United Nations Treaty Bodies: References to sexual orientation, gender identity, gender expression and sex characteristics

Compilation and Keywords

2020
The seventh edition of *United Nations Treaty Bodies: References to sexual orientation, gender identity, gender expression and sex characteristics* was written and researched by Kseniya Kirichenko, and published by ILGA World. It is copyright-free provided you cite both the author and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World).

This compilation of references with keywords was prepared by Kseniya Kirichenko with research assistance by Maria Ihler and Andrea M. Ayala.


Download the report at www.ilga.org or contact untreaties@ilga.org.

**On the names of countries and territories in this publication**

ILGA World is an organisation with ECOSOC-accredited consultative status at the United Nations and our publications therefore have to follow UN-recommended language on the names of countries and territories. Nothing in an ILGA World publication should be taken as a position made by the organisation on the status of any country or territory. If you have any doubts or queries with regard to this aspect of this publication, please contact ILGA World at info@ilga.org.
## List of Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>FOE/FOAA</td>
<td>freedom of expression / freedom of assembly and association</td>
</tr>
<tr>
<td>GBV</td>
<td>gender-based violence</td>
</tr>
<tr>
<td>GC/GR</td>
<td>general comment / general recommendation</td>
</tr>
<tr>
<td>GSO</td>
<td>gender and sexual orientation</td>
</tr>
<tr>
<td>HIV/AIDS</td>
<td>human immunodeficiency virus infection and acquired immune deficiency syndrome</td>
</tr>
<tr>
<td>HRDs</td>
<td>human rights defenders</td>
</tr>
<tr>
<td>ILGA World</td>
<td>International Lesbian, Gay, Bisexual, Trans and Intersex Association</td>
</tr>
<tr>
<td>L / G / B / T / Q / I</td>
<td>lesbian / gay / bisexual / trans / queer / intersex</td>
</tr>
<tr>
<td>LGR</td>
<td>legal gender recognition</td>
</tr>
<tr>
<td>LOI</td>
<td>list of issues</td>
</tr>
<tr>
<td>LOIPR</td>
<td>list of issues prior to reporting</td>
</tr>
<tr>
<td>PSWG</td>
<td>Pre-sessional working group</td>
</tr>
<tr>
<td>SDGs</td>
<td>Sustainable Development Goals</td>
</tr>
<tr>
<td>SI</td>
<td>sexual identity</td>
</tr>
<tr>
<td>SM</td>
<td>sexual minorities</td>
</tr>
<tr>
<td>SO / GI / E / SC</td>
<td>sexual orientation / gender identity / gender expression / sex characteristics</td>
</tr>
<tr>
<td>SRHR</td>
<td>sexual and reproductive health and rights</td>
</tr>
<tr>
<td>TSM</td>
<td>temporary special measures</td>
</tr>
</tbody>
</table>
# Table of Contents

List of Acronyms ....................................................................................................................... 3

Table of Contents .......................................................................................................................... 4

Keywords ........................................................................................................................................ 8

General Comments ........................................................................................................................ 9

1. Committee on Economic, Social and Cultural Rights ................................................................. 9
   General Comment No. 25 (2020) on science and economic, social, and cultural rights .......... 9

2. Human Rights Committee .......................................................................................................... 10
   General Comment No. 37 (2020) on the right of peaceful assembly (article 21) ..................... 10

3. Committee on the Elimination of Discrimination against Women ........................................... 11
   General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration ......................................................................................................................... 11

4. Committee on the Elimination of Racial Discrimination ......................................................... 12
   General recommendation No. 36 (2020) on preventing and combating racial profiling by law enforcement officials ................................................................................................................. 12

Decisions on Individual Communications .................................................................................. 14

1. Human Rights Committee .......................................................................................................... 14
   A.E. v. Sweden, communication No. 3300/2019, decision of 13 March 2020 ......................... 14
   M.B. v. Canada, communication No. 2957/2017, decision of 13 March 2020 ....................... 28
   M.I. v. Sweden, communication No. 3246/2018, decision of 6 November 2020 ................. 35
   Nikolai Alekseev v. Russian Federation, communication No. 2727/2016, decision of 16 October 2020 .................................................................................................................................................. 41
   Nikolai Alekseev v. Russian Federation, communication No. 2757/2016, decision of 5 November 2020 .................................................................................................................................................. 47

2. Committee on the Elimination of Discrimination against Women ........................................... 54
   O.N. and D.P. v. Russian Federation, communication No. 119/2017, decision of 24 February 2020 .................................................................................................................................................. 54

3. Committee against Torture ......................................................................................................... 65
   H.T. v. Switzerland, communication No. 888/2018, decision of 30 December 2020 .......... 65

List of Issues and Concluding Observations and Follow-Up Assessment .................................. 70

1. Committee on Economic, Social and Cultural Rights ................................................................. 70
   Belgium – Concluding Observations – 67th Session, 26 March 2020, 5th review ..................... 70
   Chile – List of Issues prior to reporting – 66th PSWG, 9 April 2020, 5th review ..................... 71
   Czechia – List of Issues – 66th PSWG, 17 April 2020, 3rd review ........................................... 72
   Democratic Republic of the Congo – List of Issues – 66th PSWG, 31 March 2020, 6th review .. 73
   El Salvador – List of Issues – 67th PSWG, 5 November 2020, 6th review ............................ 74
   Guatemala – List of Issues – 67th PSWG, 9 November 2020, 4th review ............................ 75
   Guinea – Concluding Observations – 67th Session, 30 March 2020, initial review ............. 76
   Tajikistan – List of Issues – 67th PSWG, 4 November 2020, 4th review ............................ 77
   Ukraine – Concluding Observations – 67th Session, 2 April 2020, 7th review ..................... 78
   Uzbekistan – List of Issues – 66th PSWG, 6 April 2020, 3rd review ..................................... 79
<table>
<thead>
<tr>
<th>Country</th>
<th>Issue</th>
<th>Session/Review</th>
</tr>
</thead>
<tbody>
<tr>
<td>Armenia</td>
<td>List of Issues – 129th PSWG, 26 August 2020, 3rd review</td>
<td>2020</td>
</tr>
<tr>
<td>Burkina Faso</td>
<td>List of Issues prior to reporting – 129th PSWG, 1 September 2020, 2nd review</td>
<td>2020</td>
</tr>
<tr>
<td>Cambodia</td>
<td>List of Issues – 129th PSWG, 28 August 2020, 3rd review</td>
<td>2020</td>
</tr>
<tr>
<td>Colombia</td>
<td>Follow-up Assessment – 128th Session, 22 September 2020, 7th review</td>
<td>2020</td>
</tr>
<tr>
<td>Congo</td>
<td>List of Issues prior to reporting – 129th PSWG, 1 September 2020, 3rd review</td>
<td>2020</td>
</tr>
<tr>
<td>Dominica</td>
<td>Concluding Observations – 128th Session, 24 April 2020, initial review</td>
<td>2020</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>List of Issues – 130th Session, 19 January 2021, 2nd review</td>
<td>2021</td>
</tr>
<tr>
<td>Gabon</td>
<td>List of Issues prior to reporting – 129th PSWG, 1 September 2020, 3rd review</td>
<td>2020</td>
</tr>
<tr>
<td>Georgia</td>
<td>List of Issues – 130th Session, 19 January 2021, 5th review</td>
<td>2021</td>
</tr>
<tr>
<td>Guyana</td>
<td>List of Issues prior to reporting – 129th PSWG, 31 August 2020, 3rd review</td>
<td>2020</td>
</tr>
<tr>
<td>Haiti</td>
<td>List of Issues – 128th Session, 6 May 2020, 2nd review</td>
<td>2020</td>
</tr>
<tr>
<td>Honduras</td>
<td>Follow-up Assessment – 130th Session, 22 February 2021, 2nd review</td>
<td>2021</td>
</tr>
<tr>
<td>Hong Kong, China</td>
<td>List of Issues – 129th PSWG, 26 August 2020, 4th review</td>
<td>2020</td>
</tr>
<tr>
<td>Indonesia</td>
<td>List of Issues prior to reporting – 129th PSWG, 2 September 2020, 2nd review</td>
<td>2020</td>
</tr>
<tr>
<td>Iraq</td>
<td>List of Issues – 129th PSWG, 17 August 2020, 6th review</td>
<td>2020</td>
</tr>
<tr>
<td>Ireland</td>
<td>List of Issues – 130th Session, 14 January 2021, 5th review</td>
<td>2021</td>
</tr>
<tr>
<td>Kenya</td>
<td>List of Issues – 128th Session, 1 July 2020, 4th review</td>
<td>2020</td>
</tr>
<tr>
<td>Libya</td>
<td>List of Issues prior to reporting – 130th Session, 15 January 2021, 5th review</td>
<td>2021</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>List of Issues – 130th Session, 11 December 2020, 4th review</td>
<td>2020</td>
</tr>
<tr>
<td>Macao, China</td>
<td>List of Issues – 129th PSWG, 26 August 2020, 2nd review</td>
<td>2020</td>
</tr>
<tr>
<td>Maldives</td>
<td>List of Issues prior to reporting – 130th Session, 2 February 2021, 2nd review</td>
<td>2021</td>
</tr>
<tr>
<td>Mongolia</td>
<td>Follow-up Assessment – 129th Session, 8 September 2020, 6th review</td>
<td>2020</td>
</tr>
<tr>
<td>Montenegro</td>
<td>List of Issues prior to reporting – 128th Session, 6 May 2020, 2nd review</td>
<td>2020</td>
</tr>
<tr>
<td>Panama</td>
<td>List of Issues – 129th PSWG, 20 August 2020, 4th review</td>
<td>2020</td>
</tr>
<tr>
<td>Philippines</td>
<td>List of Issues – 128th Session, 30 June 2020, 5th review</td>
<td>2020</td>
</tr>
<tr>
<td>Portugal</td>
<td>Concluding Observations – 128th Session, 28 April 2020, 5th review</td>
<td>2020</td>
</tr>
<tr>
<td>Qatar</td>
<td>List of Issues – 129th PSWG, 24 August 2020, initial review</td>
<td>2020</td>
</tr>
<tr>
<td>Russian Federation</td>
<td>List of Issues – 129th PSWG, 14 August 2020, 8th review</td>
<td>2020</td>
</tr>
<tr>
<td>Somalia</td>
<td>List of Issues prior to reporting – 128th Session, 5 May 2020, initial review</td>
<td>2021</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>List of Issues – 128th Session, 10 July 2020, 6th review</td>
<td>2020</td>
</tr>
<tr>
<td>Tunisia</td>
<td>Concluding Observations – 128th Session, 24 April 2020, 6th review</td>
<td>2020</td>
</tr>
<tr>
<td>United Kingdom of Great Britain and Northern Ireland</td>
<td>List of Issues prior to reporting – 128th Session, 5 May 2020, 8th review</td>
<td>2020</td>
</tr>
<tr>
<td>Uzbekistan</td>
<td>Concluding Observations – 128th Session, 1 May 2020, 5th review</td>
<td>2020</td>
</tr>
<tr>
<td>Yemen</td>
<td>List of Issues prior to reporting – 130th Session, 22 December 2020, 6th review</td>
<td>2020</td>
</tr>
<tr>
<td>Zambia</td>
<td>List of Issues – 130th Session, 20 January 2021, 4th review</td>
<td>2021</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>List of Issues prior to reporting – 130th Session, 20 January 2021, 2nd review</td>
<td>2021</td>
</tr>
</tbody>
</table>

