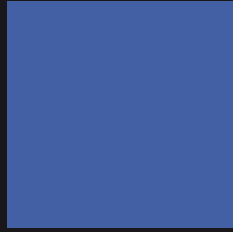
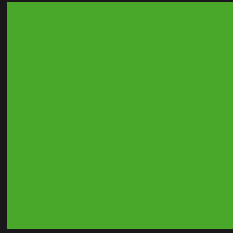
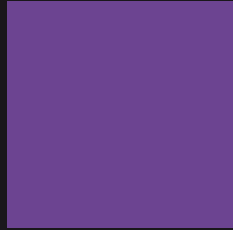


**Trade
Unionists
together for**



**LGBT
rights!**



Foreword

by Fred van Leeuwen, General Secretary, Education International
& **Hans Engelberts**, General Secretary, Public Services International

Together EI and PSI represent over 50 million education and public service workers around the world. We are pleased to publish the second joint EI/PSI manual on lesbian, gay, bisexual and transgendered (LGBT) workers.

EI and PSI have a strong tradition of promoting human rights. A key human rights issue concerns discrimination. Discrimination is unacceptable in any form. Since 1999, when the first manual was published, there have been significant advances in many OECD countries in the legal framework to address discrimination on grounds of sexual orientation. Yet every day, LGBT workers face prejudice, harassment, and discrimination. No worker should be afraid about their working future because of other people's prejudices.

Social justice is an important objective, in its own right, for the union movement.

However it also represents our future. For the union movement to grow and have a secure future, we must reach out to all equity seeking groups in our societies. Unions need to encourage LGBT workers to organise locally and nationally, to support each other and to identify and address discrimination, to increase awareness of LGBT rights and to campaign for change.

This manual is designed to assist affiliates to address key workplace issues for LGBT workers, gives practical ideas for union action, contains model policies and collective bargaining clauses, and lists resources and contact people from affiliates around the world.

We encourage education and public service unions to take up the issue of workplace equity for LGBT workers. We look forward to learning about your successes.

This manual was written for EI and PSI by Martin Moriarty. Martin is a freelance writer who has contributed to a variety of award-winning trade union and public sector publications.

EI and PSI are grateful for the support provided by UNISON in producing and publishing this manual.

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Introduction

Education International and Public Services International, global union federations which between them represent over 50 million workers in 950 trade unions throughout the world, have a long record of successful and effective joint work for lesbian, gay, bisexual and transgender (LGBT) equality in the workplace and beyond.

As part of that joint work, in 1999 we produced the ground-breaking joint publication *Working For Lesbian And Gay Members*, designed to assist affiliates develop this important area of trade union work around the world.

This new manual, *Trade unionists together for LGBT rights*, updates and replaces that earlier publication. We have designed it to help EI and PSI affiliates at national, regional and local level to identify the LGBT bargaining agenda and recruit and organise LGBT workers. It is aimed at all affiliates, whether they are relatively new to the LGBT agenda or well advanced along the road to LGBT equality. We also hope that individual members of EI and PSI affiliates in unions which have so far done little LGBT work will be able to use the information and analysis in this manual to move the issue further up their union agendas.

The manual covers discrimination based on sexual orientation (faced by lesbian, gay and bisexual workers) and discrimination based on gender identity (faced by transgender workers). Sexual orientation is distinct from and independent of gender identity – although one person can experience both forms of discrimination. But there is a long tradition of lesbian, gay, bisexual and transgender people working together to tackle both forms of discrimination, including in many of our unions.

Much of the primary data on union policy and action on LGBT issues contained in the following pages is derived from complementary surveys conducted by Education International and Public Services International in 2007. The EI survey attracted 42 responses: two from Latin America; five from North America and the Caribbean; three from Africa; 24 from Europe; and eight from Asia/Pacific. The PSI survey attracted 17 responses: two from Latin America and the Caribbean; five from North America; six from Europe; one from Africa; and three from Asia/Pacific. As the data in the surveys shows, many affiliates of both federations have already begun working for LGBT equality, some have achieved major breakthroughs with employers in the public and private sectors and with governments, while others are relatively new to the LGBT agenda.



A note on language

The language we use in all aspects of our lives is the result of the culture we have grown up with, our relationship to economic power and social class and our affiliation to social, cultural and political groups. The language also reflects developing understandings of sexual orientation and gender identity. It is important to note that the definitions we use are not exclusive and are not used by everyone on the same manner. It is also important that all trade union activists demonstrate their respect for LGBT people by learning the language LGBT people themselves prefer to be used in their local communities.

The following definitions are intended to help readers of this manual

Biphobia: prejudice against people who are, or appear to be, bisexual

Coming out/being out: when someone is open about their own sexuality or gender identity

Gender identity: a person's conception of their gender, which may or may not conform to the biological sex they were assigned at birth

Gender reassignment/transitioning: the process of change from the gender assigned at birth to the gender identified with, which may or may not involve surgical and/or medical procedures

Gender roles: describes socially determined sets of behaviours (i.e. "masculine" or "feminine") assigned to people based on their biological sex (i.e. male or female)

Heterosexism: attitudes, behaviours and practices predicated on the belief that everyone is heterosexual

Homophobia: prejudice against people who are, or appear to be, lesbian or gay

In the closet/closeted: when someone conceals their own sexuality

Sexuality/sexual orientation: someone's attraction to people of the same sex (gay or lesbian), the opposite sex (heterosexual) or both sexes (bisexual)

Stealth: when someone conceals their trans status

Transgender: someone whose deep conviction is that their gender does not conform to the biological sex they were assigned at birth (female/feminine – male/masculine)

Transphobia: prejudice against transgender people

Transsexual: the legal/medical term for someone who lives or intends to live permanently in their "new" gender



LGBT rights around the world

- ✓ LGBT RIGHTS ARE TRADE UNION RIGHTS
- ✓ MAJOR ADVANCES TOWARDS LGBT EQUALITY OVER PAST DECADE
- ✓ MORE COUNTRIES OUTLAWING DISCRIMINATION
- ✓ MORE COUNTRIES RECOGNISING SAME-SEX MARRIAGE/ PARTNERSHIP
- ✓ LGBT EQUALITY ON THE UNITED NATIONS AGENDA
- ✓ BUT HOMOPHOBIA, VIOLENCE AND MURDER REMAIN A CONSTANT DANGER EVERYWHERE
- ✓ 85 COUNTRIES CONTINUE TO CRIMINALISE HOMOSEXUALITY
- ✓ SOCIAL ACCEPTANCE CAN CHANGE DRAMATICALLY IN A SHORT SPACE OF TIME (EG, RISE IN HOMOPHOBIA IN EASTERN EUROPE)
- ✓ MAJORITY OF LGBT PEOPLE STILL CHOOSE NOT TO COME OUT AT WORK OR IN THEIR UNION
- ✓ UNIONS HAVE A VITAL ROLE TO PLAY IN MAKING THE WORKPLACE LGBT-FRIENDLY
- ✓ RECRUITING AND ORGANISING LGBT WORKERS MAKES UNIONS STRONGER AND MORE REPRESENTATIVE

Lesbian, gay, bisexual and transgender (LGBT) workers' rights are trade union rights and trade union rights are human rights: everything in this manual follows from those two straightforward propositions. That trade union rights are human rights is indisputable: the principle has been reaffirmed in a wide

range of founding documents, beginning with the Universal Declaration of Human Rights of 1948. And the proposition that LGBT workers' rights are trade union rights has gained ground throughout the international labour movement in recent years. Educational International and Public Services International, for instance, have undertaken



a considerable amount of joint work to advance LGBT equality. While some sections of union organisations may still protest, and some unions have yet to take much serious action to embrace the LGBT rights agenda, more and more unions are joining the struggle for LGBT equality today. In reality, this should hardly be surprising: since LGBT workers are members of trade unions, they are entitled to expect those unions to advance their economic, social, cultural and political rights.

The worldwide struggle to secure economic, social, cultural and political justice for lesbian, gay, bisexual and transgender (LGBT) workers has achieved many significant breakthroughs in the last decade or so.

The landmark Supreme Court decision in the *Egan v Canada* case in 1995 established that the Canadian Charter of Rights and Freedoms prohibited discrimination on the grounds of sexual orientation, although it was not specifically included in the original text. The Supreme Court decision meant that the relevant section of the constitution now applied to all laws prohibiting discrimination by all employers, landlords, service providers and governments.

South Africa's post-apartheid constitution was the first in the world explicitly to outlaw discrimination based on sexual orientation when it was adopted in 1996. In 1998 Ecuador followed suit by guaranteeing equality before the law, regardless of sexual orientation, in its Constitution.

Numerous countries now recognise same-sex partnerships in law, including Denmark, Norway, Portugal, Sweden, Greenland, Iceland, France, Germany, Finland, Croatia, New Zealand and the United Kingdom. And a number of countries have extended full marriage rights to same-sex couples, including the Netherlands, Belgium, Canada, Spain and South Africa.

In 2003, Brazil put the issue of sexual orientation on the agenda of the United Nations Human Rights Council by tabling a

draft resolution on human rights and sexual orientation which secured 26 co-sponsors, including the countries of the European Union, South Africa, Canada and New Zealand. While the resolution was never fully debated, its groundbreaking text has helped mainstream LGBT rights in the work of the UN Commission on Human Rights, and a year later the Brazilian government launched its own landmark programme 'Brazil without Homophobia' to combat discrimination and violence against LGBT people.

In 2006, at a meeting in Yogyakarta, Indonesia, a group of 29 international human rights experts drew up the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, affirming a set of binding legal standards with which all States must comply.

