

Written submission relating to the Outline of the General Comment on article 27 of the CRPD (the right to work and employment)

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These comments have been prepared by the **International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World)**. Valuable comments and suggestions to the submission have been provided by Gurchaten Sandhu: ILO – Programme Support Officer.

The purpose of this document is to suggest specific proposals for the CRPD draft General Comment on article 27 to reflect experiences of lesbian, gay, bisexual, trans and intersex (LGBTI) persons in work and employment. These experiences are formed on the intersection of both ableism and prejudices against LGBTI persons; LGBTI persons with disabilities thus face intersectional discrimination in work and employment on the basis of their disabilities and sexual orientation, gender identity, gender expression and/or sex characteristics (SOGIESC).

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1. Introduction

Recommendations:

- Ensure a more systematic and comprehensive inclusion of SOGIESC into the new General comment;
- Add LGBTI individuals with disabilities to the list of marginalised groups at more risk of discrimination, exclusion, and harassment across different paragraphs of the General Comment.

Supporting information:

LGBTI individuals living with disabilities face aggravated forms of discrimination because of both their real or perceived SOGIESC and disability which affects their enjoyment of their right to work and employment, among others. Indeed, the Preamble of the CRPD Convention itself, while not mentioning SOGIESC explicitly, stressed the problem of multiple or aggravated forms of discrimination experienced by persons with disabilities.

The problem of intersectional discrimination negatively affecting LGBTI individuals with disabilities has been raised by different human rights bodies. For example, the **Special Rapporteur on the rights of persons with disabilities** highlighted this problem in her thematic reports and urged states to adopt a multiple and intersectional approach to fulfilling the rights of groups historically discriminated against or disadvantaged, including LGBTI individuals with disabilities.¹

The **Independent Expert on sexual orientation and gender identity** has also referred to the intersectional discrimination in addition to the social exclusion and barriers to employment affecting LGBT individuals with disabilities in his thematic report.²

We warmly welcome these developments and firmly believe in the importance of a more systematic and comprehensive inclusion of a SOGIESC dimension into the new General comment on the right to work and employment as well as adding LGBTI individuals with disabilities to the list of marginalised groups at more risk of discrimination, exclusion, and harassment (alongside with women, migrants and refugees with disabilities) across different paragraphs of the General comment. This would ensure stronger protection for

¹ Access to rights-based support for persons with disabilities (2017), [A/HRC/34/58](#), para 42; The rights of persons with disabilities to social protection (2015), [A/70/297](#), para 40.

² Socio-cultural and economic inclusion (2019), [A/74/181](#), para 50.

LGBTI individuals with disabilities who face intersectional discrimination and structural barriers to work and employment.

2. Normative Content

**Comments to para 2 (a) (II) of the Outline –
Article 27.1 (a): Discrimination in the workplace, including workplace
segregation**

**Comments to para 2 (a) (III) of the Outline –
Article 27 (b): The right to equal remuneration for work of equal value**

Recommendation:

- Explicitly refer to the prevention and prohibition of intersectional discrimination based on disability and SOGIESC in the workplace, including workplace segregation and in relation to remuneration.

Supporting information:

Many LGBTI persons with disabilities experience intersectional discrimination resulting in segregated workplaces, for example sheltered workshops, being the only jobs made available to them. These settings are often exempt from providing equitable pay and employment conditions. They are also employment setting synonymous with poor outcomes with regard to health and safety and equal opportunities and inadequate pathways for the redress of grievances. Adding to that, it is extremely hard for people to transition from segregated to open employment once they are within that system.

Further, and as stated by the **International Labour Organization** (ILO), although LGBTI workers are equally entitled to the right to be free from discrimination at work, discrimination and prejudice based on SOGIESC impede the recruitment and promotion of the best candidate for the job. Such discrimination and prejudice also affect the rights of LGBTI individuals in the workplace, for example, some employers refrain from extending benefits to the same-sex partners of their employees³. These situations are regrettably exacerbated for LGBTI individuals with disabilities who face

³ LGBT workers entitled to equal rights and benefits at the workplace (2015), ILO Statement, available at: https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/ilo-director-general/statements-and-speeches/WCMS_368652/lang--en/index.htm

aggravated and intersectional forms of discrimination based on both their SOGIESC and disability.