3. Committee on the Elimination of Discrimination against Women

Azerbaijan | List of Issues – 77th PSWG, 11 March 2020, 6th review | 2020 |
Bolivia     | List of Issues – 78th PSWG, 27 July 2020, 7th review  | 2020 |
Brazil      | List of Issues prior to reporting – 79th PSWG, 17 November 2020, 8th and 9th review | 2020 |
Bulgaria – Concluding Observations – 75th Session, 10 March 2020, 8th review

Chile – Follow-up Assessment – 76th Session, 14 July 2020, 7th review

Egypt – List of issues – 79th PSWG, 17 November 2020, 8th to 10th review

Germany – List of issues prior to reporting – 77th PSWG, 11 March 2020, 9th review

Greece – List of Issues prior to reporting – 79th PSWG, 17 November 2020, 8th review

Japan – List of Issues prior to reporting – 77th PSWG, 11 March 2020, 9th review

Latvia – Concluding Observations – 75th Session, 10 March 2020, 4th to 7th review

Nicaragua – List of Issues – 77th PSWG, 11 March 2020, 7th to 10th review

Pakistan – Concluding Observations – 75th Session, 10 March 2020, 5th review

Peru – List of Issues – 78th PSWG, 27 July 2020, 9th review

Republic of Korea – Follow-up Assessment – 76th Session, 14 July 2020

Republic of Moldova – Concluding Observations – 75th Session, 10 March 2020, 6th review

Russian Federation – List of Issues – 78th PSWG, 27 July 2020, 9th review

Saint Vincent and the Grenadines – List of Issues prior to reporting – 79th PSWG, 17 November 2020, 9th review

Senegal – List of Issues – 77th PSWG, 10 March 2020, 8th review

Slovakia – List of Issues prior to reporting – 78th PSWG, 27 July 2020, 7th review

South Africa – List of Issues – 77th PSWG, 11 March 2020, 5th review

Ukraine – List of issues prior to reporting – 77th PSWG, 11 March 2020, 9th review

Uzbekistan – List of issues – 78th PSWG, 27 July 2020, 6th review

Zimbabwe – Concluding Observations – 75th Session, 10 March 2020, 6th review

4. Committee on the Rights of the Child

Austria – Concluding Observations – 83rd Session, 6 March 2020, 5th and 6th review

Belarus – Concluding Observations – 83rd Session, 28 February 2020, 5th and 6th review

Chile – List of issues prior to reporting – 85th PSWG, 31 March 2020, 6th and 7th review

Cook Islands – Concluding Observations – 84th Extraordinary Session, 2 April 2020, 2nd to 5th review

Costa Rica – Concluding Observations – 83rd Session, 4 March 2020, 5th and 6th review

France – List of issues prior to reporting – 87th PSWG, 8 October 2021, 6th review

Gambia – List of issues prior to reporting – 85th PSWG, 1 April 2020, 4th to 7th review

Greece – List of issues – 85th PSWG, 12 March 2020, 4th to 6th review

Hungary – Concluding Observations – 83rd Session, 3 March 2020, 6th review

Ireland – List of issues prior to reporting – 87th PSWG, 18 November 2020, 5th-6th review

Kiribati – List of Issues – 85th PSWG, 8 April 2020, 2nd to 4th review

Kuwait – List of Issues – 87th PSWG, 17 November 2020, 3rd-6th review

New Zealand – List of issues prior to reporting – On-line PSWG, 21 July 2020, 6th review

Philippines – List of Issues – 87th PSWG, 16 November 2020, 5th-6th review

Sweden – List of issues prior to reporting – On-line PSWG, 23 July 2020, 6th and 7th review

Tuvalu – Concluding Observations – 84th Extraordinary Session, 31 March 2020, 2nd to 5th review

Ukraine – List of issues – 87th PSWG, 17 November 2020, 5th-6th review

Viet Nam – List of issues – 87th PSWG, 17 November 2020, 5th-6th review

Zambia – List of issues – 85th PSWG, 27 March 2020, 5th to 7th review

5. Committee against Torture

Bolivia – List of Issues – 69th Online Session, 5 June 2020, 3rd review
Bosnia and Herzegovina – List of Issues prior to reporting – Cancelled Session due to COVID-19, 23 December 2020, 7th review ................................................................. 171
Botswana – List of Issues prior to reporting – Cancelled Session due to COVID-19, 29 December 2020, initial review .................................................................................. 172
Bulgaria – List of Issues prior to reporting – Cancelled Session due to COVID-19, 29 December 2020, 7th review .................................................................................. 173
Cameroon – List of Issues prior to reporting – Cancelled Session due to COVID-19, 17 December 2020, 6th review .................................................................................. 174
Iraq – List of Issues – Cancelled Session due to COVID-19, 23 December 2020, 2nd review ... 175
Italy – List of Issues prior to reporting – Cancelled Session due to COVID-19, 5 January 2021, 7th review .................................................................................. 176
Nicaragua – List of Issues – Cancelled Session due to COVID-19, 23 December 2020, 2nd review .................................................................................. 176
Panama – List of Issues prior to reporting – 69th Online Session, 11 June 2020, 5th review .... 178
Paraguay – List of Issues prior to reporting – 69th Online Session, 11 June 2020, 8th review .. 179
6. Committee on the Rights of Persons with Disabilities .................................................. 180
Chile – List of Issues prior to reporting – 14th PSWG, 13 October 2020, 2nd to 4th review ...... 180
Georgia – List of Issues – 13th PSWG, 17 April 2020, initial review .................................. 181
Hong Kong, China – List of Issues – 13th PSWG, 21 April 2020, 2nd-3rd review ................. 182
Kazakhstan – List of Issues – 14th PSWG, 14 October 2020, initial review ......................... 183
Qatar – List of Issues prior to reporting – 14th PSWG, 20 October 2020, 2nd to 4th review ..... 184
Keywords

[Designer to add]
General Comments

1. Committee on Economic, Social and Cultural Rights

General Comment No. 25 (2020) on science and economic, social, and cultural rights

Keywords: SOGI; LGBTI; discrimination, measures, TSM

IV. Obligations

A. General Obligations

25. States parties are under an immediate obligation to eliminate all forms of discrimination against individuals and groups in their enjoyment of economic, social and cultural rights. This duty is of particular importance in relation to the right to participate in and to enjoy the benefits of scientific progress and its applications because deep inequalities persist in the enjoyment of this right. 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, sexual orientation and gender identity, race and ethnic identity, disability, poverty and any other relevant status.

