

# Centering the Rights of LGBTI Individuals in U.S. Foreign Policy: A Pathway to Effective Global Leadership



The Council for  
**Global Equality**



Advancing an American Foreign Policy  
Inclusive of Sexual Orientation and Gender Identity

**November 2020**

# The Council for **Global Equality**



Advancing an American Foreign Policy  
Inclusive of Sexual Orientation and Gender Identity

The Council for Global Equality’s mandate is to insist that those who represent our country—in Congress, the White House, federal agencies and U.S. embassies abroad— use all available diplomatic, political and financial opportunities to support human and civil rights protections for LGBTI individuals around the world. We are currently working with our [30 member organizations](#), as well as foreign policy organizations and human rights groups around the world, to repair the damage done by the Trump Administration’s short-sighted isolationism and harmful “America First” policies. As we push back against “America First” impulses, we seek greater synergy between human rights policies abroad and efforts to confront injustice at home, while injecting a broader and more conscious set of human rights priorities into U.S. foreign policy.

## **FOR QUESTIONS:**

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# Introduction



*“It is our responsibility to advance human rights and development in our country and beyond our borders. As Vice President, I traveled the world on behalf of the Obama-Biden Administration and repeatedly spoke out to recognize LGBTQ+ rights as human rights, and to advance opportunities for LGBTQ+ individuals. As President, I’ll restore America’s global leadership on LGBTQ+ issues and actively combat violence and discrimination that is far too rampant. I will build on the Obama-Biden successes and repair the damage wrought by the Trump-Pence Administration’s treatment of LGBTQ+ Americans, which signals a tolerance for abuses by other countries, and its utter failure to defend American diplomats who speak out for LGBTQ+ rights abroad.”* –President-elect Joe Biden

The Council for Global Equality is a foreign policy-focused coalition of 30 prominent U.S. advocacy organizations that together seek a strong and consistent U.S. government voice in favor of lesbian, gay, bisexual, transgender and intersex (LGBTI)<sup>1</sup> equality and inclusion abroad. We know that domestic and foreign policy issues impacting LGBTI communities intersect directly with those of black and brown communities, immigrants, low-income groups, youth, and people living with HIV and AIDS because LGBTI people exist in all of these communities. We support the specific calls to address structural racism, systemic sexism, and economic injustice that are at the center of America’s inequalities today. **We believe profoundly in American principles of equality, fairness, dignity, and opportunity — and we are convinced that these principles must frame not only policies at home but also the conduct of policy abroad.**

President-elect Biden and his Administration will face an array of obstacles that include an ongoing pandemic, sharp divisions along racial, ethnic, and economic lines, and deep erosion in our country’s trust and image abroad. **These domestic and global obstacles are linked — but so are the opportunities that unprecedented public support for racial justice, significant police reform, and economic fairness offer our country.**

**A Biden Presidency can unite the country by renewing our commitment to inclusive human and civil rights values. And by aligning our domestic and foreign policies around those values, the President-elect can both restore trust in American principles and lay the basis for a more positive U.S. partnership with other countries in tackling global problems, including those impacting human rights.**

The Council asks that the foreign policy-related options being framed for the President-elect affirm our country’s respect for, and attachment to, LGBTI- and minority-inclusive

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<sup>1</sup> The Council uses the term “LGBTI” as opposed to other commonly used acronyms such as LGBTQ+ in order to conform to the State Department’s own preferred terminology. The choice of acronyms is not intended to exclude a broader understanding of gender-non-conforming individuals or identities.

human rights. We urge that human rights be approached through a “whole of government” lens rather than agency-by-agency silos. We insist that those chosen to lead these policies represent America’s commitment to fairness and equality, in both character and characteristics. And we urge the Biden Administration to recommit to strengthening coalitions of LGBTI human rights-supportive governments engaged in the work of international organizations.

With these goals in mind, we offer the following specific suggestions for the incoming Biden Administration, as well as detailed suggestions for each foreign affairs agency that will help center the rights of LGBTI individuals in U.S. foreign policy. These recommendations build on President-elect Biden’s campaign [“Plan to Advance LGBTQ+ Equality in America and Around the World,”](#) and the [GLOBE Act \(Greater Leadership Overseas for the Benefit of Equality\)](#), which has been endorsed by President-elect Biden and co-sponsored by Senator Harris.

## EARLY POLICY SIGNALS

We ask that, in his Inaugural Address,  
President-elect Biden:

- Pledge that restoring human rights, civil rights, and the dignity of all people will be Administration priorities at home and abroad;
- Include LGBTI populations by specific reference in this pledge, along with other minority populations;
- Honor U.S. global commitments to universal access to sexual and reproductive health and rights for all, including access to abortion and family planning — issues that impact LGBTI populations no less than others;
- Make clear that the U.S. will pursue partnerships with other countries in confronting today’s global challenges, as a direct refutation of the unilateralism that underpins “Make America Great Again” policies; and
- Hold himself and his Administration to high transparency and accountability standards — standards that the Trump Administration has denied.



# White House Leadership



Over the past four years, the Trump Administration has dismembered interagency coordination on global LGBTI issues that began under President Obama and Vice President Biden. As the Biden Administration frames its priorities, we encourage the following actions from the White House and the National Security Council.

## White House

- **Publicly recommit the U.S. to supporting a human rights-centric foreign policy fully inclusive of LGBTI and other minority communities.** President Trump’s embrace of dictators, his denigration of transgender and female populations, and the elevation of religious freedom above all other rights have deeply scarred global respect for our human rights policies. We urge that:
  - ✓ **Recommendation:** The President-elect find early public speaking opportunities to affirm our country’s commitment to advancing human rights reflecting our country’s diversity and principles — policies that weave together support for racial, gender, and LGBTI dignity and justice at home with support for LGBTI fairness and reproductive rights abroad.
  - ✓ **Recommendation:** This commitment be tangibly expressed through active U.S. efforts to drive an energetic pro-equality partnership within the UN’s Core Group, UNAIDS, the Equal Rights Coalition, and similar LGBTI-supportive working groups in regional organizations such as the Organization of American States.
  - ✓ **Recommendation:** The White House further direct cross-agency pursuit of partnerships with other countries in advancing human rights, with a goal of refuting the unilateralism and ethnocentric views that underpin “Make America Great Again” policies.

- ✓ **Recommendation:** The Administration urge Congress to pass the [GLOBE Act \(Greater Leadership Overseas for the Benefit of Equality\)](#) to codify U.S. leadership in support of LGBTI communities globally and to honor a Biden-Harris campaign pledge.
  - ✓ **Recommendation:** The Administration direct the State Department to seek Senate ratification of long-pending core human rights treaties, including immediate efforts at the United Nations to ratify CEDAW, CRC, Disability Rights, and the Covenant on Economic, Social and Cultural Rights and at the Organization of American States to ratify the American Convention on Human Rights, the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, and the Inter-American Convention against All Forms of Discrimination and Intolerance.
- **Within the Administration’s first week, issue Executive Orders laying the institutional groundwork for supporting global LGBTI rights, transgender equality, and reproductive rights.** President Trump has rolled back many elements of President Obama’s powerful 2011 memorandum on global LGBTI rights — a memorandum that had a powerful impact in integrating global LGBTI fairness goals into the work of U.S. federal agencies abroad. He similarly has taken steps to marginalize the transgender community and reinstated an expanded “Global Gag Rule” that denies women their rights to reproductive health and choice. We urge:
    - ✓ **Recommendation:** An Executive Order be issued within the Administration’s first week aimed at ensuring a whole-of-government approach in supporting LGBTI equality and human rights abroad ([see Annex A with suggested EO priorities](#));
    - ✓ **Recommendation:** The “Global Gag Rule” be overturned, thereby restoring to women and others their right to reproductive health and choice; and
    - ✓ **Recommendation:** The right of transgender Americans to serve in the military be reinstated, affirming in that context the dignity and equality of all people.
    - ✓ **Recommendation:** Redirection of asylum and refugee programs and detention policies to accommodate the specific vulnerabilities of LGBTI communities abroad.
    - ✓ **Recommendation:** Repeal of Migrant Protection Protocols, public health bans on asylum seekers, asylum entry and transit bans, asylum “cooperative agreements” with El Salvador, Honduras, and Guatemala, fast-track deportation processes, and presumptive detention that endanger LGBTI and other asylum seekers by returning them to countries that are manifestly unsafe.
    - ✓ **Recommendation:** Repeal of a series of regulations issued in 2020 that impose new obstacles on asylum seekers and narrow established interpretations of the refugee definition.
    - ✓ **Recommendation:** Reaffirmation of our country’s commitment to protecting persecuted social groups, including LGBTI individuals targeted by non-state actors.

- **Direct that gender issues feature prominently in a Biden foreign policy.** This requires concerted efforts to push back against anti-gender-ideology policies embedded in Trump-era initiatives and regulations and at multilateral institutions. The President should:
  - ✓ **Recommendation:** Rescind National Security Presidential Directive (NSPD) 22, which incorrectly conflates human trafficking and sex work, further stigmatizing and marginalizing sex workers who are at high risk for human rights violations.
  - ✓ **Recommendation:** Support Congressional legislation to repeal both the Global Gag Rule and the harmful anti-prostitution loyalty oath from PEPFAR, which creates and imposes barriers to health and human rights for sex workers. Support the Abortion is Health Care Everywhere Act, which repeals the harmful Helms Amendment limiting LGBTIQ+ peoples' access to comprehensive reproductive health services.
  
- **Rethink religious exemptions to policies, with due consideration given to the public funding and purposes employed.** Religious exemptions to U.S. policies on employment and service delivery non-discrimination blur the clarity of U.S. foreign policy principles—and there can only be one U.S. foreign policy, regardless of the individuals and organizations involved in its implementation. We urge that the White House:
  - ✓ **Recommendation:** Harmonize, reissue and extend across all agencies service delivery non-discrimination policies developed at HHS, USAID, and MCC during the Obama Administration.
  - ✓ **Recommendation:** Ensure that these policies cover contracts, grants, and subgrants, and that they are widened to include employment nondiscrimination overseas to conform with employment protections articulated domestically in the Supreme Court's *Bostock* decision.
  - ✓ **Recommendation:** Direct that the personnel and service delivery policies of all contracting companies whose services are used to implement U.S. federal foreign affairs agency tasks abroad be compatible with the above guidelines.
  - ✓ **Recommendation:** Similarly direct that agencies' public engagement offices integrate rather than silo religious community outreach, with a view to providing equal information, opportunities and responsibilities to all.
  
- **Demonstrate through early personnel actions the Administration's commitment to LGBTI fairness and inclusion.** America's face to the world should reflect our country's diversity and our commitment to equal opportunity. We ask the President to:
  - ✓ **Recommendation:** Ensure that our country's first lesbian and transgender ambassadors are nominated to serve our country abroad; commit to significantly greater diversity in race, ethnicity, and gender for ambassador nominations going forward; and ensure significant efforts are made to hire, retain and promote LGBTI persons and people of color at the State Department, USAID, and other foreign



affairs agencies to allow for greater diversity and a path for underrepresented communities to enter and lead the sector.

- ✓ **Recommendation:** Reinstate promptly the State Department’s Special Envoy for the Human Rights of LGBTI Persons with the rank of ambassador, and USAID’s Senior (or Global) LGBTI Coordinator — both as senior career appointments within the respective agencies with corresponding offices, to reinforce that LGBTI rights are holistic parts of our human rights and development policies. If outside talent is considered for political appointments to these roles, then strong consideration for racial and gender diversity is essential.
- ✓ **Recommendation:** Direct interagency collaboration with transgender-, intersex-, and women-led groups to investigate and address the underrepresentation of gender-diverse persons, including transgender and intersex candidates, in U.S. domestic and foreign policy positions and programs.

