reflections of advancements in what is socially acceptable and many are willing to conform to these shifts (see Chapter 3 for further details). Consistent with the fact that equality laws are essential for LGBTI inclusion and thus economic development, recent research has confirmed their strong correlation with GDP per capita (Box 2.1).

Box 2.1. LGB-inclusive laws are strongly correlated with economic development

A recent study analyses the relationship between the Global Index on Legal Recognition of Homosexual Orientation (GILRHO) and economic development in 132 countries, from 1966 to 2011. The GILRHO includes eight categories of legal rights representing most of the important legal steps that various countries have taken to strengthen the rights of LGB people: (1) legality of consensual homosexual acts between adults; (2) equal age limits for consensual homosexual and heterosexual acts; (3) explicit legal prohibition of sexual orientation discrimination in employment; (4) explicit legal prohibition of sexual orientation discrimination regarding goods and/or services; (5) legal recognition of the non-registered cohabitation of same-sex couples; (6) availability of registered partnership for same-sex couples; (7) possibility of second-parent and/or joint adoption by same-sex partners; and (8) legal option of marriage for same-sex couples. Each country with a law corresponding to each of the eight categories is awarded a full point per year since the relevant law entered into force. If the law in question only applied in part of the country, a half point is given irrespective of the number of states, provinces, or regions where the law applies. The study finds that an additional point on the 8-point GILRHO scale of legal rights for LGB persons is associated with an increase in real GDP per capita of approximately USD 2 000. A series of robustness checks confirm that this index continues to have a positive and statistically significant association with real GDP per capita after controlling for predictors of economic development that are correlated with the GILRHO, such as legal measures promoting gender equality.

Source: Badgett, Waaldijk and Rodgers (2019[5]), "The relationship between LGBT inclusion and economic development ", https://doi.org/10.1016/j.worlddev.2019.03.011.

But what is meant by "LGBTI-inclusive laws"? The right of every person to equality before the law is universal, as unequivocally set forth by Article 1 of the Universal Declaration of Human Rights of 1948: "All human beings are born free and equal in dignity and rights." In this setting, the protection of individuals on the basis of sexual orientation, gender identity and sex characteristics in OECD countries and beyond should not imply the creation of new or special rights for LGBTI people but, simply, extending the same rights to LGBTI persons as those enjoyed by everyone else by virtue of international human rights standards.

This chapter presents a critical set of LGBTI-inclusive laws that derives from applying these human rights standards to sexual orientation, gender identity and sex characteristics issues. Such standards include the

right to be free from discrimination, the right to freedom of expression, association and peaceful assembly, the right to be free from violence, the right to seek and to enjoy asylum from persecution in other countries, and the right to respect for private and family life. Notably, these standards are those underpinned by treaties, conventions or charters that have been signed and ratified by OECD countries and are therefore at least morally binding for those signatories. Section 2.1 presents the key providers of international human rights standards for OECD countries. Sections 2.2 and 2.3 focus on the set of LGBTI-inclusive laws that result from applying international human rights standards to LGBTI issues.[2] LGBTI-inclusive laws can be broken down into two categories: general provisions that are relevant for the inclusion of lesbian, gay, bisexual, transgender and intersex people altogether (Section 2.2), and group-specific provisions that aim to address the unique challenges faced by subsets of the LGBTI population (Section 2.3).

2.1. Key human rights stakeholders for OECD countries

Human rights laws in OECD countries are exposed to the human rights bodies of several international and regional organisations. Because it benefits from the strongest democratic legitimacy, the European Union (EU) who encompasses 22 OECD countries is the most powerful of these stakeholders. But other organisations are also playing a critical role, especially for non-EU OECD countries: the United Nations of which all OECD countries are members, the Council of Europe that includes all 27 European OECD countries (the 22 EU Members as well as Iceland, Norway, Switzerland, Turkey and the United Kingdom), and the Organization of American States that incorporates the four OECD countries located in North and South America (Canada, Chile, Mexico and the United States)[3].

2.1.1. The European Union

The Charter of Fundamental Rights (CFR) constitutes the human rights instrument of the European Union[4] since 2009. The CFR contributes to the setting of strong human rights standards in Member countries. It inspires EU law, including regulations and directives, that Member countries are not only bound to implement but also to enforce in a way that complies with the CFR. The European Commission is in charge of ensuring that national legal systems align with the requirements of EU law. If they do not, the Commission can initiate infringement proceedings against Member countries. In this case, a letter of formal notice is sent, by which the Commission allows the Member country to present its views regarding the breach observed. If no reply to the letter is received, or if the observations presented by the Member country in reply to that notice cannot be considered satisfactory, the Commission will move to the next stage of infringement procedure, which is the reasoned opinion, i.e. a formal request to comply with EU law. If the country still doesn't comply, the Commission may decide to refer the matter to the Court of Justice of the European Union. Most cases are settled before being referred to the court though.

LGBTI equality has been a priority of the European Union since 2014, when the European Parliament issued a resolution on the "EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity", and called on the European Commission to develop "a comprehensive multiannual policy to protect the fundamental rights of LGBTI people" (European Parliament, 2014[6]). Following this resolution, the European Commission presented in 2015 the "List of actions to advance LGBTI equality" that was endorsed in 2016 by the Council of the European Union. This list of actions presents the concrete measures the Commission committed to undertake between 2015 and 2019 in order to step up efforts to combat discrimination based on sexual orientation, gender identity and sex characteristics. It encompasses the following main branches:

- "Improving rights and ensuring legal protection of LGBTI people and their families in key areas of EU competence", i.e. adoption at EU level of key legislation for LGBTI people;

- "Strong monitoring and enforcement of existing rights of LGBTI people and their families under EU law", i.e. ensuring that the specific issues related to sexual orientation and gender identity are properly taken into consideration in both the transposition and implementation of EU legislation;
- "Reaching citizens, fostering diversity and non-discrimination", i.e. improving the social acceptance of LGBTI people through broad and inclusive communication campaigns;
- "Supporting key actors responsible to promote and advance equal rights for LGBTI people in the EU" (Member countries, public and private organisations);
- "Figures and facts for policy makers on LGBTI challenges at the EU: data collection and research activities", i.e. improving available data on the situation of LGBTI people;
- "External action: LGBTI issues in enlargement, neighbourhood and third countries", i.e. raising matters of concern regarding the situation of LGBTI persons in those countries.

Following this list of actions, multiple efforts were conducted in order to ensure that LGBTI people are not left behind – many of which are detailed in this report. To strengthen these actions, a group of 19 Member countries[5] presented in 2018 a Joint Non-Paper on the future of the List of actions, asking for the adoption of an LGBTI strategy. In 2019, the European Parliament also called on the European Commission to adopt a new strategic document to foster equality for LGBTI people that is currently under preparation.

2.1.2. Other critical stakeholders

On top of the European Union, the United Nations, the Council of Europe and the Organization of American States are playing an essential role to advance LGBTI rights among OECD countries. Although their capacity to sanction Member countries is more limited, these organisations are still instrumental in fostering state compliance with their human rights obligations (Carraro, 2019[7]).

The United Nations system of human rights

Human rights enforcement mechanisms are lacking at the global level. The only international court dealing with human rights violations is the International Criminal Court, but its scope is restricted to gross human rights violations such as genocide and war crimes.

Nevertheless, although hard coercion does not apply, the United Nations[6] (UN) is committed to trigger global adherence to human rights obligations through four leading entities:

- The Office of the High Commissioner for Human Rights (OHCHR) − created in 1993: the OHCHR assists governments to fulfil the obligations stipulated in the Universal Declaration of Human Rights, and supports individuals in claiming their rights. Although not legally binding, the Universal Declaration of Human Rights spelled out, for the first time in human history, basic civil, political, economic, social and cultural rights that all human beings should enjoy and has over time been widely accepted as the fundamental norm of human rights that everyone should respect and protect;
- The United Nations Human Rights Council (UNHRC) − created in 2006 in replacement of the United Nations Commission on Human Rights (UNCHR): the UNHRC is in charge of investigating allegations of breaches of human rights in UN Member states, in particular through the Universal Periodic Review, a peer review that analyses the situation of all 193 Member countries every four years and issues recommendations for improvement (a first cycle took place between 2007 and 2011, a second cycle between 2012 and 2016 and a third cycle between 2017 and 2021);
- UN treaty bodies, i.e. committees of independent experts in charge of monitoring governments' implementation of specific human rights conventions. Since the Universal Declaration of Human Rights (UDHR), nine core international human rights treaties have been adopted, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on

Economic, Social and Cultural Rights (ICESC). Together with the UDHR, these two covenants form the International Bill of Human Rights. These covenants have been ratified by all OECD Member countries[7] – except for the United States that signed but did not ratify the ICESC. One of the major tasks of UN treaty bodies is to undertake the state reporting procedure, during which state parties are evaluated on the implementation of their treaty obligations and receive recommendations for improvement;

- UN agencies involved in the promotion and protection of human rights: the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the United Nations Development Programme (UNDP), the International Labour Organization (ILO), the World Health Organization (WHO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Joint United Nations Programme on HIV/AIDS (UNAIDS), the United Nations Population Fund (UNFPA), and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women).

The Universal Periodic Reviews of the UNHRC and the state reporting procedure of the treaty bodies are viewed as particularly successful at fostering compliance (Carraro, 2019[7]). They generate peer and public pressure that may lead countries to align with their human rights obligations for fear of material or reputational losses. Meanwhile, these mechanisms encourage progress by teaching countries how to meet their human rights obligations, through practically feasible recommendations, both realistic and detailed.

Since 2011, the UN system of human rights has strengthened its engagement in protecting LGBTI rights, as shown by the following milestones:

- In 2011, UNHRC passed a resolution requesting that the OHCHR drafts a report "documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity" (UNHRC, 2011[8]). This was the first time that any United Nations body approved a resolution affirming the rights of LGBT persons, noting that the resolution was approved by a narrow margin but, significantly, received support from UNHRC members from all regions. The OHCHR report found that violence against LGBT people is pervasive worldwide (OHCHR, 2011[9]). This report paved the way to OHCHR's first landmark publication on LGBTI rights entitled "Born Free and Equal" (OHCHR, 2012[10]).
- In 2014, the UNHRC passed a second resolution that called for a report from the OHCHR on good practices for combating discrimination based on sexual orientation and gender identity (UNHRC, 2014[11]). This was the first time that a resolution on sexual orientation and gender identity issues was adopted by the UNHRC with the support of a majority of its members. The OHCHR report provides a list of recommendations to protect LGBT people against human rights violations that draws on UN Member states' best practices (OHCHR, 2015[12]). This report constituted the first step towards OHCHR's second landmark publication on LGBTI rights entitled "Living Free and Equal" (OHCHR, 2016[13]).
- In 2015, the OHCHR, together with ILO, UNAIDS, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UN Women and WHO, as well as the United Nations Office on Drug and Crime (UNODC) and the World Food Programme (WFP) issued a joint statement calling on governments to act urgently to end violence and discrimination against LGBTI adults, adolescents and children (OHCHR et al., 2015[14]). This initiative was applauded by the head of the United Nations – then Secretary-General Ban Ki-moon − in a historic address to the UN LGBTI Core Group, an informal group of UN Member states established in 2008 to promote LGBTI rights mainly through ongoing collaboration between Global South and Global North state diplomat: "When the human rights of LGBT people are abused, all of us are diminished. (…) This is not just a personal commitment – it is an institutional one. Some say I am the first Secretary-General to take up this cause – but I prefer to say I am the first of many. To lead this Organization means to carry out its sacred mission to deliver human rights for all people" (UN Secretariat General, 2015[15])

- In 2016, the UNHRC passed a third resolution to appoint an independent expert to identify the causes of violence and discrimination against people due to their sexual orientation and gender identity and discuss with governments how to protect those people (UNHRC, 2016[16]). That same year, the UN Security Council issued a press statement that "condemned in the strongest terms the terrorist attack in Orlando, Florida, on 12 June 2016, targeting persons as a result of their sexual orientation, during which 49 people were killed and 53 injured." This statement marked the first time the UN Security Council used language recognising violence targeting the LGBTI community (UN Security Council, 2016[17]).
- In 2018, Secretary-General António Guterres reiterated, on the occasion of the 70th anniversary of the Universal Declaration of Human Rights, that "the United Nations stands up for the rights of the LGBTI community." (UN Secretariat General, 2018[18]).
- In 2019, the UNHRC passed a fourth resolution to renew the mandate of the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

The Council of Europe

The European Convention on Human Rights (ECHR) constitutes the human rights instrument of the Council of Europe[8] (CoE) since 1953. This Convention benefits from strong enforcement mechanisms: the European Court of Human Rights is responsible for ruling on individual or state applications alleging violations of the civil and political rights set out in the Convention (after exhausting all remedies available at national level), and Member countries are obligated to execute judgements by the Court.

The Council of Europe is composed of two statutory bodies that are the guardians of the Council's fundamental values:

- The Committee of Ministers, made up of the foreign ministers of each Member country: this Committee notably monitors the execution of judgements by the European Court of Human Rights, particularly to ensure payment of the amounts awarded by the Court to the applicants in compensation for the damage they have sustained;
- The Parliamentary Assembly, composed of 324 members drawn from the national parliaments of the Member countries: the resolutions and recommendations adopted by the Parliamentary Assembly in order to maintain strong human rights standards are politically binding (although not legally binding), meaning that they can be invoked in advocacy activities within each Member country.

The Commissioner for Human Rights is the third key human rights body within the Council of Europe. Established in 1999, it is independent and responsible for promoting awareness of and respect for human rights in the Member countries. To achieve its mandate, the Commissioner for Human Rights conducts visits to each Member country for an evaluation of the human rights situation, and issues reports, opinions and recommendations to governments.

Council of Europe's long-lasting commitment to protect LGBTI rights dates back to 1981, when the Parliamentary Assembly adopted a resolution urging Member countries to stop human rights violations against homosexuals (CoE Parliamentary Assembly, 1981[19]). This resolution was complemented in 1989 by a resolution on "the condition of transsexuals" (CoE Parliamentary Assembly, 1989[20]) and in 2000 by a resolution on "the situation of lesbians and gays" (CoE Parliamentary Assembly, 2000[21]). The role of the Council of Europe in creating a normative framework to promote equal treatment of LGBTI people has been strengthening since 2010 when:

- The Committee of Ministers issued a milestone document providing recommendations to Member countries "to combat discrimination on grounds of sexual orientation or gender identity" (CoE Committee of Ministers, 2010[22]);

- The Parliamentary Assembly adopted a resolution calling Member countries to end "discrimination on the basis of sexual orientation and gender identity" (CoE Parliamentary Assembly, 2010[23]).

These two initiatives paved the way to the Council of Europe's first landmark publication on LGBTI rights entitled "Discrimination on Grounds of Sexual Orientation and Gender Identity" (CoE Commissioner for Human Rights, 2011[24]).[9]

The Organization of American States

The American Convention on Human Rights constitutes the human rights instrument of the Organization of American States[10] (OAS) since 1978. The Convention has been signed and ratified by Chile and Mexico, but not by Canada and the United States.[11] The bodies responsible for overseeing compliance of the signatories with the Convention are:

- The Inter-American Commission on Human Rights (IACHR) whose main task is to receive, analyse, and investigate individual petitions alleging violations of specific human rights protected by the American Convention on Human Rights;
- The Inter-American Court of Human Rights whose mission is both adjudicatory (the Court hears and rules on the specific cases of human rights violations referred to it) and advisory (the Court issues opinions on matters of legal interpretation brought to its attention by other OAS bodies or Member countries).

In 2008, the General Assembly of the OAS adopted a resolution urging Member countries to combat "acts of violence and related human rights violations committed against individuals because of their sexual orientation and gender identity" (OAS General Assembly, 2008[25]). The Inter-American Commission on Human Rights later published a milestone document on the protection and promotion of LGBTI rights to provide Member countries with guidance on actions to address the prevalence of violence and discrimination against LGBTI persons (IACHR, 2015[26]; 2018[27]).

2.2. LGBTI-inclusive laws: General provisions

This section and the next focus on the set of LGBTI-inclusive laws that result from applying international human rights standards to LGBTI issues. Section 2.2 deals with general provisions that are relevant for the inclusion of lesbian, gay, bisexual, transgender and intersex people altogether. These general provisions can be decomposed into five components: (i) protection of LGBTI people against discrimination, (ii) protection of LGBTI people's civil liberties; (iii) protection of LGBTI people against violence; (iv) protection of LGBTI people fleeing persecution abroad; and (v) establishment of an LGBTI-inclusive equality body, ombudsman or human rights commission.

2.2.1. Protection of LGBTI people against discrimination

The binding instruments of the European Union as well as the 2019 resolution of the European Parliament on the rights of intersex people ensure strong protection against discrimination to LGBTI people (Box 2.2).

Box 2.2. The European Union normative framework to prohibit discrimination against LGBTI people

On the protection of LGB individuals against discrimination

Paragraph 1 of Article 21 of the European Union Charter of Fundamental Rights explicitly includes sexual orientation as a category protected from discrimination: "Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or *sexual orientation* shall be prohibited". Additionally, in 2000, the Council of the European Union passed Council Directive 2000/78/EC, known as the EU Employment Equality Directive, which prohibits discrimination on the grounds of, inter alia, sexual orientation in the area of employment. In 2008, the European Commission presented a proposal for a Council directive on implementing the principle of equal treatment outside the labour market, irrespective of age, disability, sexual orientation or religious belief (the so-called "Horizontal Directive" that prohibits discrimination in education, social protection and the provision of and access to goods and services). The Horizontal Directive has not passed yet, though.

On the protection of transgender individuals against discrimination

Paragraph 1 of Article 21 of the European Union Charter of Fundamental Rights lacks a provision that explicitly prohibits discrimination on the grounds of gender identity, but the Charter's list is not exhaustive and is open to broader interpretation as indicated in the wording "such as" as well as in the case law of the Court of Justice of the European Union (CJEU). More precisely, in the case of P v. S and Cornwall County Council 1996, the CJEU was requested to consider the scope of sex discrimination protections within Directive 76/207/EEC that prohibits discrimination on the grounds of sex in employment. The CJEU ruled that the category of sex protects gender identity although in a narrow sense. It held that the right to equal treatment and prohibition of discrimination is not confined solely on the fact that an individual is of one sex or the other. Rather, "it must extend to discrimination arising from gender reassignment… since to dismiss a person on the ground that he or she intends to undergo, or has undergone, gender reassignment is to treat him or her unfavourably by comparison with persons of the sex to which he or she was deemed to belong before that operation". The right to protection from discrimination for persons that have undergone gender reassignment is further emphasised in Directive 2006/54/EC (paragraph 3), which pertains to the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. Moreover, although Directive 2004/113/EC on sex equality in access to goods and services does not expressly refer to gender reassignment, the European Commission has argued that the Directive should be interpreted as providing such protection.[1]

On the protection of intersex individuals against discrimination

The protection of discrimination against intersex persons is not explicitly referenced in the binding documents produced by the European Union. However, in February 2019, the European Parliament adopted a resolution on the rights of intersex people in which it (i) "deplores the lack of recognition of sex characteristics as a ground of discrimination across the EU, and therefore highlights the importance of this criterion in order to ensure access to justice for intersex people"; (ii) "calls on the Commission to enhance the exchange of good practices on the matter"; (iii) "calls on the Member states to adopt the necessary legislation to ensure the adequate protection, respect and promotion of the fundamental rights of intersex people, including intersex children, including full protection against discrimination" (European Parliament, 2019[28]).

[1] See for example page 4 of the European Commission's Report on the application of Council Directive 2004/113/EC.

Although the human rights instruments of the United Nations, the Council of Europe and the Organization of American States do not explicitly prohibit discrimination against LGBTI individuals,[12] they include a broad protected category (i.e. "other status" or "any other social condition") that reflects that the list of protected grounds of discrimination is intended to be open-ended, illustrative, and non-exhaustive. Over time, this broad protected category has been interpreted as applying to sexual orientation, gender identity and eventually sex characteristics. More precisely:

- The Office of the High Commissioner for Human Rights (OHCHR) has repeatedly emphasised that grounds for discrimination must evolve with context and that sexual orientation, gender identity and sex characteristics are impermissible bases for distinction in international human rights law (OHCHR, 2012[10]). Moreover, the UN treaty bodies in charge of international human rights treaties that include a general article on discrimination have broadly confirmed that sexual and gender minorities are protected from discrimination under those treaties. For instance, in 2009, the Committee on Economic, Social and Cultural Rights that scrutinises Member states' compliance with the International Covenant on Economic, Social and Cultural Rights issued a general comment where "other status" is explicitly defined as including LGBTI individuals: "'Other status' as recognised in Article 2, paragraph 2, includes sexual orientation. States parties should ensure that a person's sexual orientation is not a barrier to realising Covenant rights, for example, in accessing survivor's pension rights. In addition, gender identity is recognised as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace" (UN Committee on Economic, 2009[29]).
- Since 1991, the European Court of Human Rights (ECtHR) has increasingly relied on the following definition of discrimination in its judgments concerning violations of Article 14 of the ECHR: "treating differently, without an objective and reasonable justification, persons in relevantly similar situations" (Fredin v. Sweden 1991[13]), meaning that *any* group identity is viewed as a possible ground of unlawful discrimination. Consistent with this standard, the ECtHR has explicitly held that "the prohibition of discrimination under Article 14 of the Convention duly covers questions related to sexual orientation and gender identity" (Identoba and others v. Georgia 2015[14]). No case related to discrimination against intersex persons has been submitted to the ECtHR yet. However, there is little doubt that the ECtHR would establish on that occasion that sex characteristics are also a ground protected against discrimination under the category of "other status" referenced in Article 14 of the ECHR. Anticipating this stance, the Parliamentary Assembly of the Council of Europe published in 2017 a resolution that urges Member countries to "ensure that anti-discrimination legislation effectively applies to and protects intersex people, either by inserting sex characteristics as a specific prohibited ground in all anti-discrimination legislation, and/or by raising awareness (…) of the possibility of dealing with discrimination against [intersex people] under the prohibited ground of sex, or as an "other" (unspecified) ground where the list of prohibited grounds in relevant national anti-discrimination provisions is non-exhaustive" (CoE Parliamentary Assembly, 2017[30]).
- In 2017, the Inter-American Court of Human Rights (IACHR) clarified in a milestone advisory opinion that the expression "any other social condition" in Article 1 of the American Convention on Human Rights prohibits discriminatory laws, acts or practices based on an individual's sexual orientation and gender identity (IACHR, 2017[31]). The advisory opinion also calls for greater inclusion of all sexual and gender minorities, including intersex people.

The right for LGBTI people to be free from discrimination has been portrayed as potentially conflicting with other fundamental rights. Notably, some individuals invoke their right to freedom of religion or belief to justify discrimination against sexual and gender minorities, for instance by refusing to provide them with goods or services. Clerks may refuse to issue marriage licences, inns to rent lodgings, and bakers to make cakes for same-sex couples because of faith.

The right to freedom of religion or belief is deeply anchored in international human rights law, as shown by the International Bill of Human Rights (Article 18 of the UDHR and Article 18 of the ICCPR), as well as by Article 10 of the CFR, Article 9 of the ECHR and Article 12 of the ACHR. The right to freedom of religion or belief has two components. The first component consists in the right to freedom of thought, conscience and religion, which means the right to hold or to change one's religion or belief and which cannot be restricted under any circumstances. The second component entails the right to manifest one's religion or belief. According to international human rights law, the latter right can be restricted, but only under a limited set of conditions. In particular, to be permissible, a restriction on the freedom of religion or belief must aim to protect the rights and freedoms of others, where the term "others" refers to other persons individually or as members of a community. In this setting, numerous courts (e.g. in Canada, Spain or the United Kingdom) have found that claims for exemptions from anti-discrimination laws under the justification that these laws interfere with the right to manifest one's religion or beliefs may be dismissed.[15] The harm inflicted to LGBTI people who are turned away because of who they are (and to society as a whole because of denying the very principle of equality before the law) is indeed viewed as outweighing the harm to those whose discriminatory manifestation of religious belief cannot be accommodated (Donald and Howard, 2015[32]; INCLO, 2015[33]; UN Special Rapporteur on freedom of religion or belief, 2017[34]).

Consistent with this interpretation, the joint statement by the OHCHR and UN agencies on ending violence and discrimination against LGBTI people insists that "cultural, religious and moral practices and beliefs and social attitudes cannot be invoked to justify human rights violations against any group, including LGBTI persons" (OHCHR et al., 2015[14]). Similarly, in the two cases resolved by the ECtHR where religious freedom and the right to be free from discrimination were conflicting, the ECtHR ruled in favour of the latter (Box 2.3). Finally, the Inter-American Court of Human Rights affirmed in its landmark advisory opinion that philosophical or religious convictions "cannot condition what the Convention establishes in relation to discrimination based on sexual orientation" (IACHR, 2017[31]).

That said, religious freedom is a fundamental right that must be vigorously defended, meaning that when borderline cases come up, i.e. cases where the discriminatory consequences of religious freedom for LGBTI people is more difficult to establish, a diligent and cautious approach is critical to avoid magnifying tensions around LGBTI-related issues. In case of doubt, it may be advisable to refrain from employing legal sanctions or other restrictive measures (UN Special Rapporteur on freedom of religion or belief, 2017[34]). This stance was unanimously adopted by the Supreme Court of the United Kingdom in the case "Lee v Ashers Baking Company Ltd and others" that is now being assessed by the ECtHR (Box 2.3).

Box 2.3. Tension between freedom of religion or beliefs and non-discrimination against LGBTI people: A summary of three cases submitted to the European Court of Human Rights

Case 1: Ladele v. London Borough of Islington (2009)

Lillian Ladele was employed by the London Borough of Islington, a local public authority, from 1992. Islington had a "Dignity for All" equality and diversity policy that especially targeted discrimination based on age, disability, gender, race, religion and sexuality. In 2002 Ms. Ladele became a registrar of births, deaths and marriages. Following the introduction of the Civil Partnership Act 2004, Islington designated all of its existing registrars as civil partnership registrars as well as marriage registrars. Ms. Ladele objected to being required to officiate at civil partnership ceremonies due to her Christian beliefs. Initially, Ms. Ladele was permitted to make informal arrangements with colleagues to exchange work so that she did not have to conduct civil partnership ceremonies. In March 2006, however, two colleagues complained that her refusal to carry out such duties was discriminatory. Ms. Ladele was informed that, in the view of the local authority, refusing to conduct civil partnerships could put her in breach of the Code of Conduct and the equality policy. She was asked to confirm in writing that she would henceforth officiate at civil partnership ceremonies. Ms. Ladele refused to agree and requested

that the local authority make arrangements to accommodate her beliefs. In May 2007 the local authority commenced a preliminary investigation. This investigation concluded in July 2007 with a recommendation that a formal disciplinary complaint be brought against Ms. Ladele that, by refusing to carry out civil partnerships on the ground of the sexual orientation of the parties, she had failed to comply with the local authority's Code of Conduct and equality and diversity policy. A disciplinary hearing took place on 16 August 2007. Following the hearing, Ms. Ladele was asked to sign a new job description requiring her to carry out straightforward signings of the civil partnership register and administrative work in connection with civil partnerships, but with no requirement to conduct ceremonies. Ms. Ladele made an application to the Employment Tribunal, complaining of direct and indirect discrimination on grounds of religion or belief and harassment. The Employment Tribunal held that she had been directly and indirectly discriminated against, as well as harassed. The Employment Appeals Tribunal reversed the decision, and Ladele appealed to the Court of Appeal. She claimed that allegations of direct discrimination and harassment should have been remitted. By contrast, Islington argued there was no choice, given the Equality Act (Sexual Orientation) Regulations 2007 to do anything but require Ms. Ladele to perform her full duties. The Court of Appeal upheld the Employment Appeal Tribunal's conclusions on 15 December 2009. The ruling by the Court of Appeal was confirmed by the European Court of Human Rights in 2013 in Eweida and Others v. the United Kingdom.

Case 2: McFarlane v. Relate Avon Ltd (2010)

Gary McFarlane was employed as a relationship counsellor by the Avon branch of Relate, a charity providing relationship support including counselling for couples, families, young people and individuals, sex therapy, mediation and training courses. He joined the organisation in August 2003, and a condition of his employment was acceptance of the group's equal opportunities policy, which required him to ensure "that no person... [receive] less favourable treatment on the basis of characteristics, such as... sexual orientation...". Relate was also a member of the British Association for Sexual and Relationship Therapy, whose Code of Ethics required the therapist to "avoid discrimination... on grounds of... sexual orientation." Mr. McFarlane initially had some concerns about providing counselling services to same-sex couples, but following discussions with his supervisor, he accepted that simply counselling a homosexual couple did not involve endorsement of such a relationship and he was therefore prepared to continue. In 2007 Mr. McFarlane commenced Relate's post-graduate diploma in psycho-sexual therapy (PST). By the autumn of that year there was a perception within Relate that he was unwilling to work on sexual issues with homosexual couples. In response to these concerns, Relate's General Manager met with Mr. McFarlane in October 2007. Mr. McFarlane confirmed he had difficulty in reconciling working with couples on same-sex sexual practices and his duty to follow the teaching of the Bible. The Manager expressed concern that it would not be possible to filter clients in order to prevent Mr. McFarlane from having to provide psycho-sexual therapy to lesbian, gay or bisexual couples. Despite his subsequent claims that he would agree to carry out relationship work where it involved same-sex sexual issues, Mr. McFarlane appeared unable to counsel same-sex clients in both relationship counselling and PST with regard to all the sexual issues they may have brought. In 2008, Mr. McFarlane was dismissed from his post. Mr. McFarlane applied to the Employment Tribunal, claiming in particular discrimination on the ground of religion or belief. This claim of discrimination was dismissed. Mr. McFarlane appealed against this dismissal to the Employment Appeal Tribunal that upheld the decision of the Employment Tribunal. Mr. McFarlane applied to the Court of Appeal for permission to appeal against the decision of the Employment Appeal Tribunal. On 20 January 2010 the Court of Appeal refused the application on the basis that there was no realistic prospect of the appeal succeeding in the light of the Court of Appeal judgment of December 2009 in Ladele v London Borough of Islington (2009). The ruling by the Employment Appeal Tribunal was confirmed by the European Court of Human Rights in 2013 in Eweida and Others v. the United Kingdom.

Case 3: Lee v. Ashers Baking Company Ltd and others (2018)

In 2014 Gareth Lee, a homosexual rights activist, placed an order with Ashers Baking Company, a Belfast bakery, for a cake decorated with the slogan "support gay marriage" as same-sex marriage was illegal at that time in Northern Ireland. The McArthurs, the owners of Ashers Baking Company who are Christians, declined the order and refunded Lee's money, saying they could not make a cake that supported something they found offensive to their religious beliefs. Lee complained to the Equality Commission for Northern Ireland that he had been directly discriminated against on the grounds of his sexual orientation, and the Equality Commission supported him in filing a discrimination lawsuit against Ashers and the McArthurs. The county court found in Lee's favour and fined Ashers GBP 500 in damages. Ashers appealed to the Court of Appeal, which upheld the original verdict on the grounds of direct discrimination. Ashers then appealed to the Supreme Court of the United Kingdom. In a unanimous ruling, the Supreme Court reversed the decisions at the Belfast county court and the Court of Appeal that Ashers had discriminated against Lee on the grounds of him being gay. The Supreme Court made a distinction between someone refusing to make a cake because of a message they were being asked to put on the cake and refusing to make a cake because the person requesting it had a protected characteristic. The court found that the McArthurs did not refuse to make the cake on the grounds of Lee's personal sexual orientation but on the grounds that they disagreed with the message they were being asked to put on it. They ruled there was no direct discrimination. The court also considered associative discrimination, but again ruled that there was no discrimination on the basis of Lee's sexual orientation, as the McArthurs did not refuse service on those personal grounds: they found that the McArthurs would have refused to make the cake carrying the message for any customer regardless of the customer's sexual orientation. In August 2019, this so-called "gay cake" case was referred to the European Court of Human Rights, which has yet to issue a ruling.

2.2.2. Protection of LGBTI people's civil liberties

The universal guarantee of the rights to freedom of expression, peaceful assembly and association constitutes the foundation of every free and democratic society. Such rights are enshrined in international human rights law, including:

- The International Bill of Human Rights: Article 19 (freedom of expression) and Article 20 (freedom of peaceful assembly and association) of the UDHR, as well as Article 19 (freedom of expression), Article 21 (freedom of peaceful assembly) and Article 22 (freedom of association) of the ICCPR;
- The European Union Charter of Fundamental Rights: Article 11 (freedom of expression) and Article 12 (freedom of peaceful assembly and association);
- The European Convention on Human Rights: Article 10 (freedom of expression) and Article 11 (freedom of peaceful assembly and association);
- The American Convention on Human Rights: Article 13 (freedom of expression), Article 15 (freedom of peaceful assembly) and Article 16 (freedom of association).

International human rights treaties allow for restrictions on freedoms of expression, peaceful assembly and association. However, any restriction must pass a three-pronged test to be deemed permissible (UN Human Rights Committee, 2011[35]; Council of Europe, 2017[36]; IACHR, 2015[26]). More precisely, any restriction must altogether:

- Be lawful, i.e. "prescribed by law". Any interference with the exercise of freedoms of expression, peaceful assembly or association must have a basis in national law. In other words, the national law has to establish the conditions under which the rights may be limited, with sufficient precision so as to give individuals an adequate indication of what qualifies legal behaviour.

- Pursue legitimate aims, i.e. governments may only impose restrictions on the rights to freedom of expression, peaceful assembly and association in pursuit of a limited number of legitimate aims. The exact terms included in this list vary by fundamental rights convention but key grounds for restricting freedoms of expression, peaceful assembly and association relate to the following five dimensions:
  - Protection of national security, e.g. freedom of expression may be restricted when it consists in disclosing classified information;
  - Protection of public order, e.g. freedom of expression may be restricted when it consists in falsely yelling fire in a crowded movie theatre;
  - Protection of public morals, e.g. freedom of expression may be restricted when it consists in displaying pornographic content accessible to the public at large, free of charge and with no age restriction;
  - Protection of the reputation of others, e.g. freedom of expression may be restricted when it consists in falsifying facts to attack a person's honour;
  - Protection of the rights of others: e.g. freedom of expression may be restricted if it consists in intimidating voters in the framework of an electoral campaign.
- Be necessary in a democratic society. This condition has two implications.
  - First, governments must demonstrate that the restrictions placed on the right are necessary, i.e. they aim to avert a real and not only a hypothetical danger. For instance, two of the examples listed above would need to be specified in order to be judged as necessary. Restricting freedom of expression when it consists in revealing classified information will be viewed as critical to avoid a real danger only if the "classified" status is appropriately granted, i.e. applied to information whose disclosure would indeed pose a serious threat to national security. Similarly, restricting freedom of expression when it consists in displaying pornographic content accessible to the public at large will be viewed as necessary only if the term "pornographic" is not abusively used, which implies that it refers to adults engaged in sexual acts intended to cause sexual excitement, rather than merely kissing each other in a non-provocative way.
  - Second, governments must ensure that any restrictive measures fall within the limit of what is acceptable in a "democratic society", that is a society characterised by tolerance, pluralism and broadmindedness.[16] In particular, these restrictive measures must be proportional to the legitimate aim they pursue and be the least intrusive instruments amongst those which might achieve their protective function. This requirement seeks to guarantee that the relation between right and restriction is not reversed, a core characteristic of democracies.

Some countries have sought to justify restrictions to the rights to freedom of expression, peaceful assembly and association of LGBTI people on several grounds, chief of which the grounds of protection of public morals (UN Secretariat General, 2016[37]). These restrictions have recently taken the form of so-called "gay propaganda laws" similar to the provisions adopted by several Russian federal entities as early as 2006, a process which culminated in 2013 with the passage of the federal law "for the Purpose of Protecting Children from Information Advocating for a Denial of Traditional Family Values" (Box 2.4). Yet, gay propaganda laws do not pass the aforementioned three-pronged test, as demonstrated by judgements of the UN Human Rights Committee in charge of monitoring governments' implementation of the International Covenant on Civil and Political Rights (Irina Fedotova v. Russian Federation 2010[17]) and by rulings of the ECtHR (Bayev and others v. Russia 2017[18]).

Box 2.4. Russia's gay propaganda law

The Russian federal law "for the Purpose of Protecting Children from Information Advocating for a Denial of Traditional Family Values" (Federal Law no. 135-FZ of 29 June 2013) was unanimously approved by the State Duma and signed into law by President Vladimir Putin in 2013. This law aims to protect children from being exposed to content presenting homosexuality as being a norm. It amends two child protection laws (Federal Law no. 124-FZ of 24 July 1998 and Federal Law no. 436-F3 of 29 December 2010) in order to add "information promoting non-traditional sexual relationships" among the list of "information prohibited for dissemination to children". Moreover, the law amends the Code of Administrative Offences of the Russian Federation by adding Article 6.21 devoted to "Promotion of non-traditional sexual relations among minors". Article 6.21 provides: "The promoting of non-traditional sexual relationships among minors, expressed in the dissemination of information aimed at creating in minors a non-traditional sexual orientation, promoting the attractiveness of non-traditional sexual relationships, creating a distorted image of the social equivalence of traditional and non-traditional sexual relationships, or imposing information about non-traditional sexual relationships, arousing interest in such relationships, if these activities do not contain acts punishable under criminal law, shall be subject to the imposition of an administrative fine, ranging from 4 000 to 5 000 roubles for citizens; from 40 000 to 50 000 roubles for officials; and, for legal entities, a fine ranging from 800 000 to 1 000 000 roubles or an administrative suspension of their activities for up to 90 days."

More precisely, these judgements have established that gay propaganda laws impose restrictions that fail to be justified as necessary in a democratic society for two reasons. First, these laws rely on ambiguous terms which may be used to ban any mention of homosexuality in public space. The scope of this limitation is unacceptably large in a democracy supposed to promote tolerance, pluralism and broadmindedness. In the case of Russia for instance, the wording "arousing interest in non-traditional sexual relationships" may include even neutral information on homosexuality. Moreover, the term "among children" is also vague and does not offer clarification of whether the restrictions concern expression in the presence of minors or in any place where minors could be present. Several convictions confirm that Russia's gay propaganda law serves to impose a broad range of limitations on LGBTI people's civil liberties. As an example, a man was fined for holding up a banner with the quote "Homosexuality is not a perversion" in front of the St. Petersburg City Administration, a public place that is not specifically assigned to minors.

Second, countries that pass gay propaganda laws typically invoke two objectives as reasons to restrict freedoms of expression, peaceful assembly and association of LGBTI people: protection of public morals and protection of the rights of others. These stated objectives fall inside the list of legitimate aims mentioned above, but given the way these objectives are defined, none of them appears to be necessary in a democratic society. Concerning the protection of public morals, the vague wording that characterises gay propaganda laws makes clear that the prohibition is not limited to the pornographic display of homosexuality. In other words, public morals are implicitly equated to the values and traditions of the (heterosexual) majority. Such a definition is not permissible in a democracy because it would imply that the exercise by a minority group of the freedoms protected in international human rights treaties is conditional on acceptance by the majority. As put forward by the Human Rights Committee in its general comment on Article 19 of the ICCPR "the concept of morals derives from many social, philosophical and religious traditions", meaning that any limitation imposed for the "purpose of protecting morals must be based on principles not deriving from a single tradition" (UN Human Rights Committee, 2011[35]). The second objective allegedly pursued by anti-gay propaganda laws consists of shielding minors from information that could convey a positive image of homosexuality and, hence, potentially convert them to a "homosexual lifestyle". Yet, there is no scientific evidence suggesting that the mere mention of homosexuality in the public domain would adversely affect children.[19] Therefore, the restrictions imposed

by gay propaganda laws are not necessary since they aim to avert only a hypothetical danger, not a real one.

All in all, international human rights bodies have concluded that gay propaganda laws are discriminatory to the extent that "the authors of the provisions under consideration have not put forward any reasonable and objective criteria to justify the prohibition of "homosexual propaganda" as opposed to "heterosexual propaganda"" (Venice Commission, 2013[38]).[20] Hindering expression promoting LGBTI people's rights, erecting barriers to the organisation of peaceful LGBTI public events such as pride parades, or impeding the registration, operation and access to funding of LGBTI human rights associations under the guise of preserving public morals and protecting children is incompatible with the underlying values of international human rights treaties. It is worthwhile stressing that invoking the protection of public order to ban pride parades or LGBTI human rights associations is judged by international human rights stakeholders as equally unsubstantiated. It is indeed incumbent on public authorities in a democracy to secure the right to freedom of assembly and association of individuals by protecting them from their opponents' physical violence. This protection is particularly necessary when those at risk of retaliation belong to minority groups since their views are more likely to be judged as unpopular by the majority (see Alekseyev v. Russia 2011[21] concerning LGBTI people's freedom of peaceful assembly and Zhdanov and others v. Russia 2019[22] concerning LGBTI people's freedom of association).

2.2.3. Protection of LGBTI people against violence

Governments have an obligation under international human rights law to protect individuals from being arbitrarily deprived of their life by others, as well as from being exposed to torture or other cruel, inhumane or degrading treatment. Such an obligation is clearly stated in:

- The International Bill of Human Rights: Article 3 (right to life) and Article 5 (protection against torture) of the UDHR, as well as Article 6 (right to life) and Article 7 (protection against torture) of the ICCPR;
- The European Union Charter of Fundamental Rights: Article 2 (right to life) and Article 4 (protection against torture);
- The European Convention on Human Rights: Article 2 (right to life) and Article 3 (protection against torture);
- The American Convention on Human Rights: Article 4 (right to life) and Article 5 (protection against torture).

Hate crime laws

The duty to safeguard the right to be free from violence requires countries to take special measures of protection towards vulnerable groups, such as those aimed to deter hate crimes, i.e. crimes motivated by hatred against marginalised groups of people to which the offender believes the victim belongs. This objective is best achieved, at least as a first step, with the passage of so-called "hate crime laws" which permit authorities to deem acts motivated by bias against a protected list of grounds as an aggravating circumstance, either by defining such an act as a distinct crime or by enhancing punishment of an existing offense. That sexual and gender minorities should be part of the protected groups is unanimously upheld by international human rights stakeholders:

- The European Union (EU) has called for protection of LGBTI persons from violence in an assortment of non-binding resolutions and recommendations (European Parliament, 2014[6]). Moreover, the EU closely monitors the implementation of Directive 2012/29/EU (the Victims' Rights Directive) which ensures that all victims − including those subject to homophobic and transphobic bias motivated crime − receive appropriate information, support and protection and are able to

participate in criminal proceedings. The Directive lays down a set of binding rights for victims and clear obligations on Member countries to respect these rights in practice.

- In 2011, the OHCHR found that violence against LGBT people shows "a high degree of cruelty and brutality", including "beatings, torture, mutilation, castration and sexual assault" (OHCHR, 2011[9]). In 2015, the OHCHR explicitly recommended that states address such violence by "enacting hate crime laws that establish homophobia and transphobia as aggravating factors for purposes of sentencing" (OHCHR, 2015[12]). In 2018, in its General Comment on Article 6 (right to life) of the ICCPR, the Human Rights Committee urged states to take special measures of protection towards groups in situation of vulnerability, including "lesbian, gay, bisexual, transgender and intersex (LGBTI) persons", notably by adopting hate crime laws (UN Human Rights Committee, 2018[39]).
- In 2010, the Committee of Ministers of the Council of Europe recommended that Member countries ensure (i) "effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator" and (ii) "that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance" (CoE Committee of Ministers, 2010[22]). The Parliamentary Assembly has adopted numerous resolutions and recommendations that similarly condemn violence against LGBT persons and advocates the passage of hate crime laws as an important preventative and protective measure (CoE Parliamentary Assembly, 2010[23]; 2013[40]). In 2017, the Commissioner for Human Rights of the Council of Europe explicitly included intersex people in its recommendation about hate crime legislation. It states that "hate crime legislation should be reviewed to ensure that it protects intersex people. Sex characteristics should be included as a specific ground in equal treatment and hate crime legislation or, at least, the ground of sex/gender should be authoritatively interpreted to include sex characteristics as prohibited grounds of discrimination" (CoE Commissioner for Human Rights, 2017[41]).
- In 2015, in its landmark report on violence against LGBTI persons, the Inter-American Commission on Human Rights recommends Member countries to pass hate crime legislation in order to "identify, prosecute, and punish prejudice-based violence against persons due to perceived or actual sexual orientation and gender identity" (IACHR, 2015[26]). These recommendations are further echoed by the 2018 IACHR's report on Recognition of the Rights of LGBTI Persons (IACHR, 2018[27]). In this report, the IACHR recognises that several Member countries "have adopted legislation that specifically criminalises violence based on prejudice against LGBTI persons, or that establishes aggravating circumstances for crimes committed against this population". The IACHR expressly stresses its support to these measures by emphasising that they constitute "a first step towards effectively combating violence perpetrated on the basis of the victims' sexual orientation, gender identity and expression or body diversity."

Hate speech laws

To fully deter hate crimes, it is important that governments also prohibit particularly severe forms of "hate speech". Evidence on the causal relationship between incitement to hatred and hate crime is indeed growing (Mueller and Schwarz, 2017[42]). Article 20(2) of the ICCPR sets forth that "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."[23] International human rights standards have clarified that "hate speech" provisions should include a broader range of protected characteristics than that initially considered by Article 20(2) of the ICCPR, including sexual orientation, gender identity or sex characteristics. The 2015 joint statement by the OHCHR and UN agencies insists on the importance of hate speech legislation to end violence and discrimination against LGBTI people (OHCHR et al., 2015[14]), as do several milestones documents issued by the Council of Europe (CoE Committee of Ministers, 2010[22]; CoE Parliamentary Assembly, 2010[23]; 2013[40]; CoE Commissioner for Human Rights, 2017[41]) as well as by the OAS (IACHR, 2015[26]; 2018[27]).

The EU has similarly stepped up its efforts to prevent and combat hate speech through Directive 2018/1808, which revises Directive 2010/13/EU (the so-called Audiovisual Media Services Directive). The revision underscores the battle to combat hate speech in all audiovisual content. It notably urges Member countries to ensure that audiovisual media services do not contain incitement to violence or hatred, based on the grounds listed in Article 21 of the Charter of Fundamental Rights, including sexual orientation.

Box 2.5. Drawing the line between freedom of expression and hate speech

The prohibition in Article 20(2) of the ICCPR requires that:

- The speaker addresses a public audience, and her/his expression includes advocacy of hatred targeting a protected group based on protected characteristics, constituting incitement to discrimination, hostility or violence.
- The speaker specifically intends to engage in advocacy of discriminatory hatred and intends for or has knowledge of the likelihood of the audience being incited to a discrimination, hostility or violence. Recklessness and negligence are not sufficient as a standard of intent, meaning that consideration should be given to protecting communications that are simply ill-judged or flippant (such as a bad joke), or where the intent is more nuanced (to satire, provoke thought or challenge the status quo, including through art).
- The danger of the audience actually being incited to a proscribed act as a consequence of the advocacy of hatred, is likely and imminent. There must be a reasonable probability of discrimination, hostility or violence occurring as a direct consequence of the expression, but the proscribed outcome itself needs not actually occur. Evaluating whether this condition is fulfilled should include considering:
  - Whether the audience understands the advocacy of hatred as a call to acts of discrimination, hostility or violence;
  - Whether the speaker was in the position to influence the audience. Special considerations should be made when the speaker is a politician or a prominent member of a political party, a religious leader, a teacher, or a person of similar status due to the stronger attention and influence these individuals exert over others;
  - Whether the audience had the means to resort to acts of discrimination, hostility or violence;
  - Recent incidences of the targeted group suffering discrimination, hostility or violence as the result of incitement;
  - The length of time that passes between the speech and the time when discrimination, hostility or violence could take place is not so long to bring into doubt the causative impact of the expression.

Source: UN Rabat Plan of Action (OHCHR, 2013[43]) as well as the following publications by Article 19: The Camden Principles on Freedom of Expression and Equality (Article 19, 2009[44]), Prohibiting incitement to discrimination, hostility or violence (Article 19, 2012[45]) and 'Hate Speech' Explained. A Toolkit (Article 19, 2015[46]).

Of course, it is essential that hate speech legislation be not used to justify inappropriate restrictions on the right to freedom of expression. This objective implies that any limitation on hate speech passes the three-pronged test described in Section 2.2.2, meaning that it must (i) be prescribed by law, (ii) pursue legitimate aims and (iii) be necessary in a democratic society. Box 2.5 provides guidelines on how to concretely fulfil this requirement, based on the UN Rabat Plan of Action on the prohibition of incitement to hatred (OHCHR, 2013[43]), as well as the milestone documents produced by Article 19[24], in collaboration with various experts in international human rights law, including high-level UN officials.

For hate crime and hate speech legislation to be fully effective, governments should repeal any legal provisions that could be used to justify violence against LGBTI people, chief of which are those that criminalise homosexuality (see 2.3.1). But governments should also curtail the effectiveness of some legal tactics such as the "gay and trans panic defence" whereby the perpetrator of an offense claims that their victim's sexual orientation or gender identity not only explains but also excuses their loss of self-control and subsequent assault. Legislative action to combat this tactic should include: "(i) Requiring courts in any criminal trial or proceeding, upon the request of a party, to instruct the jury not to let bias, sympathy, prejudice, or public opinion influence its decision about the victims, witnesses, or defendants based upon sexual orientation or gender identity; and (ii) Specifying that neither a non-violent sexual advance, nor the discovery of a person's sex or gender identity, constitutes legally adequate provocation to mitigate the crime of murder to manslaughter, or to mitigate the severity of any non-capital crime" (American Bar Association, 2013[47]).

2.2.4. Protection of LGBTI people fleeing persecution abroad

International refugee law is rooted in the UN Convention Relating to the Status of Refugees (1951), also known as the Refugee Convention. The Refugee Convention defines who a refugee is, thereby building upon Article 14 of the Universal Declaration of Human Rights which recognises the right to everyone "to seek and to enjoy in other countries asylum from persecution."[25] In 1967 the Refugee Convention was complemented by the UN Protocol Relating to the Status of Refugees. The Refugee Convention had restricted refugee status to those whose circumstances had come about "as a result of events occurring before 1 January 1951." It also had given signatory states the choice to interpret such events as "occurring in Europe or elsewhere." The 1967 Protocol removed these temporal and geographic restrictions. Consequently, under international refugee law, a refugee is defined as "any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".[26] All OECD Member countries are parties to the 1967 Protocol.

In 2012, the UN High Commissioner for Refugees (UNHCR) clarified that lesbians, gay men, bisexuals, transgender as well as intersex persons are members of a "particular social groups", which is defined as "a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society." This characteristic, the UNHCR recalls, "will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights" (UNHCR, 2012[48])

In this setting, international human rights stakeholders encourage countries to explicitly recognise persecution (or a well-founded fear of persecution) based on sexual orientation, gender identity or sex characteristics as a valid ground for granting asylum. This approach is essential to protect LGBTI people from violence, in a context where a substantial number of countries still engage in severe human rights violation against sexual and gender minorities (OHCHR et al., 2015[14]; CoE Commissioner for Human Rights, 2018[49]; IACHR, 2015[26]). The normative framework established by the Europe Union is particularly binding. Member countries are obliged to transpose in their national laws a set of Directives that notably aim to protect LGB and transgender asylum seekers. Moreover, the Court of Justice of the European Union (CJEU) has issued a number of rulings that clarify protections for LGBTI asylum seekers (Box 2.6).