Just a few weeks later that same year, and after many years of labour movement lobbying, the European arm of the International Lesbian and Gay Association (ILGA-Europe) finally secured consultative status at the United Nations Economic and Social Council (ECOSOC) alongside LGBT organisations from Denmark and Germany, allowing them to contribute an LGBT perspective to the UN's central forum for discussing international economic and social issues.

And in 2007, in another important breakthrough after a long-term trade union campaign, the International Labour Organisation, the UN agency which promotes decent work throughout the world, included data and analysis on employment discrimination based on sexual orientation for the first time in its global report *Equality At Work: Tackling the Challenges* (ILO, 2007).

As the ILO global report pointed out, ***"international and national human rights institutions and mechanisms are attaching increasing importance to fighting discrimination based on sexual orientation" and many "countries have adopted legal provisions prohibiting discrimination at work based on sexual orientation."***



However, these important advances do not mean we are living through a period of slow but steady progress towards ever-increasing freedom for LGBT people worldwide: the reality is much more complex.

Witness the measurable increase in homophobia in some parts of Eastern Europe in recent years, where LGBT Pride marches have been banned in Poland (2005), Latvia (2006), Russia (2006) and Moldova (2006 and 2007) and rallies attacked by the far right, nationalists and religious extremists in Warsaw (2006), Bucharest (2006) and Moscow (2007).

Poland has been a particular flashpoint:

- ★ The Mayor of Warsaw banned the Warsaw Parade for Equal Rights (Parady Równości) in the capital in 2005.
- ★ Mirosław Sielatycki, the Director of the National In-Service Teacher Training Center (CODN), was sacked in 2006 for publishing the Polish version of a manual on human rights education commissioned by the Council of Europe which treats same-sex relationships no differently from opposite-sex relationships.
- ★ The Deputy Minister of Education Mirosław Orzechowski called a press conference in March 2007 to announce proposals to “prohibit the promotion of homosexuality and other deviance” in Polish schools.

None of this has gone unchallenged. Poland’s trade unions have joined with LGBT rights groups to protest, with 12,000 education workers demonstrating in Warsaw against government discrimination against teachers on the grounds of sexual orientation and political beliefs (the Polish Teachers’ Union ZNP – an EI affiliate – had also been targeted by the government because of its existence before 1989).

And Polish unions and LGBT activists have also had powerful international support:

- ★ the European Court of Human Rights in May 2007 ruled the ban on the Warsaw Parade for Equal Rights illegal and discriminatory (in the first case of a Pride march ban being challenged in Strasbourg).

- ★ Education International (among many others) condemned the dismissal of Mirosław Sielatycki: *“The eradication of all kinds of discrimination, including discrimination on the basis of sexual orientation, is a means of building peaceful societies based on diversity and inclusion. Schools are places where children should learn tolerance,”* General Secretary Fred van Leeuwen wrote in a letter to the Minister of National Education.
- ★ Amnesty International condemned the attack on teachers’ and students’ freedom of expression and assembly: *“If the measure is enacted, Poland would be in violation of its obligations under international and regional human rights treaties to which Poland is a state party and its commitments when the country joined the European Union,”* AI argued in a public statement in March 2007.
- ★ The European Parliament passed three resolutions within 18 months condemning the rise in racism and homophobia across Europe and notably in Poland (18 January 2006, 15 June 2006, 26 April 2007).

Overall, 85 member states of the United Nations continue to criminalise consensual same-sex relationships and behaviour between adults, according to the report *State Homophobia* (ILGA, 2007). Drafted in language rooted in deep-seated homophobia (eg, ‘gross indecency’, ‘unnatural sex’, ‘impudent acts’, ‘abominable crimes’ and ‘acts against the order of nature’), the statutes prescribe punishments ranging from fines and imprisonment (including life imprisonment) to the death penalty in seven countries including Iran, Nigeria and Saudi Arabia. These repressive laws, many of them inherited from the colonial era, may not be universally enforced, but, as ILGA points out, their very existence on the statute books “reinforces a culture where a significant portion of the citizens need to hide from the rest of the population out of fear.”

Yet even in countries where LGBT campaigning has achieved significant liberalisation over the past decade, prejudice and dis-



crimination remains a daily reality for many LGBT workers.

In Argentina two of the country's 23 provinces as well as the federal district of Buenos Aires allow same-sex couples to enter into civil unions which give them the same rights as married couples (excluding adoption) and two cities, including Buenos Aires, have adopted laws which combat some discrimination based on sexual orientation. Yet LGBT people continue to be the victims of harassment and discrimination, especially at the hands of some police members, who have the power in provincial legislation to detain people who have not committed criminal offences. In 2000, the trans activist Vanesa Ledesma died five days after she was arrested and tortured by police (she never emerged from detention) – one of over 100 trans people murdered by police between 1983 and 2000 (*The Rights of Transvestites in Argentina*, International Lesbian and Gay Rights Commission, 2001).

It's a similar story in Brazil, where discrimination on the basis of sexual orientation is outlawed in 73 municipal statutes, including São Paulo and Rio de Janeiro, and three state constitutions. Nevertheless, one LGBT person is murdered on average every three days, with fewer than 10 per cent of the murderers convicted and punished, according to the Grupo Gay da Bahia, Brazil's oldest LGBT rights group.

“Brazil lives very contradictory situations regarding LGBT issues,” says Brazilian gay activist Beto de Jesus in an interview published on the ILGA website in April 2004. ***“We have today in São Paulo one of the biggest Gay Pride Parades in the world, with over one million participants, but we still don't have laws that guarantee basic rights for LGBT citizens. We have a Parliamentary Front for Free Sexual Expression comprising almost 80 representatives and senators, but we cannot pass federal laws due to the intolerance of religious representatives.... We have a lot of institutional violence and homophobic crimes. Transvestites***

have restricted access to public schools and the labor market. However, there are no laws that criminalise homosexuality.”

In Australia, discrimination based on sexual orientation is now outlawed in one form or another in all states, and since 2001, transgender people have had the right to marry in their new gender; and yet in 2004, the Marriage Act was amended to specifically exclude same-sex couples (including those whose partnerships might have been legally recognised elsewhere in the world).

In the United Kingdom, a wide range of progressive laws have been passed since the late 1990s:

- ★ the Sex Discrimination (Gender Reassignment) Regulations 1999 make it illegal to discriminate against transgender workers;
- ★ the Employment Equality (Sexual Orientation) Regulations 2003 ban workplace discrimination based on sexual orientation;
- ★ the Gender Recognition Act 2004 gives trans people the right to change the gender on their birth certificate, granting them full legal recognition in their new gender;
- ★ the Civil Partnership Act 2004 means same-sex couples who register their partnerships can access the same rights as a married couple in areas such as workplace benefits, tax, social security, inheritance and parenting (including adoption).

In addition, during the same period, parliament equalised the age of consent and repealed Section 28 (which inhibited open discussion of sexual orientation in schools). And yet, intolerance and homophobia have not simply evaporated in the UK. In London alone, over the same ten-year period which has witnessed significant liberalisation of the LGBT legal framework, five gay men and one trans woman were murdered in hate crimes in addition to the three people (including a pregnant woman) killed in the bombing of the Admiral Duncan, a pub frequented by gay people, in 1999, which injured over 70 people.



Discrimination is always rooted in broader economic, social, cultural and political realities. Poverty is the most abject human injustice and it feeds many other types of injustices including discrimination, violence and corruption. Poverty and exclusion create conditions which render minorities all but invisible. This will continue to be the case as long as more than one billion people still living on less than a dollar a day, and 2.6 billion having to survive on two dollars or less, according to Social Watch's 2006 annual report (the widely respected independent study of social development, available at www.socialwatch.org). In addition, all minorities, including LGBT communities, tend to enjoy greater acceptance in a positive economic and cultural environment (witness the increased openness of many LGBT people in the Republic of Ireland in the 'Celtic Tiger' period of economic development). But when social realities come under threat (as they have during the marketisation of the Eastern European economies), life can become very difficult for any groups perceived to be 'other', whether they are ethnic minorities, migrants or LGBT people.

The extent of the discrimination experienced by workers who are, or appear to be, lesbian, gay or bisexual is usefully summarised in the ILO's *Equality At Work* report (trans workers face many of the same problems, and more of their own):

- * refusal of employment, dismissal, denial of promotion;
- * harassment: unwanted jokes, innuendo and loaded comments, verbal abuse, malicious gossip, name calling, bullying and victimisation, false accusations of child abuse, graffiti, abusive phone calls, anonymous mail, damage to property, blackmail, violence and even death threats;
- * benefits denied to the same-sex partner (eg, extra days off for a variety of reasons such as relocation, childbirth, parental leave, caring for a sick partner or bereavement; educational facilities for employees and their families; provision of the employer's goods or services free of charge or at a discount; survivor's benefit in occupational pension schemes or for the purposes

of life insurance; health-care insurance for employees and their families).

- * self-exclusion (eg, when homosexual persons avoid certain jobs, careers or employers for fear of being discriminated against on the basis of their sexual orientation).

Given these realities, trade unions can neither ignore nor marginalise their LGBT members. As Education International argued in its report on its first survey of LGBT issues among its affiliates: *"There always have been, there are now, and there always will be gay and lesbian students, teachers and education workers. It is just one more example of human diversity, in this case the diversity of human sexuality. It is simply a matter of teachers and trade unions knowing how to cope. The question we are raising is this: is it possible for a trade union organisation, established to defend the rights of all of its members, to ignore this reality?"* (First triennial Report on the situation of Gay and Lesbian Teachers and Workers in the Field of Education, EI, 2001).