## National Security Council

- **Re-create a standing interagency coordination process to drive policy decisions and results impacting the integration and equal treatment of LGBTI and other minority populations abroad.** The Trump Administration has scrapped interagency processes that are essential to results-oriented policy. We urge that these processes be reinstated:
  - ✓ **Recommendation:** The focus of such meetings should be to discuss and prioritize issues impacting the equal treatment of LGBTI and other minority communities abroad, and to deliver strategic results-oriented region- and country-specific plans aimed at reinforcing the principle of equality.
  - ✓ **Recommendation:** These efforts should include the intersection of U.S. development policy with World Bank and other international financial institution programs, in ways deliberately mindful of the needs of LGBTI and other marginalized communities in their project approval and implementation processes.
- **Synchronize strategic planning cycles across all foreign affairs agencies, on this and other issues, to coordinate goals and propel needed progress.** This requires:
  - ✓ **Recommendation:** Better coordination and a genuine whole-of-government approach are needed to recoup ground lost under the Trump Administration, including on steps needed to broaden global commitment to equality in political, economic and social programs.
- **Direct the creation of strategies aimed at combating the subversive impact of white nationalist and anti-gender organizations in this country and abroad.** These movements, which the Trump Administration directly supported, subvert both democratic principles and global cooperation on issues of shared concern:

- ✓ **Recommendation:** Given the transnational connections of such groups, it is important that such strategies be forged with concerned like-minded allies.
- ✓ **Recommendation:** We also urge that government funding be denied to any organization identified by the Justice Department as having ties to groups that foment hate crimes, or supporting such hate crimes in any way.
- **Increase engagement with civil society, as part of a sound decision-making process.** Engaging with a broad cross-spectrum of civil society will provide a sharp contrast to the previous Administration's lack of support for civil society, democratic governance, and justice principles. We seek:
  - ✓ **Recommendation:** A more robust effort to engage civil society on policy priorities and perceived impediments, clarify budgetary requests and expenditures, and fine-tune tactical engagement will lead to more sustainable partnerships abroad.

### Office of the United States Trade Representative

- **Include in future trade agreements framing and/or specific provisions addressing human rights, including those of marginalized populations.** Specifically:
  - ✓ **Recommendation:** Initial discussions with foreign governments should include issues related to LGBTI discrimination, in the same way that the Obama Administration's Millennium Challenge Corporation (MCC) raised these issues in the context of negotiating threshold and compact agreements.
  - ✓ **Recommendation:** Final agreements should include provisions to exclude continued trade agreement participation by countries that refuse to provide equal political and economic participation for LGBTI populations.
- **Deny support to any trade agreement provision on enhancing pharmaceutical intellectual property right protections should that agreement make it more difficult for people living with HIV, COVID-19 and other chronic, life-threatening illnesses to access affordable medicines needed to survive.** We ask that the incoming Administration:
  - ✓ **Recommendation:** Indicate clearly that it will not put pharmaceutical profits above the well-being of those living with HIV/AIDS, COVID-19 and other diseases.
- **Engage civil society more regularly on the contours of future trade pacts as they are developed and negotiated.**
  - ✓ **Recommendation:** Such consultations are needed to ensure that prospective agreements are sustainable and address issues important to the American public.

# Department of State



President Trump rescinded U.S. participation in the UN Human Rights Council and his Administration failed to provide any meaningful leadership in the UN and OAS “core groups” on LGBTI issues. It left unfilled the State Department’s Special Envoy position and gutted global women’s health safeguards and related programs that impact LGBTI communities. It challenged use of the word ‘gender’ in all multilateral fora, while abandoning protections for transgender people domestically and cutting support and funding for transgender rights globally. At home and abroad, the Trump Administration turned its back on refugees and knowingly exposed them to COVID-19 at the border and in immigration detention. It used the principle of religious freedom to justify discrimination against the LGBTI community at home and abroad. This was perhaps most notable – and most dangerously on display – in the final report of Secretary Pompeo’s Commission on Unalienable Rights, which proposed a new hierarchy of rights that would prioritize religious freedom and property rights above all else. And President Trump himself, rather than embracing human rights, chose to embrace dictators that violate those rights – from Russia and Egypt, to Turkey and the Philippines.

In this context, and as the Biden Administration frames its priorities, we encourage the following actions from the State Department to restore U.S. global leadership in support of LGBTI individuals and human rights around the world.

## Reaffirming an Inclusive Human Rights Policy

- **Reversing the erosion of an aspirational and protective human rights policy is a critical, immediate need.** The Trump Administration has eroded America's human rights commitment through its embrace of dictators, lack of strategic human rights goals, and pullback from leadership in multilateral human rights bodies and mechanisms. Structurally, the Trump Administration has undermined the integrity of the Bureau of Democracy, Human Rights and Labor (DRL) by removing key offices and functions and undermining policy experts.
  - ✓ **Recommendation:** That the Secretary of State seek an early and prominent opportunity to speak publicly on the need for truly inclusive human rights policies that reflect our country's diversity, its evolution, and principles.
  - ✓ **Recommendation:** That the Secretary's remarks include refutation of the Unalienable Rights Commission's prioritization of rights (see below), including with specific reference to the inclusion of LGBTI and reproductive rights among human rights protections.
- **Our country's human rights commitment and credentials must be refurbished.** At the United Nations and the UN Human Rights Council, and in other multilateral fora, we need greater strategic and collaborative engagement. Trump Administration policies and actions have sidelined our diplomats and muted our country's traditional support for human rights.
  - ✓ **Recommendation:** That the Administration seek a seat on the UN Human Rights Council and rejoin the World Health Organization.
  - ✓ **Recommendation:** That the State Department develop a strategy – both interagency and with like-minded allies – aimed at increasing support from African, Asian and Middle Eastern countries for LGBTI-respecting policies and measures at the UN and within the Human Rights Council and its special procedures.
  - ✓ **Recommendation:** That efforts to advance LGBTI human rights be coordinated across the full range of multilateral organizations, including UN agencies and the UN's Core Group, the Organization of American States, African Union, Association of Southeast Asian Nations, Organization for Security and Cooperation in Europe, and Asia-Pacific Economic Cooperation.
  - ✓ **Recommendation:** That the Equal Rights Coalition be given more energetic input and support, both in its diplomatic track and through active U.S. government engagement with civil society.
- **Renunciation of the narrow human rights interpretations of Secretary Pompeo's "Unalienable Rights Commission" is critical to this course correction.** The Commission — made up of religious rights zealots with records of opposition to LGBTI equality and women's reproductive rights — concluded that religious freedom and property rights are preeminent

human rights, and that LGBTI and reproductive rights are mere domestic controversies. These intentional conclusions undermine the integrity of human rights policy. As the report has been both distributed abroad and commended by the Secretary to the attention of State Department personnel, it must be unequivocally refuted.<sup>2</sup>

- ✓ **Recommendation:** That DRL or Policy Planning (S/P) promptly create a panel of human rights experts to review and rebut the conclusions of the Commission on Unalienable Rights, and to provide concrete policy recommendations to the Department for a fully inclusive and principles-based human rights policy.
  - ✓ **Recommendation:** That the Foreign Affairs Manual (FAM) be revised to specifically exclude any narrow or religious-based interpretation of human rights, consistent with U.S. founding principles.
- **A Special Envoy should be reappointed with the rank of ambassador, and the position should remain a senior career diplomatic position, placed within State/Bureau of Democracy, Human Rights, and Labor (DRL) with strong staff support.** The Trump Administration willfully has chosen not to fill the Special Envoy position. Refilling it as a priority by presidential appointment and staffing it as a fully functioning office would demonstrate the importance of its mission. Placement within DRL, as was done under the Obama Administration, would telegraph a holistic approach to human rights, while building on long-standing career relationships within the Department to invigorate engagement on LGBTI issues as human rights among both career personnel and foreign embassies/ministries. The Special Envoy should be at ambassadorial level, or filled by a person holding that title previously. If the position becomes political, then the candidate must have an extremely relevant background akin to diplomacy, while simultaneously diversifying the representation of the LGBTI community. The position also needs significantly greater staff support from a full office within DRL to be effective.
    - ✓ **Recommendation:** That appointment of a new Special Envoy be prioritized, and that the position be supported by a full Office of the Special Envoy within State/DRL.
    - ✓ **Recommendation:** That staffing and funding for the Special Envoy be increased, allowing the Special Envoy to balance policy support needs with a primary duty of working with foreign governments to enhance human rights and democratic protections for LGBTI people.
  - **Human right reporting must be strengthened and tied to policy outcomes. Robust human rights reporting in the Congressionally-mandated Human Rights Report has atrophied under the Trump Administration and the reports have virtually no tie to policy or budget decisions.**

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<sup>2</sup> As of November 4, the Council for Global Equality along with other human rights plaintiffs are awaiting a court decision on the legality of the Commission's work based on what we believe to be statutory violations of the Federal Advisory Committee Act (FACA). Plaintiffs are asking the Department to repudiate the findings of the Commission and rescind the report in all venues where it has been distributed.



- ✓ **Recommendation:** That the Secretary of State mandate a return to robust reporting by State Department human rights officers on the full range of human rights abuses impacting LGBTI communities globally in the Department’s annual Human Rights Report (HRR). This should include comprehensive reporting on sexual and reproductive health and rights, gender-based violence, as well as anti-LGBTI discrimination and violence perpetrated by both state and non-state actors, including domestic and familial violence.
  - ✓ **Recommendation:** That for the first time, the HRR reporting instructions also mandate inclusion of detailed information on the use of forced anal exams by state officials as a discredited forensic tool to establish sexual activity in criminal prosecutions, along with detailed information on the legality and prevalence of the use of “conversion therapy” to persecute LGBTI or gender non-conforming individuals, including children.
  - ✓ **Recommendation:** That when any government is identified by a Department human rights report as having directed human rights abuses, levels and types of bilateral assistance to that government automatically be placed under review, with recommendations on their effectiveness and restructuring to be reviewed and determined by the National Security Council.
- **Gender issues must feature prominently in a Biden foreign policy.** A concerted and prioritized effort is urgently needed to push back against anti-gender-ideology policies embedded in Trump-era initiatives and regulations and at multilateral institutions.
    - ✓ **Recommendation:** That Trump Administration prohibitions on use of the term “gender” in negotiated resolutions and norm-setting documents at the UN and in other multilateral fora be reversed, reestablishing Obama Administration policy that is deliberately inclusive of transgender and non-binary individuals.
    - ✓ **Recommendation:** That the Administration seek to advance, at the 65th Session of the Commission on the Status of Women in March 2021, language respecting, protecting and promoting the human rights of a diversity of sexual orientations, gender identities, and gender expressions, and that the delegation to that negotiation reflect this diversity.
    - ✓ **Recommendation:** That the Administration immediately revert to the Obama Administration’s September 2015 position of using and supporting the phrase “sexual rights” and that, in consultation with civil society experts, it seek an updated definition of sexual rights that fully recognizes sexual rights as human rights and ensures their protection for all people regardless of sexual orientation, gender identity or gender expression.
    - ✓ **Recommendation:** That as part of the Department’s efforts to replenish the diplomatic ranks and recruit more diverse employees, and in fulfilling the Biden campaign’s commitment to striving for gender parity in the senior ranks, that particular attention is paid to lesbian, bisexual and transgender women’s representation at the State Department.

