

## Chapter 9

# LGBT young people and homophobic and transphobic bullying – The European and international human rights context

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### **INTRODUCTION**

In December 2011 UN Secretary-General Ban Ki-moon described homophobic bullying of young people as a “grave violation of human rights”. He went on to say:

[I]t is also, for States, a matter of legal obligation. Under international human rights law, all States must take the necessary measures to protect people – all people – from violence and discrimination, including on grounds of sexual orientation and gender identity.<sup>9</sup>

Using this historic statement as a backdrop, and outlining some of what we know of the extent and nature of homophobic and transphobic bullying globally, this paper draws on European and international human rights law and interpretations to clarify how and why homophobic bullying violates young people’s human rights.

Sexual orientation and gender identity were not originally named grounds in international human rights law. Protections for LGBT people, including young people, emerged through the use of these instruments in more recent years. Although there can be a lack of clarity and significant controversy in this area, this paper makes the case that a great deal of international law aims to protect LGBT young people against homophobic and transphobic bullying. It highlights that all LGBT people are protected through rights ascribed to “all people”, and additionally as members of a minority group. It further makes the case that LGBT young people are specifically protected through the UN Convention on the Rights of the Child (again as part of “all children”, but also as a named group in interpretations of the convention), and specifically protected in schools, the site of much homophobic and transphobic bullying, through the right to education.

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9. New York, 8 December 2011, Message to Event on Ending Violence and Discrimination Based on Sexual Orientation and Gender Identity, delivered by Ivan Simonović, Assistant Secretary-General for Human Rights, [www.un.org/sg/statements/?nid=5747](http://www.un.org/sg/statements/?nid=5747).

In an Irish context discrimination towards LGBT people is curbed through national equality legislation (the Employment Equality Act and Equal Status Act) and similar legislation exists in some other countries, but by no means all. We are witnessing a rise in anti-LGBT legislation and sentiment in some countries, including Russia and Nigeria, a situation which has particularly devastating effects on LGBT young people. The following analysis introduces a hate crimes/incidents frame to homophobic and transphobic discrimination and bullying and addresses the issue of the often-cited friction between cultural/religious rights and LGBT people's human rights.

## **WHY WE NEED A SPECIFIC FOCUS ON HOMOPHOBIC AND TRANSPHOBIC BULLYING**

According to the United Nations *World Report on Violence against Children* (2006), most bullying is sexual or gender-based – in terms of the selection of those who are bullied and the nature of the abuse. It particularly affects young women and children and young people who are seen to be gender non-conforming and its content is most often related to sex and gender. “This reflects irrational fears of sexual diversity and atypical gender identity and is therefore described as homophobic or transphobic bullying” (UNESCO 2012a: 5). Homophobic bullying impacts on all young people, not only LGBT young people.

In terms of its specific effect on LGBT young people, the former Council of Europe Commissioner for Human Rights Thomas Hammerberg, in his comment “Schools must stop spreading homophobic and transphobic messages”, stated:

In schools across Europe young persons are being harassed because of their sexual orientation or gender identity. Homophobic and transphobic bullying is an everyday reality in the lives of many. It is time to react – especially in view of several national studies and reports warning that there have been a number of suicides among young lesbian, gay, bisexual and transgender (LGBT) persons feeling rejected by their peers and families.<sup>10</sup>

In Ireland, the youth organisation BeLonG To and the Equality Authority have described homophobic and transphobic bullying as forms of “identity-based bullying”. The Equality and Human Rights Commission in Britain describes identity-based bullying as follows:

[It is] any form of bullying related to the characteristics considered unique to a child's identity, such as their race, religion, sexual orientation or physical appearance. These forms of bullying are not only targeted at an individual, but reflect negative attitudes towards a wider sub-community or group to whom that individual identifies with (or is believed to identify with). Young people in such groups may be more vulnerable to or at risk of experiencing bullying and can benefit from more targeted support (Tippett et al. 2010: 3).

This additional risk experienced by some groups is recognised in Ireland in the national Action Plan on Bullying, which states that the Department of Education

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10. [http://commissioner.cws.coe.int/tiki-view\\_blog\\_post.php?postId=181](http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=181).

and Skills has “gained a greater understanding of how a significant proportion of bullying in schools is not merely behavioural, but is rooted in lack of respect for diversity and in social inequalities, both of which have their foundation in wider society” (Department of Education and Skills 2012: 24).

