



International Disability Alliance Member Organisations:

African Disability Forum, Arab Organization of Persons with Disabilities, ASEAN Disability Forum, Down Syndrome International, European Disability Forum, Inclusion International, International Federation of Hard of Hearing People, International Federation for Spina Bifida and Hydrocephalus, Latin American Network of Non-Governmental Organizations of Persons with Disabilities and their Families, Pacific Disability Forum, World Blind Union, World Federation of the Deaf, World Federation of the DeafBlind, World Network of Users and Survivors of Psychiatry

IDA OFFICIAL STATEMENT

DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY AND THE INTERSECTION WITH DISABILITY

1. Introduction

Just as persons with disabilities experience discrimination and exclusion in many aspects of their everyday life, LGBTIQ+¹ individuals often face discrimination and exclusion on the basis of their sexual orientation and/or gender identity. It therefore follows that these challenges are likely to be exacerbated for persons with a disabilities who also identify as part of a sexual minority due to intersectional and multi-faceted discrimination.² Challenges experienced include greater social exclusion, isolation, health disparities, education and employment barriers, higher incidences of violence, denial of supports and the right to form relationships and increased instances of forced medical interventions and treatments.³

This paper provides a high-level overview of the issues related to the intersection of disability and sexual orientation or gender identity and associated discrimination and human rights' concerns, considers applicable legislation and standards and outlines the position of the International Disability Alliance (IDA) on these issues.

2. Background

In May 2018, the issue of discrimination on the basis of sexual orientation and gender identity was raised at the Board meeting of the International Disability Alliance (IDA). This followed a letter from the Equal Rights Trust requesting the support of IDA in representations to the Committee on the Rights of Persons with Disabilities in relation to General Comment 6 on Equality and Non-discrimination (Article 5) pertaining to relevant provisions of the Convention on the Rights of Persons with Disabilities (CRPD).

¹ Within this paper, the acronym LBTIQ+ (referring to people who identify as Lesbian, Gay, Transgender, Intersex, Queer, Asexual and other diverse sexual orientations and/or gender identities) has been used as this is the generally accepted nomenclature in Australia, the country in which the primary author of this paper resides. It is very much recognised however that consensus does not exist with there being considerable debate about and diversity in the terminology used in this sphere not only by individuals but at a more macro level at both national and international levels. As a result, references to LGBTIQ+ in this paper should be interpreted by readers as encompassing the range of associated language used and therefore the full diversity of non-heteronormative persons.

² It is acknowledged that a person with intersectional identities is likely to face discrimination irrespective of whether this relates to race, ethnic background, religion, linguistic background or some other aspect of their identity but as the focus of this document is on persons with disabilities who identify as LGBTIQ+, these issues are outside the scope of this paper.

³ Statement to the 20th Session of Committee on the CRPD, 27 August 2018, Geneva presented by Silvia Quan, IDA's Senior Human Rights Advisor for the Treaty Bodies Unit on behalf of Matthew Bowden, Co-Chief Executive Officer of People with Disability Australia.

The discussion preceded a side event hosted by People with Disability Australia on behalf of Disabled People's Organisations Australia which is an alliance comprised of four organisations: National Ethnic Disability Alliances, First Peoples Disability Network, Women with Disabilities Australia and People with Disabilities Australia. The event was also co-sponsored by the Australian Human Rights Commission, the International Disability Alliance and the Australian Government and was conducted during the 11th Session of the Conference of State Parties (COSP) to the CRPD, entitled "LGBTI People with Disability & Implementation of the CRPD". This event explored *the intersection between disability and sexual orientation, gender identity and intersex status and touched on the emerging response of the Committee on the Rights of Persons with Disabilities to this intersection and the role of States Parties in ensuring that LGBTI people with disability are not left behind*. This event was facilitated by Mr Colin Allen AM who was Chair of IDA at that time.

During this event, it was agreed that a group would be established to support the writing of a position paper which examined the issues relevant to discrimination on the basis of sexual orientation and gender identity which would then be presented to IDA Board for endorsement and adoption. This approach is consistent with the principle of *Nothing about us without us*, acknowledges the imperative of addressing intersectionality in the implementation of the CRPD and is also aligned with the mission of IDA and the tenet of *Leave no one Behind*. As was highlighted in a statement on General Comment 7 presented by Silvia Quan on behalf of Matthew Bowden, Co-Chief Executive Officer of People with Disability Australia on behalf of the Disabled People's Organisations Australia at the 20th Session of Committee on the CRPD in August 2018, *the full diversity of the disability community needs to be recognised and reflected* in efforts to advance the implementation of the CRPD.

The General Comment 7 on Article 4 and Article 33 was ratified by the CRPD Committee in Geneva September 2018.

