



**G K V M U N ' 2 2**

**SOCHUM**

*Study Guide*

**#spreadyourwings**



## **TABLE OF CONTENTS**

**Letter of the Secretary-General 4**

**Letter of the Under Secretary-General 5**

**Introduction To The Committee 6**

**Definition Of Key Terms 6**

**Introduction To The Topic 7**

**Terminology, Scope, and Methodology 8**

**Facts and Things Can Be Done To Overcome This Issue 9**

**Tackling Discrimination Against LGBTIQ People 10**

**Enforcing and improving legal protection against discrimination  
11**

**Promoting inclusion and diversity in the workplace 13**

**Combating inequality in education, health, culture and sport 14**

**Conclusion 16**

**Questions to Ponder 17**

**USG's Contact 18**

## **LETTER OF THE SG**

**Highly distinguished participants of GKVMUN'22**

**I, the Secretary-General of GKVMUN'22, Naz Durakoglugil, would like to express my enthusiasm for being able to host the first annual session of this precious conference on behalf of my school,**

**We, as the GKVMUN'22 team, have been working endlessly to provide you an inspiring Model UN experience. Our both academic and organization teams are beyond eager to host a conference where our esteemed participants have the chance to spread their wings,**

**As days passed, we were better able to see the forest through the trees of organizing a conference, hence; we derived lessons from each error that occurred which was a challenging, yet, unique experience,**

**To conclude my words, whether you have attended previous MUN conferences or not, we're looking forward to unite every and each one of you at our school with having an aim of providing you an outstanding experience where you'll get the chance to gain remarkable memories and spread your wings. Hope to see you soon!**

**Best regards,  
Naz Durakoğlugil**

## **LETTER OF THE USG**

**Highly distinguished participants of GKVMUN'22,**

**I, as the USG of SOCHUM, Özge Özgür, it is with great pleasure that we welcome you to our conference. I would like to thank my dear SG, Naz Durakoğlugil, for giving me this amazing opportunity.**

**GKVMUN is such a marvelous opportunity to simulate the United Nations where we play the role of delegates from different countries and attempt to solve real-world issues with the policies and perspectives of their assigned country. It will improve your researches, public speaking, debating, and writing skills, critical thinking, teamwork, and leadership.**

**I believe that our fellow delegates will find great solutions and write amazing resolution papers for each committee. It's so exciting to see all of you face-to-face at this conference. If you are a first-timer, I'm sure you are excited more than I am, but I truly believe that each one of you, even if you are a first timer or not, will do your best and have a great time. Can't wait to see you all!**

## **TOPIC: Combatting discrimination based on sexual orientation and gender identity**

### **INTRODUCTION TO THE COMMITTEE**

The Third Committee of the United Nations General Assembly, or the Social, Humanitarian, and Cultural Committee (SOCHUM), focuses on issues dealing with fundamental human rights in the international community. SOCHUM was founded in 1945 in reaction to the establishment of the Universal Declaration on Human Rights. The Third Committee promotes and enforces basic freedoms and ideals meant to be enjoyed by the entire international community such as the right to life, the expression of cultures, the freedom of political participation, the protection of children's rights, and the promotion of social development, among many others. SOCHUM derives its legitimacy from the original United Nations Charter and operates with the goal of designing peaceful settlements for issues within the large spectrum of social, humanitarian, and cultural complications in the international community. This body does so by initiating studies that encourage recommendations for the promotion of international cooperation and fundamental freedoms for all.

### **DEFINITION OF KEY TERMS**

**SOGI:** Laws concerning sexual orientation and gender identity

**discrimination:** the unjust or prejudicial treatment of different categories of people, especially on the grounds of race, age, sex, or disability

**equality:** the state of being equal, especially in status, rights, or opportunities

**comparative:** measured or judged by estimating the similarity or dissimilarity between one thing and another; relative

**sexual orientation:** a person's identity in relation to the gender or genders to which they are sexually attracted; the fact of being heterosexual, homosexual, etc.

**gender identity:** the personal sense of one's own gender

**LGBT:** Abbreviation for Lesbian, Gay, Bisexual, and Transgender. An umbrella term used to refer to the community as a whole

## **OVERVIEW OF THE TOPIC: Combatting discrimination based on sexual orientation and gender identity**

### **INTRODUCTION TO THE TOPIC**

Laws concerning sexual orientation and gender identity (SOGI) have undergone a sea change.