It is useful to look at homophobic and transphobic bullying in terms of hate crimes and hate incidents. To mark International Day Against Homophobia and Transphobia (IDAHOT) in 2011 UN High Commissioner for Human Rights Navi Pillay warned of the increase in homophobic hate crime. She stated:

Homophobia curbs the capacity of individuals to realize their aspirations and potential. Discrimination and harassment in families, schools, workplaces and the military on the basis of sexual orientation and gender identity lead people to drop out of school, prevent them from getting jobs and inhibit millions across the globe from seeking crucial health services.<sup>11</sup>

The Crown Prosecution Service in Britain has defined a homophobic or transphobic hate incident as “any incident which is perceived to be homophobic or transphobic by the victim or any other person” (Crown Prosecution Service 2009: 3). Stonewall and the Equality and Human Rights Commission in Britain have argued that “hate crimes and incidents can range from insults to inciting others to hatred, serious physical assault and murder. Perpetrators of homophobic hate incidents are motivated by prejudice or hostility towards their victim’s actual or perceived lesbian, gay and bisexual (LGB) sexual orientation” (Equality and Human Rights Commission 2009: 3).

Paul Iganski in his work on tackling violence and hate crime in Europe and in his analysis of British Crime Survey data found that hate-related incidents and crimes have a more damaging psychological effect on victims than other types of crime. He argued against categorising certain hate-related incidents as “low-level” (as bullying often is) concluding that “verbal abuse, pranks and harassment can be just as damaging psychologically and emotionally as a physical attack” (Iganski 1999).

The Organization for Security and Co-operation in Europe (OSCE) collects annual data on hate crimes and has developed expertise in this area. It has highlighted the difference between hate crimes and other crimes in terms of their impact on the victim and the community they are from.

The impact of hate crimes can be far greater than that of crimes without a bias motive, particularly in their impact on individual victims, those immediately associated with them and wider society. This greater impact is one of the key reasons why hate crimes should be treated differently than the same crimes committed without a bias motivation (OSCE/ODIHR 2009:17)

The OSCE goes on to say:

Hate crimes and hate-motivated incidents frequently leave victims in fear of future attacks and of increased violence. This fear comes from the rejection of the victims’ identity that is implicit in hate crimes. Additionally, hate crimes and incidents send the message that victims are not an accepted part of the society in which they live. Other

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11. [www.un.org/apps/news/story.asp?NewsID=38406&Cr=Pillay&Cr1#.U9TwDlyup-Q](http://www.un.org/apps/news/story.asp?NewsID=38406&Cr=Pillay&Cr1#.U9TwDlyup-Q).

members of the target group can feel not only at risk from future attacks, but may be as psychologically affected as if they were themselves the victims. These effects can be multiplied where victims are from groups that have been discriminated against and subject to prejudice for generations (ibid.).

## **WHAT IS THE SCALE OF THE PROBLEM AND ITS IMPACT ON YOUNG PEOPLE?**

In Ireland, homophobic bullying has been found to be one of the most widespread forms of bullying (Lynch and Lodge 2002). One study found that among LGBT people 50% reported experiencing verbal homophobic bullying, 40% were verbally threatened by fellow students, 25% said they were physically threatened by their peers and 34% heard homophobic comments from their teachers, while only one in five LGBT young people who were experiencing homophobic bullying sought any support from their school or teachers. This study also found extraordinarily high levels of mental ill health associated with these experiences and a correlation between homophobic bullying and suicidal behaviour among LGBT young people (Mayock et al. 2009). Irish teachers have also reported witnessing very high levels of homophobic bullying. Research funded by the Department of Education and Skills and carried out by Dublin City University found that 79% of teachers were aware of homophobic bullying in their school. The same study found that 41% of teachers found it more difficult to deal with homophobic bullying than other forms of bullying (Norman and Galvin 2006).