At its World Congress in 1993, PSI adopted a resolution recognising that: *"Lesbian and gay workers throughout the world are confronted with various types of oppression and discrimination on the basis of their sexuality/sexual preference/sexual orientation; hostility towards and discrimination towards lesbians and gay workers by their colleagues, clients and managers constitutes harassment and is a legitimate trade union issue ...the tasks of trade unions include active prevention of and struggle against discrimination at work, on whatever basis, and improvement of the working conditions and working climate for all workers"*.

In fact, trade unions can – and do – get involved in national and international work to protect LGBT workers' rights, in more or less exactly the same way they take action to protect many groups and individuals who face prejudice and discrimination. Anything less is a dereliction of duty, given that the *raison d'être* of any trade union is to protect



and advance the economic (and social and political) interests of all its members.

But this is not only about union obligations. Many LGBT workers have not joined (or joined and then left) unions which have failed to address their concerns. Recruiting and retaining LGBT workers who have until now remained outside the orbit of the labour movement will benefit a union's size, negotiating strength and representative ca-

capacity. Similarly, developing LGBT activists will further increase the union's relevance to LGBT communities and initiate a "virtuous circle" whereby increased LGBT visibility strengthens not only recruitment of LGBT workers, but also their counterparts in other communities: indeed, the more diverse and less monolithic a union shows itself to be, the more effectively it will be able to recruit from a broad range of equity seeking communities.



Raising LGBT issues in the workplace

- ✓ COMING OUT ALWAYS UP TO EACH INDIVIDUAL LGBT WORKER. WHERE IT'S POSSIBLE, IT'S THE BEST APPROACH FOR THE INDIVIDUAL, THEIR EMPLOYER AND THEIR UNION
- ✓ WIDESPREAD WORKPLACE HOMOPHOBIA MEANS MAJORITY OF LGBT WORKERS ARE NOT OUT AT WORK
- ✓ UNIONS HAVE A RESPONSIBILITY TO HELP CREATE INCLUSIVE WORKPLACES

Union work for LGBT rights varies enormously depending on the overall legal framework for LGBT people. Where laws exist to protect LGBT workers, it's up to trade unions to ensure they are implemented. Where there is little or no legal protection, or even legalised discrimination, unions can provide the collective strength that begins to change an oppressive culture. In other words, whatever the legal background, unions have a crucial role to play to advance LGBT equality.

No one should be discriminated against at work because they are, or appear to be, lesbian, gay, bisexual or transgender (LGBT). Yet many LGBT workers choose to remain closeted at work because they fear the consequences of coming out.

Some of this has a personal component: even before they enter the world of work, many LGBT people will have experienced rejection inside their families and bullying and harassment at school or college – all of which will have left personal scars and very possibly a lingering sense that they are fundamentally unwelcome in the social mainstream. Research in New Zealand by Dr Gabrielle Maxwell and Janis Carroll-Lind,

revised in October 1997, showed the effects of bullying at school tended to endure. *“The results underline the special vulnerability of children and show that the hurt done is often considerable and long remembered.”*

Some of this is directly related to hostile workplace cultures: too many factories, offices and shops tolerate prejudice and discrimination in all its forms, from offensive banter and homophobic bullying to isolation and exclusion of LGBT workers and even physical violence. When employers claim that this behaviour is merely part of the rough and tumble of working life, this is to abdicate their responsibility to provide safety and protect the dignity of their workforce, let alone leadership. Managers should step in to challenge any behaviour which is likely to undermine the performance and productivity of any of their employees – anything less is bad for business, as the US-based organisation Out & Equal Workplace Advocates points out: *“To maximize the creativity that fuels innovation, a workplace must be without harassment, without mistrust, and without disrespect. When an employee can arrive at work free of inhibitions or worries, then that person will contrib-*



ute fully to their work and to the company's goals. Inclusiveness is simply good for business!" (*Fifteen Steps to an Out & Equal Workplace*, Out & Equal Workplace Advocates website, www.outandequal.org)

Unions have an enormous contribution to make with regard to LGBT inclusion, which provides significant benefits for individual members and the unions themselves. The most recent survey of PSI affiliates on LGBT issues at work reveals that even inside unions with long histories of positive policies and campaigning on LGBT equality, there sometimes remain groups of members who voice their disagreement about committing union resources to pro-LGBT initiatives. In addition, union cultures can encourage silence. When some unions claim they have never been asked to take up the fight on behalf of LGBT members, it is often an indication that their LGBT members don't believe their union to be working effectively on their behalf. After all, were a trade union to argue that there was no call for its contribution to collective bargaining in a particular enterprise, that would usually be considered an indication of systemic failure, not a token of enduring success.

An inclusive climate in the workplace offers benefits both to employers, in terms of improved productivity and worker loyalty, and to workers, through improved self-confidence and effectiveness. But there are many fac-

tors which prevent workers from coming out, including:

- * fears about job/career/promotion;
- * lack of 'out' senior staff;
- * organisational culture;
- * male attitudes/behaviours;
- * faith beliefs and values.

Of course, while visibility is an important ideal, coming out as LGBT at work or in the union must be up to the members themselves in all situations, taking into account the legal and social context, their personal histories, job security and family circumstances. Even in countries with full legal protection against discrimination, surveys suggest nearly half of all LGB workers conceal their sexual orientation at work. Equally, coming out may have different resonances for LGB and transgender people: many people who have undergone gender reassignment choose to live the rest of their lives without reference to their gender history and this is their right. Unions must be best practice organisations when it comes to protecting members' confidentiality.

Unions have considerable leverage in almost all of these areas and can and do take the lead in promoting a culture of inclusion and tackling prejudice, sexism, homophobia and transphobia where it exists. Much of this can be achieved through the policy and bargaining agendas outlined in the following chapters.



Adopting, implementing and reviewing union LGBT policies

- ✓ BEGINNING TO WORK FOR LGBT EQUALITY REQUIRES ADOPTION OF UNION POLICY
- ✓ POLICIES MUST COMMIT UNIONS TO BECOMING BEST-PRACTICE ORGANISATIONS FOR LGBT MEMBERS
- ✓ UNIONS MUST CREATE SPACE FOR LGBT MEMBERS TO SET THEIR OWN PRIORITIES
- ✓ POLICIES MUST COMMIT UNIONS TO BECOMING BEST-PRACTICE EMPLOYERS OF THEIR OWN LGBT WORKERS
- ✓ POLICIES MUST BE KEPT UNDER CONSTANT REVIEW
- ✓ UNIONS MUST TAKE LGBT COMMITMENTS INTO THE COLLECTIVE BARGAINING PROCESS

The declaration of the first joint EI-PSI international LGBT forum in Porto Alegre, Brazil in 2004 urged EI and PSI to (among other things):

- * adopt and implement resolutions on LGBT rights and ... encourage member organisations to adopt and implement similar resolutions;
- * encourage member organisations to adopt policies and mechanisms to detect and eliminate discrimination based on sexual orientation and gender identity and to mainstream related issues into the collective bargaining agenda;
- * adopt policies and mechanisms to detect and eliminate discrimination based on sexual orientation and gender identity

both within their own structures and at the workplace; and to mainstream LGBT issues into collective bargaining.

Much of this work is already underway in many EI and PSI affiliates. For instance, the 2007 survey of PSI affiliates revealed:

- * over half have adopted policy on LGBT workers' rights;
- * over half make specific reference to sexual orientation and gender identity;
- * almost two-thirds have measures to combat bullying and harassment.

The 2007 EI survey told a similar story. *"It is clear that some affiliates and regions have been more involved in solidarity and advocacy work around LGBT issues,*



some less, but in general there is an increasing trend of interest in working on these issues,” according to the *Third Triennial Report On The Rights Of Gay And Lesbian Teachers And Education Personnel* (EI, 2007).

Because unions are democratic organisations whose policies are determined by the members and their representatives, the crucial first step is to secure the adoption of positive policies at local, regional and national level. Exactly how this is done depends on the democratic structures set out in each individual union’s rulebook, but in most cases it will require policy-making bodies, such as delegate conferences, adopting the policies in the form of resolutions. Sometimes these initiatives will start locally: a small group of members may raise LGBT equality in their own workplace, leading to their branch adopting policy and slowly building support in other branches before taking it to the highest policy-making body of the union. In other cases, LGBT union work can start with the adoption of policy at the highest level, and local support can be built from there.

In many if not most cases, equality policies will already exist in one form or another. Union members and activists must decide on the best course of action to follow to ensure such equality policies are transformed into something comprehensive and inclusive, with explicit provisions for LGBT members.

Union policies should:

- * set out how the union will take action for LGBT equality in all aspects of its organisation, including as an employer itself;
- * detail what provision the union will make to help LGBT members organise themselves and develop union policy;
- * commit the union to taking its LGBT policies into negotiation with employers through the collective bargaining process.

Union policies should take account of the following principles:

- * policies must apply to all the services and benefits a union provides for its members,

including negotiation on pay and conditions, representation with an employer, provision of education and training and financial services;

- * policies must aim to both tackle discrimination and actively promote equality through positive action programmes;
- * policies must specifically include provision for LGBT members: it is neither acceptable nor effective to argue that LGBT members are covered where policies are silent;
- * policies must commit the union to becoming a best-practice employer of its own LGBT staff by, for example, including a comprehensive framework for tackling anti-LGBT harassment from co-workers, managers or union members;
- * policies must commit the union to becoming a best-practice organisation protecting the confidentiality of its own LGBT members: they should be able to participate in union LGBT activities without having to come out to their employers and anyone who has undergone gender reassignment while in union membership should have their records updated;
- * policies must include provision for review of their outcomes to ensure they are not allowed to become merely paper exercises.