According to an Australian research, LGBT persons with disabilities are more likely to have no employment than those without (18.7% versus 4.3%) and less likely to have full employment (31% versus 53%); persons with disabilities or long-term illness tend to have lower incomes than those without.⁴ A research conducted in Russia showed that 52.6% of respondents, LGBT persons with disabilities, faced discrimination in labour, and only 26.7% were employed.⁵

A civil society report to the CRPD Committee on Canada described the situation of LGBTI persons with disabilities including the significant discrimination and the structural barriers to employment experienced by gender diverse and gender non-binary persons with disabilities.⁶ According to an Ontario-based study by the Trans PULSE Project, 18% of trans Ontarians have been turned down for employment and 13% of them have been fired for being trans.⁷ Furthermore, nearly half of trans Ontarians are unable to obtain employment references or academic transcripts with their correct name, pronoun, and/or sex designation, reflecting the structural barriers to employment faced by trans individuals with disabilities.⁸

**Comments to para 2 (a) (V) of the Outline –
Article 27 (b) part III: Measures to eliminate discriminatory attitudes and
harassment**

Recommendations:

- Articulate the challenges faced by LGBTI individuals with disabilities in the workplace including their fear of stigma, discrimination, harassment, or violence based on their SOGIESC and disability;
- Address this problem in the list of measures proposed for States to protect workers at higher risk.

Supporting information:

⁴ W. Leonard and R. Mann (2018), *The everyday experiences of lesbian, gay, bisexual, transgender and intersex (LGBTI) people living with disability* at 50-51.

⁵ Queer-Peace (2017), *Monitoring of discrimination of representatives of LGBT community with disability* at 6.

⁶ Submission by Egale Canada Human Rights Trust (2017). *Canada: Discrimination and Violence against LGBTQI2S Persons with Disabilities*, at 9.

⁷ Bauer, G., Nussbaum, N., Travers, R., Munro, L., Pyne, J., & Redman, N. (2011). *We've Got Work to Do: Workplace Discrimination and Employment Challenges for Trans People in Ontario* (Trans PULSE E-Bulletin No. Volume 2, Issue 1) (p. 3). Ontario: Trans PULSE.

⁸ Bauer, G. R., & Scheim, A. I. (2015). *Transgender People in Ontario, Canada: Statistics from the Trans PULSE Project to Inform Human Rights Policy* (Trans PULSE E-Bulletin) (p. 11). London, ON: Trans PULSE Project.

LGBTI persons with disabilities who are able to obtain employment experience heightened rates of violence and harassment in the workplace. According to the Canadian civil society report submitted to the CRPD committee mentioned above,⁹ approximately 90% of transgender and gender variant employees experience workplace harassment and/or violence stemming from their gender identity and expression, and approximately 47% of LGB workers have experienced workplace harassment and/or violence based on their sexual orientation.

A comparative analysis on trans experiences in the European Union showed the widespread transphobia and hostility towards LGBTI individuals affecting trans individuals in different areas of employment including recruitment as well as their ability to be open about their gender identity at the workplace.¹⁰

The ILO Convention C190 (Violence and Harassment Convention, 2019, No. 190) pays specific attention to gender-based violence and harassment defined as “violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment” (Art. 1(b)). According to CEDAW General recommendation No. No. 35 on gender-based violence against women, updating general recommendation No. 19 (CEDAW/C/GC/35), gender-based violence may be aggravated by other factors, such as being lesbian, bisexual, transgender or intersex.

For the above reasons, it is important to articulate the challenges faced by LGBTI individuals with disabilities in the workplace including their fear of stigma, discrimination, harassment, or violence based on their SOGIESC and disability as well as to address this problem in the list of measures proposed for States to protect workers at higher risk.

Comments to para 2 (a) (VI) of the Outline –

Article 27 (c): Labour and trade union rights on an equal basis with others

Recommendation:

- Ensure that LGBTI persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others and without discrimination based on SOGIESC.

Supporting information:

⁹ See note 6.