These findings are in line with the international evidence. In a 2006 ILGA-Europe and IGLYO survey with over 750 respondents from 37 European countries, 53% of LGBT people said they had experienced bullying in school (Takács 2006). In 2013 the European Union Agency for Fundamental Rights (FRA) published a Europe-wide survey of over 93 000 LGBT people on experiences of discrimination, violence and exclusion. At least 6 in 10 of all respondents had experienced negative comments or conduct at school because they were LGBT; 9 in 10 of all respondents in each LGBT group had experienced negative comments or conduct (at least “rarely”) because a schoolmate was perceived to be LGBT and two thirds of all respondents said such behaviour occurred “often” or “always” at their school. In addition, around three quarters of respondents (72%) recalled hearing or seeing negative comments or conduct during their schooling before the age of 18 because a teacher was perceived to be LGBT (EU FRA 2013).

Studies conducted in North America, Australia, New Zealand and South Africa also show extremely high rates of harassment, exclusion and assault experienced in schools by LGBT young people (Taylor et al. 2011; Kosciw et al. 2012; Stephens A. 2011).

Evidence from South Africa suggests high levels of discrimination (verbal abuse, physical abuse, sexual abuse, and negative jokes) experienced by lesbians and gays in schools in KwaZulu-Natal. The primary source of victimisation reported was other learners (65%), followed by educators (22%) and principals (9%) (Stephens A. 2011 cited in UNESCO 2012a).

## WHAT DO INTERNATIONAL HUMAN RIGHTS LAW AND AGREEMENTS SAY ABOUT STATES' OBLIGATIONS TO PROTECT LGBT YOUNG PEOPLE FROM HOMOPHOBIC AND TRANSPHOBIC BULLYING?

The following focuses primarily on the United Nations human rights standards, but reference is also made to the Council of Europe, the EU and the OSCE.

Under UN international covenants and the European Convention on Human Rights sexual orientation and gender identity are not explicitly named but they have been recognised as prohibited grounds for discrimination through more recent interpretation and legislative or judicial developments specific to LGBT people, children and education.

The principles of equality and non-discrimination are fundamental elements of international human rights law. The International Covenant of Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) oblige states to ensure the enjoyment of human rights without any discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Although gender identity and sexual orientation are not explicitly named grounds here the respective treaty bodies have interpreted the covenants in their case law or in a "general comment" as including sexual orientation and gender identity within the scope of the open-ended lists of grounds.<sup>12</sup> For instance, the following remarks are included in General Comment No. 20 from the UN Committee on Economic, Social and Cultural Rights:

States Parties should ensure that a person's sexual orientation is not a barrier to realizing covenant rights, for example, in accessing survivor's pension rights. In addition, gender identity is recognised as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace.<sup>13</sup>

In July 2014 Ireland appeared before the UN Human Rights Committee for a monitoring of its compliance with the ICCPR.<sup>14</sup> Although LGBT issues did not feature heavily (with the exception of the need for gender recognition of transgender people), the committee's findings were damning in relation to women's rights. The appearance demonstrated the significance of the ICCPR and its mechanisms, which can be seen in the level of media coverage and in the response from the Department of Justice and Equality, which committed to bringing the UN report on Ireland's human rights record to the "heart of the Oireachtas [national assembly]".<sup>15</sup>

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12. UN Human Rights Committee, *Toonen v. Australia*, Communication No. 488/1992, 30 March 1994.

13. UN Committee on Economic, Social and Cultural Rights, General Comment No. 20 on Non-Discrimination in relation to Economic, Social and Cultural Rights 2009, paragraph 32.

14. For more information on Ireland's appearance at the UN Human Rights Committee in July 2014 see the ICCL "roundup" – <http://iccl.ie/a-roundup-of-coverage-of-ireland's-iccpr-examination-14-25-july-2014.html>.

15. The Irish Examiner, 25 July 2014, "Damning report set for 'heart of the Oireachtas', [www.irishexaminer.com/ireland/damning-report-set-for-heart-of-the-oireachtas-276667.html](http://www.irishexaminer.com/ireland/damning-report-set-for-heart-of-the-oireachtas-276667.html).

In her landmark report to the UN Human Rights Council on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity,<sup>16</sup> the UN High Commissioner for Human Rights explained how UN mechanisms, including human rights treaty bodies and the special procedures of the Human Rights Council, have highlighted human rights violations of LGBT people for close to two decades. She also outlined how UN entities – including the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Development Programme (UNDP), the United Nations Children’s Fund (UNICEF), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Office of the UN High Commissioner for Refugees (UNHCR) – have integrated issues of sexual orientation and gender identity into their work. Central to the High Commissioner’s report is the point that universality, equality and non-discrimination are core to all international human rights law:

The application of international human rights law is guided by the principles of universality and non-discrimination enshrined in article 1 of the Universal Declaration of Human Rights, which states that “all human beings are born free and equal in dignity and rights”. All people, including lesbian, gay, bisexual and transgender (LGBT) persons, are entitled to enjoy the protections provided for by international human rights law (p. 4).