- ✓ **Recommendation:** That all gender-based violence programming within the Department explicitly include violence that is based on gender non-conformity and transgender-specific violence.
- **The Department of State’s Office of International Religious Freedom should be reintegrated into DRL**, with a view to a broader, more holistic understanding of the place of these issues within human rights, development, and health assistance priorities.
  - ✓ **Recommendation:** That the Office of International Religious Freedom (IRF) should be reintegrated within DRL and tasked with working closely with the Office of the Special Envoy for the Human Rights of LGBTI Persons.
  - ✓ **Recommendation:** That the Ambassador-at-Large for Religious Freedom and the Special Envoy for the Human Rights of LGBTI Persons be directed to work together within DRL to provide recommendations to the White House on how religious exemptions to existing U.S. foreign policies and development programs might be reshaped in ways that avoid undercutting policy goals, consistent with Biden Administration policy and with due consideration given to the public funding and purposes employed.
- **U.S. foreign policy must recognize that white nationalist movements and anti-gender ideology organizations in this country and abroad are interconnected, and respond appropriately to this reality.** These movements and organizations enjoy significant funding; their coordination, both domestically and with like-minded organizations abroad, present major human rights challenges to American interests.
  - ✓ **Recommendation:** That the Under Secretary for Civilian Security, Democracy and Human Rights and the Under Secretary for Public Diplomacy and Public Affairs be tasked with developing bilateral and multilateral strategies aimed at educating publics as to the subversive impact of these movements on democratic progress and international cohesion, and that these strategies also include recommendations for engaging stakeholder communities of the IRF Office, GWI Office, Anti-Semitism Office and the Office of the Special Envoy for the Human Rights of LGBTI Persons.
  - ✓ **Recommendation:** That the results of the above review be reflected each year in the Department’s annual Strategic Planning and Review process.

## **Responding to LGBTI Human Rights Discrimination and Abuse**

- **While the content and scope of our response to foreign governments that systematically abuse LGBTI and other human rights may differ, there should be a smartly targeted response in each case.** The Obama Administration responded in concrete, measured fashion to passage of an egregiously discriminatory anti-LGBT law in Uganda, for instance, yet failed to respond in any way to passage of an arguably

worse law in Nigeria during the same timeframe. While there can be no “one-size-fits-all” approach to disparate human rights violations in countries where the content and weight of U.S. programs varies, systemic government-sponsored or -encouraged abuse of LGBTI and other human rights should trigger a review of U.S. priorities and programs, aimed at offering a concrete response that might target (for reasons of impact) programmatic areas of clear interest to the offending country.

- ✓ **Recommendation:** That the Secretary direct that, whenever there is evidence of government complicity in LGBTI human rights abuse, or in government-sanctioned climates encouraging LGBTI abuse, the Under Secretary for Political Affairs and the Under Secretary for Civilian Security, Democracy and Human Rights will task the relevant geographic bureau and DRL with outlining a tiered range of substantive responses aimed at encouraging appropriate government policy revisions or actions.
- ✓ **Recommendation:** That the Department’s annual strategic review process include explicit discussion of human rights behavior by each country, as well as of the obstacles in that country to the decriminalization of the status, expression, and conduct of LGBTI individuals, and the strategies available to the Department and other foreign affairs agencies to address such obstacles.
- **The Department should use existing authorities to sanction individual perpetrators of atrocities.** Although the Trump Administration lacked any positive strategies (carrots) for encouraging countries to honor and protect human rights, it appropriately sanctioned a range of individuals documented as responsible for human rights abuse. This sanctions policy enjoyed bipartisan support and should be continued in coordination with the Treasury Department.
  - ✓ **Recommendation:** That the Department, in coordination with Treasury, adopt a policy of robustly using sanctions authorities to respond to LGBTI atrocities, including Global Magnitsky, Section 7031(c) and other available country and visa sanctions.
  - ✓ **Recommendation:** That the Department’s Legal Adviser determine whether and under what conditions forced anal exams and conversion therapy constitute torture or cruel, inhuman or degrading (CID) treatment under the Convention Against Torture or other applicable U.S. law. This review should establish the applicability of Global Magnitsky, Section 7031(c), and other sanctions provisions to individuals implicated in such practices. In addition, it should establish vetting standards under which foreign assistance must be prohibited to governments or other state entities engaged in these activities.

## Sharpening our Rule of Law Focus

- **Rule of law programs should be prioritized in each country where the rights of LGBTI and other minority communities are incomplete, or where LGBTI and other civil society organizations are under siege.** Legal protections for minority communities are critical to democratic development, including: the exercise of fundamental freedoms by LGBTI individuals and organizations; blunting of discriminatory actions and laws; fair judicial recourse to rights; and protection from, and effective response to, physical and other bias-motivated violence and abuse. A number of steps would enhance our country's leadership in tackling rule of law problems abroad:
  - ✓ **Recommendation:** That the Departments of State and Justice together seek expanded funding through the Bureau of International Narcotics and Law Enforcement Affairs (INL) to support legal reform and institutional capacity to prosecute hate crimes directed at LGBTI individuals and populations.
  - ✓ **Recommendation:** That the Secretary of State, in consultation with the Attorney General, develop an annual list of countries in each geographic region in which the Office of Overseas Prosecutorial Development Assistance and Training (OPDAT) of the Department of Justice must prioritize programs seeking to decriminalize the status, expression, and conduct of LGBTI individuals, and where the trials of those prosecuted because of such status, expression, or conduct are to be monitored.
  - ✓ **Recommendation:** That interagency briefing teams on U.S. legal assistance opportunities be deployed to at least five countries in each geographic region, with a view to expanding bilateral cooperation on issues involving police training and the protection/exercise of legal rights; and
  - ✓ **Recommendation:** That International Law Enforcement Academy (ILEA) training include more specific and detailed content on appropriate steps to prevent and respond to hate crimes directed at LGBTI and other minority populations, with cautionary reference to the structural bias and racism that have undermined our own country's attention to hate crimes. The network of those who have participated in these programs also should be strengthened with a view to increasing the impact of this training country-wide.

## Protecting Vulnerable Populations

- **Expedited processing for all LGBTI refugee cases, with additional security provided during processing, is urgently needed.** LGBTI refugees are generally despised, and frequently abused, within resettlement camps and in urban settings; their resettlement often also is hampered or delayed by negative attitudes in receiving countries. Reaffirming our country's commitment to helping the most vulnerable would both address an urgent humanitarian need and restore America's humanitarian face in the wake of a brutally xenophobic Trump Administration. This will also help ensure the U.S. reaches its reestablished goal of resettling 125,000 refugees per year.

- ✓ **Recommendation:** That State Department-trained and accredited NGO partners be allowed to make in-country Priority 2 (“P-2”) referrals for those LGBTI cases that are most at-risk, and that the United States request UNHCR to send such LGBTI cases for resettlement. The P-2 category should apply to individuals facing or fleeing persecution as a result of their sexual orientation or gender identity and who share common characteristics that identify them as targets of persecution on account of sexual orientation or gender identity; and if necessary, a pilot effort could limit LGBTI P-2 status to the following countries: Chechnya/North Caucasus, Egypt, El Salvador, Guatemala, Honduras, Tanzania, and Uganda.
  - ✓ **Recommendation:** That PRM direct and notify embassies via cable to provide Priority 1 (“P-1”) referrals of cases of LGBTI people with compelling protection needs and where they are outside of UNHCR’s jurisdiction and cannot leave their country of origin; allow and ask appropriate non-governmental organizations to support and refer such LGBTI cases for P-1 visas and provide training to non-governmental organizations on assessing LGBTI refugee claims, including assessing credibility.
  - ✓ **Recommendation:** Building on the [Obama administration’s directive to State](#) to allow qualified refugees to bring their same-sex partner to the United States, confirm that LGBTI couples without access to marriage equality can be resettled together and are eligible for Priority 3 (“P-3”) processing; minimize documentation requirements in countries that don’t recognize same-sex marriages; classify K-1 visa applicants as “essential” in visa processing if they do not have access to marriage equality in their country of origin.
  - ✓ **Recommendation:** That U.S. financial support be expanded for UNHCR training, case monitoring, and security for LGBTI refugees, and that additional funding be allocated to the Department’s Bureau of Population, Refugees, and Migration (PRM) to provide consulate staff, case-workers, and translators training on non-discrimination and assessing the credibility of LGBTI refugee cases.
  - ✓ **Recommendation:** That the Departments of State and Homeland Security together seek expedited action to integrate SOGI (sexual orientation and gender identity) data into data management systems operated by both Departments, so that the United States can more effectively monitor, track and serve LGBTI refugees and asylum seekers.
- **Support to the Global Equality Fund should be increased significantly, and tracking of LGBTI-dedicated funds across government should be improved.** The Global Equality Fund, a legacy of the Obama Administration, should receive at least three times its current level of funding to match demonstrated need and achieve parity with other U.S. government human rights priorities. That funding should be more closely meshed with other Department diplomatic and development efforts to support LGBTI populations. The Department, in coordination with other U.S. government foreign affairs agencies, also should support efforts to track investments in LGBTI issues and programs through human rights and development assistance funds, including efforts within the Department’s Office of U.S. Foreign Assistance and through our reporting to the OECD’s Development Assistance Committee.



- ✓ **Recommendation:** That funding be tripled, to approximately \$30 million annually, for the Global Equality Fund under the leadership of DRL in FY 2021. Ongoing annual LGBTI funding levels as a percentage of our country’s total aid budget should grow to be equivalent to other peer development agencies.<sup>3</sup>
- ✓ **Recommendation:** That the Director of the Office of U.S. Foreign Assistance chair a working group aimed at collecting, disaggregating, and reporting targeted LGBTI investments across agencies and sectors and through the OECD process.

## Responding to Citizen Needs

- **Passport and other documentation requirements need updating for the benefit of transgender, intersex, and non-binary Americans.** Current documentation requirements for how transgender, intersex, and non-binary citizens can change their passport gender markers are unnecessarily restrictive and bureaucratic. Greater flexibility is needed and can be achieved without undue openings to fraudulent application. Non-binary gender markers should be available to all.
  - ✓ **Recommendation:** That the Department include nonbinary “X markers” on U.S. passports as an accepted gender field (along with male and female).
  - ✓ **Recommendation:** That the Department remove the gender marker from DOS Form FS-240, Consular Report on Birth Abroad of a Citizen of the United States of America, while retaining the confidential collection of statistical data on gender on Form DS 2029, Application for Consular Report of Birth Abroad of a Citizen of the United States of America.
- **Citizenship transferal requirements need revision, to reflect modern-day changes in how children increasingly are conceived.** The growing use of assisted reproductive technology (ART) as a means by which American citizens conceive children increasingly has challenged traditional understandings of how citizenship can be conferred – particularly in cases where there is neither a biological nor a gestational relationship between the child, born abroad, and its intended parents in the United States. The problem impacts both gay and straight citizens, although current policy guidance most clearly discriminates against same-sex couples. This is a complex issue, but one on which court cases are mounting as modern-day realities outstrip citizenship law. Priority must be given to ensure that the INA and FAM are fairly applied, especially in defining citizenship for children born to same-sex parents in “wedlock,” thereby ensuring that the intended children of U.S. citizens are not rendered stateless.
  - ✓ **Recommendation:** That the Bureau of Consular Affairs convene a working group, to include representation from the Department of Homeland Security, aimed at

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<sup>3</sup> For the United States to be on par with the Netherlands, Norway or Sweden in terms of an averaged percentage of our ODA dedicated to LGBTI programs, the U.S. would need to grow to \$90 million annually according to comparable data from the Global Philanthropy Project’s 2017-2018 Global Resources Report.

considering what anti-fraud measures and other guidelines might facilitate a wider interpretation of the impact of ART on how citizenship can be conferred, and how citizenship should be conferred to children born to same-sex couples in “wedlock.”