B. Special protection for specific groups

28. 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. [...].

C. Special Obligations

Obligation to protect

43. The obligation to protect requires States parties to adopt measures to prevent any person or entity from interfering with the right to participate in and to enjoy the benefits of scientific progress and its applications by, for example, preventing access to knowledge or discriminating on the grounds of gender, sexual orientation or gender identity or other circumstances. [...].

---

1 E/C.12/GC/25.
2. Human Rights Committee

General Comment No. 37 (2020) on the right of peaceful assembly (article 21)

Keywords: SOGI; discrimination, FOE/FOAA

III. Obligation of States parties regarding the right of peaceful assembly

25. 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, colour, 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 challenges in participating in assemblies. Moreover, States have a duty to protect participants from all forms of discriminatory abuse and attacks.

IV. Restrictions on the right of peaceful assembly

46. 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.

---

2 CCPR/C/GC/37.
3. Committee on the Elimination of Discrimination against Women

General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration\(^3\)

Keywords: SOGI; asylum-seekers/refugees, discrimination, women

2. Application of other protection frameworks

88. Recognize that, in specific cases, trafficking in women and girls may be considered gender-related persecution, and that consequently victims or potential victims are informed of and effectively enjoy the right of access to fair, efficient, trauma-informed and clear asylum procedures without discrimination or any preconditions, regardless of country of origin or mode of entry into the State party or their participation in criminal proceedings. 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: No. 1, on gender-related persecution, No. 7, on victims of trafficking and persons at risk of being trafficked, No. 8, on child asylum claims, and No. 9, on sexual orientation and gender identity.

\(^3\) CEDAW/C/GC/38.
4. Committee on the Elimination of Racial Discrimination

General recommendation No. 36 (2020) on preventing and combating racial profiling by law enforcement officials

Keywords: SO, SOGI; discrimination, intersectionality, investigation, law enforcement officials, measures, TSM

IV. Defining and understanding racial profiling

13. There is no universal definition of racial profiling in international human rights law. However, as a persistent phenomenon in all regions of the world, various international and regional human rights bodies and institutions have adopted definitions of racial profiling, which have a number of common elements. Racial profiling is: (a) committed by law enforcement authorities; (b) is not motivated by objective criteria or reasonable justification; (c) 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; (d) is used in specific contexts, such as controlling immigration and combating criminal activity, terrorism or other activities that allegedly violate or may result in the violation of the law.

18. For the purposes of the present general recommendation, racial profiling is understood as it is described in paragraph 72 of the Durban Programme of Action, that is, the practice of police and other law enforcement relying, to any degree, on race, colour, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities or for determining whether an individual is engaged in criminal activity. In this context, racial discrimination often intersects with other grounds, such as religion, sex and gender, sexual orientation and gender identity, disability, age, migration status, and work or other status.

VIII. Recommendations

C. Recruitment Measures

47. States should ensure that law enforcement agencies regularly evaluate recruitment and promotion policies and, if necessary, undertake temporary special measures to effectively address the underrepresentation of various national or ethnic minority groups and of groups experiencing intersecting forms of discrimination based on, inter alia, religion, sex and gender, sexual orientation, disability and age.

G. Artificial intelligence

60. States should ensure that algorithmic profiling systems deployed for law enforcement purposes are designed for transparency, and should allow researchers and civil society to access the code and subject it to scrutiny. There should be continual assessment and monitoring of the human rights impact of those systems throughout their life cycle, and States should take appropriate mitigation measures if risks or harms to human rights are identified. Those processes should examine potential and actual discriminatory effects of algorithmic profiling based on grounds of race, colour, 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.

---

4 CERD/C/GC/36.
Decisions on Individual Communications

1. Human Rights Committee

A.E. v. Sweden, communication No. 3300/2019, decision of 13 March 2020

Keywords: GL, SO; LGBT, LGBTI, SM, T; access to justice, arrest, asylum-seekers/refugees, court, criminalisation (decriminalisation), GC/GR, investigation, legislation, marriage, media, measures, police, punishment, same-sex couples, torture/ill-treatment, violence

Subject matter: Deportation from Sweden to Nigeria (non-refoulement)

Substantive issues: Risk of torture and other cruel, inhuman or degrading treatment or punishment

Articles of the Covenant: 7

Articles of the Optional Protocol: 3 and 5 (2) (b)

Background

1.1 The author of the communication is A.E., a national of Nigeria born on 11 August 1985. His applications for asylum have been denied in the State party and he is facing imminent deportation to Nigeria. The author claims that there is a risk his rights under article 7 of the Covenant would be violated by the State party if he were deported to his country of origin. The Optional Protocol entered into force for Sweden on 23 March 1976. The author is represented by counsel, Malin Dahl.

1.2 The communication was registered on 28 January 2019, with provisional interim measures, in response to which the Swedish Migration Agency decided to stay the enforcement of the author’s expulsion order until further notice. On 26 July 2019, the State party submitted a request to lift interim measures, which the Committee rejected on 31 October 2019.

The facts as presented by the author

2.1 The author identifies as homosexual. On 10 February 2015, he applied for asylum, alleging a risk of persecution by Boko Haram, without claiming any risk relating to his sexual orientation. His initial application for asylum was rejected by the Swedish Migration Agency on 28 January 2016. The appeal of the negative decision was rejected by the Migration Court on 12 May 2016. On 13 July 2016, the Migration Court of Appeal refused leave to appeal and the decision to expel the author became final and non-appealable. On 28 July 2016, the author submitted a second application for asylum based on his sexual orientation. The author stated that because he had grown up in a society where homosexuality was criminalized and strictly taboo, he had experienced almost insurmountable difficulties in talking about the real reason why he had had to leave Nigeria and why he could not return there. He also claimed that revealing his sexual orientation under the circumstances was

associated with shame and guilt. The Migration Agency granted the author’s request for re-examination of his asylum application on 18 October 2016.

2.2 During the re-examination of the case, the author had three interviews with different case officers, providing information about his background, sexual orientation, previous relationships and his life in Sweden. He did not know at that time whether the Nigerian authorities had information about his sexual orientation. On 12 October 2017, the Migration Agency rejected the author’s second application for asylum, considering that the author had not provided information about his situation and sexual orientation in a self-reflecting and coherent manner. The Migration Agency found the author’s statements about his sexual orientation not to be credible because they were vague, undetailed and implausible. Upon appeal, the decision was upheld by the Migration Court on 30 January 2018 and by the Migration Court of Appeal on 7 March 2018.

2.3 After the final decision from the Migration Court of Appeal, the author received new information regarding the difficulties he would allegedly face in Nigeria due to his assumed sexual orientation. He therefore submitted a second application for re-examination of his asylum case in 2018. The application was rejected by the Migration Agency on 18 December 2018. The author asserted that he had participated in an interview with Östersunds-Posten, a Swedish newspaper, on 11 May 2018 about his asylum case, which would mean that he would risk being identified as homosexual in Nigeria, as the article had contained a close-up photograph of his face and several other photographs in which he was identifiable. The article was also available online and remained on the newspaper's website, although accessible to subscribers only. It was therefore easy for anyone, including Nigerian citizens or authorities, to access the information. In addition, he learned at the end of December 2018 that a friend had seen his name and face in a newspaper article published in the Nigerian Observer, stating that he was wanted by the police for homosexual activity and could face 10 to 14 years of imprisonment if convicted. His name and photograph was included in the physical copy of the newspaper article, dated 15 August 2014, about which he had received information only recently and had therefore been unable to submit it earlier.

2.4 Despite the submission of new evidence, the Swedish authorities have not properly examined either the Swedish or the Nigerian newspaper articles. On 10 January 2019, a ruling by the Migration Court confirmed the decision by the Migration Agency not to re-examine the case, stating that the newspaper articles could not change the assessment of the application, while mentioning that the author had never proven nor plausibly demonstrated his identity, and thus could not connect the Swedish newspaper articles to his person. This means that the consequences of the publications have not been considered on the merits, but cannot be brought up again.

2.5 As to his identity, the author admits that he fled Nigeria and entered Sweden with a falsified passport that did not state his real name but had his photograph attached. He has never submitted any documents proving his identity, including his name and date of birth. However, the article in the Nigerian Observer contains both his name, A.E., and his photograph, which, although not of the best quality, still enables his identity to be verified. While this combined information cannot prove nor plausibly demonstrate his identity, the presence of his name as stated to the authorities since his arrival in Sweden, along with a rather large photograph of his face, means that the article is about him and his sexual orientation.

2.6 The author further claims that it is likely that Nigerian authorities would easily identify him from the newspaper article, which contained information originating from them. He argues that in the light of the article, the authorities in Sweden should have re-opened his case and granted him an interview with the Migration Agency. He reiterates that no domestic authority has examined the consequences of the publication of the newspaper article even though the publication of the information in the article would expose him to a risk of further persecution if he were to be returned to Nigeria.
2.7 The author argues that he has exhausted all available domestic remedies in the State party, and that the subject matter of the communication is not being and has not been examined under another procedure of international investigation or settlement.