Box 2.6. The European Union normative framework to protect LGBTI people fleeing persecution abroad

The European Parliament and Council of the European Union have adopted several directives that clarify the protection of LGBTI asylum seekers in the European Union. Directive 2004/83/EC conveys that Member countries have an obligation to take sexual orientation into account when assessing the reasons for persecution of asylum seekers. Although gender identity is not explicitly referenced, the wording refers to "gender related aspects", suggesting that "membership of a particular social group" can also be interpreted as including gender identity. Directive 2011/95/EU revises and replaces Directive 2004/83/EC. It explicitly states that asylum persecution based on "membership of a particular social group" includes the grounds of sexual orientation and gender identity, which must be given due consideration when assessing an asylum seeker's well-founded fear of persecution. Finally, Directive 2013/32/EU on the procedures for granting international protection calls for interviewers performing assessments to competently take into consideration the sexual orientation and gender identity of the interviewee. All these directives establish legal standards and policies on how best to support and protect the rights of LGBTI asylum seekers, and Member countries have an obligation to transpose them into national law.[1]

In the same vein, the Court of Justice of the European Union (CJEU) has issued a number of rulings that clarify protections for LGBTI asylum seekers. In the case of Minister voor Immigratie en Asiel v. X and Y and Z v.Minister voor Immigratie en Asiel (2013), the CJEU found that homosexual asylum seekers constitute a "particular social group" under 2004/83/EC that, if returned to their country of origin, may be persecuted or sanctioned through imprisonment on account of their sexual orientation. The Court further asserted that LGBTI persons should not be expected to conceal their sexual orientation or gender identity to escape human rights violations, should they be returned to the countries from which they originated. In the case of A and Others v. Staatssecretaris van Veiligheid en Justitie (2014), the CJEU ruled that when determining the credibility of the declared sexual orientation of an asylum seeker, national authorities are prohibited from engaging in detailed questioning about the sexual practices of asylum applicants or submiting them to any "tests" to establish their homosexuality, because such evidence would of its nature infringe human dignity. Finally, citing Directive 2011/95/EU in the case of F. v. Bevándorlási es Állampolgársági Hivatal (2018), the CJEU found an asylum seeker may not be subjected to a psychological test in order to determine his sexual orientation. Performing such a test constitutes a disproportionate interference in the private life of the asylum seeker. While national authorities can commission the report of an expert to determine the asylum seeker's need for protection and credibility assessment, they are prohibited from doing so in a way that violates fundamental rights guaranteed by the Charter of Fundamental rights of the EU. Further, the national authorities and courts are prohibited from basing their decision exclusively on the report conclusions or being considered bound by it.

[1] Denmark is not bound by either directives due to Protocol 22 on its position annexed to the Lisbon Treaty. See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:12016E/PRO/22.

2.2.5. Establishment of an LGBTI-inclusive equality body, ombudsman or human rights commission

International human rights stakeholders have acknowledged the need for independent national human rights institutions, e.g. equality bodies, ombudspersons or human rights commissions, in order to implement equal treatment legislation. For instance, the Paris Principles that were adopted in 1993 by the UN General Assembly encourage states to establish a national structure in charge of promoting and

protecting human rights. The first component of this mission entails ensuring "the harmonization of national legislation, regulations and practices with the international human rights instruments to which the state is a party, and their effective implementation". The second component of this mission indicates that the national institution be endowed with a "quasi-jurisdictional competence", which means that it should be authorised to hear and consider complaints and petitions brought before it by individuals, their representatives, third parties, non-governmental organisations, associations of trade unions or any other representative organisations (UN General Assembly, 1993[50]). The Commissioner for Human Rights of the Council of Europe further develops the critical role of national human rights institutions by distinguishing five complementary fields of expertise (CoE Commissioner for Human Rights, 2011[51]):

- Promotion: national human rights institutions (NHRIs) stimulate and inform a culture of compliance with the legislation among employers, service providers and policy makers, and support their capacity to put in place and implement equality and diversity policies, procedures and practices;
- Enforcement: NHRIs enable people to exercise their rights under equal treatment legislation including through provision of assistance to those experiencing discrimination;
- Communication: NHRIs contribute to and inform a culture of rights within society;
- Research: NHRIs develop a knowledge base on issues of discrimination and inequality by conducting and commissioning research and surveys;
- Multiplier effect: NHRIs encourage and enable a wide range of stakeholder organisations to take action on equality and discrimination.

Similarly, the 2017-21 Strategic Plan of the IACHR includes the strengthening of national human rights institutions among its key objectives (IACHR, 2017[52]).

International human rights stakeholders continue to repeatedly stress that the mandate of national human rights institutions should explicitly cover equal treatment of LGBTI people. EU Member countries are requested to "designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin" (Directive 2000/43/EC), as well as "on the grounds of sex" (Directive 2004/113/ and Directive 2006/54/EC). Although "sexual orientation", "gender identity" and "sex characteristics" are not explicitly mentioned in these directives, the EU exerts pressure on its members to implement antidiscrimination legislation protecting LGBTI people (Box 2.2), which has facilitated the inclusion of these grounds among the ones for which national equality bodies are responsible. The Commissioner for Human Rights of the Council of Europe similarly acknowledges that national human rights institutions "possess great potential for dealing with complaints on grounds of sexual orientation and gender identity as well as promoting the enjoyment of human rights by LGBT persons more generally" (CoE Commissioner for Human Rights, 2011[24]). Importantly, the Commissioner has also recommended that ombudspersons, equality bodies and human rights commissions be mandated to work on issues related to intersex persons (CoE Commissioner for Human Rights, 2017[41]). Consistent with these stances, the European Union and the Council of Europe have developed Equinet, the European Network for Equality Bodies that plays a critical role in coordinating, supporting and offering legal interpretation and implementation guidance for equality bodies across 36 different countries in Europe, including all EU Member countries. Within this network, discrimination based on sexual orientation and gender identity is explicitly presented as a type of discrimination equality bodies should combat.[27]

The United Nations and the Organization of American States are also active in encouraging national human rights institutions to protect LGBTI people. The OHCHR emphasises that they should combat "all forms of human rights violations on the basis of sexual orientation, gender identity and expression, and sex characteristics" (OHCHR, 2016[13]). Similarly, the IACHR expressly lists LGBTI people among the priority groups whose inclusion is targeted by the strengthening of national human rights institutions (IACHR, 2017[52]).

2.3. LGBTI-inclusive laws: Group-specific provisions

The general provisions presented in Section 2.2 are equally important for the inclusion of lesbians, gays, bisexuals, transgender and intersex individuals. But subgroups within the LGBTI population also face challenges that are unique to them. General provisions should therefore be complemented by provisions that seek to address these group-specific barriers. Group-specific provisions can be decomposed into two categories: those that aim to ensure equal treatment of LGB individuals ("LGB-specific provisions" hereafter) and those that aim to ensure equal treatment of transgender and intersex individuals ("TI-specific provisions" hereafter).

2.3.1. LGB-specific provisions

Provisions flowing from international human rights standards that aim to foster equal treatment of lesbians, gay men and bisexuals more specifically can be broken down into five components: (i) equal treatment of same-sex and different-sex consensual sexual acts; (ii) ban on conversion therapy; (iii) legal recognition of same-sex partnerships; (iv) equal adoption rights, and (v) equal access to assisted reproductive technology.

Equal treatment of same-sex and different-sex consensual sexual acts

Two types of laws violate equal treatment of consensual same-sex and different-sex sexual acts. The first type consists of criminalising same-sex conducts between consenting adults by punishing acts against "order of nature", "morality", "decency" or acts of "debauchery". The second type of laws harmful to the equality of same-sex and different-sex consensual sexual acts establishes a higher age of consent for homosexual consensual acts. In such instances, young persons engaging in homosexual conduct are subject to criminal penalties that do not apply to young persons of the same age that engage in heterosexual conduct.

These laws obviously violate individuals' right to life whenever same-sex acts between consenting adults are criminalised with the death penalty. They also breach the right to equal treatment and freedom from discrimination and constitute an impermissible infringement of the right to privacy that international human rights law strongly defends. Article 12 of the UDHR, Article 17 of the ICCPR, Article 7 of the CFR, Article 8 of the ECHR and Article 11 of the ACHR, all recall that no one shall be subjected to arbitrary interference with their privacy, family, home or correspondence, nor to attacks upon their honour and reputation. Even in countries where these laws are passed but not enforced, their existence fosters an environment of intolerance, hostility and violence against LGBTI people by strengthening prejudice, stigmatisation and legitimisation of discrimination against them (OHCHR, 2011[9]).

Landmark publications from international human rights bodies clearly emphasise governments' obligation to repeal laws that criminalise same-sex sexual activities and set unequal ages of consent between homosexual and heterosexual consensual. This obligation has also been stressed in a series of rulings (Box 2.7).

Box 2.7. Rulings by international human rights stakeholders urging Member countries to ensure equal treatment of same-sex and different-sex consensual sexual acts

In 1994, in the milestone decision of Toonen v. Australia, the Human Rights Committee found that the State's criminal code, which criminalised adult, consensual same-sex relations, interfered with and violated the individual's right to privacy (ICCPR, Article 17), even if its provisions had not been enforced for a decade. The Committee further ruled that sexual orientation is a ground protected from discrimination under the term "other status" in Article 26 and Article 2 of the ICCPR. Additionally, the

Committee also rejected the State's argument that criminalisation of homosexual practices is reasonably justified as a means of protecting public health or morals.

The European Court of Human Rights has issued several prominent rulings related to same-sex sexual acts. In the 1981 landmark ruling Dudgeon v. United Kingdom, the criminalisation of homosexual acts between two consenting adult males in England, Wales and Northern Ireland was found to violate the right to respect for private and family life under Article 8 of the Convention. In this ruling the Court emphasised that there is not a "pressing social need" for such acts to be criminalised nor sufficient evidence of the harm to vulnerable segments of society, and that though members of the public may regard homosexuality and same-sex acts as immoral, this does not warrant the imposition of penal sanctions between the relations of consenting adults. In 2001, in the case of Sutherland v. the United Kingdom, the Court found that the existence of different age limits of consent for consensual same-sex and different-sex acts constitutes discrimination (Article 14) in conjunction with a violation of the right to respect private and family life (Article 8) and, therefore, found that the same-sex age of consent should be equivalent to that of the different-sex age of consent. Similarly, in 2003, in the case of L. and V. v. Austria and S.L. v. Austria, the Court found that the state's imposition of a higher age of consent for male homosexual relations than for heterosexual or lesbian relations violated the Convention's prohibition of discrimination (Article 14) in conjunction with the right to respect for private life (Article 8).

In the case of Flor Freire v. Ecuador (2013), the Inter-American Court on Human Rights deemed that the state's distinction between sanctions for homosexual acts between consenting adults compared to those for heterosexual acts violated the prohibition of discrimination based on sexual orientation under Article 1(1) of the American Convention on Human Rights.

Ban on conversion therapy

So-called "conversion therapy" refers to practices that aim to change an individual's sexual orientation from homosexual or bisexual to heterosexual.[28] Such practices encompass a wide range of approaches: individual or group talk therapies where the "patient" is repeatedly told that there is no such thing as homosexuality, that everyone is born heterosexual, that same-sex attraction is the result of childhood trauma or dysfunctional family relationships, etc.; spiritual interventions where the "patient" is treated as a demonic person in need for exorcism; more invasive or extreme physical methods such as aversion therapy (electric shocks, nausea-inducing medications), beating, detention, or "corrective" rape thought to conform the victims' sexual orientation to heterosexual norms. These techniques can be performed by perpetrators as diverse as medical or mental health professionals, religious personnel, traditional or spiritual healers or practitioners, or other entities such as social or self-help groups (OutRight Action International, 2019[53]).

Conversion therapy is rooted in the belief (i) that LGB people suffer from a pathological condition and (ii) that same-sex sexual orientation can be cured. Neither of these assumptions is true. Homosexuality is not pathological. It was officially declassified nationwide as a mental disorder as early as 1973, when the third edition of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (DSM) concluded that same-sex sexual attraction was part of the normal spectrum of human sexuality. This important move towards depathologising same-sex sexual orientation was confirmed in 1992, when the World Health Organization removed homosexuality from the tenth edition of the International Classification of Diseases (ICD). Homosexuality is not repressible or changeable either. In 2009, the American Psychological Association (APA) Task Force on Appropriate Therapeutic Responses to Sexual Orientation conducted a systematic review of the peer-reviewed journal literature on sexual orientation change efforts (SOCE) and came to the conclusion that "the results of scientifically valid research indicate that it is unlikely that individuals will be able to reduce same-sex attractions or increase

other-sex sexual attractions through SOCE" (American Psychological Association, 2009[54]). Consistent with this conclusion, recent research shows that sexual orientation is determined by a complex mix of genetic and environmental influences that are beyond individuals' control (Ganna et al., 2019[55]).

Yet, despite their extremely harmful effects, conversion therapies still occur everywhere in the world. They typically target minors whose consent is obtained through coercive or deceptive means. Among "survivors" utter denial and attempts at erasure of their true selves by those closest to them generate profound feelings of self-hatred, depression, and suicidality (OutRight Action International, 2019[53]).

Conversion therapies are strongly condemned by international human rights stakeholders. For instance, in its 2015 report, the OHCHR writes: "There is mounting concern about so-called 'conversion therapies' intended to 'cure' homosexual attraction. Such therapies have been found to be unethical, unscientific, and ineffective and, in some instances, tantamount to torture" (OHCHR, 2015[12]). In 2018, the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity issued a report in which he reiterated concerns about the perpetration of conversion therapy and recommended that countries "ban so-called conversion therapy" (UNHRC, 2018[56]). Similarly, the resolution of January 2019 issued by the European Parliament is the first to "strongly condemn the promotion and practice of LGBTI conversion therapies, and encourage Member countries to criminalise such practices" (European Parliament, 2019[57]).

Legal recognition of same-sex partnerships

Legal recognition of same-sex partnerships primarily aims to avoid discrimination against same-sex couples in access to pecuniary rights in a wide range of areas including taxation, social benefits, health care, tenancy, property, pension or inheritance. Such recognition takes three different forms ranging from basic, to advanced, to full-fledged. *Basic* legal recognition of same-sex partnerships consists of legalising same-sex *de facto* partnership (also called cohabitation) in order to grant cohabitating same-sex partners with at least some of the rights granted to cohabitating different-sex partners. *Advanced* legal recognition of same-sex partnerships entails legalising civil/registered/domestic partnership (also called civil union) to offer a wider set of rights to same-sex couples. Yet, these types of partnerships typically fail to grant to same-sex partners the same rights as those enjoyed by different-sex married couples: homosexual partners in these partnerships all too often have fewer entitlements than heterosexual spouses, in particular when it comes to inheritance rights even after a lifetime of sharing and acquiring property.[29] In the absence of same-sex marriage, this situation constitutes indirect discrimination on the grounds of sexual orientation to the extent that same-sex partners cannot access the rights reserved to married couples because the type of partnership that would allow them to do so is not legal. Consequently, *full-fledged* legal recognition of same-sex partnerships involves legalising same-sex marriage.

International human rights stakeholders have reiterated that there should be no difference in treatment between same-sex and different-sex couples (OHCHR, 2016[13]; CoE Parliamentary Assembly, 2009[58]; IACHR, 2017[31]). Notably, in jurisdictions where unmarried heterosexual couples are entitled to certain pecuniary benefits, those same benefits should be extended to unmarried same-sex couples (e.g. Young v. Australia 1999 (UN Human Rights Committee, 2003[59]), Karner v. Austria 2003[30] and P.B. and J.S. v. Austria 2010[31]). Similarly, civil partnerships for same-sex couples should be created whenever they exist for different-sex couples (e.g. Valliatanos and others v. Greece 2013[32]). Moreover, whenever same-sex marriage is not legal, countries should provide pecuniary benefits and entitlements equivalent to those associated with marriage (e.g. Oliari and others v. Italy 2015[33]).

EU members have no obligation to legalise same-sex marriage. Article 9 of the European Union Charter of Fundamental Rights provides that "the right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights." Yet, EU members are exposed to increased pressure to recognise same-sex partnerships – same-sex marriage in particular – following the decision of the Court of Justice of the European Union (CJEU) in the so-called "Coman case" (2018)

(Box 2.8). In this case, the CJEU ruled that the term "spouse" in the regulation of freedom of movement in the European Union is "gender-neutral" and is inclusive of a "same-sex spouse", meaning that all EU Member countries are obliged to treat the same-sex spouse of an EU citizen just as they would a different-sex spouse – irrespective of whether or not the Member countries' laws provide the possibilities for same-sex marriage or civil partnership. In other words, EU countries where same-sex partnerships are not recognised are requested to amend their national laws to provide a legal framework ensuring proper implementation of the CJEU's ruling.

Box 2.8. The Coman case (2018)

The Coman and Others v. Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne is a 2018 case of the Court of Justice of the European Union (CJEU) that involved Adrian Coman, a Romanian citizen who married his husband (a US citizen) in Belgium while residing there. Upon subsequently moving back to Romania, the couple found that Romania did not recognise their marriage, and a residence permit for the American spouse was denied by authorities. A legal challenge by Coman made its way through the Romanian courts until, in 2016, the CJEU was asked by the Romanian Constitutional Court to interpret the word 'spouse' in the context of EU law on freedom of movement.

The CJEU's ruling affirmed residency rights to same-sex couples in EU countries that do not recognise same-sex unions, if at least one partner is an EU citizen and if the marriage was legally performed in an EU Member country.

The international human rights law that flows from the International Bill of Human Rights and from the European Convention on Human Rights (ECHR) has not yet created an obligation on countries to allow same-sex couples to marry. Article 16 of the UDHR, Article 23 of the ICCPR and Article 12 of the ECHR define a right to marriage specifically for "men and women", a wording that, at the time of the writing of these human rights instruments, deliberately aimed to grant the right to marry only to partners of opposite biological sex.[34] This original meaning was recalled by the UN Human Rights Committee in Joslin v. New Zealand 2002 and by the ECtHR in Schalk and Kopf v. Austria 2010, two milestone cases in which the UN Human Rights Committee and the ECtHR rejected the claim that marriage equality could be grounded in the International Bill of Human Rights or in the ECHR. However, admitting that these Conventions are living instruments which must be interpreted in the light of present-day conditions, the human rights bodies of both the United Nations and the Council of Europe encourage countries to increasingly interpret the right to marry set forth in their Conventions as simply referring to "both sexes having an equal right to marry, rather than stipulating they must marry someone of the opposite sex" − see for instance OHCHR (2018[60]) and Schalk and Kopf v. Austria 2010. Indeed, as stated by the CoE Commissioner for Human Rights, "genuine commitment to full equality" requires that countries "seriously consider opening up civil marriage to same-sex couples" (CoE Commissioner for Human Rights, 2017[61]). Not only does marriage equality ensure full-fledged equal treatment of same-sex couples in accessing pecuniary rights, it also guarantees that their partnership is endowed with the same social significance as that attached to heterosexual marriage. Marriage is indeed a social institution with a long history that is viewed as more "symbolic" than civil partnerships (EJTN, 2018[62]). Researchers have recently confirmed the benefits for same-sex couples of being able to "upgrade" their civil partnership to a civil marriage, even in countries like the Netherlands where civil partnership and civil marriage are strictly similar in terms of rights and obligations. They show that same-sex partners who transformed their civil partnership into marriage had a substantially lower separation rate following this change than similar partners who stayed in a civil partnership, thereby suggesting that the symbolism of marriage is real and exerts a stabilising effect on same-sex partnerships (Chen and van Ours, 2019[63]).

Like the human rights bodies of the United Nations and the Council of Europe, the Organization of American States recognises that full equality between same-sex and different-sex partnerships can only be achieved with marriage equality. But this regional organisation has taken a step further in favour of same-sex marriage. In its 2017 advisory opinion, the IACHR ruled that signatories to the American Convention on Human Rights are *required* to allow same-sex couples to marry. Although Article 17 of the Convention adopts a similar wording as the human rights instruments of the United Nations and the Council Europe, stating that "the right of men and women of marriageable age to marry and to raise a family shall be recognised", the IACHR endorses a more progressive interpretation by affirming that Article 17 is not confined to a particular family model. According to the IACHR: "States must ensure full access to all the mechanisms that exist in their domestic laws, including the right to marriage, to ensure the protection of the rights of families formed by same-sex couples, without discrimination relative to those that are formed by heterosexual couples" (IACHR, 2017[31]).

Legalising same-sex marriage entails benefits that extend beyond LGB individuals. Indeed, it prevents married transgender individuals from being forced to divorce in order to change their gender marker on their birth certificate and/or other identity documents. In most countries, legal gender recognition was originally conditioned on the transgender applicant to be unmarried. This *de facto* forced divorce requirement has since been removed in every country where same-sex marriage has become legal. But it is still in force in countries that do not provide for marriage equality.

Equal adoption rights

Articles 16 of the UDHR, 23 of the ICCPR, 9 of the CFR, 12 of the ECHR and 17 of the ACHR recognise the right to not only marry, but also to found a family, a provision that is being re-interpreted so as to ensure the right to respect for private and family life for all people, including same-sex couples (OHCHR, 2018[60]). This evolution notably entails removing discriminatory restrictions in access to parenthood based on sexual orientation (OHCHR, 2016[13]).

Removing such restrictions first implies ensuring equal adoption rights for different-sex and same-sex couples (CoE Parliamentary Assembly, 2018[64]). In all countries, different-sex partners enjoy adoption rights, through joint-adoption by the two partners,[35] and second-parent adoption by one of the two partners. The latter type of adoption occurs when one of the two partners becomes the second *legal* parent of her/his partner's biological or adopted children, without terminating the legal parent status of her/his partner.[36] Second-parent adoption is critical for the well-being of the children raised by the two partners. In its absence, the children and the non-legal parent are deprived of rights if the partner who is the legal parent dies, or in the case of divorce, separation, or other circumstances that would bar the legal parent from carrying out parental responsibilities.

Discriminating against same-sex couples in access to adoption rights would only be justified if children were worse off when raised by same-sex rather than different-sex parents. Indeed, international human rights bodies have repeatedly stressed that there is no such thing as the right *to* a child. In other words, adoption must be viewed as "providing a child with a family, not a family with a child" (Pini and others v. Romania 2004), which implies that the child's best interest be prioritised whenever her interest competes with the interest of the partners who want to adopt. Yet, compelling empirical evidence shows no well-being deficit among children living with same-sex parents. Quite the contrary, these children are characterised by better education and health outcomes (Box 2.9).

Box 2.9. Children are not worse off when raised by same-sex rather than different-sex parents (they are in fact better off)

Analysing how children fare with different-sex and same-sex parents is tricky since families with two different-sex parents are hardly comparable to families with two same-sex parents. Same-sex couples are less likely to be married than heterosexual couples, due to persistent or only recently removed legal barriers to same-sex marriage. Moreover, contrary to heterosexual partners, both homosexual partners cannot be biologically related to their children. In fact, at least until recently, most children being raised by same-sex parents were born to opposite-sex parents, one of whom is now in a same-sex relationship (Gates, 2015[65]). In other words, one of the same-sex parents is their biological parent, while the other is their stepparent (or their adopted parent in case second-parent adoption has occurred). The remaining set of children raised by same-sex parents have been either jointly adopted or conceived through artificial reproductive technology.

If not neutralised, these differences in family type can introduce statistical bias leading to finding a well-being deficit among children raised by same-sex parents. Same-sex parents' lower access to marriage is conducive to greater family instability and, hence, lower health and educational achievements among their children. Moreover, children of same-sex parents who originate from previous heterosexual marriages have typically undergone a parental breakup that can have negative repercussions on their psychosocial development. Finally, jointly adopted children and children conceived through artificial reproductive technology may suffer from living apart from at least one of their biological parents (Valfort, 2017[66]).

Due to data gaps, only a few studies have compared children in same-sex and different-sex households of similar family type, based on representative or administrative data. They all point to better education and health outcomes for children of same-sex couples. In the US, representative data show that grade repetition is lower among children from previous heterosexual relationships living with same-sex married parents rather than different-sex married parents (Watkins, 2018[67]). In the Netherlands, which became the first country in the world to legalise same-sex marriage in 2001, children raised by same-sex parents from their birth (who were therefore likely conceived through assisted reproductive technology) show substantially higher standardised test scores at the end of primary school than children raised by different-sex parents from birth. Based on administrative data, this result holds even after controlling for differences in socio-economic status across same-sex and different-sex parents. Indeed, given the time-consuming and costly procedures for same-sex couples to procreate through artificial reproductive technology, those who rely on such technology typically have higher levels of income and education and are older than different-sex biological parents (Mazrekaj, De Witte and Cabus, 2019[68]). Finally, based on Swedish administrative data that allow for tracking children from birth until age ten, children of lesbian couples conceived through artificial reproductive technology have a lower probability of diseases of the respiratory system until age ten than biological children of heterosexual couples, despite the fact that their birth weight is lower due to their exposure to fertility treatment (Aldén, Björklund and Hammarstedt, 2017[69]).

These positive results suggest that same-sex parents overinvest in their children's education in order to compensate for the unique stressors faced by same-sex families, including persistent stigma from society. Evidence is consistent with this supposition as same-sex parents spend more time with their children than different-sex parents. Women (regardless of their partners' sex) and partnered gay men engage in a similar amount of child-focused time with children (roughly 100 minutes per day). By contrast, partnered heterosexual men dedicate less than one hour to their children, on average (Prickett, Martin-Storey and Crosnoe, 2015[70]). The higher education and health outcomes of children of same-sex parents conceived through assisted reproductive technology (relative to biological children

of different-sex parents) may also reflect that same-sex parents who rely on this technology deliberatively choose to be parents. As stressed by the sociologist Michael Rosenfeld, "same-sex couples cannot become parents through misuse of, or failure of birth control as heterosexual couples can. Parenthood is more difficult to achieve for same-sex couples than for heterosexual couples, which implies a stronger selection effect for same-sex parents. If gays and lesbians have to work harder to become parents, perhaps those gays and lesbians who do become parents are, on average, more dedicated to the hard work of parenting than their heterosexual peers, and this could be beneficial for their children" (Rosenfeld, 2010[71]).

Consistent with this finding, international human rights courts have issued a number of rulings that establish equal parental rights for same-sex couples. In Europe, this trend started as early as 1999, with the case of Salgueiro da Silva Mouta v. Portugal in which the applicant, a gay man living with another man, was prevented by his ex-wife from visiting his daughter, in breach of an agreement reached at the time of their divorce. The European Court on Human Rights found that the state's refusal to grant custody and visitation to a parent living in a homosexual relationship violated the right to respect for family (Article 8) in conjunction with the prohibition against discrimination (Article 14) as guaranteed by the European Convention on Human Rights. Two consistent rulings concerning adoption rights followed. In E.B. v. France 2008 the Court held that, in the context of the French law that allows single persons to adopt a child, the refusal to grant approval for the purposes of adoption to an applicant because she was living with another woman "made a distinction based on considerations regarding her sexual orientation, a distinction which is not acceptable under the Convention". In X and others v. Austria 2013, the Court ruled that the impossibility of second-parent adoption being extended to an unmarried same-sex couple when state law provided this right to unmarried different-sex couples, constituted a violation of the prohibition of discrimination.

Equal access to assisted reproductive technology

Removing discriminatory restrictions in access to parenthood does not only imply equal adoption rights across different-sex and same-sex couples. This objective also entails equal access to assisted reproductive technology (ART) (CoE Parliamentary Assembly, 2018[64]). In several countries, infertile different-sex couples have access to medically assisted insemination using sperm of a donor, or to *in vitro* fertilisation using donated sperm and/or egg. In a few countries, infertile different-sex couples in which the woman is unable to carry children on her own are also granted access to surrogacy.[37]

To the extent that there is no such thing as the right to a child, it is up to each country to legalise assisted reproductive technology. However, the principle of non-discrimination enshrined in international human rights law requires equal treatment across different-sex and same-sex couples in access to such technology, unless there is strong evidence showing that children raised by same-sex rather than different-sex parents are worse off. In other words, because empirical investigations in fact point to the opposite result (Box 2.9), access to assisted reproductive technology should be legal for same-sex couples as soon as this access is legal for different-sex couples.

Finally, equal treatment of same-sex and different-sex couples in access to ART should imply that automatic co-parent recognition in this setting be non-discriminatory. In other words, the same-sex partner of the parent who gives birth through medically assisted insemination or *in vitro* fertilisation should be automatically recognised as the second legal parent, as is the male partner of a woman who procreates through these techniques (CoE Parliamentary Assembly, 2018[64]).

2.3.2. TI-specific provisions

Provisions flowing from international human rights standards that seek to address the unique challenges faced by transgender and intersex individuals aim at the following three objectives: (i) depathologising being transgender; (ii) allowing a non-binary gender option on birth certificates and other identity documents to better include non-binary transgender and intersex people; (iii) postponing medically unnecessary sex-normalising treatment or surgery on intersex minors until they can provide informed consent.

Depathologising being transgender

In 2016, various United Nations bodies together with the Commissioner for Human Rights of the Council of Europe, the Inter-American Commission on Human Rights, and the African Commission on Human and Peoples' Rights issued a joint statement that recalled that being lesbian, gay, bisexual and transgender "is part of the rich diversity of human nature" and that pathologisation of LGBT adults and children, i.e. branding them as ill based on their sexual orientation or gender identity, should be stopped. In particular, the joint statement expressed deep concern that "transgender children and adults continue to be pathologised based on international and national medical classifications" (OHCHR et al., 2016[72]).

Depathologising being transgender entails three policy actions. The first of these policy actions consists in not categorising being transgender as a mental illness in national clinical classification. This measure was first advocated by the European Parliament in its 2014 resolution on the EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity, where it urged the European Commission to "continue working within the World Health Organization to withdraw gender identity disorders from the list of mental and behavioural disorders and to ensure a non-pathologising reclassification in the negotiations on the 11th version of the International Classification of Diseases (ICD-11)" (European Parliament, 2014[6]). In 2019, the Member states of the World Health Organization adopted ICD-11 that indeed removes "gender incongruence", the terminology used to refer to transgender identity, from the list of mental health disorders. ICD-11 is planned to come into effect in all Member countries on 1 January 2022. However, this important move towards depathologising being transgender might not be followed by significant shifts at the national level. The implementation date is indicative, not mandatory, meaning that Member states are free to adjust to ICD-11 at their own pace.

The second policy implication of depathologising being transgender consists of permitting transgender people to change their gender marker in the civil registry, i.e. the elements such as sex at birth and first name that reveal an individual's gender. To the extent that being transgender is *not* a mental disorder, a person whose gender identity is at odds with their sex a birth should not receive psychiatric therapy for the purpose of re-aligning their self-perceived gender with their body. Rather, transgender individuals should be entitled to live as who they are and, hence, change their gender marker on their birth certificate and other identity documents. Ensuring that legal gender matches gender identity is essential for transgender people to live a life of dignity and respect. With no legal gender recognition, navigating everyday transactions (e.g. picking up a parcel at the post office), accessing accommodation, education, employment, and health care, travelling (e.g. boarding a plane), or even lodging a harassment complaint can become a repeated source of harassment, unfounded suspicion, and even violence. The need to legally recognise the gender identity of transgender people has been stated by human rights stakeholders on several occasions. In particular, in the case of B. v France 1992, the European Court of Human Rights found that the state's lack of legal recognition of the new gender identity of a male-to-female transsexual person constituted a violation of the right to respect for private life (Article 8 of the ECHR), and had placed the individual in a "daily situation which was not compatible with the respect due to her private life."

Finally, depathologising being transgender entails allowing transgender people to change their gender marker on birth certificate and other identity documents without having to meet medical requirements. Yet, because they view transgender identity as pathological, many countries condition legal gender recognition

on eugenic obligations such as sterilisation and/or sex-reassignment surgery or treatments that typically lead to infertility. Most countries also request a psychiatric diagnosis confirming the medical condition of the transgender person. In 2018, the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity strongly condemned that legal gender recognition procedures regularly force transgender people into "involuntary psychiatric evaluations, unwanted surgeries, sterilisation or other coercive medical procedures, often justified by discriminatory medical classifications" (UNHRC, 2018[56]). Council of Europe's bodies are similarly active in promoting legal gender recognition based on self-determination, i.e. the principle that transgender people's declaration of their gender identity for the purpose of obtaining gender recognition should not require validation by a third party, such as an expert or a judge (CoE Commissioner for Human Rights, 2009[73]; CoE Committee of Ministers, 2010[22]; CoE Parliamentary Assembly, 2015[74]). In 2017, the European Court of Human Rights ruled that the sterilisation requirement for legal gender recognition is in violation of Article 8 of the Convention (right to respect for private life), thereby urging all Council of Europe Member countries to bring their legislation and practice into line with this ruling (A. P., Garçon and Nicot v. France 2017). In its landmark Advisory Opinion OC-24/17, the IACHR also issues in-depth conclusions regarding legal gender recognition interpreted through the lens of the American Convention on Human Rights. The Court declared that legal gender recognition cannot require surgery, hormone therapy, sterilisation or bodily changes because that would violate the individual's rights to personal integrity (Article 5), privacy (Article 11) and to personal liberty (Article 7), as well as the prohibition of discrimination (Article 24). Furthermore, the Court called for legal gender recognition to be prompt, affordable, and based solely on the free and informed consent of the applicant, which rules out preconditions such as medical, psychological or psychiatric evaluations or certifications (IACHR, 2017[31]).

Obviously, access to a flexible gender recognition procedure is of critical importance for intersex people as well. Indeed, they are at risk of developing a gender identity at odds with the sex that was assigned to them at birth, in a context where cosmetic sex-normalising surgeries are still widespread (CoE Parliamentary Assembly, 2015[74]).

Allowing a non-binary gender option on birth certificates to better include intersex and non-binary transgender people

The classification of humankind into two categories – "F" (female) and "M" (male) – and the entrenchment of those categories in civil registries and identification documents constitutes key organising practices in any society. Yet, these practices are founded on the misleading belief that every individual fits into binary female or male categories. As such, they expose people who cannot be clearly designated to these categories to human rights breaches, chief of which intersex individuals, as well as those among transgender individuals who view themselves as neither female nor male, or as both female and male.

Governments' obligation to protect, respect and ensure the human rights of all persons with non-binary gender identities has been repeatedly stressed by international human rights stakeholders. In its report "Living Free and Equal", the OHCHR urges countries to adopt legislation allowing the recognition of such identities (OHCHR, 2016[13]). As for the Parliamentary Assembly of the Council of Europe, it has adopted numerous resolutions about legal gender recognition that include non-binary persons. Resolution 2048 encourages countries to consider including a third gender option in identity documents "for those who seek it" (CoE Parliamentary Assembly, 2015[74]). Resolution 2191 calls on countries to ensure that wherever gender classifications are in use by public authorities, a range of options are available for all people, including those intersex people who do not identify as either male or female (CoE Parliamentary Assembly, 2017[30]). The IACHR also recognises, in its Advisory Opinion OC-24/17, that "some people do not identify themselves as either male or female or identify themselves as both" and that the right of non-binary persons to be officially recognised with their gender identity is enshrined in the American Convention on Human Rights (IACHR, 2017[31]). Finally, in its 2019 resolution on the rights of intersex people, the European

Parliament welcomed "flexible procedures to change gender markers (…) including the possibility of gender-neutral names" (European Parliament, 2019[28]).

Allowing a non-binary gender option on birth certificates presents a significant additional advantage as regards preserving the human rights of intersex individuals. By alleviating the pressure to categorise an intersex baby as either male or female, this legal provision contributes to reduce the perceived medical need for harmful sex-normalising treatment or surgery (Fundamental Rights Agency, 2015[1]), an issue extensively discussed in the next section.

Postponing medically unnecessary sex-normalising treatment or surgery on intersex minors until they can provide informed consent

Although being transgender has been removed from the list of mental health disorders in ICD-11, variations in sex characteristics are still referred to as "disorders of sex development" and, hence, codified as pathologies (CoE Commissioner for Human Rights, 2019[75]). In this setting, even healthy variations of sex characteristics – cases where the life of the intersex newborn is not at risk – are viewed as needing "fixing" or, more precisely, "disambiguation" in order for the child to be clearly assigned as female or male.

According to a 2015 survey published by the EU Fundamental Rights Agency, so-called medically unnecessary "sex-normalising" surgeries on intersex infants and children are widespread. They are carried out in at least 21 of the EU Member countries (Fundamental Rights Agency, 2015[1]). These cosmetic non-emergency interventions on healthy bodies are nevertheless presented by medical practitioners as "medically necessary" to the extent that they are viewed as beneficial to the child's psychosocial development in a society that would otherwise stigmatise them for not conforming to the female-male binary system. However, evidence gathered by international human rights stakeholders shows that sex-normalising surgeries generate physical and psychological sufferings that far outweigh the negative effects of being potentially exposed to stigma for not having external genitals that look "normal" enough according to societal and medical conceptions to pass as female or male genitals.

These surgeries are often deeply invasive, leading to multiple follow-up surgeries, problems with hormonal balance, as well as painful scar tissue and intercourse. For instance, while vaginoplasty is frequently performed since a functional vagina is easier to construct than a functional penis, this feminising procedure has proven to be traumatic. As explained by the Commissioner of Human Rights of the Council of Europe, "when it is performed in early childhood, the neo-vagina must be kept open using a dilator, which is usually inserted regularly by the child's mother. This procedure is repeated throughout childhood and intersex people have stressed that it has been extremely painful and akin to a form of rape. The procedure may have to be continued later on in life as described by intersex people" (CoE Commissioner for Human Rights, 2017[41]).

The negative outcomes of sex-normalising surgeries are compounded by the fact that they are irreversible, meaning that no "cure" can be proposed when the gender identity of the child does not develop in conformity with their sex assigned at birth. The possibility of a divergence between gender identity and sex assigned at birth was long denied by doctors who believed in John Money's theory (Box 2.10). Yet, there is not sufficient evidence demonstrating that gender identity conforms with sex at birth when assigning an intersex child to a specific sex and raising that child as a child of that sex. For instance, among a sample of 272 intersex individuals in Australia, 8% self-identified as being transgender. This proportion is far above the most generous estimates of the share of transgender people based on nationally representative data (0.6%), which suggests that the probability of assigning the wrong sex to intersex children is much higher than expected (Jones et al., 2016[76]; Flores et al., 2016[77]; OECD, 2019[2]).

Box 2.10. The popularity of sex-normalising surgeries on intersex babies

The prevailing medical opinion is that ambiguous sex can and should be "fixed", and in fact, genital surgeries on intersex babies have become routine in spite of the fact that they are rarely medically necessary. Emphasis is placed on the newborn's ability to pass for one sex or the other, thus meeting social expectations, rather than on the child's best interests and welfare.

Current approaches to reassigning or "fixing the sex" of intersex people find their root in the science of the 1950s, especially in the work of John Money who was one of the first researchers to publish theories on the influence of societal constructs of "gender" on individual formation of gender identity. Money notably concludes that gonads, hormones and chromosomes do not automatically determine a child's "gender role", and that therefore, "mixed-sex children" can be assigned to the "proper gender" early in their childhood and be nurtured within that gender role provided the appropriate behavioural interventions ensue. Based on the belief that the best results from such assignments were achieved when the babies were not older than around two years of age, Money established the Johns Hopkins Gender Identity Clinic in 1965 that began performing sexual reassignment surgery in 1966.

Money gained increased notoriety following his intervention in the case of David Reimer, a boy who, after his penis was accidentally burnt off during a botched circumcision, was transitioned into and raised as a girl (Brenda), beginning at the age of 22 months. Money initially reported the case as a success, and he continued to follow the case annually for a decade. During that time, his view of the malleability of gender became the dominant viewpoint among physicians and doctors and led to the growing popularity of sex-reassignment surgeries. However, during his teen years Reimer transitioned back to his male state, indicating that, in spite of the dresses that he was made to wear and the oestrogen that he was administered, he never felt female. Plagued by the deep psychological trauma of this experience, he committed suicide in 2004 at the age of 38.

In spite of the negative outcome of Reimer's case (…) Money's theory had a disproportionate impact on medical procedure regarding intersex treatment and continues to inform the medical practices that affect intersex newborns today. Notably, in a case that reached the US courts in 2013, Mark and Pam Crawford, the parents of M.C. (an adopted child), sued North Carolina over a surgical procedure alleging that "the state of South Carolina violated M.C.'s constitutional rights when doctors surgically removed his phallus while he was in foster care, potentially sterilising him and greatly reducing, if not eliminating, his sexual function". M.C. was born with a condition called "ovotesticular disorder of sexual development," which included a 2-centimeter penis at birth, a small vaginal opening, both ovarian and testicular tissue, and high blood testosterone levels. Although doctors initially said that "either sex of rearing" would be possible, they eventually operated on the baby to make the genitalia appear more female, removing the penis and testicular tissue. Pam Crawford noted that she "was really sad that that decision had been made for him," and that "it's become more and more difficult just as his identity has become more clearly male. The idea that mutilation was done to him has become more and more real. There was no medical reason that this decision had to be made at that time." Estimates of assigning the wrong sex to intersex people vary between 8.5% and 40%. Many intersex children end up rejecting the sex they were assigned at birth demonstrating the major infringements on their psychological integrity.

Source: CoE Commissioner for Human Rights (2017[41]), "Human Rights and Intersex People", www.coe.int.

The view that medical and surgical treatment of intersex minors is necessary and desirable both for society and the people involved is increasingly questioned and challenged. A shift in the medical perspective towards intersex people is perceptible among a number of practitioners, following the 2012 Opinion of the Swiss National Advisory Commission on Biomedical Ethics (NEK-CNE). The NEK-CNE clearly indicates that "[a]n irreversible sex assignment intervention involving harmful physical and psychological consequences cannot be justified on the grounds that the family, school or social environment has difficulty in accepting the child's natural physical characteristics". It thus recommends that any irreversible sex assignment treatment should be deferred until "the person to be treated can decide for him/herself", as long as no urgent intervention is necessary to prevent severe damage to the person's body or health. In the commission's view, a child "attains capacity between the ages of 10 and 14 years" and even before this age children should be able to participate in decision making in an age-appropriate manner. NEK-CNE also stresses the need to protect the child's integrity, indicating that "[p]rofessional psychosocial counselling and support should be offered free of charge to all affected children and parents" (NEK-CNE, 2012[78]).

This approach is strongly promoted among international human rights stakeholders who unanimously view non-consented medically unnecessary sex-normalising treatment or surgery on intersex minors as akin to (i) torture and other cruel, inhumane or degrading treatment or punishment; (ii) a violation of the right to private life. One of the most comprehensive resources produced by the United Nations is the interagency statement written by seven United Nations bodies including the OHCHR and the World Health Organization. In the report's recommendations for actions, the bodies urge countries to "provide legal guarantees for full, free and informed decision-making and the elimination of forced, coercive and otherwise involuntary sterilisation, and review, amend and develop laws, regulations and policies in this regard." It further notes that, "in the absence of medical necessity, when the physical well-being of a person with an intersex condition is in danger", the treatment should be postponed "until the person is sufficiently mature to participate in informed decision-making and consent" (OHCHR et al., 2014[79]). Additionally, in its report on good practices for combating discrimination based on sexual orientation or gender identity, the OHCHR explicitly urges Member countries to "prohibit medically unnecessary procedures on intersex children" (OHCHR, 2015[12]). Within the Council of Europe, the Parliamentary Assembly has issued two landmark resolutions. Resolution 1952 calls for countries to ensure that no person is subjected to unnecessary medical or surgical treatment unless it is vital for the health of the child; to guarantee bodily integrity, autonomy and self-determination; and to provide intersex children and their families with adequate counselling and support (CoE Parliamentary Assembly, 2013[80]). Resolution 2 191 more explicitly calls for Member countries to "prohibit medically unnecessary sex-"normalising" surgery, sterilisation and other treatments practised on intersex children without their informed consent" (CoE Parliamentary Assembly, 2017[30]). As for the Organization of American States, the General Assembly has adopted numerous resolutions that call broadly for Member states to protect intersex people through laws and policies that ensure medical practices are consistent with human rights standards (OAS General Assembly, 2013[81]; 2016[82]; 2017[83]; 2018[84]). In its report on the recognition of LGBTI persons, the IACHR explicitly recommends that Member countries prohibit any unnecessary medical intervention that is conducted without the free, prior and informed consent of the intersex person concerned. This report and the IACHR report on violence against LGBTI persons maintain that such surgeries on intersex infants should be postponed until the individual can provide such consent (IACHR, 2015[26]; 2018[27]). Finally, in its 2019 landmark resolution on the rights of intersex people, the European Parliament (i) "strongly condemns sex-normalising treatments and surgery"; (ii) "welcomes laws that prohibit such surgery, as in Malta and Portugal", and (iii) "encourages other Member states to adopt similar legislation as soon as possible" (European Parliament, 2019[28]).

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Notes

[1] For instance, the intersex Canadian playwright and filmmaker Alec Butler explains that, born female and brought up as a girl, his life suddenly changed at 12, when he « grew a beard and had a period ». See https://www.bbc.com/news/magazine-36092431 (last accessed on 24 October 2019).

[2] The resulting set of LGBTI-inclusive laws is broad. It covers most of the legal provisions promoted by the Yogyakarta Principles, a landmark set of precepts that was developed in 2007 and 2017 by international human rights experts to address abuses endured by LGBTI individuals worldwide. These experts included the International Commission of Jurists, the International Service for Human Rights, as well as other human rights stakeholders representing 25 different countries and diverse backgrounds. The rapporteur responsible for drafting the Yogyakarta Principles adopted was Irish human rights expert Michael O'Flaherty, currently Director of the European Union Fundamental Rights Agency, the European Union body tasked with collecting and analysing data on fundamental rights.

[3] Only five OECD countries do not depend on a regional system of human rights and are therefore only exposed to the guidance of the United Nations: Israel and the four OECD countries located in Asia Pacific (Australia, Japan, Korea and New Zealand).

[4] The European Union (EU) was established when the Maastricht Treaty came into force in 1993. It is a political and economic union among 28 Member countries that is structured by the European Council, the European Commission, the European Parliament, the Council of the European Union and the Court of Justice of the European Union (also called the European Court of Justice). Although it has no legislative power, the European Council defines the European Union's overall political direction and priorities. While the European Commission proposes new laws, the European Parliament acting as co-legislator with the Council of the European Union have the power to adopt and amend legislative proposals, negotiate policies and decide on the budget of the European Union. The European Court of Justice ensures the uniform application of EU law and resolves disputes between EU institutions and Member states, and against EU institutions on behalf of individuals.

[5] These 19 Member countries are: Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain, Sweden and the United Kingdom.

[6] The United Nations (UN) is an intergovernmental organisation created in 1945. It is made up of 193 Member states tasked with addressing the most pressing issues confronting humanity, including human rights. The United Nations is based on five principal organs: (i) the General Assembly, a deliberative assembly of all UN Member states in charge of issuing non-binding resolutions to states or suggestions to the Security Council; (ii) the Security Council, responsible for the maintenance of international peace and security that may adopt binding resolutions; (iii) the Economic and Social Council, responsible for co-operation between states regarding economic and social matters; (iv) the International Court of Justice which decides disputes between states that recognise its jurisdiction; (v) the UN Secretariat, the administrative arm of the UN in charge of writing reports and studies for the General Assembly and the Security Council.

[7] In doing so, OECD countries have committed to ensuring that every individual enjoys the rights covered by these instruments and agreed for these rights to be invoked in a national or international court.

[8] The Council of Europe is an intergovernmental organisation created in 1949 with the aim of upholding human rights, democracy and the rule of law in Europe. It is made up of 47 Member countries.

[9] See as well the background document at the following link: https://rm.coe.int/discrimination-on-grounds-of-sexual-orientation-and-gender-identity-in/16809079e2.

[10] The Organization of American States is an intergovernmental organisation created in 1948 in order to achieve solidarity and cooperation among its 35 member countries, including Canada, Chile, Mexico and the United States.

[11] The United States signed but did not ratify, while Canada neither signed nor ratified the American Convention on Human Rights.

[12] The foundational human rights instruments of the United Nations, the Council of Europe and the Organization of American States urge Member countries to prohibit discrimination on a list of protected grounds. More precisely: (i) Article 2 of the Universal Declaration of Human Rights (UDHR) provides: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." A similar list of grounds protected against discrimination is stated in some of the core international human rights treaties that followed the UDHR, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Moreover, Article 7 of the UDHR ensures a freestanding right to non-discrimination that can be invoked without having to be linked to another protected right: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."; (ii) Article 14 of the European Convention on Human Rights (ECHR) states: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." Additionally, Article 1 of Protocol 12 to the ECHR that came into force in 2005 provides a general non-discrimination clause and thereby affords a scope of protection which extends beyond the "enjoyment of the rights and freedoms set forth in [the] Convention." More precisely, Article 1 of Protocol 12 provides that "the enjoyment of any right set forth by law shall be secured without discrimination on any grounds," and that "no one shall be discriminated against by any public authority on any [of these] ground[s]."; Article 1 of the American Convention on Human Rights (ACHR) affirms: "The States Parties to this Convention undertake to respect the rights and freedoms recognised herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition." Additionally, Article 24 of the ACHR ensures a freestanding right to non-discrimination: "All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law."

[13] Fredin v. Sweden, 12033/86, Council of Europe: European Court of Human Rights, 18 February 1991, available at http://hudoc.echr.coe.int/eng?i=001-57651.

[14] Identoba and others v. Georgia, 73235/12, Council of Europe: European Court of Human Rights, 12 May 2015, available at http://hudoc.echr.coe.int/eng?i=001-154400. In this ruling, the European Court of Human Rights (ECtHR) clarified for the first time that transgender people are protected against discrimination on grounds of gender identity under Article 14 of the European Convention on Human Rights. The ECtHR has established that sexual orientation is a ground protected against discrimination under the category of "other status" referenced in Article 14 of the Convention in several rulings, the first

of which was Salgueiro da Silva Mouta v. Portugal where the ECtHR was forced to conclude that "there was a difference of treatment (...) based on the applicant's sexual orientation, a concept which is undoubtedly covered by Article 14 of the Convention." (Salgueiro da Silva Mouta v. Portugal, 33290/96, Council of Europe: European Court of Human Rights, 21 December 1999, available at http://hudoc.echr.coe.int/tur?i=001-58404).

[15] This code of conduct is especially relevant when these claims emanate from civil servants or providers of goods and services. By contrast, the cost of not abiding by antidiscrimination laws may be lower, and the cost of not respecting the right to freedom of religion or beliefs higher in other contexts, for instance when they relate to the internal affairs of a religious community (e.g. the autonomous recruitment of clergy).

[16] These characteristics justify that international human rights stakeholders have developed a large jurisprudence that provides the media with an almost absolute protection of their freedom of expression. This privilege is especially enforced when the media disseminate information on politicians and high-ranking officials, notably in matters of public controversy or public interest (e.g. political debate during electoral campaigns).

[17] See http://www2.ohchr.org/english/bodies/hrc/docs/CaseLaw/CCPR-C-106-D-1932-2010.doc.

[18] Bayev and others v. Russia, 67667/09, Council of Europe: European Court of Human Rights, 20 June 2017, available at http://hudoc.echr.coe.int/eng?i=001-174422.

[19] Quite the contrary, a rapidly growing academic literature is providing compelling evidence that hindering expression promoting LGBTI people's rights increases suicide among LGBTI people, especially at teen age (OECD, 2019[2]).

[20] The Venice Commission, whose official name is the European Commission for Democracy through Law, is an advisory body of the Council of Europe, composed of independent experts in the field of constitutional law.

[21] Alekseyev v. Russia, 4916/07, 25924/08 and 14599/09, Council of Europe: European Court of Human Rights, 11 April 2011, available at http://hudoc.echr.coe.int/eng?i=001-101257.

[22] Zhdanov and others v. Russia, 12200/08, 35949/11 and 58282/12, Council of Europe: European Court of Human Rights, 16 July 2019, available at http://hudoc.echr.coe.int/fre?i=002-12561.

[23] The European Convention on Human Rights does not place a positive obligation upon states to prohibit expression in the same terms as Article 20(2) of the ICCPR. Nevertheless, the European Court of Human Rights has recognised that certain forms of harmful expression must necessarily be restricted to uphold the objectives of the Convention as a whole: "[A]s a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance), provided that any 'formalities', 'conditions', 'restrictions' or 'penalties' imposed are proportionate to the legitimate aim pursued." (Erbakan v. Turkey, No. 59405/00, 6 June 2006, para 56). As regards the American Convention on Human Rights, Article 13(5) sets a positive obligation on states to make an "offense punishable by law (…) any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, colour, religion, language, or national origin."

[24] Article 19 is a British human rights organisation founded in 1987 with a specific mandate and focus on the defence and promotion of freedom of expression worldwide. The organisation takes its name from Article 19 of the Universal Declaration of Human Rights that sets forth the right to freedom of expression.

[25] Article 22 of the American Convention on Human Rights echoes Article 14 of the Universal Declaration of Human Rights by providing: "7. Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes. 8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions."

[26] A person becomes an asylum seeker by making a formal application for the right to remain in another country and keeps that status until the application has been concluded. The applicant becomes an "asylee" if their claim is accepted and asylum is granted.

[27] See https://equineteurope.org/.

[28] Most recent statements and legislation rely on the term "conversion therapy" to also describe attempts to change an individual's gender identity from transgender to cisgender.

[29] See https://www.lawsandfamilies.eu/.

[30] Karner v. Austria, 40016/98, Council of Europe: European Court of Human Rights, 24 October 2003, available at http://hudoc.echr.coe.int/eng?i=001-61263.