Many jurisdictions around the world have repealed their laws that criminalized same-sex intimacy and expression of diverse gender identities. In addition, a growing number of jurisdictions are further reforming their laws to protect lesbian, gay, bisexual, and transgender (LGBT) people against discrimination. Legal regimes at various levels—international, regional, national, and subnational—have deemed SOGI discrimination to be impermissible in contexts ranging from employment and housing to marriage

and parenting. Developments at the United Nations reflect the globalization of SOGI rights. The United Nations Office of the High Commissioner of Human Rights has made combatting SOGI discrimination a priority, as demonstrated by its “Free and Equal” campaign aimed at cultivating SOGI rights. Likewise, the United Nations Human Rights Council passed a historic resolution in 2016, appointing the United Nations’ first-ever Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. Despite these developments, legal protections around the world remain fragmented. In many countries, LGBT people continue to suffer persecution and have no legal recourse. Countries that do protect against SOGI discrimination do so to varying degrees and have based their protections on divergent legal theories. Indeed, numerous conceptual debates have emerged over the course of law reform. This volume provides an

overview of how various legal institutions and commentators around the world have contributed to these debates. With its distillation of these debates, this volume serves as a guide for researchers who seek to acquaint themselves with comparative approaches to SOGI discrimination law.

Protections against SOGI discrimination have developed incrementally. LGBT people experience discrimination in a range of contexts including the criminal system, employment, housing, public

accommodations, marriage, and parenting. Governments historically have not reformed their laws to address these various areas all at once. Instead, governments tend to expand incrementally the range of contexts in which they prohibit SOGI discrimination.

## **Terminology, Scope, and Methodology**

This volume uses several terms that are worth explaining. It refers to individuals with a minority sexual orientation or gender identity through the commonly used acronym LGBT, which stands for “lesbian, gay, bisexual, and transgender.” In other words, the term “LGBT” describes people who are non-heterosexual and/or non-cisgender. One shortcoming of this term is the fact that individuals who have a minority sexual orientation or gender identity may not self-identify as LGBT. Indeed, in some parts of the world, local terminology for SOGI identity categories captures nuance or fluidity that the LGBT acronym erases; local identity labels may also be imbued with cultural significance that is lost when replaced by the LGBT acronym. For economy of language, however, this volume will use the acronym LGBT, which has become commonplace in English-language legal literature. It will also use the phrase “SOGI minorities” when emphasizing that not all individuals with a minority sexual orientation or gender identity identify as LGBT. Indeed, whether someone is lesbian, gay, bisexual, or straight is not necessarily related to whether the individual is transgender or cisgender. Notwithstanding distinctions between sexual orientation and gender identity, the two are closely linked in culture and politics. Discrimination based on sexual orientation and discrimination based on gender identity often stem from a shared root: the social policing of gender norms. For example, in many parts of the world, lesbians and transgender women are both perceived as violating socially constructed expectations about what it means to be a woman. Although transgender women breach gender norms through their gender identity, and lesbians breach gender norms through their sexual orientation, both are perceived as violating norms regarding what it means to be a woman. There is also a long history of coalitional politics among sexual orientation and gender identity minorities. To be sure, the strength of LGBT coalitions has fluctuated over time and place, but such coalitions have had lasting influence on advocacy and law reform. For example, the previously mentioned United Nations Independent Expert is tasked with working on issues of sexual orientation as well as gender identity. Intersex issues also frequently interact with LGBT issues. As LGBT people are targets of discrimination because they breach cultural expectations about “manhood” and “womanhood,” prejudice is also directed at intersex people because their bodies do not conform to social expectations for what it means to be a man or

woman. Accordingly, human rights defenders often consider intersex issues alongside LGBT issues. This is reflected in the growing use of the acronyms LGBTI (with the “I” standing for “intersex”) and SOGISC (with the “SC” standing for “sex characteristics”). Likewise, in 2017 when human rights experts updated the Yogyakarta Principles, which were originally a statement about LGBT rights, they added recommendations pertaining to intersex rights. Despite the relationship between SOGI discrimination and intersex discrimination, this volume will focus on SOGI discrimination. Because legal developments concerning intersex

issues are relatively nascent, they warrant fuller treatment in a volume of their own.

This volume approaches SOGI discrimination as a general topic, as opposed

to focusing on discrimination in any specific context such as employment, education, or family life. In examining the regulation of discrimination, this

volume considers law at a variety of levels, from international to national and subnational. In doing so, the volume does not seek to provide a comprehen-

sive survey of laws around the world. Instead, it selectively chooses examples to illustrate different approaches to developing protections against SOGI discrimination. This volume aims to offer comparative insights on pathways

for developing protections against SOGI discrimination. Thus, it focuses on jurisdictions that have in fact developed such protections instead of the jurisdictions where no such protections exist.

