United Nations Treaty Bodies:
References to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics
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This report provides an analysis of references to sexual orientation, gender identity, gender expression and sex characteristics made by nine Treaty Bodies in 2020 and 2021. An additional compilation of references with keywords is provided.

The report also contains a section with an analysis of developments related to sexual orientation, gender identity, gender expression and sex characteristics in Treaty Bodies between 2014 and 2021.

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### Names of countries and territories in this publication

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Main Definitions

**Concluding Observations** are the observations and recommendations issued by a Treaty Body after it has considered a State party’s report. Concluding observations refer both to the positive aspects of a State's implementation of the treaty and to areas of concern, where the Treaty Body recommends that further action needs to be taken by the State.

**Constructive dialogue** refers to the practice, adopted by all Treaty Bodies, of inviting State parties to send a delegation to the session at which their report will be considered in order to enable them to respond to the Treaty Body members’ questions and provide additional information on their efforts to implement the provisions of the relevant treaty.

**Country Periodic Review** is a process whereby Treaty Bodies review the implementation of specific treaties by State parties. After ratification of a treaty, a State must periodically provide reports on its implementation (depending on the Committee, e.g., every five years). The outcome of the periodic review is Concluding Observations.

**Follow-up Procedure** refers to a procedure aimed at ensuring that State parties act on the recommendations contained in the Concluding Observations of the Treaty Bodies or their decisions on Individual Complaints. Most of the Committees identify two to four most urgent and important recommendations at the end of their Concluding Observations. Such recommendations should be implemented in a shorter period (usually one or two years) and the State has to provide a follow-up report on the implementation of these recommendations. NGOs can also submit shadow reports assessing the level of implementation of follow-up recommendations.

**Gender expression** is each person’s presentation of their gender through physical appearance – including dress, hairstyles, accessories, cosmetics – and mannerisms, speech, behavioral patterns, names and personal references, and noting further that gender expression may or may not conform to a person’s gender identity.

**Gender identity** refers to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

**General Comment (General Recommendation)** is a Treaty Body’s interpretation of human rights treaty provisions, thematic issues or its methods of work. General comments often seek to clarify the reporting duties of State parties with respect to certain provisions and suggest approaches to implementing treaty provisions.

**Individual Communication** is a formal complaint from an individual or an organization claiming that their rights under one of the treaties have been violated by a State party. Such communications normally should be sent to the Treaty Bodies after all available and effective domestic remedies have been exhausted. Individual Communications can be considered by most of the Treaty Bodies.

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1 Most of the technical definitions are taken from the OHCHR glossary on Treaty Bodies, available here: [https://www.ohchr.org/EN/HRBodies/Pages/TBGlossary.aspx#loi](https://www.ohchr.org/EN/HRBodies/Pages/TBGlossary.aspx#loi).

Definitions of sexual orientation, gender identity, gender expression and sex characteristics are adopted from the Yogyakarta principles and the update on the Yogyakarta principles.
**List of Issues** is a list of issues or questions, formulated by a Treaty Body on the basis of a State party report and other information available to it (e.g., information from United Nations specialized agencies, NHRIs, NGOs, etc.), which is transmitted to the State party in advance of the session at which the Treaty Body will consider the report. The List of Issues provides the framework for a constructive dialogue with the State party’s delegation. CERD issues Lists of Themes, a list of themes or topics for which no responses are required, intended to guide and focus the dialogue between a State party’s delegation. Many Committees also adopt Lists of Issues prior to reporting (where issues and questions are sent to a State party not after, but before it submits its own report).

**Sex characteristics** are each person’s physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty.

**Sexual orientation** refers to each person’s capacity for profound emotional, affecional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.

**Shadow report (alternative report, CSO report, CSO submission)** is a written report prepared by civil society (including coalitions, registered NGOs and initiative groups without formal registration) submitted to Treaty Bodies on a specific country. Such reports are aimed at providing Committee experts with additional information on the situation with human rights in the country. These reports usually also suggest questions to the State and recommendations for the Concluding Observations.

**Treaty Bodies (Committees)** are committees of independent experts appointed to review the implementation by State parties of an international human rights treaty.
## List of Acronyms

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<tr>
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<td>CAT</td>
<td>Committee against Torture</td>
</tr>
<tr>
<td>CAT Convention</td>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984)</td>
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<tr>
<td>CED</td>
<td>Committee on Enforced Disappearances</td>
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<td>CEDAW</td>
<td>Committee on the Elimination of Discrimination against Women</td>
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<tr>
<td>CEDAW Convention</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women (1979)</td>
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<td>CERD</td>
<td>Committee on the Elimination of Racial Discrimination</td>
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<td>CESCR</td>
<td>Committee on Economic, Social and Cultural Rights</td>
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<td>CMW</td>
<td>Committee on Migrant Workers</td>
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<td>COs</td>
<td>Concluding Observations</td>
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<td>CRC</td>
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<td>CRPD</td>
<td>Committee on the Rights of Persons with Disabilities</td>
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<tr>
<td>CSO</td>
<td>Civil Society Organization(s)</td>
</tr>
<tr>
<td>HIV/AIDS</td>
<td>Human immunodeficiency virus infection and acquired immune deficiency syndrome</td>
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<td>HRCtee</td>
<td>Human Rights Committee</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights (1966)</td>
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<td>ICERD</td>
<td>International Convention on the Elimination of All Forms of Racial Discrimination (1965)</td>
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<td>ICESCR</td>
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<td>ICMW</td>
<td>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)</td>
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<td>ILGA World</td>
<td>International Lesbian, Gay, Bisexual, Trans and Intersex Association</td>
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<tr>
<td>IGM</td>
<td>Intersex genital mutilation</td>
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<tr>
<td>L / G / B / T / I</td>
<td>lesbian / gay / bisexual / trans / intersex</td>
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<td>LOIPR</td>
<td>List of Issues prior to reporting</td>
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<td>MSM</td>
<td>Men who have sex with men</td>
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<tr>
<td>NGO</td>
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<td>OP</td>
<td>Optional Protocol</td>
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<td>NHRI</td>
<td>National Human Rights Institution(s)</td>
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<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights</td>
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<td>PSWG</td>
<td>Pre-sessional working group</td>
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Executive Summary

This report is a compilation and analysis of SOGIESC references made by nine United Nations Treaty Bodies in 2020-2021 (CESCR, HRCtee, CEDAW, CRC, CRPD, CERD, CMW and CED). It examines the Concluding Observations\(^2\) and Lists of Issues/Lists of Issues Prior to Reporting\(^1\) in country periodic reviews, Treaty Bodies’ General Comments\(^4\) and decisions on Individual Communications.\(^5\)

The report will begin by outlining the methodology adopted for the preparation of this document, followed by the introduction to this report providing an overview of the trends and developments in the practice of Treaty Bodies in relation to SOGIESC in 2020-2021, in particular the impact of the COVID-19 pandemic on Treaty Body practice.

- The COVID-19 pandemic significantly impacted the nine Treaty Bodies covered in this report, comprising postponements, cancellations and reduced activities.
- In 2020-2021, nine Treaty Bodies made 139 SOGIESC references\(^6\) in 87 Concluding Observations\(^7\) on 159 different States. This included six follow-up recommendations to six countries made by three Committees.
- Compared to the indicators achieved by Treaty Bodies in 2019, the actual number of SOGIESC-inclusive Concluding Observations and references significantly dropped in 2020 and 2021.
- However, the rate of SOGIESC-inclusive references per Concluding Observation was the highest ever (2.7) in 2021.
- The percentage of SOGIESC-inclusive Concluding Observations decreased in 2020, however it increased again in 2021 to levels seen in 2019.
- In 2020, CRC adopted the most SOGIESC-inclusive references in Concluding Observations at 15, still significantly lower than the 24 in 2019.
- In 2021, CEDAW adopted the most SOGIESC-inclusive references in Concluding Observations at 27, slightly lower than 33 in 2019.
- HRCtee consistently recorded SOGIESC-inclusive references in 100% of Concluding Observations in 2020 and 2021 (the highest percentage among all Treaty Bodies in 2020-2021), compared to 94% in 2019.
- CRC also saw an increase in the percentage of SOGIESC-inclusive Concluding Observations in 2021, with the Committee adopting them in 100% of reviews for the first time ever.
- CED again made significant progress, being the Treaty Bodies adopting the fourth highest number and percentage of SOGIESC-inclusive references in 2021. CED also adopted trans-specific references for the first time.
- One the other hand, CMW did not adopt any SOGIESC-inclusive Concluding Observations in 2020 or 2021.
- In 2020-2021 there were nine trans-specific references\(^8\) made, as well as 17 intersex-specific references.\(^9\) One recommendation referenced ‘lesbianism’, another expressed concern about

\(^2\) Country-specific concerns and recommendations.
\(^1\) Issues and questions sent to the State parties before the main review.
\(^4\) Interpretations of international human rights treaties.
\(^5\) Complaints brought by individuals or organizations.
\(^6\) 2020-33; 2021-106.
\(^7\) 2020-28; 2021-59.
\(^8\) 2020-1; 2021-8.
\(^9\) 2020-5; 2021-12.
irreversible medical surgery performed on intersex women. One List of Issues mentioned trans women and another List of Issues Prior to Reporting mentioned trans and intersex women.

- CEDAW and CRC adopted their first decisions on Individual Communications recognizing violations based on sexual orientation.
- CERD made three SOGIESC-inclusive references in their General Comment No. 36 (2020).

The main part of this report is split into nine Committee-specific chapters. Each chapter contains qualitative and quantitative data on SOGIESC references made by Committees in 2020-2021. This analysis covers a series of themes: States criminalizing LGBTI people; references to GIGE and sex characteristics; and, references to women. The Committee chapters also include information on General Comments and decisions on Individual Communications adopted by the Committee, as well as information on follow-up recommendations and data on references to sex work and HIV/AIDS which were not SOGIESC-specific.

The annexes to this report include a list of the countries reviewed in 2020-2021, and which Treaty Body it was reviewed by; a list of SOGIESC-related civil society submissions sent to the Committee on countries reviewed in 2020-2021; and, quantitative data, including number and percentages, on SOGIESC references in Treaty Bodies' Concluding Observations from 2014-2021.

This report is supplemented by a separate document containing a compilation of all SOGIESC references made by the nine Treaty Bodies in their country reviews, General Comments and decisions on Individual Communications in 2020-2021. It is also accompanied by a simplified version which highlights key analysis, facts and recommendations for future engagement with Treaty Bodies.
Treaty Bodies and SOGIESC: 2020-2021 in numbers

- Nine Treaty Bodies made 139 SOGIESC inclusive references in 87 Concluding Observations on 159 different States;
- 68% of country periodic reviews ended with SOGIESC-inclusive Concluding Observations;
- 38 States received their first SOGIESC-inclusive Concluding Observations from the respective Committee;
- Six SOGIESC recommendations on six countries were selected for the follow-up procedure by CAT, CED and HRCtee;
- Among the 139 SOGIESC-inclusive references, there were:
  - 119 trans-inclusive references and nine trans specific references;
  - 84 intersex-inclusive references and 17 stand-alone intersex references;
  - HRCtee: 100% of country periodic reviews concluded with SOGIESC recommendations in the Concluding Observations (the highest percentage among all Treaty Bodies in 2020-2021);
  - CEDAW and CRC: 34 SOGIESC references in Concluding Observations (joint highest number of references among all Treaty Bodies in 2020-2021);
  - 11 Individual Communications on SOGI were decided by CAT, CEDAW, CRC and HRCtee (five- violation, two- no violation and four- inadmissible);
  - Four General Comments with reference to SOGI were adopted by CEDAW, CERD, CESCR, HRCtee).
Introduction

United Nations Treaty Bodies are the independent committees of experts that monitor State compliance with international human rights law treaties. States that are party to a treaty are obliged to ensure rights set out in that treaty are enjoyed by everyone in the State. Treaty Bodies provide civil society with an effective and somewhat accessible advocacy mechanism where these obligations are not being met.

Despite the lack of any explicit mention of SOGIESC or LGBTI in United Nations human rights treaties, the practice of Treaty Bodies has developed during the last two and a half decades to include these concepts. SOGIESC and LGBTI issues are now part of the framework of Treaty Body functions and are considered an integral part of human rights language.

Since May 2015, ILGA World has implemented a specific programme to better engage with Treaty Bodies. Through this programme, we have monitored and analysed Treaty Body processes and created approaches to ensure that SOGIESC are considered when relevant. The years reviewed in this report, 2020-2021, saw significant changes to the functionality of the Treaty Bodies due to the COVID-19 pandemic. The impact of the pandemic is clear to see throughout the report, and will be highlighted in chapter two, SOGIESC in the work of Treaty Bodies in 2020-2021.

In light of the COVID-19 pandemic impact, the 2020-2021 report may produce data unlike what has come in previous reports. However, as with other years, this analysis enables LGBTI advocates to identify patterns, developments and gaps in the work of the Treaty Bodies. By promoting the engagement of LGBTI civil society ILGA World continues to gain insight into the approach of the nine Committees:

- The Committee on Economic, Social and Cultural Rights (CESCR)\(^{10}\)
- The Human Rights Committee (HRCtee)\(^{11}\)
- The Committee on the Elimination of Discrimination Against Women (CEDAW)\(^{12}\)
- The Committee on the Rights of the Child (CRC)\(^{13}\)
- The Committee Against Torture (CAT)\(^{14}\)
- The Committee on the Rights of Persons with Disabilities (CRPD)\(^{15}\)
- The Committee on the Elimination of Racial Discrimination (CERD)\(^{16}\)
- The Committee on Migrant Workers (CMW)\(^{17}\)

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\(^{10}\) Responsible for monitoring State compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR).

\(^{11}\) Responsible for monitoring State compliance with the International Covenant on Civil and Political Rights (ICCPR).

\(^{12}\) Responsible for monitoring State compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention).

\(^{13}\) Responsible for monitoring State compliance with the Convention on the Rights of the Child (CRC Convention).

\(^{14}\) Responsible for monitoring State compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT Convention).

\(^{15}\) Responsible for monitoring State compliance with the International Convention on the Rights of Persons with Disabilities (ICRPD).

\(^{16}\) Responsible for monitoring State compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

\(^{17}\) Responsible for monitoring State compliance with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW).
• The Committee on Enforced Disappearances (CED).

This report will provide a comprehensive analysis of all SOGIESC references made by these nine Treaty Bodies in 2020-2021. The report will be supplemented by a compilation of SOGIESC references coded with key words.

This report will also be accompanied by a simplified version which will highlight key analysis, facts and recommendations for CSOs wishing to engage with Treaty Bodies.

In the main report, we will examine three components of Treaty Body documentation in detail:

• General Comments (interpretation of the international human rights treaties).
• Decisions on Individual Communications (complaints brought by individuals or organizations).
• Lists of Issues/List of Issues Prior to Reporting (issues and questions sent to States parties before the main review) and Concluding Observations (country-specific concerns and recommendations made as a result of the main review).

The introduction to the report explains the methodology of the research. Following this there is a chapter which provides a general overview of trends, developments, gaps and opportunities related to SOGIESC in the work of Treaty Bodies in 2020-2021. This chapter will also focus on the significant impact of the COVID-19 pandemic on the functions of the Treaty Bodies.

The main part of the report consists of nine Committee-specific chapters. Each chapter includes:

• Quantitative and qualitative data on SOGIESC references made by the respective Committee in 2020-2021;
• Information on themes covered over the two years, including on criminalization of consensual same-sex sexual acts, trans and intersex specific references and references to LB/TI women;
• Analysis of General Comments and Individual Communications adopted by Committees;
• Information on sex work and HIV/AIDS references in Concluding Observations that were not SOGIESC-specific;
• Advice for LGBTI advocates for future engagement with Treaty Bodies.

The Annexes to the report include:

• Full list of countries reviewed in 2020-2021 with information on whether or not SOGIESC were mentioned in the List of Issues or Concluding Observations.
• List of SOGIESC-related civil society submissions (shadow reports) sent to the Committees on the countries reviewed in 2020-2021, with hyperlinks and a brief description of the contents of the report.
• Quantitative data on SOGIESC references in the Concluding Observations of Treaty Bodies made in 2020-2021.

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18 Responsible for monitoring State compliance with the International Convention for the Protection of All Persons from Enforced Disappearance (ICED).
This report is supplemented by a separate document containing a compilation of all SOGIESC references made by nine Treaty Bodies in 2020-2021. It is also accompanied by a simplified version which will highlight key analysis, facts and recommendations for future engagement with Treaty Bodies.

**Methodology**

In preparing this report, ILGA World examined all the Lists of Issues, Lists of Issues prior to reporting, Concluding Observations, follow-up reports following concluding observations, General Comments (drafts and finalised versions) and decisions on Individual Communications published by CESCR, HRCtee, CEDAW, CRC, CAT, CRPD, CERD, CMW and CED in 2020-2021, as well as civil society submissions on countries reviewed in 2020-2021.

In doing so, we examined only the materials that explicitly mentioned LGBTI/SOGIESC. Therefore, our analysis did not cover references which could be understood as covering LGBTI populations, but that did not do so directly (e.g., general mentions of “vulnerable groups of women” or “different family forms”).

We primarily analysed written documents published on the website of the Office of the High Commissioner for Human Rights (OHCHR). Therefore, our analysis excluded confidential civil society submissions, most information provided orally, and reports that were not uploaded to the OHCHR website. At the same time, constructive dialogues have also been analysed in the chapter ‘SOGIESC in the work of Treaty Bodies in 2020-2021’ below.

**Definition of “reference”**. Our quantitative analysis was based on the concept of "reference". A reference and a recommendation are understood differently.

A reference means any mention of SOGIESC/LGBTI by a Committee. We counted as one reference any of the following options:

a) A paragraph made within the positive development section (e.g., when a Committee commended a State party’s new SOGIESC-inclusive anti-discrimination law).

   **Example:**
   **Positive aspects**
   3. The Committee welcomes the adoption by the State party of the following legislative and policy measures: [...] (l) Action Plan 2019–2025 for achieving equal opportunities for lesbian, gay, bisexual, transgender and intersex persons in Åland society, in 2019.

b) A paragraph expressing the Committee’s concerns, plus a following paragraph suggesting particular recommendations to mitigate the problem mentioned.

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19 HRCtee, Concluding Observations: Finland, 3 May 2021, UN Doc CCPR/C/FIN/CO/7, para 3 (l).
Example:
The Committee is concerned at the situation of intersex minors, and in particular the practice of performing surgical procedures that are often irreversible and medically unnecessary or non urgent and that are detrimental to the physical and mental integrity of the individuals concerned (arts. 10 and 12).

55. The Committee recommends that, under the Interfederal Action Plan to Combat Discrimination and Violence against Lesbian, Gay, Bisexual, Transgender and Intersex Persons, the State party:

(a) Ensure that, in practice, medically unnecessary or non-urgent procedures on the sex characteristics of intersex children are not performed until the children are capable of forming their own views and can give their informed consent...

c) Only a paragraph with recommendations not preceded by a paragraph expressing concern (particularly relevant for the CRC structure of Concluding Observations).

Example:

Harmful Practices

27. With reference to joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices, and recalling the concluding observations of the Committee against Torture (CAT/C/AUT/CO/6, para. 45) the Committee recommends that the State party:

(a) Prohibit the performance of unnecessary medical or surgical treatment on intersex children where those procedures may be safely deferred until children are able to provide their informed consent...

d) A paragraph on follow-up recommendations if SOGIESC issues were selected for the follow-up review process.

Example:

Dissemination and follow-up

45. In accordance with rule 75, paragraph 1, of the Committee’s rules of procedure, the State party is requested to provide, by 26 March 2023, information on the implementation of the recommendations made by the Committee in paragraphs 15 (hate speech and hate crimes), 19 (violence against women) and 43 (rights of the Sami indigenous people) above.

A recommendation means particular measures and activities recommended or suggested to, or required of a State party by a Committee. Recommendations could be a part of a reference, but not every reference includes recommendations.
Example:

**LGBTI persons**

The Committee recommends that the State party:

Adopt a law on hate crimes against lesbian, gay, bisexual, transgender and intersex persons, protect them from violence and discrimination and combat impunity, including through awareness-raising campaigns aimed at the judiciary, the legislature and the general public...

This report includes separate analyses of the work of each of the nine Treaty Bodies in 2020-2021. Each chapter provides information on country periodic reviews including Concluding Observations, Lists of Issues, CSO submissions and constructive dialogues, as well as SOGIESC references contained within them.

For each of the Committees, there is also a general description of the themes covered during the year. Specific sections are dedicated to:

a) **Criminalization**, including a comparison of the list of countries criminalizing consensual same-sex sexual acts with the list of countries that received SOGIESC recommendations, as well as the content of such recommendations;

b) **Gender identity and gender expression**, including quantitative information about trans-inclusive and stand-alone trans references, and an analysis of topics covered by these references;

c) **Sex characteristics**, including quantitative and qualitative information about intersex-inclusive and stand-alone intersex references; and

d) **Women**, a section introduced in the 2017 report with an analysis of how SOGIESC references made by the Committee reflected the realities of LB/TI women.

In each Committee-specific chapter, we also provide data on Individual Communications, General Comments and follow-up recommendations.

Finally, the chapters include a list of references to sex work and HIV/AIDS not directly related to SOGIESC.
**SOGIESC in the work of Treaty Bodies in 2020-2021**

The COVID-19 pandemic significantly impacted the operation of all UN mechanisms, including the nine Treaty Bodies analyzed in this report. It affected the activity of all Treaty Bodies, resulting in postponements, cancellations and reduced activities. Many sessions in 2020 were cancelled, and Treaty Bodies had to adapt to moving sessions online. Online sessions, while allowing participation of local activists who would not be able to do so otherwise, also caused many issues, particularly with accessibility and interpretation.20

The reduced activity of the Treaty Bodies caused deep concern to civil society organizations protecting human rights. In one joint statement, organizations wrote:

"Given the plethora of human rights restrictions and violations arising from the responses to the COVID-19 pandemic, it is crucial for rights-holders that the Treaty Bodies, who are the only independent and expert monitors of the legally binding human rights treaties, are able to fulfil their mandates and independently assess states' compliance."21

The Treaty Bodies responded to the COVID-19 pandemic with a series of guidance notes, advice, statements and press releases on how to protect human rights during COVID-19.22 In March 2020, the Chairs of the Treaty Bodies urged global leaders to ensure that human rights are respected in government measures to tackle the public health threat posed by the COVID-19 pandemic.23 The OHCHR published a toolkit of treaty law perspective and jurisprudence in the context of COVID-19.24

In this section, we will analyze the work of the Treaty Bodies across 2020-2021, in which activities were dramatically scaled-down. With that in mind, where possible we will draw comparisons on previous years and interpret SOGIESC-inclusion relatively. In this regard, we will identify the gaps and developments made over those two years. We will also highlight the achievements across the two years. The continued inclusion of SOGIESC issues by Treaty Bodies- even in years where Treaty Body activity was reduced, and capacity and resources of LGBTQI organizations stretched- is a testament to the dynamic and strong engagement with Treaty Bodies by LGBTQI defenders globally.

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Country periodic reviews

In 2020-2021, nine Treaty Bodies made SOGIESC-inclusive references in 59 out of 87 Concluding Observations, equally 68% of Concluding Observations. In these 59 Concluding Observations, 139 SOGIESC references were made (see Error! Reference source not found. and Error! Reference source not found.). From 2014-2019, SOGIESC-inclusive references were made in 46% of Concluding Observations, denoting that the rate at which Treaty Bodies were adopting SOGIESC-inclusive recommendations was higher than the average across previous years.