[31] P.B. and J.S. v. Austria, 18984/02, Council of Europe: European Court of Human Rights, 22 October 2010, available at http://hudoc.echr.coe.int/eng?i=001-100042.

[32] Valliatanos and others v. Greece, 29381/09 and 32684/09, Council of Europe: European Court of Human Rights, 7 November 2013, available at http://hudoc.echr.coe.int/eng?i=001-128294.

[33] Oliari and others v. Italy, 18766/11 and 36030/11, Council of Europe: European Court of Human Rights, 21 October 2015, available at http://hudoc.echr.coe.int/eng?i=001-156265.

[34] Article 16 of the UDHR provides: "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family", while Article 23 of the ICCPR affirms: "The right of men and women of marriageable age to marry and to found a family shall be recognised." Moreover, Article 12 of the ECHR states: "Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

[35] In this report, joint adoption refers to a process whereby (i) the legal relationship between a child and her/his biological parents is extinguished; (ii) the adopting partners become the two legal parents of the child.

[36] In this report, second-parent adoption refers to so-called "*full* second-parent adoption", meaning that the partner who adopts her/his partner's biological or adopted children becomes the second *legal* parent. Some countries recognise a second type of second-parent adoption, that is deemed as "simple". *Simple* second-parent adoption occurs (i) when there are already two legal parents (one of the two partners and another person external to the couple – e.g. his former wife or her former husband) and (ii) when the number of legal parents is limited to two (which is the rule in most countries). In this case, the partner who

adopts her/his partner's biological or adopted children is granted legal custody, but does not become a legal parent. Japan is an exception. There can be more than two legal parents, which means that second-parent adoption always designates a *full* second-parent adoption in this country.

[37] Surrogacy is an arrangement, often supported by a legal agreement, whereby a woman (the surrogate mother) agrees to become pregnant and give birth to a child for another person(s) (the intended parent(s)) who is or will become the parent(s) of the child. Surrogacy can be "traditional", in which case it involves the artificial insemination of a surrogate. Surrogacy can also be "gestational", in which case an embryo created by *in vitro* fertilisation is implanted in a surrogate.

3 Are laws in OECD countries LGBTI-inclusive?

This chapter takes an in-depth look at the extent to which laws critical to LGBTI equality have been passed in OECD countries as of 30 June 2019. The chapter first elaborates on the measurement of legal LGBTI inclusivity, defined as the share of LGBTI-inclusive laws that are in force among the set of legal provisions introduced in Chapter 2. The chapter then analyses levels and trends in legal LGBTI inclusivity, OECD-wide and by country, including how legal LGBTI inclusivity relates to social acceptance of LGBTI people, gender equality and economic development. Finally, the chapter proposes a realistic country-specific sequence of next steps in order to improve legal LGBTI inclusivity, along with guidance on passing some LGBTI-inclusive laws based on good practices from OECD countries and beyond.

Box 3.1. Comparative review of international indices on LGBTI inclusion

The three most prominent international indices on LGBTI inclusion are: (i) the State-Sponsored Homophobia Index by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), (ii) the Trans Rights Europe & Central Asia Index by Transgender Europe, and (iii) the Rainbow Index by ILGA Europe, the European region of ILGA. The set of LGBTI-inclusive laws defined in Chapter 2 includes virtually all of the legal provisions that are viewed as critical by these renowned indices to ensure equal treatment of LGBTI persons, and also incorporates measures not found in these foundational resources (see Annex 3.A for further details).

ILGA State-Sponsored Homophobia Index

The State-Sponsored Homophobia Index consists of a worldwide survey of what ILGA calls "institutionalised homophobia" defined as "homophobic laws". This index has been published on an annual basis since 2006. The set of LGBTI-inclusive laws defined in Chapter 2 covers all of the components of ILGA's State-Sponsored Homophobia Index and adds the following LGB-relevant issues (among many other transgender and intersex-inclusive dimensions): (i) the protection of LGB asylum seekers, (ii) the existence of LGB-inclusive human rights institutions, and (iii) equal access to assisted reproductive technology for different-sex and same-sex couples.

Trans Rights Europe & Central Asia Index by Transgender Europe

The Trans Rights Europe & Central Asia Index has been published on an annual basis since 2013. The set of LGBTI-inclusive laws defined in Chapter 2 explicitly or implicitly covers all components of the Trans Rights Europe & Central Asia Index with the exception of whether transgender minors have the same access to legal gender recognition as transgender adults. However, the legal set defined in Chapter 2 adds criteria for whether transgender people's civil liberties are respected, a facet of equality and non-discrimination which is omitted from the Trans Rights Europe & Central Asia Index.

Rainbow Index by ILGA Europe

The Rainbow Index has been published on an annual basis since 2009. It is the most complete international index on the inclusion of sexual and gender minorities as it covers lesbian, gay, bisexual, transgender and intersex persons. The 2019 iteration of the Rainbow Index significantly expanded in depth compared to earlier versions. Despite this increasing scope, the set of LGBTI-inclusive laws defined in Chapter 2 explicitly or implicitly addresses all the items of the 2019 edition of the Rainbow Index with the exceptions of: (i) whether there is a ban on donating blood or any kind of bodily tissues based on sexual orientation or gender identity and (ii) whether single persons have access to medically assisted insemination irrespective of their sexual orientation or gender identity. However, the legal set defined in Chapter 2 adds two pieces of criteria omitted from the Rainbow Index, which are for (i) whether partners in a same-sex partnership are treated on an equal footing with partners in a different-same partnership concerning access to surrogacy and (ii) whether a non-binary gender option is available on birth certificates, on top of "male" and "female".

Consensual same-sex sexual acts have become legal in all OECD countries where they were formerly criminalised, as have sex-reassignment treatments and/or surgeries for transgender people. Nevertheless, only half of OECD countries have legalised same-sex marriage throughout their national territory and only a third allow for a change of gender on official documents to match gender identity without forcing the transgender person to undergo sterilisation, sex-reassignment surgery, hormonal therapy or a psychiatric diagnosis. Steps backward have also been witnessed. Some OECD countries have introduced a constitutional ban on same-sex marriage, and the very possibility of a person being legally recognised as

transgender is questioned in some others (OECD, 2019[1]).[1] Finally, the rights of intersex people are by and large ignored.

Based on an analysis of national laws and their amendments that was vetted by a large majority of the countries covered in this report (33/35),[2] Chapter 3 takes an in-depth look at the extent to which laws critical to LGBTI equality have been passed in OECD countries as of 30 June 2019. This set of laws is comprehensive: it includes nearly all the legal provisions that are viewed as crucial by the three most prominent international indices on LGBTI inclusion, noting that it further contains critical items not covered by these indices (Box 3.1).

Section 3.1 elaborates on the measurement of legal LGBTI inclusivity, defined as the share of LGBTI-inclusive laws that are in force among the set of legal provisions introduced in Chapter 2. Section 3.2 analyses levels and trends in legal LGBTI inclusivity, OECD-wide and by country, including how legal LGBTI inclusivity correlates with social acceptance of LGBTI people, gender equality and economic development. Section 3.3 investigates how legal LGBTI inclusivity could be improved. It proposes a realistic country-specific sequence of next steps that takes into account, for each OECD country, both where this country is standing and, given this achievement, how attainable it is for this country to pass the LGBTI-inclusive provisions not yet in force on its national territory. Section 3.3 also provides guidance on passing some LGBTI-inclusive laws, based on good practices from OECD countries and beyond.

3.1. Measuring legal LGBTI inclusivity

Legal LGBTI inclusivity is defined as the share of LGBTI-inclusive laws that are in force in OECD countries among the set of legal provisions introduced in Chapter 2. Section 3.1.1 first presents the questionnaire on LGBTI-inclusive laws and policies based on which legal LGBTI inclusivity is measured. Section 3.1.2 then explains how responses to the questionnaire are compiled in order to compute legal LGBTI inclusivity.

3.1.1. The OECD questionnaire on LGBTI-inclusive laws and policies

The OECD questionnaire on LGBTI-inclusive laws and policies was designed for the purpose of this report, upon request from 12 member countries[3] who signed a call to action for the OECD to undertake, among other endeavours, an inventory of the extent to which laws and policies in Member countries ensure equal treatment of sexual and gender minorities. The questionnaire investigates whether LGBTI-inclusive provisions emphasised in Chapter 2 have been passed in OECD countries as of 30 June 2019 and, for those that are in force, it provides the year when the provision first came into effect. This information was collected by the OECD, based on an analysis of national laws and their amendments that was vetted by a large majority of the countries covered in this report (33/35).[4]

Consistent with Chapter 2, the questionnaire is structured around two sections. The first section deals with general provisions which are relevant for the inclusion of lesbian, gay, bisexual, transgender and intersex people altogether. The second section deals with group-specific provisions that seek to address the unique challenges faced by subgroups of the LGBTI population. It is composed of two subsections: one that deals with LGB-specific provisions, the other that deals with TI-specific provisions.

General, LGB-specific and TI-specific provisions are each broken down into five components, as presented in Figure 3.2. These components are:

- For *general provisions*: (i) protection of LGBTI people against discrimination; (ii) protection of LGBTI people's civil liberties; (iii) protection of LGBTI people against violence; (iv) protection of LGBTI people fleeing persecution abroad; and (v) existence of an LGBTI-inclusive equality body, ombudsman or human rights commission;
- *For group-specific provisions:*

- Within the subset of *LGB-specific provisions*: (i) equal treatment of same-sex and different-sex consensual sexual acts; (ii) ban on conversion therapy; (iii) legal recognition of same-sex partnerships; (iv) equal adoption rights; and (v) equal access to assisted reproductive technology;
- Within the subset of *TI-specific provisions*: (i) being transgender not categorised as a mental illness in national clinical classification, (ii) legal gender recognition, (iii) no medical requirement attached to legal gender recognition, (iv) availability of a non-binary gender option on birth certificates and other identity documents, and (v) postponing medically unnecessary sex-normalising treatment or surgery on intersex minors.

The detailed questions attached to each of the 15 (3x5) components are presented in Annex 3.B.

3.1.2. Compiling responses to the OECD questionnaire

Legal LGBTI inclusivity is calculated based on responses to the OECD questionnaire on LGBTI-inclusive laws and policies. For illustration, the component "Protection of LGBTI people against violence" is used. As it is apparent in Annex 3.B, applying international human rights standards to this issue would entail passing six legal provisions: three in order to protect LGBTI individuals against hate crime (one based on sexual orientation for LGB people, one based on gender identity for transgender people, and one based on sex characteristics for intersex people), and three in order to protect LGBTI individuals against hate speech (again, one for LGB people, one for transgender people and one for intersex people). Imagine a country where hate crime and hate speech explicitly based on sexual orientation and gender identity are criminalised and/or considered by the national law as an aggravating circumstance, but where no such provision exists concerning sex characteristics. In this case, legal LGBTI inclusivity attached to the component "Protection of LGBTI people against violence" will be equal to 2/3 since four of the six provisions necessary to protect LGBTI individuals are in force.

Once legal LGBTI inclusivity attached to each of the 15 components of the questionnaire is calculated, one can compute an arithmetic average by category of provisions. More precisely:

- Legal LGBTI inclusivity associated with the category "general provisions" is the arithmetic average of legal LGBTI inclusivity attached to each of the five components of general provisions;
- Legal LGBTI inclusivity associated with the category "group-specific provisions" is the arithmetic average of legal LGBTI inclusivity attached to each of the ten components of group-specific provisions, noting that legal LGBTI inclusivity can also be calculated for subcategories of group-specific provisions. In this case:
  - Legal LGBTI inclusivity associated with the subcategory "LGB-specific provisions" is the arithmetic average of legal LGBTI inclusivity attached to each of the 5 components of LGB-specific provisions;
  - Legal LGBTI inclusivity associated with the subcategory "TI-specific provisions" is the arithmetic average of legal LGBTI inclusivity attached to each of the five components of TI-specific provisions.

At this stage, it is possible to compute legal LGBTI inclusivity for the combination of both general and group-specific provisions. This value is simply the arithmetic average of legal LGBTI inclusivity associated with the category "general provisions" and legal LGBTI inclusivity associated with the category "group-specific provisions". Indeed, since general and group-specific provisions are both essential for the inclusion of LGBTI individuals, they are given equal weight in the average. Consequently, each of the five components of general provisions is assigned a 10% weight, while each of the ten components of group-specific provisions is assigned a 5% weight (Box 3.2).

Box 3.2. Computing legal LGBTI inclusivity: A methodological note

For a given country, are called:

- G1, G2, G3, G4 and G5 the level of legal LGBTI inclusivity attached to each of the five components of general provisions;
- LGB1, LGB2, LGB3, LGB4, LGB5, TI1, TI2, TI3, TI4 and TI5 the level of legal LGBTI inclusivity attached to each of the ten components of group-specific provisions: five relate to LGB-specific provisions (from LGB1 to LGB5), and five relate to TI-specific provisions (from TI1 to TI5).

Gm is the level of legal LGBTI inclusivity associated with the category "general provisions". Gm is computed as follows:

$$Gm=1/5*(G1+G2+G3+G4+G5).$$

Similarly, GSm is the level of legal LGBTI inclusivity associated with the category "group-specific provisions". GSm is computed as follows:

$$GSm=1/10*(LGB1+LGB2+LGB3+LGB4+LGB5+TI1+TI2+TI3+TI4+TI5).$$

The level of legal LGBTI inclusivity attached to general and group-specific provisions combined is merely the arithmetic average of Gm and GSm.

In some federal countries or countries with a decentralised system of governance, some of the issues addressed in the OECD questionnaire on LGBTI-inclusive laws and policies are regulated only at the subnational level.[5] These countries are Australia, Austria, Belgium, Canada, Mexico, Spain, the United Kingdom and the United States. In this case, information on whether LGBTI-inclusive laws are in force is collected for each of the four most populous subnational jurisdictions. In this setting:

- If the LGBTI-inclusive law under consideration is in force in none of these four jurisdictions, it will be considered as absent nationwide;
- If this law is in force in one, two, or three of these four jurisdictions, it will respectively be considered as in force in 25%, 50% or 75% of the national territory;
- If this law is in force in all four jurisdictions, it will be considered as in force throughout the national territory.

Focusing on the four most populous subnational jurisdictions has the advantage of covering all or a large majority of the population in most of those countries where LGBTI issues happen to be regulated at the subnational level:

- New South Wales, Victoria, Queensland and Western Australia comprise 85% of the Australian population
- Vienna, Lower Austria, Upper Austria and Styria comprise 71% of the Austrian population
- Brussels-Capital Region, Flanders and Wallonia comprise all the Belgian population
- Ontario, Quebec, British Columbia and Alberta comprise 85% of the Canadian population
- Andalusia, Catalonia, Community of Madrid and Valencia comprise 60% of the Spanish population
- England, Northern Ireland, Scotland and Wales comprise all of the UK population.

The two exceptions are Mexico and the United States. Mexico state, Mexico City, Veracruz and Jalisco comprise only 35% of the Mexican population, while California, Texas, Florida and New York comprise only 33% of the US population. That said, the four most populous entities in Mexico and the United States seem representative of the extent to which LGBTI-inclusive laws are in force nationwide. For instance, two

of the four most populous entities in Mexico have legalised same-sex marriage as of 30 June 2019, which is close to the share of entities that have done so nationwide (18 of 32 Mexican entities). Similarly, two of the four most populous states in the United States are part of the states that, according to the Movement Advancement Project[6], are above the US average concerning the implementation of LGBTI-inclusive laws and policies, which exactly coincides with the share of such top-performing states nationwide (25 of 50 US states).

3.2. Levels and trends in legal LGBTI inclusivity

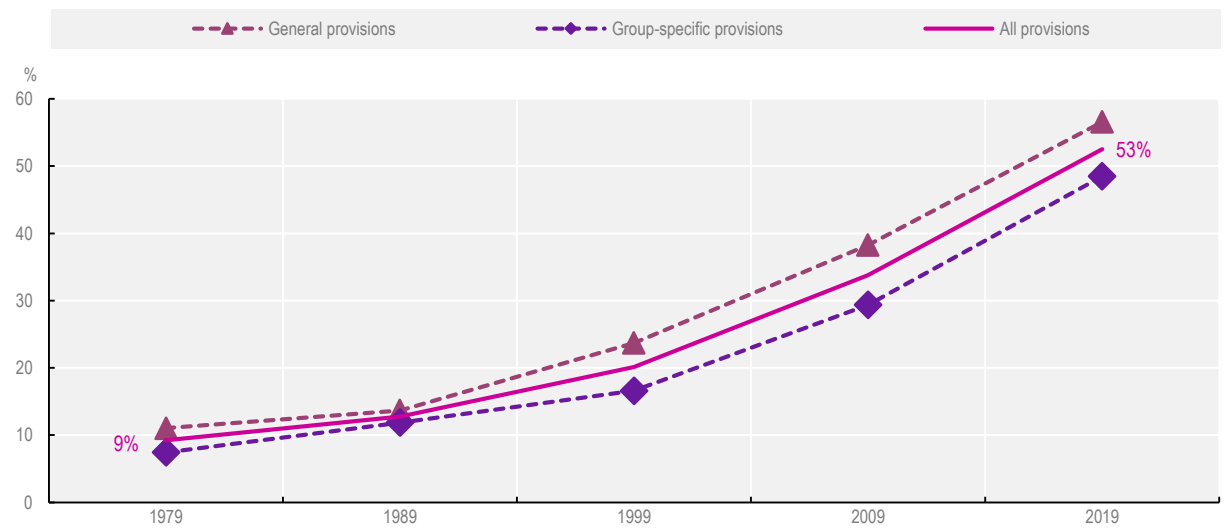
Section 3.2 analyses levels and trends in legal LGBTI inclusivity, OECD-wide (Section **Error! Reference source not found.**) and by country (Section 3.2.2). It concludes by investigating how legal LGBTI inclusivity correlates with measures of social inclusion and economic development (Section 3.2.3).

3.2.1. Moderate legal LGBTI inclusivity OECD-wide, but rising

OECD countries are slightly more than halfway to full legal acceptance of LGBTI people: legal LGBTI inclusivity is equal to 53% as of 2019. But legal LGBTI inclusivity is strongly improving: it has risen nearly six-fold since the late 1970s, when less than 10% of laws critical for LGBTI inclusion were passed. The bulk of this increase occurred in the past 20 years and is driven by passage of both general and group-specific provisions (Figure 3.1).

Figure 3.1. Legal LGBTI inclusivity in OECD countries is on the rise

Evolution of legal LGBTI inclusivity between 1979 and 2019, OECD-wide (all provisions, general provisions and group-specific provisions)



Note: This figure reports the share of legal provisions highlighted in Chapter 2 that are in force in OECD countries, between 1979 and 2019. It distinguishes between all provisions, general provisions and group-specific provisions – see Box 3.2 for further details on how legal LGBTI inclusivity is computed.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

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Figure 3.2 provides additional insights. It reports legal LGBTI-inclusivity attached to each of the 15 components of the OECD questionnaire on LGBTI-inclusive laws and policies as of 2019, and its variation between 1999 and 2019[7] (see Annex 3.C for a detailed analysis of levels and trends in legal LGBTI inclusivity by component, both OECD-wide and by country).

Figure 3.2. Legal LGBTI inclusivity varies significantly over time and across components

Legal LGBTI inclusivity attached to each of the 15 components of the OECD questionnaire on LGBTI-inclusive laws and policies (level as of 2019 in percentage and variation between 1999 and 2019 in percentage points)

Note: This figure reports legal LGBTI-inclusivity attached to each of the 15 components of the OECD questionnaire on LGBTI-inclusive laws and policies as of 2019 (in percentage), and its variation between 1999 and 2019 (in percentage points) – see Annex 3.C for a detailed analysis of levels and trends in legal LGBTI inclusivity by component, both OECD-wide and by country.
The variation in legal LGBTI inclusivity is computed between 1999 and 2019 for two reasons: (i) the bulk of the increase in legal LGBTI inclusivity occurred in the past 20 years (Figure 3.1); (ii) 1999-2009 is the decade when all OECD countries were enjoying political independence for the first time, following the collapse of the Communist regimes in Eastern Europe in the early 1990s.
The abbreviation "wgt" in the figure refers to "weight". It recalls that general and group-specific provisions are given equal weight when computing level of legal LGBTI inclusivity across all 15 components, meaning that each of the five components of general provisions is assigned a 10% weight, while each of the ten components of group-specific provisions is assigned a 5% weight – see Box 3.2 for further details on how legal LGBTI inclusivity is computed.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

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Figure 3.2 reveals that the component that provides the strongest contribution to legal LGBTI-inclusivity as of 2019 relates to the protection of civil liberties of LGBTI individuals. No legal provision in OECD countries explicitly restricts the rights to freedom of expression, peaceful assembly, and association of sexual and gender minorities. However, LGBTI equality is far from being a done deal when it comes to civil liberties and constant vigilance is needed to avoid steps backward. Attempts to pass gay propaganda laws have occurred among OECD countries, although such laws are strongly condemned by international human rights bodies for hindering freedom of expression on LGBTI issues as recalled in Chapter 2. Moreover, in some instances, public authorities erected barriers to the organisation of peaceful LGBTI public events such as pride parades, or threatened the registration, operation and access to funding of LGBTI human rights associations (see Annex 3.D for further details).

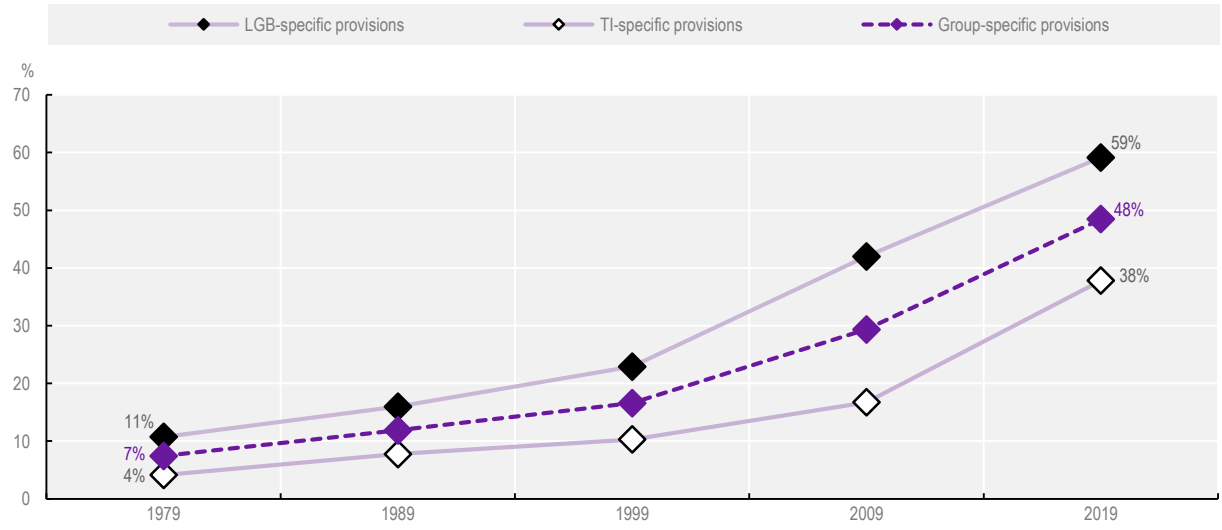
Figure 3.2 also unveils that, between 1999 and 2019, OECD countries made great strides with respect to the following five components:[8]

- *Existence of an LGBTI-inclusive equality body, ombudsman or human rights commission*: e.g. a human rights institution in charge of supporting victims of discrimination explicitly based on sexual orientation is present in 29 OECD countries in 2019, up from six OECD countries in 1999;
- *Protection of LGBTI people fleeing persecution abroad*: e.g. persecution (or a well-founded fear of persecution) explicitly based on sexual orientation is recognised as a valid ground for granting asylum in 24 OECD countries in 2019, up from four OECD countries in 1999;
- *Protection of LGBTI people against discrimination*: e.g. discrimination explicitly based on sexual orientation is prohibited in employment in 32 OECD countries in 2019, up from 11 OECD countries in 1999;
- *Equal adoption rights*: both second-parent adoption and joint adoption by same-sex partners is legal in 20 OECD countries in 2019, up from only one OECD country in 1999;
- *Legal recognition of same-sex partnerships*: same-sex marriage is legal in 20 OECD countries (at least in some parts of their national territory) in 2019, while *no* OECD country was allowing same-sex partners to marry in 1999.

Although general and group-specific provisions contribute almost equally to the rise in legal LGBTI inclusivity, OECD countries are less active with respect to group-specific provisions. Figure 3.3 decomposes group-specific provisions into their LGB-specific and TI-specific parts, and reports their evolution over time. It reveals a lack of laws to advance the rights of transgender and intersex people. In 2019, although 59% of LGB-specific provisions were in force, this was the case of only 38% of the provisions critical for the inclusion of transgender and intersex persons. However, OECD countries are catching up: in the past 10 years, TI-specific provisions were passed at a faster pace. OECD countries have made particularly strong progress in depathologising legal gender recognition. In 2019, 15 OECD countries allow transgender people to change their gender marker on birth certificate and other identity documents without attaching medical requirement to this process (at least in some parts of their national territory), while *no* OECD country was allowing legal gender recognition without sterilisation, sex-reassignment surgery and/or treatment, or mental health diagnosis in 2009.

Figure 3.3. OECD countries are lagging behind on the legal inclusion of transgender and intersex people, but slowly catching up

Evolution of legal LGBTI inclusivity between 1979 and 2019, OECD-wide (group-specific provisions, LGB-specific provisions and TI-specific provisions)



Note: This figure reports the share of legal provisions highlighted in Chapter 2 that are in force in OECD countries, between 1979 and 2019. It distinguishes between group-specific provisions, LGB-specific provisions and TI-specific provisions – see Box 3.2 for further details on how legal LGBTI inclusivity is computed.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

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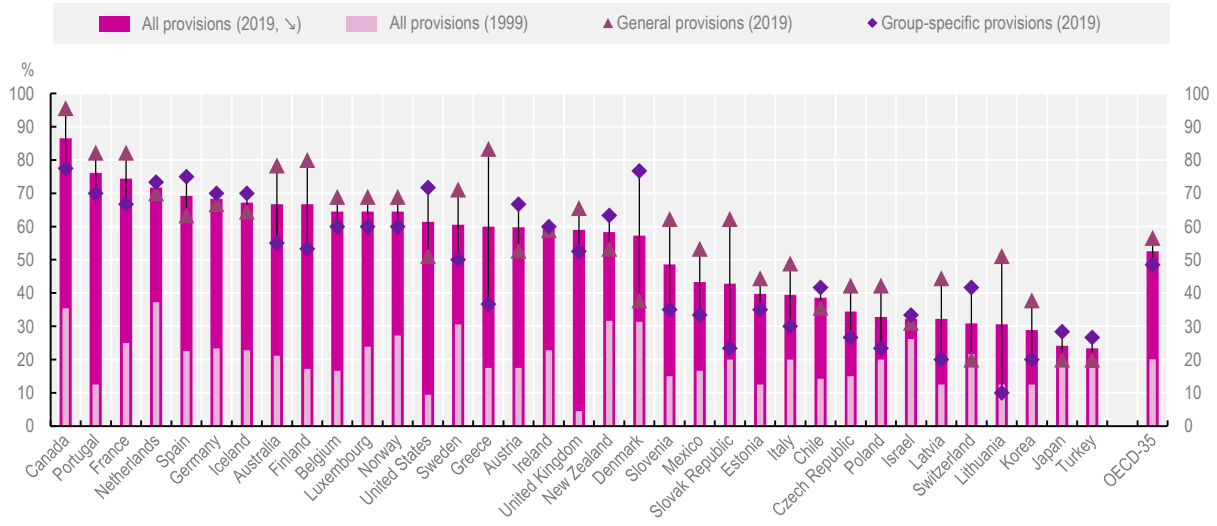
3.2.2. Unequal levels and trends across countries but progress everywhere

Legal LGBTI inclusivity varies significantly by country, ranging from 25% among the three least active countries – Japan, Turkey and Korea – to 79% among the three most active countries – Canada, Portugal and France (Figure 3.4). This disparity is mainly driven by group-specific provisions: legal LGBTI inclusivity is, in this case, nearly eight times higher in Canada (78%) than in Lithuania (10%). Within group-specific provisions however, variation in legal LGBTI inclusivity across countries does not depend much on whether LGB-specific provisions or TI-specific provisions are considered (Figure 3.5). Nearly all the provisions critical to the inclusion of lesbian, gay and bisexual people are in force in Spain (95%), as compared to only 20% in Korea, Latvia and Lithuania. Similarly, approximately three quarters of the provisions necessary for the inclusion of transgender and intersex people are in force in Denmark (73%), as compared to only 20% in nearly one third of OECD countries[9] – none of these TI-specific provisions has yet been passed in Lithuania.

Figure 3.4. Legal LGBTI inclusivity is improving in *all* OECD countries

Legal LGBTI inclusivity as of 1999 and 2019, by OECD country (all provisions, general provisions and group-specific provisions)



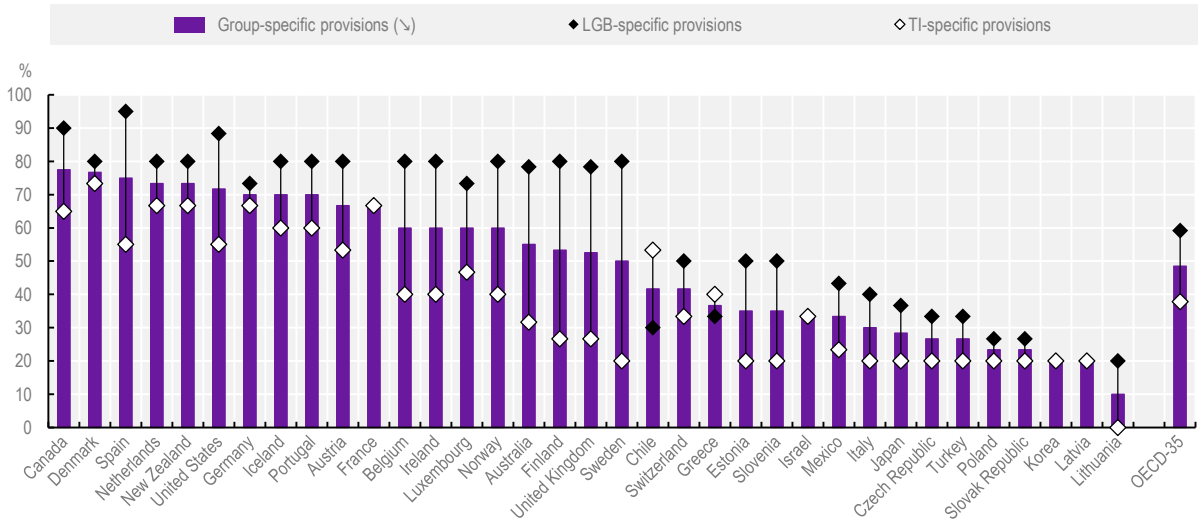
Note: This figure reports the share of provisions highlighted in Chapter 2 that are in force in OECD countries, as of 1999 and 2019. For year 1999, it focuses on all provisions. For year 2019, it distinguishes between all provisions, general provisions and group-specific provisions – see Box 3.2 for further details on how legal LGBTI inclusivity is computed.
(↘) in the legend relates to the variable for which countries are ranked from left to right in decreasing order.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

StatLink https://stat.link/6ad1qm

EU Members are overrepresented among OECD countries whose legal LGBTI inclusivity is above the OECD average as of 2019, which reflects the strong normative framework in favour of LGBTI equality required by EU institutions (Chapter 2).[10] Notably, all EU Members have transposed the Employment Equality Directive that prohibits discrimination on the grounds of, *inter alia*, sexual orientation as of 2019 (this is the case of only three quarters of non-EU OECD countries). Additionally, more than 80% of EU Members recognise persecution (or a well-founded fear of persecution) explicitly based on sexual orientation and gender identity as a valid ground for granting asylum following Directive 2011/95/EU (only a minority of non-EU OECD countries do so).

Figure 3.5. Cross-country variation in legal LGBTI inclusivity is similar should one focus on LGB-specific or TI-specific provisions

Legal LGBTI inclusivity as of 2019, by OECD country (group-specific provisions, LGB-specific provisions and TI-specific provisions)



Note: This figure reports the share of provisions highlighted in Chapter 2 that are in force in OECD countries, as of 2019. It distinguishes between group-specific provisions, LGB-specific provisions and TI-specific provisions – see Box 3.2 for further details on how legal LGBTI inclusivity is computed.
(↘) in the legend relates to the variable for which countries are ranked from left to right in decreasing order.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

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Overall, analysis of levels and trends in legal LGBTI-inclusivity permits categorising OECD countries into three performance tiers, from low- to top-performing (Box 3.3). Yet, despite this strong cross-country variation, *all* OECD countries are making progress (Figure 3.4). The strongest growth occurred in Portugal (+63 percentage points, from 13% to 76%), while the weakest growth occurred in Turkey (+5 percentage points from 18% to 23%).

Path dependence is substantial, meaning that countries that were above (resp. below) the OECD average in 1999 are more likely to be above (resp. below) this average in 2019: 13 of the 20 countries that are above the OECD average in 2019 were already above this average in 1999,[11] while 13 of the 15 countries that are below the OECD average in 2019 were already below this average in 1999.[12]

Box 3.3. Three OECD performance tiers

Levels and trends in legal LGBTI-inclusivity reveal three performance tiers among OECD countries:

- *Bottom-performing tier*: countries in this performance tier are showing only modest improvements relative to other OECD countries.[1] They are characterised by a below-average performance regarding both their level of legal LGBTI-inclusivity as of 2019 and their progress in legal LGBTI-inclusivity over the past two decades. 14 countries belong to this category: Chile, Czech Republic, Estonia, Israel, Italy, Japan, Korea, Latvia, Lithuania, Mexico, Poland, Slovak Republic, Switzerland and Turkey;
- *Middle-performing tier*: countries in this performance tier are following trends that suggest their position relative to the OECD average may change in the near future. This category includes countries who show a below-average level of legal LGBTI inclusivity as of 2019 but an above-average increase in legal LGBTI inclusivity between 1999 and 2019 (Slovenia), and countries who show an above-average level of legal LGBTI inclusivity as of 2019 but a below-average increase in legal LGBTI inclusivity between 1999 and 2019 (Denmark, New Zealand and Sweden);
- *Top-performing tier*: countries in this performance tier have been making tremendous progress over the past decades and continue doing so at a sustained pace. They are characterised by an above-average performance regarding both their level of legal LGBTI-inclusivity as of 2019 and their progress in legal LGBTI-inclusivity between 1999 and 2019. 17 countries belong to this category: Australia, Austria, Belgium, Canada, Finland, France, Germany, Greece, Iceland, Ireland, Luxembourg, Netherlands, Norway, Portugal, Spain, United Kingdom and United States.

[1] Some countries in this performance tier have recently shown major improvements in LGBTI rights that, however, cannot be reflected in the level of legal LGBTI inclusivity analysed in this report since these improvements are posterior to 30 June 2019. In Switzerland for instance, 63.1% of Swiss voters approved in a referendum on 9 February 2020 the prohibition of discrimination and hate speech (incitement to hatred) based on sexual orientation. The provision in the Swiss Penal Code resulting from this approval will come into force on 1 July 2020.

Yet, past performance of OECD countries regarding legal inclusion of LGBTI people does not fully predict current performance, and both positive and negative shifts have occurred between 1999 and 2019. Seven countries that were below the OECD average in 1999 have managed to emerge above this average as of 2019. These countries are Austria, Belgium, Finland, Greece, Portugal, United Kingdom and the United States. The strides made between 1999 and 2019 by Portugal and the United Kingdom have been truly spectacular: legal LGBTI inclusivity increased by 63 percentage points in Portugal (from 7 percentage points below the OECD average in 1999 to 23 percentage points above this average in 2019); and by 55 percentage points in the United Kingdom (from 16 percentage points below the OECD average in 1999 to 6 percentage points above this average in 2019). By contrast, two countries, Israel and Switzerland, have fallen below the OECD average as of 2019 while they were above this average in 1999. Their decline is significant: Israel was 6 percentage points above the OECD average in 1999 but 21 percentage points below this average in 2019; Switzerland was 2 percentage point above the OECD average in 1999 but 22 percentage points below this average in 2019. These drops are not due to steps backward. Instead, they reflect that these countries have made progress at a much slower pace than other OECD countries.

Some countries performing just below and above the OECD average are following trends that suggest their position relative to that average may change in the near future – for better or worse. Slovenia is trending positively and close to moving above the average. In this country, legal LGBTI inclusivity has increased from 15% in 1999 to 49% in 2019, which is only 4 percentage points below the OECD average (52%). By contrast, Denmark and New Zealand are at risk of falling below the average. Although these

countries have consistently performed better in terms of legal LGBTI inclusivity relative to the OECD average, their relative advantage is declining: their legal LGBTI inclusivity was between 11 and 12 percentage points above the OECD average in 1999, but only 4 to 5 percentage points above this average in 2019.

3.2.3. Is legal LGBTI inclusivity associated with measures of social inclusion and economic development?

Section 3.2.3 investigates the correlation between legal LGBTI inclusivity and two measures of social inclusion: (i) social acceptance of LGBTI people and (ii) gender equality. This section also analyses the relationship between legal LGBTI inclusivity and economic development.

Legal LGBTI inclusivity and social acceptance of LGBTI people

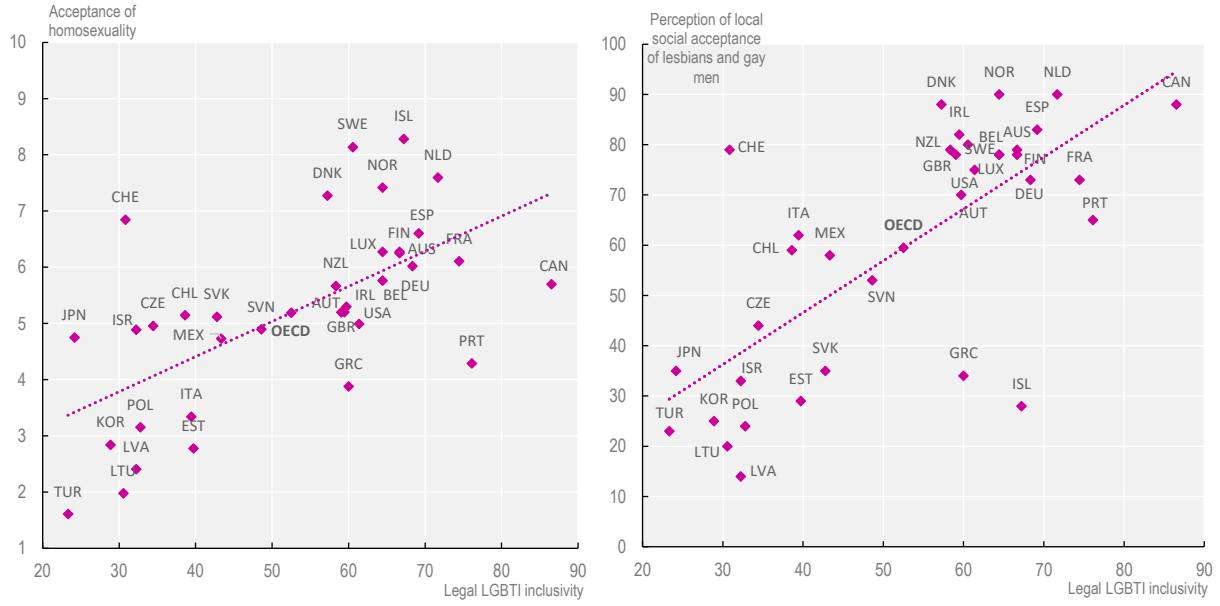
While countries with greater acceptance of sexual and gender minorities are more likely to pass LGBTI-inclusive laws, evidence shows that legal changes in favour of LGBTI people in turn do cause changes in attitudes towards this population. Indeed, individuals perceive legal changes as reflections of advancements in what is socially acceptable and many are willing to conform to these shifts (Tankard and Paluck, 2017[2]). For instance, in European countries where same-sex marriage is legal, acceptance of homosexuality increased much faster after those states adopted same-sex relationship recognition policies (Aksoy et al., 2020[3]). Similarly, same-sex marriage legalisation across U.S. states led to an increase in employment of people in same-sex couples, a change driven by improvements in attitudes towards homosexuality and, hence, lower discrimination against LGB individuals (Sansone, 2019[4]).

Figure 3.6 and Figure 3.7 confirm a significant positive relationship between legal LGBTI inclusivity and acceptance of LGB, transgender and intersex people. An increase in legal LGBTI inclusivity from its average value (25%) among the three lowest-performing OECD countries (Turkey, Japan and Korea) to its average value (79%) among the three highest-performing OECD countries (Canada, Portugal and France) is associated with:

- A 2.5 point increase in the score on a 1-to-10 scale measuring acceptance of homosexuality, from 3 to 5.5 (left panel of Figure 3.6);
- A nearly three-fold increase in the share of respondents who consider their area of residence is a good place to live for lesbians and gay men, from 28% to 75% (right panel of Figure 3.6);[13]
- A more than 25% increase in the share of respondents who support transgender people, from 34% to 43% (left panel of Figure 3.7);[14]
- A more than 50% increase in the share of respondents who support intersex people, from 28% to 43% (right panel of Figure 3.7).[15]

Figure 3.6. Legal LGBTI inclusivity is positively associated with acceptance of lesbians and gay men

Relationship between legal LGBTI inclusivity, acceptance of homosexuality (left panel) and perception of local social inclusion of lesbians and gay men (right panel)



Note: Legal LGBTI inclusivity refers to the share of provisions highlighted in Chapter 2 that are in force in OECD countries as of 2019. In the left panel, acceptance of homosexuality is measured on a scale from 1 to 10, where 1 means that homosexuality is never justified and 10 means that it is always justified. It is based on the following question: *Please tell me whether you think homosexuality can always be justified, never be justified, or something in between using this card*. This question is part of a battery of several questions about controversial behaviours and issues (e.g. abortion, divorce, euthanasia, prostitution, etc.) that have been asked in the following cross-country surveys: the AsiaBarometer, the European Values Survey, the Latinobarometro and the World Values Survey. Only survey rounds that occurred after 2001 are used. In the right panel, the perception of local social acceptance of lesbians and gay men refers to the share of respondents to the 2018 Gallup World Poll who consider that their area of residence is a good place to live for gay men or lesbians. It is based on the following question: *Is the city or area where you live a good place or not a good place to live for gay or lesbian people?*.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019), OECD compilation based on AsiaBarometer, European Values Survey, Latinobarometro and World Values Survey, and Gallup World Poll.

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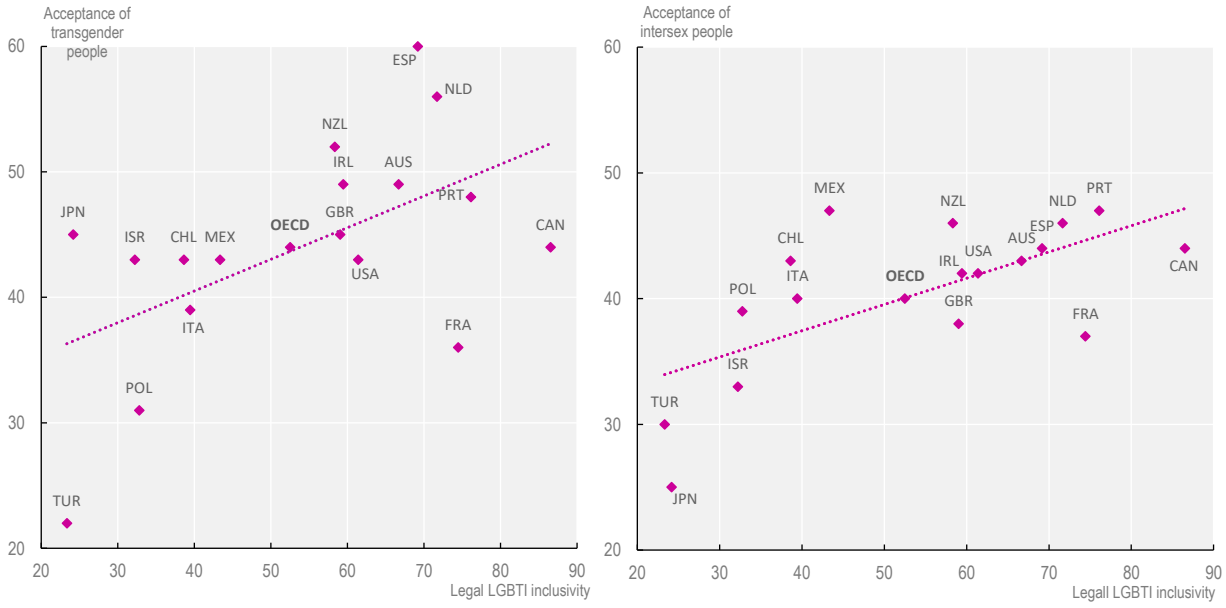
Figure 3.7. Legal LGBTI inclusivity is positively associated with acceptance of transgender and intersex people

Relationship between legal LGBTI inclusivity, acceptance of transgender people (left panel) and acceptance of intersex people (right panel)



Note: Legal LGBTI inclusivity refers to the share of provisions highlighted in Chapter 2 that are in force in OECD countries as of 2019. In the left panel, acceptance of transgender people refers to the average share of respondents to the 2016 ILGA survey who answer "Yes" to the following two questions: (i) *If a male child always dressed and expressed himself as a girl, would you find that acceptable?*; (ii) *If a female child always dressed and expressed herself as a boy, would you find that acceptable?* In the right panel, acceptance of intersex people refers to the share of respondents to the 2016 ILGA survey who answer "No" to the following question: *Do you think that children whose genitals are unclear at birth should be surgically assigned a gender by medical professionals?*
Source: 2016 ILGA survey.

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Legal LGBTI inclusivity and gender equality

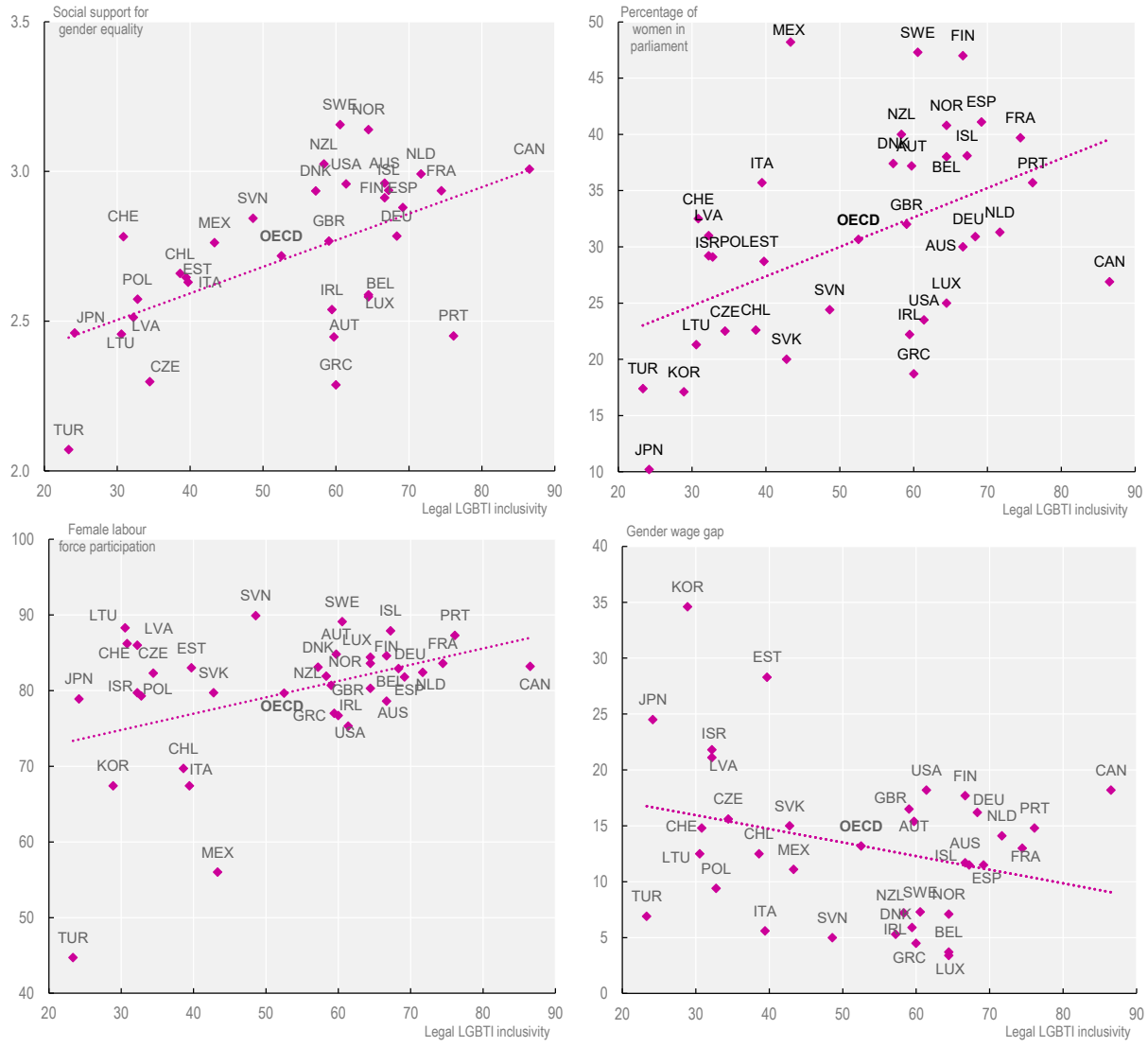
Both exclusion of LGBTI people and endorsement of traditional gender norms derive from the mistaken view that (i) individuals fall into only two distinct biological sexes at birth (male and female) that perfectly match their gender identity; (ii) men and women unequivocally feel sexual attraction to one another; (iii) within these couples, men and women fulfil biologically determined roles. One can therefore expect a strong association between legal LGBTI inclusivity and gender equality.

Figure 3.8 indeed reveals a significant positive relationship between legal LGBTI inclusivity and gender equality. An increase in legal LGBTI inclusivity from its average value (25%) among the three lowest-performing OECD countries to its average value (79%) among the three highest-performing OECD countries is associated with:

- A one-point increase on a 1-to-4 scale measuring support for gender equality, from 2 to 3 (upper left panel of Figure 3.8);
- A more than two-fold increase in the share of women in parliament, from 15% to 34% (upper right panel of Figure 3.8);
- A one-third increase in female labour force participation, from 64% to 85% (lower left panel of Figure 3.8);
- A 30% decrease in the gender wage gap, from 22% to 15% (lower right panel of Figure 3.8).

Figure 3.8. Legal LGBTI inclusivity is positively associated with gender equality

Relationship between legal LGBTI inclusivity, support for gender equality (upper left panel), percentage of women in parliament (upper right panel), female labour force participation (lower left panel) and gender wage gap (lower right panel)



Note: Legal LGBTI inclusivity refers to the share of provisions highlighted in Chapter 2 that are in force in OECD countries as of 2019. In the upper left panel, social support for gender equality is an average of responses to the following three questions taken from the European Values Survey and World Values Survey: (i) *When jobs are scarce, men should have more right to a job than women* (=1 if strongly agree, =2 if agree, =3 if disagree, =4 if strongly disagree); (ii) *On the whole, men make better political leaders than women do* (=1 if strongly agree, =2 agree, =3 if disagree, =4 if strongly disagree); (iii) *A university education is more important for a boy than for a girl* (=1 if strongly agree, =2 agree, =3 if disagree, =4 if strongly disagree). Only survey rounds that occurred after 2001 are used. In the upper right panel, the percentage of women in parliament is computed as of 2019 and stems from the OECD Government at a Glance database. In the lower left panel, female labour force participation is computed as of 2018 for the 25-54 age group and stems from the OECD Employment database. In the lower right panel, gender wage gap is defined as the difference between male and female median wages divided by the male median wages (expressed in percentage), among full-time employees. It is computed as of 2017 or earlier and stems from the OECD Employment database.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019), OECD compilation based on European Values Survey and World Values Survey, OECD Government at a Glance database, and OECD Employment database.