## **Foreign Service Personnel Protections**

- **We urge a stronger, more proactive effort to ensure that LGBTI personnel and their families can be assigned to all missions abroad.** As many as two-thirds of countries currently do not have clear policies allowing the provision of diplomatic visas or protections to the families of LGBTI diplomatic and technical staff. Tackling these obstacles is important to the Department’s rational service assignment needs; to employee career expectations; and to the safety of LGBTI men and women who support U.S. interests abroad. The Department’s leadership on this issue also would be welcomed by corporate and non-governmental organization actors, which face similar problems in the movement of LGBTI employees and their families abroad.
  - ✓ **Recommendation:** That within the first 100 days, the Under Secretary for Management will work with the Under Secretary for Political Affairs and regional assistant secretaries to prioritize diplomatic approaches and strategies aimed at reducing the number of countries that decline to offer diplomatic visas and protections to LGBTI employees and their families.
  - ✓ **Recommendation:** That this effort be reviewed and renewed at least annually, with a view to ensuring that this personnel policy issue is resolved or narrowed expeditiously.
  - ✓ **Recommendation:** That the Secretary of State provide annually to the foreign affairs committees in Congress a classified list of each country that has refused to grant accreditation to LGBTI employees of the Department or their family members in the prior two years and the actions taken or intended to be taken by the Secretary to address these refusals.
  - ✓ **Recommendation:** That the State Department improve school information for LGBTI employees and employees with LGBTI family members, and ensure that information focused on LGBTI children of all ages (including transgender and gender non-confirming students) is included in all post reports, bidding materials, and Office of Overseas School reports, databases, and adequacy lists.
  - ✓ **Recommendation:** That the State Department create a FACA advisory board, predominantly made of corporate sector representatives, to provide the White House with expertise on best practices used in the corporate sector to attract, retain, and ensure world-wide service availability of LGBTI talent, and to partner with the U.S. government in identifying strategies to impact positively the climates in which LGBTI personnel must operate overseas.

# U.S. Agency for International Development



For reasons of both principle and programmatic impact, U.S. development assistance programs should reflect values of inclusivity and equality. USAID should ensure that all relevant development programs, including those administered by implementing partners, are inclusive of LGBTI populations, including programs focused on education, health, livelihoods, poverty-alleviation, and political and social rights. In that context, we ask that USAID be directed to ensure that funding specifically reaches lesbian, intersex, transgender and other particularly marginalized communities that, to date, often have been excluded from LGBTI development assistance funding. In particular, due to the disproportionate number of LGBTI community members working in informal labor sectors, LGBTI people around the world have been disproportionately impacted by COVID-19 and to date USAID's COVID-specific funding has not been inclusive of these communities.

As the Biden Administration frames its priorities, we respectfully ask that the following policy and procedural steps be considered.

## **Public Tone**

- **Once an Administrator is confirmed, we ask that the Administrator publicly enunciate an inclusive development policy.** Sending an early signal to all USAID employees, missions, and implementers about the value of genuinely inclusive development will set an important tone for the agency in refuting the Trump Administration's negative legacy.
  - ✓ **Recommendation:** We ask that such a statement be prioritized in the new Administration, and that LGBTI populations specifically be mentioned in such a statement, along with other underserved and often overlooked populations such as people with disabilities and ethnic and religious minorities.

## **Budget Increase**

- **To meet the underserved development needs of LGBTI populations across the world, we request an immediate and sharp increase in the outflow from the LGBTI Global Human Rights Initiative to LGBTI-led organizations and programs.** The LGBTI Global Human Rights Initiative is USAID’s LGBTI-specific public-private funding mechanism, to which other governments and entities also contribute. Even the Trump Administration has acknowledged that the current funding level of roughly \$3 million is vastly insufficient to meet needs. The Initiative is poised for growth; a funding increase can spur much-needed inclusive programming from other USAID regional and thematic development assistance programs.
  - ✓ **Recommendation:** That the LGBTI Global Human Rights Initiative be funded at a minimum annual level of \$30 million as soon as feasible. Ongoing annual LGBTI funding levels as a percentage of USAID’s total aid budget should grow to be equivalent to other peer development agencies.<sup>4</sup>

## **Democratic and Developmental Assistance**

- **LGBTI populations must be more systematically integrated into USAID democratic and developmental assistance programs.** USAID’s Democracy, Human Rights and Governance Inclusive Development Policy and its [LGBT Vision for Action](#) are both solid foundational documents making the case for greater integration of the needs of LGBTI people in our fight against poverty. However, more genuinely LGBTI-inclusive development projects are needed throughout the agency’s democratic and developmental assistance mechanisms to truly “leave no one behind” as we attempt to achieve commitments made towards the 2030 Agenda for Sustainable Development. Economic development in particular enhances national security, including the economic development of the most marginalized populations such as LGBTI.
  - ✓ **Recommendation:** That the specific needs of LGBTI populations be considered within the annual planning goals, dedicated funding and staffing of all regional bureaus and relevant thematic bureaus.
  - ✓ **Recommendation:** That within USAID’s democracy programs, and in coordination with the State Department, country-specific development strategies be created to support legal reform including decriminalizing same-sex expression and conduct, as well as gender nonconformity. Support protective legal reforms such as non-discrimination, hate crimes, and other

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<sup>4</sup> For the United States to be on par with the Netherlands, Norway or Sweden in terms of an averaged percentage of our ODA dedicated to LGBTI programs, total U.S. assistance for LGBTI programs would need to grow to \$90 million annually according to comparable data from the Global Philanthropy Project’s 2017-2018 Global Resources Report.

legal equality measures. Specifically support advancing transgender and intersex rights as well as the needs of lesbian and bisexual women.

- ✓ **Recommendation:** That all poverty alleviation programs (including educational, health, livelihoods, food, microcredit, and economic development programs) and sustainable development goals include dedicated resources and goals for LGBTI populations.
- ✓ **Recommendation:** Rescind and replace USAID’s most recent Gender Equality and Women’s Empowerment Policy with a more inclusive version that recognizes the centrality of sexual and reproductive rights, as well as the intersectional needs of LGBTI women and gender-non conforming people.

## **Non-Discrimination Principles and Policies**

- **U.S.-funded contractors, grantees and their subcontractors must be verified as complying fully with 2016 USAID regulations on non-discrimination on grounds of sexual orientation and gender identity in service delivery.** In most countries where USAID missions work, LGBTI beneficiaries are socially marginalized and/or legally disadvantaged and risk discrimination in accessing services unless USAID provides clear guidance, regular and ongoing training, and compliance monitoring to secure the effective implementation of its new policy. Overly broad faith-based exemptions to non-discrimination policies have undercut the effectiveness of these policies. ([See Annex B](#) for suggested guidelines for implementation’s service non-discrimination protections.)
  - ✓ **Recommendation:** Promptly review faith-based exemptions to any non-discrimination policies, domestic or abroad, granted during the previous Administration, as well as regulatory expansion of “freedom of conscience” provisions that allow medical providers to refuse necessary medical services based on personal convictions.
  - ✓ **Recommendation:** That policy and programmatic work of the Center for Faith and Opportunities Initiative be reviewed with a view to removing homophobic and transphobic content and biased funding implementers.
  - ✓ **Recommendation:** In coordination with the White House, extend non-discrimination protections to overseas employment in keeping with parallel commitments to employment protections for LGBTI contractors in the United States based on prior policy and the recent *Bostock* decision of the U.S. Supreme Court.
  - ✓ **Recommendation:** Ensure that a “beneficiary bill of rights” and related complaint mechanism are visible at all USAID-funded programs and sites. This “bill of rights” should inform intended beneficiaries of their eligibility for U.S. government-funded services regardless of race, ethnicity, religion, national origin, disability, sexual orientation, gender identity, sex characteristics or any other protected class; emphasize their right to be free from unwanted proselytizing while receiving government-funded services; and provide information on how to access a credible complaint mechanism to redress any discrimination that might occur.



## Office of the Senior LGBTI Coordinator (or Global Coordinator for LGBTI Issues)

- **Properly refilling and funding the Senior LGBTI Coordinator position and its Office should be a priority.** An early fill would telegraph the importance of LGBTI inclusion to the new Administration and reinstate the leadership role that the U.S. government played on global LGBTI human rights and development issues under the Obama Administration. While the current LGBTI Coordinator and his predecessor have made efforts to solidify funding and staffing for the office, staff remains skeletal and pulled together primarily by annual fellows, undercutting the need to balance policy integration at home and work with USAID missions abroad.
  - ✓ **Recommendation:** The Senior LGBTI Coordinator should be reestablished within a formal office with sufficient staffing including a senior career position as either the number one or number two position. This more senior position would benefit from long-standing career relationships within the Agency to invigorate engagement on LGBTI issues as development priorities among both career personnel and foreign missions.
  - ✓ **Recommendation:** Staffing and funding for the LGBTI Coordinator’s office should be increased. To cover both the demands of policy integration and oversight at home, and work with USAID Missions and LGBTI groups abroad, we recommend a minimum staffing level of seven and funding at a level no less than \$30 million.

## Increasing Transparency

- **The American people deserve to understand where their tax dollars are going, and why.** Given this population’s historical marginalization, it is particularly critical to provide greater transparency to civil society advocates, with a view to strengthening synergies and both tracking and disaggregating funding streams, especially where such funding is included in larger programs from larger entities not led by the LGBTI community.
  - ✓ **Recommendation:** Provide data on LGBTI funding to the Global Philanthropy Project’s annual tracking report in as detailed a format as feasible in collaboration with the NSC’s interagency process once in place.
  - ✓ **Recommendation:** Hold an annual meeting with key civil society and other private donor partners to review the data submitted to the report with the purpose of greater partnership and identification of needs and gaps.
  - ✓ **Recommendation:** Disaggregate data regarding particular populations, including lesbian, gay, bisexual, transgender and intersex within “inclusive development” categories of funding, in order to provide a more accurate understanding of how much money is actually flowing to these populations for needed services.
  - ✓ **Recommendation:** Analyze the flows of funding for LGBTI human rights and

development by type of implementing organization, giving particular attention to whether LGBTI community-led organizations and programs are prioritized.

## **Foreign Service Personnel Protections**

- **Finally, we urge a stronger, more proactive effort to ensure that LGBTI personnel and their families can be assigned to all missions abroad.** Too many countries currently will not provide diplomatic visas or protections for the families of LGBTI employees – putting the latter at risk of choosing between family and career needs. Tackling these obstacles is important to rational workforce assignments and career expectations, and to the safety of the people who support U.S. interests abroad. Leadership on this issue also would be welcomed by corporate and non-governmental organization actors, which face similar problems in the movement of LGBTI employees and their families abroad.
  - ✓ **Recommendation:** Within the first 100 days, USAID leadership should work with the State Department to prioritize strategies aimed at reducing the number of countries that decline to offer diplomatic visas and protections to LGBTI employees and their families.

# The United States President's Emergency Plan for AIDS Relief (PEPFAR)



## Protecting Vulnerable Key Populations in HIV Funding

PEPFAR urgently needs important refinements. One in four new HIV infections occur among gay/bisexual men, and trans women are 13 times more likely to become HIV infected than the general population worldwide. Despite these grim statistics, PEPFAR contributes less than one quarter of its funds to key populations, and what is targeted for those populations often does not reach them directly because of how funding flows. According to a recent study, only 2% of all AIDS funding targets key populations even though key populations accounted for over half of all new infections.<sup>5</sup>

In this context, the Office of the U.S. Global Aids Coordinator (OGAC) must direct PEPFAR programs to better serve gay and bisexual men, transgender and other key populations. Key population-targeted funding has been problematic at best, with many LGBTI populations highly vulnerable both to public bias and to discriminatory service providers that reduce access. In addition, resources continue to be concentrated in large mainstream organizations at country-level (sometimes government run) or large international non-governmental organizations, barely reaching these populations and if so, ineffectively. This is true even with the Key Population Investment Fund, which was intended to direct funding directly to community-based, key population-led organizations. The program was mishandled and needs to return to original intent and become properly institutionalized.

## PEPFAR Reform

During President Obama's terms of office, OGAC directed that PEPFAR programs serve MSM and transgender populations – a critical need. However, implementation of this policy remains imperfect, with many LGBTI populations highly vulnerable both to public bias and to discriminatory service providers that reduce access.

<sup>5</sup> "Fast Track or Off Track: How Insufficient Funding for Key Populations Jeopardizes ending AIDS by 2030," October 2020.