### **Facts:**

- Discrimination on the grounds of sexual orientation or gender identity among young people is a factor contributing to isolation, underachievement and anxiety and may even lead to suicide attempts. ■ Schools are a crucial place for the health and development of young people.

- Failure to address issues related to sexual orientation or gender identity may have harmful consequences for the self-esteem of young lesbian, gay, bisexual and transgender people.

- According to the European Union Fundamental Rights Agency LGBT Survey in 2013, over 80% of the respondents remember negative comments or bullying of LGBT youth in their school years. Nearly 66% said that they had often or always hid their LGBT identity in the school when under 18.

## **Things can be done to overcome this issue**

■ Adopt legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively

enjoyed without discrimination on grounds of sexual orientation or gender identity.

■ Safeguard the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

■ Adopt measures at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity.

■ Provide objective information about sexual orientation and gender identity in school curricula and educational materials.

■ Ensure teachers' access to anti-discrimination training and teaching aids.

## **TACKLING DISCRIMINATION AGAINST LGBTIQ PEOPLE**

● 19% of lesbian, gay and bisexual people, 35% of trans people and 32% of intersex people felt discriminated against at work in the previous year.

● 46% of LGBTI people are never open to medical staff or healthcare providers about being LGBTI.

● 51% of intersex and 48% of trans persons, 35% of lesbians and 31% of gay men live in households that have difficulties making ends meet.

Discrimination affects LGBTIQ people at every stage in life. From an early age, LGBTIQ children and young people, and children of LGBTIQ or rainbow families, where one of the member is LGBTIQ, are often stigmatised, making them targets of discrimination and bullying that affects their educational performance and employment prospects, their daily lives and their personal and family well-being. In employment, LGBTIQ people continue to experience discrimination during

recruitment, in the workplace and at the end of their career, contrary to the EU legislation in this area. Many face barriers in finding fair and stable jobs in the first place, which may increase the risk of poverty, social exclusion and homelessness. Recent research has shown that trans people encounter additional barriers when seeking to access the labour market. LGBTI people suffer from high rates of homelessness. Being expelled from the family home and experiencing discrimination in access to housing are the main drivers for becoming homeless, in particular for young LGBTIQ people. An estimated 25-40% of young people experiencing homelessness are identified as LGBTI.

Discrimination on grounds of sexual orientation, gender identity/expression and sex characteristic can also have a significant impact on LGBTIQ people's physical, mental and sexual health and their well-being. EU research has demonstrated significant health inequalities between the LGBTIQ community and the population as a whole. In addition, LGBTIQ people are often reluctant to seek healthcare, because they have experienced or fear hostile reactions from health professionals and still struggle to access quality and affordable medication and care, including community and social care. Those who have disabilities, are elderly, migrants, or come from

ethnic or religious minority background are particularly vulnerable to discrimination. The COVID-19 crisis has increased this vulnerability.

### **1.1 Enforcing and improving legal protection against discrimination**

EU law ensuring legal protection against discrimination is key to advancing LGBTIQ equality, as is the CJEU case law. Such protection falls under different legal frameworks depending on whether the discrimination that LGBTIQ individuals may experience is on the grounds of sexual orientation or sex, including gender reassignment.

The Employment Equality Directive enshrines the right not to be discriminated against, nor be subjected to harassment, in employment contexts on the basis of sexual orientation. In a recent decision, the CJEU clarified that a public statement of a person ruling out recruitment of a person of a certain sexual orientation can constitute prohibited discrimination. While this directive sets out a strong baseline, the impact of its provisions is constrained in two ways: by challenges in application, and by limitations in scope, since the legislation does not go beyond employment.

The Commission will ensure rigorous application by Member States of the rights covered by the Employment Equality Directive and will report on the Directive's application in 2021. The report will also examine whether Member States have followed the Commission's recommendation to consider designating an equality body to address discrimination on the grounds of religion or belief, disability, age and sexual orientation within the scope of application of the Directive. By 2022, the Commission will put forward any legislation required as a result, in particular on the role of equality bodies.

The Gender Equality Directive enshrines the right not to be discriminated against, nor be subjected to harassment, in access to employment, working conditions and occupational social security schemes on the basis of sex, including gender reassignment. The principle of equal treatment for men and women precludes dismissal for a reason related to gender reassignment. EU law as confirmed by the European Court of Justice (CJEU) also provides for the right not to be discriminated against on the basis of sex, again including gender reassignment in access to goods and services available to the public and in statutory social security. This legal framework does not yet explicitly mention sex characteristics as a prohibited ground for discrimination.