Equal opportunities policies should be made available to all union members and staff with an explanation of why they’ve been adopted and how they affect everyone. They need to be accompanied by training, to challenge the ignorance and prejudice at the root of the hostility towards LGBT members in many unions.

It’s essential that unions provide space and networking opportunities so that LGBT members can meet together to develop LGBT policy and practice. These can include:

- * self-organised networks of LGBT members;
- * virtual/email networks for LGBT members moderated through the union’s electronic communication systems;
- * conferences, workshops and seminars for LGBT members to discuss LGBT issues.



- * Among EI affiliates, respondents in Europe, especially Western Europe, have addressed LGBT participation in terms of policy and action plans; as have affiliates in Australia and New Zealand and North America; while in Latin America and the Caribbean LGBT participation in the union is at least planned even if, generally at the moment, implementation is still lacking; and in Africa a draft background paper was produced to provide input for a regional roundtable discussion to promote LGBT participation among EI affiliates.
- * Among PSI affiliates, these structural initiatives are most effectively developed in North America, Europe and Australia/New Zealand:
- * working committees and specific meetings on LGBT workers' rights have been set up in North America, in Europe and in Australia/New Zealand.

It is vital that unions reflect these commitments at local level: unless branches and locals promote awareness of LGBT events organised at regional and/or national level,

individual LGBT members may either never get to hear about them or calculate the risk of exposure too great to ask to be sent as a delegate.

It is important that unions demonstrate their commitment to LGBT equality by ensuring their own structures display their commitment to inclusion. Some unions ensure they include provisions for LGBT members to take up leadership positions by, for instance, reserving seats on leadership boards, executive councils, and local branch structures. At the moment, these seem to be in the minority. Of the EI affiliates surveyed in 2007, only two unions, both in Europe, reserve leadership positions for LGBT activists; of the PSI affiliates surveyed, three reserve leadership positions: one in Latin America, one in North America and one in Europe.



Organising LGBT workers

- ✓ **UNIONS MUST DEMONSTRATE THEIR COMMITMENT TO LGBT EQUALITY BY JOINT WORK WITH LGBT ORGANISATIONS AND PARTICIPATION IN LGBT EVENTS (EG, PRIDE MARCHES AND FESTIVALS)**
- ✓ **UNIONS MUST DEVELOP INCLUSIVE CULTURES WITHIN THEIR OWN ORGANISATIONS**
- ✓ **UNION LEADERSHIPS MUST DEMONSTRATE THEIR SUPPORT FOR LGBT EQUALITY**

Unions can achieve a great deal when they commit resources (including staffing time and publicity) to organising LGBT workers and reaching out in partnership to LGBT communities. It's important that unions:

- * publicise their LGBT policies, including their policies against harassment and discrimination;
- * publish LGBT-related features in their union journals;
- * produce leaflets, posters, pamphlets and training materials on LGBT issues;
- * attend, participate and help organise LGBT Pride marches, parades and festivals, where they exist;
- * provide space for LGBT union members to meet, discuss and take action on LGBT issues;
- * ensure there is named officer support for LGBT members.

As is the case throughout the world of work, the best way of recruiting LGBT members is by being able to show that the union is actively committed to LGBT equality. Policies and publicity materials are important, but they can't be a substitute for action. Unions can often make common cause with LGBT organisations campaigning for change at a local, regional, national or international level, whether the aim of the campaign is to achieve legislative change (or defend legis-

lative gains) or to, for example, defend an LGBT organisation under attack by agents of the state, implementation of reactionary laws, or by private groups or individuals. The more unions raise their profile in active participation in LGBT campaigns, the greater their appeal to potential members from LGBT communities.

Participating in national campaigns such as the International Day against Homophobia breaks the silence and challenges attitudes that promote intolerance and diminish human rights. The International Day against Homophobia campaign has gained support from governments such as Canada and Mexico. The European Parliament also marks the International Day against Homophobia on May 17.

Participating in LGBT Pride marches, parades and festivals is another high-profile method of encouraging members to join, which many EI and PSI affiliates already take advantage of. The presence of union banners, placards and stalls at such events:

- * demonstrates the unions' commitment to LGBT equality;
- * recruits new LGBT members and encourages existing members to become LGBT activists;
- * develops practical support between unions and LGBT communities;



* raises the LGBT rights agenda.

When unions participate in Pride events, it also allows them to develop a dialogue with the organisers over the content and direction of the events as stakeholders.

In Brazil, the Sindicato dos Enfermeiros do Estado de São Paulo (SEESP, the São Paulo Nurses' Union) began working with the ABGLT, organisers of the annual Parada Gay (Gay Parade) about reviving the political and lobbying aspects of the parade so that it was not simply a party. ***"The impact was very positive: it opened a space for dialogue between trade unions defending workers and those organisations representing the LGBT community, so that they could work together,"*** says Solange Aparecida Caetano, SEESP President. ***"We were expecting a negative response, but on the contrary, we were praised for the initiative."***

In the Netherlands, the public services union Abvakabo always runs an information booth at Gay Pride as well as other LGBT events.

In Norway, the Norwegian Union of Municipal and General Employees Fagforbundet (the largest in the country, with 300,000 members) has participated in the labour movement stand in the Oslo Pride Village since 2004.

In Germany, ver.di, the United Services Trade Union, runs a stall at LGBT Pride events.

In Australia, WorkersOut! - a collective of unions and union members who identify as lesbian, gay, transgender, bisexual and intersex (LGBTI) - is working together to raise the profile and importance of union membership across the LGBTI community. The State Public Services Federation is actively involved in organising a strong visual presence for the labour movement at the Mardi Gras parade, one of the biggest LGBT events in the world. Similarly the Australian Services Union is actively involved in Sydney Mardi Gras and other LGBT Pride events through its national caucus of LGBT workers, GLAM.

The National Tertiary Education Union has a visible presence every year on the Labor Council float at the Sydney Gay and Lesbian Mardi Gras parade.

In the UK, UNISON says Pride events remain a prime opportunity to recruit members into the union, make contact with existing members and publicise its political campaigning messages.

In France the Union Nationale des Syndicats Autonomes (UNSA Education), Fédération Syndicale Unitaire (FSU) and Fédération des Syndicats Généraux de l'Éducation Nationale et de la Recherche Publique (SGEN-CDFT) are part of a civil society platform to increase awareness on LGBT issues and are actively engaged in educational activities.

The Canadian Teachers' Federation (CTF-FCE), Centrale des Syndicats du Québec (CSQ) and the Australian Education Union (AEU) have been challenging homophobia in schools joining public campaigns.

In United States, the National Education Association (NEA) works together with Gay, Lesbian and Straight Educational Network (GLSEN) to hold the national campaign "No Name-Calling Week". NEA publishes a guide for school employees and offered workshops across the nation to increase awareness of school safety issues.

In order both to attract and retain LGBT members, it's essential that unions take action to create an inclusive culture and environment within their own structures.

The understanding and commitment of the union's leadership is vital to advancing the LGBT agenda. Union leadership at local, regional and national level must understand why LGBT rights are union rights and must support equality for LGBT workers. Without this explicit support, it is difficult to move the LGBT agenda forward. Once a policy has been adopted, it can often be very useful for LGBT members to run a seminar for the union's leadership, setting out the benefits



of committing to the LGBT agenda for the union as a whole.

Because hostility continues to create problems for LGBT workers, it is essential that unions which commit to creating an inclusive environment allow LGBT members the opportunity to meet together to discuss issues which affect them and what they can do to resolve them. In addition to giving LGBT members the chance to set their own priorities in the union context, provision of space also encourages greater involvement of LGBT activists and ordinary members, and therefore helps retain people the union has recruited by demonstrating the leadership's good faith with regard to its LGBT commitments.

Unions can:

- * hold LGBT meetings, workshops, training sessions and conferences;
- * establish an LGBT committee or caucus;
- * create elected LGBT positions on union leadership committees;
- * create elected structures within the union for LGBT members (including self-organised LGBT groups).

All of these activities must be allocated adequate resources, including a budget for publicity and communications.

Many LGBT union members experience multiple discrimination by being members of other groups which also face prejudice (eg, women, disabled people, indigenous people, people from minority ethnic communities). It is vital that union structures established to combat discrimination are inclusive, so that space is created, for example, for minority ethnic representation within LGBT groups and for LGBT representation inside race equality groups.

The experience of EI and PSI affiliates shows the importance of LGBT members organising within their own unions. But this does not mean that they alone are responsible for tackling homophobia, biphobia and transphobia: this still remains the responsibility of every part of the union.



Bargaining for LGBT workers

- ✓ COLLECTIVE BARGAINING NOT ONLY SECURES BENEFITS FOR LGBT WORKERS: IT ALSO HELPS ADVANCE THE WIDER PROCESS OF SOCIAL AND POLITICAL REFORM
- ✓ UNIONS SHOULD DEVELOP COMPREHENSIVE EQUALITY ACTION PLANS WITH EMPLOYERS
- ✓ POLICIES SHOULD INCLUDE A FRAMEWORK FOR COMBATING HARASSMENT, WHICH REMAINS THE BIGGEST ISSUE FOR LGBT WORKERS
- ✓ COLLECTIVE BARGAINING AGENDAS ARE SIGNIFICANTLY DIFFERENT FOR LGB AND TRANS WORKERS
- ✓ LGB WORKERS SHOULD BE ABLE TO ACCESS ALL BENEFITS AVAILABLE TO HETEROSEXUAL COUNTERPARTS, INCLUDING FAMILY-FRIENDLY AND WORK/LIFE BALANCE POLICIES
- ✓ TRANS WORKERS SHOULD BE TREATED AS THE GENDER IN WHICH THEY LIVE, WHICH SHOULD BE REFLECTED IN THE UPDATING OF THEIR PERSONNEL RECORDS
- ✓ UNIONS SHOULD NEGOTIATE TIME OFF FOR TRANSITION WHERE NECESSARY

Advancing the LGBT agenda in collective bargaining, even at local level, can have enormous significance: in practical and concrete terms, it secures benefits for LGBT workers in the local area; at a more symbolic level, it announces the union's commitment to equality; and in ways that might be difficult to imagine at the time, it can help shift momentum in favour of widespread, more fundamental change.