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Legal LGBTI inclusivity and economic development

Economic development is conducive to education (Chevalier et al., 2013[5]) and, hence, legal LGBTI inclusivity. Education plays a major role in explaining differences in attitudes towards sexual and gender minorities. For instance, the score of individuals with a college education on a 1-to-10 scale measuring acceptance of homosexuality (6.1) is two points higher than that of individuals who have, at most, a lower-secondary education (4.1) (OECD, 2019[1]). This result may be in part due to education's correlation with complex reasoning that increases individuals' tolerance to nonconformity (Ohlander, Batalova and Treas, 2005[6]).

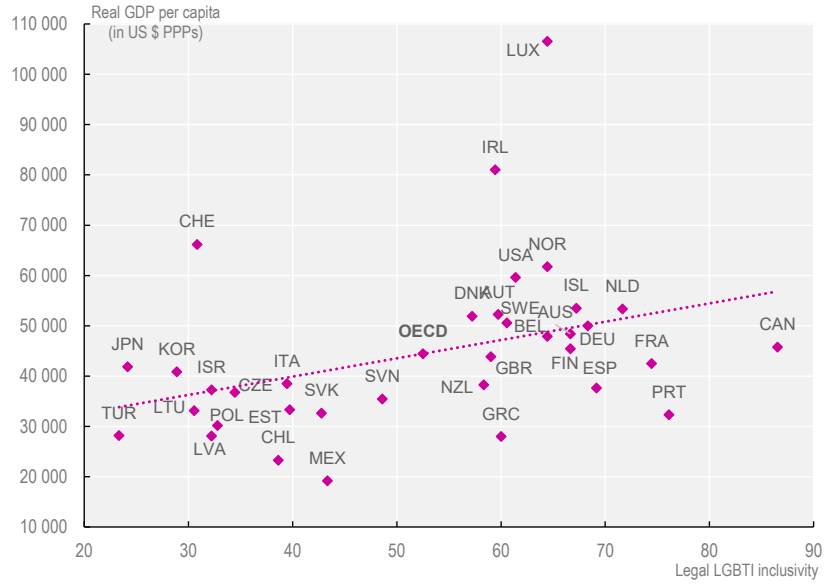
Legal LGBTI inclusivity also contributes to economic development by reducing the massive cost of anti-LGBTI discrimination (Carcillo and Valfort, 2018[7]). Anti-LGBTI discrimination reduces demand for labour of LGBTI people, which reduces their wages, their access to employment and confines sexual and gender minorities to less qualified positions than they might otherwise occupy. These negative consequences are magnified by reactions of the labour supply. Reduced wages undermine incentives to work. The discrimination-induced decrease in the demand for labour also reduces the productivity of LGBTI people who invest less in education and life-long learning because they anticipate low returns. This negative spiral results in production losses that in turn affect public finances. Lower production and wage levels reduce state revenue from income tax, corporation tax, and social security contributions. At the same time, discrimination in access to employment increases public expenditure due to unemployment benefits and social transfers to those who are discriminated against.

Yet, these immediate negative effects of discrimination represent only a fraction of the harmful spill-overs resulting from excluding LGBTI people from the labour market and the wider society. Notably, representative survey data point to widespread psychological distress among LGBTI individuals due to – at least partly – stigma (OECD, 2019[1])). Sexual and gender minorities mostly live in social environments that largely view heterosexuality and cisgender identity, i.e. congruence between sex at birth and gender identity, as the only way of being normal. LGBTI people therefore experience stress not undergone by heterosexual and cisgender individuals, the so-called minority stress (Meyer, 2003[8]). This stress has been shown to seriously hamper mental health, by generating anxiety, depression, suicide ideation, substance use and abuse. In the United States for instance, the reduction in the number of suicide attempts between LGB and heterosexual youth was substantially higher in states that adopted same-sex marriage before its legalisation by the Supreme Court in 2015, than in others – a trend that was not apparent before the implementation of LGB-inclusive policies. Overall, it is estimated that same-sex marriage policies caused a reduction by nearly 15% of suicide attempts among adolescents who self-identify as gay, lesbian or bisexual (Raifman et al., 2017[9]). Lower mental health in turn has the potential to impair LGBTI people's physical health by providing a fertile ground to other pathologies, such as cardiovascular diseases. Overall, the detrimental effect of discrimination on LGBTI people's mental health further contributes to eroding a country's human capital, as well as public finances through significant spending on social and health services in order to address the consequences of LGBTI people's marginalisation.

Consistent with these mechanisms, Figure 3.9 unveils a positive relationship between legal LGBTI inclusivity and economic development. An increase in legal LGBTI inclusivity from its average value among the three lowest-performing OECD countries to its average value among the three highest-performing OECD countries is associated with an increase in real GDP per capita of approximately USD 3 200.

Figure 3.9. Legal LGBTI inclusivity is positively associated with economic development

Relationship between legal LGBTI inclusivity and real GDP per capita (in USD PPPs)



Note: Legal LGBTI inclusivity refers to the share of provisions highlighted in Chapter 2 that are in force in OECD countries as of 2019. Real GDP per capita (in USD PPPs) is computed as of 2019 using 2015 as the reference year and stems from the OECD Main Economic Indicators database.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019) and OECD Main Economic Indicators database.

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3.3. What are the possible next steps to improve legal LGBTI inclusivity?

Identifying possible next steps entails taking into account, for each OECD country, both where this country is standing and, given this achievement, how attainable it is for this country to pass the LGBTI-inclusive provisions not yet in force on its national territory. A straightforward way to assess the attainability of LGBTI-inclusive provisions consists in investigating the prevalence of these provisions among the various OECD performance tiers. More precisely, it is possible to distinguish between:

- Legal provisions that are *low-hanging fruits*: these are the legal provisions passed by a majority among all performance categories, including bottom-performing countries;
- Legal provisions that are *middle-hanging fruits*: these are the legal provisions passed by a majority, but only among middle- and top-performing countries;
- Legal provisions that are *high-hanging fruits*: these are the legal provisions passed by a majority, but only among top-performing countries;
- *Ground-breaking* provisions: these are the legal provisions passed by only a minority among all performance categories, including top-performing countries.

A realistic country-specific sequence of next steps emerges from this categorisation. To prevent countries from being stuck in their performance tier or, worse, from being downgraded to the lower performance category, the first step would consist, for each country, in finishing passing the legal provisions already implemented by a majority of countries in the same or in lower performance tiers (if applicable). The subsequent steps would entail passing the legal provisions already implemented by a majority of countries

in the higher performance tiers, starting with the performance category just above. Concretely, this approach could imply four next steps for bottom-performing countries, three next steps for middle-performing countries and two next steps for top-performing countries (Box 3.4).

Obviously, this sequence of next steps is only indicative. Countries are free to pass all the LGBTI-inclusive legal provisions not yet in force on their national territory either simultaneously, or in the order they wish. But the suggested next steps may be useful for countries who aim to improve their legal LGBTI-inclusivity in a staggered and manageable way. To help countries implement these next steps in practice, Section 3.3.1 details the legal provisions that fall under each of the four categories above, from low-hanging to ground-breaking, while Section 3.3.2 provides guidance on passing some of these provisions, based on good practices from OECD countries and beyond.

Box 3.4. A realistic country-specific sequence of next steps

OECD countries could consider undertaking the following next steps to travel the road to legal LGBTI inclusion in a staggered and manageable way, depending on their performance tier:

- For bottom-performing countries:
  - *Step 1*: Finishing passing all low-hanging provisions (if applicable)
  - *Step 2*: Passing all middle-hanging provisions
  - *Step 3*: Passing all high-hanging provisions
  - *Step 4*: Passing all ground-breaking provisions
- For middle-performing countries:
  - *Step 1*: Finishing passing all low-hanging and middle-hanging provisions (if applicable)
  - *Step 2*: Passing all high-hanging provisions
  - *Step 3*: Passing all ground-breaking provisions
- For top-performing countries:
  - *Step 1*: Finishing passing all low-, middle- and high-hanging provisions (if applicable)
  - *Step 2*: Passing all ground-breaking provisions

3.3.1. Categorising LGBTI-inclusive legal provisions based on their attainability

Analysing the prevalence of LGBTI-inclusive provisions among the various OECD performance tiers permits identifying which of these provisions are low-hanging, middle-hanging, high-hanging or ground-breaking. Table 3.1 points out that the attainability of LGBTI-inclusive legal provisions strongly depends on the subgroups of the LGBTI population these provisions target. While legal provisions fostering the inclusion of LGB people are overrepresented among those that are low- and middle-hanging, legal provisions promoting the inclusion of transgender and intersex people are mainly high-hanging and ground-breaking. This finding echoes an important takeaway from Section 3.2.1 according to which OECD countries are lagging behind with regard to TI-specific laws. Table 3.1 also reveals that even top-performing countries are still far from full legal LGBTI inclusion. Several haven't passed all low- and middle-hanging legal provisions yet. Moreover, the number of ground-breaking provisions that only a minority have implemented thus far is significant. Two types of ground-breaking legal provisions, i.e. hate crime *and* hate speech laws based on sex characteristics, as well as laws banning conversion therapy, are particularly rare among OECD countries: the former are in force in only one OECD country nationwide (Canada), while the latter have been passed in a very limited number of OECD countries and only at the subnational level (see Annex 3.C for more details). It is important that top-performing countries continue demonstrating their leadership by passing those ground-breaking provisions, so that they progressively become standard equality measures.

Table 3.1. Legal provisions fostering the inclusion of transgender and intersex people are overrepresented among those that are high-hanging and ground-breaking

Prevalence of LGBTI-inclusive provisions among the various OECD performance tiers as of 30 June 2019

	Share of countries where the legal provision(s) is(are) in force throughout the national territory among…		
	… bottom-performing countries	… middle-performing countries	… top-performing countries
LOW-HANGING LEGAL PROVISIONS			
Protection of LGBTI people's civil liberties: *Freedom of expression, assembly and association*	all	all	all
Equal treatment of same-sex (SS) and different-sex (DS) consensual sexual acts: *No criminalisation of SS consensual sexual acts; Equal age of consent across SS and DS sexual acts*	majority:93%	all	all
Legal gender recognition	majority:86%	all	all
Protection of LGBTI people against discrimination: *Prohibition of discrimination in employment and a broad range of others fields based on SO*	majority:64%	all	majority:94%
Existence of an LGBTI-inclusive human rights institution (HRI): *HRI in charge of supporting victims of discrimination based on SO*	majority:64%	all	majority:94%
MIDDLE-HANGING LEGAL PROVISIONS			
Existence of an LGBTI-inclusive human rights institution (HRI): *HRI in charge of supporting victims of discrimination based on GI*	minority:50%	majority:75%	majority:82%
Protection of LGBTI people against violence: *Hate crime and hate speech laws based on SO*	minority:29%	majority:75%	majority:59%
Equal adoption rights: *Second-parent adoption (SPA) and joint adoption (JA) legal for SS partners*	none	majority:75%	majority:94%
Legal recognition of same-sex partnerships: *Same-sex marriage legal*	none	majority:75%	majority:88%
Equal access to assisted reproductive technology: *Equal treatment in access to medically assisted insemination (MAI) and/or in vitro fertilisation (IVF) across same-sex and different-sex partners; If MAI and/or IVF are legal for same-sex partners, automatic co-parent recognition is legal; Equal treatment in access to surrogacy*	minority:7%	majority:75%	majority:71%
HIGH-HANGING LEGAL PROVISIONS			
Protection of LGBTI people fleeing persecution abroad: *Persecution based on SO explicitly recognised as a valid ground for granting asylum*	minority:36%	minority:50%	all
Protection of LGBTI people fleeing persecution abroad: *Persecution based on GI explicitly recognised as a valid ground for granting asylum*	minority:29%	minority:50%	majority:88%
Protection of LGBTI people against discrimination: *Prohibition of discrimination in employment and a broad range of others fields based on GI*	minority:21%	minority:50%	majority:88%
Existence of an LGBTI-inclusive human rights institution (HRI): *HRI in charge of supporting victims of discrimination based on SC*	minority:7%	minority:25%	majority:59%
No medical requirement attached to legal gender recognition	minority:7%	minority:25%	majority:59%
Postponing medically unnecessary sex-normalising treatment or surgery on intersex minors	minority:29%	minority:50%	majority:53%
GROUND-BREAKING LEGAL PROVISIONS			
Protection of LGBTI people against discrimination: *Prohibition of discrimination in employment and a broad range of others fields based on SC*	none	none	minority:47%
Protection of LGBTI people against violence: *Hate crime and hate speech laws based on GI*	none	minority:25%	minority:35%
Protection of LGBTI people fleeing persecution abroad: *Persecution based on SC explicitly recognised as a valid ground for granting asylum*	none	minority:25%	minority:29%
Being transgender not categorised as a mental illness in national clinical classification	none	minority:25%	minority:24%
Availability of a non-binary gender option on birth certificates and other identity documents	none	minority:25%	minority:24%
Protection of LGBTI people against discrimination: *Prohibition of discrimination based on SO, GI and/or SC in the Constitution*	minority:7%	minority:50%	minority:12%
Protection of LGBTI people against violence: *Hate crime and hate speech laws based on SC*	none	none	minority:6%
Ban on conversion therapy	none	none	none

Note: In this table, "SO" refers to "sexual orientation", "GI" to "gender identity" and "SC" to "sex characteristics. Cells in pink refer to a situation where the legal provisions analysed are in force in a majority of countries among the performance tier under consideration.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

3.3.2. Good practices on passing LGBTI-inclusive legal provisions

Effectively passing LGBTI-inclusive provisions requires consistency of these provisions with other laws as well as carefulness in the way these provisions are drafted so that they fully protect all LGBTI people. Analysis of LGBTI-inclusive laws among OECD countries reveals that these conditions are not always fulfilled. This is particularly the case concerning the following five provisions: (i) no criminalisation of same-sex consensual sexual acts; (ii) ban on conversion therapy; (iii) no medical requirement attached to legal gender recognition; (iv) availability of a non-binary gender option on birth certificates and other identity documents; and (v) postponing medically unnecessary sex-normalising treatment or surgery on intersex minors.

No criminalisation of same-sex consensual sexual acts

Same-sex consensual sexual acts are legal in all OECD countries, which stands in sharp contrast with the situation worldwide: 68 countries continue to criminalise same-sex conduct between consenting adults including eight countries that impose or have the option to impose the death penalty as punishment (Iran, Mauritania, Nigeria, Saudi Arabian Somalia, Sudan, United Arab Emirates and Yemen) (ILGA World, 2019[10]). Yet, while the legality of same-sex consensual sexual acts is not challenged by competing laws in most OECD countries, two exceptions exist: openly gay, lesbian and bisexual individuals are banned from serving in the military in Korea and Turkey.

Box 3.5. The "Don't Ask, Don't Tell" policy in the United States

"Don't ask, don't tell" (DADT) was the official United States policy on military service by gays, bisexuals, and lesbians instituted by the Clinton Administration in 1994. The policy prohibited military personnel from discriminating against or harassing closeted homosexual or bisexual service members or applicants, while barring openly gay, lesbian, or bisexual persons from military service because their presence "would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability". DADT ensured that consensual same-sex sexual conduct, whether committed on or off a military base, could still be a ground for dismissal from military service. By 2008, more than 13 000 service members had been discharged from the military under DADT.

In 2010, DADT came under significant legislative and judicial scrutiny. In May, the US House of Representatives voted to repeal DADT. In November, the Department of Defense released a report which found that repealing the DADT policy would pose little risk to military effectiveness. The report looked at studies on militaries of Australia, Canada, Germany, Israel, Italy, the Netherlands and the United Kingdom − all of which had years of experience with LGBT personnel serving in their forces without any restrictions. The report highlighted that none of these studies found that having LGBT service members had affected unit performance. The formal repeal of DADT became effective in 2011.

In Korea, Article 92-6 of the 1962 Military Criminal Act provides that a person who commits anal intercourse or any other indecent act with "a military person" shall be punished by imprisonment for up to two years. The Korean military has invoked Article 92-6 to punish sexual acts between male servicemen regardless of whether the acts were consensual or whether they happened within or outside of military facilities (Human Rights Watch, 2019[11]). The provision of the Military Criminal Act that bans same-sex conduct among soldiers was upheld as recently as 2016 by the Constitutional Court in a 5-4 ruling.

In Turkey, the Military Health Regulation defines homosexuality as a 'psychosexual' illness and identifies homosexuals as unfit for the military (Commission of the European Communities, 2009[12]). Yet, military service is compulsory for all male Turkish citizens between the ages of 18 and 41. In this setting, individuals

whose homosexuality is found out any time during the one-year military service are not allowed to complete their service. Instead of receiving a certificate of completion, they receive a certificate of discharge for homosexuality (colloquially referred to as the "pink certificate"). Alternatively, homosexuals can "apply" for a "pink certificate" to be exempted from military service following a series of psychological evaluations consisting of personality tests and interviews with the draftee as well as with his family. A "pink certificate" is associated to huge social stigma. This stigma can last for a lifetime by severely undermining the possibility of being hired, as employers typically request proof that the job candidate or employee has done their military service.

Arguments for banning openly gay, lesbian and bisexual individuals from the military typically stress that including this population would undermine a fundamental tenet of military service, i.e. ensuring that soldiers remain undistracted from their mission. But these arguments are ill-founded. Notably, while several studies have investigated the impact of having LGBTI personnel serving in military forces without restriction (the case for instance in Australia, Canada, Germany, Israel, Italy, the Netherlands and the United Kingdom), none have concluded that this policy is detrimental to the performance of military units (Rostker et al., 2011[13]). The observation that an LGBTI-inclusive military poses no risk to military effectiveness contributed to the repeal of the "Don't Ask, Don't Tell" policy in the United States in 2011 (Box 3.5). More fundamentally, excluding openly gay, lesbian and bisexual individuals from the military breaches the right to equal treatment and freedom from discrimination, and constitutes an impermissible infringement of the right to privacy, as the European Court of Human Rights ruled in two cases in 1999 (Box 3.6).

Box 3.6. Two decisions from the European Court of Human Rights: Lustig-Prean v. the United Kingdom (1999) and Smith and Grady v. the United Kingdom (1999)

Before 2000, military policies under both the UK Ministry of Defence and the Federal Republic of Germany prohibited LGBT service members from serving openly in the armed forces, regardless of the individual's conduct or service record.

Both the United Kingdom and Germany changed their policies in 2000 in response to the decisions in Lustig-Prean v. the United Kingdom (1999) and Smith and Grady v. the United Kingdom (1999) – collectively with Lustig-Prean, "Smith". These two decisions were rendered by the European Court of Human Rights (ECtHR). The ECtHR found that the UK military policy that authorised the dismissal of military personnel following investigations into their sexuality violated the right to privacy protected under Article 8 of the European Convention on Human Rights. The ECtHR held that the UK government's position was based solely upon negative attitudes ranging from "stereotypical expressions of hostility to those of homosexual orientation, to vague expressions of unease about the presence of homosexual colleagues." The Court concluded that there was no sound evidence that consensual same-sex sexual conduct threatens unit cohesion or poses security risk. In response to the Smith decisions on 27 September 1999, the UK government repealed its ban on 12 January 2000. Germany soon followed suit in December 2000.

Ban on conversion therapy

Although bans on conversion therapy are still in their infancy, the number of bills in preparation or under discussion that provide for a prohibition of this practice at the *national* level is escalating. Such bills have notably emerged in Australia, Austria, Canada, France, Germany, Ireland, the Netherlands, New Zealand, Poland, or Switzerland. This trend largely flows from increased pressure exerted by international human rights stakeholders for their Member countries to counter efforts to change sexual orientation and gender identity (Chapter 2). A surge in the number of reports that investigate the nature, extent and impact of LGBT conversion therapies nationwide has also contributed to bring this issue to the forefront of the debate

on LGBTI rights. These reports highlight that conversion therapies that target LGBTI individuals are detrimental and remain pervasive. In Australia for instance, although all health authorities strongly oppose any form of mental health practice that treats homosexuality as a disorder, or seeks to change a person's sexual orientation, a 2018 report suggests that up to 10% of LGBTI Australians are still vulnerable to harmful conversion therapies, with at least ten organisations based in Australia and New Zealand advertising these practices (Jones et al., 2018[14]). Consistent with this finding, a national ban on LGBTI conversion therapies was found to be LGBTI Australians' top priority in a 2018 survey about next steps for greater LGBTI inclusion (Just.Equal and Pflag Australia, 2018[15]).

However, the regulation of conversion therapy practices can be complicated by tension with the right to freedom of religion. Malta's legislation is the only one worldwide that provides a full protection to LGBTI individuals against conversion therapies by targeting both professionals (e.g. state-licensed medical and mental health practitioners) as well as non-professionals (e.g. religious organisations) (Box 3.7). In other countries, the scope of conversion therapy bans is limited to professionals, unless non-professionals receive payment in exchange for "treatment", in which case they can be condemned for violating consumer fraud protection since they advertise a service they cannot deliver (false advertising).[16]

Box 3.7. Malta's national ban on conversion therapy

The Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act 2015 came into force in 2016. This act aims "to prohibit conversion therapy, as a deceptive and harmful act or practice against a person's sexual orientation, gender identity and, or gender expression, and to affirm such characteristics" and is the most comprehensive on that matter worldwide. It criminalises conversion therapy by both professionals (e.g. state-licensed medical and mental health practitioners) as well as non-professionals (e.g. religious organisations). While the former are prohibited from performing conversion therapy on any person, the latter are prohibited from (i) performing conversion therapy on a "vulnerable person", including minors and individuals suffering from a physical or mental infirmity, as well as (ii) performing involuntary and, or forced conversion therapy on any person.

Source: The Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act 2015 (Malta).

Malta could serve as an example for OECD countries who haven't passed a nationwide ban on conversion therapy yet. Among those where bans on conversion therapy are already in force at the subnational level, complementary policy actions could be considered to target non-professionals providing conversion therapies to minors for free, such as religious organisations. One option is to strengthen religious LGBT organisations engaged in outreach with those youths that may be at risk of being subject to lawful conversion treatment by anti-LGBT religious groups. This holistic approach is critical so that governments send the message to LGBTI youth that they stand with them and defend their right to be who they are.

No medical requirement attached to legal gender recognition

Among the 14 OECD countries where changing one's gender marker on one's birth certificate and other identity documents is legal and not conditioned on medical requirements, a majority (9) ground the change of gender marker on self-determination, i.e. the principle that transgender people's declaration of their gender identity for the purpose of obtaining gender recognition does not require validation by a third party, such as an expert or a judge. These countries are Belgium, Chile, Denmark, Iceland, Ireland, Mexico (Mexico City), the Netherlands, Norway and Portugal.[17]

However, in the five other countries where legal gender recognition is explicitly demedicalised, the process is not based on this good practice: it requires validation by a third party. This condition entails a risk of re-medicalising legal gender recognition since applicants are tempted to include medical assessments in their

application in order to increase their chance of being validated. In Germany, although the request for sterilization and sex-reassignment surgery was removed in 2011 from the Transsexual Act following a ruling by the German Constitutional Court, the process still involves two experts who are notably required to comment on whether the applicants' sense of belonging to a gender that does not match their sex a birth will no longer change. In France, Greece, Luxembourg or the United States (California), the applicants must submit an application to a court or an administrative body in which they must establish the proof, "by any means", that they are publicly known as living in a gender different from the gender that appears on their original birth certificate. Although the law explicitly states that "not having undergone medical treatment, surgery, or sterilisation cannot be bars to the change", having undergone them helps strengthen the application and, hence, convince the judge and other third parties in charge of endorsing the gender marker change.[18]

To avoid a *de facto* re-medicalisation of legal gender recognition, OECD countries who aim to fully demedicalise legal gender recognition are encouraged to avoid the intervention of a third party and, instead, ground legal gender recognition on self-determination. Chapter 4 presents best practice examples on how to bust myths around self-determination and, hence, ensure popular support for such laws.

Availability of a non-binary gender option on birth certificates and other identity documents

Eight OECD countries allow a non-binary gender option on birth certificates and other identity documents, at least in some parts of their national territory: Australia (New South Wales[19]), Austria, Canada (Alberta, British Columbia and Ontario),[20] Germany, Iceland, Netherlands, New Zealand and the United States (California and New York – New York City to be precise).

However, this non-binary gender option is reserved to intersex individuals in a majority of these jurisdictions (Austria, Germany, Netherlands and New Zealand). To be fully inclusive, it is important to provide this option to non-binary transgender individuals as well, i.e. transgender individuals who view themselves as neither female nor male, or as both female and male, as it is done in Alberta (2018), British Columbia (2018), California (2019), Iceland (2019), New South Wales (2014), New York City (2018), and Ontario (2018).

Postponing medically unnecessary sex-normalising treatment or surgery on intersex minors

Only two OECD countries have passed laws explicitly prohibiting medically unnecessary sex-normalising treatment or surgery on intersex minors, at least in some of their subnational jurisdictions. These countries are Portugal (Law No. 38/2018 on the right to self-determination of gender identity and gender expression and protection of the sexual characteristics of each person) and Spain where several autonomous regions have passed laws on the "rights, equal treatment and non-discrimination of LGBTI people" that notably address the situation of intersex minors. However, these laws fall short of being as straightforward and comprehensive as Malta's legislation that is viewed by human rights stakeholders as a best practice (Box 3.8). For instance, instead of prohibiting medically unnecessary treatments and surgical interventions on minors that could be deferred until the individual can decide and give informed consent, some of these laws provide that such interventions can be performed once the intersex minor's gender identity "is manifested". Yet, the expression is ambiguous and it is unclear to what extent manifestation of gender identity coincides with the minor's capacity to provide informed consent.

Box 3.8. Malta: Leading the way in protecting the rights of intersex minors

In 2015, Malta adopted the Gender Identity, Gender Expression and Sex Characteristics Act, a legislative milestone that guarantees the right to bodily integrity and physical autonomy for intersex minors who are under the age of 16. The law has been widely praised by human rights stakeholders for encapsulating some of the world's most progressive legal rights for intersex minors.

More specifically, the law makes it illegal for "medical practitioners or other professionals to conduct any sex assignment treatment and/or surgical interventions on the sex characteristics of a minor which treatment and/or intervention can be deferred until the individual to be treated is able to provide informed consent" (§14.1). Such treatments or interventions may be performed on a minor only if the child grants informed consent through parental authorities or a tutor (§14.1). In exceptional medical circumstances an agreement between a designated interdisciplinary team and the parental authorities or tutor of the minor that is still unable to provide consent may be reached, but critically the law prohibits such treatments or interventions that are performed without the consent of the minor from being "driven by social factors" (§14.3). These provisions are essential insofar as they explicitly distinguish between treatments necessary for the health needs of a person as opposed to cosmetic, deferrable treatments that are motivated by social influences, while also ensuring the support of an interdisciplinary team of professionals to provide a holistic approach. In instances when a minor offers consent to engage in treatment and conveys this decision to the parental authorities or tutor, medical professionals are obligated under the law to ensure the best interests of the child and give weight to the views of the minor with regard to the child's age and maturity (§14.6). The bill further requires that all persons (including minors and their families) seeking psychosocial counselling to be given individually tailored support beginning from the date of diagnosis or self-referral for as long as necessary (§15.1). The act also makes medical practitioners or other medical professions that breach the law liable to punishment in the form of imprisonment not exceeding five years or liable to fines ranging between EUR 5 000 and EUR 20 000 (§14.2). Finally, the law establishes a working group to review and make recommendations on the current medical treatment protocols to ensure they align with current medical best practices and human rights standards (§16).

Source: The Gender Identity, Gender Expression and Sex Characteristics Act (ACT XI of 2015, as amended by Acts XX of 2015 and LVI of 2016 and XIII of 2018) (Malta).

For countries who do not feel ready for a legal ban on medically unnecessary sex-normalising treatment or surgery on intersex minors, a range of alternatives are available that are duly taken into account when computing legal LGBTI inclusivity, as evidenced in Annex 3.C. For instance, publishing guidelines that urge medical practitioners to refrain from performing non-consensual normalisation surgery on intersex minors is one such possibility. It is also important that countries engage in preparatory steps aimed at gathering support for guidelines or laws banning unconsented non-vital medical interventions so as to ensure proper enforcement of these bans. These preparatory steps include (i) inquiring into the treatment of intersex minors in order to show the extent to which unconsented medically unnecessary sex-normalising treatment or surgery are performed on intersex minors; (ii) increasing acceptance of intersex individuals among the general public so as to alleviate the social pressure for categorising a newborn as either female or male; (iii) consulting with all stakeholders, chief of which are intersex people, parents and medical practitioners in order to build consensus around a set of recommendations that serve as a starting point to a nationally consistent human-rights based approach to decision-making about medical interventions on intersex minors.

Nearly one third of OECD countries (14) are active in seeking to postpone medically unnecessary sex-normalising treatment or surgery on intersex minors:

- Six have published guidelines that urge medical practitioners to refrain from performing these interventions, via their National Advisory Commission on Biomedical Ethics (Switzerland), their Ministry of Health (Chile, Denmark, Israel and Mexico) or their Constitutional Court (Austria);
- Eight are involved in preparatory steps aimed at gathering support for upcoming guidelines or laws banning unconsented non-vital medical interventions on intersex minors:
  - An inquiry into the treatment of intersex minors has been conducted or is being conducted in Finland, France, Germany and the United Kingdom;
  - In 2018, Luxembourg launched a nationwide awareness raising campaign called "Female? Male? Intersex? Let's Be Open Minded" that aims to promote acceptance of intersex people and, hence, reduce social pressure for individuals to conform to the female-male binary system (Box 3.9);
  - Broad consultation with key stakeholders has taken place in Australia, the Netherlands and New Zealand.

Box 3.9. Reducing social pressure for individuals to conform to the female-male binary system: best practice example from Luxembourg

As part of the 2018 Intersex Awareness Day, Luxembourg's Ministry of Family Affairs and Integration launched the "Female? Male? Intersex? Let's Be Open Minded" awareness campaign. The initiative aims to inform the public about intersex persons, break taboos, combat discrimination and prejudice, while promoting acceptance and respect. The campaign – a product of the country's LGBTI national action plan – includes a website with documents and links about intersex persons and their rights, a poster with the campaign slogan, and an informational leaflet for parents of an intersex child. The brochure for parents feature inclusive language that appeals to the shared emotions and identity of new parents, acknowledging that it is an exciting but potentially overwhelming time and that although they may have many questions about what it means to have an intersex child there are numerous resources and services available to assist them. The leaflet encourages parents not to panic and to take time getting to know their child, noting that a child's sex is only one aspect of their personhood and the child should be given time to understand their sex and develop their identity. Critically, the resource notes that operations on the genitals of an intersex child are only rarely medically necessary and often have considerable consequences, so parents are advised to consult with a list of key stakeholders when the time comes to make any decision about potential treatment. The material notably encourages parents to speak with intersex adults and other parents of intersex children to help the child develop with love and support, placing the issue within a cultural framework of a healthy and nurturing family.

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Annex 3.A. International indices on LGBTI inclusion

The three most prominent international indices on LGBTI inclusion are: (i) the State-Sponsored Homophobia Index by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), (ii) the Trans Rights Europe & Central Asia Index by Transgender Europe, and (iii) the Rainbow Index by ILGA Europe, the European region of ILGA.

ILGA State-Sponsored Homophobia Index

Established in 1978, ILGA is a global federation of 1 614 NGOs from 158 countries campaigning for the human rights of lesbian, gay, bisexual, trans and intersex persons. The organisation supports LGBTI civil society through advocacy work, research initiatives and grassroots partnerships.

The State-Sponsored Homophobia Index has been published by ILGA on an annual basis since 2006. Specifically, the 2019 report offers global, regional and national analysis of three dimensions, each of which is decomposed into subsections:

- *Criminalisation and Restriction*: decriminalisation of consensual same-sex intercourse and other sexual acts; legal barriers to freedom of expression in relation to sexual orientation issues; legal barriers to the registration or operation of sexual orientation-related civil society organisations (i.e. freedom of association and peaceful assembly);
- *Protection*: constitutional protection against discrimination based on sexual orientation; broad protections against discrimination based on sexual orientation; protection against discrimination based on sexual orientation in employment; criminal liability for offenses committed on the basis of sexual orientation (i.e. hate crimes); prohibition of incitement to hatred, violence or discrimination based on sexual orientation (i.e. hate speech); bans against “conversion therapy”;
- *Recognition*: same-sex marriage; partnership recognition for same-sex couples (e.g. civil unions); joint adoption by same-sex couples; second-parent adoption by same-sex couples.

For more information, see https://ilga.org/state-sponsored-homophobia-report.

Trans Rights Europe & Central Asia Index by Transgender Europe

Founded in 2005, Transgender Europe is a global federation of 112 NGOs from 44 countries advocating trans rights. Since 2013, Transgender Europe has been publishing on an annual basis the Trans Rights Europe & Central Asia Index that studies the legal inclusion of transgender individuals in 53 European and Central Asian countries.

The Trans Rights Europe & Central Asia Index has been published by Transgender Europe on an annual basis since 2013. Specifically, the 2019 edition of the Trans Rights Europe & Central Asia Index covers six dimensions which can be further decomposed into subsections:

- *Legal Gender Recognition*: existence of procedures for legal gender recognition; name change; change of gender on official documents to match gender identity; self-determination; no ‘Gender Identity Disorder’ diagnosis required; no compulsory medical intervention required; no surgical

intervention required; no compulsory sterilisation required; no compulsory divorce required; no age restrictions (available for minors); gender non-binary recognition;

- *Asylum*: law for international protection on grounds of gender identity; policy/other positive measures;
- *Bias-Motivated Speech/Violence*: hate crime law; hate speech law; policy tackling hatred;
- *Non-discrimination*: employment; health; education; goods and services; conversion therapy; other spheres of life; equality body mandate; equality action plan; law (protections for gender expression);
- *Health*: health care; depathologisation; conversion therapy prohibited;
- *Family Rights*: parenthood recognition.

For more information, see https://tgeu.org/trans-rights-europe-central-asia-map-index-2019/.

The four items from the Trans Rights Europe & Central Asia Index that are only implicitly covered by the set of LGBTI-inclusive laws defined in Chapter 2 are: (i) the right for transgender individuals to change their first name in the civil registry in order to reflect their gender marker (implicitly addressed in the TI-specific component "Legal gender recognition"); (ii) the fact that no compulsory divorce requirement is attached to legal gender recognition (implicitly addressed in the LGB-specific component "Legal recognition of same-sex partnerships"); (iii) the fact that conversion therapy aimed at "treating" transgender individuals is banned (implicitly addressed in the LGB-specific component "Ban on conversion therapy"); (iv) the recognition of trans-parenthood, i.e. the fact that parents' legal gender identity is recognised on their child's birth certificate with a transgender woman appearing as "mother", a transgender man appearing as "father" and a non-binary transgender parent appearing as "parent" (implicitly covered by the TI-specific components "Legal gender recognition" and "Availability of a non-binary gender option on birth certificates").

Rainbow Index by ILGA Europe

Formed in 1996 and covering 47 member countries of the Council of Europe, as well as Belarus and Kosovo, ILGA-Europe advocates for, monitors and influences the adoption of legislation and policies to advance the rights of LGBTI persons. It works with European states, as well as numerous European institutions.

The Rainbow Index has been published by ILGA Europe on an annual basis since 2009. Specifically, the 2019 edition of the Rainbow Index covers six dimensions which can be decomposed into subsections:

- *Equality and Non-Discrimination*: protections on the grounds of sexual orientation, gender identity and sex characteristics in the constitution and areas of employment, goods and services, education, health (including conversion therapy), equality body mandate, equality action plan, as well as laws on gender expression and general blood donations;
- *Family*: marriage equality; registered partnership with similar rights to marriage; registered partnership with limited rights; cohabitation; no constitutional limitation on marriage; joint adoption; second-parent adoption; automatic co-parent recognition; medically assisted insemination for couples; medically assisted insemination for single persons; recognition of trans parenthood;
- *Hate Crime and Hate Speech*: hate crime law, hate speech laws and policies tackling hatred based on the grounds of sexual orientation and gender identity, as well as hate crime laws and policy tackling hatred for intersex persons;
- *Legal Gender Recognition and Bodily Integrity*: existence of legal measures; existence of administrative procedures; name change; no age restriction for name change; self-determination; no Gender Identity Disorder diagnosis/psychological opinion required; no compulsory medical

intervention required; no compulsory surgical intervention required; no compulsory sterilisation required; no compulsory divorce required; no age restriction; prohibition of medical intervention before an intersex child is able to provide informed consent; depathologisation;

- *Civil Society Space*: public event held without state obstruction of freedom of assembly; public event held absent sufficient protection; associations operate without state obstruction of freedom of association; LGBTI human rights defenders are not at risk; no laws limiting external funding; no laws limiting freedom of expression;
- *Asylum*: law, policy or other positive measure based on sexual orientation, gender identity and intersex status.

For more information, see https://rainbow-europe.org/.

Annex 3.B. Questions to identify legal provisions fostering LGBTI inclusion

Questions to identify general provisions

A total of 25 questions investigate whether the general provisions defined in Chapter 2 are in force in OECD countries.

Protection of LGBTI people against discrimination

The protection of LGBTI people against discrimination in a Member country is addressed through three categories, each of which can be decomposed into three questions.

Because "the right to work, which includes the right of everyone to the opportunity to gain his living by work" is central to the International Bill of Human Rights, the first category of questions investigates whether anti-LGBTI discrimination in employment is explicitly prohibited:

- Is discrimination based on *sexual orientation* explicitly prohibited in employment by the national law?
- Is discrimination based on *gender identity* explicitly prohibited in employment by the national law?
- Is discrimination based on *sex characteristics* and/or *intersex status* explicitly prohibited in employment by the national law?

The second category of questions goes a step further by investigating whether anti-LGBTI discrimination in a Member country is explicitly prohibited in a broad range of fields, beyond employment (i.e. in the provision of and access to goods and services including housing, education, health, social benefits and social assistance).

- Is discrimination based on *sexual orientation* explicitly prohibited in a broad range of fields by the national law?
- Is discrimination based on *gender identity* explicitly prohibited in a broad range of fields by the national law?
- Is discrimination based on *sex characteristics* and/or *intersex status* explicitly prohibited in a broad range of fields by the national law?

The third category of questions dives deeper by investigating whether anti-LGBTI discrimination is explicitly prohibited in the Constitution, which enshrines the most fundamental legal principles of any given country:

- Is discrimination based on *sexual orientation* explicitly prohibited by the Constitution?
- Is discrimination based on *gender identity* explicitly prohibited by the Constitution?
- Is discrimination based on *sex characteristics* and/or *intersex status* explicitly prohibited by the Constitution?

Protection of LGBTI people's civil liberties

The protection of LGBTI people's civil liberties in a Member country is addressed by the following three questions:

- Is it the case that the national law has no specific provision concerning communication on LGBTI issues (e.g. through anti-propaganda measures)?
- Is it the case that the national law has no specific provision concerning peaceful assembly of LGBTI people (e.g. through barriers to the organisation of LGBTI public events)?
- Is it the case that the national law has no specific provision concerning association of LGBTI people (e.g. through barriers to the registration or funding of LGBTI associations)?

Protection of LGBTI people against violence

The protection of LGBTI people against violence in a Member country is addressed by two categories of questions. The first investigates whether LGBTI people are protected against hate crime:

- Is hate crime based on *sexual orientation* explicitly criminalised and/or considered by the national law as an aggravating circumstance?
- Is hate crime based on *gender identity* explicitly criminalised and/or considered by the national law as an aggravating circumstance?
- Is hate crime based on *sex characteristics* and/or *intersex status* explicitly criminalised and/or considered by the national law as an aggravating circumstance?

The second category of questions investigates whether LGBTI people in a Member country are protected against hate speech:

- Is hate speech based on *sexual orientation* explicitly criminalised and/or considered by the national law as an aggravating circumstance?
- Is hate speech based on *gender identity* explicitly criminalised and/or considered by the national law as an aggravating circumstance?
- Is hate speech based on *sex characteristics* and/or *intersex status* explicitly criminalised and/or considered by the national law as an aggravating circumstance?

Protection of LGBTI people fleeing persecution abroad

The protection of LGBTI people fleeing persecution abroad in a Member country is addressed by the following three questions:

- Does the national law and/or published policy explicitly recognise persecution (or a well-founded fear of persecution) based on *sexual orientation* as a valid ground for granting asylum?
- Does the national law and/or published policy explicitly recognise persecution (or a well-founded fear of persecution) based on *gender identity* as a valid ground for granting asylum?
- Does the national law and/or published policy explicitly recognise persecution (or a well-founded fear of persecution) based on *sex characteristics* and/or *intersex status* as a valid ground for granting asylum?

Existence of an LGBTI-inclusive equality body, ombudsman or human rights commission

The existence of an LGBTI-inclusive equality body, ombudsman or human rights commission in a Member country is addressed by the following three questions:

- Is a national equality body, ombudsman or human rights commission explicitly in charge of supporting victims of discrimination based on *sexual orientation*?
- Is a national equality body, ombudsman or human rights commission explicitly in charge of supporting victims of discrimination based on *gender identity*?

- Is a national equality body, ombudsman or human rights commission explicitly in charge of supporting victims of discrimination based on *sex characteristics* and/or *intersex status*?

Questions to identify group-specific provisions

A total of 16 questions investigate whether the group-specific provisions defined in Chapter 2 are in force in OECD countries.

LGB-specific provisions

The part of the questionnaire that deals with LGB-specific provisions in Member countries relies on 11 questions.

Equal treatment of same-sex and different-sex consensual sexual acts

The equal treatment of same-sex and different-sex consensual sexual acts is addressed by the following two questions:

- Are consensual same-sex sexual acts legal?
- If consensual same-sex sexual acts are legal, are the age of consent for consensual same-sex sexual acts and the age of consent for consensual different-sex sexual acts equal?

Ban on conversion therapy

A Member country's policy regarding conversion therapy is addressed by the following question: "Is conversion therapy on minors banned? (The term "conversion therapy" refers to practices that aim to change an individual's sexual orientation from homosexual or bisexual to heterosexual)".

Legal recognition of same-sex partnerships

The legal recognition of same-sex partnerships is addressed by the following three questions:

- Is same-sex cohabitation or *de facto* partnership legal? (The term "cohabitation or *de facto* partnership" refers to a regime with usually a narrower legal scope than a registered/civil/domestic partnership or civil union and, hence, marriage. By "legal", we mean that same-sex couples in a cohabitation or *de facto* partnership are granted at least some of the rights that are granted to different-sex couples in a cohabitation or *de facto* partnership).
- Is same-sex registered/civil/domestic partnership or union legal? (The term registered/civil/domestic partnership or civil union describes a wider-ranging regime than cohabitation that resembles marriage without being equivalent to marriage.)
- Is same-sex marriage legal?

Equal adoption rights

Equal adoption rights for different-sex and same-sex couples is addressed by the following two questions:

- Is it legal for partners in a same-sex partnership to jointly adopt a child? (The term "joint adoption" refers to a process whereby (i) the legal relationship between a child and her/his biological parents is extinguished; (ii) the adopting partners become the two legal parents of the child).
- When one partner in a same-sex partnership is a legal parent, can the other partner become the second legal parent through adoption (i.e. second-parent adoption), assuming that there is no second legal parent registered?

Equal access to assisted reproductive technology

Equal access to assisted reproductive technology for different-sex and same-sex couples is addressed by the following three questions:

- Is a partner in a same-sex partnership treated on an equal footing with a partner in a different-sex partnership concerning access to medically assisted insemination (using sperm of a donor) or *in vitro* fertilisation (using donated sperm and/or egg)?
- When one partner in a same-sex partnership gives birth through legal medically assisted insemination or *in vitro* fertilisation, can the other partner become the second legal parent without having to go through adoption (i.e. automatic co-parent recognition)? (Please answer N/A if access of a same-sex partner to assisted reproductive technology is not legal).
- Are partners in a same-sex partnership treated on an equal footing with partners in a different-same partnership concerning access to surrogacy, i.e. an assisted reproductive technology in which a woman (surrogate) carries a child in her uterus on behalf of another person?

TI-specific provisions

The part of the questionnaire that deals with TI-specific provisions in a Member country relies on five questions.

Being transgender not categorised as a mental illness in national clinical classification

This component is addressed by the following question: “Is being transgender removed from the list of mental disorders in national clinical classification?”.

Legal gender recognition

This component is addressed by the following question: “Is the change of gender marker in the civil registry (e.g. birth certificate, social security number) legal? (By “gender marker” we mean the elements that reveal an individual’s gender. An individual’s gender marker typically consists of his/her sex at birth and first name).”

No medical requirement attached to legal gender recognition

This component is addressed by the following question: “Is it the case that the change of gender marker in the civil registry necessitates no medical requirement (sterilisation, sex-reassignment surgery or treatment including those that involve sterilisation, and/or mental health diagnosis)? (If the change of gender marker is not legal, please answer N/A).”

Availability of a non-binary gender option on birth certificates and other identity documents

This component is addressed by the following question: “Is a non-binary gender option available on birth certificates and other identity documents, on top of “male” and “female”?”

Postponing medically unnecessary sex-normalising treatment or surgery on intersex minors

This component is addressed by the following question: “Have significant steps been taken towards postponing medically unnecessary sex-normalising treatment or surgery on intersex minors until they can provide informed consent, beyond the availability of a non-binary gender option (e.g. awareness raising campaign on intersexuation, inquiry into the treatment of intersex minors, guidelines directed at medical practitioners, legal ban on cosmetic sex-normalising treatment or surgery on intersex minors, etc.)?”

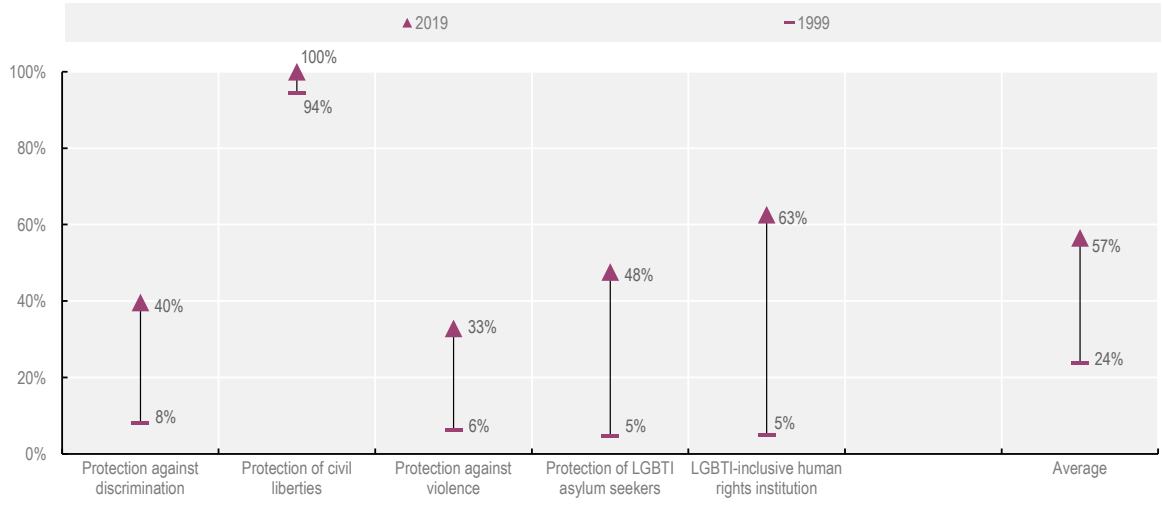
Annex 3.C. Levels and trends in legal LGBTI inclusivity, OECD-wide and by country, for each component of general and group-specific provisions

General provisions

On average, 57% of the general provisions defined in Chapter 2 are in force as of 2019 (Annex Figure 3.C.1). While no law in OECD countries explicitly restricts the civil liberties of LGBTI individuals, only one third of legal provisions aimed at protecting LGBTI individuals against hate crime and hate speech have been passed. Yet, OECD countries have made great strides since 1999 when less than one fourth of the general provisions critical for the inclusion of lesbians, gays, bisexuals, transgender and intersex people altogether were in effect. Progress was mainly achieved in the following fields: establishment of an LGBTI-inclusive human rights institution, protection of LGBTI asylum seekers, and protection of LGBTI individuals against discrimination.

Annex Figure 3.C.1. OECD countries made great strides in establishing LGBTI-inclusive human rights institutions, but modest progress in protecting LGBTI people against violence

Evolution of legal LGBTI inclusivity between 1999 and 2019 OECD-wide, by component of general provisions



Note: This figure reports the share of provisions highlighted in Chapter 2 that are in force in OECD countries in 1999 and 2019, by component of general provisions – see Box 3.2 for further details on how LGBTI inclusivity is computed.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

StatLink https://stat.link/6yb0jz

Protection of LGBTI people against discrimination

Protecting LGBTI people against discrimination entails passing nine legal provisions (Annex 3.B):

- Three in order to explicitly protect LGBTI individuals against labour market discrimination (one based on sexual orientation for LGB people, one based on gender identity for transgender people, and one based on sex characteristics for intersex people);
- Three in order to explicitly protect LGBTI individuals against discrimination in a broader range of fields (i.e. beyond employment) that typically cover the provision of and access to goods and services (including housing), education, health, social benefits and assistance (again, one for LGB people, one for transgender people and one for intersex people);
- Three in order to explicitly protect LGB, transgender as well as intersex individuals in the Constitution.

Of these nine legal provisions, nearly four (40%) are in force in OECD countries as of 2019, up from approximately one (8%) in 1999. Only three OECD countries (Japan, Switzerland and Turkey) provide no explicit legal protection against discrimination to LGBTI people (Annex Table 3.C.1). By contrast, a large majority of countries prohibit discrimination based on sexual orientation in employment (32 countries) as well as in a range of other fields (30 countries). A majority (22 countries) also explicitly protect transgender people against discrimination in these fields. However, only a small minority (9 countries) aim to explicitly shield intersex people from unfair treatment in employment and beyond. The number of OECD countries who provide constitutional protection against discrimination to LGBTI individuals is even lower (5 countries), noting that this protection, when it exists, targets the ground of sexual orientation but not that of gender identity or sex characteristics.

Consistent with the 2017 resolution of the Parliamentary Assembly of the Council of Europe, explicit protection of intersex people against discrimination takes two forms (CoE Parliamentary Assembly, 2017[16]):

- Some countries insert “intersex status” or “sex characteristics” as a specific prohibited ground in the antidiscrimination legislation: this is the case of Australia, Greece, Iceland, Netherlands, Portugal and Spain;
- Other countries explicitly state in antidiscrimination legislation that protection against discrimination on the basis of an existing characteristic, e.g. “sex” or “gender identity and expression”, extends to intersex people: this is the case of Canada, Finland or Germany.

Within the European Union (EU), sexual orientation antidiscrimination laws were passed beginning in 2000s, when the so-called “Employment Equality Directive” (Directive 2000/78/EC) obliged EU countries to explicitly prohibit discrimination based on sexual orientation, at least in employment. Accordingly, all OECD countries that are also EU Members have passed such laws. Outside the EU, discrimination against LGB individuals was first explicitly prohibited in Quebec in 1977 (and then in 1981 in Norway), and last prohibited in 2012 in Chile. The passage of antidiscrimination laws that explicitly protect transgender and intersex people is more recent, coming into effect in the mid-2010s. Discrimination against transgender individuals was first prohibited in 1999 in the United Kingdom, while antidiscrimination laws protecting intersex individuals were passed for the first time in 2006 in Germany. The Netherlands were the last OECD country to pass provisions explicitly banning both types of discrimination in 2019.