Table 1. SOGIESC in Concluding Observations of Treaty Bodies, 2020

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<tr>
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<th>All COs</th>
<th>SOGIESC-inclusive CO</th>
<th>SOGIESC-inclusive references</th>
<th>Trans-inclusive references</th>
<th>Trans-specific references</th>
<th>Intersex-inclusive references</th>
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<td>68</td>
<td>33</td>
<td>25</td>
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Table 1. SOGIESC in Concluding Observations of Treaty Bodies, 2021

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<tr>
<th></th>
<th>All COs</th>
<th>SOGIESC-inclusive CO</th>
<th>SOGIESC-inclusive references</th>
<th>Trans-inclusive references</th>
<th>Trans-specific references</th>
<th>Intersex-inclusive references</th>
<th>Intersex-specific references</th>
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Across 2020-2021, CEDAW had the highest number of SOGIESC-inclusive Concluding Observations (13), followed by HRCtee (12 each), CESCR (eight), CED (five), CAT (four), CERD (three), CRPD (two) and none were made by CMW. CEDAW and CRC also made the highest number of SOGIESC-inclusive references with 34 across 2020 and 2021. This was followed by HRCtee (30), CED and CESCR (12 each), CAT and CRPD (seven each) and CERD (three) (see Figure 1 and Figure 2).

![Figure 1. SOGIESC-inclusive references in Concluding Observations in 2020, number and percentage by Treaty Body](image-url)

29 All 2021.
Whilst in previous years there has been an incline in the number of SOGIESC-inclusive references, 2020-2021 saw a dramatic decline as a result of the COVID-19 pandemic and, consequently, significantly lower number of country reviews by Treaty Bodies (see Figure 3).
Despite the actual figures being low, the rate of SOGIESC-inclusive references per Concluding Observations remained similar to previous years, and in 2021 exceeded previous years significantly (2.7 references per Concluding Observation) (see Figure 4). Therefore, whilst the Committees did not adopt many Concluding Observations, in those they did adopt, LGBTQI issues were often considered. The increased rate of SOGIESC references also indicates that Treaty Bodies are examining LGBTQI issues in a more detailed way, and covering a wider range of issues.
Figure 5 outlines the percentage of SOGIESC-inclusive Concluding Observations by Treaty Body. HRCtee continues to lead the way, with the percentage remaining consistent in 2020-2021. In 2020-2021, the HRCtee once again made SOGIESC-inclusive references in 100% of their Concluding Observations. CRC also saw an increase in the percentage of SOGIESC inclusive Concluding Observations by Treaty Body.
Observations in 2021, with the Committee adopting them in 100% of reviews. Furthermore, CEDAW and CESCR also made relatively stable progress in those years with CEDAW at 63% and 73% and CESCR at 60% and 71%.

Figure 6 shows how many SOGIESC references were made by Treaty Bodies between 2014 and 2021. This emphasizes the clear impact the COVID-19 pandemic had on reviews, with a sizable drop in references from all Committees in 2020. Promisingly, the number of references in 2021 begin to increase again and SOGIESC was addressed by all Committees in country reviews, or in General Comments and Individual Communications.

In 2020-2021, CEDAW was again the Committee that made the largest number of SOGIESC references, with seven references in 2020 and 27 references in 2021, however this did not reach 2019’s 33 references. None of the Treaty Bodies have been able to match the 62 references made by CEDAW in 2018. Other Committees that made large number of SOGIESC references included HRCtee (eight in 2020 and 22 in 2021) and CRC (15 in 2020 and 19 in 2021).

**Figure 6. Number of SOGIESC references per Treaty Body (2014-2021)**

Constructive dialogues are the practice, adopted by all Treaty Bodies, of inviting a State delegation to engage with and respond to Committee members’ questions. It also enables States to add any further information they wish to on the implementation of the relevant Treaty. As a rule, CSOs can also meet separately with committee members before the Committee’s interactive dialogue with the State party’s delegation starts. While CSO representatives do not have formal stands and cannot intervene in the interactive dialogues, they still can observe them and sometimes approach committee members during breaks. Therefore, on-site sessions of Treaty Bodies are an opportunity for defenders to engage directly with the Committee and can be a powerful space. However, sessions and constructive dialogues were severely impacted by the COVID-19 pandemic in 2020-2021. The dialogues- which usually take place in-person, over a number of hours, and include interactions from the State delegation, Committee members and CSOs, were moved online. There were a number of logistical, as well as technical, issues which hindered the running of the dialogues, including time differences, connection issues and the huge
additional burden on translators. In many cases, the constructive dialogues were not able to go ahead and for many that did, the quality of the review was not strong.

**Follow-up recommendations**

Predictably, the decrease in Concluding Observations resulted in a decrease in SOGIESC recommendations being selected for the follow-up procedure (see Figure 7). In 2020, there were three SOGIESC recommendations selected for follow-up, all from HRCtee. In 2021 three recommendations were selected for follow-up and came from CAT (one recommendation) and CED (two recommendations).

![Figure 7. Number of SOGIESC recommendations selected for follow-up (2014-2021)](image)

**Trans and intersex references**

Similarly to overall SOGIESC-inclusive references, 2020-2021 saw a decrease in the actual number of trans and intersex references (see Figure 8). Despite there being a significant decline in 2020, the Committees- whose functionality improved in 2021- got closer to the numbers seen in previous years, with the number of intersex-inclusive references in 2021 (66) surpassing 2019 (64). However, the number of trans and intersex-specific references did not recover to reach the high numbers reached in previous years.

The number of trans-specific references was one in 2020 and eight in 2021, compared to 18 in 2019. The number of intersex-specific references was five in 2020 and 12 in 2021, compared to 20 in 2019. The number of intersex-specific references, therefore, exceeded the number of trans-specific references again, after this had happened for the first time in 2019. In 2021, there were 17 stand-alone intersex CSO submissions on 12 countries\(^{30}\) (for both Concluding Observations and Lists of Issues/Lists of Issues

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\(^{30}\) Australia, Bulgaria, Croatia, France, Finland, Germany, Liechtenstein, Luxembourg, Nepal, Russian Federation, Switzerland and Tunisia.
Prior to Reporting), with five of those resulting in intersex-specific recommendations in the Concluding Observations.\textsuperscript{31}

In 2020-2021, there was a number of different issues raised by the Committees regarding the rights of transgender people, though fewer were addressed than in previous years. The key focus of the Committees in regard to the rights of transgender persons was legal gender recognition, particularly unwarranted requirements to obtain legal gender recognition. The Committees also raised concerns about forced sterilization and mandatory conversion surgery with respect to transgender and intersex persons with disabilities.\textsuperscript{32} For the first time, CED adopted trans-specific recommendations, calling on the State to include gender identity when registering a disappeared person in the Concluding Observations for \textit{Colombia} and \textit{Panama}.

In relation to intersex-specific issues, similarly to previous years, the Committees almost exclusively focused on irreversible, unnecessary medical interventions. The Committees developed this further, however, with CAT calling for civil remedies for those who have experienced “conversion therapy” and intersex genital mutilation. CRPD also referenced the necessity of meaningful consultations with organizations and persons with disabilities, including intersex persons with disabilities.\textsuperscript{33}

The consistent inclusion of trans and intersex issues in Treaty Body recommendations, with new topics being addressed and new Treaty Bodies making recommendations, is due to the participation of trans and intersex organizations in Treaty Body processes.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure8.png}
\caption{Number of trans- and intersex-inclusive and specific references (2014-2021)}
\end{figure}

\begin{table}
\centering
\begin{tabular}{|c|c|c|c|c|c|c|c|c|c|}
\hline
\hline
\textbf{Trans inclusive references} & 14 & 7 & 14 & 20 & 25 & 24 & 20 & 5 \\
\textbf{Trans specific references} & 48 & 45 & 66 & 63 & 74 & 64 & 25 & 18 \\
\textbf{Intersex inclusive references} & 18 & 18 & 15 & 13 & 12 & 8 & 14 & 8 \\
\textbf{Intersex specific references} & 102 & 104 & 104 & 111 & 94 & 66 & 0 & 0 \\
\hline
\end{tabular}
\end{table}

\textsuperscript{31} Finland, Germany, Luxembourg, Switzerland, Tunisia.
\textsuperscript{32} See List of Issues for China (Hong Kong).
\textsuperscript{33} See Concluding Observations on Estonia.
As in previous years, CEDAW was the only Committee to include recommendations in Concluding Observations specifically on the situation of LBTI women generally and their certain groups within the umbrella. Given the nature of its mandate, CEDAW addresses all issues, including SOGIESC, through a gendered lens. In previous years, CEDAW primarily considered LBTI as one group, and rarely focused on trans women and intersex persons individually.

However, in 2020-2021, CEDAW did not always address LBTI women as a monolith group, and gave some specific recommendations. For example, in the Concluding Observations on Kyrgyzstan, the Committee referenced ‘lesbianism’ (the term used by the State’s Penal Code). In the Concluding Observations on Bulgaria, the Committee noted with concern reports of irreversible medical surgery performed on intersex women. In the List of Issues for Egypt, the Committee specifically mentioned trans women, and in the List of Issues Prior to Reporting for Slovakia, CEDAW allocated a paragraph to measures taken to protect transgender and intersex women.

CAT and HRCtee also made references to LBTI women with their Lists of Issues/Lists of Issues Prior to Reporting. In the List of Issues on Nicaragua, CAT questioned the degrading treatment of trans women in prison. In the List of Issues Prior to Reporting for Nepal, the Committee requested information on measures taken to address violence against women, including sexual minorities.

The number of recommendations specific to LBTI women and their specific groups remains low for all Committees. There is a clear difference between the number of CSO reports submitted for CEDAW on LBTI women’s issues, and the lack thereof for other Committees. In 2020-2021, there were 13 stand-alone reports on LB/LBT/LBTI women submitted to CEDAW, significantly more than any other Committee. Whilst in some cases this resulted in recommendations or references, in many it did not. Even so, in order to achieve detailed recommendations - which CEDAW often does- and to help envelope LBTI women’s issues into the Committee’s practice, it is important for defenders to keep engaging with CEDAW and other Committees on LBTI women’s matters.

Individual Communications

In 2020-2021, Committees made decisions on 11 Individual Communications that included SOGI. Out of the 11 decisions, violations were found in five, no violation in two and the remaining four were considered inadmissible. The majority of cases (seven cases) were reviewed by HRCtee, with CAT having adopted 2 decisions, and both CEDAW and CRC – one decision each (see Figure 9).
In a number of Communications, references were made by the Committee to the LGBTI community. All bar one of the Communications were brought by cisgender LG persons. In one Communication, the complainant described their gender identity as ‘someone in between a male and female rather than as a man.’

All the decisions adopted by Treaty Bodies in 2020-2021, can be divided into three groups by topic: non-refoulement (asylum-seekers); freedom of peaceful assembly and association; and violence and hate crimes (see Error! Reference source not found.).

34 MI v Sweden, communication No 2346/2018, decision of 6 November 2020.
The majority of cases (seven) concerned the topic of asylum-seekers or refugees. In these cases, the Committees addressed the non-refoulement principle. In four of these Communications, the Committees found them to be inadmissible;35 in two they were admissible but no violation was found;36 and, in one a violation was found. The latter was the first case on sexual orientation decided by CRC Committee, and it concerned a lesbian couple with their child coming from Russian Federation and denied asylum in Finland.37

Three cases concerned freedom of assembly and association. In all three cases, the HRCtee found that a violation had occurred; all three cases were brought against the Russian Federation, including two cases concerning the actions of Russian authorities in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation.38

Finally, one case concerned violence and hate crime and was brought against Russian Federation. CEDAW- in its first-time ever decision recognizing a violation based on sexual orientation- found that the State Party had gone against articles 1, 2 and 5 of the CEDAW Convention.39 Moreover, this case was the first one in all Treaty Bodies’ case-law concerning violence motivated by anti-LGBTI hatred (in this case, lesbophobic attack). The Committee recommended the Russian Federation to take a number of individual measures aimed at remedying applicants, but also measures of a general character, such as: training police and investigative authorities; ensuring prompt, thorough, impartial and serious investigation into anti-lesbian violence, as well as initiating criminal proceedings, prosecuting and punishing perpetrators; and providing lesbian survivors of violence with proper access to justice, including through free legal aid, as well as remedies and rehabilitation.40

In 2020-2021, Treaty Bodies made decisions on Individual Communications against the following States:

- Canada (1 decision)
- Denmark (1 decision)
- Finland (1 decision)
- Russian Federation (4 decisions)
- Sweden (3 decisions)
- Switzerland (1 decision)

35 This included three cases reviewed by the HRCtee and one by CAT, communications submitted by a bisexual man from Guinea to be deported from Canada, a gay non-binary person from Afghanistan to be deported from Sweden, a lesbian woman from Cameroon to be deported from Switzerland, and a gay man from Afghanistan to be deported from Sweden. See MB v Canada, communication no 2957/2017, decision of 13 Mar 2020, UN Doc CCPR/C/128/D/2957/2017; MI v Sweden, communication no 3246/2018, decision of 6 Nov 2020, UN Doc CCPR/C/130/D/3246/2018; HT v Switzerland, communication no 888/2018, decision of 4 Sep 2020, UN Doc CAT/C/70/D/888/2018; HG v Sweden, communication no 3266/2018, decision of 23 Jul 2021, UN Doc CCPR/C/132/D/3266/2018.

34 One communication by a gay man from Nigeria to be deported from Sweden, reviewed by HRCtee; and another communication by a lesbian woman from Uganda to be deported from Denmark, reviewed by CAT. See AE v Sweden, communication no 3300/2019, decision of 13 Mar 2020, UN Doc CCPR/C/128/D/3300/2019; HS v Denmark, communication no 792/2016, decision of 19 Jul 2021, UN Doc CAT/C/71/D/792/2016.

37 See AB v Finland, communication no 51/2018, decision of 4 Feb 2021, UN Doc CRC/C/86/D/51/2018. See more on this case from ILGA World: https://ilga.org/Finland-violated-rights-lesbian-mothers-child-asylum-UN.

38 See Nikolai Alekseev v Russian Federation, communication no 2727/2016, decision of 16 Oct 2020, UN Doc CCPR/C/130/D/2727/2016 (the case concerned pride event- planned in the temporarily occupied Autonomous Republic of Crimea- prohibited by Russian authorities under Russian ‘anti-propaganda’ law); Nikolai Alekseev v Russian Federation, communication no 2757/2016, decision of 5 Nov 2020, UN Doc CCPR/C/130/D/2757/2016 (the case concerned pride event in in one of the Russian regions prohibited by Russian authorities under ‘anti-propaganda’ law); Vladimir Ivanov v Russian Federation, communication no 2635/2015, decision of 18 Mar 2021, UN Doc CCPR/C/131/D/2635/2015 (the case concerned pride event- planned in the temporarily occupied Autonomous Republic of Crimea- prohibited by Russian authorities under Russian ‘anti-propaganda’ law).


40 ibid 9.
As can be seen from these figures, the majority of cases were brought against Western European States, one case against an Eastern European State, and one more case against a North American State. At the same time, applicants came from much more diverse geographical backgrounds, especially in cases concerning asylum seekers- their countries of origin included Afghanistan, Cameroon, Guinea, Nigeria, Russian Federation and Uganda.

**General Comments**

In 2020, four new General Comments from four different Treaty Bodies were adopted (CESCR, HRCtee, CEDAW and CERD). Each of these General Comments were SOGIESC-inclusive. This continued the trend since 2018 in which 100% of General Comments addressed LGBTQI issues. The themes covered in 2020’s General Comments included discrimination,\(^{41}\) freedom of assembly,\(^{42}\) asylum seekers/refugees,\(^{43}\) intersectionality and law enforcement.\(^{44}\) Notably, CERD made its first SOGIESC-inclusive General Comment.

Equally, in 2021, all General Comments adopted by Treaty Bodies were SOGIESC-inclusive. The two General Comments adopted in 2021 were done so by the CRC and CMW. The Committees focused on freedom of expression, the right to privacy,\(^ {45}\) the detention of vulnerable persons and the prohibition of torture, inhuman or degrading treatment.\(^ {46}\)

The continued 100% record of SOGIESC-inclusive General Comments (see Figure 11) demonstrates how LGBTQI issues are increasingly becoming fundamental to Treaty Bodies interpreting core human rights treaties and addressing human rights violations. This highlights that the work and submissions of LGBTQI defenders are being considered and reflected in recommendations by the Committees.

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\(^{41}\) See CESCR, General Comment No. 25 (2020) on science and economic, social, and cultural rights; HRCtee, General Comment No. 37 (2020) on the right of peaceful assembly (article 21); CEDAW, General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration; and, CERD, General recommendation No. 36 (2020) on preventing and combating racial profiling by enforcement officials.

\(^{42}\) See HRCtee, General Comment No. 37 (2020) on the right of peace assembly (article 21).

\(^{43}\) See CEDAW, General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration.

\(^{44}\) See CERD, General recommendation No. 36 (2020) on preventing and combating racial profiling by enforcement officials.

\(^{45}\) See CRC, General comment No. 25 (2021) on children’s rights in relation to digital environment.

\(^{46}\) See CMW, General comment No. 5 (2021) on migrants’ rights to liberty, freedom from arbitrary detention and their connection with other human rights.
Notwithstanding the postponements, cancellations and reduced activities of Treaty Bodies in 2020-2021, SOGIESC recommendations were still made, and defenders continued to engage in Committee processes to ensure that remained the case.

In two unprecedented years, there were still SOGIESC firsts. CED made their first trans-specific references in Concluding Observations on Colombia and Panama. Further, CERD made three SOGIESC-inclusive references in their General Comment No. 36 (2020) on preventing and combating racial profiling by enforcement officials. These can now be highlighted by defenders when engaging with CERD on country periodic reviews and Individual Communications.

CEDAW and CRC adopted their first decisions on Individual Communications recognizing violations based on sexual orientation. This includes the first for all Treaty Bodies case on violence motivated by hatred against lesbians considered by CEDAW.

Whilst the actual numbers of reviews and references appear disappointing, advocates can take note of the fact that on the whole, Committees continued to provide SOGIESC references at a rate they have done in previous years. This is demonstrative of the participation of LGBTI defenders over the years, and highlights how this work has enabled SOGIESC issues to become part of the framework and practice of many Committees - despite the lack of any explicit SOGIESC language in any of the core UN human rights treaties. All Committees have established SOGIESC references in some capacity, and sustained engagement from CSOs is integral to ensuring this continues to grow.
1. Committee on Economic, Social and Cultural Rights

General information 2020-2021

In 2020, CESCR made SOGIESC-inclusive references in Concluding Observations in three out of five States reviewed (see Figure 12). Therefore, 60% of the Committee's country reviews ended with SOGIESC recommendations. The number of SOGIESC-inclusive references made by this Committee in 2020 was three (see Figure 12). The effect of the COVID-19 pandemic on the ability of the Committee to review states is evident. Less than half the number of the Committee's 2019 reviews (11) were conducted in 2020.

In 2021, CESCR made SOGIESC references in Concluding Observations in five of the seven States reviewed; 71% of the Committee’s country reviews ended with SOGIESC recommendations (see Figure 12). The number of SOGIESC-inclusive references made by this Committee in 2020 was nine (see Figure 12). Similarly to 2020, the COVID-19 pandemic impacted the number of reviews made by the Committee.

Figure 12. SOGIESC-inclusive Concluding Observations: CESCR (2014-2021)

In 2019, the Committee reached its highest ever percentage of country reviews ending in SOGIESC references at 91%. The Committee did not reach this in 2020 (60%) or 2021 (63%), however it still achieved a higher average percentage than the five preceding years (56%) (see Figure 13). Therefore, whilst the number of reviews conducted dropped, the Committee continued to consistently include SOGIESC references in their Concluding Observations.
The number of references per Concluding Observation was similar in 2020 and 2021 compared to previous years. From 2014-2019, the Committee had been delivering on average 1.5 references per SOGIESC-inclusive Concluding Observation. In 2020 and 2021 it was 1 and 1.8 references respectively.

In 2020, the three States with SOGIESC-inclusive references in their Concluding Observations were Belgium, Guinea and Ukraine. Belgium and Guinea received their first recommendations from the CESCR Committee whilst Ukraine received a recommendation to combat and prevent discrimination against LGBT people in employment in 2014. 47

In 2021, the five States with SOGIESC-inclusive references in their Concluding Observations were Azerbaijan, Bolivia, Finland, Latvia and Nicaragua. SOGIESC-inclusive recommendations were made by CESCR for the first time for all five States.

In 2020, CESCR received CSO reports mentioning SOGIESC on five States. Of these, two (Belgium and Ukraine) were States whose state party report was being reviewed with Concluding Observations following. For the remaining three (El Salvador, Guatemala and Tajikistan), the Committee was producing a List of Issues. Overall, 12 CSO reports were submitted across five States; three were stand-alone LGBTI submissions (Guatemala, Tajikistan and Ukraine). For all the States where a CSO report mentioning SOGIESC was submitted to CESCR, SOGIESC-inclusive references were made in the Concluding Observations or questions in the Lists of Issues.

In 2021, CSOs from 13 States submitted CSO reports mentioning SOGIESC. Of these, five (Azerbaijan, Bolivia, Bosnia and Herzegovina, Finland and Nicaragua) were States whose state party report was being reviewed with Concluding Observations following. For the remaining eight, CESCR was producing Lists of Issues/Lists of Issues Prior to Reporting. Overall, 30 reports were submitted across 13 States. There were stand-alone submissions on Armenia, Azerbaijan, Bolivia, China (Hong Kong) and Nicaragua. Every State for which a stand-alone report was submitted received SOGIESC recommendations or questions in the Lists of Issues. For Bosnia and Herzegovina, despite four CSO reports covering SOGIESC submitted,

no recommendation was made in the Concluding Observations; all other States that had a SOGIESC CSO report submitted received SOGIESC recommendations.

Of the three States that received SOGIESC-inclusive recommendations in 2020 (Belgium, Guinea and Ukraine) only two also received SOGIESC questions in the List of Issues (Belgium and Ukraine). Notably, the Committee produced SOGIESC-inclusive recommendations in Guinea’s Concluding Observations without the effect of a CSO report mentioning LGBTI nor a List of Issues including LGBTI questions. One country, Norway, received SOGIESC-inclusive questions in the List of Issues that did not translate into SOGIESC-inclusive Concluding Observations.

Four out of five States that received SOGIESC-inclusive references in their Concluding Observations in 2021 (Azerbaijan, Bolivia, Latvia and Nicaragua) also received SOGIESC questions in their List of Issues. One State (Finland) received SOGIESC-inclusive references in their Concluding Observations in the absence of SOGIESC-inclusive List of Issues.