The complaint

3. The author submits that his forced return to Nigeria would expose him to a real risk of treatment contrary to article 7 of the Covenant due to his sexual orientation. He claims that he fears persecution from individuals who want to impose sharia law and punish or otherwise hurt him; that there is a risk that any individual would report him to the authorities, which would lead to his arrest and imprisonment; and that he also runs a risk of being identified as a homosexual by the police or other State authorities, and of "being punished accordingly".

Additional submission by the author

4.1 On 27 March 2019, the author submitted further information on the alleged risk he would be exposed to if returned to Nigeria, in response to a request from the Committee.

4.2 The author arrived in Sweden on 10 February 2015, and applied for asylum with a false passport under the name Isaac Junior Jumbo. The passport had been bought in Nigeria and smuggled out of the country. The passport was confiscated by the Swedish police and registered as "reported stolen or lost". Having admitted to using a false document, the author was charged with the crime of use of a false document by the Malmö District Court and sentenced on 24 January 2017. He received a suspended sentence and a fine of SKr 2,000. However, when he was being held in custody, the Swedish border police filed an application with the Nigerian embassy for the issuance of an emergency travelling certificate, stating that the author's name was Isaac Junior Jumbo and providing the photograph taken when he first applied for asylum in Sweden. The embassy issued the certificate, valid from 30 January 2019 to 8 February 2019, on unclear grounds, as it does not appear that a background check was made, nor has the application ever been signed or seen by the author. It is not clear how the embassy verified any information or why the certificate was issued. However, the fact remains that the passport of an Isaac Junior Jumbo was reported stolen at the time of the author's arrival in Sweden and determined by the District Court not to be the author's. The issue of the author's identity under the additional alias of Isaac Junior Jumbo is somewhat relevant with respect to the weight of his name being featured in media articles online and otherwise, but does not determine the author's need for protection from irreparable harm should he be returned to Nigeria.

4.3 The author notes that the Migration Agency, the Migration Court and the Migration Court of Appeal found that he had not made plausible his claims that he was homosexual and a member of a group that was subject to persecution in Nigeria. His case was not reopened by the Migration Agency despite his submission on 7 January 2019 of a newspaper article published in the Nigerian Observer, which supported his claims. He was referred to as A.E. (in full) in the article, which also contains a close-up photograph of his face. He argues that should this not be considered as adding to his credibility as a genuine member of the lesbian, gay, bisexual and transgender community, it must be considered as an ascribed sexual orientation, which carries the same risks as a genuine sexual orientation. As his face has been connected to homosexual activity, it is of lesser importance under what name he would be returned to Nigeria. He argues that the authorities in Sweden should have re-opened his case pursuant to the Aliens Act in order to assess the risk he would face because of the publication, shortly before his application was submitted, of the article in Nigeria. He claims that if he had been able to submit the article earlier, in the context of his asylum application based on sexual orientation, it would have likely had a positive impact on the assessment of his credibility and it would have shed a different light on the matter of ascribed sexuality and the risks he faces if returned to Nigeria. The author adds that there is substantial media coverage on him in Swedish newspapers, which mention his sexual orientation and the fact that homosexuality is illegal in Nigeria. A Google search result for A.E. brings
up several newspaper articles clearly identifying him as gay; these are available worldwide through translations, even though they were originally written in Swedish. A large number of close-up photographs of the author’s face are also readily accessible. This confirms how easy it would be to identify the author as an openly homosexual man, a status that, if brought to the attention of Nigerian authorities and society, would render him vulnerable to persecution and sanctions.

4.4 As regards official practices in Nigeria, the author notes that the above-mentioned article in the Nigerian Observer states that he is wanted for sodomy and homosexual acts and that he could be sentenced to imprisonment of 10 to 14 years. He claims that this gives an accurate portrayal of the situation lesbian, gay, bisexual and transgender persons face in Nigeria. He notes that Nigeria implemented the Same Sex Marriage (Prohibition) Act in 2013, which, according to Human Rights Watch, has made a bad situation even worse for the lesbian, gay, bisexual and transgender community in Nigeria. The Act has led to an increase in acts of extortion and violence against members of that community, and imposed restrictions on non-governmental organizations providing essential services to lesbian, gay, bisexual and transgender persons in Nigeria. He further notes that the Finnish Immigration Service has stated that:

Arbitrary arrests of homosexuals and people perceived as being homosexual have increased since the enactment of the Same Sex Marriage Prohibition Bill.

The bill has given Nigeria’s corrupt police, who are infamous for taking advantage of the country’s citizens, more legitimate powers. Compiling a comprehensive list of the people arrested as a result of the new law is impossible. The Nigerian press usually reports on arrests of members of sexual minorities and sometimes also on public trials. The outcomes of these trials, however, are not reported.

The Finnish Immigration Service has also noted that “under sharia law, which is observed in northern Nigeria, sodomy, i.e. sex against the order of nature, is punishable by flogging, imprisonment or death by stoning”. Moreover, the conditions in prison are harsh and the chances of fair trial are low.

4.5 The author claims that he would be at risk of imprisonment if returned to Nigeria, reiterating that a prison sentence of 10 to 14 years is provided for under criminal law. He would also be at risk of harm and persecution by individuals, including members of local communities that operate under sharia law, against which the State would be unable or unwilling to provide protection. He claims that he could be identified as homosexual through several means. Firstly, he maintains that he is genuinely a homosexual man and will continue to live openly as such. Secondly, he can be identified through the article that appeared in the Nigerian Observer, which was published both online and in printed form on 15 August 2014. Thirdly, several articles about him in Swedish can be found online, and have gained such exposure that the risks posed by the Nigerian authorities or individuals must be considered high.

4.6 The author argues that given the fact that the Same Sex Marriage (Prohibition) Act is imposed at the national level, there are no reasonable internal flight alternatives for him. It is possible and common for authorities to arrest someone based merely on an assumption of their sexual orientation. The author was featured in a newspaper as wanted because he is suspected of sodomy, which under all circumstances must be considered to constitute grounds for Nigerian officials or civilians to assume that he is homosexual. Given the severity of the punishments, all the documents and statements should be reviewed on the merits, which the Swedish authorities failed to do when rejecting the author’s request for re-examination without an interview with the Migration Agency.

State party’s observations on admissibility and the merits
5.1 On 26 July 2019, the State party submitted its observations on admissibility and the merits of the communication, and a request to lift the interim measures, as the alleged grounds for international protection had not been sufficiently substantiated and the enforcement of the expulsion order would not cause an irreparable harm to the author. Having noted that the expulsion order would become statute-barred on 13 July 2020, the State party requested that the Committee consider the communication in good time before that date.

5.5 The State party argues that the author failed to substantiate the allegations of a risk of irreparable harm, if removed, and that the communication is inadmissible pursuant to article 3 of the Optional Protocol as manifestly unfounded. It concedes, however, that he has exhausted all available domestic remedies, and that the same matter is not being and has not been examined under another procedure of international investigation or settlement.

5.6 In addition, the State party recalls the Committee’s jurisprudence on article 7 of the Covenant as regards the substantiation of a real and personal risk of irreparable harm as a necessary and foreseeable consequence of the forced return, and the background reports on the situation in Nigeria. While not underestimating the concerns that may legitimately be expressed regarding the human rights situation in Nigeria, the State party holds that the general situation does not in itself suffice to establish that the author’s expulsion would be contrary to article 7 of the Covenant. It also notes that the author has not contested this conclusion by the Swedish migration authorities in his communication to the Committee. The assessment before the Committee must thus focus on the foreseeable consequences of the complainant’s expulsion to Nigeria in the light of his personal circumstances, just like the Swedish migration authorities’ assessments in the present case. Accordingly, the author must show that he would personally face a real risk of being subjected to treatment in violation of article 7 of the Covenant upon his return to Nigeria.