Annex Table 3.C.1. A majority of OECD countries explicitly protect LGBT people against discrimination in employment and beyond, but the explicit protection of intersex people is still in its infancy, as is the prohibition of discrimination based on sexual orientation, gender identity and sex characteristics in the Constitution

Overview of whether OECD countries explicitly protect LGBTI people against discrimination as of 30 June 2019

No explicit legal protection of LGBTI people against discrimination	Explicit legal protection of LGBTI people against discrimination		
	In employment	In a broad range of fields, beyond employment	In the Constitution
Japan Switzerland Turkey	Australia (LGB: 1994; TI: 2013) Austria (LGB: 2004; T: 2004 in Styria) Belgium (LGB: 2003; T: 2014) Canada (LGB: 1996; TI: 2017) Chile (LGBT: 2012) Czech Republic (LGB: 2004; T: 2009) Denmark (LGB: 1996) Estonia (LGB: 2004) Finland (LGB: 1995; TI: 2015) France (LGB: 2001; T: 2012) Germany (LGBTI: 2006) Greece (LGB: 2005; T: 2010; I: 2016) Iceland (LGBTI: 2018) Ireland (LGB: 1998; T: 2015) Israel (LGB: 1992) Italy (LGB: 2003) Korea (LGB: 2001) Latvia (LGB: 2006) Lithuania (LGB: 2003) Luxembourg (LGB: 1997; T: 2016) Mexico (LGB: 2003) Netherlands (LGB: 1992; TI: 2019) New Zealand (LGB: 1994) Norway (LGB: 1998; T: 2013) Poland (LGB: 2004) Portugal (LGB: 2003; T: 2015; I: 2018) Slovak Republic (LGBT: 2004) Slovenia (LGB: 2003; T: 2016) Spain (LGB: 1996; TI: 2014 in Catalonia, 2016 in the Community of Madrid, 2018 in Andalusia and 2019 in Valencia) Sweden (LGB: 1987; T: 2009) United Kingdom (LGB: 2003; T: 1999) United States (LGB: 1992 in California and 2003 in New York; T: 2003 in California and 2019 in New York)	Australia (LGBTI: 2013) Austria (LGB: 2004 in Styria and Vienna and 2005 in Lower and Upper Austria; T: 2004 in Styria and Vienna) Belgium (LGB: 2003: T: 2014) Canada (LGB: 1996; TI: 2017) Chile (LGBT: 2012) Czech Republic: (LGBT: 2009) Denmark (LGB: 1996) Estonia (LGB: 2004) Finland (LGB: 1995; TI: 2015) France (LGB: 2001; T: 2012) Germany (LGBTI: 2006) Greece (LGBTI: 2016) Iceland (LGB: 1996; T: 2014) Ireland (LGB: 2000; T: 2015) Israel (LGB: 2000) Korea (LGB: 2001) Latvia (LGB: 2013) Lithuania (LGB: 2003) Luxembourg (LGB: 1997; T: 2016) Mexico (LGB: 2003) Netherlands (LGB: 1992; TI: 2019) New Zealand (LGB: 1994) Norway (LGB: 1981; T: 2013) Portugal (LGB: 2004; T: 2018; I: 2018) Slovak Republic (LGBT: 2008) Slovenia (LGB: 2004; T: 2016) Spain (LGB: 1996; TI: 2014 in Catalonia, 2016 in the Community of Madrid, 2018 in Andalusia and 2019 in Valencia) Sweden (LGB: 1987; T: 2009) United Kingdom (LGB: 2007; T: 2008) United States (LGB: 2003 in New York and 2005 in California; T: 2005 in California and 2019 in New York)	Canada (LGB: 1995) Mexico (LGB: 2011) New Zealand (LGB: 1994) Portugal (LGB: 2004) Sweden (LGB: 2011)

Note: This table indicates whether OECD countries explicitly protect LGBTI people against discrimination as of 30 June 2019. The expression "Australia (LGB: 1994; TI: 2013)" in the column entitled "employment" means that, in Australia, (i) discrimination in employment based on sexual orientation was explicitly prohibited for the first time in 1994; (ii) discrimination in employment based on gender identity and sex characteristics and/or intersex status was explicitly prohibited for the first time in 2013.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

Protection of LGBTI people's civil liberties

As of 2019, no OECD country explicitly restricts the rights to freedom of expression, peaceful assembly, and association of sexual and gender minorities: national laws do not include provisions explicitly restricting communication on LGBTI issues (e.g. gay propaganda laws) or barriers to the organisation of LGBTI public events as well as to the registration or funding of LGBTI associations.

Protection of LGBTI people's civil liberties was already ensured in most OECD countries two decades ago, except in the United Kingdom and the United States. In these countries, freedom of expression, peaceful assembly and association of sexual and gender minorities was fully recognised by national laws only in 2003 when Section 28 of the *Local Government Act* prohibiting the intentional promotion of homosexuality by any local authority was completely repealed (United Kingdom), and when the Supreme Court invalidated sodomy laws in *Lawrence v. Texas* (United States).

That said, constant vigilance is needed to avoid steps backward, as evidenced in Annex 3.D.

Protection of LGBTI people against violence

Protecting LGBTI people against violence entails passing six legal provisions (Annex 3.B):

- Three in order to explicitly protect LGBTI individuals against hate crime (one based on sexual orientation for LGB people, one based on gender identity for transgender people, and one based on sex characteristics for intersex people);
- Three in order to explicitly protect LGBTI individuals against hate speech (again, one for LGB people, one for transgender people and one for intersex people).

Of these six legal provisions, 33% are in force in OECD countries as of 2019 (i.e. two), up from 6% in 1999. Annex Table 3.C.2 reveals that one fourth of OECD countries provide no explicit legal protection of LGBTI people against violence (Czech Republic, Germany, Italy, Japan, Korea, Latvia, Poland, Switzerland and Turkey). In others, hate crime and/or hate speech laws have been passed so as to explicitly protect LGB people (26 countries), transgender individuals (14 countries) and intersex individuals (5 countries, i.e. Australia, Canada, Greece, Spain and the United Kingdom).

Sexual orientation was included as a protected ground in hate crime and/or hate speech legislation in the mid-2000s, approximately 10 years before the grounds of gender identity or sex characteristics were introduced. In several countries, this legislation was adopted as a response to murders motivated by the victims' actual or perceived membership to the LGBTI population. This was the case in the United States where the Hate Crimes Prevention Act that came into force in 2009 was named after Matthew Shepard and James Byrd Jr. who were both murdered in 1998. Matthew Shepard was an American student who was beaten, tortured, and left to die because he was gay, while James Byrd Jr. was an African American man who was tied to a truck by two white supremacists, dragged behind it, and decapitated. The Hate Crimes Prevention Act expands the 1969 United States federal hate-crime law notably (i) to include crimes motivated by a victim's actual or perceived sexual orientation or gender identity, as well as (ii) to remove, in the case of hate crimes related to the race, colour, religion, or national origin of the victim, the prerequisite that the victim be engaging in a federally protected activity, like voting or going to school. Similarly, in Chile, the 2012 hate crime law protecting LGB and transgender people was passed following the death the same year of Daniel Zamudio, a 25-year man who was beaten and tortured for several hours after his attackers learnt he was gay.

Annex Table 3.C.2. A majority of OECD countries explicitly protect LGB people against violence, but only a minority provide transgender and intersex people with such a protection

Overview of whether OECD countries explicitly protect LGBTI people against violence as of 30 June 2019

No explicit legal protection of LGBTI people against violence	Explicit legal protection of LGBTI people against hate crime	Explicit legal protection of LGBTI people against hate speech
Czech Republic Germany Italy Japan Korea Latvia Poland Switzerland Turkey	Australia (LGB: 2002 in New South Wales) Austria (LGB: 2016) Belgium (LGB: 2003; T: 2012) Canada (LGB: 1996; TI: 2017) Chile (LGBT: 2012) Denmark (LGB: 2004) Estonia (LGB: 2006) Finland (LGB: 2011) France (LGB: 2003; T: 2012) Greece (LGBT: 2014; I: 2015) Israel (LGB: 2004) Lithuania (LGB: 2009) Mexico (LGB: 2014) New Zealand (LGBT: 2002) Norway (LGB: 1994) Portugal (LGB: 2007; T: 2013) Slovak Republic (LGB: 2013) Slovenia (LGB: 2008) Spain (LGB: 1996: T: 2015) Sweden (LGB: 2002; T: 2018) United Kingdom (LGB: 2003 in England and Wales, 2004 in Northern Ireland and 2009 in Scotland; T: 2009 in Scotland and 2012 in England and Wales; I: 2009 in Scotland) United States (LGBT: 2009)	Australia (LGB: 1993 in New South Wales and 2002 in Queensland; T: 2002 in Queensland and 2018 in New South Wales; I: 2018 in New South Wales) Austria (LGB: 2012) Belgium (LGB: 2003; T: 2014) Canada (LGB: 1996; TI: 2017) Denmark (LGB: 1988) Estonia (LGB: 2006) Finland (LGB: 2011) France (LGB: 2004; T: 2012) Greece (LGBT: 2014) Iceland (LGB: 1996; T: 2014) Ireland (LGB: 1989) Israel (LGB: 1997) Lithuania (LGB: 2003) Luxembourg (LGB: 1997; T: 2016) Mexico (LGB: 2014) Netherlands (LGB: 1992) Norway (LGB: 1981) Portugal (LGB: 2007; T: 2013) Slovak Republic (LGB: 2017) Slovenia (LGB: 2008) Spain (LGB: 1996; T: 2015; I: 2014 in Catalonia, 2016 in the Community of Madrid, 2018 in Andalusia and 2019 in Valencia) Sweden (LGB: 1998; T: 2018) United Kingdom (LGB: 2004 in Northern Ireland, 2006 in Scotland and 2008 in England and Wales; T: 2006 in Scotland; I: 2006 in Scotland)

Note: This table indicates whether OECD countries explicitly protect LGBTI people against violence as of 30 June 2019. The expression "Austria (LGB: 2016)" in the column entitled "explicit legal protection against hate crime" means that, in Austria, hate crime legislation explicitly protecting LGB individuals was adopted for the first time in 2016.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

Protection of LGBTI people fleeing persecution abroad

Protecting LGBTI people fleeing persecution abroad entails passing three legal provisions that explicitly recognise persecution (or a well-founded fear of persecution) based on sexual orientation, gender identity and sex characteristics as a valid ground for granting asylum (one provision per ground) – see Annex 3.B.

Of these three legal provisions, 48% are in force in OECD countries as of 2019, up from 5% in 1999. Annex Table 3.C.3 reveals that one third of OECD countries provide no explicit protection of LGBTI asylum seekers (Chile, Czech Republic, Denmark, Estonia, Israel, Japan, Korea, Mexico, New Zealand, Switzerland, Turkey). In others, explicit protection is granted to LGB asylum seekers (24 countries), transgender asylum seekers (21 countries) and, to a lesser extent, intersex asylum seekers (5 countries, i.e. Australia, Canada, Finland, France and Norway).

LGBTI-inclusive immigration laws and policies are recent. Their average year of passage is 2008 for the ground of sexual orientation, 2012 for the ground of gender identity and 2015 for the ground of sex characteristics.

Annex Table 3.C.3. A majority of OECD countries explicitly protect LGBT fleeing persecution abroad, but only a minority provide intersex people with such a protection

Overview of whether OECD countries explicitly protect LGBTI people fleeing persecution abroad as of 30 June 2019

No explicit protection of LGBTI asylum seekers	Explicit protection of LGBTI asylum seekers
Chile	Australia (LGBTI: 2014)
Czech Republic	Austria (LGBT: 2013)
Denmark	Belgium (LGBT: 2013)
Estonia	Canada (LGB: 1993; T: 1995 ; I: 2017)
Israel	Finland (LGB: 2009; TI: 2015)
Japan	France (LGB: 2015; TI: 2019)
Korea	Germany (LGBT: 2013)
Mexico	Greece (LGBT: 2013)
New Zealand	Iceland (LGB: 2016)
Switzerland	Ireland (LGB: 1996; T: 2015)
Turkey	Italy (LGB: 2008; T: 2015)
	Latvia (LGBT: 2016)
	Lithuania (LGB: 2017; T: 2016)
	Luxembourg (LGB: 2006; T: 2016)
	Netherlands (LGB: 2007; T: 2015)
	Norway (LGB: 1998; TI: 2012)
	Poland (LGB: 2008)
	Portugal (LGBT: 2008)
	Slovak Republic (LGB: 2007; T: 2014)
	Slovenia (LGB: 2008; T: 2013)
	Spain (LGBT: 2009)
	Sweden (LGBT: 2006)
	United Kingdom (LGB: 2006; T: 2011)
	United States (LGB: 1994)

Note: This table indicates whether OECD countries explicitly protect LGBTI people fleeing persecution abroad as of 30 June 2019. The expression "Belgium (LGBT: 2013)" in the column entitled "explicit protection of LGBTI asylum seekers" means that, since 2013, persecution (or a well-founded fear of persecution) based on sexual orientation and gender identity is explicitly recognised as a valid ground for granting asylum in Belgium.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

Existence of an LGBTI-inclusive equality body, ombudsman or human rights commission

Establishing a LGBTI-inclusive human rights institution entails passing three legal provisions that explicitly entrust this institution with assisting victims of discrimination and promoting equality based on sexual orientation, gender identity and sex characteristics (one provision per ground) – see Annex 3.B.

Of these three legal provisions, 63% are in force in OECD countries as of 2019 (i.e. nearly two), up from 5% in 1999. OECD countries with an LGBTI-inclusive equality body, ombudsman or human rights commission are typically those where antidiscrimination laws explicitly protecting sexual and gender minorities are in force (Annex Table 3.C.4). Indeed, antidiscrimination legislation usually designates or establishes a body or bodies to promote equality and combat discrimination in the fields and across the grounds it covers. These provisions establish the structure and composition of the bodies, set out their functions and accord them the powers to fulfil these functions.

Yet, exceptions exist. None of the OECD countries where no LGBTI-inclusive antidiscrimination laws exist hosts an LGBTI-inclusive human rights institution. But three of the 32 countries where such laws are in force do not associate them with the establishment of an LGBTI-inclusive equality body, ombudsman or human rights commission. The latter is the case of Chile, Israel and Spain. In the remaining 29 OECD countries, the grounds addressed by the LGBTI-inclusive human rights institution are often wider than those covered by the LGBTI-inclusive antidiscrimination legislation. This broader scope can be observed in eight OECD countries: Estonia, France, Italy, Korea, Luxembourg, Mexico, New Zealand and Poland. In France for instance, while intersex people are not explicitly mentioned by the antidiscrimination legislation, they are part of the groups explicitly supported by the national human rights institution.

Annex Table 3.C.4. In a majority of OECD countries, LGBT people are explicitly protected by a national human rights institution, but this is not the case of intersex people

Overview of whether OECD countries host a national human rights institution that explicitly protects LGBTI persons, as of 30 June 2019

There is no national equality body, ombudsman or human rights commission that explicitly protects LGBTI persons	There is a national equality body, ombudsman or human rights commission that explicitly protects LGBTI persons
Chile	Australia (LGB: 1994; TI: 2013)
Israel	Austria (LGB: 2004)
Japan	Belgium (LGB: 2003; T: 2014)
Spain	Canada (LGB: 1996; TI: 2017)
Switzerland	Czech Republic (LGBT: 2009)
Turkey	Denmark (LGB: 2008)
	Estonia (LGBT: 2009)
	Finland (LGBTI: 2015)
	France (LGB: 2004; T: 2012; I: 2018)
	Germany (LGBTI: 2006)
	Greece (LGB: 2005; T: 2010; I: 2016)
	Iceland (LGBTI: 2018)
	Ireland (LGBT: 2014)
	Italy (LGBT: 2011)
	Korea (LGB: 2001; T: 2019)
	Latvia (LGB: 2007)
	Lithuania (LGB: 2005)
	Luxembourg (LGBTI: 2006)
	Mexico (LGBTI: 2003)
	Netherlands (LGB: 1994; TI: 2019)
	New Zealand (LGB: 1994; T: 2006; I: 2016)
	Norway (LGB: 2007; T: 2013)
	Poland (LGBT: 2011)
	Portugal (LGBT: 2007; I: 2018)
	Slovak Republic (LGBT: 2004)
	Slovenia (LGB: 2004; T: 2016)
	Sweden (LGB: 1999; T: 2009)
	United Kingdom (LGB: 1998 in Northern Ireland and 2007 in England, Scotland and Wales; T: 2010 in England, Scotland and Wales)
	United States (LGB: 2015; T: 2012)[1]

Note: This table indicates whether OECD countries host a human rights institution that explicitly protects LGBTI persons as of 30 June 2019. The expression "Canada (LGB: 1996; TI: 2017)" in the right column means that Canada has been hosting a human rights institution explicitly in charge of equal treatment of (i) LGB individuals since 1996; (ii) transgender and intersex individuals since 2017.

1. In the United States, the Equal Employment Opportunity Commission (EEOC) is the federal agency in charge of enforcing bans on employment discrimination, mediating and settling thousands of discrimination complaints including those coming from LGBT individuals. Although LGBTI-inclusive antidiscrimination legislation has not emerged yet at the US federal level, the EEOC held in 2012 that discrimination against an individual because that person is transgender constitutes discrimination based on sex and is therefore covered under Title VII of the Civil Rights Act of 1964. See Macy v. Department of Justice, EEOC Appeal No. 0120120821 (20 April 2012): http://www.eeoc.gov/decisions/0120120821%20Macypercentage20vpercentage20DOJpercentage20ATF.txt. Moreover, in 2015, the EEOC also held that discrimination against an individual because of that person's sexual orientation constitutes discrimination based on sex and is therefore prohibited under Title VII. See David Baldwin v. Dep't of Transportation, EEOC Appeal No. 120133080 (15 July 2015): http://www.eeoc.gov/decisions/0120133080.pdf. However, these rulings are not binding on courts and would need to be addressed by the Supreme Court for a final decision.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

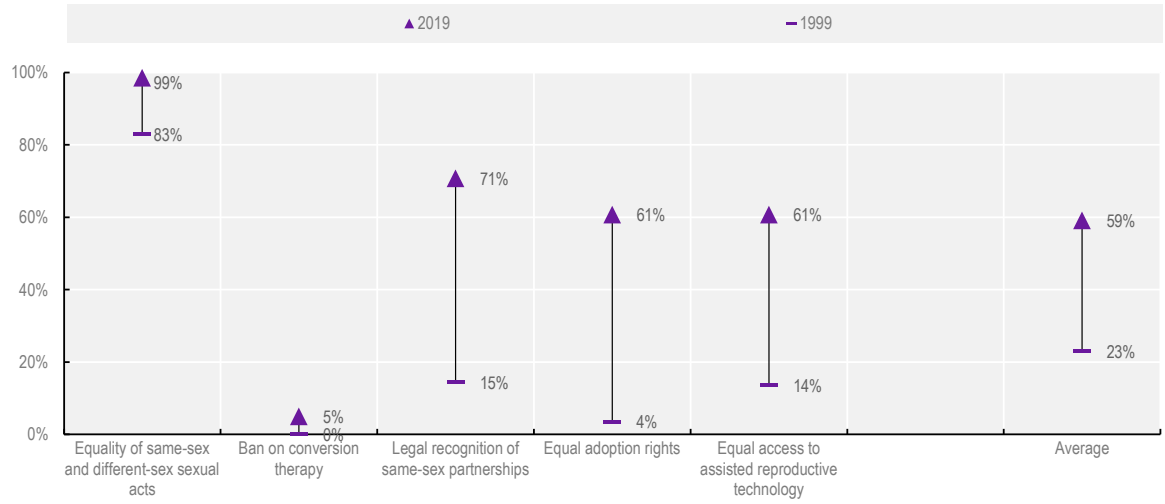
Group-specific provisions

LGB-specific provisions

On average, 59% of the LGB-specific provisions defined in Chapter 2 are in force as of 2019, up from 23% in 1999 (Annex Figure 3.C.2). While the national law of all countries treats different-sex and same-sex consensual sexual acts on an equal footing (or nearly so), only three countries ban conversion therapy. Spectacular progress was achieved in the following fields: legal recognition of same-sex partnerships, equal adoption rights as well as equal access to assisted reproductive technology of different-sex and same-sex couples.

Annex Figure 3.C.2. While all OECD countries have decriminalised same-sex consensual sexual acts, only three ban conversion therapy in some of their subnational jurisdictions

Evolution of legal LGBTI inclusivity between 1999 and 2019 OECD-wide, by component of LGB-specific provisions



Note: This figure reports the share of provisions highlighted in Chapter 2 that are in force in OECD countries in 1999 and 2019, by component of LGB-specific provisions – see Box 3.2 for further details on how LGBTI inclusivity is computed.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

StatLink https://stat.link/3v8ydw

Equal treatment of same-sex and different-sex consensual sexual acts

Two types of laws violate equal treatment of consensual same-sex and different-sex sexual acts: those that criminalise same-sex conducts between consenting adults and those that establish a higher age of consent for same-sex than for different-sex sexual acts. In all 35 OECD countries covered in this report, both types of laws have been repealed (or were, in a few cases, never passed) except for one country. In Chile, although the section of Article 365 of the Penal Code criminalising homosexual acts was repealed in 1999, it still provides for a minimum age of consent for homosexual acts (18) that is different from the minimum age of consent for heterosexual acts (14). A bill is pending that would allow repealing Article 365 altogether and, hence, equalise the age of consent regardless of sexual orientation (Cámara de Diputados de Chile, 2009[17]).

Annex Table 3.C.5. No OECD country criminalises consensual same-sex sexual acts and only one sets a higher age of consent for same-sex than for different-sex sexual acts

Overview of whether same-sex and different-sex consensual sexual acts are treated on an equal footing in OECD countries as of 30 June 2019

No criminalisation of same-sex consensual sexual acts		Equal age of consent for same-sex and different-sex sexual acts
Countries where same-sex consensual sexual acts were never explicitly criminalised	Countries where same-sex consensual sexual acts were once explicitly criminalised	
Italy	Australia (1994)	Australia (1994)
Korea	Austria (1974)	Austria (2002)
Mexico	Belgium (1795)	Belgium (1867 – except between 1965 and 1985[2])
Turkey	Canada (1969)	Canada (2019)
	Chile (1999)	Czech Republic (1990)
	Czech Republic (1962)	Denmark (1976)
	Denmark (1933)	Estonia (2001)
	Estonia (1992)	Finland (1999)
	Finland (1971)	France (1982)
	France (1791 – except between 1960 and 1980[1])	Germany (1994)
	Germany (1969)	Greece (2015)
	Greece (1951)	Iceland (1992)
	Iceland (1940)	Ireland (1993)
	Ireland (1993)	Israel (1988)
	Israel (1988)	Japan (1882)
	Japan (1 882)	Korea (2012)
	Latvia (1992)	Latvia (2001)
	Lithuania (1993)	Lithuania (2004)
	Luxembourg (1794)	Luxembourg (1992)
	Netherlands (1811)	Netherlands (1971)
	New Zealand (1986)	New Zealand (1986)
	Norway (1972)	Norway (1972)
	Poland (1932)	Poland (1932)
	Portugal (1983)	Portugal (2007)
	Slovak Republic (1962)	Slovak Republic (1990)
	Slovenia (1976)	Slovenia (1976)
	Spain (1979)	Spain (1996)
	Sweden (1944)	Sweden (1978)
	Switzerland (1942)	Switzerland (1992)
	United Kingdom (1967 in England and Wales, 1981 in Scotland and 1982 in Northern Ireland)	United Kingdom (2001)
	United States (2003)	United States (2003)

Note: This table indicates whether same-sex and different-sex consensual sexual acts are treated on an equal footing in OECD countries as of 30 June 2019. The expression "Chile (1999)" in the column "countries where homosexual consensual acts were once explicitly criminalised" means that homosexual consensual acts were decriminalised in Chile in 1999.
1. In 1960, a clause was introduced in the French Penal Code that doubled the penalty for indecent exposure ("outrage public à la pudeur") for homosexual activity (Article 330-2). This clause was repealed in 1980 as part of an act redefining several sexual offenses. See https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886767.
2. The age of consent in Belgium is 16, as specified by Article 372 of the Penal Code. The age of consent was increased to 18 for same-sex sexual activity in 1965, following the addition of Article 372bis. This article was repealed in 1985.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

Annex Table 3.C.5 presents where and when (i) homosexual consensual acts were decriminalised – in countries where they were once explicitly illegal; (ii) the ages of consent for homosexual and heterosexual consensual acts were equalised. In four countries, homosexual consensual acts were never explicitly criminalised (Italy, Korea, Mexico and Turkey). Among countries where these acts were once illegal, a majority decriminalised this conduct after 1970, although the timing varies significantly by country. France became the world's first country to legalise same-sex sexual acts between consenting adults. Before the French Revolution, sodomy was a serious crime. Jean Diot and Bruno Lenoir were the last homosexuals burned to death on 6 July 1750. The first French Revolution decriminalised homosexuality when the Penal Code of 1 791 made no mention of same-sex relations in private. The United States was the last OECD country where homosexuality was made legal nationwide, following Lawrence v. Texas (2003), a landmark civil rights case by the United States Supreme Court. In this case, the Court struck down the sodomy law in Texas and, by extension, invalidated sodomy laws in 13 other states, making same-sex sexual activity legal in every US state and territory.

Across OECD countries, the ages of consent for homosexual and heterosexual consensual acts were set equal between three to four decades after homosexuality was decriminalised. Canada was the last OECD country to ensure age of consent equality. Until 2019, Section 159 of the Penal Code set an age of consent for anal sexual acts at 18, while the age of consent for other types of sexual activity was equal to 16. Section 159 was repealed on 30 June 2019, noting that several provincial courts had independently declared Section 159 to be unconstitutional prior to 2019.

Ban on conversion therapy

Of the four countries that have banned conversion therapy on minors throughout their national territory, i.e. Brazil, Ecuador, Malta and Taiwan, none is part of the OECD[21] (OutRight Action International, 2019[18]). Yet, three OECD countries ban conversion therapy on minors in some of their subnational jurisdictions. This is the case of:

- Two of the four most populous provinces in Canada: Ontario since 2015 and British Columbia (Vancouver) since 2018;[22]
- Three of the four most populous regions in Spain: the Community of Madrid since 2016, Andalusia since 2018 and Valencia since 2019;
- Two of the four most populous states in the United States: California since 2013 and New York since 2019, noting that, as of 30 June 2019, 14 other US states have banned conversion therapy on minors.[23]

Legal recognition of same-sex partnerships

Legal recognition of same-sex partnerships takes three different forms, ranging from *basic* (same-sex *de facto* partnership or cohabitation), to *advanced* (same-sex civil/registered/domestic partnership or civil union), to *full-fledged* (same-sex marriage). Legal LGBTI inclusivity related to the item "Legal recognition of same-sex partnerships" is therefore computed as follows:

- It is equal to 0 if the country does not recognise any type of same-sex partnership;
- It is equal to 1/3 if the country only recognises same-sex *de facto* partnership or cohabitation;
- It is equal to 2/3 if the country only recognises same-sex civil/registered/domestic partnership or civil union;
- It is equal to 1 if the country recognises same-sex marriage.

Legal LGBTI inclusivity attached to the item "Legal recognition of same-sex partnerships" is equal to 71% in 2019, up from 15% in 1999. This evolution reflects major progress (Annex Table 3.C.6). Same-sex marriage is legal in 20 OECD countries (at least in some parts of their national territory) as of 2019, while *no* OECD country was allowing same-sex partners to marry in 1999. Netherlands was the first country to legalise same-sex marriage (in 2001). In most other countries, marriage equality laws were passed after 2010. Moreover, nine additional OECD countries have legalised either a *basic* or an *advanced* type of same-sex partnership, as compared to only one two decades ago (Israel[24]). Only six OECD countries do not provide any recognition of same-sex partnerships (Japan, Korea, Latvia, Lithuania, Slovak Republic, and Turkey). Except for Turkey, these countries are characterised by a Constitution that explicitly defines marriage as the union between a man and a woman.

Annex Table 3.C.6. A majority of OECD countries have legalised same-sex marriage

Overview of whether same-sex partnerships are recognised in OECD countries as of 30 June 2019

No legal recognition of same-sex partnerships	Legal recognition of same-sex partnerships
Japan Korea Latvia Lithuania Slovak Republic Turkey	Australia (Basic: 2008; Advanced: 2008 in Victoria, 2010 in New South Wales and 2012 in Queensland; Full-fledged: 2017) Austria (Basic: 2003; Advanced: 2010; Full-fledged: 2019) Belgium (Basic: 1996; Advanced: 2000; Full-fledged: 2003) Canada (Basic: 2000; Advanced: 2002 in Quebec; Full-fledged: 2005) Chile (Advanced: 2015) Czech Republic (Advanced: 2006) Denmark (Advanced: 1989; Full-fledged: 2012) Estonia (Advanced: 2016) Finland (Advanced: 2002; Full-fledged: 2017) France (Basic/Advanced: 1999; Full-fledged: 2013) Germany (Advanced: 2001; Full-fledged: 2017) Greece (Advanced: 2015) Iceland (Advanced: 1996; Full-fledged: 2010) Ireland (Advanced: 2011; Full-fledged: 2015) Israel (Basic: 1994) Italy (Basic/Advanced: 2016) Luxembourg (Advanced: 2004; Full-fledged: 2015) Mexico (Advanced: 2007 in Mexico City; Full-fledged: 2010 in Mexico City and 2016 in Jalisco) Netherlands (Advanced: 1998; Full-fledged: 2001) New Zealand (Basic: 2002; Advanced: 2005; Full-fledged: 2013) Norway (Basic: 1991; Advanced: 1993; Full-fledged: 2009) Poland (Basic: 2012) Portugal (Basic: 2001; Full-fledged: 2010) Slovenia (Advanced: 2005) Spain (Basic: 1995; Advanced: 1998 in Catalonia, 2001 in Madrid and Valencia and 2002 in Andalusia; Full-fledged: 2005) Sweden (Basic: 1988; Advanced: 1995; Full-fledged: 2009) Switzerland (Advanced: 2007) United Kingdom (Advanced: 2005; Full-fledged: England, Scotland and Wales in 2014) United States (Advanced: 2000 in California; Full-fledged: 2015)

Note: This table indicates whether same-sex partnerships are legally recognised in OECD countries as of 30 June 2019. "Basic" refers to the recognition of same-sex *de facto* partnership or cohabitation, "Advanced" refers to the recognition of same-sex civil/registered/domestic partnership or civil union and "Full-fledged" refers to the recognition of same-sex marriage. The expression "Czech Republic (Advanced: 2006)" in the column entitled "legal recognition of same-sex partnership" means that same-sex civil/registered/domestic partnership or civil union became legal in 2006 in Czech Republic.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

Equal adoption rights

In all OECD countries, different-sex partners enjoy adoption rights, meaning that they are entitled to joint-adoption as well as to second-parent adoption by one of the two partners (Chapter 2). Equal adoption rights for different-sex and same-sex couples therefore implies that:

- When one partner in a same-sex partnership is a legal parent, the other partner is entitled to become the second legal parent through adoption, assuming that there is no second legal parent registered (i.e. *full* second-parent adoption for same-sex couples)
- Same-sex partners are entitled to jointly adopt a child (i.e. joint adoption for same-sex couples, whereby (i) the legal relationship between the child and her/his biological parents is extinguished, and (ii) the adopting same-sex partners become the two legal parents of the child).

Of these two legal provisions, 61% are in force in OECD countries as of 2019 (i.e. around one), up from 4% in 1999. While 11 OECD countries provide no adoption right to same-sex couples, 24 grant them with access to second-parent adoption and 20 with access to joint adoption (Annex Table 3.C.7). The latter are those that have legalised same-sex marriage, which may reflect the strong commitment of these countries to the advancement of LGB rights, rather than the need to legalise same-sex marriage before being able to grant joint adoption. Indeed, the right to joint adoption is restricted to married different-sex and same-sex couples in only a minority of countries (Finland, France, Germany and Luxembourg).

Annex Table 3.C.7. A majority of OECD countries provide same-sex couples with access to both second-parent adoption and joint adoption

Overview of whether same-sex partners enjoy equal adoption rights relative to different-sex partners as of 30 June 2019

No adoption right for same-sex partners	Equal adoption rights of different-sex and same-sex couples concerning second-parent adoption (SPA) and/or joint adoption (JA)
Chile	Australia (SPA and JA: 2002 in Western Australia, 2010 in New South Wales, 2016 in Queensland and Victoria)
Czech Republic	Austria (SPA: 2013; JA: 2016)
Greece	Belgium (SPA and JA: 2006)
Israel	Canada (SPA and JA: 1996 in British Columbia, 2000 in Alberta and Ontario and 2002 in Quebec)
Italy	Denmark (SPA: 1999; JA: 2010)
Korea	Estonia (SPA: 2016)
Latvia	Finland (SPA: 2009; JA: 2017)
Lithuania	France (SPA and JA: 2013)
Poland	Germany (SPA: 2005; JA: 2017)
Slovak Republic	Iceland (SPA: 2000; JA: 2006)
Turkey	Ireland (SPA: 2017; JA: 2015)
	Japan (SPA: 1947)
	Luxembourg (SPA and JA: 2015)
	Mexico (SPA and JA: 2011 in Mexico City)
	Netherlands (SPA and JA: 2001)
	New Zealand (SPA and JA: 2013)
	Norway (SPA: 2002; JA: 2009)
	Portugal (SPA and JA: 2016)
	Slovenia (SPA: 2011)

No adoption right for same-sex partners	Equal adoption rights of different-sex and same-sex couples concerning second-parent adoption (SPA) and/or joint adoption (JA)
	Spain (SPA and JA: 2005) Sweden (SPA and JA: 2003) Switzerland (SPA: 2018) United Kingdom (SPA and JA: 2005 in England and Wales, 2009 in Scotland, 2013 in Northern Ireland) United States (SPA and JA: 2015)

Note: This table indicates whether same-sex partners enjoy equal adoption rights relative to different-sex partners as of 30 June 2019. The expression "Denmark (SPA: 1999; JA: 2010)" in the column entitled "equal adoption rights of different-sex and same-sex couples concerning second-parent adoption (SPA) and/or joint adoption (JA)" means that same-sex partners are granted access to second-parent adoption since 1999, and to joint adoption since 2010 in Denmark.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

Annex Box 3.C.1. Even in countries where same-sex adoption is legal, the quest for same-sex partners to become adoptive parents has remained elusive

In countries where same-sex adoption is legal, couples have two main options to adopt a child: they can adopt a child from their own country (domestic adoption) or from another country (international adoption). Evidence suggests that same-sex couples enjoy equal adoption rights in formal terms, but hardly in practice (Messina and D'Amore, 2018[19]). Many social workers and foster care/adoption panels are still biased against LGB individuals, meaning that same-sex couples are rarely put on the top of the list of "suitable" adoptive parents, in a context where the number of couples applying for adoption far outweigh the number of adoptable children. In France for instance, a controversy emerged in 2018 after adoption agency officials made disparaging remarks about same-sex couples – one saying that agencies would always favour heterosexual couples over homosexual ones, and another that same-sex couples were "atypical" and should be prepared to adopt "atypical" children, i.e. those who are older or with disabilities.[1]

International adoption turns out not to be an easier option. Indeed, many countries of origin prohibit adoption of their children by same-sex couples and, in order to preserve cooperation, countries of destination usually carefully comply with the set of limitations and terms. In Norway for instance, the new Adoption Act 2018 contains a provision that specifies that adoption by same-sex partners is not possible if the child comes "from a country that does not permit persons of the same sex to adopt together".

Despite these substantial hurdles, same-sex couples are fuelling a rise in adoption rates although the overall number of adoptions is falling. In England and Wales for instance, adoption orders by same-sex couples represented 12% of all adoptions in 2018/19, as compared to just 7% in 2013/14, while only 4 895 adoption orders were issued in 2018/19, down from 6 437 in 2013/14. Indeed, same-sex couples are more likely to adopt children who would usually be considered 'harder to place', including children who are over the age of four and those who have been identified as having 'special needs'.[2]

1. See https://www.lemonde.fr/societe/article/2018/06/21/en-seinte-maritime-les-homosexuels-candidats-a-l-adoption-cibles-de-propos-discriminatoires_5318899_3224.html.
2. See https://www.telegraph.co.uk/news/2019 11 October/rise-same-sex-couples-adopting-charity-says-willing-care-harder/.

Despite this commitment, the adoption process for same-sex couples in these countries remains an obstacle course marked by unique and additional challenges compared with those encountered by opposite-sex couples wanting to adopt a child (Annex Box 3.C.1).

Equal access to assisted reproductive technology

Equal access to assisted reproductive technology of different-sex and same-sex couples implies that:

- Partners in a same-sex partnership be treated on an equal footing with partners in a different-same partnership concerning access to medically assisted insemination (using sperm of a donor) or *in vitro* fertilisation (using donated sperm and/or egg);
- When medically assisted insemination or *in vitro* fertilisation is legal for both different-sex and same-sex couples, the same-sex partner be automatically recognised as the second legal parent, as would be the case for a male partner of a woman who procreates through these techniques (i.e. automatic co-parent recognition for same-sex couples);
- Partners in a same-sex partnership be treated on an equal footing with partners in a different-same partnership concerning access to surrogacy.

Of these three legal provisions, 61% are in force in OECD countries as of 2019 (around two), up from 14% in 1999. Despite this progress, only a minority of OECD countries (16) provide same-sex couples with an access to assisted reproductive technology that is fully equal to that of different-sex partners (Annex Table 3.C.8), meaning that they are treated on an equal footing with respect to each of the following dimensions: (i) access to medically assisted insemination or *in vitro* fertilisation; (ii) access to automatic co-parent recognition when medically assisted insemination or *in vitro* fertilisation is legal; (iii) access to surrogacy. Four countries fulfil two of these three conditions, and nine countries comply with only one of them. Six countries fully discriminate against same-sex couples regarding access to assisted reproductive technology: Czech Republic, Greece, Korea, Latvia, Lithuania and Poland.

Of the 21 countries that provide equal treatment in access to medically assisted insemination (MAI) or *in vitro* fertilisation (IVF), only one country, Turkey, ensures equality by *denying* access to these techniques to *both* different-sex and same-sex partners (by contrast, the 20 other countries ensure equality by *granting* access to these techniques to *both* types of partnerships). Indeed, since 1987 when the first regulation of assisted reproduction was published in Turkey (By-law on Centres for Assisted Procreation – Official Gazette no. 19551), third-party reproductive assistance, i.e. the use of donor eggs, donor sperm and surrogacy, is strictly prohibited.

An opposite pattern is at work regarding equal treatment in access to surrogacy: countries that ensure this equal treatment by denying access to surrogacy to both different-sex and same-sex partners are a majority (16) of the 27 countries where access to surrogacy is non-discriminatory. Surrogacy is legal for both different-sex and same-sex partners in only four countries: Canada, the United Kingdom, as well as some subnational jurisdictions in Australia and the United States. In these countries, lawfulness usually concerns altruistic surrogacy (no financial compensation of the surrogate mother beyond reimbursement for medical costs and other reasonable pregnancy-related expenses). Commercial surrogacy remains by and large explicitly prohibited, except in California and Texas (United States) and in Queensland (Australia). In a third category of countries, equal treatment of different-sex and same-sex couples is formally ensured through the fulfilment of two conditions: (i) surrogacy, at least when it is altruistic, is not explicitly illegal; (ii) joint adoption by same-sex partners is legal. The absence of unlawfulness of surrogacy implies, in principle, that the intended parents can become the legal parents, but only after the surrogate mother gives up her parental rights and the intended parents jointly adopt the child − thus there is no possibility of automatically eliminating the parenthood of the surrogate mother or of doing so through a simple “parental order” as it is the case in countries where surrogacy is explicitly legal. But legal joint adoption by same-sex partners ensures, in this context where surrogacy is not explicitly unlawful, that same-sex partners can become parents through the services of a surrogate mother in the same way as different-sex partners. Seven OECD countries belong to this third category: Belgium, Ireland, Luxembourg, Mexico (Mexico City), the Netherlands, New Zealand and Sweden.

Finally, among the 21 countries where MAI or IVF are legal (or not explicitly illegal) for both different-sex and same-sex partners, a majority grant the same-sex partner with access to automatic co-parent recognition. The five exceptions are Chile, Germany, Israel, Luxembourg and Mexico.

Annex Table 3.C.8. Only a minority of OECD countries provide same-sex couples with an access to assisted reproductive technology that is fully equal to that of different-sex partners

Overview of whether same-sex partners enjoy equal access to assisted reproductive technology relative to different-sex partners as of 30 June 2019

No equal treatment of different-sex (DS) and same-sex (SS) partners in access to ART	Equal treatment of different-sex (DS) and same-sex (SS) partners in access to assisted reproductive technology					
	Equal treatment in access to medically assisted insemination (MAI) or in vitro fertilisation (IVF)		When MAI or IVF are legal for both DS and SS partners, SS partners are entitled to automatic co-parent recognition	Equal treatment in access to surrogacy		
	MAI or IVF legal (or not explicitly illegal) for both DS and SS partners	MAI or IVF explicitly illegal for both DS and SS partners		Surrogacy legal for both DS and SS partners	Surrogacy not explicitly illegal and joint adoption legal for SS partners	Surrogacy explicitly illegal (or prohibited by national medical associations) for both DS and SS partners
Czech Republic Greece Korea Latvia Lithuania Poland	Australia (2002 in Western Australia, 2007 in New South Wales, and 2010 in Queensland and Victoria) Austria (2015) Belgium (2007) Canada (2004) Chile (1984) Denmark (2006) Finland (2007) Germany (1991) Iceland (2006) Ireland (1986) Israel (1996) Luxembourg (2005) Mexico (1984) Netherlands (1986) New Zealand (2004) Norway (2009) Portugal (2016) Spain (2006) Sweden (2005) United Kingdom (2009) United States (1981)	Turkey (1987)	Australia (2008) Austria (2015) Belgium (2015) Canada (2002 in Quebec, 2011 in Alberta, 2013 in British Columbia, 2007 in Ontario) Denmark (2013) Finland (2019) Iceland (2010) Ireland (2019) Netherlands (2014) New Zealand (2005) Norway (2009) Portugal (2016) Spain (2015) Sweden (2019) United Kingdom (2009) United States (2017)	Australia (2010 in New South Wales, Queensland and Victoria) Canada (2004) United Kingdom (2009) United States (2005 in California, 2015 in Texas)	Belgium (2006) Ireland (2015) Luxembourg (2015) Mexico (2011 in Mexico City) Netherlands (2001) New Zealand (2013) Sweden (2003)	Austria (2005) Denmark (1986) Estonia (2002) Finland (2007) France (1994) Germany (1991) Iceland (1996) Italy (2004) Japan (2003) Norway (2004) Portugal (2006) Slovak Republic (2005) Slovenia (2000) Spain (2006) Switzerland (1998) Turkey (1987) United States (1992 in New York)

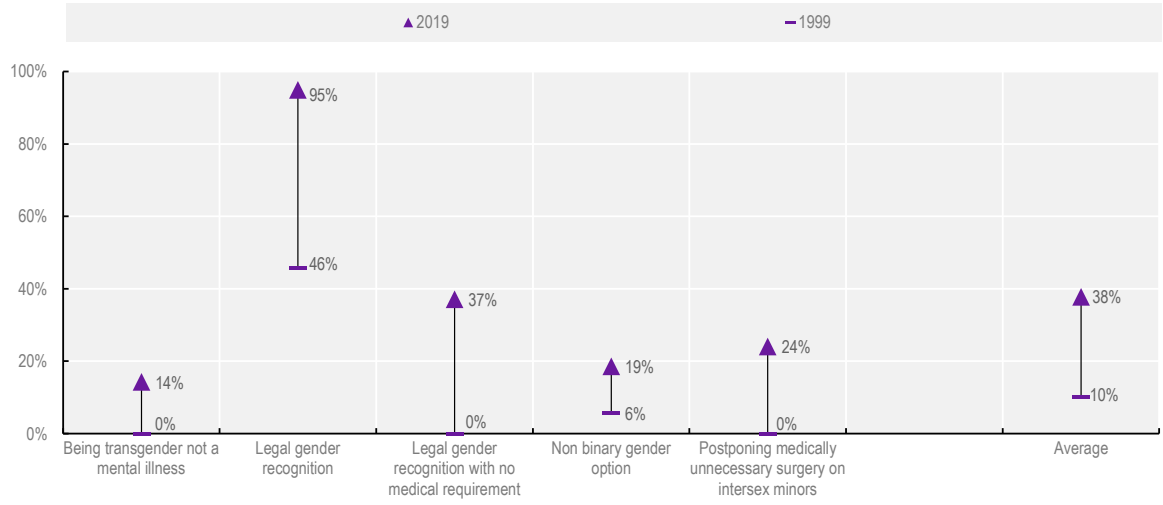
Note: This table indicates whether same-sex partners enjoy equal access to assisted reproductive technology relative to different-sex partners as of 30 June 2019. The expression "Finland (2007)" in the column "MAI or IVF legal (or not explicitly unlawful) for both DS and SS partners" means that medically assisted insemination or *in vitro* fertilisation is legal (or not explicitly unlawful) for both different-sex and same-sex couples since 2007 in Finland.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

TI-specific provisions

On average, only 38% of the TI-specific provisions defined in Chapter 2 are in force as of 2019, up from 10% in 1999 (Annex Figure 3.C.3). Nearly all OECD countries allow transgender people to change their gender marker on birth certificates and other identity documents as of 2019, while less than half did so in 1999. Significant progress has also been made regarding expunging medical requirements from gender recognition legislation, noting that these requirements were part of all gender recognition laws 20 years ago. But improvements have been extremely modest in the following fields: not categorising being transgender as a mental illness in national clinical classification; availability of a non-binary gender option on birth certificates and other identity documents; and postponing medically unnecessary sex-normalising treatment or surgery on intersex minors.

Annex Figure 3.C.3. Despite a surge in the number of countries that have passed gender recognition laws, legal inclusion of transgender and intersex individuals remains limited

Evolution of legal LGBTI inclusivity between 1999 and 2019 OECD-wide, by component of TI-specific provisions



Note: This figure reports the share of provisions highlighted in Chapter 2 that are in force in OECD countries in 1999 and 2019, by component of TI-specific provisions – see Box 3.2 for further details on how LGBTI inclusivity is computed.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

StatLink https://stat.link/lipun1

Depathologising being transgender

Depathologising being transgender entails three policy actions: (i) not categorising being transgender as a mental illness in national clinical classification; (ii) allowing transgender people to change their gender marker on birth certificates and other identity documents; (iii) attaching no medical requirement to legal gender recognition.

According to Annex Figure 3.C.3:

- Legal LGBTI inclusivity attached to the item “Being transgender not a mental illness” is equal to 14% as of 2019, which means that being transgender was removed from the list of mental illnesses in national clinical classification in only five OECD countries (this declassification was effective in no country in 1999);

- Legal LGBTI inclusivity attached to the item "Legal gender recognition" is equal to 95%, which indicates that a large majority of OECD countries (34 of 35) allow transgender people to change their gender marker on birth certificate and other identity documents at least in some parts of their national territory (this was the case of only 17 countries in 1999);
- Legal LGBTI inclusivity attached to the item "Legal gender recognition with no medical requirement" is equal to 37%, which denotes that a minority of OECD countries (14 of the 34 countries where gender recognition is legal) attach no medical requirement to this process at least in some of their subnational jurisdictions (no country had demedicalised this process in 1999).

Only a small minority of OECD countries (five) fully depathologise being transgender, which means that they comply with each of the three items mentioned above, although not always throughout their national territory (Annex Table 3.C.9). These countries are Canada, Denmark, France, Spain and the United States. Eleven countries fulfil two of these three conditions, and 18 countries comply with only one of them. In one country, Lithuania, being transgender is still fully pathologised, meaning that the law does not even permit transgender people to change their gender marker on birth certificates and other identity documents. The decision whether to grant this right, and under which conditions, is addressed by courts on a case-by-case basis, after the transgender person has filed a petition.[25]

The removal of being transgender from the list of mental illnesses in national clinical classification is effective in five OECD countries.[26] In 2010, France became the first country worldwide to proceed to this declassification (Government order n°2010-125 of 8 February 2010). It was followed by the United States in 2013, when "gender identity disorder" was dropped from the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) maintained by the American Psychiatric Association. A new condition called "gender dysphoria" was added to diagnose and treat those transgender individuals who felt distress at the mismatch between their identities and their bodies. The new diagnosis recognised that a mismatch between one's birth gender and identity was not necessarily pathological. It shifted the emphasis in treatment from fixing a disorder to resolving distress over the mismatch. In 2014, the Canadian Psychiatric Association adopted DSM-5. In 2016, citing a lack of progress of a pending decision by the World Health Organization (WHO) to remove transgender identity from its list of mental illnesses, the Danish Parliament voted for a unilateral change and removed transgender identity from the National Board of Health's list of mental illnesses. This decision came into effect in 2017. Finally, starting from the mid-2010s, several autonomous regions of Spain, including the four most populous, have adopted a set of laws "guaranteeing the rights of LGBTI people" in which the health care system is forbidden from referring to being transgender as a pathology. This trend towards removing being transgender from the list of mental illnesses in national clinical classification should accelerate in the near future. Indeed, in 2019, the Member states of the World Health Organization adopted the eleventh edition of the International Classification of Diseases (ICD-11) that removed "gender incongruence" from the list of mental health disorders, noting however that Member states are free to adjust to ICD-11 at their own pace.

The change of gender marker on birth certificates and other identity documents is legal in at least some of the subnational jurisdictions of 34 of the 35 countries covered in this report. In a majority (21), legal gender recognition is conditioned on medical requirements in at least some parts of their national territory. Among those countries, sterilisation is explicitly required in five countries (Czech Republic, Finland, Japan, Korea and Turkey), while sex-reassignment surgery and/or treatment that can lead to sterilisation is a precondition to legal gender recognition in ten others (Australia, Israel, Italy, Latvia, New Zealand, Poland, Slovak Republic, Slovenia, Spain and Switzerland). Legal gender recognition is based solely on a mental health or "gender dysphoria" diagnosis in six countries: Austria, most provinces of Canada except for Alberta and Quebec where legal gender recognition is based on self-determination (see Section 3.3.2), Estonia, Sweden, the United Kingdom and most states in the United States.

In the remaining 13 countries, legal gender recognition necessitates no medical requirement. This situation typically results from amendments to the original legal gender recognition law that by and large occurred

after 2015, under pressure from international and regional human rights stakeholders (Chapter 2). On average, these amendments took place in 2017, several decades after legal gender recognition laws have been passed in these countries.

Annex Table 3.C.9. Only five OECD countries have fully depathologised being transgender

Overview of whether being transgender is depathologised in OECD countries as of 30 June 2019

No depathologisation of being transgender	Depathologisation of being transgender		
	Being transgender is not categorised as a mental illness in national clinical classification	It is legal for transgender individuals to change their gender marker on their birth certificate and other identity documents (legal gender recognition)	When gender recognition is legal, it necessitates no medical requirement
Lithuania	Canada (2014) Denmark (2017) France (2010) Spain (2014 in Catalonia, 2016 in the Community of Madrid, 2018 in Andalusia and 2019 in Valencia) United States (2013)	Australia (1995 in New South Wales, 2000 in Western Australia, 2003 in Queensland and 2004 in Victoria) Austria (1983) Belgium (2007) Canada (1973 in British Columbia and Alberta, 1978 in Ontario, 1991 in Quebec) Chile (2018) Czech Republic (2000) Denmark (1929) Estonia (2002) Finland (2003) France (1992) Germany (1981) Greece (1976) Iceland (2012) Ireland (2015) Israel (1986) Italy (1982) Japan (2004) Korea (2006) Latvia (2013) Luxembourg (1975) Mexico (2004 in Mexico City) Netherlands (1985) New Zealand (1995) Norway (2016) Poland (1978) Portugal (2011) Slovak Republic (1995) Slovenia (2005) Spain (2007) Sweden (1972) Switzerland (1993) Turkey (2001) United Kingdom (2005) United States (1970s in New York, 1989 in Texas, 1995 in California and 2004 in Florida)	Belgium (2018) Canada (2016 in Quebec, 2018 in Alberta) Chile (2018) Denmark (2014) France (2017) Germany (2011) Greece (2017) Iceland (2019) Ireland (2015) Luxembourg (2018) Mexico (2015 in Mexico City) Netherlands (2019) Norway (2016) Portugal (2018) United States (2019 in California)

Note: This table indicates whether being transgender is depathologised in OECD countries as of 30 June 2019. The expression "France (2010)" in the column entitled "being transgender is not categorised as a mental illness in national clinical classification" means that France removed being transgender from the list of mental illnesses in its national clinical classification in 2010.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

Allowing a non-binary gender option on birth certificates and other identity documents

Legal LGBTI inclusivity attached to the item "Non-binary gender option on birth certificates and other identity documents" is equal to 19% as of 2019, which reflects that eight OECD countries allow for such an option, at least in some parts of their subnational jurisdictions (only two countries did so in 1999): Australia (New South Wales), Austria, Canada (Alberta, British Columbia and Ontario), Germany, Iceland, Netherlands, New Zealand and the United States (California and New York – New York City to be precise). In most of these countries, the legalisation of a non-binary option occurred recently, after 2015.