## Staffing, Budget and Oversight

- ✓ **Recommendation:** Ensure the new leadership of OGAC has a proven commitment to the particular needs of the most at-risk populations including LGBTI people.
- ✓ **Recommendation:** Ensure sufficient funding by increasing the budget for PEPFAR and the Global Fund each year – and convene the world to fill the remaining gap.
- ✓ **Recommendation:** Launch a bold multi-sectoral effort to fight marginalization and address the structural drivers of HIV for LGBTI communities, including criminalization. Coordinate with the Global Equality Fund at the State Department on strategies. The Global AIDS Coordinator and the Special Envoy for the Human Rights of LGBTI Persons should work jointly on diplomatic approaches to augment related funding.
- ✓ **Recommendation:** PEPFAR indicators should be fit for purpose. Indicators or targets that take a singular focus on ‘yield’ (number of positive test results) are inappropriate for comprehensive program approaches. They also perpetuate bad practice since funding is often conditioned on meeting targets like yield. As a result, implementers are pressured to make their targets and to do so often cut corners, which in turn compromises the quality, safety, and security of services.
- ✓ **Recommendation:** OGAC must create a more rigorous and meaningful definition of “Key Populations-competent” organizations as part of procurement.
- ✓ **Recommendation:** USAID must rigorously enforce policies that prohibit religious or morality-based exemptions to public health and evidenced-based development strategies and programs.
- ✓ **Recommendation:** PEPFAR funding and outcomes data must be disaggregated by each population, so that accurate information about gay and bisexual men and transgender populations can be better understood.

## Structural Reforms

- ✓ **Recommendation:** The Administration must prioritize seeking a legislative rider to revoke PEPFAR’s “anti-prostitution pledge,” which public health and civil society communities recognize as counter-productive to an effective response to the HIV/AIDS epidemic; and that the administration should seek work-arounds for the “anti-prostitution pledge” until a legislative rider is possible.
- ✓ **Recommendation:** The Administration must repeal the Mexico City policy, also known as the global gag rule, which has deleteriously affected HIV services for gay/bi men, trans people and other key populations. These communities often seek their HIV and other sexual health services from family planning clinics impacted by the global gag rule, since these clinics are often more welcoming and sensitive to the needs of the LGBTI community.
- ✓ **Recommendation:** Coordination between USAID and CDC, the main recipients of PEPFAR funding, remains poor. The administration should encourage better coordination between OGAC and federal agencies with which they work.

- ✓ **Recommendation:** The Key Populations Investment Fund (KPIF) must be evaluated, stabilized and instructed to seek community-led partners capable of reducing criminalization, stigma and discrimination directed at gay, bisexual, and transgender people. PEPFAR should explore opportunities to identify new partners—including human rights grantmakers—to serve as intermediaries and implementors for KPIF funds; simultaneously, implementors that have historically received PEPFAR funding for HIV treatment and prevention programs should undergo a rigorous vetting process to verify a history of non-discrimination towards key population beneficiaries, stigma-free service delivery, adequate end-user buy-in and representation from key population individuals, and overall alignment with the initial intent of KPIF.

### Funding Priorities and Safeguards

- ✓ **Recommendation:** A far greater proportion of PEPFAR funding should be directed to community-led (i.e., LGBTI-led, key-population-led) organizations. This strategy would improve cost efficiency, accessibility, quality, recruitment, utilization, and retention.
- ✓ **Recommendation:** Structural interventions should focus on removing policy and legal barriers to HIV-related services. LGBTI-led organizations should be funded to lead these efforts, including work required to decriminalize homosexuality<sup>6</sup> and gender non-conformity as well as to introduce laws and policies that respect gender identity and protect LGBTI people from discrimination and violence.
- ✓ **Recommendation:** The Administration should increase focus on HIV *prevention* for gay/bisexual men and trans women, given the disproportionate rates of infection. PEPFAR funding has prioritized testing and treatment over prevention.
- ✓ **Recommendation:** The Administration should discourage the use of approaches that would undermine safety, security, and human rights. OGAC should not continue to endorse public health practices, like index testing, without careful consideration for the human rights concerns of gay/bi men, trans people, and other key populations.
- ✓ **Recommendation:** OGAC should work more diligently to encourage countries to better engage gay/bi men, transgender people, sex workers, and people who use drugs during COPS/ROPS and other HIV planning processes.
- ✓ **Recommendation:** Key populations in middle-income countries should continue to receive funding and prioritization by the PEPFAR program.

### COVID-19 Impact on LGBTI People

The COVID-19 pandemic has caused extreme hardship for LGBTI people living with HIV. Government responses to the pandemic must safeguard HIV programming and protect marginalized and vulnerable LGBTI people.

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<sup>6</sup> New research revealed at the AIDS 2020 international conference showed rates of HIV infection were five times higher for men who have sex with men in criminalized contexts over those in non-criminalized contexts.



- ✓ **Recommendation:** The world was already off track to reach 2020 global targets, and COVID-19 further threatens progress, particularly among gay and bisexual men, trans women, and other key populations. We must recommit to targets through partnership with community-led and key population-led organizations, networks, and consortia.
- ✓ **Recommendation:** Gay and bisexual men, trans women, and [LGBTI communities are being scapegoated, blamed, harassed, and targeted](#) during the COVID-19 pandemic, including the raiding of some LGBTI-led organizations, increases in “conversion therapy,” and difficulties accessing medications. These factors undoubtedly impact the HIV response and deter key populations from seeking services.
- ✓ **Recommendation:** Efforts to decentralize HIV services should bolster pre-existing community-led strategies, and increased support and investment should flow to community-led organizations to reach gay and bisexual men and trans women during COVID-19.
- ✓ **Recommendation:** The economic impact of COVID-19 on gay and bisexual men, trans people, LGBTI communities, sex workers, and others will also greatly impact the ability of some persons to seek health services and acquire medicine. Considerations should be made for income support.
- ✓ **Recommendation:** Governments must acknowledge barriers to meaningful participation of key populations in virtual meetings during the pandemic. Governments and multilateral agencies should develop a plan to overcome these barriers based on human rights principles and guided as well by principles of accountability, transparency, and equity. Special efforts should be made to provide financial and technological assistance to connect with civil society stakeholders who are less able to acquire the necessary technology and connectivity, so the groups farthest left behind are still meaningfully engaged.

# Department of Commerce



Multinational corporations have shown increasing leadership in revising internal policies in ways that reflect the reality that fair and equal workplaces are more productive than those that discriminate. The Council urges that the Department of Commerce promote these policies, working with U.S. corporations and chambers of commerce around the world to make clear their support for LGBTI equality and workplace fairness. In this effort, as the Biden Administration frames its policy priorities, we encourage the following actions from the Commerce Department.

- ✓ **Recommendation:** The Commerce Department’s **Foreign Commercial Service (FCS) should actively engage American Chambers of Commerce abroad** with a view to forging country-specific government engagement plans on the need to ensure LGBTI protections in the workplace. Unfair laws negatively impacting LGBTI employees abroad represent major business impediments that are similar to unfair regulatory, tax, customs, or other “equal playing field” factors that American Chambers regularly address. In this effort, American Chambers of Commerce should regularly consult with local LGBTI chambers of commerce where they exist and support their development where they do not exist.
- ✓ **Recommendation:** The Commerce Department also should **partner with global U.S. companies and their supply chains to ensure that LGBTI workers are accorded equal employment opportunities and protections abroad.** Restating a company’s commitment to fair employment practices for LGBTI employees, particularly through unambiguously clear local recruitment and personnel policies that are publicized and trained to at all levels, can be done irrespective of any host country’s laws related to sexual orientation or gender identity. Having a clearly inclusive and globally consistent policy is positive not only for a company’s board, stakeholders, and public image, but also for our country’s image abroad.

- ✓ **Recommendation:** The FCS should promote LGBTI small business as a priority, and it should only promote trade and business opportunities (in Washington and at U.S. embassies abroad) for those U.S. corporations that demonstrate their commitment to LGBTI-fair policies. Access to “Gold Key” programs in U.S. embassies abroad that provide technical assistance to help U.S. corporations identify trade opportunities should be made contingent on corporate policies that are consistent with Administration non-discrimination objectives. Doing so would reaffirm visibly and meaningfully the new Administration’s commitment to ensuring that fairness and equality are America’s face to the world.
- ✓ **Recommendation:** The Department and other federal foreign affairs agencies should partner actively to **ensure that LGBTI personnel and their families can be assigned to all missions abroad.** Many countries currently deny visas for the families of LGBTI employees – putting the latter at risk of choosing between family and career needs. Department leadership in tackling this obstacle to workforce assignments would be well-received by the Department’s own LGBTI personnel, but also the private corporate sector, which faces this problem as well.

# Department of Defense



The Department of Defense’s vital mission is to protect our national security. One core way to accomplish this mission is by representing our country’s interests and values – values including fairness and equality, promised to our own citizens and held out as models for other countries.

The transgender military ban and service prohibitions for otherwise deployable HIV+ and intersex troops telegraph a message of intolerance and discrimination, even for those lesbian, gay, and bisexual service members who are allowed to serve. As such, these service bans undermine our country’s commitment to equality. In contrast, providing equal opportunity for all who meet deployment standards will make our military stronger and more effective.

In addition, the U.S. military, including the service academies, provide important opportunities for marginalized communities to access quality education, career training, and career advancement, and this is equally the case within the LGBTI community and especially for LGBTI persons of color.

As the Biden Administration frames its policy priorities, we encourage the following actions from the Defense Department.

## Under Secretary for Personnel and Readiness

- ✓ **Recommendation:** That the Department **reinstate the right of transgender Americans to serve in the military**, because opportunity for all who can meet the standards makes our military stronger and more effective.
- ✓ **Recommendation:** **Begin the process of eliminating service and retention disqualifications for individuals living with HIV and for individuals born with intersex variations** (previously referred to using the outdated and offensive term “hermaphroditism”).
- ✓ **Recommendation:** Revise the Department’s **military training on diversity issues** to



include new modules on sexual orientation, gender identity, and intersex status, including modules for all foreign military training programs.

- ✓ **Recommendation:** Ensure that all basing and status of forces agreements include clear protections for all Department deployed LGBTI personnel, both military and civilian. These protections should extend to contracted and locally hired base personnel and to all LGBTI dependents living, working or studying on base; they equally should obligate host countries to discuss and respond to off-base LGBTI personnel safety concerns.

### Under Secretary for Policy

- ✓ **Recommendation:** Engage foreign military staffs pro-actively on lessons learned in defense readiness, productivity and morale from the repeal of both “Don’t Ask, Don’t Tell” and the transgender service ban. These discussions should be part of our regular interaction with foreign military officials, with a view both to assuaging any concerns regarding our openly LGBTI personnel and to re-shaping how foreign military officials view the question of open service.
- ✓ **Recommendation:** Ensure that all U.S-funded foreign military training programs and officer exchange programs include training on the value of diversity inclusion, including specific modules on sexual orientation, gender identity, and intersex status.
- ✓ **Recommendation:** Calibrate overseas investments in cooperation with the State Department to incentivize LGBTI-related policies in host governments and partners. Decisions related to country-selection or participation in regional military exercises, the opening of new facilities or related decisions to upgrade or downgrade military contacts provide opportunities to reward LGBTI-affirmative efforts by local partners or to discourage hostile trends. In this context, consideration should be given to the effective messaging around our military’s damaged relationship with Uganda following that country’s adoption of an “Anti-Homosexuality Law” in 2014.



# Department of Health and Human Services



Significant health disparities are well-documented for LGBT and intersex populations in the United States and abroad. The Department of Health and Human Services has a critical role to play in rectifying those disparities domestically as well as fortifying diplomatic efforts to address the human rights and right to health and wellbeing for LGBTI citizens through its global plans and programs.

As the Biden Administration frames its policy priorities, we encourage the following actions.