5.7 In the view of the State party, the assessment by the Swedish migration authorities was significantly broader than the matter before the Committee, as the domestic asylum proceedings concerned not only the risk of treatment that would be contrary to article 7 of the Covenant, but also other grounds for asylum and a residence permit, such as a risk of corporal punishment or the death penalty. The Migration Agency held an introductory interview with the author in connection with his asylum application on 10 February 2015. On 25 March 2015, an extensive asylum investigative interview that lasted for almost two hours took place. After the author’s initially claimed grounds for asylum, namely, alleged risks of persecution by Boko Haram, had been investigated and examined by all domestic migration authorities and the decision to expel him had become final and non-appealable, he was granted a new examination of the issue of a residence permit after invoking new grounds for asylum, this time, his sexual orientation. The Agency subsequently held a new asylum investigative interview with the author on 8 December 2016, lasting for three hours and focusing primarily on his need for protection owing to his alleged sexual orientation. On 23 February and 11 April 2017, the Agency held two supplementary investigative interviews with the author, lasting for more than six hours and still focusing on his alleged sexual orientation. The minutes from all the investigative interviews were, during this process, communicated to the author’s public counsel. Furthermore, upon appeal, the Migration Court held an oral hearing with the author in camera on 11 January 2018. The interviews, the investigative interviews and the hearing were all conducted in the presence of a public counsel and with the aid of interpreters whom the author confirmed that he understood well. Through his public counsel, the author was invited to scrutinize and submit written observations on the minutes from the interviews, and to make written submissions and appeals. He therefore had ample opportunities to explain the relevant facts and circumstances in support of his claim and to argue his case, orally as well as in writing, before the Migration Agency and the Migration Court. The State party submits that against this background, it must be considered that the domestic authorities had
sufficient information, together with the facts and documentation in the case, to ensure that they had a solid basis for making a well-informed, transparent and reasonable risk assessment concerning the author’s need for protection in Sweden. It argues that there is no reason to conclude that the national rulings were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a manifest error or denial of justice. Accordingly, the State party holds that considerable weight must be attached to the opinions of the Swedish migration authorities.

5.8 The State party notes that throughout the examinations of the author’s case before the domestic authorities, he was found not to have plausibly demonstrated his identity. He was initially apprehended with a passport issued in a name that was different from the name he later gave and which he uses before the Committee. However, his photograph was attached to the passport and the passport has been assessed as genuine, even though it contained a partly falsified residence permit. The identity stated in the passport was later confirmed by the Nigerian embassy in Sweden. No other documents have been submitted in support of the author’s alleged identity. The State party therefore argues that the author has not plausibly demonstrated his cited identity.

5.9 The State party mentions that during the domestic migration proceedings, the author cited grounds for protection that were different than those that were later presented before the migration authorities and that now form the basis of his communication before the Committee. The author originally stated, before the domestic authorities, that a forced return to Nigeria would put him at risk of being killed by Boko Haram. He stated, inter alia, that one day in July 2014, Boko Haram had attacked a marketplace in his home town and killed both of his parents. He had escaped the attack since he had been at home when it happened. In August 2014, Boko Haram had come back to his home town to search for him. However, he had managed to escape to a friend’s house and had stayed hidden there until January 2015, when he left the country. The State party notes that the domestic authorities considered the author’s initial asylum account to be contradictory and vague and held that he had not plausibly demonstrated that there was a risk in Nigeria that he would face persecution from Boko Haram.

5.10 On 28 July 2016, shortly after his expulsion order became final and non-appealable, the author applied for a residence permit or a new examination of the issue of a residence permit, citing impediments to the enforcement of the expulsion order. In his second asylum application, he claimed that he was homosexual and explained that the reason for not having invoked that circumstance at an earlier stage during the asylum proceedings was that he had been afraid to tell anyone about his sexual orientation. In its decision to grant the complainant a new examination of the request for a residence permit, the Migration Agency noted that it occasionally happened that an applicant invoked sexual orientation or transgender identity or expression as grounds for protection at a late stage in the process, sometimes even at the enforcement stage. The fact that new asylum grounds are cited at a late stage can sometimes lead to the applicant’s credibility being questioned. However, when it comes to sexual orientation or gender identity, it must be taken into account that it can be perceived as shameful, even in liberal societies, and therefore difficult to talk about. In addition, several asylum seekers come from cultures where, inter alia, homosexuality is strictly taboo and criminalized, in some cases even punishable by death. If the applicant can provide an explanation as to why these grounds were not invoked earlier, the account should thus not be considered less credible solely because they are cited late in the process. The State party argues that the Migration Agency made extensive efforts during three more investigative interviews, lasting more than nine hours in total, in the presence of his public counsel, to give the author the opportunity to present his grounds for asylum and describe how his alleged sexual orientation and gender identity had affected him in Nigeria and to describe what he would risk if he were to return there. During this process, the author also made written submissions on three occasions through his public counsel. The author’s case was further assessed by an expert on lesbian, gay, bisexual, transgender and intersex issues who participated in making the final decision.
During the investigative interviews, the author claimed that he had discovered his homosexuality at the age of 13. He allegedly revealed his sexual orientation to a man in Nigeria who brought him to church to pray for salvation. The author further claimed that he had been involved in three long-term relationships with men in Nigeria. One day, the author allegedly had been caught together with another man in the bathroom of a nightclub. The author escaped, but the other man was killed. The author also claimed that his parents were killed after the incident, when a group of people searched for him at his house. He later left Nigeria and travelled to Sweden.

5.11 The Migration Agency, however, considered the author’s account to be strikingly vague, and noted that the author had not been able to provide any in-depth reflections regarding his sexual orientation or to speak about terms such as homosexuality even though he was 32 years old and claimed to have been thinking about his sexuality since he was a teenager. It further noted that the author had first mentioned that he was homosexual two weeks after his expulsion order had become final and non-appealable, even though he claimed to have had three long-term relationships with men in Nigeria while knowing that homosexuality was prohibited there. The Migration Agency considered that his account lacked credibility to such an extent that it could not serve as the basis of a subsequent assessment of his need for protection in Sweden. Upon appeal, the Migration Court held an oral hearing, once again giving the author the opportunity to orally present his cited grounds for protection and to explain any misunderstandings. During the hearing, the author claimed that he had realized he was homosexual when he was 9 years old. The Court noted, inter alia, that the new circumstance contradicted the earlier claim that the author had realized he was homosexual at 13 years of age. The Court upheld the decision of the Migration Agency, noting that, during the hearing before the Court, the author had changed his asylum account in more ways than one. The Court considered that the author’s claims for protection had escalated, had become inconsistent and could not be deemed credible. The author had therefore not plausibly demonstrated that he would be threatened in Nigeria because of his alleged sexual orientation. The decision to reject the application became final and non-appealable on 7 March 2018.

5.12 On 14 December 2018, the author once again applied for a residence permit or a new examination for a residence permit, citing impediments to the enforcement of his expulsion order. He claimed that his sexual orientation was publicly known because an article had been published in a local newspaper in Sweden. He further claimed that there was reason to believe that the Nigerian authorities monitored Nigerian citizens’ activities over the Internet. In its decision of 18 December 2018, the Migration Agency noted, inter alia, that the author had not plausibly demonstrated his identity. He had, furthermore, provided the authorities with a passport stating a name that was different from the one he had used in his application. However, the passport did bear his photograph. Those circumstances alone gave reason to exercise caution when considering the author’s claim about the possibility that the Nigerian authorities could connect him to the article. The Migration Agency held that it was hardly reasonable to believe that an article in a local Swedish paper had been read by or passed on to the Nigerian authorities. Moreover, the author had not substantiated his claim that the article had garnered attention through social media. Against this background, the Migration Agency did not consider the cited circumstances to constitute a lasting impediment to the enforcement of the expulsion order. The decision was appealed to the Migration Court, which rejected the appeal on 10 January 2019 as no reason to deviate from the Migration Agency’s decision had been found. What had emerged regarding the cited newspaper article in the Nigerian Observer did not change that assessment.

5.13 The State party states that while homosexuality is criminalized in Nigeria, the situation is not such that everyone from Nigeria who claims to belong to the lesbian, gay, bisexual, transgender and intersex community is deemed to be in need of international protection. It follows from the Aliens Act that persecution due to sexual orientation can constitute a ground for protection, as reaffirmed by a
Migration Agency legal position paper concerning the method for a forward-looking risk assessment of a need for protection due to sexual orientation, transgender identity or expression. The task of the Migration Agency is not to determine an applicant’s sexual orientation but to assess if an asylum seeker has plausibly demonstrated that he or she belongs to such a group. The Office of the United Nations High Commissioner for Refugees has confirmed that sexual orientation is a fundamental aspect of human identity and that ascertaining an applicant’s lesbian, gay, bisexual, transgender and intersex background is essentially an issue of credibility, which needs to be undertaken in an individualized and sensitive way. The State party also refers to the decision by the European Court of Human Rights in M.K.N. v. Sweden, in which the Court considered that the applicant’s claim concerning the cited homosexual relationship was not credible.

5.14 The State party argues that what is stated in the article published in the Nigerian Observer, submitted by the author, differs from the oral account provided by him before the domestic authorities. For instance, the author claimed before the migration authorities that he had been caught with another man in a nightclub. However, in the article it is stated that the people involved in the incident were apprehended in a hotel. It is further stated in the article that two men were dragged outside the hotel and beaten mercilessly before one man escaped. Later, the escaped man’s parents were killed in their store in a marketplace. Before the domestic authorities, the author did not claim to have been beaten, and he further claimed that his parents had been killed in his house. The State party argues that these inconsistencies raise serious doubts regarding the article’s connection to the author. The State party also pointed out that the paper version of the article submitted by the author is different from the one available on the newspaper’s website. It further notes that the online edition of the article does not contain a photograph of the alleged suspect. The State party argues that this raises questions about the legitimacy of the photograph attached to the paper version of the article. It also notes that contrary to what the author claims, the photograph does not clearly depict him. It also reiterates its argument that the author has not plausibly demonstrated his alleged identity and that he would therefore not be connected to the article by the Nigerian authorities.