¹⁰ European Union Agency for Fundamental Rights (2014), [Being Trans in the European Union Comparative analysis of EU LGBT survey data](#), at 27-34.

Even though LGBTI persons in general face higher rates of discrimination in employment, they do not have access to labour or trade unions at all (including because of negative prejudices against LGBTI in trade unions) or they are significantly underrepresented there.¹¹ For LGBTI persons with disabilities, joining labour or trade unions can be even more difficult when LGBTI-friendly unions do not provide accessible platforms, or when accessible platforms are not LGBTI-friendly.

**Comments to para 2 (a) (VII) of the Outline –
Article 27 (d) and (j): Access to inclusive education and inclusive vocational
training**

Recommendations:

- Ensure that LGBTI persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training, and are not subjected to discrimination based on SOGIESC;
- Promote the acquisition by LGBTI persons with disabilities of work experience in the open labour market without discrimination based on SOGIESC.

Supporting information:

According to different research studies, LGBTI persons with disabilities face multiple discrimination and bullying in educational institutions – both because of their disabilities and their SOGIESC.

The Independent Expert on sexual orientation and gender identity pointed out that LGBT persons with disabilities often face intersectional discrimination and barriers to education.¹² Indeed, LGBTI persons with disabilities face increased risks of school bullying, segregation in specific schools and difficult access to vocational training programmes.¹³ A British research has shown that LGBT students with disabilities are more likely to experience homophobic, biphobic and transphobic bullying than non-disabled LGBT students (60% compared to 43%).¹⁴ In the case of intersex students, research in Australia has shown that 18% of 272 survey respondents failed to complete

¹¹ See, for example, ERA, LGBTI Equal Rights Association, LGBTI+ Workers' Rights in the Western Balkans (online seminar recording, 10 March 2021), available at: <https://www.facebook.com/lgbtiera/videos/269014294664690>.

¹² Socio-cultural and economic inclusion, [A/74/181](#), para 50.

¹³ European Disability Forum (2019), *European Human Rights Report*, Issue 3 at 28.

¹⁴ Stonewall (2017), '[School Report: The experiences of lesbian, gay, bi and trans young people in Britain's schools in 2017](#)'.

secondary school compared to an average of 2% in the Australian population as a whole.¹⁵

3. State parties' obligations

Comments to para 3 (b) (I) of the Outline –

Non-discrimination, particularly on the basis of disability or multiple grounds

Recommendation:

- Explicitly refer to the prevention and prohibition of intersectional discrimination based on disability and SOGIESC.

Supporting information:

As mentioned above, LGBTI individuals with disabilities face intersectional discrimination and specific challenges in different areas of work and employment based on both their SOGIESC and disability.

In this context, the inclusion of a SOGIESC dimension while discussing state parties' immediate obligations to prohibit and counter multiple or intersectional grounds of discrimination is vital to reflect the real experiences of LGBTI individuals with disabilities and better protect their right to work and employment.

4. Relationship with other provisions of the CRPD

Comments to para 4 of the Outline

Article 8: Awareness-raising

Recommendations:

- Articulate the need for intersectional awareness-raising campaigns covering stereotypes and prejudices in relation to disability and other factors including SOGIESC;
- Articulate the need to target employers in awareness-raising and sensitisation campaigns, inclusive of LGBTI topics, run by governments;

¹⁵ T. Jones et al. (2016), '[Intersex: Stories and Statistics from Australia](#)'.

- Highlight the importance of awareness-raising campaigns focusing on disability aimed at other sectors such as LGBTI organizations, as well as awareness-raising campaigns focusing on SOGIESC aimed at disability organizations.

Supporting information:

Awareness-raising programmes are crucial to counter multiple and intersectional discrimination and discriminatory attitudes faced by LGBTI individuals with disabilities in different areas of work and employment, including recruitment, working conditions, and harassment in the workplace.

The CRPD Committee has previously referred to SOGIESC-related awareness-raising campaigns. For instance, in its review of Canada, it expressed concerns on the absence of information about awareness campaigns to combat attitudinal barriers and prejudices against LGBTI persons with disabilities.¹⁶

We highly appreciate the CRPD Committee’s practice on article 8 of the Convention regarding explicit references to LGBTI persons, and we believe that this approach should be supported by relevant provisions in the new General Comment on the right to work and employment.