LGBT young people under the age of 18 (as most school-goers are) also have their rights recognised in the UN Convention on the Rights of the Child, Article 19 of which provides that “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence”. In reference to this article, in its General Comment No. 13 (2011) the UN Committee on the Rights of the Child states clearly that “bullying” is a form of both physical and mental violence.<sup>17</sup> This general comment also states that “violence among children, including physical, psychological and sexual violence, is often by bullying”. Importantly it goes on to state that “children in potentially vulnerable situations”, and “groups of children which are likely to be exposed to violence” include those who are “lesbian, gay, transgender or transsexual”.<sup>18</sup> It is clear here that the bullying of LGBT children and young people – homophobic and transphobic bullying – constitutes violence which is prohibited under the UN Convention on the Rights of the Child and against which signatory states to the convention are obliged to take measures to protect children and young people.

In terms of the right to education, UNESCO in its “Review of Homophobic Bullying in Educational Institutions” (2012b) states:

Violence, fear and intimidation should have no place in educational settings. Yet bullying is a pervasive practice that adversely affects the health and well-being of learners and is recognised as such by the United Nations.<sup>19</sup>

In creating a climate of fear and intimidation, bullying makes schools and other educational settings fundamentally unsafe places. In so doing, as well as undermining

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16. A/HRC/19/41, November 2011.

17. UN Committee of the Rights of the Child, General Comment No. 13 (2011) pp. 9-10.

18. Ibid., p. 27.

19. United Nations (2006), World Report on Violence against Children.

the UN Convention on the Rights of the Child<sup>20</sup> together with fundamental human rights to health, safety, dignity and freedom from discrimination and violence,<sup>21</sup> bullying poses a significant threat to the universal right to education as reflected in the Universal Declaration of Human Rights (1948), the Millennium Development Goals and related actions of the Dakar Framework for Action.<sup>22</sup> (UNESCO 2012: 4).

The UN Special Rapporteur on the right to education has argued that impartial information in schools can overcome prejudice and save people from inflicting or suffering violence:

Sexual education must pay special attention to diversity, since everyone has the right to deal with his or her own sexuality without being discriminated against on grounds of sexual orientation or gender identity. Sexual education is a basic tool for ending discrimination against persons of diverse sexual orientations.<sup>23</sup>

The UN Committee on the Rights of the Child has recommended that states include sexual education in the curricula of primary and secondary schools, which may also imply that laws that prevent young people educating themselves about their sexual orientation conflict with the convention (Council of Europe 2011).

In terms of a UN-level call for education and prevention, in 2011 UNESCO brought together NGOs and government bodies from around the world in Rio de Janeiro, Brazil for the first UN-sponsored global consultation on homophobic bullying. At this meeting the bodies represented published the Rio Statement on Homophobic Bullying and Education for All, which concluded with the declaration that:

We call upon all governments to live up to their responsibility to provide universal access to a high-quality education by eliminating the barriers created by homophobia and transphobia, including the unacceptable and devastating prevalence of anti-LGBTI bias and violence in elementary, secondary and tertiary levels and settings of education around the world.<sup>24</sup>

The UN High Commissioner for Human Rights, in her 2011 report mentioned above, highlighted her concern about discrimination against LGBT young people in schools,<sup>25</sup> and specifically about homophobic bullying. She included a recommendation that states “support public information campaigns to counter homophobia and transphobia among the general public and targeted anti-homophobia campaigns in schools” (p. 25).

