

None of their Business? How the United Nations is Calling on Global Companies to Lead the Way on Human Rights of LGBTI people

Dan BROSS*, Fabrice HOUDART** and Salil TRIPATHI***

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As the state-driven campaign in Indonesia against lesbian, gay, bisexual, transgender and intersex (LGBTI) people has gained intensity in the past few months¹, several US-based multinationals have found themselves caught in the crossfire. First, religious leaders in Indonesia called for a consumer boycott of the coffee chain Starbucks in protest at the company's public support for LGBTI causes. As the issue gained visibility, Starbucks' local franchise responded with a statement² in Bahasa, Indonesia that was criticized by several activists as an apparent attempt to distance the brand from the local LGBTI community. A few months later, Google pulled several gay dating and other LGBTI-related applications from the Indonesian version of its online store in response to government demands.³

The Indonesia case is not unique. It is one of the many situations multinational companies face in their attempt to reconcile their global policies and values with the local reality. These global policies are drawn from international law and human rights standards, as well as their own values and codes of conduct. Company codes and practices are also drawn from the laws and practices in the countries where the companies originate. When these companies operate in a new environment where those norms clash with local practices and customs, conflict is inevitable. These tensions between global and local norms raises important questions about uniformity of standards, companies' willingness to adhere to international standards, and their own understanding of corporate accountability. Companies may face pressure from employees and shareholders too. They also have the challenge of remaining true to

* Senior Advisor, Article One Advisors; formerly Senior Director, Business and Corporate Responsibility, Microsoft.

** Human Rights Officer, United Nations.

*** Senior Advisor, Global Issues, Institute for Human Rights and Business.

¹ 'Criminalizing Indonesia's LGBT People Won't Protect Them', Kyle Knight (Researcher, Lesbian, Gay, Bisexual, and Transgender Rights Program), *Asia Times*, 14 February 2018.

² 'Starbucks Indonesia Clarifies Stance on LGBT Rights Following Recent Boycott', Agnes Anya (<http://www.thejakartapost.com/news/2017/07/05/starbucks-indonesia-clarifies-stance-on-lgbt-rights-following-recent-boycott.html>), *The Jakarta Post*, 5 July 2017.

³ 'New Indonesia web system blocks more than 70,000 "negative" sites' by Ed Davies and Cindy Silviana (<https://www.reuters.com/article/us-indonesia-communications/new-indonesia-web-system-blocks-more-than-70000-negative-sites-idUSKCNIG30KA>), *Reuters*, 19 February 2018.

their global policies and corporate values and their responsibility to respect human rights wherever they operate, and figuring out ways of avoiding antagonizing governments and customers in markets where homophobia and transphobia is widespread and same-sex relationships may even be considered criminal. For all the progress of the past decade, millions of LGBT people remain trapped in a climate of hostility, violence and stigma, and for some of them, life is getting harder rather than easier as outlined in the latest report of the United Nations (UN) Independent Expert on sexual orientation and gender identity.⁴

The reaction by these companies raises several important questions such as: which responsibilities and opportunities do companies have in contributing to social change on human rights of LGBTI people, particularly in ‘hostile environments’? What does it mean for a company to present itself as a supporter of ‘global LGBTI rights’ in home markets but steer clear from this position abroad, where LGBTI rights are neither recognized, nor respected?

In June 2011, the United Nations Human Rights Council adopted the first of three resolutions on human rights, sexual orientation and gender identity.⁵ These three Human Rights Council resolutions squarely placed the human rights of LGBTI people under the instruments of international human rights law and international humanitarian law, including the UN Guiding Principles on Business and Human Rights⁶ and the UN Global Compact.

Yet, at the World Economic Forum’s 2016 Annual Meeting in Davos, Switzerland⁷ at a session on the role of the private sector in fostering greater inclusion for LGBTI people, which was attended by the UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein, it was noted that many companies remained unaware that LGBTI issues are a human rights issue. The meeting highlighted that the private sector has a limited understanding of this issue and often sees it as pertaining to the worlds of ‘corporate culture’, ‘tradition’ or ‘private life’ rather than human rights.