Article 9: Accessibility

Recommendation:

- Ensure that accessibility measures take into account the needs of persons with disabilities facing intersectional barriers, exclusion in discrimination. In particular, recommend States to ensure accessibility of gender-neutral toilets in all public and private premises, as well as accessibility of information on how to protect one’s rights in cases of intersectional forms of discrimination in employment.

Supporting information:

As stated by the CRPD Committee, accessibility is one of the enabling elements for the right to work and employment of persons with disabilities.

LGBTI individuals with disabilities, and especially those with non-conforming gender identities and expressions, face specific accessibility challenges such as the lack of access to equipped gender-neutral toilets in the workplace.¹⁷ Access to bathroom facilities is a constant difficulty for D/deaf and disabled trans people in public and

¹⁶ [CRPD/C/CAN/CO/1](#), paras 19.

¹⁷ Report of the Special Rapporteur on the human right to safe drinking water and sanitation, 27 July 2016, [A/HRC/33/49](#), paras 2, 4, 30, and 48.

private spaces and premises. There may be no accessible bathrooms at all, or they may fail to appropriately cater for the needs of some D/deaf and disabled people.¹⁸ Gender-segregated toilets do not consider the gender perspectives of disabled transgender and gender non-confirming persons with disabilities, subjecting them to an increased risk of exclusion, humiliation, harassment, and gender-based violence.

Many countries do not prohibit discrimination based on SOGIESC at all. When relevant laws and procedures are in place, information on how to protect one's rights and challenge employment discrimination is often inaccessible due to the written format it is provided in, as well as complicated language.¹⁹

Article 12: Equal recognition before the law

Recommendation:

- Ensure that trans and gender non-confirming persons with disabilities have access to quick, transparent and accessible legal gender recognition procedures, including with regard to any documents relevant for employment such as educational certificates, employment record books or passports.

Supporting information:

The exercise of legal capacity is essential to access employment and fulfil the right of persons with disabilities to work and employment.

LGBTI individuals have the right to exercise legal capacity without discrimination based on SOGIESC. Specifically, trans and gender non-confirming persons should be able to change gender markers and names in their identity documents without abusive requirements (for example, sterilization) and according to self-identifications.²⁰

However, this is not the case for trans and gender non-confirming persons in many parts of the world. For instance, in Russia, the existing regulations do not allow to change a person's name in their employment record book (т р у д о в а я к н и ж к а) without revealing the previous name. For trans people, it usually means making their gender history open to current or potential employers and other actors.²¹

¹⁸ Transgender Europe: N. Gale (2017), [Oppression Squared: D/deaf and disabled trans experience in Europe](#), at 32-33.

¹⁹ *Ibid.*

²⁰ The Yogyakarta Principles, 2006: Principle 3; The Yogyakarta Principles Plus 10, 2017: Principle 31

²¹ Coming Out, Transgender Legal Defense Project, and Russian LGBT Network (2014), [Implementation of the International Covenant on Civil and Political Rights in the Russian Federation: Sexual Orientation and Gender Identity Issues: Alternative report](#), at 25-26.

Trans people with disabilities face additional barriers to legal gender recognition because information on relevant processes and procedures is often inaccessible due to the format it is provided in, i.e. in writing, and the complicated language it uses.²² In addition, these procedures usually involve additional costs while disabled trans people are at a high risk of living in poverty.²³

Gender non-conforming individuals experience deprivation of legal gender recognition that acts as a barrier to accessing their right to work and employment.

Trans and gender non-conforming individuals with disabilities are particularly disadvantaged in working life as they might experience deprivation of legal capacity based on disability status and deprivation of legal gender recognition. Reflecting the real experiences of gender non-conforming individuals with disabilities in relation to this issue in the General Comment would ensure better protection of their right to work and employment.

²² Transgender Europe: N. Gale (2017), [Oppression Squared: D/deaf and disabled trans experience in Europe](#), at 33-34.

²³ *Ibid.*