## Policy Formulation

- ✓ **Recommendation:** The Office of Global Affairs (OGA) should deliberately integrate the health needs and concerns of LGBT and intersex people in the next Global Health Strategy.
- ✓ **Recommendation:** Appropriate ways should be identified to draw attention to discredited yet globally pervasive medical practices of forced anal exams, conversion therapy, and intersex genital surgeries in an effort to halt such activities globally.
- ✓ **Recommendation:** HHS regulations on nondiscrimination to employment should be advanced and expanded, similar to the 2015 final [HHS Acquisitions Regulation](#) that extended sexual orientation and gender identity protections in service delivery in all HHS-sponsored grants, contracts and subgrants, including those overseas.
- ✓ **Recommendation:** Progressive health-policy goals pursued abroad should be sought and reviewed promptly for implementation at home, particularly regarding transgender and intersex health care, as well as the end of conversion therapy in the United States.
- ✓ **Recommendation:** The Medicaid policy on reimbursement for unnecessary cosmetic surgery on intersex infants throughout the United States must be ended immediately, up to the age of informed consent by the patient.
- ✓ **Recommendation:** Preparations should begin now for the change from use of ICD-10 to ICD-11, the last the World Health Assembly passed (with the support of the United

States) with a two-year lead time to help governments ready themselves for integration of new diagnoses and codes. ICD-11, which includes significant advances for transgender Americans, requires urgent consultation with industry stakeholders if it is to be implemented effectively by January 2022.

## **Multilateral Engagement**

- ✓ **Recommendation:** We ask the incoming Administration to rejoin the World Health Organization and re-engage World Health Organization leadership promptly, and to signal immediately to leadership and the Secretariat that LGBT and intersex-related changes to the International Classification of Diseases that were based on science and expert recommendations are supported by the United States.
- ✓ **Recommendation:** HHS should immediately disband and disassociate from the HHS-created “Geneva Consensus Declaration,” (and the related women’s health conference announced for 2021) as well as the “Protecting Life in Global Health Policy.”
- ✓ **Recommendation:** We also ask that OGA re-engage immediately with the Pan American Health Organization (PAHO), encouraging it to produce a report on health disparities for LGBT and intersex populations as mandated by past resolutions.
- ✓ **Recommendation:** Similar work also should begin now in the Western Pacific WHO regional body, where the United States is also a member.

## **HHS’s Office of Refugee Resettlement (ORR)**

- ✓ **Recommendation:** Create an LGBTI training program for organizations resettling LGBTI refugees in the United States.
- ✓ **Recommendation:** Collect data on applicants’ sexual orientation and gender identity (SOGI).
- ✓ **Recommendation:** Establish non-discrimination protections during the resettlement process to ensure LGBTI refugees are appropriately resettled and supported upon arrival.

## **Personnel**

- ✓ **Recommendation:** As positions are filled, the Assistant Secretary for Global Affairs should promptly begin collaboration with the State Department’s Special Envoy for the Human Rights of LGBTI Persons and USAID’s Global Coordinator for LGBTI Issues on the critical inter-related issues of violence, discrimination, and health disparities related to LGBTI people, including disparities exacerbated by COVID-19, when preparing for multi- and bilateral engagements with health ministries.
- ✓ **Recommendation:** The health attaché at our Geneva mission to multilateral organizations must be fully trained and fluent in LGBTI health issues.

# Department of Homeland Security



The Trump Administration has gutted protections for refugees and asylum seekers with disastrous consequences for LGBTI refugees fleeing horrific persecution abroad. As a priority, the Biden Administration should reverse the myriad policies and regulations implemented by the Trump administration that hinder access to refugee protection for LGBTI and other asylum seekers. These include the Migrant Protection Protocols; the Asylum Cooperative Agreements with Guatemala, El Salvador, and Honduras; the CDC regulation empowering Customs and Border Patrol to close the border to most asylum seekers based on the pretext of COVID-19; expedited asylum review procedures that severely limit access to legal representation and lack meaningful due process; and the series of regulations issued in 2020 that impose new obstacles on asylum seekers and narrow established interpretations of the refugee definition. The Department also should act quickly to minimize the use of immigration detention for asylum seekers and migrants and ensure that COVID-19 vulnerabilities are properly managed in immigration detention and at the southern border.

In support of the Biden Administration's plan to restore principle and fairness to our nation's immigration system, we encourage the following actions.

- ✓ **Recommendation: Reinstate Access to Asylum:** Given recent actions by the current Administration regarding our immigration and asylum system generally and in particular at the southern border of the United States, including some egregious violations of the rights of LGBTI people in custody, we request a series of actions to ensure nondiscriminatory access to and treatment in our asylum system. These requests are as follows:
  - ✓ Rescind in entirety any new overarching asylum regulations that are finalized before the end of the Trump Administration.
  - ✓ Include LGBTI asylum seekers in any universal representation initiative.
  - ✓ End the backlog of asylum claims by hiring sufficient immigration judges and asylum officers and providing judges with additional clerks.
  - ✓ End fee funding for USCIS and expand hiring of asylum officers.
  - ✓ Provide a memo clarifying exceptions to the one-year filing deadline and



applicability of those exceptions to LGBTI and people living with HIV/AIDS asylum seekers, who are disproportionately impacted by the ban.

- ✓ Return to limiting enforcement of Expedited Removal to formal ports of entry. The failed implementation of this policy's exception for asylum seekers has removed countless LGBTI asylum seekers without access to a fair hearing. Even when the exception has been implemented, that implementation has caused an explosion in the backlog of affirmative asylum cases.
  - ✓ Create a mechanism whereby applicants potentially eligible for cancellation of removal can petition ICE for a Notice to Appear ("NTA") in order to substantially reduce the asylum backlog.
  - ✓ Direct USCIS to include explicitly the treatment of LGBTI people in country conditions memos as meeting the definition of a refugee, which would significantly reduce the interview time and potential to re-traumatize the refugee.
  - ✓ Direct USCIS to remove the inclusion test as a member of a particular social group requirement for LGBTI cases to limit additional infliction of trauma on applicants (e.g., targeted questions on sexual history and trauma).
  - ✓ Direct USCIS to facilitate visas for LGBTI persons who face imminent persecution and require quick movement to a neighboring country.
- ✓ **Recommendation: End Mandatory Custody Policies:** Trump Administration detention policies have resulted in serious abuses for vulnerable groups, including LGBTI immigrants. Mandatory detention for all asylum seekers must end: it is not necessary for security and has fostered inhumane treatment, including sexual abuse, medical neglect, transgender women held with men, solitary confinement for transgender immigrants, and even death of immigrants. Even during the Obama Administration, studies showed that implementation of risk assessments for detention did not work and that LGBTI immigrants were disproportionately detained and exposed to significant danger, even when the automated assessment allowed for their release. We ask that the incoming DHS Secretary issue a memorandum establishing presumption of release in custody determinations. That memorandum might include the following:
- ✓ A renewed and expanded definition of vulnerable populations, clarifying that LGBTI people and individuals living with HIV are vulnerable groups whose detention is not in the public interest.
  - ✓ Clarified discretion requirements for ICE officers who decide parole requests for arriving asylum seekers to establish a presumption of release for LGBTI people and individuals living with HIV that places the burden of overcoming such presumption on DHS. Only extraordinary circumstances should overcome the presumption of release. The memo should clarify that there is no requirement that a sponsor be a family member and any person or entity can qualify as a sponsor. Individuals should only be deemed a flight risk if they have a previous parole violation or have otherwise absconded.
  - ✓ A quantifiable increase in the use of community-based alternatives to detention

- (ATD) and pilot LGBTI specific ATD programs.
  - ✓ Strict limits on, or elimination of, the use of bonds as a condition of release in favor of other methods that do not penalize the poor.
  - ✓ A limit on CBP custody to a maximum of 24 hours.
  - ✓ The requirement that detention centers implement humane standards of care, with a goal of ensuring that detention centers do not foster a prison-like environment. Measures to implement this requirement should allow freedom of movement, regular access to outdoor space and sufficient access to hygiene items.
  - ✓ Ensuring that the “Trans Care Memo” is in force at every detention facility through inspecting each facility at least twice a year without notice to ensure compliance.
  - ✓ A systematic review of Risk Classification Assessments, to ensure that presumption of release is being implemented.
  - ✓ Enforcement of Prison Rape Elimination Act (PREA) standards as applicable to ICE.
  - ✓ Ensuring that custody determinations for transgender people aren’t limited to sex assigned at birth.
  - ✓ An end to the use of force and solitary confinement in immigration detention, which is particularly prevalent for transgender immigrants.
  - ✓ Ensuring access to counsel and community for detained people by providing free access to phone, internet, email, copying, and faxing in all detention facilities.
  - ✓ The streamlining of marriage procedures to enable detained LGBTQ people who are unable to marry in their country of origin to get married in immigration detention.
- ✓ **Recommendation: Reinforce Principle-Based Training:** Training all personnel on the rationale for these policies is essential to their effective implementation. We ask that:
    - ✓ Training on LGBTI cultural competence, the scope and features of LGBTI persecution, and claims based on LGBTI persecution be made mandatory for immigration judges and CBP officers.
    - ✓ Asylum officer training on LGBTI persecution be reinstated.
    - ✓ Staff at every facility should receive appropriate training to implement properly the Trans Care Memo.
    - ✓ To improve transparency, the asylum officer manual should be published.
  - ✓ **Recommendation: Improve Transparency:** To refute the Trump Administration’s troubled record of inadequate public consultation involving citizenship and immigration matters, we ask that the Biden Administration commit to basic good governance procedures of transparency and civil society engagement by:
    - ✓ Collecting sexual orientation and gender identity information on LGBTI refugees and asylum seekers, assess claim outcomes, and publish an annual report on protection claims for LGBTI people.
    - ✓ Reinstating regular stakeholder meetings between ICE and USCIS and the NGO community, emphasizing transparency and cooperation, even if confidential.



# Department of the Treasury



With ambivalent support from the Treasury Department, human rights sanctions authorities have been used for the first time in recent years to respond to LGBTI atrocities abroad, primarily in Chechnya and Tanzania. These targeted authorities (Global Magnitsky, Russia Magnitsky, and all country-specific sanctions authorities with a human rights prong) should be used even more robustly and with greater precision in the Biden Administration. **A new focal point at Treasury should coordinate closely with the State Department and human rights groups on sanctions policies, including more effective monitoring and asset tracing of sanctioned individuals.**

In addition, with pressure and support from the Treasury Department and the U.S. Executive Director's Office at the World Bank during the Obama Administration, the World Bank has now begun to address LGBTI inclusion by adding a new position of Global Advisor on Sexual Orientation and Gender Identity (SOGI), allocating LGBTI-specific program funds, and adding SOGI indicators to its project review criteria. None of this would have happened without strong U.S. government leadership. **Additional Treasury Department engagement with the World Bank and other international financial institutions (IFIs) in the Biden Administration would leverage significant new funding and propel existing LGBTI investments and policies to a new level of effectiveness.** In addition, the World Bank's leadership has played an increasingly important behind-the-scenes diplomatic role in mitigating LGBTI-related human rights abuses, particularly in Africa. U.S. government support for this quiet diplomacy is important – and currently lacking.

Regionally-based IFIs, including the African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development (EBRD), and the Inter-American Development Bank (IADB) have been less focused on LGBTI inclusion, but they all have engaged at some level and with renewed U.S. government leadership and support

the potential for future investments is significant. The Inter-American Development Bank in particular is now poised to provide major funding and is cooperating with the World Bank to understand the economic impacts of LGBTI-exclusion in Latin America. Likewise, the Asian Development Bank is engaged in an important effort to establish new social protection safeguards, a process that must be leveraged to ensure further LGBTI integration in the Asia-Pacific region.

As the Biden Administration frames its policy priorities, we encourage the following support from the Treasury Department.

### **Staffing Priorities**

- ✓ **Recommendation: The Treasury Department should appoint a Focal Point for LGBTI issues within the Office of International Affairs and reestablish and adequately staff its previous LGBTI Task Force.** The Focal Point and Task Force should ensure effective use of U.S. human rights sanctions authorities, including but not limited to the Global Magnitsky Human Rights Sanctions, against perpetrators of human rights abuses against LGBTI people abroad. In addition, the Focal Point and Task Force should ensure attention to global LGBTI issues, especially in relation to U.S. investments and leadership within IFIs, including the World Bank Group and the other major multilateral development banks. The Focal Point also should serve as a liaison to other U.S. international financial institutions, including the Millennium Challenge Corporation, the U.S. International Development Finance Corporation, and the Export-Import Bank of the United States, all of which should participate in the NSC-led interagency process on LGBTI issues.