Table 2. CESC country reviews, 2020

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>SOGIESC IN PREVIOUS COS</th>
<th>LOI</th>
<th>CSO REPORTS MENTIONING SOGIESC</th>
<th>STAND-ALONE SOGIESC REPORTS</th>
<th>COS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes SC; I; LGBTI</td>
</tr>
<tr>
<td>Benin</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Guinea</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes SO</td>
</tr>
<tr>
<td>Norway</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Ukraine</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes SOGI; LGBTI</td>
</tr>
</tbody>
</table>

Table 3. CESCR country reviews, 2021

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>SOGIESC IN PREVIOUS COS</th>
<th>LOI</th>
<th>CSO REPORTS MENTIONING SOGIESC</th>
<th>STAND-ALONE SOGIESC REPORTS</th>
<th>COS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Azerbaijan</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes SOGI; LGBT; T</td>
</tr>
<tr>
<td>Bolivia</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes SOGI; LGBTI; T</td>
</tr>
<tr>
<td>Bosnia and Herzegovina</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Finland</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes LGBTI</td>
</tr>
<tr>
<td>Kuwait</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Latvia</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes SOGI</td>
</tr>
</tbody>
</table>
Despite CESC not reaching the high level of SOGIESC-inclusive Concluding Observations seen in 2019, the Committee still demonstrates that it is inclusive of LGBTI issues, remaining around the 60% mark in 2020 and 2021. In addition, the Committee has shown that it is willing to make SOGIESC-inclusive references in the absence of information from CSO submissions. However, the correlation between success rate of SOGIESC-inclusive references and CSO submissions is evident and provides a good opportunity for LGBTI defenders who wish to engage with CESC. In addition, the inclusion of SOGIESC topics in Lists of Issues or Lists of Issues Prior to Reporting seemingly increases chances of receiving relevant recommendations in the following Concluding Observations.

**Themes 2020-2021**

CESCR addressed a multitude of SOGIESC issues in Concluding Observations as well as Lists of Issues and Lists of Issues Prior to Reporting from 2020-2021. As in other years, the Committee focused on the introduction of, or amendment to, anti-discrimination legislation to include SOGI.

The Committee also focused on access to healthcare in a number of reviews. The Committee asked for information on how States were combatting discrimination being an obstacle to attaining suitable healthcare. In particular, there was a question on the issue of stigmatization in relation to LGBTI people accessing physical and mental healthcare and compromised confidentiality. The impact of COVID-19 was also addressed in the List of Issues for Brazil, with the Committee asking the country to provide data on the impact of measures taken to protect LGBTQI people.

The Committee also highlighted discrimination in the context of access to housing. In its review of Finland, the Committee noted risk of homelessness among certain groups and recommended ensuring housing agencies do not engage in discriminatory practices against LGBTI people.

In some instances, CESC gave attention to the field of employment. In El Salvador's List of Issues, the Committee questioned the impact of the abolition of the Directorate for Sexual Diversity would have on the elimination of discrimination in the civil service on the grounds of SOGI. In the Concluding Observations on Bolivia, recommendations were made on unemployment and conditions of work.

In some reviews, the Committee referred to the problem of negative attitudes and violence. In particular, the Committee requested information on progress made to combat stigma, misconceptions and discrimination against LGBTI people. In the Concluding Observations for Bolivia, the Committee

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48 See Concluding Observations on Ukraine, Azerbaijan, Latvia and Nicaragua. See List of Issues on Tajikistan, Armenia, Chad, China, Hong Kong (China), Lithuania and State of Palestine. See List of Issues Prior to Reporting on Chile, Kazakhstan and Mauritius.

49 See List of Issues on Democratic Republic of the Congo, Panama, Romania and Uzbekistan. See Concluding Observations for Bolivia.

50 See List of Issues for Armenia.

51 See List of Issues on Democratic Republic of the Congo, Hong Kong (China) and Panama. See List of Issues on Finland.

52 See Concluding Observations for Bolivia. See List of Issues for Hong Kong (China), Panama, Romania and Uzbekistan.

53 See List of Issues for Lithuania. See List of Issues for Hong Kong.

54 See List of Issues for Lithuania.
noted concerns about the violence and discrimination committed against LGBTI persons and the impunity of those acts.

The situation of LGBTI human rights defenders was addressed in the Committee’s review of Tajikistan. The Committee identified an issue with the registration of civil society organizations, especially those working for the rights of LGBTI persons.

Finally, the Committee took note of the ability for same-sex couples to marry in the Concluding Observations on Bolivia and in the List of Issues for China (Hong Kong). The Committee noted a decision by Bolivian courts to allow a registration of a same-sex partnership but expressed concern that other applications had been denied. For China (Hong Kong), the Committee requested an update on any measures taken to recognize same-sex couples, including those married abroad.

The multitude of themes CESCR has addressed over the years is demonstrative that the Committee is open to addressing new issues brought to it. CESCR provides an opportunity for advocates to raise issues in areas related to education, employment, housing and healthcare.

Advocates can also highlight: SRHR; comprehensive sexuality education; water and sanitation, with particular regard to access to bathrooms; poverty and economic justice; violence against HRDs; the situation for asylum seekers and refugees; and, family and private life.

Criminalization 2020-2021

Consensual same-sex sexual relations were criminalized in two of the States receiving Concluding Observations from the Committee. Lists of Issues were formulated for six criminalizing States across 2020 and 2021. References to criminalization were made on three States. Guinea received Concluding Observations with a recommendation to repeal the article 274 of the Criminal Code. Alongside the urge to decriminalize were recommendations to adopt comprehensive anti-discrimination law and carry out awareness raising campaigns, including for those living with HIV and persons with albinism.

In the List of Issues for Uzbekistan, the Committee questioned what steps had been taken to decriminalize homosexuality.

In the Committee’s List of Issues, Mauritania was asked to provide information on steps to repeal Article 308 of the Criminal Code. The Committee also highlighted the ‘legal vacuum that exists in respect of rape of the male population, which is not punishable under the Criminal Code.’

The Committee does not refrain from urging decriminalization in States it is reviewing. CSOs are also encouraged to discuss the impact of criminalization on the enjoyment of economic, social and cultural rights.

55 Guinea and Kuwait.

56 Chad, Mauritania, Qatar, State of Palestine, Yemen and Uzbekistan.
Gender Identity and Expression 2020

In 2020, CESCR made one reference to gender identity out of five SOGIESC-inclusive Concluding Observations (see Figure 14). Overall, including Lists of Issues/Lists of Issues Prior to Reporting, the Committee made ten references to gender identity.

The reference made in Concluding Observations was one on Ukraine and was not a trans-specific reference. The Committee called on Ukraine to ensure that discrimination based on SOGI was explicitly prohibited in the Law on Principles of Preventing and Combating Discrimination in Ukraine.

One stand-alone reference was made in the List of Issues for Czechia. The Committee requested that the country provide an update on the procedure and conditions of gender reassignment.

The significant drop in country reviews and Concluding Observations in 2020 impacted the data heavily in this area when making comparisons to previous years. Whereas between 2014-2019, the Committee made trans-inclusive references in, on average, 85% of SOGIESC-inclusive references, in 2020 this percentage was 33% only (see Figure 15).

Figure 14. GIGE references, CESCR Concluding Observations (2014-2021)
Gender Identity and Expression 2021

In 2021, CESCR made nine trans identity-inclusive references in all nine SOGIESC-inclusive references in Concluding Observations (see Figure 14). Overall, including Lists of Issues/Lists of Issues Prior to Reporting, the Committee made 25 references to gender identity.

Out of the nine references made in Concluding Observations, two addressed gender identity specifically. These two references were made on Azerbaijan and Bolivia. The Committee highlighted in their review of Azerbaijan that ‘the absence of legal recognition of the gender identity of transgender persons is a barrier to their effective access to work, education and health services.’ In reviewing Bolivia, the Committee stated concerns about the Constitutional Court ruling No. 0076/2017 that ‘restricts the fundamental rights of transsexual and transgender persons.’

The Lists of Issues for three States included trans-specific references (Lithuania, Panama and Romania). Firstly, in the List of Issues for Lithuania, the Committee asked the country to report on plans for anti-discrimination legislation that includes gender identity. Secondly, in the List of Issues for Panama, the Committee requested that the country describe measures adopted to prevent physical, psychological and sexual abuse against transgender persons, among others. Thirdly, the Committee requested that Romania indicate measures taken to implement the European Court of Human Rights judgment regarding recognition of the gender identity of transgender persons. CSO reports that specifically mentioned the experiences of trans people were submitted for Panama and Romania.57

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Whilst there were still fewer reviews carried out in 2021, the Committee returned to providing high numbers of trans-inclusive references - this year being 100% of all SOGIESC-inclusive references made (see Figure 15).

**CESCR has addressed trans issues in the past, however it seems necessary for LGBTI defenders to provide detailed and specific information on the experiences of trans people for the Committee to adopt specific recommendations.**

*For defenders working on LGR, CESCR is a positive place to bring this issue as the Committee has addressed it many times. Advocates can also raise issues such as non-discrimination, access to education, employment and healthcare.*

*ILGA World have produced a trans advocacy guide on CESCR for activists hoping to engage with this Committee. The guide can be found here.*

### Sex Characteristics 2020

In 2020, CESCR made only two intersex-inclusive references in its Concluding Observations. This number falls below those made between 2015-2019 (see Figure 16). However, the fewer number of overall reviews conducted by the Committee may account for this shortage. Overall, including Concluding Observations, Lists of Issues/Lists of Issues Prior to Reporting, the Committee made six intersex-inclusive references.

*Figure 16. Intersex references, CESCR Concluding Observations (2014-2021)*
Out of the two references made in Concluding Observations, one was intersex-specific. In Belgium’s Concluding Observations, the Committee expressed concern about the practice of performing irreversible and medically unnecessary surgical procedures on intersex minors. The Committee gave a detailed recommendation urging Belgium to ensure that medically unnecessary or non-urgent procedures are not performed until children are capable of informed consent; to train healthcare professionals on health needs and human rights of intersex persons; and to ensure consultation with intersex people and organizations.

Notably, there was a CSO submission from Ligue de droits humains in Belgium which mentioned intersex people in the chapter on ‘Medical Normalisation’. There was also one CSO submission from Ukraine that focused solely on the rights of intersex people in Ukraine. Another Ukrainian submission mentioned transgender and intersex people among other key populations. Despite this, no intersex-specific references were made in the Concluding Observations on the country.

There were no intersex-specific references in the Lists of Issues/Lists of Issues Prior to Reporting.

**Sex Characteristics 2021**

In 2021, CESCR made seven intersex-inclusive references in its Concluding Observations. This number is more in line than those seen in between 2014-2019 demonstrating that the lower number in 2020 was likely a result of fewer reviews (see Figure 16). Of these seven, four were made in the Concluding Observations for Belgium and two in the Concluding Observations for Finland. The seventh was in the

58 Report available: Ligue de droits humains  

59 Report available:  

60 Report available: 
Concluding Observations for Azerbaijan. Overall, including Concluding Observations, Lists of Issues/Lists of Issues Prior to Reporting, the Committee made 16 intersex-inclusive references. There were no intersex-specific references in the Concluding Observations by the Committee.

The List of Issues for one country included an intersex-specific reference (China (Hong Kong)). The Committee requested that the State provide information on any reviews carried out on the practice of early surgery and medical interventions on intersex children, and to provide statistical data on the number of children who had undergone such medical interventions.

There were two CSO reports submitted on Finland that included sections on intersex individuals, including a joint submission that addressed unnecessary treatment and irreversible genital surgeries on intersex people. However, this was not adopted in the Concluding Observations on Finland.

CESCR has previously addressed specific challenges faced by intersex persons and made detailed recommendations, particularly on unnecessary and irreversible medical and surgical treatment on intersex persons. However, input from CSOs seems to be essential; therefore, participation from human rights defenders is recommended.

Women

Similarly to previous years, CESCR made no specific references to LBTI women in 2020 nor 2021. Notably, there was a CSO submission on Ukraine mentioning the ability of lesbian, bisexual and transgender women to access housing. However, whilst the Concluding Observations on Ukraine contained SOGIESC-inclusive references, this did not amount to a reference specific to LBT women.

CESCR is yet to make a recommendation on LBTI women. However, CSOs are strongly encouraged to approach CESCR with a range of topics including: the effect of gender pay gaps and the economic situation for women; access to sexual and reproductive health, including reproductive technologies; so-called ‘corrective rape’, honour killings and forced marriage. Defenders will need to highlight clearly how SOGIESC intersects with gender and how LBTI women face multiple and unique challenges because of both their gender and their SOGIESC.

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Individual Communications

The Optional Protocol to CESCR entered into force on 5 May 2013\(^62\) and there are 114 countries that are State Party to the protocol. A Communication may be submitted by or on behalf of individuals or groups of individuals.\(^63\)

The decision on an Individual Communication will be one of three things: violation; no violation; or inadmissible. The Committee will not consider a communication unless it has ascertained that all available domestic remedies have been exhausted.

Defenders can see if their country has ratified the Optional Protocol here. Information and guidance on submitting Individual Communications and the process can be found here.

In 2020 and 2021, CESCR did not adopt any decisions which referenced SOGIESC topics. In 2020, 13 decisions were made by the Committee; one on Argentina and 12 on Spain.\(^64\) In 2021, 35 decisions were made by the Committee; one on Belgium and 34 on Spain.\(^65\)

As of 1 August 2022, only 26 States have ratified the Optional Protocol of the ICESCR, establishing the Committee’s Individual Communication mechanism. The State parties include those from four ILGA World regions:

- Europe and Central Asia\(^66\)
- Latin American and the Caribbean\(^67\)
- Pan Africa\(^68\)
- Asia\(^69\)

CESCR has not reviewed a SOGIESC Individual Communication as yet. As this is a fairly new mechanism, and the number of States that have ratified it is low, defenders may wish to pursue this as an avenue for bringing a case as it would be a quicker process than other Treaty Bodies or regional human rights instruments.

Recommendations made in Concluding Observations can be used as a basis for Individual Communications. Defenders can bring cases on a number of issues including housing, education, employment and health.


\(^{63}\) Article 2.

\(^{64}\) See CESCR Sessions 67 and 68.

\(^{65}\) See CESCR Sessions 69 and 70.

\(^{66}\) Armenia (ratified October 2020), Belgium, Bosnia and Herzegovina, Finland, France, Italy, Luxembourg, Montenegro, Portugal, San Marino, Slovakia and Spain.

\(^{67}\) Argentina, Bolivia, Costa Rica, Ecuador, El Salvador, Honduras, Uruguay and Venezuela.

\(^{68}\) Cabo Verde, Central African Republic, Gabon and Niger.

\(^{69}\) Mongolia, Maldives (ratified December 2020).
General Comments

In 2020, CESC adopted one General Comment.\textsuperscript{70} This General Comment was on science and economic, social and cultural rights and was SOGIESC-inclusive. With regards to the right to participate in and to enjoy the benefits of scientific progress, the Committee stated that:

States must adopt the measures necessary to eliminate conditions and combat attitudes that perpetuate inequality and discrimination in order to enable all individuals and groups to enjoy this right without discrimination, including on the grounds of religion, national origin, sex, \textit{sexual orientation and gender identity}, race and ethnic identity, disability, poverty and any other relevant status.\textsuperscript{71}

The Committee went further to state that there should be special protection for specific groups to eliminate all forms of discrimination in relation to the participation and enjoyment of science:

Without prejudice to the duty of States to eliminate all forms of discrimination, special attention should be paid to groups that have experienced systemic discrimination in the enjoyment of the right to participate in and to enjoy the benefits of scientific progress and its applications, such as women, persons with disabilities, lesbian, gay, bisexual, transgender and intersex persons, indigenous peoples and persons living in poverty. Temporary special measures might be necessary to achieve substantive equality and remedy current manifestations of previous patterns of exclusion of these groups.\textsuperscript{72}

The Committee also conferred an obligation on States to adopt measures to curb interfering with the right to participate in and enjoy science, and used the example of ‘preventing access to knowledge or discriminating on the grounds of gender, \textit{sexual orientation or gender identity} or other circumstances.’\textsuperscript{73}

In 2021, there was a call for written contributions to the draft general comment (No. 26) on land and economic, social and cultural rights. This is yet to be adopted by the Committee.

\textit{Defenders are encouraged to participate in discussions on future CESC General Comments. The draft of General Comment No. 25 on article 15: science and economic, social and cultural rights, did not include any reference to LGBTI issues, but the final draft included three references, demonstrating the impact of engagement from CSOs.}

\textit{The General Comment No. 26 on land, economic, social and cultural rights has now closed its submissions, but advocates can look out for more opportunities here.}

\textsuperscript{70} General Comment No. 25 (2020) on science and economic, social, and cultural rights, E/C.12/GC/25.
\textsuperscript{71} Ibid, para 25 [Emphasis added].
\textsuperscript{72} Ibid, para 28 [Emphasis added].
\textsuperscript{73} Ibid, para 43 [Emphasis added].
Follow-up Procedure

The formal procedure for follow-up to Concluding Observations was adopted by CESCR in 2017. In 2020 and 2021, CESCR did not select SOGIESC-inclusive recommendations as part of its follow-up process in the Concluding Observations. However, in 2021 two States were assessed on the implementation of SOGIESC-inclusive recommendations made previously.74

The assessment of the implementation of follow-up recommendations may result in four conclusions by the Committee: sufficient progress; insufficient progress; lack of sufficient information to make and assessment; and, no response.

In 2021, the Committee assessed Kazakhstan’s implementation of a recommendation concerning forced sterilization and mandatory gender reassignment surgery. The Committee assessed that the State party had ‘taken no action to implement the recommendation’ and that it considered that the recommendation had not been implemented. Moreover, the Committee also stated that the information provided to them was vague, incomplete and consequently unsatisfactory. The Committee recommended that the State party take action on this point and provide information about further action in its next periodic review.

The Committee also assessed Mauritius’ implementation of a recommendation on the revision of the Equal Opportunities Act to include protection from discrimination on the basis of gender identity. The Committee concluded that there was ‘insufficient progress’ by the State party which stated that it had no plans to extend the scope of the Act. The Committee requested that the State provide more information in the next periodic review.

SOGIESC recommendations have been selected by the Committee for follow-up previously, and defenders should consider advocating for follow-up recommendations in the future. For more information on CESCR’s follow-up procedure see here.

Sex Work and HIV/AIDS

No references to sex work were made by the Committee in 2020 or 2021.

References to HIV/AIDS that were not SOGIESC-related were made Committee Concluding Observations on Guinea in 2020 (paras 18-19). In 2021, references were made to HIV/AIDS in List of Issues for Armenia (para 23) and Chad (para 10).

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74 See Follow-Up to Concluding Observations for Kazakhstan and Mauritius.
2. Human Rights Committee

General information 2020-2021

In 2020, HRCtee made SOGIESC-inclusive references in Concluding Observations in all five States under review (see Figure 18). This sees the Committee returning to adopting SOGIESC-inclusive Concluding Observations in 100% of reviews as seen in 2017 and 2018. The number of SOGIESC-inclusive references made by this Committee in 2020 was eight, a drop from previous years, however this can be explained by the reduction in reviews themselves, due to the pandemic. In fact, the number of SOGIESC-references made per Concluding Observations remained the same as 2019 at 1.6. Similarly to other Committees, the number of reviews conducted by the HRCtee in 2020 was significantly lower than previous years (17 in 2019; 16 in 2018; 20 in 2017; 21 in 2016; 20 in 2015 and, 18 in 2014).

In 2021, HRCtee made SOGIESC-inclusive references in Concluding Observations in all seven out of seven States reviewed (see Figure 18). The number of SOGIESC-inclusive references made by the Committee rose from 2020 to 22. This makes the number of references per Concluding Observation 3.1, higher than previous years. Notably, for Finland and Ukraine, four SOGIESC-inclusive references were made in the Concluding Observations. For Kenya, the Committee made six SOGIESC-inclusive references.

Figure 18. SOGIESC-inclusive Concluding Observations: HRCtee (2014-2021)

In 2020, the Committee formulated SOGIESC-inclusive questions in its Lists of Issues/Lists of Issues Prior to Reporting for 30 out of 32 States (94%). The only States not to receive SOGIESC-inclusive questions were Malta and Guinea-Bissau.
In 2021, the Committee increased the percentage of SOGIESC-inclusive questions in its Lists of Issues/Lists of Issues Prior to Reporting to 100%, formulating them for all 18 States. As seen from Figure 19, this is an increase from 2020 (94%) and 2019 (95%).

Figure 19. Percentage of SOGIESC-inclusive Concluding Observations: HRCtee (2014-2021)

In 2020, four States (Central African Republic, Dominica, Portugal and Tunisia) received their first recommendations on SOGIESC from HRCtee. Uzbekistan had previously received a recommendation in 2015 regarding discrimination against LGBT people, including from law enforcement, as well as on decriminalization of consensual same-sex sexual activities.75

Central African Republic was the only country reviewed in 2020 that did not receive any SOGIESC-related questions from the Committee in the List of Issues/List of Issues Prior to Reporting.

CSO reports with SOGIESC-related information were submitted for all except one State, Central African Republic- the fact correlating with the lack of SOGIESC topics in the Committee’s List of Issues for this country. There was one stand-alone report submitted on Portugal regarding the rights of intersex people.76 Significantly, the Committee adopted recommendations on strengthening measures to end performance of irreversible medical acts on intersex children.

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75 See Concluding Observations on Uzbekistan, 17 August 2015, CCPR/C/UZB/CO/4, para 7.
In 2021, only one country received their first recommendation on SOGIESC, Germany. The remaining six States reviewed had already received SOGIESC recommendations in previous reviews.  

All seven States reviewed in 2021 (Armenia, Botswana, Finland, Germany, Kenya, Togo and Ukraine) also received SOGIESC-related questions from the Committee in their Lists of Issues/Lists of Issues Prior to Reporting.

In 2021, CSOs from 14 States submitted 48 reports mentioning SOGIESC. CSO reports referring to SOGIESC among other topics were submitted for six out of the seven countries receiving Concluding Observations (Armenia, Finland, Germany, Kenya, Togo and Ukraine). Botswana was the only State not to receive CSO submissions covering SOGIESC, but still received SOGIESC recommendations. CSOs also submitted stand-alone reports for all States receiving Concluding Observations, with the exception of Armenia. CSO reports were submitted for eight States receiving Lists of Issues/Lists of Issues Prior to Reporting. Every State for which a SOGIESC-inclusive report was submitted also received SOGIESC-inclusive references in their Concluding Observations or questions in the Lists of Issues/Lists of Issues Prior to Reporting. There were 12 countries for which CSO reports were not submitted, but SOGIESC references were still adopted.

### Table 4. HRCtee country reviews, 2020

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>SOGIESC IN PREVIOUS COS</th>
<th>LOI</th>
<th>CSO REPORTS MENTIONING SOGIESC</th>
<th>STAND-ALONE SOGIESC REPORTS</th>
<th>COS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central African Republic</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes SOGI</td>
</tr>
<tr>
<td>Dominica</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes SOGI; LGBT</td>
</tr>
<tr>
<td>Portugal</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes LGBT; I</td>
</tr>
<tr>
<td>Tunisia</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes SOGI; LGBTI</td>
</tr>
<tr>
<td>Uzbekistan</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes SOGI</td>
</tr>
</tbody>
</table>


### Table 5. HRCtee country reviews, 2021

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>SOGIESC IN PREVIOUS COS</th>
<th>LOI</th>
<th>CSO REPORTS MENTIONING SOGIESC</th>
<th>STAND-ALONE SOGIESC REPORTS</th>
<th>COS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Armenia</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes SOGI; LGBTI</td>
</tr>
<tr>
<td>Botswana</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes SOGI;</td>
</tr>
</tbody>
</table>
The HRCtee remains the most receptive to SOGIESC issues. This is demonstrative from the 100% record across 2020-2021 for SOGIESC-inclusive Concluding Observations. It is also clear that the HRCtee is committed to including SOGIESC even where CSO reports have not been submitted. Even so, in order for the Committee to raise detailed, relevant and distinct recommendations on LGBTI communities, advocates may wish to present specific data to the Committee. Further, continued engagement with the Committee will ensure the visibility of SOGIESC issues and maintain the incredible progress made by defenders over the years.

### Themes 2020-2021

As in other years, the Committee addressed a plethora of SOGIESC issues over the course of 2020-2021 in its country reviews.