3. Definition of key terms used in this paper

Disability

The term "disability" is described in Article 1 of the UN CRPD as follows:

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Persons with disabilities are heterogenous and their support needs vary, including among persons with the same type of disability. As such, measures to ensure non-discrimination and equality for persons with disabilities must be individually tailored, inclusive of reasonable accommodations where needed in a particular instance.⁴

Sexual Orientation

Humans possess both a *sexual orientation* and a *gender identity*. *Sexual orientation* refers to *a person's emotional, affectional and sexual attraction to...individuals of a different gender or the same gender or more than one gender*.⁵

Gender Identity

Gender identity refers to *each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth*.⁶ Most individuals identify as male or as female. However, some individuals identify with a non-binary gender or with no gender at all.

⁴ CRPD, art. 5.

⁵ International Commission of Jurists, [Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity](#) (2007) ("Yogyakarta Principles"), Preamble.

⁶ Ibid

Discrimination

Discrimination is seen when a person is treated differently than another person in a similar situation, with the treatment causing the person harm or preventing enjoyment of one or more human rights.

It should be reinforced that just as heterosexual people are not a homogenous group, neither are LGBTIQ+ individuals. Equally “*one size does not fit all*” when considering persons with disabilities. Whilst there may be some challenges which tend to affect each of the groups which are the subject of this paper, this does not negate the reality that challenges experienced can also be individual.

4. Legal protections for LGBTIQ+ persons

While the CRPD is a comprehensive human rights convention and international development tool at the core of the disability rights movement, no international human rights treaty explicitly protects the rights of sexual and gender minorities and persons with atypical sex characteristics. The absence of a specific convention however does not mean that sexual minorities are not protected under international human rights law. Instead, international and regional human rights conventions protect **all persons** regardless of their sexual orientation or gender identity. The Universal Declaration of Human Rights highlights this notion and provides: *All human beings are born free and equal in dignity and rights.*⁷

In working towards recognising the rights of LGBTIQ+ persons, intergovernmental and political bodies in more recent times have outlined policies and statements of position. Of particular relevance is the Yogyakarta Principles which are a non-binding yet authoritative set of international standards which contextualize sexual orientation and gender identity within the context of international human rights and the corresponding duties and obligations of States so that LGBTIQ+ persons can exercise and enjoy those rights.

The United Nations Human Rights Council and associated UN human rights entities have also advanced recognition of the rights of sexual minorities, including the following UN treaty bodies:

- Committee on Economic, Social and Cultural Rights
- Human Rights Committee
- Committee on the Elimination of Discrimination Against Women
- Committee on the Rights of the Child
- Committee Against Torture
- Committee on the Elimination of Racial Discrimination
- Committee on the Rights of Persons with Disabilities

Inevitably the adoption of international standards and soft law instruments alone does not alleviate discrimination. Nevertheless, the progressive development of international human rights law and the clear application of equality and non-discrimination to all persons, including persons with disabilities and individuals who identify as LGBTIQ+, is working to situate human rights violations against persons with disabilities and LGBTIQ+ persons squarely on the international human rights agenda. This, in turn, should likewise work to advance and affirm the human rights of persons with intersectional identities, including persons with disabilities who are LGBTIQ+.

5. Human rights issues

LGBTIQ+ persons with disabilities have the same human rights and fundamental freedoms as all persons and accordingly must be treated equally in all spheres of life including in services provided by government and non-government organisations including but not limited to housing, education, employment, health care, aged care and community activities.

⁷ [The Universal Declaration of Human Rights](#) (adopted 10 December 1948), UNGA Res. 217 A(III) (UDHR) Art.1

While the size of the LGBTI community across the world is difficult to estimate in any country, surveys in some places have consistently shown major health and education disparities among young persons who identify as sexual or gender minorities relative to their peers and experience higher school drop-out rates, higher suicide rates, and higher homelessness rates.⁸ Exclusion based on sexual orientation and gender identity is prevalent in many forms in most countries and often take a legislative form. Same-sex sexual acts are illegal in many countries and are in some instances punishable by death. Persons who are gender non-conforming likewise risk punishment, violence, and other egregious norms of exclusion. Beyond legislative discrimination, LGBTIQA+ persons experience stigma, discrimination and isolation in their communities and face numerous barriers in education, earning a living, accessing services and participating in society.

Issues of particular concern pertinent to LGBTIQA+ persons include the criminalisation of homosexuality, the right to marry, familial and parental rights and the recognition of identity. Although progress has been made in some countries in this area, human rights violations still prevail in many nations.

Some one billion persons globally or around 15% of the world's population are estimated to have a disability, many of whom live in poverty. Persons with disabilities face attitudinal, legal, infra-structural and environmental barriers to social, economic, and political participation and therefore face significant obstacles to the full enjoyment of human rights. Barriers to full inclusion and participation in society include inaccessible physical environments and transportation, exclusion from education, non-availability of assistive devices and technologies, non-adapted means of communication, gaps in service delivery, and discrimination, prejudice and stigma in society. This results in adverse socioeconomic outcomes for persons with disabilities relative to their non-disabled peers including less education, poorer health outcomes, lower levels of employment and higher poverty rates.