5.15 The author has submitted to the Committee a newspaper article from a local Swedish newspaper (Arbetarbladet), which has not previously been cited before the domestic authorities. The newspaper article appears to be based on the author’s account without any prior evaluation of his credibility. The same can be said of the article in the other article from a local Swedish newspaper (Östersund-Posten) submitted by the complainant, which has been presented to the domestic authorities. These articles can consequently be attributed only low probative value. The State party agreed with the domestic authorities’ assessment that the articles were not sufficient to cause the authorities to assume that the articles would constitute a lasting impediment to the enforcement of the expulsion order. Moreover, the migration authorities noted in their decisions and judgements that the complainant had been unable to answer, to any appreciable extent, general questions about his sexual orientation and how it had affected his life. The fact that the complainant waited to present his alleged homosexuality until the decision to expel him had become final and non-appealable is another shortcoming in the credibility of the author’s claims. The author’s explanation for the delay, that he did not dare to tell anyone, is contradicted by his claim that he revealed his sexual orientation to several people in Nigeria, although he knew about the general opinion of homosexuality there and that it was prohibited. The State party does not consider the author’s explanation for not having cited his sexual orientation at an earlier stage to be reasonable or acceptable. In the State party’s view, this casts serious doubts regarding the general credibility and the veracity of the author’s claims.

5.16 The author has failed to demonstrate that the domestic migration authorities did not take into account relevant facts or risk factors in their assessments and has not shown that the authorities’ assessments were arbitrary or amounted to a manifest error or a denial of justice. Consequently, the claims presented to the migration authorities and to the Committee are insufficient to conclude that the
author's expulsion to Nigeria would constitute a violation of the State party's obligations under article 7 of the Covenant.

Author's comments on the State party's observations on admissibility and the merits

6.1 On 21 October 2019, the author submitted comments, requesting that the interim measures remain in place and adding that should he be returned, he should be expelled under his real and cited name, and not under the alias registered by the Swedish authorities. The author acknowledges that the assessment of his asylum interviews has not been clearly arbitrary or amounted to a denial of justice. He notes that after having been granted a retrial, he had three interviews with the Migration Agency. All three were held in English, which is not his mother tongue (Hausa). Although he requested an English interpreter and has not expressed any complaints regarding the translation, he argues that in the assessment of the information he provided, especially when it comes to details, it should be taken into account that he did not express himself in his first language. He also had travelled a long distance for the interviews and was exhausted.

6.2 The author notes that the primary reason for conducting three separate interviews on the re-examination of his case was the poor quality of the first two interviews, as the case officer posed ill-informed and offensive questions regarding the author’s information on his gender identity being fluid or transgender. He argues that his alleged inability to explain his actions and background can be attributed primarily to the case officer’s lack of understanding of transgender identities during the first two interviews and the author’s lack of education, limited vocabulary, and previous life in a society that heavily restricted his living conditions and thoughts. The author maintains that it is incorrect to claim that he had three full-length interviews, adding that his perceived credibility and reliability were influenced by the repetition and confusion as a result of feeling misunderstood and maltreated. The author also questions the influence of having an expert on lesbian, gay, bisexual, transgender and intersex issues involved.

6.3 The author acknowledges that he has not been able to present documents to plausibly demonstrate his cited identity, but claims that the State party does not have grounds to argue that his true identity is that of the man whose passport he used to escape Nigeria. He argues that the State party's assertion that his identity has been confirmed by the Nigerian embassy in Sweden is false. The Nigerian embassy was presented with an application for an emergency travel document, which was submitted by the Swedish police without the author's participation. The Nigerian embassy could not have confirmed his identity with no passport to examine, without having personally met him and without any other investigation presented. It appears as though the Nigerian embassy received the application with the attached photograph of the author and approved it without questioning the contents. The author admits that the information initially provided was incorrect, which is regretful; however, he had fled Nigeria due to persecution after being exposed as homosexual. Having lived a secretive and dangerous life for 20 years in Nigeria has had obvious effects on his expression, which explains why he did not disclose his homosexuality earlier, although he had been living in Sweden for almost a year when the Migration Agency rejected his second application for asylum.

6.4 As concerns the newspaper article in Nigeria, cited in December 2018, the author reasserts that his name is stated both in the physical version of the newspaper as well as online. While he agrees that the content of the physical article differs from the oral account he provided, cross-referencing his name from the online publication to the cited Swedish articles, which feature a full-page photograph of his face, as well as his name and nationality, may lead to a conclusion that the author can easily and strongly be tied to the online article and identified as homosexual. The physical copy of the article in question has not been examined by the Migration Agency or other authorities. The claim that it has been tampered with is therefore unfounded.
6.5 The author claims that the domestic authorities failed to take into account all relevant facts and risk factors in their assessment. The refusal to consider the articles in the Nigerian Observer and in the Swedish newspapers in the context of a retrial or as new circumstances amounts to a denial of justice.

State party’s additional observations

7.1 On 2 December 2019, the State party submitted that the author’s comments of 21 October 2019 did not include any new substantive information. It maintains its initial observations on the facts, admissibility and the merits of the communication. If there were aspects of the author’s submissions that the authorities have not addressed, this should not be interpreted as acceptance of those assertions. Nonetheless, the State party presents some additional clarifications.

7.2 It notes that the author acknowledges that the domestic asylum interviews were not held in a clearly arbitrary way and did not constitute a denial of justice. He admitted that the third asylum investigative interview, which lasted for four hours, was conducted in a respectful manner. He nevertheless contends that the assessment of his case was unfair. Given these statements, the State party holds that the author is clearly trying to use the Committee as an appeals court to have his credibility reassessed. This is, however, not the role of the Committee.

7.3 The author argues that all asylum interviews were held in English, even though his mother tongue is Hausa. The State party notes that the author, in his application for asylum, stated that his mother tongue was English. During the initial asylum interview on 25 March 2015, he declared that his parents spoke English with him and that people who came to the marketplace in Nigeria also spoke English. It is also noted that the Migration Agency repeatedly asked the author, during the asylum investigative interviews, whether he understood what was being said; he confirmed that he did. Moreover, after the author was granted a new examination, the Migration Agency asked twice whether he could speak Hausa. On both occasions, the author maintained that he could not speak Hausa. In that light, the State party questions the entirely new assertion by the author regarding his mother tongues and holds that this appears to be an escalation of the cited circumstances before the Committee.

7.4 In addition to the three asylum interviews conducted by the Migration Agency, the Migration Court held an oral hearing in which the author had the opportunity to account for his newly cited grounds for protection. The State party hence emphasizes that the domestic migration authorities have thoroughly examined the author’s case and all the circumstances cited throughout the investigative interviews. However, the authorities did not consider the author’s claim of belonging to the lesbian, gay, bisexual, transgender and intersex community to be credible. The State party argues that when an author’s grounds for protection have been thoroughly assessed by the State party’s authorities, which have found that the author was not credible, the Committee cannot conclude a violation of article 7 if the author has not identified any irregularities in the decision-making process or any risk factor that the authorities failed to take into account. In this regard, the State party reiterates that the author concedes that the examination of his case was not clearly arbitrary or amounted to a denial of justice.

7.5 As regards the author’s claims that the application for an emergency travel document was written and submitted by the Swedish police without his participation, the State party notes that, while the “emergency travelling certificate” from the Nigerian embassy is not signed by the author, it declares that he stated to the embassy that he was Nigerian, born on 11 August 1985 in Lagos State. The document also states that the embassy had no reason to doubt the author’s statement. Accordingly, the document does not confirm the author’s claim.

7.6 On 12 February 2015, the Swedish border police conducted an examination of the passport submitted by the author, with the help of optic technology, and made comparisons with other original identity documents from Nigeria. The police concluded that the passport, which contained the author’s
photograph, was authentic but noted that the residence permit attached to the passport was partly falsified. This assessment was subsequently communicated to the author.

7.7 Regarding the cited article from the Nigerian Observer, the State party maintains its position that the inconsistencies between the author’s oral account and the information provided in the article raises serious doubts regarding its connection to the author. In this context, the Government also considers it necessary to underline the generally frequent occurrence of fraudulent documents issued in Nigeria. This is evident from, inter alia, reports issued by the Home Office of the United Kingdom of Great Britain and Northern Ireland and by the Immigration and Refugee Board of Canada. In the report of the Home Office (p. 34), the following information can be found: “Benin City is a centre of the engraving industry, and practically any falsified document can be procured there, from birth certificates to diplomas.” In addition to the above-mentioned inconsistencies, there are thus further reasons to question the authenticity of the submitted article.