A significant number of SOGIESC references made by HRCtee were related to anti-discrimination legislation and SOGI/LGBTI as a protected characteristic.\(^\text{78}\) Alongside this, the Committee made recommendations on, and asked for information about, combatting discrimination through training and awareness raising campaigns for authorities and the public.\(^\text{79}\)

On many occasions, the Committee expressed concerns on reports of violence and discrimination experienced by LGBTI people.\(^\text{80}\) Of particular concern were reports on harassment, discrimination and violence on the basis of SOGI by law enforcement.\(^\text{81}\) In the List of Issues Prior to Reporting for Malawi, the Committee requested more information on reports of the excessive use of force during the COVID-19 by law enforcement on LGBTI people and sex workers.

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\(^\text{79}\) See Concluding Observations on Armenia, Dominica, Finland, Germany, Kenya, Portugal, Togo, Tunisia and Ukraine. See List of Issues Prior to Reporting for Ecuador. See List of Issues for Iraq.

\(^\text{80}\) See Concluding Observations on Finland, Kenya, Uzbekistan. See List of Issues Prior to Reporting for Albania, Fiji, Guyana, Malawi, Nepal. See List of Issues for Armenia, Ethiopia, Georgia, Kyrgyzstan, Panama.

In addition, the Committee focused on the issue of hate speech and hate crimes in country reviews,\(^2\) and it noted the use of homophobic and transphobic rhetoric by public officials and politicians.\(^3\)

The Committee also requested information from Kenya on protections provided to LGBTI asylum seekers and refugees in refugee camps.\(^4\) Further, in Kenya’s Concluding Observations the Committee urged the State party to uphold the principle of non-refoulement in both law and practice in relation to the fact that LGBTI asylum seekers and refugees would be criminalized in Kenya given the illegality of same-sex relations.\(^5\)

In the List of Issues Prior to Reporting for Indonesia, the Committee highlighted concerns around the prohibition of research projects relating to the rights of LGBTI people.

Finally, similarly to previous years, the Committee continued to examine the topic of LGBTI human rights defenders being targeted. Reports of attacks against HRDs were addressed in the List of Issues and then Concluding Observations on Armenia. The Committee also addressed attacks on HRDs in their Concluding Observations on Ukraine.

HRCtte is consistent in addressing a range of SOGIESC issues, including anti-discrimination legislation; violence, discrimination and hate crime; and asylum seekers and refugees. Whilst the Committee did not raise the issue of marriage and adoption in 2020-2021, it has done so previously, and defenders are encouraged to engage with this Committee on this issue and others.

Criminalization 2020-2021

In 2020-2021, the Committee adopted Concluding Observations on five States (Dominica, Kenya, Togo, Tunisia and Uzbekistan) that criminalize consensual same-sex sexual acts. Each country received recommendations that were SOGIESC-inclusive from the Committee as well as being urged to amend or repeal criminalizing laws.

The Committee also called on Botswana to amend the Penal Code to bring it in line with the decriminalizing judgement in the case of Letsweletse Motshediemang v AG.\(^6\)

In the Concluding Observations for Togo, the Committee noted with particular concern, the choice of the State party to retain criminalizing provisions in the Criminal Code, and that the applicable penalties had increased. The Committee recommended that the Criminal Code be amended to decriminalize sex between consenting adults of the same sex.

As well as adopting recommendations on decriminalization, in the Concluding Observations for Tunisia, the Committee promoted training law enforcement officials on respect for diverse SOGI. Similarly, in

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82 See Concluding Observations on Germany, Ukraine. See List of Issues for Hong Kong (China), Kyrgyzstan, Montenegro, Zimbabwe. See List of Issues Prior to Reporting for Canada, Fiji, France, Greece, Mozambique, North Macedonia, Republic of Tanzania and United Kingdom.


84 See List of Issues for Kenya.

85 See Concluding Observations on Kenya.

86 See Concluding Observations for Botswana.
**Togo’s Concluding Observations**, the recommendation to decriminalize was followed by a call to take all measures to raise awareness among trial judges, prosecutors, law enforcement officials and security forces to protect people targeted because of their SOGI.

As noted above, in **Kenya’s Concluding Observations**, the Committee highlighted concerns about LGBTI refugees and asylum seekers being subjected to refoulement on the de facto basis of their sexual orientation, given the continued illegality of same-sex relations.

Several Lists of Issues/Lists of Issues Prior to Reporting included questions on criminalization and steps taken to amend or repeal criminalizing legislation. In 2020, 11 criminalizing States received Lists of Issues/Lists of Issues Prior to Reporting. Of those, ten included questions related to criminalization. Only **Qatar** did not receive questions on criminalization; their List of Issues focused on anti-discrimination legislation and indirectly referred to criminalization requesting the State indicate what was being done ‘to combat laws and social practices that are discriminatory on the basis of sex, sexual orientation, religion, race, ethnicity, disability and national status.’ In 2021, four criminalizing States received Lists of Issues/Lists of Issues Prior to Reporting. In all four, the Committee included questions on criminalization. In the List of Issues for **Burundi**, the Committee requested information on the number of people arrested, detained and prosecuted under the provisions.

_HRCtee has taken a consistent approach to criminalization since Toonen v Australia 20 years ago. The Committee considers criminalization a severe breach of the Covenant and any criminalizing States being reviewed are urged to repeal or amend such provisions. Defenders may be interested in contextualizing the impact of criminalization, that goes beyond the legislation. Advocates for decriminalization can also explain how awareness raising and training need to complement decriminalization. Defenders can also highlight the criminalization of GIGE in many States, and its impacts._

**Gender Identity and Expression 2020**

In 2020, HRCtee made trans references and/or references to gender identity in all eight SOGIESC-inclusive references in its Concluding Observations. Of these, only one was a stand-alone trans reference (see Figure 20). This demonstrates a decrease in absolute numbers comparatively to previous years (with the exception of 2014 (1)); in this instance it is important to note the overall decrease in reviews because of the COVID-19 pandemic. Significantly, the percentage of trans-inclusive Concluding Observations was the highest ever at 100%. The percentage of trans-specific references was 13%, lower when compared with an average of 18% from 2014-2019 (see Figure 21). The small number of overall reviews may account for this drop.

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88 Burundi, Grenada, Malawi, Tanzania.
The stand-alone trans reference was made by the Committee in its Concluding Observations on Uzbekistan. The Committee recommended that the State party 'eliminate unwarranted requirements for legal recognition of gender reassignment, including mandatory psychiatric hospitalization, as well as provide and effectively implement a quick, transparent and accessible gender recognition procedure on the basis of self-identification by the applicant.'

In many instances, the Committee included trans-specific questions/questions about gender identity in the Lists of Issues/Lists of Issues Prior to Reporting. This was the case for Georgia, Guyana, Hong Kong (China), Indonesia, Macao (China) and Panama. This additionally confirms the Committee's openness to addressing gender identity issues in its practice.

In the Lists of Issues/Lists of Issues Prior to Reporting the Committee questioned States on:
- Legal gender recognition,89
- Gender-based violence against trans people,90 and
- Ill-treatment of trans people in detention.91

The Committee also asked Panama to comment on reports that the COVID-19 policy ordering a 'lockdown' on alternate days for men and women had a discriminatory effect on transgender persons.

**Gender Identity and Expression 2021**

In 2021, HRCtee made trans references and/or references to gender identity in 19 out of 22 SOGIESC-inclusive references in its Concluding Observations. Of these, only one was a stand-alone trans reference (see Figure 20). Although this is a decrease from 2020 in the percentage of Concluding Observations with

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89 See List of Issues on Georgia and Macao (China).
90 See List of Issues Prior to Reporting on Indonesia.
91 See List of Issues Prior to Reporting on Guyana. See List of Issues on Hong Kong (China).
trans-inclusive references, it is in line with the average percentage of references from 2014-2019, 89%. However, the percentage of trans-specific references was the lowest ever at 5% (see Figure 21).

![Graph](image)

**Figure 21. Percentage of trans-inclusive and trans-specific references in HRCtee Concluding Observations (2014-2021)**

The single stand-alone reference in 2021 was in the Concluding Observations on *Finland*. In the recommendation, the Committee urged the State party to ‘establish a simple and accessible administrative procedure for change of civil status with respect to gender identity that is in accordance with the Covenant.’

In one List of Issues Prior to Reporting (*Fiji*) the Committee included a trans-specific question on measures on violence against women and requested information on specific protections for groups included transgender persons.

Three CSO reports specifically mentioned GIGE (*Finland, Germany* and *Malawi*). The CSO report on *Finland* referenced LGR, healthcare for transgender and non-binary individuals, discrimination against trans individuals and intersex children, support services for lesbian and transgender women and reforming the Trans Act.\(^\text{92}\)

> **HRCTee has presented an openness to including gender identity and trans topics.** LGR is well established in recommendations, including from the depathologization perspective, as well as the ill-treatment of transgender people in detention, and the criminalization of some forms of GIGE. Defenders may bring other topics the Committee has touched upon, including violence against trans persons and discrimination based on GIGE.

Sex Characteristics 2020

In 2020, HRCtee made only two intersex-inclusive references in its Concluding Observations. Of these two, one was an intersex-specific reference. The absolute numbers of intersex-inclusive fall below those made between 2014-2019 (see Figure 22). Considering the number of intersex-inclusive Concluding Observations proportionately to the number of reviews conducted, the percentage still falls below previous years (with the exceptions of 2014 and 2016). However, the percentage of intersex-specific references is higher than in previous years (13%) despite only being one reference (see Figure 23).

Overall, including Concluding Observations, Lists of Issues/Lists of Issues Prior to Reporting, the Committee made 20 intersex-inclusive references.

The single intersex-specific reference adopted by the Committee was in the Concluding Observations for Portugal. The Committee stated:

The State party should strengthen the measures to end the performance of irreversible medical acts, especially surgical operations, on intersex children who are not yet capable of giving their free and informed consent, except in cases where such interventions are absolutely necessary for medical reasons.

The only intersex-specific question asked by the Committee in its List of Issues for Luxembourg concerned an update on the implementation of National Plan of Action to Promote the Rights of Lesbian, Gay, Bisexual, Transgender and Intersex Persons, particularly with regard to the introduction of a legal ban on non-emergency ‘sex normalizing’ medical treatment on intersex people without the free and informed consent. The Committee also requested that the State party ‘indicate what mechanisms are in place to stop non-consensual sex-change surgery and to enable survivors of such surgery to obtain redress.’

A CSO submission on Luxembourg was made by Intersex and Transgender Luxembourg and StopIGM for the 130th Session and was a stand-alone report on the rights of intersex people, particularly related to
A stand-alone report on the rights of intersex people was also made by StopIGM for the review of Portugal.

Stand-alone reports on the rights of intersex people were also made for the United Kingdom and the Russian Federation, however no questions were adopted in the Lists of Issues for these states.

**Sex Characteristics 2021**

In 2021, HRCtee made 13 intersex-inclusive references in its Concluding Observations. Of these, five were intersex-specific references (see Figure 22). This represents an increase in absolute numbers from previous years, and, when looked at proportionately to the number of Concluding Observations adopted, the highest ever percentage of intersex-specific references at 23% (see Figure 23).

Overall, including Concluding Observations, Lists of Issues/Lists of Issues Prior to Reporting, the Committee made 28 intersex-inclusive references.

In the Concluding Observations on Finland, the Committee expressed concerns about irreversible and invasive medical interventions performed on intersex children without free and informed consent, based on a stereotyped vision of gender roles. Consequently, the Committee made recommendations to prevent the performance of these medical interventions and to enable access to effective remedies for victims of such interventions.

In the Concluding Observations for Germany, the Committee made two intersex-specific references; one recommendation, and one call to follow-up on the intersex recommendation made. This was the first-ever intersex-specific recommendation selected by a Treaty Body for the follow-up procedure. Similarly

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to **Finland**, the Committee recommended that all necessary steps should be taken to ensure acts relating to the assignment of sex to intersex children performed without free and informed consent are specifically prohibited, except in cases where such interventions are absolutely necessary for medical reasons. The Committee urged the State party to consider amendments to the Law on the Protection of Children with Variations in Sex Development.

The Committee also adopted two intersex-specific references in the Concluding Observations on **Kenya**. The Committee welcomed the enactment of the Registration of Persons (Amendment) Bill 2019 by the State party, which provides for the legal recognition of intersex persons. The Committee also expressed concern about cases of non-urgent, irreversible surgical procedures, infanticide and abandonment among intersex children. Consequently, the Committee called for the State to strengthen measures to end the performance of irreversible, non-consensual medical acts. It also noted that the State should provide access to effective remedies.

There were two intersex-specific questions asked by the Committee in its Lists of Issues Prior to Reporting for **Canada** and **Iceland**. In both, the Committee asked questions on measures taken to limit or prohibit medically unnecessary surgery on intersex children.

For the 128th Session, a stand-alone report on the rights of intersex people, and specifically on IGM practices and infanticide was made for the List of Issues for **Kenya**. A stand-alone report on the rights of intersex people was also made for **Malta**, however no questions were adopted in the List of Issues for the State.

Stand-alone CSO reports were submitted for **Finland** and **Germany** on non-consensual medical interventions towards intersex children, and the situation for intersex people.

> The Committee is open to addressing intersex issues, however it seems essential that civil society provide information on this issue. Intersex issues should be brought to the Committee with proper consultations with and participation from intersex people and activists.

**Women**

As in previous years, in 2020, there were no explicit stand-alone references to LBTI women.

There were, however, references to LBTI women made in some CSO submissions. In 2020, for **Armenia**, a submission was made with reference to LBT regarding healthcare and anti-discrimination. For **Kenya**, access report here: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/DEU/INT_CCP%20CSS_DEU_46658_E.pdf.
Article 19 submitted a report mentioning lesbians facing censorship in a film screening. In 2021, a reference to support services for lesbian and transgender women was made in a CSO report on Finland.

In 2021, there was one stand-alone reference to LBTI women made by the Committee in the List of Issues Prior to Reporting. For Nepal, the Committee requested information of the measures taken to address violence against women, including sexual minorities.

In most instances, CSOs provided either general information framed under the LGBT(I) umbrella or stand-alone submissions on intersex and/or trans persons without specific reference to LBTI women.

Defenders can consider using HRCtee to highlight issues facing LBTI women as the Committee has mentioned gender and intersectional forms of discrimination previously. Defenders would be required to explain clearly how LBTI women experience different challenges to other women in society.

### Individual Communications

The Optional Protocol to HRCtee entered into force on 13 March 1976 and there are 116 countries that are a State Party to the Protocol. Information and guidance on submitting Individual Communications and the process can be found here.

Overall, the HRCtee made 218 decisions in 2020 (126) and 2021 (92) on over 40 States. In this period, the Committee made seven decisions which referenced SOGIESC topics. Violations were found in three of these cases. Each of these cases were brought against the Russian Federation and concerned the right to peaceful assembly and discrimination against LGBT persons. The facts of the cases were similar; the authors had requested to organize peaceful assemblies on LGBT rights that were continuously denied by authorities on the basis that inter alia it would violate legislation banning so-called promotion of non-traditional sexual relations to minors. In Nikolai Alekseev v Russian Federation, the Committee gave the following reasoning:

While the Committee recognizes the role of the State party's authorities in protecting the welfare of minors, it observes that the State party failed to demonstrate that the restriction on peaceful assembly was based on reasonable and objective criteria. Moreover, no evidence which would point to the existence of factors that might justify that assessment has been advanced... In such circumstances, the obligation of the State party was to protect the author in the exercise of his rights under the Covenant and not to contribute to

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99 Defenders can see whether their State has ratified here: [https://indicators.ohchr.org](https://indicators.ohchr.org).

100 Nikolai Alekseev v Russian Federation, communication No. 2727/2016, decision of 16 October 2020; Nikolai Alekseev v Russian Federation, communication No. 2757/2016, decision of 5 November 2020; Vladimir Ivanov v Russian Federation, communication No. 2635/2015, decision of May 2021.

suppressing those rights. The Committee further notes that it has previously concluded that the laws banning the ‘promotion of non-traditional sexual relations to minors’ in the State party exacerbate negative stereotypes of individuals on the grounds of sexual orientation and gender identity and represent a disproportionate restriction of their rights under the Covenant, and has called for the repeal of such laws. Accordingly, the Committee considers that the State party has failed to establish that the restriction imposed on the author’s right to peaceful assembly was based on reasonable and objective criteria, in pursuit of an aim that was legitimate under the Covenant, and that the prohibition therefore amounted to a violation of the author’s rights under articles 21 and 26 of the Covenant.

The remaining four cases reviewed by HRCtee in 2020-2021, were on asylum and the challenge to the State party by people who were threatened with deportation (non-refoulement). Three of these cases were brought against Sweden and the fourth against Canada. Three of the cases were found to be inadmissible; one on the basis that the author had not exhausted all available domestic remedies, and two on the basis that the author had not sufficiently substantiated that the evaluations made by the State of their asylum claim were clearly arbitrary or amounted to a manifest error or denial of justice. The fourth case was found to be admissible, however no violation was found as the author could not demonstrate he would face a real and personal risk of ill-treatment in his removal to Nigeria.

HRCtee has made decisions on more SOGIESC Individual Communications than any other Committee. HRCtee has covered a range of topics including criminalization, non-refoulement, violence, freedom of assembly, freedom of expression, same-gender families and LGR. Advocates are encouraged to raise a range of topics; there are still gaps in decisions regarding discrimination against LGBTI persons, and efforts can be raised to bring these cases.

Defenders should be aware that decisions on Individual Communications made by the HRCtee can take a long time.

General Comments

In 2020, the HRCtee adopted one General Comment on the right of peaceful assembly (Article 21 of the ICCPR). The General Comment referred to SOGI in two paragraphs:

- States must ensure that laws and their interpretation and application do not result in discrimination in the enjoyment of the right of peaceful assembly, for example on the basis of race, color, ethnicity, age, sex, language, property, religion or belief, political or other opinion, national or social origin, birth, minority, indigenous or other status, disability, sexual orientation or gender identity, or other status. Particular efforts must be made to ensure the equal and effective facilitation and protection of the right of peaceful assembly of individuals who are members of groups that are or have been subjected to discrimination, or that may face particular

103 MI v Sweden, communication No 2346/2018, decision of 6 November 2020; HG v Sweden, communication No. 3266/2018, decision of 23 July 2021.
105 General Comment No. 37 (2020) on the right of peaceful assembly (article 21).
challenges in participating in assemblies. Moreover, States have a duty to protect participants from all forms of discriminatory abuse and attacks.\footnote{Paragraph 25, Obligation of States parties regarding the right of peaceful assembly. [Emphasis added].}

- Restrictions on peaceful assemblies should only exceptionally be imposed for the protection of ‘morals’. If used at all, this ground should not be used to protect understandings of morality deriving exclusively from a single social, philosophical or religious tradition, and any such restrictions must be understood in the light of the universality of human rights, pluralism and the principle of non-discrimination. Restrictions based on this ground may not, for instance, be imposed because of opposition to expressions of sexual orientation or gender identity.\footnote{Paragraph 46, Restrictions on the right of peaceful assembly. [Emphasis added].}

The Committee referred to this General Comment several times in one of their Individual Communications.\footnote{Nikolai Alekseev v. Russian Federation, communication No. 2727/2016, decision of 16 October 2020.} Notably, the Committee recalled that States must not deal with assemblies in a discriminatory manner, for example on the basis of SOGI.\footnote{ibid 7.11.}

\begin{quote}
Consider ing references in the above General Comments, Committee practice on country periodic reviews and Individual Communications, LGBTI defenders are encouraged to provide input on new General Comments.
\end{quote}

**Follow-up Procedure**

In 2020, HRCtee selected SOGIESC-inclusive recommendations for three States for follow-up assessment. The first, on hate crimes and hate speech, was in its Concluding Observations on Finland (State report due by 26 March 2023). Secondly, the Committee selected a recommendation on Germany regarding the prohibition of unnecessary medical treatment relating to assignment of sex performed on intersex children (State report due by 5 November 2024). Thirdly, the Committee selected a recommendation on Ukraine concerning freedom of expression for human rights defenders, including LGBTI activists (State report due by 5 November 2024).

In 2020, the Committee assessed Colombia’s implementation of a recommendation concerning effective protection and care for vulnerable communities who are the victims of internal armed conflict, including LGBTI people. The Committee discontinued the evaluation stating that information/action taken was partially satisfactory. It did note the lack of disaggregated information on specific measures taken to protect communities such as the LGBTI community, and requested this information is included in the next periodic report.

The Committee also assessed Honduras’ implementation of a recommendation regarding freedom of expression, assembly and violence against LGBTI HRDs. The Committee discontinued the evaluation stating that information/action taken was partially satisfactory and requested that on the establishment of a database by the Public Prosecution Service to guarantee respect for the gender identity of complainants from the moment the complaint is submitted.

The Committee assessed the implementation of a recommendation made to Mongolia on discrimination on the grounds of SOGI, as well as the promotion of freedom of expression, association and assembly
for LGBTI people. The Committee discontinued the evaluation stating that information/action taken was partially satisfactory. It welcomed the State party’s efforts to train law enforcement and the creation of a crime database.

In 2021, the Committee assessed the implementation of a recommendation on adopting anti-discrimination legislation on the basis of SOGI, to recognize same-sex couples and the legal identity of transgender people in Dominican Republic. The Committee discontinued the evaluation stating that information/action taken was not satisfactory. The Committee noted that the State party had not referred to any measures taken to eliminate discrimination against LGBTI persons.

The Committee has demonstrated on a number of occasions that it is willing to select SOGIESC recommendations for follow-up procedure. CSOs participating in the sessions have a chance to highlight specific issues they would like to be covered. If LGBTI CSOs are able to cooperate with other NGO representatives from their countries in Geneva, this can be crucial to the inclusion of SOGIESC.

Defenders are also encouraged to update the Committee on follow-up developments in States which have had recommendations selected.

Sex Work and HIV/AIDS

HRCtee made two references specific to sex work that were not SOGIESC-specific in the Lists of Issues Prior to Reporting for Malawi (para 12) and Mozambique (para 5). These were the only reference to sex work in any of the reviews across 2020-2021.

In 2020, references were made to HIV/AIDS in Lists of Issues Prior to Reporting for Burkina Faso (para 7), Congo (para 7), Gabon (para 7), Indonesia (para 4), and Zimbabwe (para 6), and in Lists of Issues for Ethiopia (para 6), Kenya (para 4), and Philippines (para 6). In 2021, references to HIV/AIDS that were not SOGIESC-related were made in the Committee Concluding Observations on Botswana (paras 11-12) and Kenya (paras 10-11). Such references were also made in the Lists of Issues Prior to Reporting for Albania (para 7), Canada (para 7), Malawi (paras 6-7), North Macedonia (para 4), and the United Republic of Tanzania (para 6).
3. Committee on the Elimination of Discrimination against Women

General information 2020-2021

In 2020, CEDAW made SOGIESC-inclusive references in Concluding Observations in five out of eight countries reviewed (see Figure 24). Therefore, 63% of the Committee’s country reviews ended with SOGIESC recommendations. The number of SOGIESC-inclusive references made by CEDAW in 2020 was seven (see Figure 24). The low number of reviews conducted by CEDAW is demonstrative of the impact of the COVID-19 pandemic on the Committee’s processes; between 2014-2019, the number of reviews conducted by CEDAW did not fall below 22, almost triple the amount carried out in 2020. Equally, the rate of SOGIESC-inclusive references per Concluding Observation fell in 2020. CEDAW has one of the highest rates of any Committee between 2014-2019 averaging at 2.3 references per Concluding Observation with the highest being 3.6 in 2018, when 62 references were made. In 2020, the rate fell to 1.4 SOGIESC-inclusive references per Concluding Observation.