An intersectional identity that combines disability with sexual orientation and/or gender identity or other status can result in multiple forms of exclusion and discrimination. "Lesbian, gay, bisexual, transgender and intersex (LGBTI) people with disability often face intersectional discrimination and may have to disclose both their sexual orientation, gender identity or intersex status as well as their disability, resulting in what has been referred to as a 'second coming out.'"⁹ Common to persons with disabilities and LGBTIQA+ persons and those who share those intersectional characteristics comprised of disability and LGBTIQA+ status are stigma, discrimination, violence, and exclusion.¹⁰ While research is scarce, some emerging studies point to health disparities for those who have intersecting characteristics of disability and sexual orientation.¹¹ Further, it is important to recognize that persons with intersecting characteristics often confront barriers and marginalization that is unique to their circumstances and yet little understood, acknowledged or addressed.¹²

6. IDA's position on discrimination on the basis of sexual orientation and gender identity against persons with disabilities

IDA recognizes and affirms that all persons with disabilities irrespective of sexual orientation or gender identity are to be accorded all human rights and fundamental freedoms and be protected from discrimination on the basis of disability and LGBTIQA+ status. IDA will work proactively within the UN system to ensure the realisation of these rights and protections and

⁸ UNESCO (2012) *Education Sector Responses to Homophobic Bullying*. UNESCO, Paris; Formby, E. (2013) *The Impact of Homophobic and Transphobic Bullying on Education and Employment: A European survey*. IGLYO, Brussels.

⁹ NSW Gay and Lesbian Rights Lobby and City of Sydney, *Uncloseting Discrimination: Consultation Report on the Intersections of Discrimination*, March 2012, 41.

¹⁰ UNESCO (2016) *Out in the Open: Education sector responses to violence based on sexual orientation and gender identity/expression*. UNESCO, Paris.

¹¹ Rutherford K, McIntyre J, Daley A, Ross LE. Development of expertise in mental health service provision for lesbian, gay, bisexual and transgender communities. *Med Educ*. 2012 Sep;46(9):903-13.

¹² Fredriksen-Goldsen KI, Kim HJ, Barkan SE. Disability among lesbian, gay, and bisexual adults: disparities in prevalence and risk. *Am J Public Health*. 2011;102(1):e16-21; NSW Gay and Lesbian Rights Lobby and City of Sydney, *Uncloseting Discrimination: Consultation Report on the Intersections of Discrimination*, March 2012.

highlight and promote good practices that facilitate meaningful inclusion for persons with intersectional identities.

IDA contributions to protecting the rights of persons with intersecting identities of disability and LGBTIQ+ status will include:

- Increasing networking and information exchange between disabled peoples organizations and LGBTIQ+ organizations;
- Supporting efforts to end legislated discrimination and criminalization based on sexual orientation and/or gender identity;
- Ensuring the inclusion of LGBTIQ+ persons in IDA work on the implementation of the CRPD;
- Advocating for LGBTIQ+ persons with disabilities to have full sexual and reproductive rights, and freedom from physical and sexual abuse; and
- Advocating for LGBTIQ+ persons with disabilities to be included in IDA decision-making bodies.

7. Conclusion

Despite the fact that in recent years, progress has been made in realising the rights of LGBTIQ+ persons with countries increasingly exercising their authority including adopting laws in specific areas relevant to sexual orientation or gender identity in a range of life activities, coupled with the CRPD achieving greater traction internationally, there is still much to be done to ensure translation into practice to specifically address the intersection between the two issues to ensure safety and guarantee freedom from discrimination. Diversity should be recognised and celebrated.

8. Acknowledgements

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- Ms Janet E. Lord, Board Member, United States International Council on Disabilities
- Ms Margherita Coppolino, President of the National Ethnic Disability Alliance (Australia) and Committee member of Australia GLBTIQ Multicultural Council
- Mr Clifton Cortez, Sexual Orientation and Gender Identity (SOGI) Global Advisor, World Bank Group

9. References

- Statement to 20th Session of Committee on the CRPD, 27 August 2018, Geneva presented by Silvia Quan, IDA's Senior Human Rights Advisor for the Treaty Bodies Unit on behalf of Matthew Bowden, Co-Chief Executive Officer of People with Disability Australia.
- International Justice Resource Center – Sexual Orientation & Gender Identity <https://ijrcenter.org/thematic-research-guides/sexual-orientation-gender-identity/>
- Australian Human Rights Commission – About Sexual Orientation, Gender Identity and Intersex Status Discrimination - <https://www.humanrights.gov.au/our-work/sexual-orientation-gender-identity-intersex-status/about-sexual-orientation-gender-identity>
- Australian Human Rights Commission - Protection from discrimination on the basis of sexual orientation and sex and/or gender identity in Australia, Consultation Report; 2011.
- The International Human Rights Framework and LGBTI People - <https://www.pgaction.org/inclusion/background/framework.html>
- International Commission of Jurists, *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* (2007) (“Yogyakarta Principles”), Preamble.
- [The Universal Declaration of Human Rights](#) (adopted 10 December 1948), UNGA Res. 217 A(III) (UDHR) Art.1