The meeting also concluded that through their global presence, with strong diversity and inclusion (D&I) policies across their entire workforces around the world, and the ability to use their economic clout to raise human rights issues with governments, companies can play, and have played, a positive role. They have done so by either acting as a role model or by using their soft power to encourage greater levels of acceptance and equal rights for LGBTI people. This power was best articulated by Sylvia Ann Hewlett and Kenji Yoshino’s three models⁸ that companies can adopt on LGBTI issues: the ‘when in Rome’ model, ‘the embassy model’, and ‘the advocate model’. The models

⁴ Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/72/172, 19 July 2017.

⁵ Human Rights Council resolution, Human rights, sexual orientation and gender identity (adopted 17 June 2011), A/HRC/RES/17/19

⁶ Guiding Principles on Business and Human Rights – United Nations Human Rights, Office of the High Commissioner for Human Rights (2011), http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

⁷ ‘How a Once Taboo Topic Came out from the Shadows at Davos’, Lucy Marcus, *BBC* <http://www.bbc.com/capital/story/20160119-how-a-once-taboo-topic-came-out-from-the-shadows-at-davos>, 20 January 2016.

⁸ Center for Talent Innovation’s report, ‘Out in the World: Securing LGBT Rights in the Global Marketplace’, Sylvia Ann Hewlett and Kenji Yoshino, <http://www.talentinnovation.org/publication.cfm?publication=1510>, 22 January 2016.

suggest three levels of action by companies – in some countries, comply with the local law, because challenging the government may be harmful to the company and its employees, including LGBTI employees; in some countries, to create an environment within the workplace which is consistent with international standards and best practices, recognizing the limitations of what a company can do beyond the workplace; and in some countries, to play an active role in the public sphere advocating for greater respect for rights. As this piece and other international experts note, unless there are exceptional circumstances, companies that do take their human rights responsibilities seriously should reject the first model.

Increasingly, large, global companies in the global north and the south, have begun rewriting their policies and operational practices to root out discrimination against LGBTI people, and they have become proactive in supporting LGBTI rights. While more than 70 countries continue to criminalize same-sex relationships, more and more countries are making such relationships legal, including an increasing number of countries that have legalized same-sex marriage. Marketing experts say that the millennial generation is more liberal, and companies are fine-tuning their policies and practices to remain attractive to tomorrow's employees and consumers. Companies whose businesses are consumer-facing are even marketing themselves as being LGBTI-friendly, and in some instances, they are openly advocating progressive positions.

In several instances in the past few years, companies in the financial sector, as an example, have demonstrated how the *advocate* model can be harnessed for social change in difficult environments. Among others, PayPal, Deutsche Bank, Bank of America and Citibank took a stance in North Carolina in the United States against House Bill 2, a law that sought to prevent transgender people from using bathrooms corresponding to the gender with which they identify.⁹ Similarly, Barclays, Uganda's third largest bank, challenged the government's proposed anti-homosexuality bill in their engagements with local officials in 2012.¹⁰ In previous years, Barclays, JP Morgan, Goldman Sachs and Visa have sponsored Pink Dot,¹¹ the annual LGBT event in Singapore. They can now no longer do so because the Singaporean Government has prohibited foreign companies from participating in Pink Dot celebrations. Beyond the finance sector, many Indian companies took out advertisements in India, after the Supreme Court reversed the Delhi High Court judgement that had decriminalized same-sex relationships. Among the companies that took such a stance were retailers, consumer product companies, hotel chains, and leather accessories manufacturers.¹²

⁹ 'Companies Hit Back at Legislation that Targets LGBT Community', Shannon Bond and Barney Jopson, <https://www.ft.com/content/54e1974a-02a8-11e6-9cc4-27926f2b110c>, *Financial Times*, 15 April 2016.

¹⁰ 'Mild Financial Fallout From Uganda Anti-Homosexuality Act', Stephanie Keene, https://www.cov.com/-/media/files/corporate/publications/2014/07/law360_mild_financial_fallout_from_uganda_anti-homosexuality_act.pdf, *Law360*, 17 July 2014.

¹¹ '50 Local Firms Throw Their Support Behind Pink Dot SG', Vivienne Tay, <http://www.marketing-interactive.com/50-local-firms-throw-their-support-behind-pink-dot-2017/>, 27 March 2017.

¹² See, for example 'How India, Inc. is Raising its Voice against Sec 377', <https://www.firstpost.com/business/images-how-india-inc-is-raising-its-voice-against-sec-377-1285545.html>, *FirstPost*, 21 December 2014; and 'Brands Peek out of the Closet', <https://timesofindia.indiatimes.com/india/Brands-peek-out-of-the-closet/articleshow/27248253.cms>, *The Times of India*, 12 December 2013.