The Council of Europe also has a role here. Article 14 of the European Convention on Human Rights and Protocol No. 12 to the Convention contain open-ended lists of

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20. Together with other international principles, such as the Yogyakarta Principles, that address impediments to the right to education faced by victims of bullying and/or violence.
  21. United Nations (1948), The Universal Declaration of Human Rights.
  22. United Nations (2000), United Nations Millennium Declaration, United Nations, New York; World Education Forum, The Dakar Framework for Action, UNESCO, Paris; UNESCO (2005), Education for All Global Monitoring Report 2005, UNESCO, Paris.
  23. Report of the United Nations Special Rapporteur on the right to education, A/65/162, 23 July 2010, paragraph 60.
  24. Rio Statement on Homophobic Bullying and Education for All – including a list of participants.
  25. A/HRC/19/41, November 2011.

grounds for the prohibition of discrimination. Neither Article 14 nor Protocol No. 12 specifically mentions sexual orientation nor gender identity as prohibited discrimination grounds but the commentary on the provisions of the protocol stipulates that the list of non-discrimination grounds is not exhaustive.

As with the UN conventions, it is clear that both sexual orientation and gender identity have become grounds for discrimination in more recent years. The European Court of Human Rights confirmed in 1999 that sexual orientation is a discrimination ground covered by Article 14 of the Convention. Similarly, in 2010, the Court explicitly mentioned transsexuality.

The Court has issued several judgments on discrimination on grounds of sexual orientation in which Article 14 has been invoked. In 2011, the Committee of Ministers of the Council of Europe adopted the Convention on preventing and combating violence against women and domestic violence. The non-discrimination article of this convention includes the grounds of sexual orientation and gender identity thereby making it the first international treaty to include explicitly both sexual orientation and gender identity as prohibited grounds for discrimination (Council of Europe 2011).

Specifically relevant to work to combat homophobic bullying, in 2009 the European Committee of Social Rights affirmed that “educational materials [should] not reinforce demeaning stereotypes and perpetuate forms of prejudice which contribute to the social exclusion, embedded discrimination and denial of human dignity often experienced by historically marginalised groups such as persons of non-heterosexual orientation” (Council of Europe 2011).

In 2010, the Council of Europe Committee of Ministers adopted a recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity, inviting member states to ensure that the stipulated principles and measures are applied in national legislation, policies and practices relevant to the protection of the human rights of LGBT persons. The recommendation covers a wide range of areas including hate crime and education. While it is not a legally binding instrument, all Council of Europe member states should implement this recommendation. The Parliamentary Assembly of the Council of Europe also adopted resolutions and recommendations on the subject.

It is widely held that the EU treaties say little about education or LGBT rights but the FRA points to a significant role of the EU in this area. It says:

Despite the limited protection against discrimination granted by EU legislation to LGBT persons beyond the employment sector, individuals enjoy a substantial protection through a variety of legal instruments at national and international level. Moreover, the enjoyment of the right to education, protected by Article 14 of the EU Charter of Fundamental Rights or Article 2 of Protocol No. 1 to the European Convention on Human Rights (ECHR), can be affected by discrimination, which is prohibited by Article 21 of the EU Charter (EU FRA 2013: 18).

The Council for Global Equality, an NGO in the United States which works to “encourage a clearer and stronger American voice on human rights concerns impacting LGBT communities around the world”,<sup>26</sup> has described the OSCE as “an obscure but

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26. From the Council for Global Equality’s website: <https://globalequality.wordpress.com/about/>.



influential international organisation that focuses on a range of security and human rights issues". It goes on: "Created as a mechanism to engage the Soviet Union and its satellite states, in the messy aftermath of the Cold War, the OSCE has emerged as an important platform for promoting tolerance and non-discrimination."<sup>27</sup> LGBT rights issues have been very controversial at the OSCE for many years and under the Bush administration the US "worked with the Vatican to block discussion of LGBT human rights concerns" (ibid.). More recently, due in no small part to the change in US administration, LGBT human rights issues have come to be discussed. In December 2012, during the Irish Chairpersonship of the OSCE, the Civil Solidarity Platform of the OSCE, which included an involvement from the Irish youth organisation BeLoNG To, made recommendations to member states on LGBT rights and specifically on homophobic and transphobic bullying. The document "Civil Society Recommendations to the participants of the OSCE Ministerial Council Meeting in Dublin, 6-7 December 2012" contains the following text:

We are concerned about the growth of violence against LGBT people and restrictions of the freedom of expression of the LGBT community ... homophobic and transphobic bullying of LGBT young people in schools is of particular concern. Such bullying can seriously affect young people's education and health, and can be a causal factor in self-harm and attempted suicide. Such bullying is often compounded by lack of support from teachers and non-inclusive school curriculums.