As Canadian academic Alan Sears pointed out when the Canadian federal government extended marriage rights to same-sex couples in 2003, it was possible to trace that dramatic legal change back through two decades of small victories by the Canadian labour movement (*Canadian Unions Fight For Same Sex Marriage*, Labor Notes, August 2005). Sears argues the legal victory is rooted as far back as 1981, when the Canadian Union of Postal Workers (CUPW) became the first union in the country to win collective



agreement language prohibiting discrimination on the basis of sexual orientation (at a time when discrimination was wholly legal everywhere in the country except Quebec); and 1985, when a library local of the Canadian Union of Public Employees won collective agreement language recognising same-sex partners as spouses. Starting with such modest demands, few LGBT activists could have imagined that marriage would be extended to same-sex couples just two decades later.

Unions and employers should begin by developing an effective equality action plan, based on the following principles:

- * to work in partnership to combat prejudice and discrimination;
- * to regularly review all policies, procedures and practices to ensure they are LGBT-friendly;
- * to consult LGBT workers and service users on taking steps to achieve equality;
- * to ensure services are appropriate to the diversity of LGBT service users;
- * to publicise the equal opportunities policies and statements;
- * to co-operate to monitor progress towards equality;
- * include LGBT issues in equality training;
- * insist that contracting companies and external agencies comply with equality policies.

When unions and employers adopt an equality action plan, they must agree how and when the action plan will be reviewed, and by which yardsticks success will be measured.

Some of this should be relatively straightforward: for instance, monitoring an employer's commitment to advertise vacancies in LGBT media (where they exist) is something that either has or hasn't been done.

However, some issues require enormous sensitivity, such as workforce monitoring, as the TUC in the UK notes: ***"The fact that one of the commonest problems faced by LGB or T workers is harassment and abuse means that many people still conceal their sexuality or gender identity."***

Most LGB workers are not 'out' at work: maybe homophobic 'banter' is commonplace, maybe they fear what would happen at home if their own families find out. Trans workers can face similar kinds of abusive behaviour. Invisibility is the most important difference from race and gender discrimination and it has very important consequences for deciding whether to extend monitoring to cover sexual orientation or gender identity." (LGBT Equality in the Workplace: A TUC guide for union negotiators on lesbian, gay, bisexual and trans issues, 2006)

The TUC suggests four principles should be adhered to when it comes to workforce monitoring:

- * a full LGBT equality policy should already in place, and action to implement it;
- * clarity about why monitoring for sexual orientation and gender identity is being carried out, and what will be done with the results;
- * consultation on, and explanation of, the purpose of the exercise, prior to completion of the plan and implementation;
- * an absolute guarantee of confidentiality of the information collected.

Union action to ensure workplaces become and remain LGBT-friendly partly depends on the legal context: in a country where there are laws protecting LGBT rights, the union has a duty to ensure employers and co-workers adhere to them, while negotiating to extend those protections beyond the legal minimums; in a country with little or no legal protection, unions should be confident about advancing the process of reform through the collective bargaining agenda.

The many areas of common concern mean that lesbian, gay and bisexual members tend to organise alongside transgender members in the struggle for workplace equality. But there are important differences which unions need to take account of in the development of the collective bargaining agenda. For this reason, the guiding principles for both sets of workers are set out separately below. In addition, model language used by NUPGE



(Canada) and a model statement developed by UNISON (UK) are included as appendices to guide EI and PSI affiliates in their work in this area.

Collective bargaining for lesbian, gay and bisexual workers

Lesbian, gay and bisexual workers face potential and actual discrimination when applying for jobs, remaining in work, seeking promotion and when in trouble at work. This includes:

- * not being appointed to jobs;
- * verbal and physical abuse from co-workers, managers and service users;
- * unfair allocation of work;
- * excessive supervision of work;
- * prejudiced attitudes about suitability to work with young people or other vulnerable groups;
- * not being considered for training or promotion;
- * non-recognition of partners and/or children;
- * refusal of benefits available to other workers.

Unions seeking to advance LGB rights through the collective bargaining agenda should develop their work according to the following guidelines

Equal opportunities policy

No equal opportunities policy is truly comprehensive if it does not specifically include sexual orientation (or an equivalent term). In addition, all other policies must include specific equal opportunities clauses cross-referenced to the over-arching equal opportunities policy, which state that the policy will be put into practice without discrimination and with the aim of promoting equality.

Harassment and bullying

Harassment and bullying are some of the most common forms of discrimination experienced by lesbian, gay and bisexual work-

ers. Some of this may be directly targeted at particular workers who are, or appear to be, lesbian, gay or bisexual, while some of the abuse takes the form of general prejudiced remarks designed to create a hostile environment in which no one would feel comfortable talking about their own sexuality, or that of their children, family or friends.

However, large numbers of lesbian, gay and bisexual workers still refrain from making any formal complaint, and those that do can often be accused of lacking a sense of humour, being over-sensitive, taking things the wrong way, or even blamed for being open about their sexuality.

If the employer has already agreed a policy to tackle harassment, the union should ensure it explicitly covers lesbian, gay and bisexual workers. The policy should include a confidential complaints procedure so that anyone can make a complaint without fear of reprisal and without needing to out themselves if they do not wish to do so.

Workers whose job requires them to interact with service users run the risk of encountering prejudice in all its forms. It is neither practicable nor acceptable to try to deal with harassment of lesbian, gay or bisexual staff by service users by advising or instructing staff to conceal their sexuality (eg, by changing their appearance) or not to challenge homophobia or biphobia (eg, by remaining silent in the face of general or particular explicit prejudice).

Family-friendly policies and work-life balance

Many lesbian, gay and bisexual workers keep their family life private in an understandable attempt to avoid encountering prejudice about their role in a non-traditional family, which can contribute to the perception that they have no family life and therefore no need to access rights to maternity leave, maternity support leave or dependant care leave. This is far from true in a growing number of cases worldwide.



When negotiating access to the various forms of family leave, unions should ensure family-friendly policies are predicated on the social rather than biological or legal views of parenthood. This is simply a matter of ensuring that the wording of policies is inclusive:

- * childcare policies should refer to “parents” in preference to “mother and father”;
- * leave around the birth of a child should be referred to as “maternity support leave” rather than “paternity leave”;
- * references to marriage should include civil partnership or civil unions (where they exist);
- * benefits offered to unmarried partners should be available to same-sex as well as opposite-sex couples.

LGB workers who need to apply for special leave (eg, after bereavement) can face enormous problems when arrangements for special leave are discretionary (as they often are), line managers are homophobic (as they often are) and they workers themselves are not out (as they often aren't). For these reasons, unions should negotiate a system whereby workers can apply for special leave to a confidential point of contact, usually a named person in the human resources/personnel department.

Employers should not fear the extension of family-friendly and work-life balance policies to LGB workers. The cost of ensuring policies and terms and conditions are inclusive is minimal, but the potential returns are significant: the improved attendance and retention that are likely outcomes mean that there is a clear business case for the change.

Collective bargaining for transgender workers

The workplace can be a harsh environment for transgender workers, especially during and after the process of transition. **“Our research finds that transition in a place of work is a major trigger point for experiencing inequality and discrimination.”** (*Engendered Penalties: Transgender and Transsexual People’s Experiences of Inequality and Discrimination, A Research*

Project and Report Commissioned by the Equalities Review, Stephen Whittle, Lewis Turner and Maryam Al-Alami, February 2007)

Transgender workers can be:

- * discriminated against during the recruitment process;
- * verbally and physically harassed at the workplace;
- * compelled to take lower-paid jobs;
- * forced out of jobs by their managers and/or co-workers.

Unions should:

- * support union members through the process of transition;
- * negotiate clear procedures with employers covering transition in the workplace, in consultation with trans members;
- * stand up against harassment of trans workers;
- * make the case for training of managers, co-workers and service users.

The following guidelines should apply to collective bargaining on equality for transgender workers

Gender identity

Unions should ensure that transgender workers are treated as the gender in which they live, regardless of whether or not they have completed the process of gender reassignment, medically or legally.

Training for staff and service users

Unions should argue for staff training to ensure managers and co-workers understand the issues around transition, in consultation with any transgender individuals who wish to be involved. This is especially important around single-sex facilities such as toilets and changing areas, where ignorance among co-workers can cause enormous difficulties for trans people. **“A fine line has to be observed between the privacy of the trans person and the obvious nature of such**



a transition at work: involving the trans person in any communication should minimise difficulties.” (*Out At Work*, TUC, 2007)

Time off for treatment

Time off for transition is essential, with the length of time required varying according to the needs of each individual and the accessibility or otherwise of medical and surgical resources. It should be negotiated to be taken as special leave or sickness absence (the latter is much less satisfactory in enterprises where a set number of days of sickness absence triggers disciplinary procedures). Wherever possible, time off should be paid leave.

Personnel records

All personnel records (including security passes, internal contact lists, etc.) should be amended to record a trans worker’s new gender identity when they request it. Any mention of a person’s previous gender in an employer’s reference should only be made with their explicit permission. Old records should be kept confidential or destroyed.