In 2021, CEDAW made SOGIESC references in Concluding Observations in eight out of 11 countries reviewed (see Figure 24); 73% of the Committee’s country reviews ended with SOGIESC recommendations, a higher percentage than 2019 (59%) and 2018 (70%) (see Figure 25). The number of SOGIESC-inclusive references made by this Committee in 2021 was 27. Notably, whilst not reaching the high number of actual references achieved between 2016-2019, the rate of SOGIESC-inclusive references per Concluding Observation was still quite high (3.4 references per Concluding Observation on average). This shows the Committee’s willingness to include multiple, detailed SOGIESC references, even where there are a small number of country reviews.
In 2020, CEDAW formulated SOGIESC-inclusive questions in its Lists of Issues/Lists of Issues Prior to Reporting for 16 out of 26 States (62%). In 2021, the percentage of Lists of Issues/Lists of Issues Prior to Reporting receiving SOGIESC questions was slightly lower than 2020, at 11 out of 20 States (55%).

Figure 25. Percentage of SOGIESC-inclusive Concluding Observations: CEDAW (2014-2021)

In 2020, the five States with SOGIESC-inclusive references in their Concluding Observations were Bulgaria, Latvia, Pakistan, Republic of Moldova and Zimbabwe. Bulgaria, Latvia, Pakistan and Republic of Moldova received their first recommendations from CEDAW. Zimbabwe previously received a recommendation in 2012 from CEDAW about protection from discrimination for LBT women, in particular by enacting anti-discrimination legislation.110

Table 6. CEDAW country reviews, 2020

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>SOGIESC IN PREVIOUS COS</th>
<th>LOI</th>
<th>CSO REPORTS MENTIONING SOGIESC</th>
<th>STAND-ALONE SOGIESC REPORTS</th>
<th>COS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes; LBTI</td>
</tr>
<tr>
<td>Eritrea</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Kiribati</td>
<td>N/A</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Latvia</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>LBTI</td>
</tr>
<tr>
<td>Republic of Moldova</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>SO; LBT</td>
</tr>
</tbody>
</table>

In 2021, the eight States with SOGIESC-inclusive references in their Concluding Observations were Denmark, Ecuador, Indonesia, Kyrgyzstan, Maldives, Russian Federation, South Africa and Sweden. Indonesia, Maldives and Sweden received their first SOGIESC recommendations from CEDAW, whilst the remaining five, Denmark, Ecuador, Kyrgyzstan, Russian Federation and South Africa have all previously received recommendations from the Committee.

Table 7. CEDAW country reviews, 2021

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>SOGIESC IN PREVIOUS COS</th>
<th>LOI</th>
<th>CSO REPORTS MENTIONING SOGIESC</th>
<th>STAND-ALONE SOGIESC REPORTS</th>
<th>COS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denmark</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes LGBTI; LBTI</td>
</tr>
<tr>
<td>Ecuador</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes LGBTI; LBTI; GI; LBT</td>
</tr>
<tr>
<td>Egypt</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Indonesia</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes LBT; LBTI</td>
</tr>
<tr>
<td>Kyrgyzstan</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes LBT; T</td>
</tr>
<tr>
<td>Maldives</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes LBTI</td>
</tr>
<tr>
<td>Russian Federation</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes LBTI; SOGI</td>
</tr>
<tr>
<td>South Africa</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes LGBTI; LBTI; LBT</td>
</tr>
<tr>
<td>South Sudan</td>
<td>N/A</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Sweden</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes LBTI</td>
</tr>
<tr>
<td>Yemen</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

In 2020, CEDAW received CSO reports mentioning SOGIESC on 15 States. Of these, three (Pakistan, Republic of Moldova and Zimbabwe) were States whose state party report was being reviewed with Concluding Observations following. For the remaining 12, CEDAW was producing Lists of Issues/Lists of Issues Prior to Reporting. Overall, 36 CSO reports were submitted across 16 States. There were stand-alone SOGIESC CSO submissions from Brazil, Peru, Republic of Moldova, Russian Federation, Uzbekistan and Zimbabwe. Each of these States received SOGIESC-inclusive references in their Concluding Observations or questions in the Lists of Issues/Lists of Issues Prior to Reporting.

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111 Brazil, Egypt, Germany, Japan, Indonesia, Lebanon, Morocco, Peru, Russian Federation, South Africa, Ukraine and Uzbekistan.
In 2021, CSOs from 10 States submitted CSO reports mentioning SOGIESC. Of these, six (Ecuador, Indonesia, Kyrgyzstan, Russian Federation, South Africa and Sweden) were States whose state party report was being reviewed with Concluding Observations following. Lists of Issues/Lists of Issues Prior to Reporting were adopted for the other four States for which CSO reports were submitted. The number of States receiving stand-alone SOGIESC CSO reports in 2021 was six. Stand-alone reports resulted in SOGIESC references in five States, with Georgia not receiving any SOGIESC-inclusive questions in their List of Issues. However, there were 10 States that did not receive any SOGIESC-inclusive CSO reports, but did receive SOGIESC references in their Concluding Observations or Lists of Issues/Lists of Issues Prior to Reporting.

Four out of five States that received SOGIESC-inclusive references in their Concluding Observations in 2020 (Bulgaria, Latvia, Republic of Moldova and Zimbabwe) also received SOGIESC questions in their Lists of Issues/Lists of Issues Prior to Reporting. Pakistan received SOGIESC-inclusive references in their Concluding Observations in the absence of SOGIESC-inclusive List of Issues.

In 2021, Denmark, Ecuador, Kyrgyzstan, Russian Federation and South Africa received SOGIESC questions in their Lists of Issues/Lists of Issues Prior to Reporting as well as SOGIESC references in their Concluding Observations. Three States (Indonesia, Maldives and Sweden) received SOGIESC-inclusive references in their Concluding Observations without the adoption of SOGIESC question in their List of Issues/List of Issues Prior to Reporting.

The high rate of SOGIESC references in 2021 demonstrates CEDAW’s willingness to make multiple and detailed references on LBTI communities. Defenders can continue engaging to ensure that these references are commonplace in Concluding Observations. The submission of CSO reports and participation help the Committee understand these issues and make specified recommendations on them.

Themes 2020-2021

From 2020-2021, CEDAW addressed a multitude of SOGIESC issues in comprehensive and extensive ways. Frequently, the Committee would request information from, and make recommendations to, States on exhaustive topics within a single paragraph.

The Committee focused on violence against women, including LBT women and intersex persons, particularly in the context of gender-based violence. The Committee called on States to provide information on measures to reporting cases of gender based violence, on programmes to eliminate and

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112 Armenia, Ecuador, Georgia, Indonesia, Kyrgyzstan, Netherlands, Russian Federation, South Africa, Sweden, Türkiye.
113 Armenia, Georgia, Netherlands and Türkiye.
114 Armenia, Georgia, Kyrgyzstan, Netherlands, Russian Federation and Türkiye.
115 Bhutan, Chile, China, Denmark, Estonia, Finland, Honduras, Maldives, Namibia and Uganda.
118 See List of Issues for Peru.
protect LBT women and intersex persons from gender-based violence;¹¹⁹ and in one instance expressed deep concerns about reports of femicide, disappearance, psychological and sexual violence and hate crimes against LBT women and intersex persons.¹²⁰

The Committee also expressed concerns regarding instances of violence, harassment and arbitrary detention from law enforcement in the List of Issues for Uganda, and the Concluding Observations for Indonesia and Kyrgyzstan. In the Concluding Observations for Indonesia, the Committee urged the state to conduct awareness-raising to combat such discrimination and violence.

The Committee also addressed the situation of multiple and intersecting forms of discrimination targeted at LBT women and intersex persons.¹²¹ In many reviews the Committee highlighted the need for inclusive anti-discrimination legislation and policies to guarantee protection from discrimination for marginalized groups, particularly LBT women and intersex persons.¹²² The Committee also expressed a need for data collection on this issue in the List of Issues for Slovakia.

In line with the issue of discrimination, the Committee requested States provide information on measures taken to train public institutions on experiences of LBT women and intersex persons including training for teachers,¹²³ law enforcement,¹²⁴ and healthcare workers.¹²⁵

In some instances, the Committee gave attention to access to justice for LBT women and intersex persons. The Committee made references to access to justice and accessibility for marginalized women¹²⁶ in Lists of Issues and Concluding Observations highlighting:

- Raising awareness of women’s rights under the Covenant;¹²⁷
- Enabling women to invoke their rights to equality and non-discrimination;¹²⁸
- Enabling women to lodge complaints and seeks remedies.¹²⁹

On many occasions, the Committee addressed Convention rights collectively, requesting information from, and making recommendations to, States on enabling LBT women and intersex persons to access education, employment, housing and healthcare.¹³⁰ The Committee specifically mentioned access to the labour market and ensuring women are in leadership and management positions in the Lists of Issues Prior to Reporting for the Netherlands and Estonia. The Committee also raised the issue of public and

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¹¹⁹ See List of Issues Prior to Reporting for Slovakia and List of Issues for Honduras and Türkiye.
¹²⁰ See List of Issues for Honduras.
¹²³ See List of Issues on Bolivia.
¹²⁴ See List of Issues on Russian Federation. See List of Issues Prior to Reporting for Ukraine.
¹²⁵ See List of Issues for Armenia.
¹²⁶ See Concluding Observations on Latvia.
¹²⁷ See Concluding Observations on South Africa.
¹²⁸ See List of Issues for Brazil.
¹²⁹ See List of Issues Prior to Reporting for Chile, Saint Vincent and the Grenadines, Slovakia, Ukraine, Chile.
political participation by women,\textsuperscript{131} and in the Concluding Observations for Ecuador, recommended capacity building on political campaigning and leaderships skills focusing on marginalized women including LBT women. In the List of Issues Prior to Reporting on Ukraine, the Committee asked about measures taken to provide shelter to LBT women and intersex persons who are victims of violence.

The Committee requested information in the List of Issues for Chile on the current state of the draft law on same-sex marriage.

The Committee also requested information from Chile on measures taken to ensure legislation on migration thoroughly addresses the risk faced by women who are victims of persecution in their country of origin, particularly LBT women and intersex persons.

\textbf{Criminalization 2020-2021}

In 2020-2021, the Committee adopted SOGIESC-inclusive Concluding Observations on ten States that criminalize consensual same-sex acts,\textsuperscript{132} including between people of any gender, particularly, lesbian women.\textsuperscript{133}

Four of these Concluding Observations were SOGIESC-inclusive; Indonesia, Maldives, Pakistan and Zimbabwe. However, in only one of these Concluding Observations (Maldives) did the Committee explicitly mention criminalization and decriminalization. In the Concluding Observations for Maldives, the Committee urged the State to decriminalize consensual relations between women.

In the Concluding Observations on Indonesia, the Committee referenced discriminatory provisions but did not expressly urge repeal or amendment of these laws: The Committee stated:

\begin{quote}
The fact that the draft criminal code seeks to criminalize extramarital sex, which may impact lesbian, bisexual and transgender women, restricts women’s sexual and reproductive health rights, and authorizes local governments to enact by-laws containing criminal penalties for sexual conduct based on ‘living law’.
\end{quote}

CEDAW went on to recommend that Indonesia:

\textsuperscript{131} See Concluding Observations on Ecuador, Kyrgyzstan and Sweden.

\textsuperscript{132} Afghanistan, Egypt, Eritrea, Indonesia, Kiribati, Maldives, Pakistan, South Sudan, Yemen and Zimbabwe.

\textsuperscript{133} Afghanistan, Egypt, Eritrea, Maldives, South Sudan and Yemen, see ILGA World; Lucas Ramon Mendos, State-Sponsored Homophobia 2019: Global Legislation Overview Update (Geneva: ILGA, December 2019).
Adopt a concrete time frame for the adoption of the draft law on gender equality and justice that defines and prohibits all forms of discrimination against women, including direct and indirect discrimination in the private and public spheres and intersecting forms of discrimination against women...

Furthermore, the Committee addressed the situation for LBT women and intersex persons in a separate paragraph, highlighting ‘discriminatory legislation’ in the Islamic Criminal Code in Aceh. However, the Committee did not go as far as explicitly urging decriminalization of the criminalizing provisions.

In the Concluding Observations on Pakistan, the Committee focused on the unnecessary medical interventions on intersex persons and called on the State to prevent this practice. The Committee did not mention the issues of criminalization.

Finally, in the Concluding Observations on Zimbabwe, the Committee addressed the issue of hate speech, stigma and discrimination against LBT women and intersex persons in the fields of education, health, employment and justice; criminalization was not referenced.

A number of States receiving Lists of Issues/Lists of Issues Prior to Reporting criminalize same-sex acts (Namibia, Saint Vincent and the Grenadines, Senegal, Uganda and Uzbekistan), including three (Saint Vincent and the Grenadines, Senegal and Uganda) criminalizing such acts between persons of any gender.\(^\text{134}\) However, the Committee only referenced criminalization in one List of Issues on Uganda. The Committee requested information on what steps were being taken to revise the criminalizing provision.

CEDAW did not explicitly reference criminalization, and did not recommended relevant repeal/amendments many times over the period. Defenders should outline criminalizing provisions and the harm they cause. Importantly, defenders should highlight the impact of criminalization on LBTI communities, notwithstanding in instances where only male same-sex intimacy is criminalized, which adversely affects LBTI people.

Gender Identity and Expression 2020

In 2020, CEDAW made four references to gender identity in seven SOGIESC-inclusive references in Concluding Observations; none of these references were trans/gender identity specific. However, in the Lists of Issues/Lists of Issues Prior to Reporting, the Committee made four trans/gender identity specific references (Bolivia, Egypt, Germany and Ukraine). The Committee requested information on legal gender recognition and conditions for gender reassignment treatment for Bolivia, Germany and Ukraine. In the List of Issues for Egypt, the Committee questioned the ill-treatment of transgender women, by security and prison personnel. In the List of Issues Prior to Reporting for Slovakia, the Committee dedicated a paragraph to the experiences of transgender and intersex women.

The substantial scale-down of country reviews during 2020 impacted the data significantly comparatively to previous years; the actual number of references dropped to the lowest recorded since 2014 (see Figure 26) Moreover, when considering the number of references relatively to the number of reviews, the percentage of trans-inclusive SOGIESC references still falls below other years at 57%,

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\(^{134}\) See ILGA World: Lucas Ramon Mendes, State-Sponsored Homophobia 2019: Global Legislation Overview Update (Geneva; ILGA, December 2019).
followed by 66% in 2018 (see Figure 27). The number of trans-specific references has fluctuated over the years and disappointingly there were none made in 2020.

Figure 26. GIGE references, CEDAW Concluding Observations (2014-2021)

Gender Identity and Expression 2021

In 2021, CEDAW made trans-inclusive references in all 27 SOGIESC-inclusive references in Concluding Observations. Significantly, this is the first time that CEDAW has included trans and gender identity references in 100% of SOGIESC-inclusive references (see Figure 27). Out of the 27 references made, only two were trans-specific (Ecuador and Kyrgyzstan). This demonstrates a decrease in both the actual number of trans-specific references, and the relative percentage (see Figure 26 and Figure 27).

In the Concluding Observations on Ecuador, the Committee urged the State to enforce legislation which prohibits discrimination based on gender identity, and legislation that prohibits "sexual reorientation" or "de-homosexualization". The recommendation on Kyrgyzstan called on the State to reinstate the right of transgender people to change the gender marker on their documents.
Equally, in the Lists of Issues/Lists of Issues Prior Reporting the Committee formulated few trans-specific questions. There were only two States that received trans-specific questions (Armenia and Finland). Armenia was questioned about sterilization of women and girls, specifically women transgender women; Finland was asked about legislation governing legal gender recognition process.

CEDAW has consistently demonstrated a commitment to including trans identities in the broader SOGIESC agenda. Whilst there were fewer trans-specific references over the period, defenders should be encouraged by the fact that the Committee has made references, and with CSO input, is likely to continue doing so. Whilst experiences of trans women have been mentioned by the Committee, there is a gap in the experience of other trans and gender-non conforming people and defenders may want to introduce those issues into the scope of the CEDAW narrative.

Sex Characteristics 2020

In 2020, five out of the seven (71%) SOGIESC-inclusive references in CEDAW Concluding Observations mentioned intersex (see Figure 28 and Figure 29). Among them, there were two intersex-specific references (29%). This demonstrates a significant peak in the percentage of intersex-specific references comparatively to previous years, largely due to the small number of reviews conducted in 2020. This is lower than the average number of intersex-specific references by CEDAW from 2014-2019 (3), with the highest ever amount being 10 in 2018.

One of the intersex-specific references was found in the Concluding Observations on Bulgaria and the second in the Concluding Observations on Pakistan. In the Concluding Observations on Bulgaria, the Committee focused on reports of irreversible medical surgery performed on intersex women and urged the State to ensure that intersex women were not subjected to this practice. In Pakistan’s Concluding Observations, the Committee expressed concern regarding the performance of gender reassignment surgery on intersex people for the purpose of legal gender recognition and called on the State to end the practice and to eliminate the barriers to preventing victims from gaining access to justice.

The Committee also formulated an intersex-specific question in the List of Issues Prior to Reporting for Slovakia. The Committee dedicated a paragraph to measures taken to protect transgender and intersex women, including legal gender recognition, hate crime, surgical interventions, and the media.
Sex Characteristics 2021

In 2021, CEDAW made 19 intersex-inclusive references in its Concluding Observations (70%) (see Figure 28 and Figure 29). This is comparable to the number of references made by CEDAW in years preceding the pandemic; between 2014-2019, the average number of references was 11 with the highest being 36 in 2018, followed by 20 in 2017 and 14 in 2016. Regrettably, there were no intersex-specific references made in 2021.

There was one intersex-specific question formulated in the List of Issues Prior to Reporting for the Netherlands. The Committee requested information on measures taken to develop rights-based healthcare protocol for intersex children.
There has been a decrease in the focus the Committee is giving to intersex issues in its Concluding Observations, however engagement from CSO is encouraged. It is promising that the Committee dedicated a paragraph to the experiences of trans and intersex women in one of the List of Issues in the period and with participation from defenders, similar references and recommendations can follow. CEDAW has established condemnation of irreversible medical interventions on intersex people. Defenders may also want to address other issues facing intersex people, including discrimination based on intersex status in different areas of life such as education, sport, housing and employment.

Women

Due to its mandate, addressing intersections between SOGIESC and gender are inherent to CEDAW's approach. Overwhelmingly, the Committee used the term 'women' (or sometimes 'women and girls') when referring to LBT, however the majority of intersex references were about 'intersex persons'.

CEDAW made one reference to 'lesbianism' in the Concluding Observations on Kyrgyzstan. This, and two other references, followed the submission of three different shadow reports mentioning LBT women and one that specifically mentioned 'lesbianism' in the Criminal Code submitted in 2019 for Kyrgyzstan's List of Issues. In addition, in the List of Issues for Uganda, 'same-sex relations' and 'marriage' were referenced by the Committee in the context of their legal prohibition.

In the Concluding Observations on Bulgaria, the Committee noted with concern the reports of irreversible medical surgery performed on intersex women.

The situation for trans women was not specifically mentioned in the Committee's Concluding Observations between 2020-2021. In the List of Issues for Egypt, the Committee requested that the State address reports of abuse and ill-treatment of transgender women in detention, by security and prison personnel.

In the List of Issues Prior to Reporting for Slovakia, the Committee allocated a paragraph to measures taken to protect transgender and intersex women, including legal gender recognition, hate crime, surgical interventions and hate speech in the media.

Across 2020-2021, there were over 60 CSO submissions to CEDAW on the situation of LBTI, including 18 stand-alone reports.

CEDAW often considers ‘LBT women’ and ‘intersex persons’ as a homogenous group and recommendations do not reflect the specificities of the situation for each group within that acronym. In order for the Committee to engage with each group, CSO reports and participation can focus on the experiences of lesbians, trans women, intersex women and particularly bisexual women to ensure the Committee understands the breadth of experiences.
Individual Communications

The Optional Protocol to CEDAW entered into force on 22 December 2000 and there are 114 countries that are State Party to the protocol. A Communication may be submitted by or on behalf of individuals or groups of individuals.

The decision on an Individual Communication will be one of three things: violation; no violation; or inadmissible. The Committee will not consider a communication unless it has ascertained that all available domestic remedies have been exhausted.

Information and guidance on submitting Individual Communications and the process can be found here.

Overall, CEDAW made 18 decisions in 2020 and seven decisions in 2021 on 22 States. In this period, the Committee made one decision that referenced SOGIESC topics. This case was brought in 2020 against Russian Federation and concerned violence and hate crime against two lesbian women and their lack of access to justice and effective remedy (Article 1, 2(b) and (g) and 5(a) of CEDAW).

In this case a violation was found. The Committee stated:

‘The Committee notes that... by failing to investigate the authors’ complaint about the violent attack against them, as lesbian women, promptly, adequately and effectively and by failing to address their case in a gender-sensitive manner, the authorities allowed their actions to be influenced by negative stereotypes against lesbian women. The Committee therefore concludes that the authorities failed to act in a timely and adequate manner and to provide a remedy for the authors, in violation of the obligations under the Convention.’

The Committee continued:

‘The Committee considers that the present case shows a failure by the State party in its duty to uphold women’s rights, particularly in the context of violence and discrimination against women on the basis of their sexual orientation and to eliminate the barriers that the authors faced in seeking justice in their case, in particular negative stereotypes against lesbian women, and to ensure that law enforcement officials strictly apply the legislation prohibiting gender-based discrimination against women.’


136 Defenders can see whether their State has ratified here: https://indicators.ohchr.org.

137 Article 2.


139 Ibid, para 7.8.
Over the period, the Committee reviewed a case focusing on SO and found a violation. Defenders can bring cases on numerous issues including gender-based violence, hate crime, labor discrimination, detention, health, parental rights, legal gender recognition, medical interventions and criminalization. The Committee has made recommendations on each of these issues, and advocates can bring new cases to develop this practice in Individual Communications.

General Comments

In 2020, CEDAW adopted one General Comment. The General Comment was on trafficking in women and girls in the context of global migration and was SOGI-inclusive. The Committee called on States to interpret the grounds for identifying victims of persecution under the Convention relating to the Status of Refugees, in line with the Guidelines on International Protection of the Office of the United Nations High Commissioner for Refugees, including on SOGI.

In 2021, CEDAW adopted a General Comment on indigenous women and girls, however there were no SOGIESC references in the publication.

Country reviews have well established LBTI references, and General Comments are an opportunity for advocates to further develop the Committee’s understanding of LBTI communities. Likewise, General Comments can also be used to generate recommendations in Concluding Observations with the Committee often citing them. Defenders are strongly encouraged to include their inputs on LBTI for new draft General Comments.

Follow-up Procedure

In 2020 and 2021, CEDAW did not select SOGIESC-inclusive recommendations as part of its follow-up process in Concluding Observations. However, in 2020 and 2021 States were assessed on the implementation of SOGIESC-inclusive recommendations previously selected (2020- Chile and Republic of Korea; 2021- Kazakhstan and Luxembourg).

In 2020, the Committee assessed Chile’s implementation of a recommendation concerning the adoption of a draft law on the right of women to live free from violence and that such violence is recognized in law, particularly in regard to, amongst others, LBT women and intersex persons. The Committee assessed that the recommendation had been partially implemented and that the quality of information was satisfactory. The Committee requested more information in Chile’s next periodic review in March 2022.