The document goes on to recommend that OSCE participating states take "actions to provide for safe education for LGBT students and combat homophobic and transphobic bullying in schools".<sup>28</sup>

There are of course frictions when it comes to supporting LGBT people, including young people, to access their rights – specifically when cultural rights are set in opposition to LGBT people's human rights. Addressing this ongoing issue the UN Secretary-General Ban Ki-moon has said:

We know how controversial the issues surrounding sexual orientation can be. In the search for solutions, we recognize that there can be very different perspectives. And yet, on one point we all agree – the sanctity of human rights ... As men and women of conscience, we reject discrimination in general, and in particular discrimination based on sexual orientation and gender identity. Where there is a tension between cultural attitudes and universal human rights, rights must carry the day.<sup>29</sup>

The Secretary-General's statement is highly relevant to the tensions that exist in Russia, much of the Middle East and increasingly in Africa, where homosexuality has been increasingly criminalised and where in some countries the death penalty is a reality. In Russia the infamous anti-gay propaganda laws which have come into effect specifically target young people and educationalists – making work to combat homophobic and transphobic bullying close to impossible.

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27. <https://globoequality.wordpress.com/category/organization-for-security-cooperation-in-europe/>.

28. For the full text of "Civil Society Recommendations to the participants of the OSCE Ministerial Council Meeting in Dublin, 6-7 December 2012", see: [www.civicsolidarity.org/sites/default/files/civil\\_society\\_recommendations\\_for\\_mcm\\_in\\_dublin\\_final.pdf](http://www.civicsolidarity.org/sites/default/files/civil_society_recommendations_for_mcm_in_dublin_final.pdf).

29. Secretary-General comment SG/SM/13311 HR/5043.

The “Camden Principles on Freedom of Expression and Equality” address the perceived and often-cited “incompatibility” between freedom of expression and equality, often highlighted by those opposed to LGBT people accessing their rights. These principles, drawn up in 2009 by Article 19: Global Campaign for Free Expression, claim that there is an affirmative rather than oppositional relationship between equality and free speech. They state:

The Principles assert the affirmative relationship between freedom of expression and equality, identifying the complementary and essential contribution they make to the securing and safeguarding of human dignity, and the fact that together they are key to the indivisibility and universality of human rights. Observed and upheld they enable and strengthen respect for human rights for all (Article 19 2009: 3).

## **WHAT IS BEING DONE INTERNATIONALLY IN REFERENCE TO INTERNATIONAL HUMAN RIGHTS LAW IN THIS AREA?**

As mentioned above, in December 2011 UNESCO organised the first ever United Nations consultation on homophobic bullying in educational institutions, held in Rio de Janeiro, Brazil. The consultation revealed the scope of the problem worldwide and the impact of homophobic bullying on the right of LGBT young people to education, on their health and well-being, and on the learning environment for all students. Examples of good policies and practices from governments and development partners in this area were shared, and future priorities identified and agreed. BeLonG To, with the support of the Irish Department of Children and Youth Affairs, was a core member of this consultation. Its work was presented as an example of good practice<sup>30</sup> and UNESCO has committed to working in partnership with BeLonG To in delivering its global work programme in the coming years (UNESCO 2013).

The findings of the consultation were compiled in the publication *Education Sector Responses to Homophobic Bullying*, which includes practical guidance for the development and implementation of policies, interventions and practical tools to prevent and address homophobic bullying in schools. This resource was launched in May 2012 at an event associated with IDAHO Day and is available in four UN languages and five non-UN languages, including Korean, with a foreword by UN Secretary-General Ban Ki-moon.

UNESCO’s work in this area is carried out within the framework of Education for All (EFA). As such it evokes the UN Convention on the Rights of the Child together with the universal right to education as reflected in the Universal Declaration of Human Rights (1948), the Millennium Development Goals and related actions of the Dakar Framework for Action. UNESCO has developed a work plan in this area (July 2013 to December 2016) and is working with partners globally to “collect solid evidence on the nature, scope and consequences of homophobic bullying in educational institutions in countries where there is little or no data available; document and share best practice for action; raise awareness and build coalitions; and facilitate

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30. [www.thejournal.ie/unesco-praises-irish-anti-homophobic-bullying-campaign-as-global-best-practice-303945-Dec2011/](http://www.thejournal.ie/unesco-praises-irish-anti-homophobic-bullying-campaign-as-global-best-practice-303945-Dec2011/).

country-level action to prevent and address homophobic bullying in educational institutions” (UNESCO 2013: 1).