Harassment and bullying

Because trans workers are vulnerable to abuse and harassment, it is essential that their rights are specifically included in anti-harassment policies and/or statements.



International action for LGBT rights

- ✓ MAJOR DEVELOPMENTS IN INTERNATIONAL HUMAN RIGHTS LAW TO ADVANCE LGBT EQUALITY IN THE PAST DECADE
- ✓ KEY MECHANISMS OF THE UNITED NATIONS AFFIRM RESPONSIBILITY OF MEMBER STATES TO PROTECT LGBT PEOPLE FROM DISCRIMINATION
- ✓ ILO INCLUDING SEXUAL ORIENTATION IN ITS GLOBAL REPORT OF EMPLOYMENT DISCRIMINATION
- ✓ YOGYAKARTA PRINCIPLES DRAWN UP BY HUMAN RIGHTS EXPERTS TO AFFIRM BINDING LEGAL STANDARDS WITH WHICH ALL STATES MUST COMPLY, INCLUDING FOUR KEY PRINCIPLES FOR TRADE UNION WORK
- ✓ DECLARATION OF MONTREAL SUMMARISING KEY DEMANDS OF LGBT MOVEMENT ADOPTED AT 2006 INTERNATIONAL CONFERENCE ON LGBT HUMAN RIGHTS
- ✓ EDUCATION INTERNATIONAL AND PUBLIC SERVICES INTERNATIONAL CONTINUING TO DEVELOP JOINT WORK FOR LGBT EQUALITY THROUGH INTERNATIONAL LGBT FORUMS AND OTHER MECHANISMS
- ✓ MANY UNIONS ORGANISING JOINT WORK WITH INTERNATIONAL COUNTERPARTS



International trade union work for LGBT rights has scored a series of significant breakthroughs in recent years, some of which were highlighted in Chapter One and more of which are detailed below. This work is especially important given that the founding documents of international human rights law were all silent on sexual orientation and gender identity – unsurprisingly, since they were all drawn up long before LGBT rights had been established in most

national, let alone international, legal frameworks:

- ★ the United Nations Charter (1945)
- ★ the Universal Declaration of Human Rights (1948)
- ★ the European Convention on Human Rights (1950)
- ★ the International Covenant on Civil and Political Rights (1966)
- ★ the International Covenant on Economic, Social and Cultural Rights (1966).

However, key human rights mechanisms of the United Nations have now affirmed states' obligation to ensure effective protection of all persons from discrimination based on sexual orientation or gender identity.

- * In 1994, in the *Toonen v Australia* case, the United Nations Human Rights Commission ruled that criminal prohibitions on gay male sexual activity in Tasmania at the time contravened the right to privacy enshrined in Article 17 of the International Covenant on Civil and Political Rights.
- * In 1995, the Coalition of Activist Lesbians in Australia first gained UN Economic and Social Council (ECOSOC) accreditation as a Non-Government Organisation. They have since been involved in the work of the Commission on the Status of Women (CSW) and in the follow up process to the UN World Conference on Women in Beijing.
- * In 1999, the Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions included cases of severe persecution of members of sexual minorities in her reports to the Human Rights Commission.
- * In 2001, the Special Rapporteur on freedom of expression held a meeting with transgender activists while on official mission to Argentina.
- * In 2001, the Special Representative on human rights defenders met Colombian LGBT organisations working with members of sexual minorities, people living with HIV/AIDS and sex workers.
- * Also in 2001, the Special Rapporteur on torture raised the issue of torture and discrimination against sexual minorities before the UN General Assembly in New York.
- * In 2002, the United Nations Working Group on Arbitrary Detention argued that the arrest and trial of 50 gay men in Egypt on the grounds that their sexual orientation incited social dissension "constitutes arbitrary deprivation of liberty."
- * In 2003, Brazil tabled a resolution on human rights and sexual orientation at the United Nations Human Rights Council which secured the co-sponsorship of 26 countries.

- * In 2004, the Special Rapporteur on health declared: "***discrimination on the grounds of sexual orientation is impermissible under international human rights law. The legal prohibition of same-sex relations in many countries, in conjunction with a widespread lack of support or protection for sexual minorities against violence and discrimination, impedes the enjoyment of sexual and reproductive health by many people with lesbian, gay, bisexual and transgender identities or conduct.***"
- * The United Nations High Commissioner for Refugees has interpreted the definition of refugees as "individuals who have a well-founded fear of persecution based on grounds of race, religion, nationality, membership of a particular social group or political opinion" to include lesbians and gay men (as members of a particular social group), an interpretation which has been accepted by many states.
- * In 2006, the United Nations Economic and Social Council (ECOSOC) granted consultative status to three LGBT non-governmental organisations (NGOs) addressing human rights violations based on sexual orientation and gender identity: the Danish National Association for Gays and Lesbians (LBL), the Lesbian and Gay Federation in Germany (LSVD) and the European Region of the International Lesbian and Gay Association (ILGA-Europe).
- * In 2007, the International Labour Organisation, the UN agency which promotes decent work throughout the world, included an analysis on employment discrimination based on sexual orientation for the first time in its global report *Equality At Work: Tackling the Challenges* (ILO, 2007). As a reminder of the necessity to monitor the implementation of any legal achievements, the report points out that while the European Union's Employment Equality Directive of 2000 (which commits states to "equal treatment in employment and training irrespective of religion or belief, disability, age or sexual orientation"), there have been "shortcomings" in its implementation:



- * in some member states, such as Estonia, the definition of harassment is more restrictive than in the Directive;
- * in others, such as France, there is no specific provision making instruction to discriminate on this ground unlawful;
- * in Latvia, discrimination based on sexual orientation in vocational guidance and training is not prohibited;
- * and in many countries, national anti-discrimination bodies do not cover sexual orientation.

While all of these decisions, taken together, constitute significant advances for LGBT equality – many of them accomplished with effective contributions from affiliates of EI and PSI alongside other union labour movement bodies – there is no doubt that the issue remains profoundly contested at international level, and many states continue to fail in their human rights obligations when it comes to LGBT workers.

In an attempt to chart a way forward for both the United Nations and governments to ensure the universal reach of human rights protections, a group of 29 international human rights experts drew up the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity in November 2006 at a meeting in Yogyakarta, Indonesia. The Principles affirm binding legal standards with which all States must comply. Of particular importance for trade unions committed to securing LGBT workers' rights, the principles call on states to:

- * take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of sexual orientation and gender identity in public and private employment, including in relation to vocational training, recruitment, promotion, dismissal, conditions of employment and remuneration;
- * eliminate any discrimination on the basis of sexual orientation or gender identity to ensure equal employment and advancement opportunities in all areas of public service, including all levels of government service and employment in public func-

- tions, including serving in the police and military, and provide appropriate training and awareness-raising programmes to counter discriminatory attitudes;
- * take all necessary legislative, administrative and other measures to ensure the rights to peacefully organise, associate, assemble and advocate around issues of sexual orientation and gender identity, and to obtain legal recognition for such associations and groups, without discrimination on the basis of sexual orientation or gender identity;
- * take all necessary legislative, administrative and other measures to ensure a favourable environment for activities directed towards the promotion, protection and realisation of human rights, including rights relevant to sexual orientation and gender identity.

The full text of the Yogyakarta Principles is available online at: <http://yogyakartaprinciples.org>.

“UN human rights mechanisms have advocated full enjoyment of human rights and full inclusion of all persons in the development process, irrespective of sexual orientation, gender identity or other characteristics,” explained Professor Vitit Muntarbhorn of Thailand, co-chair of the experts' group when the principles were first published. ***“The Yogyakarta Principles are based on the positive development of international law and provide clarity for the needed actions in regard to sexual orientations and gender identity.”***

Given both the uneven development of the LGBT rights agenda between states and the fundamentally internationalist perspective of the labour movement, it is not surprising that many unions are both asking for help from, and providing support to, their counterparts around the world.

In Latin America, some of this work has included:

- * SEESP (Brazil) has initiated an exchange with UNISON in the UK to share informa-



tion and best practice (both unions organise in the nursing sector).

In North America, some of this work has included:

- * CUPE (Canada) helped organise and finance the Workers Out! conference in Montreal in 2006.
- * PSAC (Canada) supported three PSI representatives from the South to attend the 2006 Workers Out! conference
- * BCGEU (Canada) has responded to calls for urgent action on LGBT issues issued by Amnesty International.

In Europe, some of this work has included:

- * ABVAKABO (Netherlands) was one of the main promoters of the 1998 international conference on homosexuality, trade unions and work held in Amsterdam; sent delegates to the 2002 and 2006 Workers Out! conferences; and has set up a twinning relationship with the PSI Brazil LGBT group.
- * In Norway, a network of unions held a conference on LGBT issues in labour life to coincide with EuroPride in Oslo in 2005, with the Education International general secretary a keynote speaker.
- * ver.di (Germany) sent delegations of activists to the Homosexuality, Trade Unions and Work Conference in Amsterdam (1998) and the EI/PSI LGBT forums in Porto Alegre in 2004 and Vienna in 2007.
- * UNISON (UK) has actively participated in the first three Workers Out! conferences; raised LGBT rights with international guests at its annual conference and on its delegations to other countries (eg, Poland 2007); and organised extensive fund-raising for Jamaican LGBT group J-FLAG.
- * In Spain, Comisiones Obreras, the national centre, and the Federación Estadual de Lesbianas y Gays (FELGT) have signed a cooperation agreement to tackle discrimination in the workplace and challenge homophobia in schools. FELGT and the Federación de Enseñanza of the Worker's Commission have also set up online training programs.