In 2008, the Commission put forward a proposal for an Equal Treatment Directive, which would extend EU legal protection against discrimination on the basis of, among other things, sexual orientation beyond the area of employment and vocational training<sup>31</sup>: it calls on the Council to adopt the proposal in order to close the gaps in EU law protection against discrimination based on sexual orientation.

Research supported by the Commission, the Council of Europe and civil society has shown that Member States have diverging approaches with regard to protecting LGBTIQ people, especially non-binary, intersex and queer people, against discrimination. The Commission will support Member States in stepping up their exchanges of best practice on legal protection against discrimination on the grounds of sexual orientation, gender identity/expression and sex characteristics in various areas. While some Member States have added sex characteristics as a ground for discrimination to their national equality legislation, others have used a broad interpretation of 'sex'. Similarly, the grounds of gender expression features in anti-discrimination legislation in only a few Member States. The Commission is examining how non-binary, intersex and queer people can be better protected against discrimination.

New technologies bring new opportunities to improve the lives of Europeans, but also present new challenges. While artificial

intelligence (AI) can be used to address many societal issues, it can also exacerbate real life discrimination, including against LGBTIQ people, and gender inequalities. In particular, as highlighted in a recent Commission policy review, one of the emerging challenges in the field of facial recognition AI systems is the identification of trans faces, especially during transition periods<sup>34</sup>. The Commission is planning to put forward a regulatory framework that will specifically address bias and unjustified discrimination inherent in high-risk AI systems, including biometric systems. It will propose specific requirements, including on documentation, related to the quality of training datasets and testing procedures for bias detection and correction. These requirements would serve to prevent negative discriminatory effects early on, and enable continuous monitoring and vigilance for compliance with existing equality legislation throughout the AI lifecycle.

## **1.2 Promoting inclusion and diversity in the workplace**

Beyond the prohibition of discrimination, diverse and inclusive work environments help to create equal opportunities in the labour market and improve business outcomes. Diversity and inclusion are crucial to stimulating new ideas and fostering an innovative, thriving society. For example, there is a proven correlation between LGBTIQ inclusion and returns on assets, innovation and productivity.

The Commission promotes diversity management through the EU Platform of Diversity Charters. The signatories have adopted diversity and inclusion policies, established internal LGBTIQ networks, provided training for their staff, celebrated the International Day against Homophobia, Transphobia, Biphobia and Interphobia (IDAHOT), and participated in national Pride events. LGBTIQ employees can benefit from improved coordination between the EU Platform, national diversity charters and individual businesses. The Commission will continue to foster the creation of national diversity charters and engage in specific efforts to promote LGBTIQ equality through dedicated action in the framework of the EU Platform of Diversity Charters.

The Commission will promote the use of the European Social Fund Plus (ESF+) to improve the socio-economic position of the most marginalised LGBTIQ people and develop initiatives focusing on specific groups, such as the gay, lesbian, bisexual, trans and intersex subgroups. The Commission will gather evidence regarding the barriers to full equality experienced in employment,

but also in other areas, such as social protection. This work will feed into guidance for Member States and businesses on enhancing trans and intersex people's participation in the labour market. The Commission will foster the exchange of best practice between the Member States and provide reliable and comparable data in this area with FRA support.

The Commission will continue to support measures under the gender equality strategy intended to improve the socio-economic position of women, including those that are relevant for LGBTIQ women .

Social enterprises, and the social economy at large, can be on the frontline in the tackling of anti-LGBTIQ discrimination. They can develop specific programmes, training and schemes leading to increased inclusion of LGBTIQ people. In 2021, the Commission will publish a European action plan for social economy that will foster the development of these enterprises and organisations, and address how better to include specific marginalised groups in the society, including LGBTIQ people.

The Commission will lead by example as an employer. In the framework of its new human resources strategy, it will continue to strive for a fully inclusive working environment, providing in particular more targeted support and guidance for LGBTIQ staff, as well as significantly improving the use of gender-inclusive language in all communication. The Commission invites the other EU institutions to take steps to foster diversity and inclusion in their respective workplaces.

### **1.3 Combating inequality in education, health, culture and sport**

The Commission will support the fostering of best practice exchanges between Member States and experts on ensuring safe and inclusive education for all children, young people and adults. For instance, a new expert group developing proposals on strategies for creating supportive learning environments for groups at risk of underachievement and for supporting wellbeing at school, will address gender stereotypes in education, bullying and sexual

harassment. In addition, the Commission's upcoming comprehensive Strategy for the rights of the child, will ensure indiscriminate access to rights, protection and services also for LGBTIQ children. Promoting a more inclusive education is in the interests of all students and citizens, and it helps to combatting stereotypes and to building a fairer society for all.