In Europe, the Council of Europe has developed an LGBT Unit to support LGBT people across the region to access their rights. This work includes initiatives to combat homophobic bullying and provide safe education for LGBT people. The work of the unit is based on three key legal instruments – the European Convention for the Protection of Human Rights and Fundamental Freedoms (commonly known as the European Convention on Human Rights), the European Social Charter and the Convention on preventing and combating violence against women and domestic violence.<sup>31</sup> To date the unit’s work has included the promotion of LGBT youth rights among member states within the context of the rights of the child, and the development of school-based LGBT awareness materials and training courses in Poland, Montenegro, Latvia and Albania (the latter carried out in partnership with BeLonG To).<sup>32</sup>

Even within the OSCE we can see some movement. In September 2013 at the OSCE Human Dimension Implementation Meeting in Warsaw a panel took place on the theme “The role of education in promoting mutual understanding and respect for diversity in sexual orientation”, on which activists from Russia, Ukraine and Ireland spoke about their work to combat homophobia among younger people.<sup>33</sup> The following month, as part of Ukraine’s OSCE Chairmanship, and based on the Civil Solidarity Platform recommendations developed in Dublin in 2012, the Ukrainian Ombudsman hosted an event to explore ways in which Ukrainian schools could tackle homophobia.

ILGA-Europe, which is the European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, has prioritised work to combat the exclusion of LGBT people from education. While it works on education on a number of levels (including supporting member organisations and building alliances with European education stakeholders), some of its most effective work has been in the field of advocacy for European policy change. ILGA-Europe monitors the development within the European institutions, and provides input whenever possible: “The aim is to increase the legal protection against discrimination of LGBTI people in access to education. This can be done by securing a new European anti-discrimination legislation and promoting effective implementation of relevant international and European human rights instruments”.<sup>34</sup>

In the Irish context the Department of Education and Skills’ national Action Plan on Bullying cites UNESCO’s *Education Sector Responses to Homophobic Bullying*. Drawing on the UN Convention on the Rights of the Child it describes homophobic bullying as “a threat to the universal right to education” (Department of Education and Skills 2013: 24). Also in Ireland *Better Outcomes, Brighter Future: The National Policy Framework*

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31. For more information on the Council of Europe LGBT Unit, see [www.coe.int/t/dg4/lgbt/Documents/Instruments\\_EN.asp](http://www.coe.int/t/dg4/lgbt/Documents/Instruments_EN.asp).

32. [www.coe.int/t/dg4/lgbt/themes/theme6\\_en.asp](http://www.coe.int/t/dg4/lgbt/themes/theme6_en.asp).

33. [www.nhc.nl/en/news/archive\\_2013/Education\\_key\\_in\\_countersing\\_discrimination\\_of\\_LGBT\\_persons.html?id=205](http://www.nhc.nl/en/news/archive_2013/Education_key_in_countersing_discrimination_of_LGBT_persons.html?id=205).

34. [www.ilga-europe.org/home/issues/education](http://www.ilga-europe.org/home/issues/education).

for Children and Young People 2014-2020 applies the principles of the UN Convention on the Rights of the Child (Department of Children and Youth Affairs 2014: 2, 98, 120), and recognises that “prejudice, including homophobia and transphobia, is a significant underlying cause of bullying amongst adolescents” (p. 79).

## CONCLUSION

This paper has presented an outline of the European and international human rights contexts for tackling homophobic and transphobic bullying and creating safe educational environments for LGBT young people. It has examined why homophobic and transphobic bullying need specific responses and by looking through a hate crimes/incidents lens has highlighted the particular impact such harassment has on young people. It has paid particular attention to the UN but also referred to the role of the Council of Europe, the EU and the OSCE, drawing together what various treaties, interpretations and statements say about states’ obligations to LGBT young people. With a growth in homophobic laws and sentiment, particularly in eastern Europe and Africa, much of which use education as an instrument (the Russian anti-propaganda laws are essentially anti-LGBT education laws), it is timely to highlight states’ obligations under international human rights law to combat homophobia and homophobic bullying among young people.

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