The use of a non-binary gender option is reserved to intersex individuals in Austria, Germany, Netherlands and New Zealand. In the Netherlands and New Zealand, it is possible since 1995 to state on a birth certificate "sex cannot be determined" or "sex indeterminate" when the sex of a newborn is unclear.[27] Austria and Germany go a step further by granting access to a non-binary gender option called "diverse" to *all* intersex individuals since 2018 and 2019 respectively. In other words, intersex adults who were assigned as female or male at birth can change this gender marker to "diverse". Both intersex and non-binary transgender individuals have access to a non-binary gender option in the remaining jurisdictions. This option is called "non-specific" in New South Wales (2014), "X" in Alberta (2018), British Columbia (2018), Ontario (2018), Iceland (2019) and New York City (2018), and "non-binary" in California (2019).

Postponing medically unnecessary sex-normalising treatment or surgery on intersex minors until they can provide informed consent

International human rights stakeholders are exerting increased pressure on their Member countries to postpone medically unnecessary sex-normalising treatment or surgery on intersex minors until they can provide informed consent. They all call for governments to ban these practices.

But a legal ban is not the only option and there is a range of actions countries can take to positively address this issue. For instance, publishing guidelines that urge medical practitioners to refrain from performing non-consensual normalisation surgery on intersex minors is one such possibility. Most importantly, it is critical to proactively engage in preparatory steps aimed at gathering support for guidelines or laws banning unconsented non-vital medical interventions so as to ensure proper enforcement of these bans. These preparatory steps include (i) inquiring into the treatment of intersex minors in order to show the extent to which unconsented medically unnecessary sex-normalising treatment or surgery are performed on intersex minors; (ii) increasing acceptance of intersex individuals among the general public so as to alleviate the social pressure for categorising a newborn as either female or male; (iii) consulting with all stakeholders, chief of which are intersex people, parents and medical practitioners in order to build consensus around a set of recommendations that serve as a starting point to a nationally consistent human-rights based approach to decision-making about medical interventions on intersex minors.

In this framework, legal LGBTI inclusivity for the item "Postponing medically unnecessary surgery on intersex minors" is equal to:

- 0 if the country has taken no significant step in this direction;
- 1/3 if the country is engaged in one or several of the preparatory steps aimed at gathering support for guidelines or laws explicitly banning unconsented non-vital medical interventions on intersex minors;
- 2/3 if the country has published guidelines that explicitly urge medical practitioners to refrain from performing non-consensual normalisation surgery on intersex minors;
- 1 if the country has passed laws explicitly prohibiting medically unnecessary sex-normalising treatment or surgery on intersex minors.

Legal LGBTI inclusivity attached to the item "Postponing medically unnecessary surgery on intersex minors" is equal to 24% as of 2019 which reflects that the protection of intersex minors is still in its infancy

in OECD countries: on average, OECD countries lie between inaction on the issue and engagement in one or several of the preparatory steps mentioned above.

More precisely, 16 OECD countries are active on that issue (Annex Table 3.C.10). Among them, only two countries have passed laws explicitly prohibiting medically unnecessary sex-normalising treatment or surgery on intersex minors, at least in some of their subnational jurisdictions: Portugal and Spain.

Annex Table 3.C.10. Only eight OECD countries have issued guidelines directed at medical practitioners or passed laws explicitly banning non-consensual medically unnecessary interventions on intersex minors

Overview of whether OECD countries have taken significant steps towards explicitly postponing medically unnecessary surgery on intersex minors as of 30 June 2019

No significant step towards explicitly postponing medically unnecessary surgery on intersex minors	Significant steps towards explicitly postponing medically unnecessary surgery on intersex minors		
	Preparatory steps aimed at gathering support for guidelines or laws explicitly banning non-consensual medically unnecessary interventions	Guidelines directed at medical practitioners explicitly banning non-consensual medically unnecessary interventions	Law explicitly prohibiting non-consensual medically unnecessary interventions
Belgium	Australia (2013)	Austria (2018)	Portugal (2018)
Canada	Finland (2019)	Chile (2015)	Spain (2016 in the Community of Madrid, 2018 in Andalusia and 2019 in Valencia)
Czech Republic	France (2018)	Denmark (2014)	
Estonia	Germany (2016)	Israel (2017)	
Greece	Luxembourg (2018)	Mexico (2019)	
Iceland	Netherlands (2019)	Switzerland (2012)	
Ireland	New Zealand (2016)		
Italy	United Kingdom (2019)		
Japan			
Korea			
Latvia			
Lithuania			
Norway			
Poland			
Slovak Republic			
Slovenia			
Sweden			
Turkey			
United States			

Note: This table indicates whether OECD countries have taken significant steps towards explicitly postponing medically unnecessary surgery on intersex minors as of 30 June 2019. The expression “Germany (2016)” in the column entitled “preparatory steps aimed at gathering support for guidelines or laws banning non-consensual medically unnecessary interventions” means that Germany engaged in these steps in 2016.
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

Annex 3.D. Threats to LGBTI people's civil liberties among OECD countries

LGBTI people's civil liberties appear at risk in three of the 35 OECD countries covered in this report:

- In Lithuania, the Law on the Protection of Minors against the Detrimental Effect of Public Information (2002) was amended in an ambiguous way that leaves room for restricting freedom of expression on LGBTI issues. Initially, Article 4 of the Law bans public information detrimental to "the physical, mental or moral development of minors", including "incitement to discrimination based on nationality, race, gender, origin, disability, sexual orientation, religion or other characteristics" (Article 4-9). In 2010, Article 4 was amended to include two potentially conflicting clauses. One is in line with the original spirit of the law since it forbids information promoting bullying, specifically based on sexual orientation (Article 4(12)). This is not the case however of the second clause. Although the amendment that more explicitly banned the promotion among minors of "homosexual, bisexual, and polygamous relations" was eliminated following protestation from the European Parliament (European Parliament, 2009[20]), it was replaced by a ban on information that encourages "the notion of entry into a marriage and creation of a family other than stipulated in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania" (Article 4(13)). As both the Lithuanian Constitution (Article 38) and Civil Code (Articles 3.7 and 3.12) define marriage as between a man and a woman, this new piece of legislation was strongly criticised by human rights organisation for posing a threat to civil liberties. There have been three notable instances where the Law on the Protection of Minors against the Detrimental Effect of Public Information was deployed to undermine freedom of expression, following the 2010 amendment. In 2013, the Law was successfully referenced by the Inspector of Journalist Ethics to restrict one advertisement related to the Vilnius Gay Pride 2013 to be broadcast at only night time and with the adult content logo, because one person in the advertisement had a T-shirt with an inscription in Lithuanian "For the diversity of families". In 2014, based on similar grounds, the same institution recommended restricting the distribution of a children's book of tales titled "Gintarinė širdis" ("Amber Heart") published by the Lithuanian University of Educational Sciences, because two stories in it were related to same-sex relationships. The Inspector ordered the book to be labelled "Not suitable for children under 14 years", which led to the termination of the dissemination of the book on the initiative of the publisher. The third instance relates to the social advertising clips created by an LGBT rights organisation called the Lithuanian Gay League. Although the clips did not have any overt sexuality-related content in 2013, the national broadcaster refused to broadcast them and in 2014 commercial broadcasters did the same.[28] In both cases, the Lithuanian Gay League lodged a complaint. The Inspector established in these two instances that the information provided in the social video clip was classified as the information which had a detrimental effect according to the Law on the Protection of Minors against the Detrimental Effect of Public Information (UN Human Rights Committee, 2016[21]). However, a recent decision of the Lithuanian Constitutional Court may contribute to mitigate these threats to LGBTI people's civil liberties: in January 2019, the Court ruled that the concept of "family" enshrined in the Constitution is gender-neutral, meaning that residence permits must be granted to foreign same-sex partners of Lithuanian citizens even though same-sex partnerships are not legally recognised in Lithuania.
- In Poland, freedom of expression, freedom of peaceful assembly and freedom of association of LGBTI individuals are under threat. A recent and worrisome trend has been the promulgation of "LGBT-free zones" declarations over the course of year 2019, particularly among local

governments in the south-eastern part of the country. In December 2019, the European Parliament passed a resolution that strongly condemns the more than 80 Polish municipal or local governments who proclaimed themselves to be ‘‘free from LGBTI ideology’’. The enforcement of such declarations remains ambiguous but the dissemination of “LGBT-free zone” stickers have fed an atmosphere of hatred and violence towards the LGBT population. The phenomenon is not new, however. For instance, in response to witnessing two participants in the 2018 Equality March in Częstochowa carry a rainbow flag with the Polish state symbol of a white eagle, a complaint was filed, prompting the Minister of Interior and Administration to declare via social media that there would be a formal investigation into the possible crime of slandering Polish symbols (ILGA EUROPE, 2018[22]). In 2016, Poland’s Parliament adopted an amendment to the Law on Assemblies that introduces the concept of “cyclical assemblies”, which are typically the celebration of important events for the history of the Republic of Poland and religious assemblies. According to the amendment, regional governors are responsible for deciding if the assembly can be considered as cyclical or not. Moreover, the amendment provides that regular assemblies of citizens cannot be organised at the same time and place as cyclical assemblies, meaning that, in case of overlap, the “non-cyclical” assembly should be prohibited. Despite protests from Poland’s ombudsman and a number of non-government organisations, the amendment was deemed constitutional by Poland’s Constitutional Court. This situation led the European Parliament to issue a resolution on the situation of the rule of law and democracy in Poland on 15 November 2017. The resolution expresses concern about “the Law on Public Assemblies, as amended in December 2016, which allows for excessive limitations on the right of assembly, including prioritisation of so-called ‘regular/cyclical assemblies’ devoted to patriotic, religious and historic events and the possibility for the authorities to ban counter-demonstrations.” The resolution “calls on the Polish Government to respect the right of freedom of assembly by removing from the current law on assembly the provisions prioritising government-approved ‘cyclical’ assemblies; urges the authorities to refrain from applying criminal sanctions to people who participate in peaceful assemblies or counter-demonstrations and to drop criminal charges against peaceful protesters” (European Parliament, 2017[23]). Finally, in 2017, a law was passed granting government control over the process of distributing the funds to NGOs. Following this law, a new body decides which NGOs receive public funds. Although a board of directors oversees this body, NGO representatives make up only a minority of this board with the remainder appointed by the government, meaning that the government can severely hinder the work of organisations it doesn’t approve of (Civil Liberties Union for Europe, 2017[24]).

- In Turkey, LGBTI civil liberties are also under pressure. In 2017, under Turkey’s state of emergency, the Ankara governor indefinitely banned all LGBTI-related events occurring in the provincial area and justified this discriminatory action by listing “social sensitivities and sensibilities”, as well as “protection of public health and morality” as reasons for the ban’s implementation (CoE Parliamentary Assembly, 2018[25]). Although the emergency rule concluded in July of 2018, the governor refused to lift the ban. In 2018, Ankara’s 4th and 13th Administrative Courts upheld the ban and in April, the Ankara-based LGBTI NGO Kaos GL brought the case to the Constitutional Court. In April of 2019, the court ruled the ban to be unlawful and found that it restricted rights in unconditional, vague and disproportionate ways, emphasising the state’s responsibility to protect peaceful assembly rather than simply ban the events. Significant barriers have also been erected to the organisation of peaceful LGBTI public events in Istanbul. Although Istanbul Pride had been held annually since 2003, it was banned in 2015 over “security concerns”. It was banned again in 2016, 2017, 2018 and 2019. Overall, LGBTI organisations are reporting a sharp increase in campaigns of intimidation and harassment targeting individuals or planned events demonstrating support of LGBTI rights (Amnesty International, 2018[26]).

Notes

[1] The Constitution of Latvia was amended in 2006 and the Constitution of the Slovak Republic was amended in 2014 to define marriage as the union between a man and a woman and, hence, constitutionally ban same-sex marriage. In the United States, in a draft memo leaked to The New York Times in 2018, the Department of Health and Human Services proposed to establish a legal definition of whether someone is male or female based solely and immutably on the genitals they are born with.

[2] In this chapter, the terms "OECD countries" and "Member countries" refer to 35 of the 37 OECD countries since Hungary decided not to participate in the analysis and Colombia was not yet an OECD Member when the report was initiated.

[3] These 12 member countries are Australia, Chile, Denmark, Finland, France, Iceland, Ireland, Netherlands, Norway, Sweden, Switzerland, and the United States.

[4] The prefilled OECD questionnaire on LGBTI-inclusive laws and policies was sent to the relevant ministries of the 36 OECD Member countries for their review in July 2019 (Colombia was not yet an OECD Member at that time). By October 2019, nearly all OECD countries had welcomed and supported this initiative. Most of the 32 countries that thoroughly verified the answers prefilled by the OECD provided valuable complementary information that enhanced the understanding of domestic laws related to LGBTI inclusion. Moreover, the draft of this report was sent to OECD Member countries in April 2020 to give them the opportunity to review, correct and complete its content. A total of 15 member countries provided the OECD with detailed and constructive feedbacks which are all taken into consideration in this publication.

[5] For issues that are regulated at both the national and subnational levels, priority is given in the analysis to the national level.

[6] The Movement Advancement Project (MAP) is an independent non-profit think tank founded in 2006 that provides rigorous research in order to measure inclusion of minority groups in all 50 US states. In particular, the MAP provides an overview of laws and policies within each state that helps drive equality for LGBT people. See http://www.lgbtmap.org/.

[7] Due to space constraints, the label of each component presented in Figure 3.2 was shortened compared to what it is in the OECD questionnaire on LGBTI-inclusive laws and policies, except for "Legal gender recognition" (TI-specific provision). Concerning general provisions: (i) "Protection against discrimination" refers to "Protection of LGBTI people against discrimination"; (ii) "Protection of civil liberties" refers to "Protection of LGBTI people's civil liberties"; (iii) "Protection against violence" refers to "Protection of LGBTI people against violence"; (iv) "Protection against persecution abroad" refers to "Protection of LGBTI people fleeing persecution abroad"; and (v) "LGBTI-inclusive human rights institution" refers to "Existence of an LGBTI-inclusive equality body, ombudsman or human rights commission". Concerning LGB-specific provisions: (i) "No criminalisation" refers to "Equal treatment of same-sex and different-sex consensual sexual acts"; (ii) "No conversion therapy" refers to "Ban on conversion therapy"; (iii) "Partnership recognition" refers to "Legal recognition of same-sex partnerships"; (iv) "Adoption rights" refers to "Equal adoption rights"; and (v) "Assisted reproduction" refers to "Equal access to assisted reproductive technology". Concerning TI-specific provisions: (i) "Clinical classification" refers to "Being transgender not categorised as a mental illness in national clinical classification"; (ii) "No medical requirements" refers to "No medical requirement attached to legal gender recognition"; (iii) "Non-binary gender" refers to "Availability of a non-binary gender option on birth certificates and other identity documents"; and (iv) "No

sex normalising treatment" refers to "Postponing medically unnecessary sex-normalising treatment or surgery on intersex minors".

[8] The contribution of each component to the rise in legal LGBTI inclusivity is computed by taking their weight into account. For example, legal LGBTI inclusivity attached to the component "Existence of an LGBTI-inclusive equality body, ombudsman or human rights commission" increased by 58 percentage points between 1999 and 2019. Given that this component is assigned a 10% weight (and that legal LGBTI inclusivity attached to all provisions increased by 32 percentage points), this means that the increase in the component "Existence of an LGBTI-inclusive equality body, ombudsman or human rights commission" explains (10%*58)/32=18% of the overall increase in legal LGBTI inclusivity.

[9] These countries are Czech Republic, Estonia, Italy, Japan, Korea, Latvia, Poland, Slovak Republic, Slovenia, Sweden and Turkey.

[10] While the share of EU Members in the 35 OECD countries covered in this report amounts to approximately 60%, they stand for 70% of countries with an above-average level of legal LGBTI inclusivity.

[11] These 13 countries are Australia, Canada, Denmark, France, Germany, Iceland, Ireland, Luxembourg, Netherlands, New Zealand, Norway, Spain and Sweden.

[12] These 13 countries are Chile, Czech Republic, Estonia, Italy, Japan, Korea, Latvia, Lithuania, Mexico, Poland, Slovak Republic, Slovenia and Turkey.

[13] On top of the question on the justifiability of homosexuality and on the perception of local social acceptance of lesbians and gay men, a third question has been asked in prominent cross-continent or regional surveys to measure attitudes of the general public towards LGB people. This question reflects whether the respondent would be comfortable with homosexuals as neighbours. However, the wording of this question is not consistent across surveys. In fact, the Americas Barometer is the only survey where this question explicitly refers to "homosexuals": *Are you comfortable with homosexuals as neighbours?* In the other surveys, respondents have to choose people they would *not* like to have as neighbours, among a list that includes "homosexuals" or "gays". An additional drawback of this question flows from the fact that answers are difficult to interpret. No selection of the "homosexuals" or "gays" items by the respondents is interpreted as equivalent to accepting homosexuals as neighbours. Yet, this omission may reflect instead that the respondent considers these items as taboos, i.e. words to be proscribed due to the unacceptable reality they depict.

[14] Information on the share of respondents who support transgender people is missing for Korea, which means that the average of this share among lowest-performing OECD countries is computed across two countries (Turkey and Japan), not three countries.

[15] Information on the share of respondents who support intersex people is missing for Korea, which means that the average of this share among lowest-performing OECD countries is computed across two countries (Turkey and Japan), not three countries.

[16] See for instance Ferguson v. JONAH, New Jersey Superior Court No. L-5473-12 (N.J. Super. Ct. Law. Div. 2015), a landmark LGBT civil rights case in which a New Jersey jury unanimously determined that conversion therapy constituted consumer fraud.

[17] In some of these countries, the applicant may still be requested to provide a statutory declaration stating that he or she (i) has a settled and solemn intention of living in the preferred gender for the rest of her or his life; (ii) understands the consequences of the application; and (iii) makes the application of his or her

free will. A reflection period of up to 6 months from the date of the application is sometimes required after which the applicant must confirm her or his application. All or some of these requirements prevail for instance in Belgium, Denmark or the Netherlands.

[18] For a critique of this procedure in France, see https://www.sos-homophobie.org/article/decret-sur-le-changement-d-etat-civil-des-personnes-trans-est-encore-loin-du-changement-d.

[19] In federal countries where LGBTI-related issues are regulated at the subnational level, we remind that this report analyses the situation that prevails in the *four most populous states*. The case of other states is not addressed.

[20] On top of allowing a non-binary gender option on birth certificates and other identity documents in these three Canadian provinces, Canada introduced in June 2019 a non-binary gender option ('X' for 'Another Gender') on its passports, citizenship certificates and permanent resident cards in order to recognise Canadian citizens and residents who do not identify exclusively as female or male.

[21] In Brazil, Resolution 1/99 issued by the Federal Council of Psychology, prohibits the "pathologisation of homoerotic behaviours and practices" and orders all licenced psychologists to "refrain from coercive or unsolicited treatment to homosexuals". It also prohibits their participation in events or services offering a "gay cure". In Ecuador, Article 151(3) of the *Penal Code 2014* criminalises any act of torture (defined in broad terms) perpetrated with the intention of modifying a persons' sexual orientation. In Malta, the Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act that came into effect in 2016 prohibits the performance of conversion therapy both by professionals (Section 3.b) and by non-professionals (Section 3.a). In Taiwan, the Ministry of Health and Welfare issued a letter to all local health authorities in 2018 which effectively banned conversion therapy.

[22] On 9 March 2020, the Canadian Minister of Justice introduced Bill C-8, An Act to amend the Criminal Code (conversion therapy), in the House of Commons and it was given first reading: https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=10686845&Parl=43&Ses=1&Mode=1&View=8. Also, in the province of Alberta, the two cities of Edmonton (St Albert) in 2019, and Calgary in 2020, have banned conversion therapy.

[23] See http://www.lgbtmap.org/equality-maps/conversion_therapy.

[24] Civil marriage does not exist in Israel. Only marriages sanctioned by the religious authorities may be performed, meaning that those who choose to get married must turn to one of the 15 religious marriage courts recognised by the state. Yet, none of these courts allow for same-sex marriage.

[25] However, when the right to change gender marker is granted by a court in Lithuania, it requires neither sterilisation nor sex-reassignment surgery and/or treatment.

[26] Since 1 January 2020, Norway has also removed being transgender from the list of mental illnesses in its national clinical classification.

[27] Since 2013, a blank gender entry is available in Germany for intersex babies whose sex cannot be determined, in response to the German Ethics Council. But this option was widely criticised by the German Constitutional Court as well as international stakeholders. Indeed, this option suggests that the complainants see themselves as genderless persons, while the reality is that these persons perceive themselves as having a gender beyond male or female.

[28] See https://www.youtube.com/watch?v=3rLit2Pc3Ig&feature=youtu.be.

4 How could OECD countries better include LGBTI people, beyond passing LGBTI-inclusive laws?

This chapter presents the broader policy measures that should accompany the LGBTI-inclusive laws defined and analysed in Chapters 2 and 3 in order to strengthen the inclusion of LGBTI people. Based on a detailed analysis of ongoing national action plans, this chapter identifies the following four key policies – and illustrates how to implement them through a wide range of best practice examples: (i) collecting information on sexual orientation, gender identity and sex characteristics; (ii) enforcing LGBTI-inclusive antidiscrimination, hate crime/hate speech and asylum laws, e.g. through training police officers on properly dealing with hate crimes targeting LGBTI people; (iii) fostering a culture of equal treatment in education, employment and health care, beyond enforcing laws prohibiting discrimination in these fields; and (iv) creating and maintaining popular support for LGBTI inclusion, e.g. through well-designed awareness-raising activities among the general public.

Passing the set of LGBTI-inclusive laws defined and analysed in Chapters 2 and 3 should come along significant efforts to make LGBTI individuals and the penalties they face visible in national statistics (OECD, 2019[1]). Absent thoughtful data collection on sexual orientation, gender identity and sex characteristics, policy makers aiming to improve LGBTI inclusion will continue to do so with little if any relevant information. Although they still constitute a minority, an increasing number of OECD countries are introducing questions in their nationally representative surveys to identify sexual and gender minorities. They constitute helpful precedents in order to disseminate good practices on how to best implement this data collection (Box 4.1).

Box 4.1. Good practices about collecting representative data on sexual orientation, gender identity or sex characteristics

Collecting information on sexual orientation, gender identity and sex characteristics in censuses as well as national labour force, health and victimisation surveys is critical to improve awareness on the penalty that LGBTI individuals face and, hence, guide policy makers.

No census in OECD countries has ever asked questions on sexual orientation and/or gender identity to identify LGB and transgender people, and representative data on individuals' intersex status are absent. Yet, as of 2018, some countries have included a question allowing respondents to self-define their sexual orientation[1] and gender identity[2] (15 and 3, respectively), in at least one of their nationally representative surveys conducted by national statistical offices or other public institutions (OECD, 2019[1]). Moreover, improving data collection to identify trends and patterns of stigmatisation, discrimination and violence against LGBTI individuals is a key objective of 10 of the 13 ongoing nationwide action plans devoted to creating an inclusive environment for sexual and gender minorities in OECD countries. In particular, subject to Parliamentary approval, Great Britain (England, Scotland and Wales) should become the first OECD region in 2021 to include both a question on sexual orientation and a question on gender identity in its censuses.

Collecting data on LGBTI persons typically necessitates complying with strict regulation. For instance, according to Article 9 of the General Data Protection Regulation (EU) 2016/679 (GDPR) the processing of personal data revealing characteristics such as sexual orientation is prohibited unless the data subject has given explicit consent to the processing of those personal data (European Commission, 2018[2]).[3] Even when explicit consent is not required as it is the case in the United States, the respondent is always entitled to refuse to answer questions perceived as sensitive, as are questions on sexual orientation, gender identity and sex characteristics.

The main challenge therefore consists in ensuring the representativeness of the data collected, which necessitates not only that individuals accept to disclose their characteristics but also that that they provide accurate information when they do (OHCHR, 2018[3]; UNHRC, 2019[4]).

In preparation of the 2021 census in the United Kingdom, the Office for National Statistics ran in 2019 a census rehearsal that provides enlightening guidance to increase public acceptability of questions on sexual orientation and gender identity (Office for National Statistics, 2019[5]):

- The 2021 census will be a "digital-first" census[4] which means that people will be encouraged to fill the census online and on their own: this approach is conducive to accurate disclosure of sexual orientation and gender identity. Indeed, underreporting of these characteristics is lower when the survey is completed by the respondent in the framework of a self-administered module than when it is completed by the interviewer, for instance in a face-to-face or telephone interview (OECD, 2019[1]).
- In previous tests of the 2021 census (Office for National Statistics, 2018[6]), some members of the public did not answer the question on sexual orientation and/or gender identity because they did not understand why the information was needed. The guidance associated to each of these

questions was therefore revised in the 2019 census rehearsal to better explain the reasons for asking these questions. For instance, the justification given for the sexual orientation question reads as follows: "Why we ask this question: Your answers help your local community by allowing charities, organisations, and local and central government to understand what services people might need. This information is used to monitor equality between groups of people of different sexual orientations. Equality monitoring helps make sure that everyone is treated fairly."

- Previous tests of the 2021 census also emphasised the need to reiterate messages about the confidentiality of interviewees' responses. The 2019 census rehearsal therefore addresses worries about privacy, including within households. In this latter case, concern arises because the census form is typically completed by the head of household, which means that LGBT teenagers or young adults still living at home, for instance, would have to be 'out' to their parents in order to be counted as such. For people who would prefer to keep their answers private from other people in their household, the 2019 census rehearsal provides them with the option to ask for a personal form.

Useful guidance can also be found from census experience of ethnic and racial minorities (Balestra and Fleischer, 2018[7]). When advocacy groups succeeded in getting the US census to count the Hispanic population starting in 1980, community leaders subsequently worked with the Census Bureau to inform people about the importance of being counted as Hispanic and to build trust in the census process. As and when questions on sexual orientation and gender identity are added to censuses, statistical agencies need to continue to engage with organisations representing LGBT people to ensure that privacy concerns are fully addressed, and that solutions to these privacy issues are properly communicated to LGBT communities, who can then have greater confidence in being counted (Cooley, 2019[8]).

[1] These countries are Australia, Canada, Chile, Denmark, France, Germany, Iceland, Ireland, Italy, Mexico, New Zealand, Norway, Sweden, the United Kingdom and the United States.
[2] These countries are Chile, Denmark and the United States.
[3] This restriction explains that the mention "This question is voluntary, so you can leave it blank if you prefer" often precedes the sexual orientation question in nationally representative surveys.
[4] See https://census.gov.uk/about-the-census/about-census-2021/.

OECD countries can take several additional actions to achieve progress and exhibit leadership in the realm of LGBTI inclusion. As of 30 June 2019, one third of OECD countries (13) had adopted a nationwide action plan devoted to creating an inclusive environment for sexual and gender minorities. An analysis of these plans reported in Annex 4.A reveals three essential sets of policy measures complementing LGBTI-inclusive laws in order to strengthen the integration of LGBTI people, including those of indigenous and ethnic minority background (Box 4.2).

For each of these key action areas, Chapter 4 presents a wide range of good practices implemented in OECD countries and/or promoted by international, regional and national human rights stakeholders. Section 4.1 focuses on enforcement mechanisms to make LGBTI-inclusive antidiscrimination, hate crime/hate speech and asylum laws truly effective, e.g. through training police officers on properly dealing with hate crimes targeting LGBTI people. Section 4.2 concentrates on policies that aim to foster a culture of equal treatment in education, employment and health care, beyond enforcing laws prohibiting discrimination in these fields (e.g. through developing standards to showcase employers' implementation of LGBTI-inclusive workplace equality policies). Section 4.3 highlights complementary measures in order to create and maintain popular support for LGBTI inclusion, e.g. through well-designed awareness-raising activities among the general public.

Box 4.2. Taking LGBTI people of indigenous and ethnic minority background on board: the case of Norway national action plans

Several national LGBTI action plans seek to enhance outreach to LGBTI persons of indigenous and ethnic minority background who are subject to multi-faceted drivers of discrimination. The risk of letting these populations behind if no specific action is taken is indeed high given that these people typically face geographic, linguistic and/or cultural barriers that hinder their access to mainstream policies.

For instance, numerous actions by the Norwegian Government aim to improve outcomes for LGBT persons in the Sami population, an indigenous people recognised as a national minority in Norway. The government's 2009-12 action plan included measures to conduct a survey on the circumstances of life and living conditions of LGBT persons in the Sami population to be culminated in proposals to improve the socio-economic situation and prevent discrimination of these groups (The Norwegian Government's action plan, 2009[9]). Moreover, the government's 2017-20 LGBT action plan commits (i) that any documents and tools developed as a result of the plan are available in Sami language and (ii) that authorities initiate a collaboration with the Sami Parliament and Sami institutions for the purpose of continuing and developing actions to assist LGBTI persons of Sami background (The Norwegian Government's action plan, 2017[10]).

The Norwegian Directorate of Integration and Diversity is also involved in addressing the special challenges faced by LGBTI refugees during resettlement, notably due to the hostility that some of their countrymen/women may express against them. In particular, the Directorate plans to include more information on LGBTI inclusion into the introductory programme that refugees and their families who have been granted a residence permit in Norway have to complete.

4.1. Enforcing LGBTI-inclusive anti-discrimination, hate crime/hate speech and asylum laws

Prohibiting discrimination on the grounds of actual or perceived sexual orientation, gender identity, and sex characteristics is an essential protection to ensure the human rights of LGBTI persons, as is the passage of LGBTI-inclusive hate crime/hate speech and asylum laws. However, true effectiveness can only be achieved through sound enforcement mechanisms.

4.1.1. Enforcing LGBTI-inclusive anti-discrimination laws

Passing antidiscrimination laws based on sexual orientation, gender identity or sex characteristics is not sufficient to protect sexual and gender minorities against discrimination. One must also ensure that the threat of sanction entrenched in these laws is credible. This objective entails that individuals report the discrimination they undergo, i.e. that they file a discrimination claim if possible well-documented enough to trigger reparation from their discriminator, either through a settlement agreement or following a court case.

Yet, non-reporting is the default response of people facing discrimination, irrespective of the protected ground considered (Equinet, 2012[11]). For instance, while more than one third (38%)[1] of LGBT individuals in the EU affirmed in 2012 having personally felt discriminated against because of being L, G, B or T in the 12 months prior to the survey, only 10% declared that they (or anyone else) reported this incident of discrimination (European Union Agency for Fundamental Rights, 2014[12]). Unfortunately, the situation is not improving: the share of LGBTI individuals in the EU who stress having been discriminated against because of their sexual orientation, gender identity or sex characteristics in the past 12 months reaches

41%[2] in 2019, while the proportion who reported this incident (11%) has remained virtually unchanged compared to 2012 (European Union Agency for Fundamental Rights, 2020[13]).

Making LGBTI-inclusive antidiscrimination laws truly effective therefore entails combating under-reporting of discrimination. This objective requires that the mandate of the national equality body, ombudsman or human rights commission not only explicitly covers equal treatment of LGBTI people but that the national human rights institution also actively engages in a specific set of actions to encourage LGBTI people to report the discrimination they face (Equinet, 2012[11]; 2013[14]; UNDP, 2016[15]; ECRI and Council of Europe, 2017[16]).

Reasons behind under-reporting of discrimination

When asked why they did not report the last incident of discrimination that occurred to them, EU-based LGBTI respondents provide reasons that largely echo the broad justifications for under-reporting given by other populations at risk of discrimination (Equinet, 2012[11]). These reasons can be grouped into three categories (European Union Agency for Fundamental Rights, 2020[13]): (i) lack of information that the law prohibits discrimination based on sexual orientation, gender identity and/or sex characteristics, and that a national human rights institution is in charge of implementing this equal treatment legislation – such knowledge gap makes people feel their case "would not have been taken seriously" had they reported it, a reason for remaining silent given by 22% of LGBTI respondents across the EU; (ii) lack of information on how to file a discrimination claim well-documented enough to trigger reparation – such knowledge gap makes people feel "nothing would happen or change" if they report their case, a reason for remaining silent given by 41% of LGBTI respondents; (iii) reluctance to personally file complaints of discrimination due to several causes: because it would reveal one's sexual orientation, gender identity or sex characteristics to people dealing with the complaints (22% of LGBTI respondents), because this is time consuming (33%), or because of fear of intimidation by perpetrators (9%).

Guidance on combating under-reporting of discrimination

National human rights institutions have an important role to play to overcome each of the barriers to reporting discrimination incidents, by maintaining well-designed interactive websites allowing users to actively engage with their content (Box 4.3). First, these websites should deliver clear information about the grounds and fields that are protected by antidiscrimination laws.

Second, these websites should provide users (people who believe they have been discriminated against as well as their advisors such as staff representatives, trade unions or lawyers) with concrete guidance on how to compile the discrimination case, based on real examples taken from previous successful discrimination complaints, i.e. complaints that allowed the complainant to obtain reparation. It is important that such guidance and examples be specific to the ground and field considered by the user since the evidence needed to prove discrimination varies by type of discrimination. For instance, it is more difficult to prove hiring than wage discrimination simply because collecting information on similar others and comparing oneself to them is more feasible when these others are colleagues rather than competing job candidates. National human rights institutions should therefore equip individuals to address these hard cases based on a comprehensive review of successful legal precedents that could be conveyed through online learning modules. This empowerment will not only benefit the complainant, but also reduce the risk that laws prohibiting discrimination in employment be counterproductive. Indeed, these laws raise the costs of terminating protected workers because they create an incentive to claim dismissal is unfair (even if it is not) in order to get compensation. If this rise occurs without a parallel increase in the risk of retaliation against employers who discriminate at the recruitment stage, then antidiscrimination laws in employment could unintentionally reduce hiring of protected groups (Bloch, 1994[17]).[3] Of course, the guidance provided by the national human rights institution's website should be complemented by the possibility for users to, in a free and confidential way: (i) ask for advice either by phone or through an online form; (ii) submit a discrimination complaint that

the national human rights institution will provide assistance to if it is substantiated enough, for instance by representing the complainant before institutions, adjudicatory bodies, and the courts.

Third, individuals who are reluctant to personally sue their discriminators (because they do not want to disclose their sexual orientation, gender identity or sex characteristics, because it is time consuming, or because of fear of intimidation by perpetrators, etc.) should nevertheless be strongly encouraged to submit a discrimination claim. This submission should not necessitate sharing any personal information but still allow the national human rights institution to contact the complainant (for instance through an anonymous email address) to permit certifying the authenticity of the complaint and therefore avoid dealing with fake reporting. If the discrimination claim is substantiated enough, it will allow the national human rights institution to conduct on-site inquiries and obtain complementary evidence and information in order to establish that discrimination against people sharing similar characteristics with the complainant has occurred and bring the case of discrimination in its own name, without revealing the complainant's identity. But this outcome could be reached even in instances where the claim does not provide strong evidence that an act of unlawful discrimination may have been committed as alleged, provided this individual claim echoes similar claims submitted by complainants accusing the same institution of the same kind of discriminatory practice. In this situation, the national human rights institution could again investigate and bring the case in its own name, or convince the complainants to engage in a class action lawsuit, assuming they will be more inclined to disclose their identity in this collective setting.

Box 4.3. Overcoming under-reporting of discrimination: good practice examples from the Equality Commission for Northern Ireland

The Equality Commission for Northern Ireland is a non-departmental public body in Northern Ireland established under the *Northern Ireland Act* 1998. It is notably responsible for implementing the legislation on discrimination. Its interactive website provides a wide range of resources that aim to reduce under-reporting of discrimination.

Informing individuals of their rights

The website clearly mentions the grounds that are protected by the legislation on discrimination. It also clearly states the fields in which discrimination is prohibited (employment, access to goods and services, etc.). Finally, the website provides links to current equality and anti-discrimination laws for each ground covered by the equality body, alongside an invitation to users to contact the equality body's services if they need clarification or guidance on what the law means.

Informing individuals of how to compile their discrimination case

The website provides access to decisions and settlements (in cases where the complainant was assisted by the Equality Commission for Northern Ireland) that can be sorted by ground (e.g. sexual orientation), field (e.g. employment) and subfield (e.g. recruitment) of discrimination. The website also displays a layperson's guide to taking a case of discrimination to Tribunal. Finally, the website includes a specific section that: (i) provides resources to individuals or organisations who advise people believing they have been discriminated against, such as staff representatives, trade unions or lawyers; (ii) proposes training sessions free of charge.

Allowing users to submit a discrimination complaint in an anonymous but accountable way

The website offers the possibility to make a discrimination complaint in view of obtaining legal assistance from the Equality Commission. Complainants are not requested to provide personal data but they must nevertheless indicate a way for the Equality Commission to contact them and talk through their complaint further.

Informing the general public about resources to combat discrimination

These resources to combat under-reporting of discrimination should be accompanied by efforts to consistently remind people of their existence, accessibility and effectiveness (Equinet, 2015[18]; 2017[19]). Specific attention is needed to get the message through to groups at risk of discrimination. Yet, these groups may view national human rights institutions as part of 'the system' or a distant authority not to be trusted or out of touch with their lives and needs. The national human rights institution should therefore build and maintain collaborative relationships with "connectors" that are trusted as messengers by these groups, including LGBTI organisations and networks.[4] Regularly showcasing the national human rights institution's commitment to promote equal treatment of LGBTI people also constitutes an essential ingredient to building a trust relationship with sexual and gender minorities. This objective can be achieved in several ways, including attendance to pride events − as it is the case in Greece where the Ombudsman has been participating in the Athens Pride every year since 2007 − or through awareness-raising activities aiming to combat LGBTI-phobia − such as the nationwide campaigns "Dislike bullying homofóbico" or "Trans e Intersexo #DireitoASer" (Trans and intersex #TheRightToBe) run in 2013 and 2018 respectively by the Commission for Citizenship and Gender Equality in Portugal (Equinet, 2015[18]). But the communication strategy should not only target people whose reporting behaviour needs to be changed, i.e. victims and groups at risk/potential victims. It is also critical that it be directed at a secondary target audience consisting of people who will get the message to the primary target audience and/or facilitate the process of changing behaviour, such as staff representatives, trade unions or lawyers.

Box 4.4. The "12 things you didn't know about gender discrimination" initiative in Germany

In Germany, the Federal Anti-Discrimination Agency asked people (from the street and celebrities) attending their "Day of action against gender discrimination" to draw a paper from a hat, read it aloud and comment on it. The facts covered a diverse set of issues such as equal pay and trans rights. From this, they created a short film called "12 things you didn't know about gender discrimination". The variety of facts kept the audience interested and led to a vital discussion. The film reached an audience of more than 280 000 people and was covered as a "viral hit" in newspapers. The average viewing time was much longer than with other films published by the national human rights institution and also allowed to raise the attention of people that it is usually hard to reach.

Source: Equinet (2017[19]), "Communicating Equality Through Social Media".

Given the comprehensiveness of the resources that a national human rights institution can provide to counter under-reporting, a communication strategy of the "did you know?" type could be particularly suitable. The one implemented in Germany to raise awareness around gender discrimination turned out being a success (Box 4.4). Finally, it is important that the national human rights institution evaluates on a regular basis the efficiency of its communication strategy and perception of its work among key stakeholders, as it is done by the Office of the Ombudsman for Equality in Finland (Box 4.5).

Box 4.5. Evaluating the public profile of the national human rights institution : good practice examples from the Office of the Ombudsman for Equality in Finland

In 2008 and 2013, the Office of the Ombudsman for Equality in Finland commissioned an evaluation of its public profile among a wide range of key stakeholders including complainants, groups at risk of discrimination and NGOs promoting their equal treatment, and trade unions.

The survey aimed to assess:

- Stakeholders' knowledge about the Office of the Ombudsman for Equality (lack of knowledge, right and wrong knowledge)
- Stakeholders' perception of the work of the equality body, based on:
  - Qualitative data: respondents' first impressions, report of experiences in cooperating with the Office of the Ombudsman for Equality, as well as hopes and expectations for the equality body;
  - Quantitative data: relying on the Osgood Semantic Differential Scale,[1] the respondents were asked to evaluate the equality body based on five dimensions: (i) authoritative; (ii) respected; (iii) reliable: (iv) serving; (v) effective.

The survey revealed the strengths and weaknesses of the Office of the Ombudsman for Equality's public profile and, hence, the actions to be taken to correct and enhance its image among different stakeholder groups.

[1] The Osgood Semantic Differential Scale is a rating scale designed to measure the connotative meaning of objects, events, and concepts. The connotations are then used to derive the attitude towards the given object, event or concept. More precisely, the respondent is asked in this type of survey to choose where his or her position lies, on a scale between two polar adjectives (for example: "Adequate-Inadequate", "Good-Evil" or "Valuable-Worthless").
Source: Equinet (2015[18]), "The Public Profile of Equality Bodies", www.equineteurope.org.

4.1.2. Enforcing LGBTI-inclusive hate crime and hate speech laws

Governments must take action to legally recognise sexual orientation, gender identity and sex characteristics as grounds for hate crime and hate speech. But successful implementation of LGBTI-inclusive hate crime and hate speech laws is critical. Achieving this objective entails (i) training police officers on adequately dealing with hate crime incidents and (ii) effectively combating hate speech online.

Enforcing LGBTI-inclusive hate crime laws

Failure to appropriately prosecute crimes motivated by hatred against the LGBTI population creates a sense of impunity among perpetrators and can result in increasing levels of violence against sexual and gender minorities. Training police officers to properly handle hate crime incidents can help prevent this troubling cycle from emerging. The police are at the frontline of the criminal justice system and the first point of contact for many victims. A fair application of national hate crime laws is out of reach if they are not equipped with the skills to take a detailed victim statement and to identify when a criminal offence is a hate crime (ILGA Europe, 2008[20]; OSCE, 2009[21]; 2014[22]; CoE, 2017[23]; European Commission, 2017[24]; European Union Agency for Fundamental Rights, 2018[25]). Training police officers is all the more important since their presumed reluctance and/or incapacity to deal with violence targeted at LGBTI people is the main reason why LGBTI people refuse to report abuse. Across the EU, 5% of LGBTI respondents in 2019 declare experiences of physical or sexual attacks and 38% declare experiences of harassment due to being LGBTI, in the 12 months prior to the survey. When thinking about the last incident of hate-motivated physical or sexual attack they underwent, only 14% decided to report it to the police, mainly due to mistrust in the system: 24% explicitly state that they do not trust the police, 40% stress that they do not think the police would or could do anything, and 26% that they feared homophobic and/or transphobic reaction from the police (European Union Agency for Fundamental Rights, 2020[13]).

The victim statement is often the point where key evidence can be provided. Depending on how it is conducted, this statement can make or break a criminal case. The police must therefore be trained on creating a welcoming environment conducive to gathering the best evidence (Box 4.6).

Box 4.6. Enforcing hate crime laws: Taking a detailed victim statement

To create an environment conducive to gathering the best evidence, the police must know how to balance the need to press for as much detailed information as possible with the needs of the victim, including the need for privacy. This entails:

- ensuring the interview room is quiet and that no one will disturb the statement;
- providing breaks when required;
- never using judgemental language or giving one's opinion on the victim's individual circumstances;
- using a reassuring tone;
- being careful with one's body language and keeping as neutral an expression as possible;
- being respectful at all times, acknowledging pain/upset;
- being patient with the victim if they go into great detail about the incident beyond what is required for a statement;
- never criticising the victim's behaviour;
- allowing sufficient time and not rushing the process;
- never belittling the seriousness of the crime.

Posters stressing the police's commitment to a fair implementation of national hate crime laws are also a key ingredient to LGBTI victim's comfort once at the police station. Such were the posters used in London boroughs in the early 2010s. Those read: "Being black or white, lesbian, gay or transgender, having a disability or belonging to a particular faith group is not a crime. Abuse, assault, threats, offensive material or damage towards someone because of their race, faith, disability or sexuality is a crime." (Burston, 2012[26]).

Source: CoE (2017[23]), "Policing Hate Crime against LGBTI persons: Training for a Professional Police Response".

Additionally, police officers should be trained on identifying when a criminal offence is a hate crime in order to be able to record this information in an electronic database that will then be used by the investigation and prosecution service. An incident can be designated a hate crime if: (i) a criminal offence has occurred and (ii) the offender had a bias motive. To determine whether the perpetrator chose the target of the crime based on their actual or perceived sexual orientation, gender identity or sex characteristics, police officers must be given the means to use "bias indicators", that is, "objective facts, circumstances or patterns connected to a criminal act that, alone or in conjunction with other indicators, suggest that the offender's actions were motivated in whole or in part by bias, prejudice or hostility" (OSCE, 2014[27]). These indicators should cover a number of different factors. Indeed, given the subjective nature of motivations, and the fact that some indicators are stronger than others, police officers should be encouraged to build a case using a multifactorial combination of bias indicators (see Annex 4.B for further details).

The training of police officers on properly dealing with hate crime targeting LGBTI individuals is still not generalised across OECD countries. For instance, as of 2018, more than one third of the 23 OECD countries that are also member of the EU did not provide any guidance on hate crime recording for police officers (European Union Agency for Fundamental Rights, 2018[25]). Yet, encouragingly, initiatives to remedy this situation are gaining momentum. Such is the work of the European LGBT Police Association, an umbrella organisation bringing together police LGBT organisations from across Europe that is notably engaged in peer-to-peer training on better assisting LGBT victims of hate crime.[5]

To further improve the reporting of hate crimes by LGBTI people, this training should be complemented by creating close partnerships between the police and civil society organisations (Box 4.7). Civil society organisations are often the first entities contacted by victims of hate crime, because they provide them with essential emotional, practical, legal and, sometimes, medical support. They can therefore become invaluable intermediaries between the police and victims by increasing the chances of victims cooperating with the investigation and remaining engaged in the criminal justice process.

Box 4.7. Collaborative initiatives between police and civil society organisations: good practice examples from the United Kingdom

Public authorities and civil society organisations in the United Kingdom have taken significant steps to address hate crimes against LGBT persons in a collaborative way. For instance, the Metropolitan Police Service[1] and the London-based LGBT organisation Galop[2] have set up a partnership to develop an "assisted reporting" scheme that allows individuals to report through Galop's website or its Shoutline, a helpline and casework service that provides advice, resources and support for victims of homophobic and transphobic crimes (ILGA Europe, 2010[28]). In addition to collecting information on the incident, the victim and perpetrator, the scheme offers victims the possibility to connect with the police or, if they prefer, with one of the 155 police LGBT liaison officers appointed by the Metropolitan Police Service to facilitate communication with the LGBT population.

[1] The Metropolitan Police Service is responsible for law enforcement in the Metropolitan Police District which consists of the 32 London boroughs.
[2] See http://www.galop.org.uk/.

Enforcing LGBTI-inclusive hate speech laws

To fully deter hate crime, governments should also prohibit particularly severe forms of hate speech, while ensuring that hate speech legislation is not used to justify inappropriate restrictions on the right to freedom of expression.[6] Passing LGBTI-inclusive hate speech laws is a critical first step in that direction. But this step should be complemented by strategies to tackle those forms of hate speech that are the most challenging. Such is online hate speech due to the (i) immediacy and viral nature of its content, (ii) anonymity of internet users and (iii) ability of authors to respond to prohibitions by easily moving to other platforms (UNESCO, 2015[29]). There is indeed no reason that hate speech that would not be tolerated on a bus, in a café, in school − basically, in 'real life' − should be tolerated online.

One option is for international and/or regional stakeholders to set up standards with social media companies. For instance, in 2016, the European Union entered into a Code of Conduct agreement on countering illegal hate speech online with Facebook, Microsoft, Twitter, YouTube, and later Dailymotion, Google+, Instagram, jeuxvideo.com and Snapchat (European Commission, 2016[30]). Under the Code, the companies are required to:

- Define Terms and Conditions or Terms of Service and Community Guidelines that define what content is acceptable on the platform;
- Provide regular training to their staff to equip them with the skills to draw the line between freedom of expression and hate speech (Chapter 2);
- Review content that is reported to them by general users as well as "trusted flaggers" within 24 hours and remove or disable access to this content if it qualifies as "hate speech". The trusted flaggers are NGOs across Europe with which social media companies partner to improve their understanding of what constitutes hate speech depending on national contexts, and collaborate on campaigns for tolerance and pluralism.

To raise awareness the Commission simultaneously launched the hashtag campaign #noplace4hate and regularly publishes monitoring exercises. The latest round of evaluation that took place in 2019 reveals that social media companies assessed 89% of flagged content within 24 hours (up from 40% in 2016) and that they removed 72% of the content notified to them. Hate speech on the combined grounds of sexual orientation and gender identity comprised 19.3% of the reports in total – 15.6% for the ground of sexual orientation and 3.7% for the ground of gender identity. Variation of removal rates depending on the severity of hateful content suggests that the reviewers assess the content scrupulously and with full regard to protected speech. On average, 85.5% of content calling for murder or violence against specific groups was removed, while content using defamatory words or pictures to name certain groups was removed in 58.5% of the cases (European Commission, 2019[31])

To push social media companies to regulate content more forcefully and to crack down on hate speech more quickly, some countries have passed (Germany) or are considering passing (Australia, France, or New Zealand) laws that impose obligations on private companies to regulate hate speech online and provide high fines for non-compliance. These initiatives are not without shortcomings, however. Notably, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression conveyed that although businesses have a responsibility to respect human rights, the state should not delegate censorship measures to private entities or require them to take steps that unnecessarily or disproportionately interfere with freedom of expression, through laws, policies or extra-legal means (OHCHR, 2017[32]). Similar concerns have been voiced by other human rights organisations which assert that placing decisions on hate speech cases in the hands of private actors has led to pre-emptive censoring, over-blocking and censoring of legitimate speech, satire and political speech absent any remedy for such restrictions (Article 19, 2018[33]). With the obvious risk of government regulation exceeding its aim and drifting into censorship, a more decentralised approach is worth being considered. It consists in fostering the creation of organised counter-speech groups. Such groups can attract large numbers of members that coordinate their efforts to respond to hateful comments online (e.g. by providing new piece of information to debunk hateful comment). Their action has proven to help dissuade internet users from engaging into hate speech (Box 4.8).

Box 4.8. Combating hate speech online via organised counter-speech groups: evidence from Germany

A recent study found a substantial moderating impact of online counter-speech intervention by the German group #ichbinhier (#iamhere) that was founded in late 2016 and attracted more than 35 000 members within a few months. More specifically, the study found that internet users exposed to a counter-speech intervention are 5.3 percentage points less likely to write or condone a xenophobic comment in a given week compared to similar internet users not exposed to this intervention (although this effect is transitory with individuals reverting back to their initial hate-fuelled behaviour after two weeks). The intervention is most effective in altering behaviour among individuals that only occasionally spread hate speech.

Source: Sonntag (2019[34]), "Social Norms and Xenophobia: Evidence from Facebook".

4.1.3. Enforcing LGBTI-inclusive asylum laws

LGBTI persons living in one of the 68 countries where same-sex conduct is still criminalised may consider seeking asylum abroad. Governments have a responsibility under international law to explicitly recognise persecution (or a well-founded fear of persecution) based on sexual orientation, gender identity or sex

characteristics, as a valid ground for granting asylum. Yet, processing LGBTI asylum claims remains a challenge.

Over the years, stakeholders have issued thorough guidelines on how countries can uphold this human rights responsibility in a way that promotes professionalism, sensitivity and respect of LGBTI asylum applicants. Milestone documents emphasise the need for countries (i) to help asylum officials (e.g. interviewers, interpreters or adjudicators) determine refugee status in an informed and non-judgmental manner and (ii) to ensure the safety of LGBTI people in asylum detention and reception facilities. To increase their effectiveness, these actions could be complemented by resettlement policies directed at LGBTI individuals who were granted refugee status so that they successfully integrate in their host society, as it is the case in Canada (Box 4.9) or Norway (Box 4.2).

Box 4.9. The Rainbow Refugee Assistance Partnership in Canada

In 2011, the Canadian government entered into partnership with the civil society organisation "Rainbow Refugee Society" to direct a programme called the Rainbow Refugee Assistance Partnership to support LGBTI refugees who have been identified overseas by the United Nations High Commissioner for Refugees, and approved by the Canadian government. This programme relies on both public and private funds:

- The Canadian government covers start-up costs and provides 3 months of financial assistance to each refugee after their arrival in Canada;
- Community groups formed by the Rainbow Refugee Society ensure financial support for the remaining 9 months. These groups are in charge of sponsoring LGBTI refugees, by notably helping them adjust to life in Canada, teaching them about rights and responsibilities of permanent residents in Canada, and assisting them in learning an official language as well as seeking and finding employment.

In 2020, the Rainbow Refugee Assistant Partnership was scaled up, with the number of privately sponsored LGBTI refugees rising from 15 to 50 per year.

Source:https://www.canada.ca/en/immigration-refugees-citizenship/news/2019/06/canada-announces-new-initiative-to-support-lgbtq2-refugees.htm.