The Committee selected two recommendations for follow-up for Republic of Korea which were assessed in 2020. One recommendation was on adopting a comprehensive anti-discrimination law prohibiting discrimination against women, including sexual minority groups. The second recommendation was on gender-based violence against women, and ensuring safety of victims and their families including same-

140 General Comment No. 38 (2020) on trafficking in women and girls in the context of global migration.
141 Ibid, para 88.
142 General Comment No. 39 (2021) on indigenous women and girls.
sex couples and all women, regardless of their SOGI. For the first recommendation, the Committee assessed that the recommendation had not been implemented, for the second it assessed that it had been partially implemented. The Committee requested further information in the State’s next periodic review in March 2022.

In 2021, the Committee assessed the implementation of a recommendation on Kazakhstan. The recommendation urged the State to ensure that forced sterilization was criminalized and that mandatory gender reassignment surgery was abolished. The Committee assessed that the recommendation had not been implemented and that the information provided was unsatisfactory. The Committee recommended that the State provide further information on the actions taken to fulfil this recommendation by the next periodic report (due in November 2023).

CEDAW selected a recommendation on monitoring and countering hate speech against inter alia, sexual minority groups, for Luxembourg, which was assessed in 2021. The Committee found that the recommendation had been partially implemented, and that the information provided was partially satisfactory. It was requested that more information on actions taken was provided in the next periodic review (due in March 2022).

CEDAW has previously selected SOGIESC recommendations for follow-up procedure and advocates are encouraged to request this from the Committee. Follow-up procedures can put greater pressure on States to implement recommendations put to them. CSOs can build coalitions with other CSOs to advocate for follow-up procedure. For more information on follow-up procedure see here.

Sex Work and HIV/AIDS

There were no references made to sex work that were not SOGIESC-related in 2020-2021.

In 2020, two references to HIV/AIDS that were not SOGIESC-related were made by CEDAW in the List of Issues for South Africa (para 22) and the List of Issues Prior to Reporting for Ukraine (para 6). In 2021, such references were made in the Concluding Observations on Kyrgyzstan (paras 21-22 and 41-42) and South Africa (paras 59-60) and List of Issues for Armenia (para 15).
4. Committee on the Rights of the Child

General information 2020-2021

In 2020, CRC made SOGIESC-inclusive references in Concluding Observations in six out of nine States reviewed (see Figure 30). Therefore, 67% of CRC’s country reviews ended with SOGIESC recommendations (see Figure 31). Within the six SOGIESC-inclusive Concluding Observations, the Committee made 15 LGBTI or SOGIESC references. This is lower than the previous year (24); however, the rate of references per Concluding Observations was 2.5, similar to 2019 (2.6) and higher than 2018 (1.5) and 2017 (1.4). Due to the COVID-19 pandemic, this year was the lowest number of country reviews conducted by CRC since ILGA began reporting in 2014, with only nine country reviews; the second lowest was 16 in 2014.

In 2021, CRC made SOGIESC references in Concluding Observations in all six countries reviewed (see Figure 30). Therefore, for the first time, CRC made SOGIESC references in 100% of its Concluding Observations, significantly higher than previous years with the second highest being in 2016 and 2020 (67%) (see Figure 31). The number of SOGIESC-inclusive references by the Committee in 2021 was 19. Whilst lower than 2019, 19 SOGIESC-inclusive references is also the average number of references made by the Committee between 2014-2019. Similarly to 2020, the number of country reviews in 2021 was the lowest again at six. However, the rate of SOGIESC references per review was high at 3.2, the highest number of references was seven in the Concluding Observations on Switzerland and five in the Concluding Observations on Poland.
In 2020, of the six States with SOGIESC-inclusive Concluding Observations, five (Austria, Belarus, Cook Islands, Costa Rica and Tuvalu) received their first recommendation on this topic from CRC. Hungary had previously received a recommendation from the Committee in 2014 on laws that prohibit discrimination against children of same-sex parents and LGBTI children.  

In 2021, the six States with SOGIESC-inclusive references in their Concluding Observations were Czechia, Eswatini, Luxembourg, Poland, Switzerland and Tunisia. Czechia, Eswatini, Luxembourg and Tunisia received their first SOGIESC recommendations from CRC, whilst Poland and Switzerland had previously received recommendations from the Committee in 2015.

**Table 8. CRC country reviews, 2020**

<table>
<thead>
<tr>
<th>Country</th>
<th>SOGIESC in previous COS</th>
<th>LOI</th>
<th>CSO reports mentioning SOGIESC</th>
<th>Stand-alone SOGIESC reports</th>
<th>COS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Belarus</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes LGBT; SOGI</td>
</tr>
<tr>
<td>Cook Islands</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes Same-sex</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes SOGI; LGBTI</td>
</tr>
<tr>
<td>Hungary</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes LGBTI</td>
</tr>
</tbody>
</table>


In 2020, CRC received three CSO reports mentioning SOGIESC on three States (Austria, Costa Rica and Hungary). This is a significant drop compared to the 34 reports received in 2019. There was one stand-alone report submitted for Austria by StopIGM on intersex genital mutilation.\(^\text{145}\)

In 2021, CSOs from seven States submitted 18 reports mentioning SOGIESC. Of these, three (Luxembourg, Switzerland and Tunisia) were States whose report was being reviewed with Concluding Observations following. For the remaining four, CRC was formulating Lists of Issues/Lists of Issues Prior to Reporting. Notably, 50% of CSO reports submitted were stand-alone reports, and a significant number of these were on the situation of intersex persons; Switzerland and Tunisia received two stand-alone CSO reports each, with both States then being recommended actions to improve the situation of intersex persons.\(^\text{146}\) In the List of Issues Prior to Reporting on Liechtenstein, the Committee formulated six questions on LGBTI, including two questions on the experiences of intersex children, following a stand-alone CSO submission addressing this issue.

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>SOGIESC IN PREVIOUS COS</th>
<th>LOI</th>
<th>CSO REPORTS MENTIONING SOGIESC</th>
<th>STAND-ALONE SOGIESC REPORTS</th>
<th>COS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Micronesia</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Rwanda</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>State of Palestine</td>
<td>N/A</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Tuvalu</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes Same-sex</td>
</tr>
</tbody>
</table>

In the List of Issues Prior to Reporting on Liechtenstein, the Committee formulated six questions on LGBTI, including two questions on the experiences of intersex children, following a stand-alone CSO submission addressing this issue.

Table 9. CRC country reviews, 2021


\(^\text{146}\) Other States receiving stand-alone LGBTI reports were Bulgaria, Croatia, Liechtenstein, Luxembourg, and the Netherlands.
In 2020, **Belarus, Costa Rica, Hungary** and **Tuvalu** received SOGIESC questions in their Lists of Issues/Lists of Issues Prior to Reporting preceding the SOGIESC references in their Concluding Observations. **Austria** and **Cook Islands** received SOGIESC-inclusive references in their Concluding Observations in the absence of SOGIESC-inclusive Lists of Issues/Lists of Issues Prior to Reporting.

Four out of six States that received SOGIESC-inclusive references in their Concluding Observations in 2021 (**Eswatini, Luxembourg, Poland** and **Switzerland**) also received SOGIESC questions in their Lists of Issues/Lists of Issues Prior to Reporting. **Czechia** and **Tunisia** received SOGIESC-inclusive references in their Concluding Observations, despite not receiving SOGIESC-inclusive references in their Lists of Issues/Lists of Issues Prior to Reporting.

In 2020-2021, the CRC was significantly impacted by the COVID-19 pandemic, however defenders should be encouraged by CRC’s previous reviews and the fact that despite the low number of reviews in the past two years, the rate of SOGIESC references the Committee made was high. The Committee is also responsive to CSO information and defenders are advised to submit reports wherever they can. The Committee continues to pay significant attention to violations involving intersex children, and therefore intersex advocates can consider CRC as one of the main international advocacy fora for their actions.

**Themes 2020-2021**

As in other years, the majority of SOGIESC references made in 2020-2021 addressed the issue of discrimination.147 More specifically, CRC expressed concerns about bullying targeted at LGBTI children148 and discrimination against children of same-sex parents.149 In some instances, the Committee raised anti-discrimination laws considering SOGI protected grounds.150 In the Concluding Observations on **Hungary** and **Poland** the Committee urged the State to implement and amend legislation to ensure protection from discrimination on the basis of SOGI. In order to combat discrimination, including hate speech, the Committee addressed awareness-raising campaigns about experiences of LGBTI children and adolescents.151

Additionally, the CRC referenced instances of violence in States.152 In the List of Issues Prior to Reporting for **Bhutan**, the Committee requested information on measures taken to combat violence, sexual harassment and bullying in schools.

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149 See List of Issues Prior to Reporting for Liechtenstein.


152 See List of Issues for Bolivia.
The issue of healthcare was also raised by the Committee. Key recommendations and questions were formulated on:

- Access to sexual and reproductive healthcare for LGBTI children and adolescents,\(^{153}\) and effective and inclusive sexual and reproductive health education;\(^{154}\)
- Instances of high incidence of mental illness,\(^{155}\) access to psychological and psychiatric services for LGBTI children and adolescents,\(^{156}\) and effective implementation of action plan on suicide prevention;\(^{157}\)
- Training healthcare professionals to support LGBTI children.\(^{158}\)

Participation of children in decision-making was another topic covered by CRC. In the Concluding Observations on Costa Rica and Switzerland, the Committee urged the States to engage with organizations supporting children, including those supporting LGBTI children in the formulation of public policies and programmes concerning their rights.\(^{159}\)

In the Lists of Issues Prior to Reporting for Bulgaria and Ecuador, the Committee requested information on measures taken to implement systemic reforms in areas affecting children such as violence, child justice and reproductive health of LGBTI children.

In the List of Issues Prior to Reporting for Liechtenstein, the Committee formulated questions on the allocation of resources, and specific efforts to introduce a child rights approach to budgeting and to budget for children in vulnerable situations such as LGBTI children.

The Committee also requested information on the Liechtenstein’s plan to extend adoption to enable same-sex parents to adopt.

For organizations working with LGBTI children, or LGBTI parents, the CRC is the key Treaty Body addressing violations affecting these groups. Defenders are encouraged to submit evidence addressing issues impacting LGBTI children, including those previously addressed by the CRC, but also other issues such as online discrimination and abuse.

### Criminalization 2020-2021

In 2020-2021, the Committee adopted Concluding Observations on five States that criminalize consensual same-sex acts (Cook Islands, Eswatini, State of Palestine, Tunisia and Tuvalu). The Committee urged decriminalization in two of these Concluding Observations (Cook Islands and Tuvalu). In the review of State of Palestine, the Committee made no SOGIESC-inclusive recommendations.

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\(^{153}\) See Concluding Observations on Poland. See List of Issues Prior to Reporting for Estonia and UK.

\(^{154}\) See List of Issues Prior to Reporting for Fiji.

\(^{155}\) See List of Issues Prior to Reporting for Sweden and UK.

\(^{156}\) See List of Issues Prior to Reporting on Liechtenstein.

\(^{157}\) See Concluding Observations on Switzerland.

\(^{158}\) See Concluding Observations on Belarus and Poland.

\(^{159}\) See Concluding Observations on Costa Rica and Switzerland.
Criminalization was also mentioned in the List of Issues Prior to reporting on Gambia. The Committee requested information on whether the State had taken steps to amend the Criminal Code to remove criminalizing provisions.

There were no CSO reports submitted on criminalizing countries in 2020. In 2021, there were three reports submitted on SOGIESC for Tunisia; one of these mentioned the criminalization of LGBTI children, however this was not included in recommendations by the Committee.160

CRC’s inclusion of recommendations on criminalization of consensual same-sex is inconsistent. However, criminalization has been recognized a flagrant violation of rights by other Committees and if defenders raise this issue with CRC, their efforts may lead to relevant recommendations. In order for the CRC to consider this issue, advocates can evidence how criminalization impacts LGBTI children or children of LGBTI parents, for example, impacts their access to health information.

It is also important to consider the possibility of push back from certain States/groups by addressing criminalization through the lens of children’s rights and defenders can think about challenges this could create in their situation.

Gender Identity and Expression 2020-2021

In 2020, CRC referred to gender identity in 12 out of 15 (80%) SOGIESC-inclusive references in its Concluding Observations (see Figure 32 and Figure 33). However, there were no trans-specific references made by the Committee in 2020. There was one trans-specific question formulated by the Committee in Sweden’s List of Issues Prior to Reporting. The Committee requested information on measures taken to provide health services for children who do not identify with the gender given to them at birth. Another trans-specific question was included into the List of Issues Prior to Reporting for Ireland. The Committee asked about legal gender recognition procedures for children below 16 years of age. Markedly, the average number of trans-specific references is low by the CRC even in years not impacted by COVID-19, being 1.2 between 2014-2019.

In 2021, CRC made trans-inclusive references in 13 out of 19 (68%) SOGIESC-inclusive references in Concluding Observations (see Figure 32 and Figure 33). Of these, only one specifically addressed transgender persons. **Switzerland** received Concluding Observations recommending that the State ensure suicide preventative measures for transgender adolescents.

No trans-specific references were formulated by the Committee in 2021 in the Lists of Issues/Lists of Issues Prior to Reporting.

At the same time, there were also no CSO submissions that specifically mentioned the situation of transgender or gender non-conforming children and adolescents.

**Figure 32. GIGE references, CRC Concluding Observations (2014-2021)**

**Figure 33. Percentage of trans-inclusive and trans-specific references in CRC Concluding Observations (2014-2021)**
One of the rights enshrined in the CRC is the right to identity, and advocates can raise this in relation to the right to gender identity. Further, the Convention also encourages the right to freedom of expression, to seek, receive and impart information. This can be focused on by advocates in order to highlight how it is integral for children and adolescents to both express themselves, but also to be able to freely access information on gender expression and identity.

The access of trans children to LGR can be raised with the Committee. The right to health could also be raised in the context of accessing puberty blockers. The CRC is also experienced in discussing the capacity of children to consent which advocates can raise in discussing various issues related to trans healthcare in particular.

Sex Characteristics 2020-2021

In 2020, 60% of CRC’s SOGIESC-inclusive references were also intersex-inclusive (9 out of 15). This shows a slight decline in the percentage of intersex-inclusive references compared to 2019 (88%) and 2018 (71%), however it is the same as 2017 and 2015 (see Figure 34 and Figure 35).

There was one intersex-specific reference in the Concluding Observations on Austria. This was lower than previous years but the same as 2017. In the recommendation to Austria, the Committee urged the State to ‘prohibit the performance of unnecessary medical or surgical treatment on intersex children where those procedures may be safely deferred until children are able to provide their informed consent.’ The recommendation was preceded by a stand-alone CSO report on violations towards intersex children in the country submitted for review to the Committee.

The Committee also formulated intersex-specific references in the Lists of Issues/Lists of Issues Prior to Reporting on Chile, France, Greece, Ireland, New Zealand, Sweden and Ukraine. Questions formulated by the Committee concerned health-care protocols for intersex children, measures to end practice of unnecessary treatment of intersex children, statistics on such treatment, training programmes for health professionals, and support and remedies available for intersex children.

Figure 34. Intersex references, CRC Concluding Observations (2014-2021)
In 2021, 84% of CRC’s SOGIESC-inclusive references were also intersex-inclusive (16 out of 19). This is the third highest percentage achieved by the Committee with the second and first being in 2016 (85%) and 2019 (88%) (see Figure 34 and Figure 35).

At the same time, the Committee made the third highest number of intersex-specific references, amounting to five, compared to 7 in 2016 and 8 in 2019. CRC made intersex-specific references in the Concluding Observations for Czechia, Luxembourg, Switzerland and Tunisia. In the Concluding Observations on Luxembourg, the Committee made two intersex-specific references.

There were also intersex-specific references in the Lists of Issues/Lists of Issues Prior to Reporting for Bulgaria, Germany, Liechtenstein, South Africa and UK.

In the reviews in 2020-2021, the Committee mainly addressed the issue of unnecessary medical or surgical treatment of intersex children. The Committee also addressed:

- Data on intersex births and on intersex children who have been subjected to non-urgent and irreversible surgery;
- Social, medical and psychological services available to families with intersex children.

Stand-alone reports on the situation of intersex children were submitted for five of the States that received Concluding Observations or questions in the Lists of Issues/Lists of Issues Prior to Reporting focusing on intersex (Bulgaria, Liechtenstein, Switzerland and Tunisia).

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161 See Concluding Observations on Austria, Luxembourg, South Africa, Switzerland, Tunisia. See List of Issues Prior to Reporting for Bulgaria, Chile, Liechtenstein, New Zealand, Sweden, United Kingdom. List of Issues for Germany, Greece.

162 See Concluding Observations on Austria. See List of Issues Prior to Reporting for Bulgaria, Chile, Germany, Liechtenstein, New Zealand and Sweden.

163 See Concluding Observations on Czechia, Luxembourg, Switzerland and Tunisia.
CRC seems very willing to address intersex issues when CSOs have submitted relevant information on the topic. Intersex advocates are strongly recommended to continue to engage with CRC to raise issues concerning unnecessary, forced surgeries and treatments on intersex children. Defenders should be encouraged by the consistent inclusion of intersex references and recommendations made by the Committee. Advocates can also expand CRC’s understanding of intersex issues and highlight other topics such as discrimination, bullying and recommending engagement with intersex CSOs in policy and procedure decisions.

Women

CRC did not issue any references in Concluding Observations nor Lists of Issues/Lists of Issues Prior to Reporting specific to LBTI women and girls in 2020-2021. Similarly, there were no CSO submissions to the Committee on the specific experiences of LBTI women and girls.

CRC focuses on the situation of girls, and in doing so is familiar with carrying out gender analyses. Defenders can rely on this experience to advocate for the specific needs of LBTI girls in general, or their specific groups. Access to sexual and reproductive health information and services for LGBTI children has already been addressed by the Committee and defenders can ask the Committee to address the specific needs of LBTI girls in this context. Equally, defenders can also raise forms of violence against LGBTI girls, including forced marriage, ‘corrective rape’ and ‘conversion’ therapy. The Committee can also examine the situation of LBTI parents.

Individual Communications

The Optional Protocol to the CRC on a communication procedure entered into force on 14 April 2014164 and there are 48 countries that are a State Party to the protocol.

Article 2 of the protocol states that in all its considerations under the protocol, the Committee will be guided by the ‘best interests of the child’. Article 3 outlines that safeguards will be put in place to protect the child from manipulation by those acting on their behalf.

A Communication may be submitted on behalf of individuals or groups of individuals.165 The decision on an Individual Communication will be one of three things: violation; no violation; or inadmissible.166 Information and guidance on submitting Individual Communications and the process can be found here.

Overall, CRC made 29 decisions in 2020 and 31 decisions in 2021 on 13 States. In this period, the Committee made its first (and so far only) decision involving sexual orientation of a child’s parents. This

165 Article 5.
166 Article 7- Admissibility.
case was brought against *Finland* in 2018, and the decision was adopted by the Committee in 2021.\(^{167}\)

The case *AB v Finland* concerned the deportation of a Russian lesbian couple and their child to the Russian Federation. The Committee was asked to consider the best interests of the child, and to address a violation of non-discrimination and the non-refoulement principle.

Founding the violation of Articles 3, 19 and 22 of the CRC Convention by Finland, the Committee stated that:

> ...the State party failed to adequately take the best interests of the child as a primary consideration when assessing the author's asylum request based on his mothers' sexual orientation and to protect him against a real risk of irreparable harm in returning him to the Russian Federation.\(^{168}\)

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**General Comments**

In 2020-2021, CRC adopted one General Comment on children's rights in relation to digital environment.\(^{169}\) In the General Comment, the Committee made two SOGIESC references. First, it called on States to take proactive measures to prevent discrimination on the grounds of a child being LGBTI.\(^{170}\) Second, the Committee highlighted that the digital environment can enable children to form social, religious, cultural, sexual and political identities.\(^{171}\)

The CRC has a forthcoming Draft General Comment No. 26 on children's rights and the environment with a special focus on climate change for which consultations are being held.\(^{172}\)

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\(^{167}\) AB v Finland, communication No. 51/2018, decision of 4 February 2021.

\(^{168}\) Ibid, para 12.6.

\(^{169}\) General comment No. 25 (2021) on children's rights in relation to digital environment.

\(^{170}\) Ibid, para 11.

\(^{171}\) Ibid, para 64.

Follow-up Procedure

Unlike most of the other Committees, CRC does not currently have a written follow-up procedure, nor does it identify priority issues for follow-up in its Concluding Observations. However, the structure of CRC Concluding Observations includes one paragraph where the Committee identifies recommendations in respect of which urgent measures must be taken.

In 2020-2021, CRC identified LGBTI recommendations for urgent measures in its Concluding Observations on Belarus (LGBT-inclusive anti-violence strategy and monitoring), Costa Rica (campaigns against hate speech, harassment, bullying and negative portrayal affecting LGBTI children; collect disaggregated data and combat cyberbullying and harassment against LGBTI children), Hungary (national LGBTI-inclusive anti-violence strategy; measures against bullying in schools and support to LGBTI child victims), Poland (SOGI-inclusive anti-discrimination legislation and its implementation; awareness-raising and education on the issues of discrimination, intolerance and hate speech against LGBTI children), Switzerland (policies and awareness-raising to address discrimination against LGBTI children), and Tunisia (awareness-raising to end the stigmatization of LGBTI children).

In addition, in 2020-2021, CRC continued to recall its previous recommendations to States when calling for measures to end discrimination against LGBTI children.173

Although CRC does not have a formal follow-up procedure, the Committee has previously identified recommendations in Concluding Observations as urgent, with action to be taken immediately. LGBTI advocates are also encouraged to review the State’s previous recommendations so that this can be flagged to the Committee in the following country review.

Sex Work and HIV/AIDS

The CRC does not use the term ‘sex work’ in the context of children, instead referring to ‘child prostitution’. There were no references made to ‘child prostitution’ in 2020-2021.

References to HIV/AIDS that were not SOGIESC-related were made in the Concluding Observations on Belarus (paras 15 and 34) and Eswatini (paras 26-27), the List of Issues for Zambia (para 9) and the Lists of Issues Prior to Reporting for Fiji (para 12) and South Africa (para 12).

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173 See Concluding Observations on Costa Rica, Hungary, Poland and Tunisia.
5. Committee against Torture

General information 2020-2021

In 2020, CAT was due to hold two sessions, however due to COVID-19 these sessions were cancelled. Consequently, no State party reports were reviewed and no Concluding Observations published (see Figure 36). In previous years, the Committee has made SOGIESC-inclusive references in 38% (2014), 53% (2015), 39% (2016), 35% (2017), 44% (2018) and 31% (2019) of Concluding Observations and on average eight SOGIESC-inclusive references in total per year.

CAT adopted SOGIESC-inclusive questions in the Lists of Issues/Lists of Issues Prior to Reporting for ten out of 18 States, equating to 56%. The total number of SOGIESC-inclusive references in the Committee’s questions was 11, with Italy’s List of Issues Prior to Reporting containing two references.

![Figure 36. SOGIESC-inclusive Concluding Observations: CAT (2014-2021)](image)

In 2021, the Committee held three sessions, with two of them being online. Normal practice for the Committee did resume in 2021 and it was able to adopt Concluding Observations on seven States. Of these, SOGIESC-inclusive Concluding Observations were adopted in four (Bolivia, Kyrgyzstan, Nigeria and Serbia). The number of SOGIESC-inclusive references totalled seven, an increase on 2017 and 2019 but falling short of the nine reached in 2018, ten in 2016 and 11 in 2015 (see Figure 36). Similarly to other Committees, the number of reviews conducted by CAT remained low in 2021 comparatively to other years. As such, there is a higher number of SOGIESC-inclusive references relative to Concluding Observations.