### **World Bank and Other IFIs**

- ✓ **Recommendation: The President should prioritize the nomination of a new U.S. Executive Director at the World Bank and quickly fill other senior U.S. positions within all other IFIs with qualified experts who understand the importance and effectiveness of an LGBTI-inclusive development agenda.** Nominations to serve as U.S. Executive Director at the World Bank, or to serve in other similar senior positions within other IFIs, are not often seen as a priority by a new Administration, but given the growing importance of LGBTI issues within World Bank-financed projects, **an appointment to the World Bank U.S. Executive Director position should be seen as a 100-day priority in the Biden Administration.** Similar appointed positions within other IFIs also should be filled as a priority by appointees committed to LGBTI-inclusive development.
- ✓ **The Treasury Department should instruct the U.S. Executive Director at the World Bank, along with other officials representing U.S. interests in other international development banks, to use their influence and voting to support the development needs of LGBTI communities,** especially in programs specifically targeting

marginalized or excluded individuals, public health, social protection, education, and economic empowerment. This should include a review of recently approved development projects to analyze their attention to the needs of LGBTI communities and the steps taken, if any, to ensure their inclusion, consultation, and protection in criminalized or otherwise dangerous country contexts. It also should include robust financial and technical support for new research to understand the true impact of LGBTI inclusion on economic development and individual opportunity.

- ✓ **The Treasury Department should instruct the U.S. Executive Director at the World Bank, along with other officials representing U.S. interests in other international development banks, to ensure that mandated consultations with civil society include representatives of local LGBTI communities.** These consultations must account for the safety and security of LGBTI individuals and the local civil society organizations representing them. They must not be avoided just because they require additional sensitivity and security. In particularly hostile or criminalized country contexts, global LGBTI advocacy organizations should be consulted first and relied on as a resource to ensure safe and effective introductions to local LGBTI actors and organizations.

# ANNEX A

## Proposed Executive Order on the Human Rights of LGBTI Persons

Building on President Obama's December 2011 [Presidential Memorandum](#), a first-week Executive Order should direct that LGBTI and other marginalized communities be included deliberately and consistently in U.S. foreign assistance, rule of law, civil society, public diplomacy, and health and reproductive services policies. The Executive Order should:

### Human Rights Policy

- ✓ Instruct all relevant foreign affairs agencies to combat criminalization of LGBTI conduct or status, while also promoting, within their policies and programming, the legal protection of LGBTI people as equal citizens.
- ✓ Instruct all foreign affairs agencies, working with ambassadors and their staffs, to pursue swift and meaningful responses to human rights violations based on sexual orientation, gender identity and expression, and sex characteristics.
- ✓ Mandate a return to robust reporting on the full range of human rights abuses experienced by LGBTI communities globally in the State Department's annual Human Rights Report, including comprehensive reporting on sexual and reproductive health and rights, gender based violence, and anti-LGBTI discrimination and violence perpetrated by both state and nonstate actors, including domestic and familial violence. Also mandate, for the first time, the inclusion of information on the use of forced anal exams by state officials in criminal prosecutions and detailed information on the legality and use of "conversion therapy" to persecute LGBTI individuals, including children.

### Budget

- ✓ At a minimum, triple Function 150 assistance to LGBTI-led civil society and development priorities abroad, and review assistance amounts on an ongoing basis with a view to meeting actual needs.

### Public Diplomacy

- ✓ Task the State Department with developing public diplomacy strategies aimed at changing stereotypes regarding LGBTI individuals and encouraging their community inclusion.

### Citizenship Issues

- ✓ Direct the State Department to issue nonbinary "X markers" on U.S. passports as an accepted gender field (along with male and female).

## Development Policy

- ✓ Ensure strict adherence by USAID service providers to non-discrimination provisions in service delivery and partner selection for all developmental assistance programs.
- ✓ Require USAID to develop rights-based and poverty-alleviation strategies to support LGBTI individuals through its programming. In that context, ensure funding reaches lesbian, intersex, transgender, and other particularly marginalized communities that often are excluded from LGBTI funding streams.

## Health Policy

- ✓ Direct the Department of Health and Human Services (HHS) to identify and remove barriers to healthcare services in all global health programs (including COVID-19 and HIV prevention and treatment programs) as well as those pertaining to reproductive health assistance.
- ✓ Task HHS to leverage its global health diplomacy and programming toward ending “conversion therapy” used on minors who identify as LGBTI, in accordance with guidelines identified by the UN Independent Expert on Sexual Orientation and Gender Identity.

## Trade Policy

- ✓ Within the U.S. Trade Representative’s Office, ensure trade agreements include and rigorously use provisions for periodic review of human rights and labor conditions.

## Personnel Policy

- ✓ At the Department of Defense, reinvigorate military training on diversity issues to include sexual orientation, gender identity, and intersex issues not only within the military but in foreign populations where U.S. military officials engage.
- ✓ Also at the Department of Defense, begin the process of eliminating antiquated service and retention disqualifications for “hermaphroditism,” an offensive and outdated term previously used to refer to individuals with intersex variations.

## Asylum and Refugee Protection

- ✓ At the Departments of State and Homeland Security, redirect asylum and refugee programs and detention policies to accommodate the specific vulnerabilities of LGBTI communities abroad. This should include repeal of Migrant Protection Protocols that endanger LGBTI and other asylum seekers by returning them to countries that are manifestly unsafe. It also should reaffirm our country’s commitment to protecting persecuted social groups, including LGBTI individuals targeted by non-state actors.



## Interagency Coordination

- ✓ At the Departments of Justice and State, ensure that bilateral partnership-oriented rule of law programs include specific attention to the plight of transgender and intersex people, and that they include wholistic understandings of policing based on our own recent experiences with systemic racism. Also ensure that Regional Legal Advisors include within their work programs attention to criminalization laws that adversely impact the lives and dignity of LGBTI and gender non-conforming persons, where those laws exist.
- ✓ Require all federal agencies making grants domestically or abroad to issue a “beneficiary bill of rights” that: informs intended beneficiaries of their eligibility for U.S. government-funded services regardless of race, ethnicity, religion, national origin, disability, sexual orientation, gender identity, sex characteristics or any other protected class; emphasizes their right to be free from unwanted proselytizing while receiving government-funded services; and provides information on how to access a credible complaint mechanism to redress any discrimination that might occur.
- ✓ Promptly review faith-based exemptions to any non-discrimination policies, domestic or abroad, granted during the previous Administration, as well as regulatory expansion of “freedom of conscience” provisions that allow medical providers to refuse necessary medical services based on personal convictions.
- ✓ Expand non-discrimination protections to address employment as well as service delivery and harmonize those protections across all federal agencies.
- ✓ Require all Federal employees in relevant foreign affairs agencies to complete international LGBTI sensitivity training not less frequently than once every 3 years.
- ✓ Require all federal agencies to collect and analyze data on government and civil society sector engagement on LGBTI human and civil rights advancement abroad with a view to building a roadmap of governmental and non-governmental investments and seeking synergies in those investments where appropriate.

# Annex B

## Suggested Guidelines for an Effective and Impactful Policy on Non-Discrimination in Service Delivery

In its 2016 “[Nondiscrimination Policy Statement for Beneficiaries of USAID Programs](#),” USAID recognizes that “inclusion, protection, and empowerment of all persons is critical because drawing on the full contributions of the entire population leads to more effective, comprehensive, and sustainable development results.” As such, the policy directive mandates that “Bureaus/Missions and Operating Units must include language in their programs and resulting requirements documents to not discriminate against any beneficiary or potential beneficiary, such as, but not limited to, by withholding, adversely impacting, or denying equitable access to benefits or services on the basis of any non-merit factor.” The protected, non-merit factors are identified as: “race, color, religion, sex (including gender identity and pregnancy), national origin, disability, age, sexual orientation, genetic information, marital status, parental status, political affiliation, or veteran’s status.”

This paper is intended to offer guidelines in how USAID’s policy should be constructed to meet its objectives of being fully inclusive and empowering for lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals. The Council for Global Equality offers these specific guidelines based on the expertise of our member organizations in addressing discrimination against LGBTI individuals in the United States and abroad, and with the goal of addressing discrimination against LGBTI individuals as a category of discrimination that is routinely ignored and where effective inclusion is complicated by laws criminalizing homosexual behavior, gender affirmation, and gender expression. The Council does not presume to understand the unique challenges or opportunities involved in the application of this directive to other communities. However, many of these principles clearly could be adapted or applied by USAID to protect other traditionally excluded or marginalized communities.

### Defining Nondiscrimination in Services

To ensure that beneficiaries are not “adversely impacted” or “denied equitable access,” and to safeguard USAID’s overarching goal of inclusion and empowerment of all persons including LGBTI individuals as a category of particular concern, USAID must provide a clear definition of LGBTI nondiscrimination that recognizes the very real presence of stigma and discrimination in the lives of LGBTI individuals everywhere. To this end, **USAID should presume that in most environments, LGBTI beneficiaries who are socially marginalized or disenfranchised will face discrimination in accessing services unless USAID provides clear guidance, regular training and compliance monitoring to secure the effective implementation of its new policy.**

## Hallmarks of a Welcoming Environment

There is an emerging field of literature outlining best practices in service delivery in the context of public health and HIV/AIDS for key populations<sup>i</sup> and socially marginalized groups, including gay and bisexual men, other men who have sex with men, and transgender individuals. These best practices are directly relevant to nondiscriminatory access to services for LGBTI persons in USAID's global health programs. They also should inform a broader definition of nondiscriminatory access to services across all sectors, including: equitable access to emergency food, shelter and sanitation; equal opportunities within educational, vocational and livelihood programs; and full inclusion in democratic participation and economic empowerment programs. In each of these contexts, **the minimum standard relates to the ability of LGBTI individuals to access services in an environment free from stigma and that provides an open and welcoming space for those who might otherwise be denied access out of prejudice or fear, or who might themselves decline services offered in undignified or unsafe environments. The emerging literature suggests the following definition of nondiscrimination in services that focuses on the welcoming nature of the program, where program implementers must:**

- ✓ Ensure that employees who provide services at all stages of interaction with beneficiaries prioritize the human rights of all beneficiaries by providing services with dignity and by respecting diversity, equity, confidentiality and informed consent as a condition of participation.<sup>ii</sup>
- ✓ Involve communities being served at every stage in the design, development and implementation of service initiatives, including as employees and in all training and monitoring efforts.<sup>iii</sup> This should include a demonstrated commitment to serving LGBTI and other marginalized communities in the grant-making and contracting process as a required component of grant and contract applications.
- ✓ Provide feedback mechanisms, including safe and effective complaints procedures, to ensure accountability to the communities and clients served.<sup>iv</sup>
- ✓ Schedule service hours that are regular, dependable and suit the needs of LGBTI and other intended clients.<sup>v</sup>
- ✓ Locate services strategically where LGBTI and other intended beneficiaries or key populations congregate or transit and where they can access them in relative safety.<sup>vi</sup> At the same time, program implementers should identify physical spaces that are likely to be less safe for LGBTI clients and consider how they might be made safer. In educational contexts, for example, UNESCO has noted that areas outside the classroom, such as school corridors, outlying areas and sports facilities are more dangerous for LGBT students.<sup>vii</sup> Service providers must be aware of these danger zones and take steps to mitigate their risks.
- ✓ Provide visual cues that identify the service site as a welcoming location, including signage/branding, posters, brochures, photographs or other visual elements that are easily identifiable and culturally relevant and provide clear assurances to LGBTI individuals

that they will be served with dignity and respect. At minimum, this should include a posted nondiscrimination policy statement, in all relevant languages, pledging dignified and nondiscriminatory services, which is sometimes referred to as a “Charter of Service” in public health contexts and may be accompanied by a “safe space” sign to identify that the personnel in the facility have participated in diversity trainings to support the implementation of the USAID directive. These signs should be displayed in highly trafficked areas where beneficiaries are likely to see it upon arrival.<sup>viii</sup> Similarly, a complaints procedure for discriminatory service provision should be prominently displayed in a public place. Visual cues that clearly manifest hostility to LGBTI individuals, including signs, posters or iconography that overtly express a homophobic or transphobic message must not be displayed in public areas.<sup>ix</sup> Ideally visual images should be as inclusive as possible and reflect the diversity of clients served.