7.8 The State party also reiterates that the author has not plausibly demonstrated his claimed identity. Accordingly, the article cannot be connected to him personally. Moreover, his claim that the Nigerian authorities monitor their citizens on the Internet and will cross-reference his face and cited name to articles published by local Swedish newspapers is merely speculative, as it is not based on specific facts. In any event, the author’s emergency travel document from the Nigerian embassy is issued in a name that is different than the one appearing in the articles.

7.9 The State party maintains that there is no reason to conclude that the domestic rulings were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice, observing that the author’s account and the facts relied on by him in the communication are insufficient to conclude that the alleged risk of ill-treatment upon his return to Nigeria meets the requirements of being foreseeable, real and personal. Consequently, an enforcement of the expulsion order would not, under the present circumstances, constitute a violation of the State party’s obligations under article 7 of the Covenant.

7.10 Lastly, considering that the decision to expel the author will become statute-barred on 13 July 2020, and that no further correspondence should be necessary, the State party respectfully reiterates its request that the Committee consider the admissibility and merits of the present communication in good time before July 2020, at the latest at its 128th session in March 2020.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being, and has not been, examined under another procedure of international investigation or settlement.

8.3 The Committee further recalls its jurisprudence to the effect that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5 (2) (b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the author. The Committee takes note of the author’s submission that he has exhausted all available domestic remedies, as the last negative decision not to grant the author a residence permit or a new examination was appealed to the Migration Court, which rejected the appeal on 10 January 2019. The Committee also notes that the State party does not contest the fact that all available domestic remedies have
been exhausted in the present case. Accordingly, the Committee considers that in the present case, the requirements of article 5 (2) (b) of the Optional Protocol have been met.

8.4 The Committee, however, observes the State party’s objection to the admissibility of the communication due to a manifest lack of substantiation, pursuant to article 3 of the Optional Protocol, as the author’s assertions of a risk of violation of article 7 of the Covenant, if he were to be removed to Nigeria, failed to attain the basic level of substantiation required for the purpose of admissibility. The Committee considers the author’s claims of a risk of persecution, criminal conviction and an eventual risk to his life, on account of his assumed homosexuality, as sufficiently specific and evidenced in regard to risk factors, sources of persecution and sanctions, and potential errors in the assessment of evidence, including the Swedish and Nigerian newspaper articles, during the domestic asylum proceedings, and therefore adequately substantiated for the purpose of admissibility. The Committee further considers that the inadmissibility argument adduced by the State party is intimately linked to the merits and should thus be considered at that stage. Accordingly, the Committee considers as admissible the author’s claims under article 7 and proceeds to their examination on the merits.

**Consideration of the merits**

9.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, as required under article 5 (1) of the Optional Protocol.

9.2 The Committee notes that the author claims that the State party would violate its obligations under article 7 of the Covenant by forcibly removing him to Nigeria. In this context, the Committee notes that the author submitted two applications for asylum in Sweden, on 10 February 2015 and on 28 July 2016. He first alleged that he faced a risk of being persecuted and killed by Boko Haram. He subsequently changed his account to an alleged risk of persecution or sanction for his assumed homosexuality, which is criminalized in Nigeria – the reason why he did not admit his sexual orientation initially.

9.3 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant. The Committee has also indicated that the risk must be personal and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high. Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author’s country of origin. The Committee further recalls its jurisprudence that considerable weight should be given to the assessment conducted by the State party and that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such a risk exists, unless it is found that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.

9.4 The Committee notes the State party’s argument that following the rejection of the author’s initial asylum application on 28 January 2016, the Migration Agency decided on 18 October 2016 to re-examine his asylum application; that he had three interviews with different case officers whom he informed about his background and sexual orientation, admitting that he did not know at that time whether Nigerian authorities had information about his sexual orientation; and that the Migration Agency rejected the author’s second asylum application on 12 October 2017, considering the author’s statements about his sexual orientation not to be credible as being vague, undetailed and implausible. The second negative decision was upheld by the Migration Court on 30 January 2018, and the Migration Court of Appeal on 7 March 2018. The author submitted a second application for re-examination of his asylum case after he received new information regarding his status in Nigeria; that
application was rejected by the Migration Agency on 18 December 2018, and the negative decision was upheld by the Migration Court on 10 January 2019, which stated that the Swedish and Nigerian newspaper articles could not change the assessment, while mentioning that the author had never proven nor made plausible his identity, and hence could not connect the articles to his person to demonstrate a personal and real risk of irreparable harm due to his sexual orientation. The Committee further notes the State party’s argument that the author fled Nigeria and entered Sweden with a falsified passport, which contained a name that was different than his claimed one but which had his photograph attached, and that the Nigerian embassy confirmed the author’s identity as documented in the passport, which contained a visa page that had been falsified, as determined by the expertise of the Swedish police.

9.5 The Committee notes that the State party has further argued that the Swedish migration authorities have considered two different accounts of alleged risks by the author and re-examined his asylum application twice, having perceived the evolving arguments, including the submission of the newspaper article from the Nigerian Observer only on 7 January 2019, although dated 15 August 2014, as an escalation of claims rather than new circumstances that would merit re-assessment. The Committee further notes the State party’s argument that the author admitted that the assessment of his asylum interviews had not been arbitrary or amounted to a manifest error or denial of justice, and that the evolving statements by the author, such as about the killing of his parents first by Boko Haram and then by a mob in retaliation for his disclosed sexual orientation, have lacked consistency, which together with the disputed identity, has weakened the author’s general credibility.

9.6 The Committee notes the author’s submission that his claims were not properly assessed by State party’s authorities, as he had participated in an interview with Östersunds-Posten, a Swedish newspaper, on 11 May 2018, available online to subscribers, against which he could be identified as homosexual by the Nigerian authorities or individuals since the article contained a close-up photograph of his face and several photographs in which he could be identified. The author has claimed that he could therefore face 10 to 14 years of imprisonment, if convicted. The author further submits that he learned at the end of December 2018 that a friend had seen a newspaper article published in the Nigerian Observer, dated 15 August 2014, containing both his name (A.E.) and his photograph and stating that he is wanted by the police for homosexual activity, and that a physical copy of the newspaper article could not be submitted earlier. The author has claimed that despite the submission of new evidence, the Swedish asylum authorities have not properly examined on the merits either the Swedish or the Nigerian newspaper articles, and that the Migration Court, on 10 January 2019, had confirmed the decision by the Migration Agency of 18 December 2018 not to re-examine the case, which amounted to a denial of justice. The Committee notes the author’s argument that he should have been granted a new interview with the Migration Agency, as the new material gives reason to look more closely at his ascribed sexual orientation, which would expose him to a risk of further persecution if returned to Nigeria.

9.7 The Committee observes in this regard the State party’s assertion that the Migration Agency and the Migration Court have repeatedly exercised both an individualized and an overall assessment of the specific circumstances of the author’s case, taking into account the background information on the situation of lesbian, gay, bisexual, transgender and intersex persons in Nigeria, and found that the author was not facing a personal and real risk that would justify asylum in Sweden, mainly since he did not establish as probable that he was homosexual or convincingly demonstrate his identity and that he would attract the risks under the name cited in the Swedish or the Nigerian newspaper articles. The Committee observes that the newspaper articles were duly assessed by the asylum authorities, which could not establish without a doubt that the photograph in the paper copy of the Nigerian Observer article was that of the author, thus posing a legitimate concern about the genuineness of the article. In addition, it was not established whether the article in the Swedish newspaper related to
the author, and since its online access was limited to paying members, the asylum authorities did not consider that homosexual orientation would be ascribed to the author in his country of origin. The Committee also observes that the migration authorities’ decisions of 18 December 2018 and 10 January 2019 took into account that A.E. did not speak about his sexual orientation until after his expulsion order had entered into legal force. It has affected the credibility of his information negatively, especially in view of the fact that at that time he had been in Sweden for 1.5 years and had had several meetings with the Migration Agency where he had had the opportunity to talk about it. At an overall assessment, the Migration Court found that A.E.’s story had escalated and contained such deficiencies and ambiguities that it did not appear credible. National authorities were of the view that since he was not able to establish as probable that he was homosexual and that if returned to Nigeria he risked persecution due to his sexual orientation, he could not be granted a residence permit or subsidiary protection. The Committee recalls its jurisprudence that an author carries the burden of proof to support the allegations of a personal and real risk of irreparable harm, including the obligation to submit evidence sufficiently in advance of the decisions of the national authorities, unless the information could not have been presented before. The Committee observes that the author’s alleged irregularity in the decision-making process has been characterized by the State party’s authorities as an escalation of his claims. In the circumstances of the present case, the Committee considers that the author’s claims mainly reflect his disagreement with the factual conclusions drawn by the State party’s authorities, and do not demonstrate that these conclusions are arbitrary or manifestly unreasonable or that the proceedings in question amounted to a procedural error or denial of justice.