In 2021, the Committee formulated SOGESC-inclusive questions in its Lists of Issues Prior to Reporting for ten out of 12 States, equating to 83%. The total number of SOGIESC-inclusive references in the Committee’s questions was 21, with Canada, Czechia, Guatemala, Netherlands, Norway, Peru, Russian Federation and Senegal all receiving two or more references.
In 2021, two States (Bolivia and Nigeria) received their first recommendations on SOGIESC from CAT. For Nigeria, this was the first ever country review by this Committee. Kyrgyzstan and Serbia had previously received a recommendation from CAT in 2013 and 2015 respectively. \(^{174}\) Ireland has also received a SOGIESC-inclusive recommendation in 2014 but did not receive one from the Committee in 2021. \(^{175}\)

Of the four States that received SOGIESC-inclusive references, three also previously received SOGIESC-related questions from the Committee in the Lists of Issues/Lists of Issues Prior to Reporting (Bolivia, Kyrgyzstan and Serbia).

In 2021, CAT received 15 CSO reports mentioning SOGIESC on 11 States. \(^{176}\) Five States (Bolivia, Kyrgyzstan, Nigeria, Serbia and Sweden) were being reviewed by the Committee with Concluding Observations following. Six States were receiving the Lists of Issues/Lists of Issues Prior to Reporting from the Committee. It is important to note that, with the exception of Sweden, States that submitted CSO reports on SOGIESC received SOGIESC-inclusive recommendations in their Concluding Observations. Belgium and Lithuania did not receive any CSO reports and did not receive any SOGIESC recommendations. For Kyrgyzstan, a stand-alone report on LGBTI was submitted; and Kyrgyzstan received the highest number of recommendations. Furthermore, stand-alone CSO reports were submitted for the Lists of Issues/Lists of Issues Prior to Reporting for Czechia, Netherlands and Russian Federation; for each of these, the Committee formulated two or more SOGIESC questions.

As with other years, the Committee does not seem to address SOGIESC issues unless they are raised by defenders and, ideally, included in the Lists of Issues/Lists of Issues Prior to Reporting. LGBTI advocates who would like to engage with the Committee can think about how to raise awareness of SOGIESC.


\(^{175}\) See Concluding Observations on Sweden, 12 December 2014, CAT/C/SWE/CO/6-7.

\(^{176}\) Belarus, Bolivia, Canada, Czechia, Guatemala, Kyrgyzstan, Netherlands, Nigeria, Russian Federation, Serbia and Sweden.
issues, perhaps by submitting stand-alone reports that detail the situation for LGBTI people in their country.

Themes 2020-2021

As in previous years, the Committee addressed a myriad of issues affecting LGBTI people. In most instances, the Committee addressed the need for protocols to be in place to meet the needs of LGBTI people in detention. In particular, the Committee requested information on measures to ensure LGBTI people in detention were treated in accordance with international standards and without discrimination.

The Committee also condemned the allegations of torture and ill-treatment by law enforcement against LGBTI people. In the Concluding Observations on Kyrgyzstan, the Committee urged the prompt investigation of such allegations. In the List of Issues Prior to Reporting on Bulgaria, the Committee requested information on steps taken to ensure such abuse is properly investigated. The Committee also asked for information on steps taken to prevent attacks from law enforcement in the List of Issues Prior to Reporting for Peru. For the List of Issues Prior to Reporting for Senegal, the Committee noted the violent arrests of LGBTI people and measures taken to protect people. In the Concluding Observations on Nigeria, the Committee also expressed concern about the use of legislation by law enforcement to arbitrarily detain and assault LGBTI people. It urged the State to stop and investigate these instances.

In some cases, the Committee requested information on steps taken to combat violence and hate crimes against LGBTI people. The Committee also asked State parties to provide statistical data on hate crimes, violence and ill-treatment committed against LGBTI people.

In three Lists of Issues Prior to Reporting (Guatemala, Netherlands and Norway), the Committee asked for information on measures taken to prohibit so-called ‘conversion therapy’.

In the List of Issues Prior to Reporting for the Netherlands, the Committee also focused on the experiences of LGBTI asylum seekers, requesting information on mechanisms in place for reporting ill-treatment in detention and asylum centres.

In the Concluding Observations on Nigeria, the Committee stated it was distressed by reports of capital punishment being imposed for sexual relations between same-sex persons. The Committee urged the State to commute all death sentences to prison sentences, to declare a moratorium on the death penalty for all crimes and to consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

LGBTI defenders can use CAT as a way to platform issues such as hate crime, police violence and the situation of LGBTI persons in detention. Additionally, advocates can raise topics in relation to the

177 See Concluding Observations on Bolivia. See Lists of Issues on Bolivia, Nicaragua. See Lists of Issues Prior to Reporting on Canada, Chile, Czechia, Guatemala, Netherlands, Norway, Panama, Paraguay, Peru, Russian Federation, Saudi Arabia and Senegal.
178 See Lists of Issues on Nicaragua and Lists of Issues Prior to Reporting on Paraguay.
treatment of asylum seekers in detention and by law enforcement. This can also include the principle of non-refoulement, as addressed in the Individual Communications below.

LGBTI defenders can also broaden the scope of topics by considering torture and ill-treatment in healthcare settings, such as psychiatric facilities. Domestic abuse against LGBTI persons can also be flagged to the Committee. So-called ‘conversion therapy’ was referenced in the Lists of Issues/Lists of Issues Prior to Reporting for Guatemala, Netherlands and Norway and defenders from these States can submit further evidence for the country review. Likewise, defenders from other States can raise awareness of such practices in their own State.

Criminalization 2020-2021

In 2020-21, the Committee adopted Concluding Observations on only one country that criminalizes consensual same-sex sexual relations, Nigeria. Nigeria received two recommendations that were SOGIESC-inclusive. The Committee urged the State to stop the use of capital punishment for sexual relations between same-sex persons but did not explicitly call for the repeal of criminalizing provisions in the Criminal Code Act. A CSO report referencing SOGIESC was submitted for Nigeria, however it did not specifically mention criminalization.181

Lists of Issues/Lists of Issues Prior to Reporting included questions on criminalization and steps taken to amend or repeal criminalizing legislation. In 2020, two criminalizing States received Lists of Issues/Lists of Issues Prior to Reporting.182 In the List of Issues Prior to Reporting on Cameroon, the Committee addressed the issue in detail, requesting the state to provide information on allegations of torture, ill-treatment, including anal examinations by police against LGBTI people, and so-called ‘corrective rape’ by private individuals. The Committee asked the state on whether, in light of this, it was considering repealing criminalizing provisions.

In 2021, two criminalizing States received Lists of Issues Prior to Reporting.183 The Committee questioned Senegal on whether there was consideration of the repeal of criminalizing provision 319 of the Criminal Code. The Committee did not address criminalization in the List of Issues Prior to Reporting on Saudi Arabia, and focused on measures to protect LGBTI people in detention in this country.

CAT is an important forum for defenders to highlight criminalization of same-sex sexual acts in their countries, and to contextualize the impact criminalization has on LGBTI communities. This can include practices relating to anal and vaginal examinations, ‘corrective rape’, hate crime, detention and deportation.

Defenders are recommended to submit a report on these issues as this seems imperative for the Committee to make recommendations on such topics.

182 Cameroon and Iraq.
183 Saudi Arabia and Senegal.
Gender Identity and Gender Expression 2020-2021

In 2021, CAT made trans references and/or references to gender identity in six out of seven SOGIESC-inclusive references in its Concluding Observations. This amounted to 86% of SOGIESC inclusive references of the Committee- the achievement only outdone by 100% in 2017 (see Figure 38).

The six trans-inclusive references of the Committee made in 2021 marks an increase from the five references made in 2019, but falls below the seven made in 2018. Regrettably, there were no trans-specific references made in Concluding Observations in 2021 (see Figure 37). However, it is important to note that there were only seven States reviewed by the Committee, less than half the number of previous years (2019-16, 2018-16, 2017-17, 2016-18, 2015-19, 2014-16).

Figure 37. GIGE references, CAT Concluding Observations (2014-2021)

Figure 38. Percentage of trans-inclusive and trans-specific references in CAT Concluding Observations (2014-2021)
In Lists of Issues/Lists of Issues Prior to Reporting there was one trans-specific reference in 2020 (Nicaragua) and one in 2021 (Czechia). In the List of Issues for Nicaragua, the Committee noted the degrading treatment of trans women in prison, including being held in the same cells as men and during strip searches. The Committee followed with a question to the State party on what measures are being taken to ensure that LGBT people in detention are treated in accordance with international standards and without discrimination. In the List of Issues Prior to Reporting for Czechia, the Committee asked the State party to inform on legislative measures adopted or planned to repeal article 29 (1) of the Civil Code, which provides for the requirement of compulsory surgery and sterilization for transgender persons who wish to obtain legal recognition of their gender.

There were two CSO reports on SOGIESC that specifically mentioned the experiences of transgender people. One report on the Russian Federation, highlighted in torture and ill-treatment of transgender people in institutionalized settings. However, there were no trans-specific references in the List of Issues Prior to Reporting for Russian Federation. Another stand-alone report on Czechia included information on forced medical treatment and sterilization of transgender people. The Committee formulated a question on this topic in the List of Issues Prior to Reporting for Czechia.

At the same time, a submission focused on experiences of trans people in Sweden, and even personal participation of representatives of civil society in the CAT session, did not lead to any questions on the topic to the State party, nor to any recommendations in the Concluding Observations.

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**CAT has previously addressed violence faced by trans women and the treatment of trans women in detention. It has also focused on the criminalization of certain gender expression and gender identity.**

*Advocates can aim at the Committee’s broader understanding of trans experiences, and can raise issues in regard to hate crime, the murder of trans persons, so-called ‘conversion therapy’ and medical misconduct, including forced sterilization as a requirement for LGR, experimental treatment and failure to enable access to healthcare.*

*At the same time, LGBTI, and particularly trans and intersex group may consider organizing a thematic briefing with the Committee to make sure that human rights issues they are working on are adequately addressed in the CAT practice.*

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**Sex Characteristics 2020-2021**

In 2021, CAT made intersex-inclusive references in three out of seven SOGIESC-inclusive references in its Concluding Observations. The three intersex-inclusive references made in 2021 are consistent with those made in 2019 however fall below the six made in 2018 (see Figure 39). Regrettably, there were also no intersex-specific references made in Concluding Observations. As noted above, there were far fewer reviews conducted in 2021.

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In Lists of Issues/Lists of Issues Prior to Reporting, there were four intersex-specific references in 2021 for Canada, Netherlands, Norway and Russian Federation. All of the Lists of Issues/Lists of Issues Prior to Reporting referred to measures taken by the States to ensure that no intersex children are subjected to non-medical, unnecessary medical or surgical procedures. In the List of Issues Prior to Reporting for the Netherlands, the Committee requested that the State indicate what criminal or civil remedies are available against the physical or mental pain and suffering that so-called ‘conversion therapies’ or intersex genital mutilation can inflict.

A stand-alone CSO report on the situation of intersex persons was submitted on Russian Federation, and a question on measures taken to prevent unnecessary medical or surgical procedures on intersex persons was formulated by the Committee. Similarly, a CSO report on the Netherlands mentioned the situation for intersex children, and this was included in the List of Issues Prior to Reporting for the Netherlands.
Considering previous recommendations by CAT, intersex advocates are encouraged to engage with this Committee. Activists can consider whether other issues impacting intersex people can be raised with the Committee, for example hate crime or detention situations. It is important to stress that these problems are relevant to intersex people as well as LGBT people, and also that the experiences of intersex people are different.

Women

In 2020-2021, CAT made no specific references to LB/TI women in its Concluding Observations. One reference was made to trans women in the List of Issues for Nicaragua, as noted above. This followed a submission from CSOs with a reference to the treatment of trans women in prison.\(^{185}\)

There were no stand-alone reports on LB/TI women from CSOs. In one instance, a report on Nigeria highlighted gender-based violence and rape of women and LGBT persons.\(^{186}\)

Defenders are encouraged to provide in-depth explanations and information on the experiences of LB/TI women and how they differ from other groups in the community. Highlighting the importance of an intersectional approach is essential to ensuring development of this topic with the Committee.

Advocates can raise issues such as so-called ‘corrective rape’, honor violence, forced marriage, violence against trans women and LBT women in detention with this Committee.

Individual Communications

Under Article 22 of the Convention Against Torture, a State can recognize the competence of the Committee to consider Individual Communications from or on behalf of individuals who have been subjected to a violation under the Convention.

Defenders can see if their country has ratified the Optional Protocol here. Information and guidance on submitting Individual Communications and the process can be found here.

Overall, CAT made no decisions in 2020 but made 99 decisions in 2021 on 19 States.\(^ {187}\) In this period, the Committee made two decisions that referenced SOGIESC topics. One of the cases was brought

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\(^{187}\) The decision on HT v Switzerland was made on 30 December 2020, but the decision was published in the 70th Session in 2021, on 15 January 2021.
against Switzerland, and the second against Denmark. In both cases, the authors were challenging deportation and raising the principle of non-refoulement (Article 3 of the CAT).

The case against Switzerland was found to be inadmissible as, having failed to pay application fees for a domestic review of the decision made against her, the author had shown a lack of due diligence to see the review process through to its conclusion. The case against Denmark was found to be admissible, however no violation was found with the Committee finding that the author (a lesbian woman) had not adequately demonstrated the existence of substantial grounds for believing that her return to Uganda would expose her to a real, foreseeable and person risk of torture contrary to Article 3.

The majority of Individual Communications reviewed by the Committee are on the topic of non-refoulement and LGBT asylum seekers/refugees. However, there are a range of issues, previously raised in Concluding Observations, that can be explored in Individual Communications including hate crime, ill-treatment by State or non-State actors and ill-treatment in detention facilities.

General Comments

CAT did not issue any General Comments in 2020-2021.

CAT has already addressed a number of SOGIESC issues in country reviews and Individual Communications, and defenders are encouraged to input to any upcoming General Comment consultations to ensure the inclusion of the LGBTI community.

Follow-up Procedure

In 2021, CAT selected a SOGI-inclusive recommendation for Kyrgyzstan only (State report due by 3 December 2022). This recommendation was regarding investigations into allegations of torture and ill-treatment by law enforcement officials on LGBT people.

CAT continues to select SOGIESC recommendations for its follow-up procedure and defenders are encouraged to propose SOGIESC topics for this process. For more information on CAT’s follow-up procedure see here.

Sex Work and HIV/AIDS

CAT did not issue any references to sex work or HIV/AIDS in 2020-2021.

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188 HT v Switzerland, communication No. 888/2018, decision of 30 December 2020; HS v Denmark, communication No. 792/2016, decision of 19 July 2021.

189 Para 5.5.

190 Para 8.15.
6. Committee on the Rights of Persons with Disabilities

General information 2020-2021

In 2020, due to the COVID-19 pandemic, no State party reports were reviewed by CRPD and no Concluding Observations published. In previous years, the Committee had made SOGIESC-inclusive references in 7% (2015), 43% (2016), 36% (2017), 29% (2018), 33% (2019) of Concluding Observations and on average 7 SOGIESC-inclusive references in total per year (see Figure 41).

In 2020, CRPD adopted SOGIESC-inclusive questions in the Lists of Issues/Lists of Issues Prior to Reporting for five out of 18 States, equating to 28%. The total number of SOGIESC-inclusive references in the Committee’s questions was eight with the highest being three for Georgia and two for China (Hong Kong).

In 2021, CRPD reviewed a limited number of States, Estonia, Djibouti and France. Of these, the Committee adopted SOGIESC-inclusive Concluding Observations on Estonia and France, with a total of seven SOGIESC-inclusive references (see Figure 41).

There were no Lists of Issues/Lists of Issues Prior to Reporting formulated in 2021.

Table 11. CRPD country reviews, 2021

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191 There were no SOGIESC-inclusive references in 2014.
In 2021, the Committee adopted the first ever Concluding Observations on Estonia and France, and in them the States received their first recommendations on SOGIESC.

France was the only country to receive SOGIESC-inclusive references in the List of Issues.

Two CSO reports were submitted on Estonia. One report from Estonian Association of the Deaf made reference to the intersection of deafness and LGBT issues.\(^{192}\) The second, from Estonian Chamber of Disabled People referenced weak protection for grounds of disability and sexual orientation under the Equality Treatment Act.\(^{193}\)

The COVID-19 pandemic significantly impacted the work of CRPD following the progress made on LGBTI issues in 2019. However, in 2021, CRPD made SOGIESC-inclusive references in two out of three Concluding Observations demonstrating that the Committee is still open to making recommendations on LGBTI issues.

Therefore, defenders working on SOGIESC issues are encouraged to continue engage with this Committee. Stand-alone submissions on SOGIESC serve as a powerful tool to advocate for the inclusion of LGBTI issues with other Committees and the CRPD could be receptive to more detailed and specific information.

### Themes

As with previous years, the main theme addressed by the Committee in 2020-2021 was tackling intersectional discrimination. The Committee mentioned measures, including legislation, to address multiple and intersectional discrimination against LGBTI persons with disabilities in the Lists of Issues for Georgia and China (Hong Kong) as well as the Concluding Observations on France.

The Committee also addressed developing systems and procedures for statistical data collection on the situation of persons with disabilities, with data also being disaggregated by SOGI.\(^{194}\)

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\(^{194}\) See List of Issues for Georgia. See Concluding Observations on Estonia and France.
In the List of Issues for Kazakhstan, the Committee requested information on measures taken to protect persons with disabilities, including LGBTQI+ persons with disabilities, from domestic and gender-based violence.

In the Concluding Observations on Estonia, the Committee urged the State to strengthen mechanisms for involving persons with disabilities in public decision making, including the sustainable development goals, and ensuring meaningful consultations with amongst others, intersex persons with disabilities and LGBT and gender diverse persons with disabilities.

In the Concluding Observations on France, the Committee called on the State to ensure meaningful and effective support and consultations with diverse organizations of persons with disabilities, including LGBTI persons with disabilities.

CRPD is a promising space for organizations working on intersections between SOGIESC and disabilities. The Committee itself has recommended that States consult with all organizations of persons with disabilities, including organizations working with LGBTI persons with disabilities. CSOs can further develop their engagement with the Committee to ensure that intersectional discrimination is considered in CRPD’s practice. Activists are encouraged to engage with this Committee and to provide in-depth information.

Criminalization 2020-2021

One State that criminalizes same-sex sexual acts, Qatar, received a List of Issues Prior to Reporting from the Committee in 2020-2021. There were no Lists of Issues nor Concluding Observations on criminalizing States. In the List of Issues Prior to Reporting for Qatar the Committee did not reference criminalization, but requested information on measures taken to protect the integrity of LGBTI persons with disabilities.

There were no CSO submissions regarding criminalization in Qatar to the Committee.

CRPD has not yet addressed the issue of criminalization. Defenders can use creative engagement to highlight the effects of criminalization on LGBTI people with disabilities, including the effect of criminalization on mental health.

Gender Identity and Gender Expression 2020-2021

In 2021, CRPD made six trans-inclusive references in its two SOGIESC-inclusive Concluding Observations. Regrettably, there were no stand-alone trans references made in Concluding Observations in 2021. This marks a decrease from 2019 and 2017 however the Committee has frequently neglected to make trans-specific references in its Concluding Observations (see Figure 42 and Figure 43).
In 2020, seven trans-inclusive references were made in the Lists of Issues/Lists of Issues Prior to Reporting for five States. One stand-alone trans reference was in the List of Issues for China (Hong Kong). The Committee requested information on measures taken to ensure the right of persons with disabilities to respect for their physical and mental integrity including protection against forced sterilization and mandatory conversion surgery with respect to transgender and intersex persons with disabilities.

There were no CSO reports specifically referencing GIGE in 2020-2021.
Defenders are encouraged to engage with CRPD on the intersections on GIGE and disability, including on depathologization and ensuring respect for physical and mental integrity, such as the prevention of forced sterilization.

Sex Characteristics 2020-2021

In 2021, the Committee made four intersex-inclusive references out of its seven SOGIESC-inclusive references in Concluding Observations. Of these, two were intersex-specific references (see Figure 44).

Figure 44. Intersex references, CRPD Concluding Observations (2014-2021)

Figure 45. Percentage of intersex-inclusive and intersex-specific references in CRPD Concluding Observations (2014-2021)
In the Concluding Observations on Estonia, the Committee urged the State party to ensure meaningful consultations with the diversity of organizations of persons with disabilities, including intersex persons with disabilities. In the Concluding Observations on France, the Committee called on the State party to prohibit the practice of subjecting intersex persons to medical interventions without their consent.

Additionally, in 2020, intersex-specific questions were also included in the Committee’s List of Issues Prior to Reporting for Chile and List of Issues for China (Hong Kong). In Chile and China’s (Hong Kong) references, the Committee focused on protecting the integrity of the persons and specifically non-urgent, unnecessary medical surgeries on intersex children.

Over the past seven years, CRPD has made significant progress in intersex topics covered, however there is still more development needed. Detailed recommendations from other Treaty Bodies can serve as a reference to strengthen the demands of defenders approaching CRPD. More information is needed from CSOs for the Committee to have a fuller understanding of intersections between intersex persons and disability, and it is crucial that meaningful consultations with organization of intersex persons take place before information is submitted.

Women

CPRD did not issue any references in Concluding Observations nor Lists of Issues/Lists of Issues Prior to Reporting specific to LBTI women in 2020-2021. Civil society did not provide any relevant information on LBTI women.

Advocates are encouraged to engage with the Committee on this issue with in-depth data and information. Article 6 of CPRD, as well as General comment No. 3 on Article 6 – women and girls with disabilities that has explicit references to sexual orientation, gender identity, LBT women and intersex persons, both enshrine a gender sensitive approach and defenders can rely on this when highlighting issues for LB/TI women and other persons with disabilities.

Individual Communications

[The Optional Protocol to CRPD entered into force on 3 May 2008 and there are 100 countries that are State Party to the protocol. A Communication may be submitted by or on behalf of individuals or groups of individuals.]

Information and guidance on submitting Individual Communications and the process can be found here.]

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197 Defenders can see whether their State has ratified here: https://indicators.ohchr.org.
198 Article 2.
CRPD considered fourteen Individual Communications in 2020 (seven) and 2021 (seven), none of which made reference to SOGIESC.

As yet, there have been no Individual Communications on intersections between SOGIESC and disability reviewed by, or submitted to, CRPD. Considering the developed and inclusive understanding of these intersections (and general approach to intersectionality) by this Committee, defenders can contemplate bringing individual cases. Topics may include the impacts of criminalization; discrimination and violence against LGBTI persons with disabilities; depathologization of GIGE; and protecting intersex children from irreversible and unnecessary medical surgery and treatment.

General Comments

In 2020 and 2021 CRPD did not adopt any General Comments.

In 2021 however, the Committee worked on an upcoming General Comment on Article 27: Work and Employment, published a call for submissions and organized a general discussion day. Intersectional aspects covering disability and SOGIESC have been highlighted in several CSO submissions, including a stand-alone submission by ILGA World. 199

CRPD has previously included SOGIESC issues in its General Comments and defenders working on the intersections between SOGIESC and disability are strongly encouraged to input to any new General Comments.

Follow-up Procedure

In 2021, CRPD did not select SOGIESC recommendations for follow-up procedure, nor did it assess progress on any previously made recommendations selected for follow-up.