Research on the intersectional experiences of LGBTIQ people, as those who are elderly or with disabilities, is often lacking. Horizon Europe will support gender studies and intersectional research relevant for LGBTIQ people, including on health. The Commission will disseminate the research results, including their recommendations and policy guidance, and organise an EU-wide conference through the EU Health Policy Platform. It will also propose that the Steering Group on Promotion and Prevention (SGPP) considers validated health-related good practice in this area that could be implemented by the Member States.

Member States will be encouraged to organise training for healthcare professionals to raise awareness of the health needs of gay and bisexual men; lesbian and bisexual women; intersex people; and trans people and to avoid discrimination and stigmatisation in access to health services. The training material from the HEALTH4LGBTI project will be further disseminated and offered to Member States. The Commission will encourage and facilitate Member States' exchanges of best practice in addressing the mental health challenges faced by a significant number of LGBTIQ people.

Gender biases and other stereotypes are among the main drivers of negative or hostile attitudes towards LGBTIQ people in many communities. In particular, they can lead to the exclusion and stigmatisation of anyone who does not conform to fixed norms/images of women and men, such as non-binary and queer people. The media, cultural and sport sectors are powerful tools changing attitudes and challenging gender biases and other stereotypes.

The Commission will support projects that use cultural expression to tackle discrimination, build trust and acceptance, and promote the full inclusion of LGBTIQ people. The Commission will enhance LGBTIQ equality mainstreaming in relevant employment, education and health initiatives (in particular those regarding mental health initiatives and HIV/AIDS prevention) and EU funding programmes (e.g. EU4Health and Erasmus+). The future Europe's Beating Cancer Plan will take into account the situation of vulnerable groups, including LGBTIQ people. Projects that tackle intersectional discrimination and inequality experienced by LGBTIQ people, gender biases and other stereotypes can be funded through the 'Citizens, Equality, Rights and Values' programme.

Erasmus+ finances projects that help enable and empower young people facing discrimination because of their gender or sexual orientation, and other social obstacles. Likewise, the European Solidarity Corps can promote solidarity activities geared to tackling racism and discrimination, and

broaden participation. For the new programming period, particular attention will be paid to inclusion, equality and diversity in the Erasmus+ and European Solidarity Corps Programmes. It will set out a multi-faceted approach to making the programme more inclusive and improving outreach to people with fewer opportunities, including through the introduction of more flexible and accessible formats; support measures to help prepare and accompany participants; and financial measures to address the barriers faced by under-represented groups in taking part in the programmes.

## **CONCLUSION**

This strategy is based on a vision of a Europe where people, in all their diversity, are equal – where they are free to pursue their life regardless of their sexual orientation, gender identity/expression or sex characteristics.

While Europe has made step-by-step progress over recent years, this LGBTIQ equality strategy marks a new phase in our efforts to promote equality for lesbian, gay, bisexual, trans, non-binary, intersex and queer people while continuing to focus on priority areas. In addition, it emphasises the need to integrate a LGBTIQ equality perspective into all EU policies as well as into EU funding programmes.

Combating inequality in the EU is a shared responsibility, it requires joint efforts and action at every level. EU institutions and agencies, Member States, including regional and local authorities, equality bodies, civil society, and businesses must strengthen their engagement to achieve the strategy's objectives.

All institutions should set out a clear commitment to pursue a common strategy. The Commission invites the European Parliament to renew its commitment and support the implementation of the strategy and the Council to adopt Conclusions as a follow-up to the strategy. It calls on the Committee of the Regions and the European Economic and Social Committee to promote dialogue with local and regional authorities and civil society, including social partners, on how to advance LGBTIQ equality. Through regular surveys, technical assistance and methodological support to Member States, the European Union Agency for Fundamental Rights and the European Institute for Gender Equality will continue to support LGBTIQ equality.

Discrimination, violence and hatred against LGBTIQ people go against the fundamental values of the European Union, and must be

eliminated. Together, we can break down barriers to LGBTIQ equality and make clear progress by 2025 towards an EU where LGBTIQ people, in all their diversity, are safe and have equal opportunities to participate fully in society and thus reach their full potential.

### **QUESTIONS TO PONDER**

- 1) Is SOGI dis-crimination encompassed by existing laws prohibiting discrimination based on sex?**
- 2) Should sexual orientation and gender identity be considered protected categories in and of themselves?**
- 3) Is there a standard sequence of steps for developing legal protections against SOGI discrimination?**
- 4) What are the drawbacks of developing SOGI discrimination protections?**
- 5) To what extent should religious objections justify exemptions from SOGI discrimination bans?**

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## **FURTHER READING**

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