Another example of the private sector's 'soft power' is the 2017 Procter and Gamble 'Touch of Care' campaign for Vicks, ¹³ featuring a transgender Indian mother which has been seen by more than 10 million viewers on YouTube and been widely discussed in the Indian media – providing a conversation starter for a debate about transgender acceptance in a country of 1.3 billion people.

During the 2016 Davos meeting, the High Commissioner pointed out that achieving further progress – especially in countries where neither the government nor public opinion is receptive to calls for change – is going to take a collective effort from all parts of society and broader coalitions including the private sector: *'If we are to achieve faster global progress towards equality for lesbian, gay, bi, trans, and intersex people, businesses will not only have to meet their human rights responsibilities, they must become active agents of change.'*¹⁴

The High Commissioner proceeded to announce that his Office, together with the Institute for Human Rights and Business (IHRB)¹⁵ and corporate and civil society partners would develop global guidance for businesses. The guidance would build on the UN Global Compact and the Guiding Principles on Business and Human Rights and follow in the footsteps of other global United Nations campaigns against racism, human trafficking or violence against women, which also sought to popularize a human rights message to a private sector audience. The idea was to help the private sector grapple with their role in this area of human rights and define the steps that they can and should take. The Standards were to be designed to support companies in reviewing existing policies and practices – and establishing new ones – to respect and promote the human rights of LGBTI people.

Following this decision, the UN Human Rights Office and IHRB went through extensive efforts to make sure that experiences and ideas from all corners of the world were considered in crafting the Standards. This included a series of region-wide consultative meetings with business and civil society representatives in Europe, Africa, Asia and the Americas. Throughout 2016, the team also met various stakeholders and continued with virtual consultations.

On 26 September 2017, in New York, the High Commissioner unveiled a set of five global standards for business to tackle discrimination against LGBTI people¹⁶ Since then, the Standards have been launched in Mumbai, Paris, London, Hong Kong, Washington DC, Geneva, Melbourne, at the World Economic Forum in Davos, at the Nasdaq stock exchange, in Nairobi, Toronto and Tokyo. They will be launched later in 2018 in Sao Paulo.

The five standards are:

- KNOW AND SHOW RESPECT for human rights
- ELIMINATE discrimination
- PROVIDE support

¹³ Touch of Care: https://www.youtube.com/watch?time_continue=3&v=7zeeVEKaDLM.

¹⁴ <http://www.ohchr.org/EN/NewsEvents/Pages/GlobalStandards.aspx>.

¹⁵ <https://www.ihrb.org/>.

¹⁶ The Standards are available online at: <http://unfe.org/standards>.

- PREVENT other human rights violations
- ACT in the public sphere

The first four standards call for companies to have anti-discrimination policies in place, exercise due diligence and establish effective grievance mechanisms. They also urge companies to equalize staff benefits and sensitize managers, and to take steps to eliminate discrimination against LGBTI customers, suppliers and distributors – and to require the same of their business partners.

Perhaps most ambitiously, the fifth standard ‘Act in the public sphere’ challenges companies to stand up for the rights of LGBTI people in the countries where they do business – including through dialogue and advocacy, support for local community organizations, and, in some cases, civil disobedience.

Yet the Standards remain realistic in what companies can and should do. The language is suggestive rather than prescriptive, recognizing that every situation is different, and that a company’s actions will inevitably be shaped in part by the context in which it operates. This does not mean companies should make no effort; rather, they should assess the local situation and context, and implement their policies without harming their employees, and use their influence and leverage with the government to work patiently towards bringing about change. One of the most salient aspects of these standards is that they encourage companies to ‘find their voice’ on human rights of LGBTI people, acknowledging that companies cannot fulfil all five standards in all markets all the time.

The standards are comprehensive and practical – and are already having an impact around the world. As of early March 2018, they have received the support of more than 73 of the largest and high-profile global companies¹⁷ representing more than \$2 trillion in revenues and five million employees. The backing of these ‘early supporters’ representing many industries and several regions, is part of a campaign by the UN Human Rights Office entitled #Biz4LGBTI to promote use of the Standards by a wide range of businesses globally.