- ✓ Use appropriate language to refer to LGBTI individuals, including appropriate pronouns for transgender or gender-nonconforming individuals. This should include specific local guidance, as appropriate terminology and pronoun use are culturally-determined. All program-related forms, including client intake forms, should include gender-neutral or gender-inclusive language wherever appropriate. This should include opportunities to differentiate between a beneficiary’s identified gender and the individual’s sex at birth or on identity documents if that information is necessary and appropriate.<sup>x</sup> This should also include appropriate language for any relevant questions or intake forms that ask about the relationship status or sex/gender of an individual’s intimate partners, sex partners or parents.
- ✓ Ensure that a “beneficiary bill of rights” and related complaint mechanism are visible at all USAID-funded programs and sites. This “bill of rights” should inform intended beneficiaries of their eligibility for U.S. government-funded services regardless of race, ethnicity, religion, national origin, disability, sexual orientation, gender identity, sex characteristics or any other protected class; emphasize their right to be free from unwanted proselytizing while receiving government-funded services; and provide information on how to access a credible complaint mechanism to redress any discrimination that might occur.

### Training to the Standards

- ✓ All personnel should be trained in the nondiscrimination policy—both in the U.S. government and within the implementing agencies and their subs. This should begin with senior management, and would include those who design programs, have oversight responsibility for contracts and grants, in home offices or abroad (including all contract officers and technical officers); those who receive contracts and grants; and those who are sub-assigned responsibility in the carrying out of those contracts and grants.
- ✓ Expectations for the training should include clarity on: the policy’s rationale from the standpoints of program service delivery effectiveness and principle; the need for effective community outreach, to raise awareness of the services being provided and

thereby fulfill the program's intent; what constitutes a welcoming environment for all impacted individuals and communities at the service delivery site; why a fully welcoming environment is important to the program's intent; and expectations regarding oversight of the provision, along with clear consequences of non-compliance.

- ✓ Training should be mandatory; should be carried out in the same fashion that EEO training and certain PEPFAR training currently is carried out; and should be required whenever a new employee is hired by the agency or brought into an existing contract. Like EEO training, it should be repeated at regular intervals (preferably annually). The content of training provided directly by an agency, on the one hand, and any training contracted out, on the other, should be identical, so as to preclude any misunderstanding.
- ✓ Recognizing the significance of recent studies showing that training on sexual and gender minority rights is considerably more effective when sexual and gender minorities are openly included as part of the training, LGBTI individuals must be included as trainers, whether in person or online. These trainings also should include representatives of local LGBTI communities.
- ✓ In addition to generic training, technical partners on the ground in each country should be sought out to inform implementers of actual country situations that may need to be planned for or addressed.

### Oversight and Evaluation

The effectiveness of this new nondiscrimination policy rests on the success of three common enforcement strategies: regular compliance reporting to Washington by program implementers; USAID's commitment to compliance oversight at home and monitoring in the field; and the establishment of a simple and effective complaints procedure. The following models describe enforcement components that could prove effective. The policy must also be integrated into risk assessments, grant-making decisions, and in all phases of the grant cycle from beginning to end.

- Integration of non-discrimination language and measures should be undertaken throughout all stages of finance and evaluation. To undertake this, USAID must commit to hiring a team of human rights experts to lead this work, and to mainstream and consistently integrate non-discrimination commitments throughout the institution, as well as to provide capacity-building and act as a resource for the institution on measures to ensure non-discrimination.
- Clear and consistent language regarding effective implementation of the service non-discrimination policy must be built into each contract or grant from USAID and passed down through sub-agreements. Required compliance mechanisms outlined in these contracts and grants should include:



- ✓ Posters and other materials, placed prominently at each service site, to explain the policy and how non-compliance complaints can be filed;<sup>xi</sup>
  - ✓ Clear expectations of the service provider regarding recipient privacy, with those expectations also explained to recipients;
  - ✓ A hotline and/or email address to which to report policy non-compliance;
  - ✓ Spot-checking of the degree to which service delivery sites are providing the needed welcoming environment; and
  - ✓ Regular in-country consultations with stakeholder communities on whether all affected communities are being served in a non-discriminatory manner.
- Contractors and grantees should be required to file (regular) reports affirming their compliance with the service non-discrimination policy. These reports should include details, to be specified by the policy agency, regarding:
  - ✓ How they have conducted outreach to intended service recipient communities;
  - ✓ How they train to and monitor compliance with this policy;
  - ✓ Specific ways in which the service delivery environment is designed to be welcoming;
  - ✓ Whether any complaints have been received by on-site staff; and
  - ✓ If so, how those complaints have been handled.
- These reports should be submitted with other required program narrative and financial reports on at least an annual basis. USAID should include summary information on cumulative compliance indicators in its reporting to the U.S. Congress. Activities to address the non-discrimination in service policy should be part of evaluation criteria and performance monitoring over time.
- Where LGBTI communities are recognized as beneficiaries or part of a set of communities served in a specific USAID program, USAID should require a detailed explanation of steps the implementer would take to train to and monitor the policy as a scored component in the bidding or application process before the award is issued. In the bidding and application processes, these bidders should be specific about the intended target beneficiaries when describing the training and monitoring approaches they will use to execute the policy. All program descriptions should include request to implementing agencies to address how they will handle prevention of discrimination as they relate to each of the programs (food security, health provision, education, disaster relief, etc.)
- Contractors and grantees should be made clearly responsible to rectify any complaint received about the actions or non-actions of a sub-contractor or sub-grantee. Assignment of responsibilities to sub-contractors or sub-grantees in no way relieves the contractor or grantee of the requirement that non-discrimination in service delivery must be observed. If a sub-contractor or sub-grantee fails to take appropriate action, it

will be the responsibility of the contractor or grantee to remedy the problem. Failure by any party to observe these contract provisions could result in loss of contract or grant.

- Irrespective of the above, primary oversight responsibility for effective implementation of a service non-discrimination policy must rest with USAID as the home agency. This responsibility is to be shared equally between those responsible for non-discrimination policies globally and those responsible for individual substantive programs where non-discriminatory practices and environments are to be expected.
- As a complement to routine compliance and auditing work, USAID's Office of Inspector General and/or a Washington-based ombudsman for compliance with the policy should oversee the policy's effectiveness. In the event agency personnel (whether located in the U.S. or abroad) receive a complaint of non-compliance, the complaint should be referred within one week to the Office of Inspector General and/or ombudsman. USAID must bear responsibility for investigating the complaint in association with the USAID Mission Director and other embassy personnel, with a direct or referred conversation with the complainant, and site visits, as appropriate.
- Should contractors, grantees, or their subs report that legal or regulatory barriers to service non-discrimination prevent them from carrying out their contractual obligation, the Mission Director should consult with Washington as to steps that might be taken to surmount such obstacles. These steps may require obtaining legal advice locally; they may also require Washington policy authorities to engage in conversations at the political level.
- The USAID- and PEPFAR-funded Health Policy Project (HPP) has developed a standardized HIV-related stigma and discrimination (S&D) questionnaire for monitoring healthcare settings. This should be adapted as a monitoring and enforcement mechanism for service nondiscrimination policies impacting LGBTI individuals across a range of sectors.
- An important aspect of this approach is that "observed discriminatory behavior questions do not ask health facility staff directly if they themselves have engaged in specific stigmatizing behaviors because previous research has shown that staff often know which types of behaviors are acceptable and which are not, and may provide the socially desirable response, whether or not they have actually engaged in the behavior. However, asking facility staff about what they have observed provides a more accurate measure because staff are more comfortable reporting what they see happening (including what they themselves may have done).<sup>xiii</sup>

# Endnotes

- i The World Health Organization defines key populations in the HIV context as: “defined groups who, due to specific higher-risk behaviours, are at increased risk of HIV irrespective of the epidemic type or local context. Also, they often have legal and social issues related to their behaviours that increase their vulnerability to HIV.” In the context of HIV, the World Health Organisation has identified five key populations: 1) men who have sex with men, 2) people who inject drugs, 3) people in prisons and other closed settings, 4) sex workers and 5) transgender people. “Key populations are important to the dynamics of HIV transmission. They also are essential partners in an effective response to the epidemic.” See <http://www.ncbi.nlm.nih.gov/books/NBK294011/>.
- ii Adapted from A Code of Conduct for HIV and Health Professionals, International AIDS Society, available at: <http://www.hivhumanrightscodes.org/#post-16>.
- iii Id.
- iv Id.
- v Adapted from Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations, World Health Organization, available at: <http://www.who.int/hiv/pub/guidelines/keypopulations/en/>
- vi Id.
- vii See [http://www.lgbt-education.info/doc/unesco/UNESCO\\_Homophobic\\_bullying\\_2012.pdf](http://www.lgbt-education.info/doc/unesco/UNESCO_Homophobic_bullying_2012.pdf).
- viii Adapted from Implementing Comprehensive HIV and STI Programmes with Transgender People: Practical Guidance for Collaborative Interventions, UN Development Programme, available at: <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/implementing-comprehensive-hiv-and-sti-programmes-with-transgend.html>.
- ix Adapted from Implementing Comprehensive HIV and STI Programmes with Transgender People: Practical Guidance for Collaborative Interventions, UN Development Programme, available at: <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/implementing-comprehensive-hiv-and-sti-programmes-with-transgend.html>.
- x Adapted from Implementing Comprehensive HIV and STI Programmes with Transgender People: Practical Guidance for Collaborative Interventions, UN Development Programme, available at: <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/implementing-comprehensive-hiv-and-sti-programmes-with-transgend.html>.
- xi The Global Fund to Fight AIDS, Tuberculosis and Malaria has adopted a human rights complaints procedure that provides a model for enforcing the Global Fund’s nondiscrimination pledge. The Global Fund defines discrimination, whether intentional or unintentional, as “unjustified, differential treatment of individuals and groups based on prejudice, ignorance, fear or stereotypes.” Individuals who believe that they have either experienced or witnessed a violation of non-discrimination or any other service delivery standards may file a complaint with the Global Fund’s Office of the Inspector General. The Inspector General must respond within 48 hours and will determine whether to conduct a full investigation. Under this process, “an organization may file a complaint on behalf of an individual or group that is directly affected, provided that it has a letter of authorization. The identity of the person making the complaint will remain strictly confidential, unless he or she provides consent for his/her information to be disclosed. Anyone reporting a violation may choose to remain anonymous.” Reports may be submitted by phone, email or online. Global Fund sites are also required to display “know your rights” posters with information on how to submit complaints if an individual faces discrimination. These posters received support from the U.S. government and carry a PEPFAR logo. Both the complaint process and the Global Fund poster should provide a model for USAID under this new service nondiscrimination policy. [file:///C:/Users/GLOBAL~1/AppData/Local/Temp/HumanRights\\_2015-ComplaintsProcedure\\_Brochure\\_en.pdf](file:///C:/Users/GLOBAL~1/AppData/Local/Temp/HumanRights_2015-ComplaintsProcedure_Brochure_en.pdf)
- xii [http://www.healthpolicyproject.com/pubs/281\\_SDQuestionnaireManual.pdf](http://www.healthpolicyproject.com/pubs/281_SDQuestionnaireManual.pdf).