A number of international forums have provided significant support for the advance of the international LGBT rights agenda in the global trade union movement.

EI and PSI organised their first International LGBT Forum at Porto Alegre, Brazil, in 2004 (its declaration is included as Appendix III). In addition to a number of key recommendations for EI and PSI affiliates, the declaration also made a series of specific demands, including:

- * that the International Labour Organisation (ILO) refer explicitly to discrimination at work based on sexual orientation or gender identity in their programs and action plans; and develop and disseminate guidelines related to the elimination of discrimination on grounds of sexual orientation or gender identity;
- * that UNESCO and Education for All include sexual diversity in its training tools;
- * that UNAIDS programmes contain non-discriminatory references to human sexuality and gender;
- * that non-governmental organisations document discrimination at the workplace and coordinate joint actions with trade unions at national, regional and international level;
- * that governments promote, protect and enforce respect for existing standards for the promotion of human rights and non-discrimination; and amend national legislation in order to eradicate discrimination on the basis of sexual orientation and gender identity.

The full text of the declaration is available online at: www.ei-ie.org/glbtforum/.

Many EI and PSI affiliates participated in the third Workers Out! conference in Montreal, Canada, in July 2006, where a total of 1,500 participants endorsed the Declaration of Montreal.

The declaration is an attempt to summarise the main demands of the international LGBT movement in the broadest possible terms, and was designed to be used:



- * as an adaptable advocacy and campaigning tool by individuals and organisations;
- * to promote the principles enshrined in the statement. The full text is available online (in English, French, Spanish and Catalan) at: www.declarationofmontreal.org/.

EI and PSI:

- * raise LGBT workers' rights on a regular basis at their decision-making forums;
- * speak at NGO panel events at the UN Human Rights Council in Geneva;
- * develop web based information and exchange;
- * promote training and awareness programmes at national level;
- * carry out awareness raising programmes with their own staff;
- * produce and distribute widely training modules on sexual orientation and other diversity issues;
- * facilitate exchange programmes for LGBT activists to learn about work in developed countries;
- * facilitate participation of developing country representatives at the workers' out conference;
- * condemn acts of harassment and violence against LGBT workers;
- * encourage the ILO to take up LGBT workers' rights issues under Convention 111 on non-discrimination in employment;
- * lent their institutional weight to the call for ILGA accreditation at the ECOSOC;
- * signed on to the petition to support the resolution on human rights and sexual orientation at the UN Human Rights Council;
- * distributed among their membership information concerning the Yogyakarta Principles;

- * encouraged other global unions to support work to promote the rights of LGBT workers;
- * placed the issue of sexual diversity and LGBT workers on the agenda of the global union council.

The advances of the last few years have seen significant breakthroughs in the struggle for LGBT workers' rights throughout the world. Many unions have continued to work for their LGBT members and more have joined the struggle. Educational International and Public Services International have continued their ground-breaking work to secure equality for LGBT workers worldwide. Many countries have passed progressive legislation outlawing discrimination at the workplace and beyond. Many non-governmental organisations have taken up the issues; the first LGBT NGOs have secured a voice at the United Nations; and the number of international agencies beginning to prioritise LGBT rights is growing. This is a very different world from the one that existed in 2000, when EI and PSI published the first version of this manual. After years of securing strictly limited advances, trade unions, trade union federations, global unions and their allies around the world have made a qualitative leap into the future. There may yet be setbacks – there almost certainly will, since forward progress is rarely linear. But the movement for LGBT workers' rights looks set to make very considerable advances towards genuine equality in the years ahead.



Appendix 1

Collective bargaining model language (NUPGE, Canada)

The following contract language is model language that NUPGE has developed and included in one form or another in many of the 3,000 collective agreements negotiated by the union.

Non-discrimination

The parties shall not discriminate against any employee because of age, race, colour, creed, national or ethnic origin, political or religious affiliation, sex, gender identity, sexual orientation, marital status, same-sex partnership status, physical disability, mental disability, conviction for which a pardon has been granted, union membership or participation in the lawful activities of the union.

Anti-harassment

The parties recognise the right of employees to work in an environment free from harassment based on age, race, colour, creed, national or ethnic origin, political or religious affiliation, sex, gender identity, sexual orientation, marital status, same-sex partnership status, physical disability, mental disability, conviction for which a pardon has been granted, union membership or participation in the lawful activities of the union.

Health benefits

Eligible dependents include: the employee's spouse (including a married spouse or a common-law spouse of the same or opposite sex) and the employee's children (including a natural child, adopted child, step-child, child under a guardianship order, and the child of the employee's spouse where the employee intends to treat the child as his or her own). Application for benefits shall be kept confidential.

Pension benefits

A retiree is an employee of the Employer who retires under the pension plan. The spouse of a retiree is the employee's spouse (either married or common-law of the same or opposite sex)

Leave of absence

An employee who provides a certificate from a medical practitioner confirming that the employee requires a leave of absence in order to undergo the medical procedure(s) related to a physical change from one gender to another shall be granted a leave of absence without loss of service or seniority and will be eligible for sickness and accident coverage while absent.

Bereavement leave

In the case of a death in the immediate family, an employee shall be entitled to five consecutive days' leave, without loss of pay and adequate additional time without pay for extended travel. "Immediate family" means the employee's spouse (including a common law spouse of the same or opposite sex), child, parents, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, grandchildren, grandmother, grandfather and any relative living in the employee's household.

Marriage/commitment ceremony leave

An employee who gives the employer at least two weeks' notice shall be granted special leave with pay but not more than five days, for the purpose of getting married or participating in a commitment ceremony.



Family leave of absence

The Employer shall grant a request for leave of absence because of illness, injury or medical emergency of the employee's immediate family. "Immediate family" means the employee's spouse (including a common law spouse of the same or opposite sex), child,

step-child, foster child, parents, step-parents, foster parents, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, grandchildren, grandmother, grandfather and any relative living in the employee's household or relative who is dependent on the employee for care or assistance.

Appendix 2

Collective bargaining model statement (UNISON, UK)

This model statement on sexual orientation and gender identity has been developed by UNISON in the UK to help its branches negotiate inclusive collective bargaining agreements. This statement has been jointly agreed by management and the trade unions, who are equally committed to its implementation.

1. (Name of employer) recognises and values the diversity of its workforce

- * We are committed to creating an environment where the sexual orientation and gender identity of all workers and service users are respected, and where all are afforded dignity and equal rights.
- * We also recognise and value the diversity of lesbian, gay, bisexual and transgender (LGBT) people themselves, who are of every age, race, nationality, religion, disability, occupation, and family situation.

2. (Name of employer) recognises the existence of discrimination and prejudice

- * We recognise that false assumptions, prejudice, discrimination and stereotyping are widespread in society and that to achieve our aim, we must take steps to actively promote equality and combat prejudice, discrimination and harassment.
- * We will not make assumptions about people's sexual orientation, gender identity, relationships or caring responsibilities.
- * We will not discriminate either directly or indirectly against job applicants or workers on grounds of sexual orientation or gender identity, including in recruitment, selection, promotion, training, pay, conditions, leave or benefits.
- * We will not discriminate either directly or indirectly on grounds of sexual orientation or gender identity in the delivery of our services.



- * We will not discriminate on grounds of sexual orientation, gender identity or marital/Civil Partnership status in the provision of family benefits or facilities for job applicants, workers or service users.
- * We will not tolerate prejudice or harassment.
- * We will take seriously and investigate any complaints of discrimination or harassment, using the agreed procedures and respecting confidentiality.

3. (Name of employer) recognises the need to take positive steps to promote equality and tackle discrimination

- * We will work with the trade unions to take positive action to redress past and present discrimination, both individual and institutional. All policies, procedures and practices will be regularly reviewed in consultation with the trade unions, for their impact on equality on grounds of sexual orientation and gender identity.
- * Our literature, language, publicity and images will reflect the diversity of the workforce, including LGBT members.
- * We will work to provide services accessible and appropriate to the diversity of LGBT service users.
- * We will consult LGBT workers and service users on steps to equality.

4. (Name of employer) recognises people's right to be open about their sexual orientation/transgender identity and their right to keep this confidential

- * We aim to provide a supportive environment for LGBT workers and service users who wish it to be known they are LGBT and respect the confidentiality of those who do not.

- * We recognise that to out someone without their permission is a form of harassment and we will treat it as such.
- * We recognise that this has implications for record keeping, for how some rights can be accessed and for how complaints of discrimination are reported and investigated.
- * We will support workers undergoing gender reassignment and work with them and their trade union representative to agree a process for this in the workplace.
- * We will ensure that workers who have undergone gender reassignment are treated in all respects as the gender in which they live.

5. (Name of employer) is committed to effective implementation and monitoring of steps to equality

- * We will publicise this statement widely and include it in our equality strategy and equality action plan.
- * We will work with the trade unions to monitor and report on progress in achieving our aims.
- * We will establish clear lines of responsibility and accountability and make sure they are well publicised.
- * We will include these equality issues in existing training programmes, and run specific training where necessary.
- * We recognise that effective implementation requires the full participation of the trade unions.
- * We will make clear to contracting companies and external agencies that they are expected to demonstrate compliance with our equalities policies.