While companies are encouraged to support, endorse and refer to these Standards in reporting on their actions to respect and promote human rights, the Standards do not come with a mechanism to monitor and enforce their application. The UN Human Rights

¹⁷ As many as 134 companies (listed on <http://unfe.org/Standards>) have already expressed support, and these are: ABN Amro, Accenture, Accor Hotels Group, Adidas, AirBNB, Airbus, Air Canada, Amalgamated Bank, American Airlines, Anglo-American, ANZ, A.T. Kearney, Avianca, Aviva, AXA, Baker McKenzie, Banca Comunicacao, Barclays, Barilla, The Boston Consulting Group (BCG), BDMG – Banco de Desenvolvimento de Minas Gerais, Ben & Jerry’s, Best Buy, Bloomberg L.P., BNP Paribas, BNY Mellon, Braskem, Burberry, Calvin Klein, The Carlyle Group, Cisco Systems Inc., Clifford Chance LLP, The Coca-Cola Company, Credit Suisse, De Beers, Demarest Advogados, Deutsche Bank, Deutsche Post DHL Group, Diageo, Dow Chemicals, Eataty, EDF, EY, Fidelity International, Fotos Publicas, Freshfields Bruckhaus Deringer LLP, Generation Investment, The Gap, Godrej Industries, Gol Linhas Aéreas Inteligentes, Google, Greenberg Traurig LLP, Gucci, H&M, Herbert Smith Freehills LLP, Hermes Investment Management, Hogan Lovells LLP, HP, Hyatt, IKEA Group, Intel, JLL, Johnson & Johnson, JWT, KPMG, The Lalit Hotels, Lee, Brock, Camargo Advogados, Levi Strauss & Co., Lloyd’s, L’Oreal, Lufthansa, Lush Fresh Handmade Cosmetics, Marks & Spencer, Marsh, MAS Holdings, Marriott International, Mastercard, Mattos Filhos, Metro AG, Microsoft, McKinsey, MCV Advogadas, Monsanto, Nasdaq, Natura, Nestle, New York Life, Novartis, Oath, Panda Criativo, Orange, Pepsi Cola, PIMCO, Pinsent Masons LLP, The Phluid Project, PVH, PWC, Ralph Lauren Corp., RELX Group, RBS, Safilo Group S.p.A., Salesforce, Santander Group, SAP, Siemens, Simmons & Simmons, Schneider Electric SE, Smirnoff, SNC-Lavalin, Société Générale, Sodexo, Sonders and Beach Group, Spotify, Stanley Black & Decker, Suit Supply, Telefonica, Tesco, Thomson Reuters, Thyssen Krupp, Tommy Hilfiger, Trillium Asset Management, Twitter, Uber, Under Armour, Unilever, Veolia, Vert Asset Management, Viacom, Virgin, Vodafone, Watanabe Advogados, Westpac, Williams-Sonoma Inc and Xerox.

Office encourages companies themselves—along with trade unions, civil society organizations, academic institutions and other stakeholders – to monitor and evaluate performance, set benchmarks, identify and share good practices, and engage in dialogue on further steps that might be taken in line with these Standards.

The UN Human Rights Office and IHRB are working with civil society, and particularly Stonewall (a LGBT rights charity in the United Kingdom), to take leadership in developing a monitoring mechanism and performance assessment around the Standards, particularly on the fifth and last standard ‘acting in the public sphere’. The three authors of this article have been individually participating in seminars, public forums, and speaking to companies individually or in groups, explaining how the Standards have been formed and encouraging companies to support them and civil society organizations to use them as part of their advocacy programmes. The Standards could be followed by the development of several engagement tools which would lead companies to think more systematically of reporting on their engagement on human rights of LGBTI people. IHRB intends to offer confidential workshops with companies that face these challenges.

One message the UN Human Rights Office and IHRB have been stressing is to ensure that these efforts by companies are not only part of companies’ own policies and part of their compliance protocol, but are also inscribed into the wider Corporate Social Responsibility agenda, as outlined in the Global Compact, the UN-led initiative that urges companies to do more to respect human rights, labour, environment and initiate anti-corruption measures. This also encompasses the concept of shared prosperity.

With this initiative, the UN Human Rights Office believes that as more companies commit to change and take up the challenge of implementing these standards, the private sector can help pave the way for millions more LGBTI people to enjoy their rights – and live their lives with dignity, experiencing greater equality, acceptance and inclusion.