Defenders planning to submit reports to the Committee, or to partake in sessions, should consider advocating for SOGIESC recommendations to be selected for the follow-up review. Where recommendations are selected, it is important for CSOs to provide the Committee with information on the implementation of that recommendation.

Sex Work and HIV/AIDS

The Committee made no references to sex work nor HIV/AIDS in 2020-2021.

199 Available at: https://ilga.org/downloads/CRPD_Right_Work_March2021.pdf.
7. Committee on the Elimination of Racial Discrimination

General information 2020-2021

In 2020, CERD was due to hold two Sessions, however due to the COVID-19 pandemic, the country reviews in these sessions were postponed and consequently no Concluding Observations were adopted in 2020 (see Figure 46). In previous years, the Committee had made SOGIESC-inclusive references in 10% (2015), 10% (2016), 5% (2017), 14% (2018) and 12% (2019) of Concluding Observations and on average just under two SOGIESC-inclusive references in total per year (1.8).

There were two Lists of Issues Prior to Reporting formulated by the Committee in 2020 (Guyana and Monaco). Neither of these, however, contained SOGIESC-inclusive questions.

![Figure 46. SOGIESC-inclusive Concluding Observations: CERD (2014-2021)](image)

In 2021, CERD made SOGIESC-inclusive references in Concluding Observations in three out of eight States reviewed (Belgium, Netherlands and Thailand). The number of SOGIESC inclusive references made by the Committee was three, an increase on 2019 and the same as 2018 and 2015 (see Figure 46). Similarly to other Committees, the number of reviews conducted by CERD remained low in 2021 comparatively to other years. As such, there is a higher number of SOGIESC-inclusive references relative to Concluding Observations.

In 2021, CERD formulated seven Lists of Issues Prior to Reporting, however none of these contained SOGIESC-inclusive questions.

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200 No references were made in 2014.
In 2021, two States (Belgium and Thailand) received their first recommendations on SOGIESC from CERD. The Netherlands had previously received three SOGIESC-inclusive recommendations from this Committee- in its Concluding Observations in 2015.

For the States that received SOGIESC-inclusive references in their Concluding Observations, none received SOGIESC-inclusive questions from the Committee in the Lists of Themes.

There were CSO submissions for the postponed 2020 Sessions reviewing Netherlands, Switzerland and Thailand. None of these were stand-alone LGBTI reports, but did make reference to LGBTI issues.

In 2021, CERD received eight CSO reports mentioning SOGIESC on five States. Reports were received for the country reviews of Belgium, Denmark, Netherlands, Switzerland and Thailand. All of these States received SOGIESC recommendations with the exception of Switzerland. For the review of Thailand, CSO representatives, including those addressing LGBTI issues, went to Geneva to engage with the Committee members.

LGBTI advocates are encouraged to engage with CERD and to provide information on the link between SOGIESC issues and racial discrimination. CSOs may want to collaborate to field submissions that include chapters devoted to LGBTI issues in the context of racial discrimination.

**Themes 2020-2021**

CERD addressed different themes in each of the three SOGIESC-inclusive Concluding Observations. In its review of Belgium, the Committee expressed concern about the situation of people of African descent and racial discrimination they face in areas of employment, housing and education as well as facing multiple discrimination based on their sexual orientation and/or other parts of their identity. The
Committee recommended the State party to take effective measures to combat all forms of discrimination.

In the Concluding Observations on Netherlands, the Committee noted that stereotyping may occur whilst assessing asylum claims based on sexual orientation. The Committee called on the State party to engage in dialogue with CSOs working with LGBTI asylum seekers to improve the asylum process.

The Committee focused on reports of intersectional and multiple forms of discrimination faced by LGBTI persons belonging to ethnic and ethno-religious groups in its Concluding Observations on Thailand. The Committee recommended taking all necessary measures to tackle such discrimination, including legislative and policy ones.

Whilst there is not a large number of LGBTI recommendations made by CERD, defenders can strengthen claims by relying on recommendations and statements made by other Treaty Bodies and international mechanisms, such as the UN Special Procedures.

The definition of ‘racial discrimination’ in ICERD is broad, and explicitly covers five grounds of discrimination: race, color, descent (including social stratification, such as caste and analogous systems of inherited status), nationality and ethnic origin. The interpretation of the ICERD by the Committee includes groups such as indigenous people, stateless people and non-citizens in this definition. While religion is not included in the grounds for discrimination set out in the ICERD, advocates can apply to the Committee if they are able to draw a clear line between ethnic/national origin and religion.

There are a range of SOGIESC-related topics that defenders can raise with CERD including, discrimination in housing, employment and education; barriers facing specific communities including asylum seekers/refugees, migrant trans sex workers, LBTI women of color, LGBTI people from indigenous communities; raising awareness of multiple discrimination; and, trainings on how to recognize discriminatory practice.

Criminalization 2020-2021

In 2020-2021, CERD reviewed two criminalizing States (Lebanon and Singapore). Regrettably, no SOGIESC-inclusive references were made for these States and there was no mention of criminalization in the Concluding Observations.

The Committee formulated questions on two criminalizing States (Guyana and Maldives). However, no SOGIESC-inclusive references were made and no mention of criminalization in the Lists of Issues Prior to Reporting for either State.

Defenders can consider analysing instances of criminalization through the lens of racial discrimination and contextualizing criminalization to demonstrate how criminalizing provisions are used to target LGBTI people of color. Issues that can be raised with the Committee include the use of criminalizing provisions to extort gay men from ethnic minorities, or the deportation of individuals resulting from being charged under criminalizing provisions. In addition, the problem of criminalization can be presented to the Committee through the lens of colonization and the colonial roots of the criminalizing laws.
Gender Identity and Gender Expression 2020-2021

In 2021, CERD made trans references and/or references to gender identity in two out of three SOGIESC-inclusive references in its Concluding Observations (Netherlands and Thailand) (see Figure 47). There were no stand-alone trans references made in Concluding Observations. There were also no trans-inclusive nor trans-specific references made in Lists of Issues Prior to Reporting in 2020 or 2021.

![Figure 47. GIGE references, CERD Concluding Observations (2014-2021)](image)

Defenders can use CERD to address intersections between trans and gender non-conforming identities and race/ethnicity. CSOs reports can highlight topics such as legal gender recognition for trans migrants and refugees; culturally sensitive and accessible (including language) trans-specific healthcare; the disproportionate level of violence and criminalization against trans people of color; and, the lack of recognition for indigenous/ancestry/cultural gender identities.

Sex Characteristics 2020-2021

In 2021, CERD made intersex-inclusive references in two out of three SOGIESC-inclusive references in its Concluding Observations (Netherlands and Thailand) (see Figure 48). As in other years, there were no intersex-specific references made by the Committee. There were also no intersex-inclusive nor intersex-specific references made in Lists of Issues Prior to Reporting in 2020 or 2021.
Defenders whose work addresses the intersections between race/ethnicity and the experiences of people can highlight these issues to the Committee. This can include how colonial, binary understandings of biological sex impact intersex people.

**Women**

There were no stand-alone references made to LBTI women by CERD in 2020-2021.

Defenders fighting particular barriers faced by LBTI women of color can raise these issues with CERD. This may include the disproportionate level of violence against trans migrant women, trans women of color and lesbian and bisexual women of color. The situation for migrant trans sex workers can also be addressed by this Committee. CERD may also address the colonizing definitions of gender, sexuality and race.

**Individual Communications**

Under Article 14 of CERD, a State can recognize the competence of the Committee to consider Individual Communications from or on behalf of individuals who have been subjected to a violation under the Convention. Defenders can find if their country has accepted the Individual Communications procedure here.

Information and guidance on submitting Individual Communications and the process can be found here.

There were four decisions on Individual Communications made by CERD in 2020 (2) and 2021 (2). However, these decisions did not concern SOGIESC issues.
CERD is yet to review any Individual Communications involving SOGIESC, however defenders are encouraged to raise cases of intersectional discrimination and violence with the Committee. This can include ill-treatment and discrimination by law enforcement of LGBTI people of color; homophobic, lesbophobic, biphobic and transphobic behavior of immigration officers in asylum/refugees detention centers; and, failure to prevent, investigate and prosecute violence against migrant trans sex workers.

General Comments

There was one General Comment adopted by CERD in 2020 on preventing and combatting racial profiling by enforcement officials. There were three references to SOGIESC within the General Comment.

The first reference was in defining and understanding racial profiling; the Committee noted that it is based on grounds of ‘race, colour, descent, national or ethnic origin or their intersection with other relevant grounds, such as religion, sex or gender, sexual orientation and gender identity, disability and age, migration status, or work or other status.’

The second reference concerned recruitment measures to effectively address the underrepresentation of various national or ethnic minority groups and groups experiencing intersecting forms of discrimination, including on the basis of sexual orientation.

The third reference was in regard to artificial intelligence and its role in profiling; the Committee highlighted the potentially discriminatory effects of algorithmic profiling on the basis of race, color, descent, or national or ethnic origin and their intersection with other grounds, including religion, sex and gender, sexual orientation and gender identity, disability, age, migration status and work or other status.

In 2020 CERD adopted its first General Comment including SOGIESC. Defenders can continue to contribute to General Comments to ensure the inclusion of SOGIESC topics.

Follow-up Procedure

In 2021, CERD did not select SOGIESC recommendations for follow-up procedure, nor did it assess progress on any previously made recommendations selected for follow-up.

The Committee has not yet selected a SOGIESC recommendation for follow-up, however this can be a useful tool to provide greater opportunities for CSO’s work on the ground. Defenders are encouraged to

201 General Recommendation No. 36 (2020) on preventing and combatting racial profiling by law enforcement officials.
202 Ibid, paras 13 and 18.
203 Ibid, para 47.
204 Ibid, para 60.
highlight to the Committee recommendations to consider for the follow-up procedure. For more information on CERD’s follow-up procedure see here.

Sex Work and HIV/AIDS

The Committee made no references to sex work nor HIV/AIDS in 2020-2021.
8. Committee on Migrant Workers

General information 2020-2021

CMW was significantly impacted by the COVID-19 pandemic, with only three States receiving Concluding Observations between 2020-2021. From July 2020 to February 2021, CMW had an intersessional period in which it formulated questions for the Lists of Issues/Lists of Issues Prior to Reporting for seven States, however it did not adopt any Concluding Observations in that period. In previous years, the Committee had made SOGIESC-inclusive references in 17% (2014), 0% (2015), 25% (2016), 33% (2017), 0% (2018), and 29% (2019) of Concluding Observations (see Figure 49), and on average two SOGIESC-inclusive references in total per year.

Figure 49. SOGIESC-inclusive Concluding Observations: CMW (2014-2021)

Table 13. CMW country reviews, 2021

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<tr>
<th>COUNTRY</th>
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<th>STAND-ALONE SOGIESC REPORTS</th>
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</table>

In 2021, CMW adopted three Concluding Observations however none of these made references to SOGIESC. In 2021, during the intersessional period, the Committee formulated questions for Lists of Issues/Lists of Issues Prior to Reporting for seven States. Of these, four contained SOGIESC-inclusive


206 Azerbaijan, Chile and Rwanda.
questions (El Salvador, Jamaica, Nigeria and Philippines) equating to 57%. In each List of Issues Prior to Reporting, one SOGIESC-inclusive reference was made.

There were no SOGIESC CSO reports submitted to CWM in 2020-2021.

CMW is yet to adopt detailed and nuanced recommendations and questions on SOGIESC in its Concluding Observations and Lists of Issues/Lists of Issues Prior to Reporting. Equally, there had been a dearth of information submitted from CSOs to help develop the Committee’s understanding and practice. Providing more data to the Committee could help to improve the current situation.

Themes 2020-2021

There were no Concluding Observations that included SOGIESC references, however in the Lists of Issues Prior to Reporting, four States received SOGIESC-inclusive questions. These were all related to anti-discrimination legislation and asked the State to indicate whether national legislation ensured that all migrant workers and family members enjoyed rights under the Convention without discrimination based on, amongst others, SOGI.207

Advocates can highlight the specific challenges LGBTI people from across the globe face when forced to leave their countries of origin, including for purposes of labour migration. LGBTI migrant workers experience discrimination in employment, housing and healthcare; barriers to accessing justice; and there is a lack of disaggregated statistics and data on LGBTI migrant populations. These are all areas that defenders can highlight to the Committee.

Defenders should also be aware of the limitations the wording of the ICMW creates. For instance, the ICMW only provides a narrow definition of family,208 and establishes strict requirements in relation to access to health care.209 These restrictions may impede efforts to develop the Committee’s practice on issues regarding LGBTI families and accessing healthcare for LGBTI people, particularly trans and intersex persons.

Criminalization 2020-2021

In 2020-2021, the State parties receiving Concluding Observations from the Committee were not criminalizing States. Four of the States receiving Lists of Issues/Lists of Issues Prior to Reporting from the Committee were criminalizing States (Jamaica, Morocco, Nigeria and Syrian Arab Republic). Of these, the Committee formulated SOGIESC-inclusive questions for two (Jamaica and Nigeria). However, these questions did not reference criminalization.

207 See List of Issues Prior to Reporting on El Salvador, Jamaica, Nigeria and Philippines.

208 Article 4.

209 Article 28.
CSOs working on decriminalization may want to raise this issue with the Committee, particularly how the effects of criminalization can impact access to employment for LGBTI migrant workers. Defenders can also highlight the need to LGBTI migrant workers to leave their home country because of criminalization.

Gender Identity and Gender Expression/Sex Characteristics 2020-2021

There were no Concluding Observations that included SOGIESC references, much less trans-inclusive or trans-specific references (see Figure 50). In the four SOGIESC-inclusive Lists of Issues Prior to Reporting, all made gender identity inclusive references, but no trans-specific ones.

There were also no intersex-inclusive nor intersex-specific references in either Concluding Observations or Lists of Issues Prior to Reporting (see Figure 51).
Whilst there was very little practice including GIGE from CMW in 2020-2021, the Committee has previously addressed these issues. This practice could be expanded with further engagement from defenders who can outline specific issues faced by trans populations. Defenders could raise issues of disproportionate violence faced by domestic trans workers, labor discrimination, access to healthcare and problems obtaining visas because of incongruency of documents.

Equally, despite no references to intersex issues in 2020-2021, CMW has previously addressed this, and intersex advocates may consider providing information to the Committee on specific challenges faced by the community. This can include documentation problems, access to healthcare for intersex migrant workers, and needing to leave a country because of harmful practices towards intersex persons.

**Women**

As in previous years, CMW did not make any references specific to LBTI women in 2020-2021, including in the Lists of Issues/Lists of Issues Prior to Reporting.

*Similarly to other Committees, CMW consistently uses a gender sensitive approach when addressing the situation for migrant workers. The Committee’s General Comments and Concluding Observations frequently focus on gender-based violence, gender-sensitive healthcare and gender-sensitive programmes. Defenders can reference this practice when raising issues impacting LBTI women, and provide information on the specific challenges they face.*
Individual Communications

Under Article 77 of the ICMW, the Committee has the competence to receive and consider Individual Communications on alleged violations of the ICMW by States parties, provided they have made the necessary declaration under this article. However, the Individual Complaint mechanism will only come into force once ten States parties have made such a declaration. Only Ecuador, El Salvador, Mexico and Uruguay have recognised the competence of CMW under Article 77 of the ICMW.

General Comments

There was one General Comment adopted by CMW in 2021 on migrants’ right to liberty, freedom from arbitrary detention and their connection with other human rights. There were three references to SOGIESC within the General Comment.

The first reference was regarding the non-detention of persons in vulnerable situations. The Committee noted that, ‘States should avoid detaining migrants who have specific needs or who are particularly at risk of exploitation, abuse, gender-based violence, including sexual violence, or other human rights violations... that includes lesbian, gay, bisexual, transgender and intersex persons.’

The second reference highlighted that the LGBTI+ community are highly vulnerable to abuse in immigration centres, in some cases amounting to torture. The Committee reinforced that States have an obligation to prevent, investigate, prosecute and punish any acts of torture or ill-treatment in detention.

The third reference requested that States take into consideration the particular needs of LGBTI+ people when segregating immigration detention between men and women.

Extensive SOGIESC references have been made by CMW in General Comments. Defenders are encouraged to continue engaging with the Committee on future General Comments. Defenders can also raise issues addressed in General Comments in submissions for Concluding Observations and Lists of Issues/Lists of Issues Prior to reporting, including on abuse in immigration centers and non-discrimination.

Follow-up Procedure

In 2021, CMW did not make any SOGIESC recommendations which could be selected for follow-up. It also did not assess progress on any previously made recommendations selected for follow-up.

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211 Ibid, para 46.
212 Ibid, para 71.
213 Ibid, para 85.
CMW has previously selected SOGIESC recommendations and defenders may ask for future recommendations to be selected. If a recommendation is selected, defenders have the opportunity to provide updates on the implementation of that recommendation in their State. For more information on CMW’s follow-up procedure see here.

Sex Work and HIV/AIDS

The Committee made no references to sex work nor HIV/AIDS in 2020-2021.
9. Committee on Enforced Disappearances

General information 2020-2021

In 2020, due to the COVID-19 pandemic, the activities of CED were limited with the Committee only adopting Concluding Observations on Iraq. There were no SOGIESC-inclusive references in the Concluding Observations (see Figure 52). The Committee also formulated Lists of Issues for six States, however none of these contained SOGIESC-inclusive questions.

![Figure 52. SOGIESC-inclusive Concluding Observations: CED (2014-2021)](image)

In 2021, the Committee adopted Concluding Observations on seven States, with SOGIESC-inclusive references being made in five (Brazil, Colombia, France, Mongolia and Panama), the highest number the Committee has ever made. Equally, the number of SOGIESC-inclusive references totaled 12, again being the highest number ever made, with the second highest being five in 2019 (see Figure 52).

In 2021, the Committee formulated four Lists of Issues; however, none of these contained SOGIESC-inclusive questions.

![Table 14. CED country reviews, 2021](image)

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214 Brazil, Czechia, Greece, Mali, Niger and Panama.

215 Costa Rica, Mali, Mauritania and Zambia.
In 2021, four countries (Brazil, France, Mongolia and Panama) received their first recommendations on SOGIESC from CED. For Brazil, Mongolia and Panama, this was the first ever review by CED. Colombia previously received a SOGIESC-inclusive recommendation in 2016.

None of the countries that received SOGIESC-inclusive references in their Concluding Observations had SOGIESC-related questions from the Committee in the Lists of Issues/Lists of Issues Prior to Reporting. The only country to receive SOGIESC-inclusive questions was Spain, however this was not followed by SOGIESC-inclusive recommendations in the Concluding Observations.

There were no SOGIESC-inclusive CSO submissions in 2020 nor 2021.

**Themes 2020-2021**

For all States with SOGIESC-inclusive Concluding Observations, the Committee focused on compensation and reparations for victims of enforced disappearances, which is sensitive to the needs of the victim, including their SOGI. Similar recommendations were made by the Committee in 2016-2019.

The Committee also expanded the scope of SOGIESC themes it addressed. In the Concluding Observations on Colombia, the Committee urged the State to implement protective measures to prevent acts of violence and reprisals against complainants, and these measures should guarantee a differential approach taking into account the person’s SOGI. The Committee also called on Colombia to intensify efforts to search for, locate and free disappeared persons, again adopting a differential approach with regard to LGBTI persons.

The Committee recommended the streamlining of statistical information and data collection systems for registering known disappeared persons in Concluding Observations on Colombia and Panama. The Committee stated that these registers should include the gender identity of the disappeared person.

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See Concluding Observations on Brazil, Colombia, France, Mongolia and Panama).
Criminalization 2020-2021

The Committee adopted Concluding Observations on one criminalizing country in 2020-2021, Iraq. However, no SOGIESC-inclusive references were made.

Gender Identity and Gender Expression/Sex Characteristics 2020-2021

In 2021, CED made trans references and/or references to gender identity in 12 out of 12 SOGIESC-inclusive references in its Concluding Observations. In only two out of 12 SOGIECS-inclusive references did the Committee make intersex-inclusive references (see Figure 53).

The Committee also made its first trans-specific references in 2021. In the Concluding Observations on Colombia and Panama, the Committee called on States to include gender identity when registering a disappeared person (see Figure 53).

There were no intersex-specific references made in 2020-2021 (see Figure 54).
Women

As in previous years, the Committee made no specific references to LB/TI women in 2020-2021.

CED has not included SOGIESC in much of its practice from 2014-2021. However, the ICED is relevant to LGBTI persons, and CSOs have an opportunity to raise many issues with this Committee.

Advocates can address issues such as enforced disappearances of LGBTI persons relating to criminalization and marginalization; socio-economic vulnerability; and, compensations and reparations for family members who have experienced an enforced disappearance. Advocates can also raise the need for a definition of family that recognizes the partners and children of LGBTI victims.

In 2021, CED adopted its first trans-specific references, calling for the inclusion of gender identity when registering a disappeared person. Defenders can submit detailed information on the experiences of trans persons for upcoming country reviews to ensure this practice is repeated.

CED do not frequently receive submissions from CSOs, and this is an opportunity for LGBTI advocates to draw focus to SOGIESC issues and encourage the adoption of SOGIESC questions and recommendations.

Individual Communications and General Comments

CED did not publish any decisions on Individual Communications in 2020-2021. The Committee is yet to adopt any General Comments. The Committee has a forthcoming General Comment on Enforced Disappearances in the context of migration.217

The Committee has demonstrated a willingness to include LGBTI issues in Individual Communications by explicitly requesting information on SOGIESC in its guidance for submitting urgent action. Therefore, defenders working on this issue can consider bringing cases to CED.

The Committee has made a call for submissions on the General Comment on Enforced Disappearances in the context of migration, and CSOs are encouraged to submit information for inclusion in the Comment.

Follow-up Procedure

In 2020-2021, CED selected two SOGI-inclusive recommendations for follow-up procedure. The Committee selected a recommendation on statistical information on, and search for, disappeared persons in Concluding Observations on Colombia (State party report due 7 May 2022). In Concluding Observations on France (State party report due 27 September 2024), the Committee selected a recommendation concerning systems of reparation for victims for the follow-up procedure.

In 2021, the Committee assessed Slovakia’s implementation of a recommendation concerning the right to reparation and compensation for people who have suffered harm as a result of an enforced disappearance. The Committee recommended measures including revisions to domestic legislation to provide for a comprehensive compensation system that was sensitive to the victims’ individual characteristics including SOGI. The Committee reported that the action taken by the State was partially satisfactory and noted information that the Ministry of Justice was evaluating the current compensation scheme and requested an update on the status of the proposal. The Committee requested the additional information by 11 October 2025.

Sex Work and HIV/AIDS

The Committee made no references to sex work nor HIV/AIDS in 2020-2021.
# Annexes

## Annex 1 – List of countries reviewed by Treaty Bodies in 2020-2021

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| CESCER  | 10  | 12   | 11   |
| CMW  | 6    | 5    | 5    |
| CRC  | 21   | 17   | 17   |
| CRPD | 14   | 14   | 16   |
| HRCtee | 20  | 20   | 16   |
| All  | 141  | 131  | 130  |

2018

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| CEDAW | 24  | 22   | 22   |
| CERD | 21   | 17   | 17   |
| CESCER  | 12  | 14   | 14   |
| CMW  | 5    | 5    | 5    |
| CRC  | 17   | 17   | 17   |
| CRPD | 14   | 14   | 14   |
| HRCtee | 16  | 16   | 16   |
| All  | 131  | 138  | 130  |

2019

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