Appendix 3

Porto Alegre Declaration

Education International (EI) and Public Services International (PSI) Declaration, 1st International Lesbian, Gay, Bisexual and Transgender (LGBT) Forum

The participants of the First EI/PSI International Lesbian, Gay, Bisexual and Transgender (LGBT) Forum meeting in Porto Alegre (Brazil) from 19 to 21 July 2004,

- * Recalling the importance of the inherent dignity and of the equal and inalienable rights of all human beings as the foundation of freedom, social justice and peace in the world;
- * Reaffirming the principle of universality, indivisibility and interdependence of human rights, the full enforcement of which will require the elimination of all forms of discrimination;
- * Calling on all members of Education International and Public Services International to recognise that we are all responsible for making sure that human rights are reaffirmed through our ways of thinking and in our actions;
- * Taking note of the progress that has been achieved during the past decades to eradicate discrimination based on sexual orientation and gender identity;
- * Concerned by the obstacles that remain in many countries to the full enjoyment of civil, political, economic, social and cultural rights of all peoples, in particular those who are excluded or discriminated against on grounds such as gender, race, ethnic group, nationality, disability, religion or socio-economic status;
- * Concerned that the rights of sexual minorities are not explicitly recognised in most international and national standards and instruments; and that therefore discrimination and inequality based on sexual orientation and gender identity continue to persist at different levels. These include employ-

ment; access to public services; criminal and civil law; failure to recognise legally atypical personal relations such as same-sex partnerships and de facto couples; lack of support for lesbian, gay, bisexual and transgender young workers; and the specific needs of transgender people;

- * Being aware of the diversity in the lesbian, gay, bisexual and transgender communities and lifestyles, the social, cultural and even linguistic diversity, the needs for different age groups and the differences in accessibility of information on these topics;
- * Convinced that the workplace must be a space free of discrimination of any kind, including bullying and violence, and that trade unions must play an important role in ensuring full respect for the dignity and fundamental rights of all workers;
- * Acknowledge that campaigns for equal rights for LGBT workers will be strengthened if they are integrated successfully into broader rights campaigns at national, regional and international level;
- * Taking into consideration the constitutions of both Education International and Public Services International and the policies and resolutions approved by both EI and PSI;
- * Acknowledging the work done on LGBT issues and the results obtained by individual affiliates of EI and PSI.

The participants of the First EI/PSI Lesbian, Gay, Bisexual and Transgender Forum request EI and PSI that they recommend:

To the International Labour Organisation (ILO):

- * to refer explicitly to discrimination at work based on sexual orientation or gender identity in their programs and action plans, particularly in the follow-up action plan to the Global Report on Discrimination adopted by the November 2003 Governing Body;



- * to develop and disseminate guidelines related to the elimination of discrimination on grounds of sexual orientation or gender identity, and information about best practices;
- * to provide technical support to the social partners (governments, employers and workers) to evaluate employment and workplace practices in order to detect and eliminate discrimination on grounds of sexual orientation or gender identity, including in the education system, and in the provision of public services;
- * to compile a Conditions of Work Digest focusing on best practices related to promoting labour and trade union rights of lesbian, gay, transgender and bisexual workers;
- * to endorse its code on HIV/AIDS, containing fundamental principles for policy development and practical guidelines and for all trade unions to implement this code.

To UNESCO and Education for All (EFA) programmes:

- * to include in their materials and training tools, themes and issues related to sexual diversity, the cultural, social and historical roots of discrimination, and to make recommendations on ways to eradicate all form of discriminatory practices.

To UNAIDS:

- * to develop programs that are diverse, and contain non-discriminatory references to human sexuality and gender; and to address their linkages to poverty.

To non-governmental organisations:

- * To work on specific actions and campaigns to remove all obstacles to the full enjoyment of civil, political, economic, social and cultural rights of all peoples;
- * To document discrimination at the workplace and coordinate joint actions with trade unions at national, regional and international level;
- * To exchange information, analyses and best practice with trade unions so as to improve the quality and impact of the work against all forms of discrimination.

To governments:

- * To promote, protect and enforce respect for existing standards for the promotion of human rights and non-discrimination on any ground;
- * To amend national legislation in order to eradicate discrimination on the basis of sexual orientation, gender identity or marital status including laws that penalise same-sex relations; and to eradicate exemption provisions, e.g. for religious organisations;
- * To afford same-sex relationships the full protection of the law in the areas of pension and inheritance rights, adoption rights, taxation, access to housing, health services, and to take the necessary steps to recognise the diversity of family relationships including ending discriminatory legislation, policies and practices in all fields where this currently exists;
- * To ensure the widest and earliest possible access to Quality Public Education, free of prejudice and to empower people, especially women and girls, to make their own choices;
- * To ensure that sex education and health care materials, campaigns and services include information relating to lesbians, gay, bisexual and transgender people and their needs;
- * To eliminate all discriminatory practices related to people living with HIV/AIDS, especially at the workplace, including arbitrary dismissal or transfer.

The participants of the First EI/PSI Lesbian, Gay, Bisexual and Transgender Forum further request EI and PSI:

- * to reaffirm the unequivocal commitment of EI and PSI and their member organisations to provide full support for the rights of lesbian, gay, bisexual and transgender workers;
- * to request the International Confederation of Free Trade Unions (ICFTU) to establish an LGBT workers' network and to develop programs to work on sexual orientation and gender identity issues;
- * to develop an action plan aimed at cooperation with other world trade union con-



federations to work on the protection of LGBT workers against discrimination;

- * to submit a test case to the ILO regarding the application of ILO Convention 111 to the rights of LGBT workers;
- * to adopt and implement resolutions on LGBT rights and to encourage member organisations to adopt and implement similar resolutions;
- * to explicitly deal with the issues of sexual orientation and gender identity discrimination as they relate to women in the EI and PSI women structures;
- * to develop capacity building programs and training materials, specially aimed to help member organisations to develop new capacities on LGBT issues;
- * to organise staff training sessions on diversity, including sexual orientation and gender identity, so as to develop strategies and tools to evaluate progress on anti-discrimination issues;
- * to establish a web-based data base and information service to exchange information on relevant cases, policies, legislation, news from affiliates, best practices;
- * to encourage member organisations to adopt policies and mechanisms to detect and eliminate discrimination based on sexual orientation and gender identity and to mainstream related issues into the collective bargaining agenda;
- * to encourage member organisations to establish LGBT workers' advisory structures;
- * to review and extend existing equality programs to sexual orientation and gender identity issues;
- * to take up campaigns in cases of human rights violations, e.g. murder, imprisonment of LGBT activists;
- * to take up campaigns against bullying and violence against LGBT youth and to prevent youth suicides;
- * to provide regular reports to their respective Executive Boards on affiliates' progress in establishing these advisory structures;
- * to implement a 2nd EI/PSI International LGBT Forum meeting in conjunction with the PSI Congress in 2007;

- * to provide all the necessary staff and financial resources for the implementation of the follow up activities of the Forum's recommendations.

Further, the participants of the First EI/PSI Lesbian, Gay, Bisexual and Transgender Forum further request EI and PSI to encourage their member organisations:

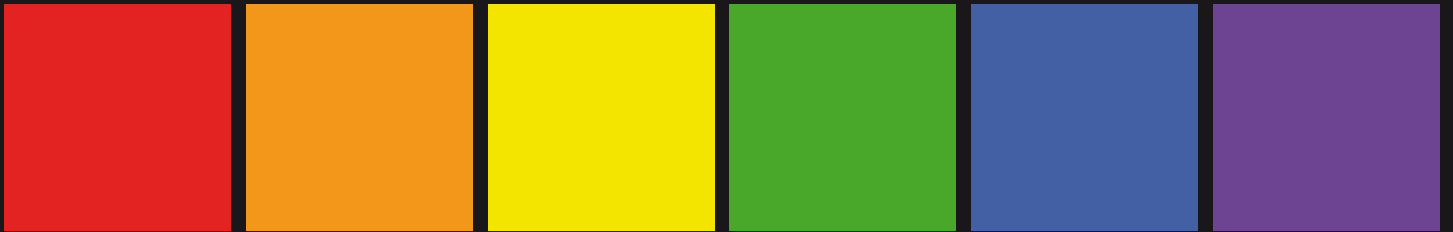
- * To promote human and trade union rights education that raises awareness of issues related to discrimination on grounds of sexual orientation and gender identity;
- * To adopt policies and mechanisms to detect and eliminate discrimination based on sexual orientation and gender identity both within their own structures and at the workplace; and to mainstream LGBT issues into collective bargaining;
- * To establish LGBT workers' advisory structures;
- * To work with local governments and employer organisations to promote changes in attitudes relating to any form of discrimination, including sexual orientation and gender identity;
- * To establish networks with existing human rights and lesbian, gay, bisexual and transgender organisations to promote and protect the human and labour rights of all person at the workplace regardless of sexual orientation or gender identity;
- * To ensure that the rights of affected LGBT workers are protected in the development of policies on HIV/AIDS at the workplace.

Finally, the participants of the EI/PSI Lesbian, Gay, Bisexual and Transgender Forum therefore request EI and PSI:

- * To establish a Steering group from this Forum to advise and assist the Executive Boards with the implementation of the follow-up activities of the Forum recommendations, which should be composed equally of representatives from EI and PSI affiliates.







Public Services International

BP 9
F-01211 Ferney-Voltaire Cedex
France
Tel: +33 (0)4 50 40 64 64
Fax: +33 (0)4 50 40 73 20
equality@world-psi.org
www.psi100.org

Public Services International (PSI) is the federation of over 650 public sector trade unions in over 160 countries. PSI speaks on behalf of some 20 million members.



Education International

5 bd. du Roi Albert II
B-1210 Brussels
Belgium
Tel.: +32.2.2240611
Fax: +32.2.2240606
headoffice@ei-ie.org
www.ei-ie.org

Education International (EI) is the federation of trade unions representing over 30 million teachers and other education workers, through 348 member organisations in 169 countries and territories.