Helping asylum officials determine refugee status

Empowering asylum officials to assess the credibility of LGBTI asylum applicants first implies that they easily access precise, up-to-date and reliable information on the status of LGBTI persons in the country of origin. Insights on this status can be derived from reports of human rights organisations, the United Nations and local LGBTI organisations (COC Nederland, 2011[35]). In this process, asylum authorities should be reminded that applicants are entitled to live as who they are, including in their country of origin and, hence, that the "discretion" argument does not apply: they should not reject the applications of LGBTI asylum seekers on the basis that they could avoid persecution by concealing their non-conforming sexual orientation, gender identity or sex characteristics upon return to their country of origin, as ruled in 2013 by the Court of Justice of the European Union (CJEU) in the case of Minister voor Immigratie en Asiel v. X and Y and Z v.Minister voor Immigratie en Asiel (Chapter 2). Additionally, adequate ascertainment of an applicant's LGBTI identity and background entails that asylum officials be trained on fostering asylum seekers' confidence in narrating their experience, by giving them the opportunity to describe how their sexual orientation or gender identity has developed, including responses of the environment; exposure to problems, harassment, violence; and feelings and perceptions of difference, stigma, fear and shame. To

ensure that applicants testify as openly as possible about these sensitive issues, their requests in relation to the characteristics of interviewers or interpreters should be considered favourably. For instance, if the interpreter is from the same country, religion or cultural background, this may heighten the applicant's sense of shame and hinder him or her from fully presenting all the relevant aspects of the claim (UNHCR, 2012[36]). More generally, international human rights stakeholders and NGOs call for creating awareness on the following facts to avoid prejudiced and stereotypical assumptions and/or practices during the determination process (UNHCR, 2010[37]; 2011[38]; 2012[36]; 2015[39]; COC Nederland, 2011[35]; ILGA Europe, 2014[40]):

- Medical, psychological or psychiatric expert opinions are an inadequate and inappropriate method for establishing an applicant's LGBTI status, and medical "testing" such as "phallometric testing"[7] is an infringement of the applicant's basic human rights − see CJEU's ruling in A and Others v. Staatssecretaris van Veiligheid en Justitie (2014) and in F. v. Bevándorlási es Állampolgársági Hivatal (2018) emphasised in Chapter 2;
- An applicant's lack of familiarity with LGBTI organisations, venues or culture cannot in itself be considered as an indication that the applicant's purported fear of being persecuted on account of sexual orientation, gender identity or sex characteristics is not credible;
- Not all gay men are feminine, and not all lesbians are masculine;
- The fact that an applicant is or has been married or cohabiting in a heterosexual relationship, possibly with children of that relationship, should not rule out the fact that she or he may be LGBTI;
- A negative credibility finding should not be based solely on the late disclosure of the applicant's sexual orientation, gender identity or intersex status in the screening phase or early stages of interview. Rather, reasons for belated disclosure should be carefully considered: many applicants are reluctant to reveal their sexual orientation, gender identity or sex characteristics early in the asylum process because they fear consequences and repercussions of persons in their communities, families or within the reception facility or accommodation learning about their LGBTI status.

Ensuring safety of LGBTI people in asylum detention and reception facilities

Ensuring safety of LGBTI people in asylum detention and reception facilities equally constitutes a major challenge. Although international human rights bodies insist that placing migrants and asylum seekers in detention should be seen as a last resort to be used only in strictly limited circumstances, the use of detention of migrants remains a worldwide practice which has grown steadily over recent years (UN Working Group on Arbitrary Detention, 2018[41]). In these settings, LGBTI persons face unique risks and challenges in these settings that distinguish them from other segments of the general population: they typically occupy the bottom of the informal hierarchy that characterises places of incarceration and are therefore disproportionately exposed to violence (UNHCR, 2012[42]). Studies report that non-heterosexual inmates are 10 times more likely than heterosexual inmates to be sexually assaulted by other inmates, while the likelihood of a transgender person being sexually assaulted by a fellow inmate is 13 times higher than for cisgender inmates (UN Committee against Torture, 2016[43]). Similarly, reception centres are all too often characterised by significant hostility against LGBTI residents, mainly coming from their countrymen/-women (ILGA Europe, 2014[40]).

To protect LGBTI persons in asylum detention and reception facilities, special consideration should be devoted to their place of accommodation as well as to their health. LGBTI asylum seekers typically fled alone and they have neither the support of family members nor a network of fellow expatriates (ILGA Europe, 2014[40]). To ensure their safety, it is important to create spaces where they can live without fearing retaliation from other asylum seekers while ensuring that this solution does not amount to placing them in a form of solitary confinement. A good practice in this regard consists of transferring LGBTI asylum seekers to smaller reception facilities, and/or to centres with fewer countrymen/-women (ILGA Europe, 2014[40]).

Moreover, if placement is gender-specific, it should not occur solely on the basis of the genitalia or sex assigned at birth of transgender persons but also take their self-identified gender into consideration to avoid that they be allocated to facilities where they can be highly vulnerable to abuse and violence (APT, 2018[44]). In Austria for instance, female transgender asylum seekers are mostly placed in facilities devoted to unaccompanied women to which men cannot access. Finally, there should be clear guidelines on the provision of specific health care to LGBTI persons. These guidelines should notably avoid the harmful interruption of hormonal treatment for transgender and intersex people if this treatment already started in their countries of origin (European Union Agency for Fundamental Rights, 2017[45]).

4.2. Fostering a culture of equal treatment in education, employment and health care

It is unlikely that reducing under-reporting of discrimination in a context where discrimination is illegal will be enough to eliminate anti-LGBTI discrimination. To effectively combat this discrimination, it is essential to concomitantly create a culture of equal treatment by educating people to counter and control their bias against LGBTI individuals (OECD, 2019[1]). Indeed, consciously or not, people tend to be biased *in favour* of their in-group (the social group with which they identify as being a member) and/or to be biased *against* their out-group (the social group with which they do not identify) (Kahneman, 2013[46]). This bias leads them to judge positively, even before they get to know them, people who are similar to them, and to "prejudge" negatively the others. This bias also largely accounts for stereotypes' inaccuracy. Individuals tend to overestimate the weaknesses of dissimilar others and to underestimate their strengths, while they are prone to the opposite in face of similar others. Overall, in-group and out-group bias contributes to minority groups, LGBTI people included, being discriminated against by the majority.

Bias against LGBTI people is widespread. Implicit measures of this bias reveal that most people prefer straight people to gay people (Box 4.10). Although explicit measures lead to underestimating in-group and out-group bias, given that respondents tend to provide socially desirable answers and can only report the bias they are conscious of, cross-country surveys also by and large reveal negative attitudes towards LGBTI people. OECD countries are no exception, as shown in Chapter 3. Despite a shift towards greater acceptance, discomfort with homosexuals is pervasive: OECD countries are only halfway to full social acceptance of homosexuality, scoring five on a 1-to-10 acceptance scale (OECD, 2019[1]). Moreover, only a minority of respondents in OECD countries covered by the 2016 ILGA survey would: (i) accept a transgender child (44%); (ii) oppose medically unnecessary sex-normalising surgery on intersex babies (40%) (ILGA, 2016[47]).

Well-designed awareness-raising activities like the ones described in the next section (Section 4.3) are key to educate people in countering their bias against sexual and gender minorities. But they should be complemented by specific actions in the fields of education, employment and health care. Although these fields are viewed by the International Bill of Human Rights as critical for individuals to flourish[8], they are fraught with discrimination against LGBTI people.

Box 4.10. Implicit measure of bias against LGBTI people: the Implicit Association Test (IAT) on Sexuality developed by Harvard University

The IAT on Sexuality measures the strength of associations between concepts (e.g. Gay people and Straight people) and evaluations (e.g. good and bad).

More precisely, when doing an IAT, participants are asked to quickly sort words and pictures into categories that are on the left and right hand side of the computer screen by pressing the "e" key if the word (or picture) belongs to the category on the left and the "i" key if the word (or picture) belongs to the category on the right.

The main idea is that making a response is easier when items that are perceived as closely related share the same response key. In this setting, someone who is faster to categorise words and pictures when Straight People and Good share a response key relative to when Gay People and Good share a response key will be considered as having an automatic preference for Straight people relative to Gay people.

Between 2004 and 2015, approximately 1.5 million people across the world took the IAT on Sexuality. Their scores reveal that most of them (nearly two thirds) prefer Straight people to Gay people, i.e. they are faster sorting when good words and straight images go with the same key:

- 25% show a strong automatic preference for Straight people;
- 24% show a moderate automatic preference for Straight people;
- 15% show a slight automatic preference for Straight people.

Only 15% show little to no automatic preference for Straight people (the remaining 21% show an automatic preference for Gay people).

Comparing these implicit measures with self-reported attitudes towards Straight and Gay people confirms that explicit measures underestimate anti-gay bias: half of the participants to the IAT self-report no preference between Straight and Gay people in the survey, while the IAT reveals this is the case for only 15%.

Source: https://implicit.harvard.edu/implicit/takeatest.html.

4.2.1. Promoting LGBTI equality in education

Among other key documents, the Convention on the Rights of the Child enshrines every child's right to be free from discrimination (Article 1) and to access an education that respects their dignity and rights (Article 28), develops their personality, talents and abilities, while encouraging their respect for human rights (Article 29). Yet, LGBTI-phobic bullying at school is a worldwide problem (UNESCO, 2016[48]). For instance, across the EU, nearly 60% of LGBTI respondents declare in 2019 they have hidden being LGBTI at school, and 4 in 10 report having always or often experienced negative comments or conduct in the school setting because of being L, G, B, T or I (European Union Agency for Fundamental Rights, 2020[13]). The victimisation of LGBT students ranges from the interference of homophobic and transphobic discourse in everyday interactions (e.g. the use of "dyke", "faggot" or "tranny" as generalised derogatory comments among teenagers) to verbal harassment, physical violence or cyberbullying – noting that these wrongdoings are not only committed by peers, but can also involve the school staff. In the United States, 70.1% of LGBT students experienced verbal harassment (e.g. called names or threatened) at school in the year preceding the 2017 National School Climate survey conducted among students between the ages of 13 and 21, 28.9% were physically harassed (e.g. pushed or shoved), 12.4% were physically assaulted

(e.g. punched, kicked, injured with a weapon), and 48.7% experienced electronic harassment, via text messages or postings on social media (GLSEN, 2018[49]).

These numbers underestimate the actual prevalence of LGBTI-phobic bullying. Indeed, evidence shows that pupils do not necessarily have to be lesbian, gay, bisexual, transgender or intersex to be bullied: not fitting in with the gender expectations of their peers – boys judged as being not masculine enough, girls judged as being not feminine enough – is often sufficient for them to experience rejection.

Hostile school settings are detrimental to the mental and physical health of LGBTI children and youth and negatively affect educational attainment including lower participation in class or school activities, poorer academic performance and lower rates of attendance, or dropping out of school entirely (OECD, 2019[1]; Sansone, 2019[50]). Ultimately, school environments where children and youth are subject to LGBTI-phobic behaviour are factors that contribute to high rates of social exclusion and lack of higher education and employment prospects, adversely impacting LGBTI persons and society at large.

Governments have a responsibility to prevent and tackle all types of bullying, including bullying on account of sexual orientation, gender identity and sex characteristics. There are three key policy options to achieve this objective: introducing a mandatory, objective-oriented and enforceable LGBTI-inclusive school subject; guiding school staff on implementing an LGBTI-inclusive curriculum; adopting a whole-school approach to deal with LGBTI-phobic language and behaviour every time they occur (UNESCO, 2012[51]; 2016[48]; GLSEN, 2016[52]; CoE, 2018[53]; IGLYO, 2018[54]; ILGA Europe and OII Europe, 2019[55]).

While implementing these policies, it is critical that parents understand why the school is preventing and tackling LGBTI-phobic bullying, to avoid backlash. Schools should clarify that their efforts aim to look after the welfare and safety of all young people in the school, not to talk about sex or try to turn children gay − two pervasive worries among parents. It is also important to keep parents informed about what the school is doing, including lesson plans, and provide them with the option to discuss their concerns with senior leadership – a way to reassure parents that their concerns are taken seriously, but also to send a strong message that the commitment to prevent and tackle LGBTI-phobic bullying extends across the school (Stonewall, 2015[56]).

Introducing a mandatory, objective-oriented and enforceable LGBTI-inclusive school subject

Introducing a school subject that promotes the inclusion of LGBTI identities, among other groups at risk of discrimination, constitutes a crucial front in the battle for LGBTI equality. Early years settings and primary schools should be given special attention while ensuring of course that the subject's content is age-appropriate: values and attitudes are formed early and are likely to be highly resistant to change in later life. To deeply anchor a culture of equal treatment, this LGBTI-inclusive subject should be mandatory. It should also be grounded in a set of clear objectives so that school staff understand expectations. Finally, actual implementation of this curriculum should be closely monitored by school inspectors to ensure enforcement.

Yet, these conditions are rarely fulfilled in OECD countries (IGLYO, 2018[54]). The United Kingdom is an exception though. Between 1988 and the early 2000s, now repealed Section 28[9] of *the Local Government Act* prohibited in England, Scotland and Wales "the intentional promotion of homosexuality" by any local authority and "the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship". But the United Kingdom has been proceeding on a radically different path since 2014 when the government Equalities Office launched a series of ambitious programmes to prevent and tackle LGBT-phobic bullying in schools (Government Equalities Office, 2018[57]). UK's strong commitment to promote LGBTI equality in education is also reflected in the decision in England to make school subjects required to encompass LGBTI-inclusive content statutory in primary and secondary schools, starting from September 2020 (Box 4.11).[10] A similar historic move is expected in Scotland, following acceptance by the Scottish government of the 33 recommendations delivered in 2018 by the LGBTI Inclusive Education Working Group (LGBTI Inclusive Education Working Group, 2018[58]).[11]

Box 4.11. Mandatory, objective-oriented and enforceable LGBTI-inclusive school subjects: the case of England

In May 2019, the House of Commons and the House of Lords voted to make "Relationships Education" in primary schools and "Relationships and Sex Education" in secondary schools compulsory. Both subjects are required to encompass LGBTI-inclusive content, based on clearly defined objectives. While implementing this curriculum, schools are however given flexibility to decide how and when they cover content in order to ensure it is age appropriate and that the background and beliefs of pupils are properly taken into account.

Relationships Education in primary schools

The focus of Relationships Education in primary school is on teaching the fundamental building blocks and characteristics of positive relationships, with reference to family relationships, friendships, and relationships with other children and with adults. LGBTI inclusion is addressed while discussing (UK Department for Education, 2019[59]):

- The diversity of families: children are taught respect for all types of families to the extent that they are all characterised by love and care (families include single parent families, LGBT parents, families headed by grandparents, adoptive parents, foster parents, etc.);
- Relationships with other children and with adults (the importance of respecting others, the different types of bullying and their impact, what a stereotype is, etc.).

Relationships and Sex Education in secondary schools

Relationships and Sex Education (RSE) in secondary schools aims to continue to develop knowledge on topics specified for primary education. For instance, when discussing stereotypes, the grounds of sexual orientation and gender identity (gender reassignment) are distinguished, and pupils are taught the facts and the law about these dimensions (UK Department for Education, 2019[59]).

In a context where discrimination based on sexual orientation and gender reassignment is prohibited in a broad range of fields in the United Kingdom, including education (Chapter 3), the Office for Standards in Education, Children's Services and Skills (Ofsted) – the body in charge of inspecting services providing education and skills for learners of all ages – directs inspectors to look at a school's efforts to prevent and tackle LGBTI-phobic bullying. In 2019, Ofsted launched its new Education Inspection Framework. The capacity of the school staff to "create a safe, calm, orderly and positive environment (…) in which pupils feel safe, and in which bullying, discrimination and peer-on-peer abuse – online or offline – are not accepted and are dealt with quickly, consistently and effectively whenever they occur" is presented as a key evaluation criterion. To help inspectors make their judgement, schools have an obligation to provide evidence of their commitment to prevent and tackle "bullying, discriminatory and prejudiced behaviour (…) including racist, sexist, disability and homophobic/biphobic/transphobic bullying, use of derogatory language and racist incidents." (Ofsted, 2019[60]).[1]

[1] See https://www.gov.uk/government/publications/school-inspection-handbook-eif.

Guiding school staff on implementing an LGBTI-inclusive curriculum

To reap the full benefits of a mandatory, objective-oriented and enforceable LGBTI-inclusive school subject, it is critical to provide school staff with guidance on how to teach this subject, especially at early stages. This ambition implies giving teachers access to detailed lesson plans, as it is done by the "No Outsiders" project in the United Kingdom directed at primary schools (Box 4.12).

Box 4.12. Assisting school staff in teaching LGBTI-inclusive school subjects: the "No Outsiders" project directed at primary schools in the United Kingdom

The "No Outsiders" project was first developed in the mid-2000s by Andrew Moffat, a Personal Social Health Education (PSHE) teacher and assistant head teacher in a Birmingham primary school. This project aimed to explore ways in which primary schools could work to combat all kinds of bullying, including homophobic bullying.

Initially, the resources prepared by Andrew Moffat were targeting the last year of preschool (age 4) and the first two years of primary school (age 5 and age 6). Each plan uses a children's book as a focus for the lesson. The teacher reads the story, there are notes for discussion and then a role play to tease out the issues and develop thinking. A plenary concludes the lesson (Moffat, 2007[61]).

Nowadays, the "No Outsiders" project proposes comprehensive resources for all years of primary school. These resources aim to teach children about the following grounds of discrimination that are legally protected in the United Kingdom: gender and gender reassignment, religion, sexual orientation, disability and age (Moffat, 2015[62]; 2020[63]). The project is expanding as a charity providing assistance and guidance to educational providers in the United Kingdom and beyond, in view of preventing children being drawn into terrorism and activities that cause detriment to community cohesion, such as far right activity.[1]

[1] See no-outsiders.com.

Teachers should also be given insights on how to embed LGBTI families, people and themes throughout the curriculum, beyond teaching the mandatory LGBTI-inclusive subject. Confining the mention of LGBTI issues to a specific area of the curriculum indeed entails a risk that children view being LGBTI as something marginal or even something to hide or be ashamed of. As a recipient of the government Equalities Office's Anti-Homophobic, Biphobic and Transphobic Programme and with the support of Pearson (the British multinational publishing and education company), the UK-based LGBT rights charity Stonewall has recently published two landmark guides giving primary and secondary schools as well as education publishers insightful ideas to include LGBTI identities in all areas of the curriculum (Stonewall, 2017[64]; 2019[65]) – see Annex 4.C for further details.

Finally, teachers should be given assistance in managing parental concerns about the teaching of LGBTI content, especially in primary schools.[12] Indeed, this teaching can induce sharp critics, as shown in 2014 and in 2018/2019 by protests involving parents against the "No Outsiders" project (Box 4.12).[13] Setting up partnerships with organisations for LGBT people of faith and faith schools having already shown best practice in combating LGBTI-phobic bullying also constitutes a promising approach to connect with faith communities at large. In the United Kingdom, such partnerships[14] led several prominent faith groups to develop guidelines emphasising the need for faith schools and religious parents to support LGBTI rights *because* of their faith, not in spite of it. Specifically, in 2019 the Church of England Education Office published the second edition[15] of "Valuing All God's Children. Guidance for Church of England schools on challenging homophobic, biphobic and transphobic bullying" (Church of England, 2019[66]); in 2018 the Catholic Education Service in partnership with St Mary's University published "Made in God's Image: Challenging homophobic and biphobic bullying in our Catholic schools" (Catholic Education Service, 2018[67]); in 2018 Keshet UK published the "Wellbeing of LGBT+ Pupils: A Guide for Orthodox Jewish Schools" (Keshet UK, 2018[68]).

Adopting a whole-school approach to deal with LGBTI-phobic language and behaviour every time they occur

But empowering school staff to properly implement LGBTI-inclusive curricula is not enough to prevent and tackle LGBTI-phobic bullying. A whole-school approach is also needed to deal with LGBTI-phobic language and behaviour every time they occur. Such language is widespread but often goes unchallenged by school staff, firstly because they lack the confidence to do but also because they consider this language to just be harmless banter – thereby reflecting that expressions like "faggot," "dyke," "no homo," and "so gay" are indeed[16] used casually in everyday interactions (Stonewall, 2017[69]).

Box 4.13. Key transgender- and intersex-inclusive policies at school

The following guidelines and recommendations are viewed as critical to affirm the rights of transgender and intersex students in the school setting (UNESCO, 2012[51]; 2016[48]; GLSEN, 2016[52]; CoE, 2018[53]; IGLYO, 2018[54]; ILGA Europe and OII Europe, 2019[55]):

- Respect learner's choice to identify as their desired gender by using their chosen name, pronouns and gender on all official and administrative documents such as certificates, diplomas and student identification cards, and obligating all school staff to use the name and pronoun chosen by the student regardless of whether they have been changed in official documents;
- Respect students' right to dress in accordance with their gender identity regarding school clothing and uniform policies;
- Enable learners to access restrooms and lock rooms that correspond to their gender identity. Schools are encouraged to designate one or more restroom to be gender neutral or single-user facilities accessible to learners of all genders and to incorporate such designs into new construction or renovations;
- Allow students to participate in physical education classes and sports activities in a manner consistent with their gender identity;
- Protect learner's right to privacy and confidentiality in relation to their gender status and ensure that all information for transgender and intersex learners are kept confidential in accordance with applicable state, local and federal privacy laws.

Creating a zero-tolerance school policy that clearly states LGBTI-phobic language and behaviour are wrong and will not be tolerated from any member of the school community – students, staff or parents and carers – is often viewed as the best way to start addressing the problem. The rules should be that words that individuals use or would use to describe themselves (e.g. gay, lesbian, bisexual, girl, black) are acceptable, but that words or phrases that wrongly imply an individual's membership of a group and/or refer to that particular group in a derogatory way are wrong (e.g. faggot, that's so gay, you're so gay) (Stonewall, 2015[56]). The rules should leave no one behind and, hence, be an opportunity for the school to also explicitly commit to implement key transgender- and intersex-inclusive policies (Box 4.13). This school policy should be communicated on multiple platforms to all learners, teachers and school staff, as well as families and the broader community.

Alongside adopting a sound school policy, it is important to train school staff on why and how LGBTI-phobic language should be challenged – even when they consider the bully did not mean to be LGBTI-phobic. To the best of our knowledge, no OECD country has yet made this training compulsory, although Scotland plans to do so in a near future in the framework of both Initial Teacher Education and Career Long Professional Learning (LGBTI Inclusive Education Working Group, 2018[58]). In the meantime, the United Kingdom is again providing good practice examples. As a recipient of the government Equalities Office's Anti-Homophobic, Biphobic and Transphobic Programme, the PSHE association – the national

body in charge of implementing Personal, Social, Health and Economic education[17] – has set up partnerships with six different organisations and consortia to help over 1 200 primary and secondary schools in England foster a school culture more inclusive of LGBTI individuals, in particular through school staff training.[18] The training typically consists in providing the school staff with facts and figures as well as personal accounts about the level of LGBTI-phobic bullying and its harmful effects, an information viewed by participants as instrumental to convince them of the importance of being on board (NatCen, 2016[70]). The training then guides the school staff in challenging LGBTI-phobic language whenever it is used, which implies: (i) referring back to the school's anti-bullying policy; (ii) reminding pupils that when they use for instance the word 'gay' in a negative way to mean rubbish, they make gay people and people with gay family or friends feel bad about themselves – talking about equivalent racist or sexist remarks often helps pupils understand why LGBTI-phobic language is wrong; (iii) explaining pupils what the sanctions will be for repeat offences – e.g. setting the pupil a remedial activity, referring to them to a member of the senior leadership team for further sanctions, inviting parents in to discuss the pupil's behaviour (Stonewall, 2015[56]). By exemplifying the zero-tolerance school policy, the school staff will offer a fertile ground to the emergence of ally and ambassador groups among students willing to self-police in their use of LGBTI-phobic language, which will in turn increase the chances that such language be challenged both in and outside the school gates.

An alternative to school staff training to combat LGBTI-phobic bullying and behaviour is for schools to partner with LGBTI NGOs that directly intervene among pupils to discuss about their representations of sexual and gender minorities and counter those that are prejudiced and stereotypical. In France for instance, the Ministry of Education has accredited several civil society organisations (e.g. SOS homophobie). These organisations are entrusted with complementing public education via school-based interventions that notably aim to create awareness about the harmful consequences of LGBTI-phobic bullying and activate empathy. However, none of these interventions has been subject to rigorous impact evaluation. One therefore ignores whether these interventions are effective and, hence, whether they should be scaled up, noting that, for the time being, they are restricted to a few voluntary schools or regions/cities.

4.2.2. Promoting LGBTI equality in employment

Survey and experimental data demonstrate the pervasiveness of discrimination against LGBTI job seekers and employees. Across the EU, more than one fourth of LGBTI respondents in 2019 declare they hide being LGBTI at work, and more than one fifth report having personally felt discriminated against in the labour market in the 12 months prior to the survey because of being L, G, B, T or I (European Union Agency for Fundamental Rights, 2020[13]). Comparison of labour market outcomes of LGBT and non-LGBT adults based on representative survey data provides a consistent picture. They reveal that LGBT people are 7% less likely to be employed than non-LGBT people and their labour earnings are 4% lower (OECD, 2019[1]).[19] Labour market discrimination can also be measured by comparing the rate at which two fictitious candidates are invited to a job interview: one that employers perceive as LGBT and one that employers perceive as non-LGBT. Such experiments indicate that homosexual applicants are, on average, 1.5 times less likely to be invited to a job interview than their heterosexual counterparts when their sexual orientation is conveyed through their volunteer engagement or work experience in a gay and lesbian organisation. Experimental data also reveal significant discrimination against transgender job applicants (OECD, 2019[1]) − discrimination against intersex job applicants has not been tested yet.

Creating a culture of equal treatment in employment implies that private and public employers adopt a comprehensive workplace equality policy with an explicit LGBTI-specific component. A first step is to publicise employers' commitment to recruit staff and extend to each individual the same benefits, salaries, opportunities for training or promotion regardless of sexual orientation, gender identity or sex characteristics (Box 4.14). A second – more ambitious – step, is to *actually* undertake a critical set of actions to ensure non-discrimination, chief of which staff training, human resource management strategies

that deny conscious and unconscious bias the chance to operate, and an advanced benefit and leave policy (ILO/UNAIDS/UNDP, 2015[71]; European Commission, 2016[72]; OHCHR, 2017[73]; TGEU, 2017[74]; ILGA Europe and OII Europe, 2019[55]). To deeply anchor LGBTI-inclusive policies in the organisation's culture, support by the executive leadership, including LGBTI role models, should be regularly demonstrated in the framework of internal as well as external events such as pride festivals. Additionally, these policies should be widely communicated to new hires, for instance during induction programs: on top of informing new staff of the standards of conduct they are expected to comply with, this strategy allows those who are lesbian, gay, bisexual, transgender or intersex to feel welcome and valued.

However, if LGBTI-inclusive workplace equality policies generate significant benefits for employers, they also entail costs. In this context, governments can contribute to incentivise employers to embrace these policies, through standards and benchmarks.

Box 4.14. Publicly demonstrating commitment to equality for LGBTI employees

There are two LGBTI business principles that employers can sign to publicly demonstrate their commitment to equality for LGBTI employees.

The Declaration of Amsterdam (Workplace Pride)

Workplace Pride is a not-for-profit organisation dedicated to improving the lives of LGBTI people in workplaces all over the world. Based in Amsterdam, Workplace Pride created the Declaration of Amsterdam in 2011. The Declaration consists in ten steps aiming to address unfair treatment of LGBT people in the workplace.

The "Charter of LGBT Commitment" (L'Autre Cercle)

Founded in 1998, L'Autre Cercle is a French not-for-profit organisation. In 2012, L'Autre Cercle created with Accenture a "Charter of LGBT Commitment". Companies signing up to the Charter notably commit to: (i) create an inclusive workplace for LGBT staff; (ii) ensure equal rights and treatment for all staff irrespective of their sexual orientation or gender identity; (iii) support any staff members who are victims of discriminatory words or acts; (iv) measure progress and share best practices to advance the general workplace environment.

Adopting a comprehensive workplace equality policy with an explicit LGBTI-specific component

This objective entails undertaking a set of critical actions to ensure non-discrimination against LGBTI persons, chief of which staff training, human resources management strategies that deny conscious and unconscious bias the chance to operate, and an advanced benefit and leave policy.

Staff training

Following the good practice implemented by several large companies, training staff on being open and supportive of LGBT inclusion within the workplace can rely on a two-staged approach. A starting point is disseminating and promoting a guide among the whole staff. For instance, in 2012, Sodexo, a food services and facilities management multinational, created a resource to help employees be inclusive of LGBT colleagues. Called the "LGBT Conversation Guide", this resource's objective was threefold (Sodexo, 2012[75]): (i) familiarising staff with what being LGBT means; (ii) explaining why combating discrimination against LGBT job candidates and employees is a priority (an essential step to involve the whole staff and avoid backlash against the organisation's policy[20]); (iii) educating staff in supporting LGBT inclusion in everyday interactions within the workplace, based on enlightening real-life scenarios that speak to all

employees. The guide also provided links to video clips featuring personal narratives from Sodexo employees (both LGBT and allies) to help staff better understand how to become open leaders (see Annex 4.D for further details).

This guide can then be complemented by an advanced training aimed at giving employees, chief of which managers and people in charge of human resources, more skills to counter their conscious and unconscious bias against specific groups.[21] Rigorous impact evaluation suggests that this advanced training should include the following three steps in order to durably de-bias participants (Devine et al., 2012[76]):

- Informing participants about conscious and unconscious bias that underlies prejudice and stereotyping and how this bias can result in discrimination if uncontrolled;
- Making participants aware of their bias by means of implicit association tests like the IAT on Sexuality described in Box 4.10;
- Providing them with "techniques" to make such bias less pronounced, which includes (Carcillo and Valfort, 2018[77]):
  - Counter-stereotypic imaging: this approach consists of thinking of members both of one's group and of the outgroup who do not conform to the prejudice and stereotypes attached to those groups, in order to have participants realise that counterexamples of this type are in fact not unusual, thus casting doubt on the validity of systematic positive perceptions about the ingroup and systematic negative perceptions about the outgroup (Dasgupta and Greenwald, 2001[78]);
  - Individuation: this approach entails thinking of people of the outgroup individually rather than as members of their group (Lebrecht et al., 2009[79]);
  - Perspective-taking: this approach involves putting oneself in the shoes of a member of the outgroup (Todd et al., 2011[80]). Inducing empathy has proven to be successful at countering bias against LGBTI people, based on the unique randomised field experiment on the topic (Box 4.15).

Box 4.15. Countering bias against LGBTI people: evidence from the unique randomised field experiment on the topic

This experiment was carried out in the context of a door-to-door operation in Florida in 2014, after a local authority passed an ordinance protecting transgender people from discrimination in housing, employment, and public accommodations. Fearing that this decision be submitted to citizens' vote and repealed, LGBT associations went door to door to have conversations with voters. These conversations largely sought to induce empathy. In particular, voters were invited to talk about an instance in their lives when they were rejected because of their difference and to think about the possible similarities between that personal experience and the discrimination suffered by transgender people. This intervention turned out being very effective, despite its brevity. The results show that it made the participants much more tolerant of transgender people, and also more supportive of the decision prohibiting discrimination against them. The effects were still present three months after the intervention.

Source: Broockman and Kalla (2016[81]), "Durably reducing transphobia: A field experiment on door-to-door canvassing". https://doi.org/10.1126/science.aad9713.

Human resource management strategies that deny bias the chance to operate

To further deny conscious and unconscious bias the chance to operate, firms could also invest in objective human resources management strategies (Carcillo and Valfort, 2018[77]). Special attention should be devoted to the interview stage since this stage provides recruiters with the opportunity to infer the sexual orientation, gender identity and/or sex characteristics of job candidates, notably based on their physical appearance. Evidence indeed suggests that individuals who self-identify as homosexual are significantly more likely to be viewed as homosexual by external observers not informed of their sexual orientation (Rule and Ambady, 2008[82]). Similarly, a transgender identity may be detectable at the interview stage, even if it is not verbally disclosed. In the EU, in 2019, more than two thirds of transgender people report rarely or never avoiding expressing their preferred gender through their physical appearance and clothing (European Union Agency for Fundamental Rights, 2020[13]). Moreover, the legal and preferred first names of transgender people often conflict with each other, unless transgender people have gone through a legal process to change their gender marker. This conflict is typically unveiled during the first job interview, when recruiters ask for applicants' identity documents and/or diplomas.

To help objectivise the interview process, its structure, questions, interviewers should be the same from one candidate to another, with the sole purpose of determining whether candidates have the required skills. Without a consistent protocol, recruiters tend to let their prejudice and stereotypes become self-fulfilling: when their bias is positive, recruiters are more likely to begin the interview with the candidates' strengths, which increases candidates' chances of excelling, and *vice versa*. A number of studies confirm that a consistent interview protocol ensures skills-based recruitment (Bohnet, 2016[83]). For example, students' performance in the United States at the end of their first year of university is not correlated with their entry ranking when this ranking is based on an oral admissions procedure which varies from one panel to another. More specifically, the results show that a non-standardised interview is no more effective than a selection procedure based on random selection of eligible students (DeVaul et al., 1987[84]).

An advanced benefit and leave policy

For the workplace equality policy to be fully LGBTI-inclusive, companies should not only extend the same benefits to partners, spouses, children or other dependents of staff members, regardless of sexual orientation, gender identity or sex characteristics. The leave policy should also be amended for a better inclusion of both employees who become parents in the framework of a same-sex partnership and transgender employees (AWEI, 2020[85]).

More precisely, many parental leave policies are still directed at "birth mothers". These policies should be revised to include those who have children via surrogacy, adoption and foster arrangements regardless of employee gender. Moreover, in most instances, transgender employees who wish to undergo gender-reassignment surgery use sick and annual leave to do so. Yet, they may still get sick (nothing to do with the transitioning process) and require sick leave as much as every other employee, while annual leave is designed for people to take time out of work and refresh – a necessary step for ongoing mental health and work life balance. Employers should therefore be encouraged to accommodate paid leave options for transgender people who transition to avoid that they utilise all their sick or holiday leave.

Incentivising employers to embrace LGBTI-inclusive workplace equality policies through standards and benchmarks

Employers have an economic interest in creating the conditions for their workplace to be inclusive of LGBTI individuals. On top of the cost that it inflicts on the economy as a whole (Chapter 3), anti-LGBTI discrimination indeed erodes firms' performance[22] via two mechanisms (OHCHR, 2017[73]):

- First, anti-LGBTI discrimination undermines productivity through at least four channels:

- Worse-quality hires: when employers pass over talented individuals in the recruitment process based on characteristics with no bearing or relevance for the job, such as their sexual orientation, gender identity and sex characteristics, businesses are left with a sub-optimal workforce. Experimental data confirm that, with the same CV, fictitious applicants perceived as LGBT receive about 50% fewer callbacks than fictitious applicants perceived as non-LGBT (OECD, 2019[1]);
- Weaker employee engagement: not allowing LGBTI employees to bring their whole selves to work (because they fear being discriminated against if they are out) is detrimental to their productivity. It makes them spend energy on hiding who they are instead of fulfilling their potential, it undermines their mental health and ultimately fuels absenteeism (OECD, 2019[1]). In the United States, 27% of LGBT employees who are not out said in a study that hiding their identity at work had held them back from speaking up or sharing an idea (OHCHR, 2017[73]);
- Lower employee retention: anti-LGBTI discrimination forces otherwise qualified LGBTI employees to quit their jobs, creating unnecessary turnover-related costs and loss of talent. In the United States, closeted LGBT employees who feel isolated at work are 73% more likely than "out" employees to leave their job (Hewlett and Sumberg, 2011[86]);
- Lost diversity dividend: anti-LGBTI discrimination undermines team diversity while a growing body of research reveals that enriching the employee pool with representatives of different genders/gender identities, races, nationalities, ages, sexual orientations, etc. is key for boosting the company's intellectual potential. Provided the organisation has inclusive practices so that everyone feels respected and valued, diverse teams indeed challenge individuals to overcome their stale ways of thinking and, hence, sharpen their performance (Sommers, 2006[87]; Phillips, Liljenquist and Neale, 2008[88]; Hoogendoorn, Oosterbeek and van Praag, 2013[89]; Levine et al., 2014[90]; Rock and Grant, 2016[91]; Hoogendoorn, Oosterbeek and Van Praag, 2018[92]).

- Second, anti-LGBTI discrimination leads to market share losses: in 2018, the global spending power of the LGBT consumer segment was estimated at USD 3.6 trillion per annum, excluding the purchasing power of friends and families of LGBT individuals that make up the ally community.[23] The same year, a national survey of US LGBT adults revealed that 78% tend to be loyal to brands that market to and support the LGBT community (Community Marketing & Insights, 2018[93]). More generally, a workforce that does not reflect the make-up of society will have difficulties appealing to a broad range of potential customers (European Commission, 2016[72]).

However, establishing a workplace equality policy also entails costs. In this context, it is important to provide employers with additional incentives to embrace LGBTI inclusion by allowing them to showcase their achievements and, hence, improve their reputation and attractiveness among job candidates, employees, customers and suppliers.

To date, several not-for-profit organisations have developed standards to rate employers' implementation of LGBTI-inclusive workplace equality policies (see Box 4.16 for further details):

- The Australian Workplace Equality Index (AWEI) by Pride in Diversity (for employers based in Australia);
- The Hong Kong LGBT+ Inclusion Index by Community Business (for employers based in Hong Kong);
- The Global Benchmark by Workplace Pride (for multinationals);
- The South African Workplace Equality Index (SAWEI) by LGBT+ Management Forum (for employers based in South Africa);
- The UK Workplace Equality Index (for employers based in the United Kingdom) and the Global Workplace Equality Index (for multinationals) by Stonewall;

- The Corporate Equality Index by the Human Rights Campaign (for employers based in the United States and in a few other countries in the Americas, as well as multinationals).

These indices do not only value all the good practices emphasised above, they are also attractive to employers. First, except for the Hong Kong LGBT+ Inclusion Index and the Global Benchmark, these indices are based on a free certification process: employers simply have to opt in by forwarding evidence of their good practices. Second, apart from the Corporate Equality Index, publication of these indices relies on a "name and praise" rather than "name and shame" approach. While the public is informed of whether employers belong to the top-performing employers (e.g. whether they are part of the top 100, or of the gold, silver or bronze tiers, etc.), employers' detailed index score and ranking is notified to employers in private and kept confidential. Moreover, organisations that wish to assess their work but lack confidence about their performance are typically allowed to participate in the index on an anonymous basis, or to be publicly acknowledged only if they achieve an outstanding performance. Third, employers are given the possibility to improve their achievements through customised reports containing in-depth analysis of their score, recommendations and best practice examples.

There are ways for governments to improve the outreach and take-up of workplace equality standards among national employers.[24] First, they could sponsor the creation of standards at the national level in countries where these standards haven't emerged yet, and publicly support these standards in countries where they already exist. Moreover, governments could exemplify and generate peer pressure by encouraging the public sector to participate in the benchmarking process, as it is the case in Australia (AWEI, 2019[94]) and the United Kingdom.[25]

Box 4.16. Standards to assess LGBTI-inclusive policies in the workplace

Six not-for-profit organisations have created comprehensive standards and invested in promotion procedures to celebrate organisations that implement LGBTI-inclusive policies in their workplace.

Pride in Diversity (for employers based in Australia)

Pride in Diversity[1] is Australia's national not-for-profit employer support programme for all aspects of LGBTI workplace inclusion. In 2010, Pride in Diversity created the Australian Workplace Equality Index (AWEI) that sets a comparative benchmark for Australian employers wishing to demonstrate their commitment to LGBTI equality. The benchmark is published on a yearly basis, in the framework of the AWEI report (AWEI, 2019[94]). Based on the AWEI, Pride in Diversity also maintains a website that allows job seekers and employees to identify employers, by industry and location, "that are committed to creating and sustaining a culture in which sexual and gender diversity is not only accepted, but is affirmed and celebrated."[2]

Community Business (for employers based in Hong Kong)

Founded in 2003, Community Business[3] is an Asian organisation headquartered in Hong Kong whose mission is "to lead, inspire and support businesses to have a positive impact on people and communities" in the following key markets: China, Hong Kong, India, Japan, Philippines and Singapore. In 2015, Community Business created the Hong Kong LGBT+ Inclusion Index that provides organisations in Hong Kong with a tool to assess and promote their efforts towards LGBT inclusion. The benchmark is published on a yearly basis, in the framework of the LGBT+ Index Report (Community Business, 2019[95]).

Workplace Pride (for multinationals)

Workplace Pride is an Amsterdam-based organisation dedicated to improving the lives of LGBTI people in workplaces all over the world. In 2014, Workplace Pride created the Global Benchmark, a standards

designed to measure the LGBT policies and practices for internationally active employers. The benchmark is published on a yearly basis, in the framework of the Global Benchmark Report (Workplace Pride, 2019[96]).

LGBT+ Management Forum (for employers based in South Africa)

The LGBT+ Management Forum[4] is an umbrella organisation based in South Africa for LGBT employee network groups seeking to create safe and equitable workplaces. In 2018, the LGBT+ Management Forum created the South African Workplace Equality Index (SAWEI) which seeks to benchmark the levels of LGBT equality in the South Africa workplace. The benchmark is published on a yearly basis, in the framework of the SAWEI Full Results Report (SAWEI, 2019[97]).

Stonewall (for employers based in the United Kingdom and multinationals)

Stonewall[5] is a UK-based LGBT rights charity named after the 1969 Stonewall riots[6] in New York City's Greenwich Village and formed in 1989 by political activists opposing Section 28[7] of the Local Government Act. In 2005, Stonewall created the UK Workplace Equality Index that showcases the best UK-based employers for LGBT employees. In 2011, the UK Workplace Equality Index was complemented by the Global Workplace Equality Index which is directed at multinationals. On top of assessing whether organisations practice LGBTI inclusion, the Workplace Equality Index relies on an Employee Feedback Survey that organisations are requested to send to all their employees. This survey, whose responses are collected and analysed by Stonewall, examines whether LGBT and non-LGBT employees are treated on an equal footing at work, based on their self-reported experience. Results of the benchmarking are published on a yearly basis, in the framework of the Top 100 Employers Report (UK Workplace Equality Index) and of the Top Global Employers Report (Global Workplace Equality Index).

Human Rights Campaign (for employers based in the United States and in a few other countries in the Americas, as well as multinationals)

Founded in 1980, the Human Rights Campaign[8] is the largest LGBT advocacy group in the United States. In 2002, the Human Rights Campaign created the Corporate Equality Index as a tool to rate American businesses on their treatment of LGBT employees. In 2016, the Corporate Equality Index criteria were expanded to require that multinationals do not restrict their LGBTI-inclusive policies to operations performed in the United States, but extend these policies across all countries where they are active. The benchmark is published on a yearly basis, in the framework of the Corporate Equality Index Report (HRC, 2020[98]). This report notably contains the list of the best places to work for LGBT individuals, by industry.[9] The Human Rights Campaign is also developing indices similar to the Corporate Equality Index for national employers outside the United States. Such is the HRC Equidad MX that evaluates LGBT workplace inclusion within major businesses in Mexico (HRC EQUIDAD MX, 2020[99]).

[1] See http://prideinclusionprograms.com.au/.
[2] See http://www.inclusiveemployers.com.au/.
[3] See https://www.communitybusiness.org/.
[4] See http://lgbtforum.org/.
[5] See https://www.stonewall.org.uk/.
[6] The Stonewall riots were a series of spontaneous, violent demonstrations by members of the LGBT community against a police raid that began in the early morning hours of 28 June 1969, at the Stonewall Inn in the Greenwich Village neighborhood of Manhattan, New York City. They are widely considered to constitute the most important event leading to the LGBT liberation movement.
[7] See Section 4.2.1 for more information on Section 28.
[8] See https://www.hrc.org/.
[9] See https://www.hrc.org/resources/best-places-to-work-2020.

4.2.3. Promoting LGBTI equality in health care

Legally prohibiting discrimination on the grounds of sexual orientation, gender identity and sex characteristics in health care, barring conversion therapies on LGBTI minors, banning medical mandates for legal gender recognition, postponing medically unnecessary sex-normalising treatment or surgery on intersex babies, are all actions that contribute to ingraining a culture of equal treatment in health care settings. Additionally, it is important that governments examine the possibility that the public health system provides adequate health care to transgender people who wish to transition or, at least, that the costs are covered or reimbursable under private and public health insurance schemes (Health4LGBTI, 2017[100]). Similarly, intersex people should get coverage or reimbursement for treatments needed as a result of surgical and/or other interventions on their sex characteristics (e.g. life-long hormone substitution therapy). In case surgery occurred at an early stage of their life without their consent, they should also be entitled to reparative treatments on the same coverage terms as those provided for survivors of female genital mutilation (ILGA Europe and OII Europe, 2019[55]).

But more can be done. LGBTI people indeed face specific health needs and risks that must be properly addressed by health practitioners and professionals (HPPs). However, focus groups conducted among LGBTI participants across the EU reveal that LGBTI people identify a lack of knowledge on the part of HPPs around their needs. This situation is compounded by the fact that a large share of LGBTI people do not disclose their sexual orientation, gender identity and/or sex characteristics in health care settings for fear of discrimination (Health4LGBTI, 2017[101]): 42% of EU LGBT respondents in 2012 declare they have hidden being LGBT in the health care system, and 10% report having personally felt discriminated against because of being L, G, B or T by health care personnel, e.g. a receptionist, nurse or doctor, in the 12 months prior to the survey (European Union Agency for Fundamental Rights, 2014[12]). Moreover, nearly one third (31%) of LGBTI respondents in 2019 report having experienced difficulties when using or trying to access health care services due to being LGBTI. Notably, 14% reported inappropriate curiosity or comments, 7% that some of their specific needs were ignored and 5% that they had to change general practitioners or other specialists due to their negative reaction (European Union Agency for Fundamental Rights, 2020[13]).

To remove these barriers, state authorities could include compulsory modules in the initial education and career-long learning of HPPs, that will teach them (i) about the specific health needs of LGBTI people; (ii) how to approach LGBTI people in an inclusive way (Gay and Lesbian Medical Association, 2006[105]; 2010[106]; Health4LGBTI, 2018[102]). Such training has proven to be successful in an EU-funded impact evaluation conducted in six EU countries: Belgium, Bulgaria, Italy, Lithuania, Poland and the United Kingdom (Box 4.17).[26]

Box 4.17. LGBTI-inclusive training curricula for health practitioners and professionals: good practice examples from EU-funded Health4LGBTI

Health4LGBTI is an EU-funded Pilot Project aimed at reducing health inequalities experienced by LGBTI people. This programme relies on a training course named “Reducing health inequalities experienced by LGBTI people: what is your role as a health professional?”. This course is organised around the following four modules of two hours each (Health4LGBTI, 2018[102]):

- Module 1: Improving knowledge on terms and concepts related to LGBTI topics;
- Modules 2 and 4: Improving knowledge on the health needs of LGBTI people, with a special focus on transgender and intersex people in Module 4;
- Module 3: Improving knowledge on how to approach LGBTI people in an inclusive way.

A total of 110 health care practitioners and professionals (HPPs) participated in this pilot training in six EU countries: Belgium, Bulgaria, Italy, Lithuania, Poland and the United Kingdom. Nearly all attended the training due to personal interest (half self-identified as LGBTI) and reported inclusive attitudes towards LGBTI people already before the training. Despite this limited room for progress, the pre- and post-training tests revealed a significant increase in participant's knowledge on all the topics covered by the training. Moreover, in a follow-up questionnaire administered two months after the end of the training, participants mentioned being able to apply what they learned in their practice. Additionally, more than 90% reported having discussed the content of the training with their colleagues at least once (Health4LGBTI, 2018[103]; Donisi et al., 2019[104]).

Source: Health4LGBTI's webpage, https://ec.europa.eu/health/social_determinants/projects/ep_funded_projects_en#fragment2.

Increasing knowledge on LGBTI people's health needs

LGBTI people are at greater risk of mental health disorders (Chapter 3). The general tendency of health sustems not to prioritise mental health disproportionately affects the LGBTI population. It is critical that health practitioners and professionals (HPPs) be informed of this reality to better address LGBTI people's health needs.

But lower mental health is only one of the many health inequalities faced by LGBTI individuals (Health4LGBTI, 2017[100]), which include the fact that:

- Lesbian and bisexual women are less likely to attend cervical screening due to the wrong perception among HPPs that they do not need such screening, thereby placing them at a higher risk of developing cancer;
- Gay and bisexual men have a higher anal cancer rate and are at greater risk of contracting a sexually transmitted infections such as syphilis and human immunodeficiency virus (HIV): globally, the risk of acquiring HIV is 22 times higher among men who have sex with men in 2019 (UNAIDS, 2019[107]);
- Transgender people are also at greater risk of sexually transmitted infections, in a context where stigma both within and outside the family compels some to engage in sex work. In Italy for instance, past experiences of discrimination are strongly correlated with transgender people's decision to become sex workers (D'Ippoliti and Botti, 2016[108]). Consistent with this finding, transgender people are overrepresented among prostitutes (Valfort, 2017[109]);
- Intersex people who were subject to unconsented sex normalising surgery or treatment in their early life are at greater risk of long term conditions, although more research is needed on the long-run impact of surgical interventions and hormone treatment.

Finally, HPPs working in facilities providing health care to transgender people should be trained on providing individualised treatment, one that assists transgender people in finding a gender expression that is the best suited for them. It is important to make HPPs aware that hormones and surgery are just two of many options available to help transgender people achieve comfort with their self (World Professional Association for Transgender Health, 2012[110]).

Increasing knowledge on how to approach LGBTI people in an inclusive way

To encourage LGBTI people to access health care and be open to disclose their identity in health care settings where appropriate, it is essential that health practitioners and professionals (HPPs) be trained on providing them with a welcoming environment. When entering health care facilities, many LGBTI people report looking for clues that signal whether it is an LGBTI-inclusive setting. To meet expectations, HPPs could consider implementing key good practices such as (Health4LGBTI, 2017[100]):

- Visibly posting a non-discrimination statement for equal care to all patients, regardless of sexual orientation, gender identity, gender expression, sex characteristics and other characteristics such as age, race, ethnicity, physical ability or attributes and religion;
- Clearly displaying LGBTI-specific media such as magazines and newsletters for LGBTI individuals;
- Exhibiting posters with racially and ethnically diverse same-sex couples, LGBTI families, transgender and intersex people, as well as posters from LGBT or HIV/AIDS organisations, etc.

HPPs should also be trained on communicating with LGBTI patients in an inclusive way. According to LGBTI patients, language used in health care settings causes discomfort and offense because it assumes all patients are heterosexual, cisgender and non-intersex, and is at times judgmental (Health4LGBTI, 2018[102]). HPPs should be encouraged to adopt a communication that reflects a sensitivity to creating space for plurality and diversity. This approach entails:

- Avoiding assuming the gender of patients' partners by asking if a male patient has a girlfriend or wife or if a female patient has a boyfriend or husband. HPPs should instead ask open-ended questions such as "Do you have a partner?";
- Using gender pronouns only if HPPs are certain of the patient's gender identity. If unsure, HPPs should politely ask the patient's preferred name or pronoun: "What name and pronouns should I use?" or "I would like to be respectful – how would you like to be addressed?";
- Building respect and trust by carefully listening to patients to learn how they self-describe their own sexual orientation, gender identity, sex characteristics, partner(s) and relationship(s).

Compliance with these guidelines is especially important when HPPs interact with elderly LGBTI people. This group has greater needs for health care and is much less likely to be out than the younger generation, having spent lives marked by histories of greater marginalisation, discrimination and even persecution. In the United States for instance, only 1.4% of people born before 1945 self-identified as being LGBT in 2017, as opposed to 8.2% among millennials − born between 1980 and 1999 (OECD, 2019[1]). In this context, the priority could be put on training staff working with seniors, such as long-term care facilities. This strategy is all the more critical since older LGBTI people are more likely to reside in these settings: they are less often provided home care by a partner and/or children since their probability to be single and childless is higher (MAP and SAGE, 2017[111]).

Box 4.18. LGBTI-inclusive housing for seniors: good practice examples from France, Germany and Spain

Created in 2017 in France, the Rainbold Society was founded with the aim of designing and developing the "Home of Diversity".[1] This project represents a solidarity-focused and intergenerational response to the social isolation faced by LGBTI elders, organised around the following criteria: participative and inclusive environment of over 20 rental housing units free of LGBTI-phobia; care and personal assistance services; openness to non-retired persons; activities and services that strengthen the social bond and are accessible to residents and neighbourhood associations; "hetero-friendliness". The "Home of Diversity" will be 80% comprised of LGBTI seniors (autonomous or weakly dependent and over the age of 60), as well as 20% comprised of people under 60 and/or heterosexual. The project also involves the creation of "Les Audacieux" association which provides a programme of weekly activities and meetings to the older LGBTI community with the aim of providing benevolent and warm exchanges without taboos related to age, sexuality or gender.

France is not unique in this best housing practice for older LGBTI persons. The Rainbold Society was inspired by the "Lebensort Vielfalt" ("Diverse Living Space") house of Schwulen Beratung in Berlin.[2] Similarly, "Fundacion 26 de Diciembre" in Madrid promotes the construction of residential

centres specialising in the care of LGBT seniors with comprehensive social, health and psychological care programs.[3] In addition to LGBT residences that host regular dinners, movie-viewings, and workshops, the organisation offers peer support groups for LGBT persons over 50 living with HIV.

[1] See https://rainbold.fr.
[2] See http://www.schwulenberatungberlin.de/post.php?permalink=lebensort-vielfalt#seitenanfang.
[3] See http://www.fundacion26d.org/mision/.

Yet, training HPPs working with seniors might not be enough. Large percentages of individuals worldwide report they are not comfortable socialising with sexual and gender minorities and this discomfort is higher among older generations, meaning that LGBTI elders in long-term care facilities face anti-social behaviours from other residents that lead many to stay in or retreat back to the closet (SAGE, 2018[112]). An alternative strategy could consist in supporting the development of co-housing inclusive of LGBTI seniors, as it is done for instance in France, Germany and Spain (Box 4.18).

4.3. Creating and maintaining popular support for LGBTI inclusion

As recalled in Section 4.2, social acceptance of LGBTI people remains limited in OECD countries. Yet, popular support for LGBTI inclusion is critical for countries to pass the legal provisions defined and analysed in Chapters 2 and 3 and avoid backlash against those already in force. Creating and maintaining this support first entails implementing well-designed awareness-raising activities among the general public so as to cultivate greater understanding of LGBTI persons and their rights (Section 4.3.1). It is also important that government and public officials behave, collectively and individually, in a way that fosters equal treatment of LGBTI individuals (Section 4.3.2).

4.3.1. Implementing well-designed awareness-raising activities among the general public

Effectively communicating human rights is challenging. Comprehensive guidelines published by key stakeholders identify four main conditions to ensure that campaigns promoting LGBTI equality resonate with the general public and, hence, positively impact individual attitudes and behaviours (Equinet and PIRC, 2017[113]; ILGA-Europe and PIRC, 2017[114]; European Union Agency for Fundamental Rights, 2018[115]).

Telling a human story

To promote LGBTI equality, any communication strategy should seek to humanise LGBTI individuals. Research into “psychic numbing” indeed provides empirical support to the famous saying according to which “One man’s death is a tragedy, a million deaths is a statistic”: individuals’ empathy and willingness to help decreases as the number of victims increases (Slovic, 2010[116]; Västfjäll et al., 2014[117]). In this setting, rather than statistics on the pervasiveness of stigmatisation, discrimination and violence endured by LGBTI individuals, advocacy and awareness-raising campaigns should rely on personal testimonials and anecdotes that provide a human face to the problem. This strategy was notably implemented by the European Union’s “We all share the same dreams” initiative that was launched in 2016 to increase awareness and acceptance of LGBTI persons (Box 4.19).

Box 4.19. The European Union's "We all share the same dreams" campaign

"We all share the same dreams" is the theme of the European Commission campaign aiming to raise awareness and increase the social acceptance of LGBTI people (European Commission, 2016[118]). A critical component of the campaign is the #EU4LGBTI video testimonies[1] which feature LGBTI and straight people sharing the same dreams of equality for all. The videos offer personal profiles and insight into the everyday lives of LGBTI people, as well as social stigmas and individual challenges they encounter when coming out. In addition to introducing individualised narratives of persons from all across the LGBTI spectrum, the videos also include testimony from family members and partners on how they learned more about the obstacles faced by LGBTI persons and their growing acceptance and love of the LGBTI person in their lives.

The videos raise awareness in a non-condescending, interpersonal and relatable manner that humanises LGBTI persons through personal testaments and shows how people that were initially ignorant or unsympathetic to the experience of LGBTI persons evolved into allies and advocates for inclusion and diversity. The approach thereby creates common ground with members of the public viewing the content who perhaps feel uninformed but are open-minded and want to learn more about how to better support LGBTI persons. Importantly, the European Commission has provided a social media toolkit to support awareness-raising, promote positive messaging and increase the number of non-LGBTI allies (European Commission, 2016[119]). The resource includes suggested Tweets and Facebook posts to achieve these aims.

[1] See https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=605456#Awarenessraising.

Identifying issues of broader interest to the general public

It is critical that the campaign does not focus on topics viewed as too specific to sexual and gender minorities but concentrate instead on issues of broader interest to the general public. A successful communication strategy should go beyond appealing only to people's compassion for minorities. This objective entails identifying the values underlying LGBTI rights that matter for non-LGBTI people, that they hold dear in their everyday life and are willing to fight for, in order to connect them with the campaign. These are the lessons that were learned "the hard way" by the Freedom to Marry[27] campaign in the United States where numerous popular votes on marriage equality were lost until the organisation began to use "values based campaigning" in 2010 (Box 4.20).

Box 4.20. Overhauling the US-based Freedom to Marry campaign to win at the ballot

By 2009, the Freedom to Marry campaign had lost every one of the 30 state-wide up-or-down votes of the public on a ballot measure related to marriage equality. Beginning in 2010, Freedom to Marry developed a plan to win at the ballot. The organisation conducted research among the "moveable middle", i.e. the 40% of Americans who, based on polls, were neither strongly supportive of nor strongly opposed to marriage equality.

This investigation made Freedom to Marry aware that the campaign's heavy focus on the entitlements and benefits lost by same-sex couples in absence of marriage equality was turning off these reachable-but-no-yet-reached individuals. It did so by spreading the misconception that same-sex couples wanted to marry for reasons different from those motivating different-sex couples: while the moveable middle held that different-sex couples married primarily for "love and commitment", they considered that same-

sex couples married primarily for "rights and benefits". The research made clear that what was needed was an emphasis on love and commitment that same-sex couples share so that the moveable middle feels connected with them and, hence, willing to adhere to basic moral values − like treating others the way you would like to be treated − leading them to support same-sex marriage.

The campaign therefore began to feature same-sex couples, their parents, and their children discussing why marriage was so important (because of love, commitment and family). This values-based approach allowed the Freedom to Marry campaign to turn the corner on years of ballot losses (Freedom to Marry, 2016[120]).

Taking the public on a journey

A well-designed campaign to promote LGBTI equality should take the public on a journey by showing them how other people's thinking evolved. One famous case was President Barrack Obama who spoke of how his daughters helped him to embrace marriage equality in the United States. It is important to include among messengers individuals to whom the public can relate. People telling stories should not always be role models, experts, activists and survivors of abuses, but everyday people just like the public who have gone on a journey that the audience can also take. Finding "unlikely" messengers, such as faith leaders, is also critical because these messengers are viewed as "permission givers" by the undecided. This capacity to build alliances with a broad range of messengers to take the public on a journey was one key ingredient of the successful "Yes Equality" campaign in Ireland (Box 4.21).

Box 4.21. Proposing a wide range of journeys to the public: the "Yes Equality" campaign in Ireland

In 2015, Ireland held a referendum to amend the constitution to permit marriage equality for same-sex couples, becoming the first country in the world to secure this landmark achievement by popular vote. In a country where over 75% of the population identified as Catholic in 2016 and the Catholic Church opposed the measure, persuading the general public to vote in support of LGBTI rights was a difficult task. The "Yes Equality" campaign was only able to address this challenge by building alliance with a broad range of messengers who did not tell the electorate how to vote but why they would vote yes, thereby modelling a journey that the public could also take. These messengers included:

- Role models, i.e. people that are admired and trusted by the audience. These included Irish actor Colin Farrell and country singer Daniel O'Donnell, each of whom helped the campaign reach out a pocket of voters that would be influenced by these celebrities saying why they thought a Yes vote was a good thing ("For fairness, for equality and for a kind and inclusive future for Ireland"). But one of the most influential role model in the Irish campaign was well known Catholic and former President of Ireland, Mary McAleese. She spoke out for marriage equality, saying how it was a way to ensure equality for all children and would help end homophobic bullying of young people. She told the surprised nation about her love for her own gay son. Her voice as a Catholic, a mother and a former President was seismic and strongly influenced the voting public, just days out from the referendum vote. This experience showed how identifying leaders and holding them back until the right time for campaign purposes is key for a campaign's success.
- Permission givers. The "Yes Equality" campaign very early on supported the formation of a faith based advocacy group 'Faith in Marriage Equality'. This group of Church of Ireland, Catholic, Jewish and Presbyterians spoke to other faith holders and church spokespersons about why

they, as people of faith were voting Yes. Prominent Catholic public figures came out in support of the referendum such as:

- Sister Stanislaus Kennedy, known for her work among homeless Irish, who said: "I have thought a lot about this… I am going to vote Yes. I have a big commitment to equality for all members of society. It's what my life has been about. We have discriminated against members of the gay and lesbian community for too long. This is a way of embracing them as full members of society";
- Fr. Gabriel Daly, an influential theologian who insisted that Catholics could vote for marriage equality "with good conscience" since marriage equality was about providing same-sex couples with access to civil, not religious marriage;
- Fr. Martin Dolan, a long-time priest in Dublin who came out during Mass saying "I'm gay myself" as he called upon parishioners to support same-sex marriage in the Irish referendum – an initiative praised by the audience who applauded him.

Although the Catholic hierarchy was more divided around marriage equality than priests and sisters, some archbishops took a clear stance in favour of same-sex civil marriage such as Diarmuid Martin (Dublin) who said: "Anybody who doesn't show love towards gay and lesbian people is insulting God. They are not just homophobic if they do that − they are actually Godophobic because God loves every one of those people."

- Everyday people. The Yes Equality campaign used a lot of personal stories from people the public could easily relate to, which included:
  - Long-time married straight couples speaking about how important marriage was to them and how they supported the rights of other loving couples to get married;
  - Parents with LGBT children speaking about how they wanted equal rights for all children;
  - Older people with strong religious faith speaking of how marriage was about love and love must be supported by giving everyone access to the right to marry, etc.

Source: Council of Europe (2017[121]), "Good Practice Guide on Values Based Campaigning for Legal Recognition of Same-Sex Partnerships" and Parker (2017[122]), "The Path to Marriage Equality In Ireland: A Case Study".

Giving people hope without being naive

An overarching element of successful campaigns fostering LGBTI equality consists in leading the debate with positive messages to inspire positive associations in the public imagination. Campaigners should refuse to be drawn into ugly debates with the opposition and avoid attacks. Instead of negative emotions like anger and fear, successful campaigns trigger empathy and hope. However, it is important not to be naïve and, hence, refute misinformation spread by opponents when it risks persuading the undecided.

This stance is particularly critical when gathering support for passing transgender-inclusive laws such as those prohibiting discrimination based on gender identity in public accommodations – these laws notably allow transgender individuals to access restrooms in accordance with their gender identity rather than sex a birth. Transgender people are disproportionately exposed to discrimination and abuses in public accommodations (National Center for Transgender Equality, 2016[123]), but laws to provide such access to restrooms have faced strong opposition from conservatives and "gender critical" feminists[28] who disseminate myths to discredit these laws. A common tactic deployed by these groups entails citing fear of safety and privacy and claim that predatory males will exploit such laws by falsely declaring themselves as female to invade women-only spaces such as restrooms, incarceration institutions and domestic violence shelters in order to commit abuses, thereby putting cis-women in harm's way. Yet, these assertions are not empirically grounded (GLAAD, 2017[124]; TGEU, 2017[125]). For instance, a study

comparing Massachusetts localities with and without inclusive public accommodation ordinances found that public accommodations antidiscrimination laws do not affect the number or frequency of criminal incidents in restrooms, locker rooms or changing rooms (Hasenbush, Flores and Herman, 2018[126]).

Not anticipating and countering these backlash narratives raises substantial barriers to advancing transgender rights, as recently shown in the United Kingdom where the government launched in 2018 a public consultation to make the legal gender recognition less bureaucratic and intrusive, i.e. based on self-determination (Government Equalities Office, 2018[127]). This project to amend the Gender Recognition Act 2004 has stalled since the conclusion of the consultation due to fierce and unforeseen opposition. Although countries that have adopted legal gender recognition based on self-determination have seen no evidence of people amending their gender with fraudulent intent, adversaries to the reform won public opinion by claiming self-determination would make it easier for predatory men to pass as women (Stonewall, 2018[128]). The successful "Yes on 3" ballot referendum campaign that took place in 2018 in Massachusetts exemplifies good practices to avoid this type of deadlock (Box 4.22).

Box 4.22. Fighting myths and misconceptions: the "Yes on 3" ballot referendum campaign in Massachusetts

In 2016 the Massachusetts Legislature passed public accommodation protections for trans persons in places such as restaurants, parks, public transportations and restrooms. Opponents of the law waged a campaign to include a ballot question on reversing the law's protections, prompting Massachusetts to host in 2018 the first-ever state-wide popular vote on whether to continue to prohibit discrimination on the ground of gender identity in places of public accommodation.[1]

The campaign embraced several critical awareness raising tactics. It included a variety of videos that humanise the issue by sharing stories of trans youth and their parents. The videos use the language of common values, conveying the desire for trans persons (particularly youth) to live free from abuse and for families with trans children to thrive, thereby making the issue real and relatable. The campaign also appealed to shared identity and emotions of parents across the states: parents of trans youth convey to parents viewing the advertisements that they are united in their commitment to do anything to protect their children, want for their children to be the treated just like any other and the need for their children to have the same rights as others. The videos also feature testimony from law enforcement and government officials, social workers, as well as sexual assault, domestic violence and women's organisations that speak to safety and privacy concerns launched as part of fear-mongering campaigns by opponents. These voices represent only a few from a wide coalition that also includes business and industry stakeholders; faith leaders; higher education and educational associations; non-profits; labour unions and every championship professional sports team from Massachusetts.

Critically given the myths and misconceptions spread by opponent to transgender rights, the website of the campaign includes a detailed myth-buster that notably debunks the following three common myths:

- Myth: "Non-discrimination protections could be used as cover for misconduct in restrooms and locker rooms." Fact: "The language of the law prohibits its abuse, criminal laws remain in force, and real-life experience tells a different story":
  - The law explicitly prohibits people from asserting gender identity for any "improper purpose."
  - Nothing in this law weakens existing laws against illegal behaviour. Assault and harassment remain illegal.
  - The 18 states and more than 200 municipalities with laws protecting transgender people from discrimination have reported no problems.

- Myth: "Transgender people who use restrooms and locker rooms will make others uncomfortable." Fact: "Transgender men and transgender women use restrooms and locker rooms for the same reasons everyone does. And when they do, they value safety, privacy, and modesty just like everyone else. Transgender people are part of our workplaces and our neighbourhoods, and they need to be able to use the restroom just like everyone else."
- Myth: "Discrimination against transgender people is not a problem in Massachusetts." Fact: "A 2014 survey revealed that 65 percent of transgender people in Massachusetts faced discrimination in a public place in the previous 12 months."

[1] Voting "yes" on ballot question 3 indicated support for upholding the protections in the existing 2016 law, hence the name of the campaign. Source: https://www.freedommassachusetts.org.

4.3.2. Setting an example through government and public authorities

Building and sustaining popular support for LGBTI inclusion also requires that government and public authorities lead through exemplary official and individual conduct. Yet, the United Nations continues to express concern over rhetoric used by political and community leaders that incites anti-LGBTI hatred and violence, promotes negative stereotypes, prompts prejudice and contributes to further stigmatisation (OHCHR, 2015[129]). The 2012 survey conducted by the European Union Agency for Fundamental Rights confirms that bias against sexual and gender minorities among government and public officials is viewed as pervasive: almost half of all LGBT respondents agreed offensive language about LGBT people by politicians is 'very widespread' or 'fairly widespread' (European Union Agency for Fundamental Rights, 2014[12]).

Exemplifying through official conduct

Government and public officials can take official steps to affirm LGBTI persons and their rights, at both the domestic and international level.

Official conduct showing the way to LGBTI inclusion at the domestic level

International human rights law provides firm legal basis for a right to remedy and reparation.[29] The Office of the United Nations High Commissioner for Human Rights has made clear that state obligation to redress applies not only vis-à-vis other states, but also to injured persons and groups within the jurisdiction of the state itself (UN General Assembly, 2005[130]; OHCHR, 2008[131])

Reparation is an important tool that government and public authorities can collectively use to acknowledge past state-sponsored discrimination, oppression and violence against LGBTI people. This official strategy is conducive to beginning a healing process, while also familiarising and sensitising the public about historical injustices suffered by LGBTI persons at the hands of the state, to avoid repetition of those acts.

Reparation policies are gaining ground in countries at the forefront of the battle for LGBTI inclusion such as Canada, Germany the Netherlands or the United Kingdom where redress revolves around the following key set of measures:

- Issuing a formal national apology on behalf of the government and law enforcement entities that engaged in or were complicit in human rights violations against LGBTI persons − such is the national public apology uttered in 2017 by Prime Minister Trudeau in front of members of the LGBTQ2[30] community who suffered from being banned from the military and civil service from the 1950s to the early 1990s;

- Expungement and destruction of criminal records for those convicted for same-sex crimes or under public morality and decency laws (Box 4.23);
- Financial compensation for loss of income and state benefits such as pensions due to labour market discrimination and confinement (Box 4.23);
- Erection of memorials such as the Memorial to Homosexuals persecuted under Nazism that was established in Berlin in 2008 with the intention of honouring the victims, keeping alive the memory of the injustice and creating a lasting symbol of opposition to enmity, intolerance and the exclusion of gay men and lesbians;[31]
- Issuing publications that provide official documentation and public reporting on the degree and order of magnitude of wrongdoings – such is the "Pink Life Stories" project initiated in 2012 by the International Homo/Lesbian Information centre and Archive (IHLIA) based in Amsterdam whereby volunteers draw up the personal story of an homosexual senior in a book form to create awareness on the individual and social struggle carried out by older generations to advance LGBTI rights.[32]

Box 4.23. Expungement and compensation: good practice examples from Canada, Germany and the United Kingdom

Canada

Following Prime Minister Justin Trudeau's national public apology, the *Expungement of Historically Convictions Act* of 2018 establishes a process for expunging historically unjust convictions for consensual sexual activity between same-sex persons under gross indecency, buggery and anal intercourse offenses. The legislation also provides for the destruction or removal of the judicial records for those convictions from federal repositories and systems. These actions were further complemented by a settlement class action that provides USD 15 million broad based reconciliation and memorialisation measures funded by the Canadian government; individual reconciliation and recognition measures including the creation of the Canada Pride Citation and personal letter of apology; individual compensation between USD 5 000 and USD 50 000 for those directly affected by the government's official policies including investigation, sanction, discharge or termination.[1]

Germany

In 1935, the Nazi regime revised Paragraph 175 of the German criminal code to expand and strengthen provisions that criminalised "lewd and lascivious" homosexual acts between men. Violations resulted in penalties that included imprisonment, in some cases castration, and the loss of civil rights. Over the course of the Nazi regime, an estimated 100 000 men were arrested with approximately 50 000 convicted and sentenced to regular prisons and an estimated 5 000 to 15 000 interned in concentration camps and forced to don pink triangles.

Although Paragraph 175 was eased in 1969, it was not rescinded until 1994 and even then, convictions of offenses persecuted under the provision remained on the men's criminal records. In 2016, the German Federal Anti-Discrimination Agency launched the #NotGuilty campaign which featured posters and videos of men imprisoned for their sexuality under Paragraph 175 and now in their old age with criminal records of those offenses (Federal Anti-Discrimination Agency, 2016[132]). The campaign was particularly effective because the audience saw and heard directly from those who experienced discrimination and prosecutions because of their sexual orientation as they told personal stories about their lives including what had led to their arrest, the trial and sentencing. Following this campaign, the German Parliament unanimously voted in 2017 to void the convictions of approximately 50 000 men that were prosecuted for same-sex sexual acts under Paragraph 175 since World War II. The

government also approved compensation of EUR 3 000 for each individual with an additional EUR 1 500 for each year spent in prison for the conviction.

United Kingdom

In 2012, the United Kingdom passed the *Protection of Freedom Act* that allows men with historical convictions for consensual same-sex acts to apply free of charge to have their convictions deleted, or where not possible, annotated and pardoned. In 2017, the United Kingdom went a step further by passing the *Policing and Crimes Act*, a section of which offers reparation in the form of an amnesty law that posthumously pardons deceased individuals convicted under now repealed homophobic discriminatory laws, such as "buggery" and "gross indecency" laws and equivalent military services offenses.

[1] Plus up to USD 50 000 for exceptional harm not arising from physical or sexual assault, and up to USD 100 000 for exceptional harm resulting from physical or sexual assault.

Official conduct showing the way to LGBTI inclusion at the international level

Government and public officials representing countries that have made strides to protect and promote the inclusion of LGBTI rights in their home countries are in a position to positively advocate for the expansion of those rights in other countries through international relations and foreign diplomacy. Human rights stakeholders encourage these countries to engage in two types of actions (European Union, 2010[133]; Parliamentarians for Global Action and UNDP, 2017[134]).

First, these countries are invited to participate in and contribute to resources for global and regional action by promoting and facilitating the discussion of LGBTI human rights, as well as sharing best practices, innovative initiatives, challenges and lessons learned about LGBTI rights. For instance, a majority (29) of OECD countries are members of the Equal Rights Coalition.[33] Launched in 2016 under the leadership of Uruguay and the Netherlands, this initiative advances the human rights of LGBTI persons and promotes inclusive development in both member and non-member countries through close work with civil society, multilateral partners and UN agencies, and through groups focused on the following four priority areas: (i) international and regional diplomacy; (ii) LGBTI inclusion in the 2030 Agenda for Sustainable Development; (iii) coordination of donor funding; and (iv) national laws, policies and practices. Moreover, some former colonial powers are involved in helping their former colonies counter the anti-LGBTI legislation that emerged during colonial times in case it is still in force. In 2018 for instance, during the Commonwealth Heads of Government Meeting, the UK Prime Minister Theresa May took the historic step in expressing deep regret over the legacy of violence, and even death, which outdated discriminatory legislation often put in place by the United Kingdom continues to inflict on women, girls and LGBT people across the Commonwealth. This speech was backed up by a major programme of GBP 5.6 million (USD 7.7 million or EUR 6.3 million) in partnership with civil society groups to support countries wishing to work towards legislative reform.

Second, countries who made strides to ensure LGBTI equality are encouraged to incorporate LGBTI concerns in statements and in questions during interactive dialogues at the UN and other regional or multilateral events, reflecting the fact that the country is worried by violations of human rights and fundamental freedoms based on sexual orientation, gender identity and sex characteristics (Box 4.24). In the same vein, these countries are expected to invite state visiting missions, diplomats and other public officials abroad to raise issues of human rights violations and abuses towards LGBTI people, and to condemn in particular the use of the death penalty, extrajudicial, summary or arbitrary executions, the practice of torture and other cruel, inhuman and degrading treatment or punishment, arbitrary arrest or detention, and deprivation of economic, social and cultural rights (Box 4.24).

Box 4.24. The US global campaign to decriminalise homosexuality

In September 2019, President Trump included in his speech before the United Nations General Assembly his administration's global initiative launched in February of the same year to decriminalise homosexuality in the more than 60 countries where it remains illegal. This speech marks the first time a U.S. president explicitly brings up the decriminalisation of homosexuality in remarks before the United Nations General Assembly.

It is not the first time however that a US president brings up LGBT rights before the United Nations. That distinction belongs to President Obama, who included gays and lesbians in a speech addressing the General Assembly in 2011. "No country should deny people their rights to freedom of speech and freedom of religion, but also no country should deny people their rights because of who they love, which is why we must stand up for the rights of gays and lesbians everywhere," Obama said. Of significance was also the entire speech before United Nations delegates in Geneva that Hillary Clinton devoted in 2011 to US solidarity with LGBT people across the globe. A notable line in the speech was Clinton saying "Gay rights are human rights, and human rights are gay rights."

Consistent with Trump administration's global initiative to decriminalise homosexuality, US diplomatic officials have shown commitment to denounce human rights violations based on sexual orientation. Notably, Daniel L. Foote, the US Ambassador to Zambia, officially condemned in November 2019 a Zambian high court ruling sentencing two men to 15 years in prison for homosexuality (U.S. Embassy in Zambia, 2019[135]).

Source: https://www.whitehouse.gov/briefings-statements/remarks-president-trump-74th-session-united-nations-general-assembly/.

Exemplifying through individual conduct

In addition to advocating for legal advancements, members of parliament play a crucial role in fostering inclusion, acceptance and support for LGBTI person through their individual conduct, as illustrated by the newly created Global LGBT+ Caucus (Box 4.25). Effectively intervening and demonstrating leadership to condemn discrimination and promote the human rights of LGBTI persons within parliaments and constituencies can serve to deter some from engaging in negative conduct against LGBTI persons, while emboldening others to positively defend their rights (European Union Agency for Fundamental Rights, 2016[136]).

The United Nations Development Programme and the international network Parliamentarians for Global Action identify five key practice areas where parliamentarians can take action in support of LGBTI people (Parliamentarians for Global Action and UNDP, 2017[134]):[34]

- Representation role: parliamentarians are invited to guarantee that LGBTI constituents accessing services do not face additional barriers but receive equal treatment as all other constituents;
- Oversight role: parliamentarians are encouraged to monitor the implementation of government policies and plans that advance equality and non-discrimination for all individuals and be sure they specifically address the needs of LGBTI people;
- Work with parliament: parliamentarians are urged to challenge other parliamentarians who advocate for discriminatory and exclusionary language or actions and take concrete steps to counter these actions;
- Work with political parties: parliamentarians are encouraged to influence the platform of their political party to ensure that LGBTI people are: (i) regularly consulted and take part in the design,

implementation and monitoring of laws, policies and programmes that affect them; (ii) encouraged to join the party, run as candidates and vie for leadership positions within the party;

- Reaching out to civil society: parliamentarians are pushed to bring together and build broad-based civil society coalitions to promote dialogue and partnerships between parliaments and civil society to help break down taboos and challenge stigma and discrimination against LGBTI people.

Box 4.25. The Global LGBT+ Caucus

In 2019, the Global Equality Caucus formed as an international network of parliamentarians and elected representatives aiming to tackle discrimination against LGBT+ people. Membership is open to legislators across the world, regardless of sexual orientation, gender identity or sex characteristics. The organisation is the first dedicated global network focused on convening and building international coalitions of elected officials to promote LGBT+ rights. The Caucus partners with NGOs, businesses and governments and supports collective action campaigns to positively influence policy debates and legislation. The Caucus' key priorities include supporting decriminalisation and the end of violence against LGBT+ people; equal rights and non-discrimination against LGBT+ people; equal access to health care, including HIV treatment and adequate services for trans persons; effective data collections to ensure accountability; and funding for NGOs that work for LGBT+ people.

Source: https://equalitycaucus.org/about-the-caucus.

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Annex 4.A. Ongoing nationwide action plans devoted to improving LGBTI inclusion in OECD countries

Annex Table 4.A.1. One third of OECD countries host a nationwide action plan devoted to improving LGBTI inclusion

Overview of the measures featured by ongoing nationwide action plans (NAPs) according to key topic areas in OECD countries as of 30 June 2019

Country	Name of the NAP	Period covered by the NAP	Enforcing LGBTI-inclusive:			Fostering LGBTI equality in:			Creating and maintaining popular support for LGBTI inclusion	
			Anti-discrimination laws	Hate crime/hate speech laws	Asylum laws	Education	Employment	Healthcare	Well-designed awareness-raising activities	Setting an example through government and public authorities
Belgium	Interfederal Action Plan Against anti-LGBTI Discrimination & Violence	2018-19	✓	✓	✓	✓	✓	✓	✓	✓
Denmark	Action Plan to Promote Security, Well-being and Equal Opportunities for LGBTI People	2018-21	✓	✓	✓	✓	✓	✓	✓	✓
Finland	National Action Plan on Fundamental and Human Rights	2018-19	✓							✓
France	Mobilisation Plan against Hate and Anti-LGBT Discrimination	2017-19	✓	✓	✓	✓	✓	✓	✓	✓
Germany	National Action Plan Against Racism	2017-20	✓	✓	✓	✓	✓	✓	✓	✓
Ireland	LGBTI+ National Youth Strategy	2018-20	✓	✓	✓	✓	✓	✓	✓	

Country	Name of the NAP	Period covered by the NAP	Enforcing LGBTI-inclusive:			Fostering LGBTI equality in:			Creating and maintaining popular support for LGBTI inclusion	
			Anti-discrimination laws	Hate crime/hate speech laws	Asylum laws	Education	Employment	Healthcare	Well-designed awareness-raising activities	Setting an example through government and public authorities
Korea	National Action Plan for the Promotion and Protection of Human Rights	2017-21				✓		✓		
Lithuania	Action Plan for Promoting Non-discrimination	2017-19		✓						✓
Luxembourg	National Action Plan for the Promotion of Human Rights of Lesbian, Gay, Transgender and Intersex Persons	2018-21	✓	✓	✓	✓	✓	✓	✓	✓
Netherlands	Gender & LGBTI Equality Police Plan	2018-21	✓	✓		✓	✓	✓	✓	
Norway	Government`s action plan against discrimination based on sexual orientation, gender identity and gender expression	2017-20	✓	✓	✓	✓	✓	✓		✓
Portugal	National Strategy for Equality and Non-Discrimination	2018-30	✓	✓		✓	✓		✓	✓
United Kingdom	LGBT Action Plan Improving the Lives of Lesbian, Gay, Bisexual and Transgender People	2018-20	✓	✓	✓	✓	✓	✓	✓	✓

Note: This table provides a checklist that indicates which ongoing LGBTI-inclusive nationwide action plans in OECD countries feature measures according to key topic areas as of 30 June 2019. The National Strategy for Equality and Non-Discrimination 2018-30 in Portugal includes an action plan "to combat discrimination based on sexual orientation, gender identity and expression and sexual characteristics".
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

Annex 4.B. Identifying bias indicators for hate crimes against LGBTI persons

It is critical to identify bias indicators for crimes against LGBTI persons, as this will help the relevant authorities to decide whether the case in question should be prosecuted as a possible hate crime.

Several factors can be used to identify bias motivation which can be categorised under the following headings (CoE, 2017[23]):

Victim or witness perception

- Did the victim or witness perceive that the criminal act that occurred was motivated by anti-LGBTI bias? (Note that the victim may not realise they have been the victim of a bias-motivated crime. They may also wish to deny that it was a bias-motivated crime, as they may be denying the LGBTI part of themselves.)
- Was the victim with a same-sex partner at the time of the event? Were they holding hands or kissing? Were they wearing pride or other LGBTI badges/ribbons/clothing?
- Was the victim engaged in activities promoting LGBTI rights/services/issues at the time of the incident?
- Was the victim visibly identifiable as LGB, T or I due to dress, behaviour or presentation?
- Is the victim a public figure who is known as being LGBTI or for advocating LGBTI rights (the victim may be openly heterosexual but support LGBTI causes and thus become a victim of a LGBTI bias crime)?

Comments, written statements and gestures

- Did the perpetrator use homophobic/transphobic/intersexphobic language or terminology when committing the crime?
- Did the perpetrator refer to the perceived sexual orientation, gender identity or sex characteristics of the victim?
- Did the perpetrator write homophobic/transphobic/intersexphobic statements or refer to the perceived sexual orientation/gender identity/sex characteristics in writing (possibly in an email/letter/on a social networking site)?
- Did the perpetrator use hand gestures that would indicate perceived sexual orientation?
- Were homophobic/transphobic/intersexphobic graffiti left at the scene?

Involvement of organised hate groups or their members

- Did the perpetrator identify as part of an organised hate group?
- Did the perpetrator display through their clothing or tattoos any indication of belonging to an organised hate group?
- Does the perpetrator identify with any hate groups online, on social media, etc.?

- Is the offender known for making hate speeches or homophobic/transphobic/intersexphobic speeches or comments (in writing or orally)?
- Did a hate group take responsibility for the assault?

Location and timing

- Did the attack happen during a major LGBTI event (e.g. Pride festival)?
- Did the attack happen at a time of political significance for LGBTI persons in the area (marriage equality laws being passed, opening of a new LGBTI bar for the first time in a city, or first gay pride event being held)?
- Did the offence happen near to LGBTI premises/bar/centre?
- Did the incident happen near a location used by extremist/hate groups?
- Was the location historically an LGBTI meeting place, even if it is not now?

Patterns or frequency of previous crimes or incidents

- Did the offence happen in a location where previous events have occurred or at similar times?
- Is there a pattern in the type of offence/graffiti/violence towards minority group members?
- Does the perpetrator have a history of committing this type of offence?

Nature of violence

- Was there an unusual level of violence/brutality or sexual violence associated with the attack that would appear inappropriate given the facts of the case?
- Did the violence concentrate on genitals or sexual organs?

Lack of other motives

- Did the attacker fail to display any financial or other motive when committing the offence (e.g. no theft during an assault or house burglary)?

Annex 4.C. Embedding LGBTI families, people and themes throughout the curriculum: Stonewall's proposal for secondary schools

There are a lot of ways to easily and naturally integrate LGBTI issues throughout the curriculum, as shown by the following tips, prompts and lesson ideas devoted to Literature and Math in secondary schools (Stonewall, 2017[64]):

Literature

- Introduce LGBTI authors and themes: Study works of fiction by LGBTI authors. Discuss how their LGBTI identity and the culture they lived in might have influenced their writing, and include LGBTI themes in discussions about representation in literature;
- Set up speeches, discussions and writing activities on LGBTI topics: Support pupils to discuss topics such as same-sex marriage, or why it's important to challenge gender stereotypes. Set persuasive writing tasks relating to LGBTI topics – for example a letter to the local council arguing against the closure of local LGBTI services;
- Include LGBTI topics in teaching on grammar and language: For example, when discussing pronouns, highlight their importance and what they tell us about a person's gender, linking to respecting people's choice of pronouns (including gender-neutral pronouns such as they/them). Explore how the English language has changed over time by planning a lesson on word etymology, using the word 'gay' as one example.

Maths

- Include references to LGBTI people and different family structures in teaching: For example, 'Mr X & Mr Y want to know how much it will cost to have a holiday in Italy if…', 'Lila's mums are trying to calculate...';
- Highlight LGBTI mathematicians: Make reference to the contributions of LGBTI mathematicians and LGBTI figures in related disciplines, such as Alan Turing;[35]
- Examine arguments for and against capturing data on sexual orientation, gender identity and sex characteristics: Use documents published by different bodies, including the National Statistics Office (NSO), to discuss: Why doesn't our census currently capture people's sexual orientation, gender identity and sex characteristics? What would be the advantages of capturing this information in future censuses? What are some of the potential barriers to collecting this information?

Annex 4.D. Building an LGBTI-inclusive culture in the workplace: good practices from the LGBT Conversation Guide by Sodexo

Created in 2012, the LGBT Conversation Guide by Sodexo is a best practice example to initiate openness to and support for LGBT inclusion within the workplace. This guide is organised around three objectives:

- Familiarising employees with what being LGBT means: the related section defines sexual orientation and gender identity in concrete terms and presents the words to use and to avoid when having conversations on LGBT issues. This step can be the opportunity to remind that:
  - the words "sexual preference" or "lifestyle" are wrong because they imply that being LGBT is a choice;
  - the words "homosexual" or "transsexual" are outdated clinical terms considered by many LGBT people as restrictive and, hence, potentially derogatory and offensive:
    - the word "homosexual" suggests that being gay or lesbian is all about sexual attraction to individuals of the same sex, with no place for emotions;
    - the word "transsexual" suggests that being transgender is all about obsession of changing sex while the reality is more nuanced.
- Explaining why combating discrimination against LGBT job candidates and employees is a priority: the related section could stress that:
  - Discrimination in the workplace is, by definition, unethical since it consists of treating unequally people who are identical in terms of their employability and performance;
  - Discrimination against LGBT people is illegal, whenever the public or private entity issuing the guide operates in a country where discrimination based on sexual orientation and/or gender identity is indeed legally prohibited;
  - Discrimination against LGBT people ruins the firm's economic performance through a wide range of channels (see Section 4.2.2 for a presentation of these channels)
- Educating staff in supporting LGBT inclusion in everyday interactions within the workplace: the related section could be based on real-life scenarios that equip:[36]
  - the whole staff with the capacity to react adequately in commonplace situations: for instance, when they hear a joke about LGBT people, staff should be encouraged to explain why this type of joke should not be said again by reminding that (i) it is hurtful for LGBT people as much as a joke about other groups is hurtful for those groups, meaning that unless someone is able to tell a joke about everybody they should probably not tell one at all; (ii) it is contrary to the employer's ethics and values;
  - managers with the capacity to competently handle challenging conversations, for instance with co-workers or clients opposing LGBTI inclusion (Annex Box 4.D.1): targeting managers is critical since they contribute to set standards and can therefore become agents of change at work.

Annex Box 4.D.1. Handling challenging conversations with co-workers or clients around LGBTI issues

The section of Sodexo's guide devoted to how to have challenging conversations is particularly valuable. It gives important insights on how to lead by example when co-workers or clients oppose LGBT inclusion, as shown by the excerpts below.

A co-worker says they aren't comfortable working with a gay person

THINK TO YOURSELF: This person is obviously uncomfortable and I should be glad they shared this with me. I want to honour the person's feelings while letting them know LGBT employees are part of our team and this organisation, and not working with someone is not an option.

SAY: "I'm sorry to hear you're feeling uncomfortable. That's never a good thing at work."

WHY? It is important not to invalidate how someone is feeling, even if you may disagree with the reasons that they provide. This also helps you frame the next part of the discussion, which is about the importance of everyone feeling comfortable and valued at work.

YOU MIGHT SAY: "As you know, we have strong values about people being able to be themselves at work. We encourage people to bring their whole selves to work (…). While we might not understand all of them, or agree with all of them, it is our responsibility to focus on our jobs and behave in a way that is respectful of each person's contributions and abilities. Try getting to know that person a little better. I have found that when people focus on similarities, the differences don't end up making much of a difference anymore."

WHY? The truth is that, as people know each other better, the unfamiliar becomes less scary, and we know people for who they are, not just one part of themselves. This also focuses the employee on learning good cooperative behaviour at work, as opposed to isolating themselves from another person.

A co-worker says they aren't comfortable working with a transgender person transitioning to the other gender

SAY: "I appreciate your honesty in sharing your feelings with me. I understand this change can present some challenges because this may feel new or unfamiliar, and it is critical that we all work together. This person is a valued member of our team."

ASK: "What is it that makes you uncomfortable?"

- If the reason provided focuses on someone changing their name and identifying as a different gender

YOU MIGHT SAY: "It may take a little while to get used to this person's new name and pronoun. However, it's important to make every effort because using the preferred name/pronoun is a sign of respect. My expectation is that you treat this person with the same level of respect that you show the rest of the team. I expect the two of you to continue working together effectively."

- If the reason provided focuses on sharing a bathroom with someone who has just disclosed that they are transgender and is expressing their gender in a way that is "new" to other people

In this case the manager should ask why the co-worker is concerned with sharing the restroom with this person and bust myths, as it is done in Box 4.22.

- If the reason provided focuses on physical changes that may occur

YOU MIGHT SAY: "(…) I'm sure, with time, you'll begin feeling less uncomfortable. In the meantime, let's remain open and respectful and consider the courage it takes for transgender people to live authentically as themselves."

A client is unhappy about the firm's LGBTI-inclusive policy

THINK TO YOURSELF: I need to be sensitive to the client's perspective while also taking a stand for our employees.

SAY: "I understand some clients have different views on valuing different kinds of employees. At Sodexo, we have a strong policy around inclusion of all employees. While this can be challenging for some clients to understand, we have found it's the best way to make sure our clients' needs are met. We include everyone, we value everyone, and in turn, our people perform better for our customers. For us, it's simply the right way to operate our business."

WHY? It is important to frame the discussion in a way that makes this about the big picture of being a good corporate citizen on many fronts, and in many diversity and inclusion dimensions, and this is a good way to have that discussion. It isn't just about LGBT people – it is about all people.

Source: Sodexo (2012[75]), "LGBT Conversation Guide".

Notes

[1] This share represents the percentage of LGBT individuals across the EU who respond "yes" to the following question: "During the last 12 months, have you personally felt discriminated against because of being L, G, B or T in any of the following situations? i) when looking for a job; ii) at work; iii) when looking for a house or apartment to rent or buy (by people working in a public or private housing agency, by a landlord); iv) by health care personnel (e.g. a receptionist, nurse or doctor); v) by social service personnel; vi) by school/university personnel – this could have happened to you as a student or as a parent; vii) at a cafe, restaurant, bar or nightclub; viii) at a shop; ix) in a bank or insurance company (by bank or company personnel); x) at a sport or fitness club; (xi) when showing your ID or any official document that identifies your sex." This share is computed based on Round I of the cross-country survey among LGBT people that was conducted in 2012 by the European Union Agency for Fundamental Rights. Data were collected through an anonymous online questionnaire, among 93 079 people who self-identify as lesbian, gay, bisexual and/or transgender across the EU. The data explorer is available at the following url: https://fra.europa.eu/en/publications-and-resources/data-and-maps/survey-fundamental-rights-lesbian-gay-bisexual-and.

[2] This share represents the percentage of LGBTI individuals across the EU who respond "yes" to the following question: "In the past 12 months have you personally felt discriminated against due to being LGBTI in the following eight areas of life? i) when looking for a job; ii) at work; iii) when looking for housing; iv) by health care or social services personnel; v) by school/university personnel; vi) at a cafe, restaurant, bar or nightclub; vii) at a shop; (viii) when showing your ID or any official document that identifies your sex." This share is computed based on Round II of the cross-country survey among LGBTI people that was conducted in 2019 by the European Union Agency for Fundamental Rights − compared to Round I, this share does not cover experiences of discrimination in a bank or insurance company, or at a sport or fitness club. Data were collected through an anonymous online questionnaire, among almost 140 000 people who self-identify as lesbian, gay, bisexual, transgender and/or intersex across the EU. The data explorer is available at the following url: https://fra.europa.eu/en/data-and-maps/2020/lgbti-survey-data-explorer.

[3] Evidence on this issue comes from studying the impact of age discrimination protections in the United States. This evidence suggests that economic downturns are conducive to stronger discrimination protections deterring hiring of protected workers through the termination cost channel. More precisely, the literature indicates that, in normal times, antidiscrimination legislation helps the hiring of protected workers (Neumark and Stock, 1999[139]; Adams, 2004[140]; Neumark and Song, 2013[141]; Neumark and Button, 2014[142]; Neumark et al., 2019[143]). However, during an experience such as the Great Recession, stronger discrimination protections becomes less productive or even counterproductive for protected workers (Lahey, 2008[144]; Neumark and Button, 2014[142]). An explanation could be that economic crises elevate product and labour demand uncertainty to a level where employers, in contemplating hiring a protected worker, perceive a stronger possibility of wanting to terminate that worker before the worker voluntarily chooses to leave. Several papers have analysed the impact of disability antidiscrimination laws on the hiring of disabled people in the United States (Neumark, Song and Button, 2016[145]). However, they do not constitute a clean test of whether antidiscrimination laws generate negative unintended effects since disability discrimination protections in the United States lead to raise the cost not only of terminating disabled workers, but also of hiring them. The law indeed requires employers to offer adequate facilities for disabled people (e.g. by enabling wheelchair access, purchasing special equipment for disabled employees, restructuring jobs to permit disabled employees to work part-time or from home, etc.).

[4] For instance, the resources available on the Equality Commission for Northern Ireland's website (see Box 4.3) were carefully advertised among groups at risk of discrimination, including LGBT people. The campaign directed at sexual and gender minorities was launched in 2013. To maximise outreach, it was designed and developed following analysis of research into the needs of LGBT people as well as focus groups. The campaign was composed of a dedicated website ("So Me" available at www.some-ni.co.uk) and ramifications on Youtube, Facebook and Twitter. It notably included several videos of persons the Equality Commission had assisted.

[5] See https://www.lgbtpolice.eu/.

[6] Indeed, the fact that hate speech ultimately leads to hate actions is increasingly backed by empirical evidence (Sonntag, 2019[34]).

[7] In such tests, gay male applicants who claim asylum based on their sexual orientation have their physical reactions to heterosexual pornographic material measured. In 2010, FRA raised alarm over the then-used practice of 'phallometric testing' in the Czech Republic, noting that such tests were in contradiction with the prohibition of torture and inhuman or degrading treatment, as well as the right to private life (CoE Commissioner for Human Rights, 2018[146]).

[8] See Articles 23, 25 and 26 of the Universal Declaration of Human Rights and Articles 6, 12 and 13 of the International Covenant on Economic, Social and Cultural Rights.

[9] Section 28 was repealed in 2000 in Scotland (*Ethical Standards in Public Life etc. (Scotland) Act*) and in 2003 in England and Wales (*Local Government Act*).

[10] See https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06103.

[11] See as well https://www.gov.scot/news/lgbti-education/.

[12] In the United Kingdom for instance, see https://www.gov.uk/government/publications/engaging-parents-with-relationships-education-policy.

[13] Following these incidents, the UK government published a guide for local authorities to help them manage school disruption over LGBT teaching, notably through engaging constructively with parents (UK Department for Education, 2019[148]).

[14] See https://www.pshe-association.org.uk/stonewall.

[15] The first edition was published in 2014.

[16] The website NoHomophobes.com looks at the use of homophobic language on Twitter on a daily basis and confirms the prevalence of casual homophobia across the world.

[17] Personal, social, health and economic education (PSHE) aims to give children the knowledge, skills and understanding to lead confident, healthy and independent lives (UK Department for Education, 2020[147]).

[18] These organisations and consortia include Stonewall, Barnardo's, the Consortium Anti-Homophobic and Transphobic Bullying Alliance, METRO Charity, Rainbow Flag Award and Learn Equality, Live Equal programme. See https://www.pshe-association.org.uk/content/government-equalities-office-anti-homophobic.

[19] These estimates presumably constitute a lower bound of the actual penalty faced by sexual and gender minorities since LGBT people who accept to disclose their sexual orientation and gender identity in surveys tend to be economically advantaged.

[20] When the bank BNP Paribas signed the "Charter of LGBT Commitment" (Box 4.14) in 2015, the bank's executive committee received some 12 000 external emails protesting this engagement. Facing this backlash, the bank did not retreat. But it committed to strengthen its internal communication policy in order to better involve employees and facilitate understanding of its purpose (OHCHR, 2017[73]).

[21] This advanced training could be delivered as a face-to-face workshop or in the framework of an online learning. Recent research indeed shows that even a brief online diversity training intervention creates some value, thereby suggesting it could become effective if repeated: a one-hour stand-alone e-learning module improves attitudes towards minority groups, especially among participants who were relatively less supportive of those groups (Chang et al., 2019[150]).

[22] Consistent with this claim, a Credit Suisse study showed that companies that embrace LGBT employees outperform in many dimensions, including profit (Credit Suisse, 2016[149]).

[23] See http://www.lgbt-capital.com/index.php?menu_id=2.

[24] An alternative could consist in obliging employers to implement some of the good practices critical to foster LGBTI inclusion in the workplace, i.e. those typically valued by workplace equality standards. For instance, in France, the 2017 Law "Equality and Citizenship" has made training on avoiding discrimination in recruitment compulsory for human resources staff in firms with 300 employees and above. However, monitoring compliance with this legal obligation is resource demanding.

[25] See https://www.stonewall.org.uk/2019-list-public-sector.

[26] Of course, this training could be complemented by an advanced training similar to the one described in Section 4.2.2 in order to help HPPs counter their conscious and unconscious bias against LGBTI people. A study among nearly 20 000 health care providers mainly located in the United States indeed reveals that this bias is real, should one rely on explicit measures (question asking whether the interviewee prefers straight people to gay people) or implicit measures (the Implicit Association Test on Sexuality presented in Box 4.10) (Sabin, Riskind and Nosek, 2015[151]).

[27] Freedom to Marry was the national bipartisan organisation dedicated to winning marriage for same-sex couples in the United States. Founded in 2003, the organisation officially closed after the June 2015 victory at the Supreme Court.

[28] Gender-critical feminism argues that anyone born with a vagina is in its own oppressed sex class, while anyone born with a penis is automatically an oppressor. According to this thinking, gender is a system that exists solely to oppress women, which it does through the imposition of femininity on those assigned female at birth. In other words, for gender-critical feminists, trans men are just lesbians attempting to identify out of womanhood. By contrast, gender-critical feminists view trans women as only predators obsessed by assaulting cis women. See https://www.vox.com/identities/2019/9 May 20840101/terfs-radical-feminists-gender-critical.

[29] See the Universal Declaration of Human Rights (art. 8), the International Covenant on Civil and Political Rights (art. 2), the International Convention on the Elimination of All Forms of Racial Discrimination (art. 6), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (art. 14) and the Convention on the Rights of the Child (art. 39).

[30] The acronym "LGBTQ2" stands for lesbian, gay, bisexual, transgender, transsexual, queer (or sometimes questioning) and two-spirited. The term "two-spirited" is used by some indigenous North Americans. It describes people who identify as having both a masculine and a feminine spirit.

[31] See https://www.stiftung-denkmal.de/en/memorials/memorial-to-the-homosexuals-persecuted-under-the-national-socialist-regime/history-of-the-memorial-to-the-homosexuals.html.

[32] See https://www.ihlia.nl/collection/pink-life-stories/?lang=en.

[33] The Equal Rights Coalition comprises 43 member countries: 29 OECD countries (Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Israel, Italy, Lithuania, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland, United Kingdom, United States) and 13 non-OECD countries (Albania, Argentina, Cabo Verde, Costa Rica, Cyprus, Ecuador, Honduras, Malta, Montenegro, North Macedonia, Serbia, Ukraine, Uruguay). For more information, see https://www.gov.uk/government/collections/equal-rights-coalition for more information.

[34] In order to effectively execute those action means, it is important that parliamentarians be well versed in how to speak about LGBTI persons and rights, depending on the audience they face. Use of the appropriate terminology is a prerequisite to respectfully support LGBTI persons and positively impact social norms among communities and constituencies (GLAAD and MAP, 2012[137]; GLAAD, 2016[138]).

[35] Alan Turing (1912-1954) is widely considered to be the father of theoretical computer science and artificial intelligence. During WWII he played a pivotal role in cracking intercepted coded messages that enabled the Allies to defeat the Nazis in many crucial engagements, including the Battle of the Atlantic. Turing was prosecuted in 1952 for homosexual acts. He accepted chemical castration treatment as an alternative to prison. He was eventually driven to suicide in 1954 at the age of 41, two years after he was chemically castrated.

[36] On top of providing staff with the right conversation cues, this section could inform them of reporting processes to prevent and address harassment and discrimination in the workplace (while protecting those who report such abuses from retaliation).

Over the Rainbow? The Road to LGBTI Inclusion

Ensuring that LGBTI people – i.e. lesbians, gay men, bisexuals, transgender and intersex individuals – can live as who they are without being discriminated against or attacked is a concern worldwide. Discrimination against LGBTI people remains pervasive, while its cost is massive. It lowers investment in human capital due to bullying at school. It also reduces economic output by excluding LGBTI talents from the labour market and impairing their mental health, hence their productivity. This report provides a comprehensive overview of the extent to which laws in OECD countries ensure equal treatment of LGBTI people, and of the complementary policies that could help foster LGBTI inclusion. The report first identifies the legislative and regulatory frameworks in the areas of civil rights, protection against discrimination and violence, as well as health that are critical for the inclusion of sexual and gender minorities. The report then explores whether these laws are in force in OECD countries and examines the margin for further improvement. Finally, the report investigates the broader policy measures that should accompany LGBTI-inclusive laws in order to strengthen the inclusion of LGBTI people.

PRINT ISBN 978-92-64-35092-2
PDF ISBN 978-92-64-52318-0

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