9.8 In the light of the above, the Committee concludes that the information before it does not demonstrate that the author would face a real and personal risk of treatment contrary to article 7 of the Covenant in the event of his removal to Nigeria.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the removal of the author to Nigeria would not violate his rights under article 7 of the Covenant.
Keywords: SO; B, LGBT, SM; asylum-seekers/refugees, attacks, court, criminalisation (decriminalisation), GC/GR, harassment, health, homophobia, measures, medical/health care, prosecution, remedy, same-sex couples, torture/ill-treatment, violence

Subject matter: Deportation to Guinea

Substantive issues: Cruel, inhuman or degrading treatment or punishment; effective remedy

Articles of the Covenant: 2, 6 and 7

Articles of the Optional Protocol: 2, 3 and 5 (2) (b)

Background

1.1 The author of the communication is M.B., a national of Guinea born in 1982. The author presents himself as being bisexual. He claims that his deportation to Guinea would amount to a violation by the State party of his rights under articles 2, 6, 7, 23, 24 and 27 of the Covenant. Canada acceded to the Optional Protocol on 19 May 1976. The author is represented by counsel.

1.2 On 15 February 2017, pursuant to rule 92 of its rules of procedure (now rule 94), the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to grant the author’s request in relation to interim measures and asked the State party not to deport him to Guinea pending the Committee’s consideration of the communication.

1.3 On 13 September 2017, the State party requested the Committee’s agreement for the interim measures granted in respect of the author to be lifted. On 20 February 2018, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, decided to agree to the State party’s request for the interim measures to be lifted. However, at the time of consideration of the present matter, the author remained in Canada. He had informed the Committee that a new application for humanitarian and compassionate consideration was pending before the Canadian authorities.

The facts as submitted by the author

2.1 The author, whose father is an imam and a member of the Islamic League of Guinea, states that he was raised in the Islamic tradition. He asserts that, in the event of his return to Guinea, he would be at risk of persecution owing to his sexual orientation. The author indicates that, despite his bisexuality and his relationship with another man, his family forced him to marry a woman. In 2012, his wife discovered his relationship with a man and disclosed everything to members of his family. Rumours about his sexual orientation spread within the community, the members of which subjected him to derision and persecution. He was beaten and threatened with death. His store was set on fire.

2.2 The author arrived in Canada in July 2012 and filed an application for asylum with the Canadian authorities. On 14 April 2014, the Refugee Protection Division of the Immigration and Refugee Board of Canada rejected that application because it considered that the author’s testimony was not credible. It found it implausible that the author and his lover had been able to meet each week for
years without attracting the attention of his family and his wife’s family. Furthermore, the State party authorities considered that the author had not satisfactorily explained the letter signed by his lover to prove his bisexuality. In the letter, the author’s alleged lover stated that the author was part of a homosexual group and that people had been informed that a homosexual person was present in his home. In addition, the author had not satisfactorily explained the allegations that he had been beaten and threatened with death because of his sexual orientation.

2.3 Following a workplace accident, the author had the first toe of his right foot amputated on 20 June 2013; this caused various health problems, including chronic pain. The author indicates that he is on strong medication and needs help to move around and carry out his daily household tasks.

2.4 The author lodged an appeal with the Federal Court against the decision of the Refugee Protection Division dated 14 April 2014. His appeal was rejected on 12 September 2014. He filed an initial application for humanitarian and compassionate consideration in August 2014; this was rejected in April 2016. The author also submitted an application for a pre-removal risk assessment, which was rejected on 5 April 2016. In the rejection decision, the immigration officer found that the author had not filed documentation sufficient to substantiate his account of the facts. There was no evidence that the author had been subjected to persecution because of his homosexuality, such as evidence from his lover confirming that they had had a relationship or evidence proving that he had attempted to seek remedy from his country’s authorities in respect of the attack and the death threats against him. As for the author’s claims regarding his health problems, the immigration officer found that the author could not request protection from Canada simply because better health care was unavailable to him in his country of origin. The immigration officer also noted that the author had not presented any evidence to prove that he might be subjected to torture or that his life might be at risk if he were returned to Guinea. The author lodged appeals with the Federal Court against the decision rejecting his application for a pre-removal risk assessment and the decision rejecting his application for humanitarian and compassionate consideration, but the Federal Court rejected both appeals in August 2016. The author also filed a second application for humanitarian and compassionate consideration, on 16 October 2016; that application is still pending.

2.5 The author claims to have exhausted all domestic remedies.

The complaint

3.1 The author claims that, by returning him to Guinea, the State party would be violating his rights under articles 6 and 7 of the Covenant, given that Guinea is known for its lack of respect for the rights of sexual minorities, who are at risk of extrajudicial executions, torture and imprisonment. He submits that same-sex relations are illegal and criminalized in Guinea. The author considers that, because he was previously subjected to violence in his country owing to his sexual orientation, he faces a greater risk of such violence.

3.2 The author also claims a violation of article 2 of the Covenant on the grounds that the State party did not conduct an in-depth assessment of the risk he would face if returned to Guinea. He maintains in this regard that new evidence submitted was never assessed by an appropriate administrative decision maker and that this evidence was presented in his second application for humanitarian and compassionate consideration, which is still pending.

3.3 The author also states that he fears persecution from his family and community. He notes that same-sex relations are taboo in Guinea and that lesbian, gay, bisexual and transgender persons are subjected to harassment, persecution and criminal prosecution.

3.4 Lastly, the author points out that, as his health condition requires intensive and regular monitoring, his return to Guinea, which would also entail a long flight, would put an end to the medical treatment that he is receiving in Canada; that would have serious consequences for his health. The author
furthermore considers that cessation of the treatment he receives in Canada would constitute torture and cruel and unusual treatment, especially in the light of his psychological state, and would place him at risk of suicide.

3.5 The author does not explain why he considers that his return to Guinea would constitute a violation by the State party of articles 23, 24 and 27 of the Covenant.

State party’s observations on admissibility and the merits

[...]

4.2 The State party emphasizes that the author’s claims essentially amount to an attempt to convince the Committee to review and overturn the decisions of the Canadian authorities. In this regard, it recalls that the Committee is not a “fourth instance tribunal”. The State party also submits that the author, in arguing that the decisions of the Canadian authorities violated procedural fairness principles, that he was a victim of clearly arbitrary proceedings and that those proceedings resulted in a denial of justice, is attempting to convince the Committee to evaluate facts, evidence and the credibility of claims made by individuals in proceedings before national authorities. The State party asserts that all competent national decision makers, including the Refugee Protection Division and the officer responsible for his application for humanitarian and compassionate consideration, called into question the evidence submitted by the author to support his claims. It recalls that the Refugee Protection Division emphasized on numerous occasions that the author lacked credibility, that under Canadian law there is no obligation to take account of documentary evidence supporting allegations deemed not to be credible and that, moreover, the Federal Court dismissed the author’s application for leave and judicial review of the decision taken by the Refugee Protection Division.

4.3 The State party submits that the author’s claims based on articles 6 and 7 of the Covenant, regarding his state of health, are incompatible ratione materiae with the Covenant, which does not cover the right to health. The State party asserts that a person’s deportation to a country that is unable to offer health-care services of a quality equivalent to those available in Canada does not give rise to an obligation of non-refoulement under articles 6 and 7 of the Covenant, except in “very exceptional circumstances”, which the author has not been able to establish in the present case. The State party asserts that the author’s deportation to his country of origin does not constitute torture or cruel, inhuman or degrading treatment within the meaning of article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, even if his situation worsens. The State party emphasizes that the officer responsible for the application for humanitarian and compassionate consideration took into account the findings of the Refugee Protection Division that the application lacked credibility, and it points out that the author had not submitted credible evidence capable of overturning the Division’s findings. It adds that the application for leave and judicial review of the Division’s decision was rejected by the Federal Court. The State party emphasizes that the findings of the officer responsible for the application for a pre-removal risk assessment were based on a thorough examination of the facts and the evidence presented by the author, while recalling that, as provided in subparagraph 97 (1) (b) (iv) of the Immigration and Refugee Protection Act, the inability of the author’s country of origin to provide adequate medical care does not constitute a ground for granting him protected person status. The State party stresses that the assessment carried out by the officer responsible for the application for humanitarian and compassionate consideration showed that the author was recovering and that he would be able to continue his treatment in Guinea. The evidence presented by the author was examined by the Canada Border Services Agency, which also rejected it, on 6 February 2017.

4.4 Even if the author’s claims regarding his health were to fall within the scope of articles 6 and 7 of the Covenant, the State party requests that the Committee find them inadmissible, since they are not sufficiently substantiated. First, the author has not been able to demonstrate that treatment for his
The condition is unavailable in Guinea. The asylum authorities found the evidence submitted to support that argument to be not credible. Second, the author has failed to credibly demonstrate that, as he alleges, he would be unable to travel by plane if deported to Guinea. Third, his alleged depression can be treated in Guinea.

4.5 With regard to the author’s bisexuality, the State party maintains that the claims made by the author have not been sufficiently substantiated. It also calls into question the credibility of all the documentation submitted by the author to substantiate those claims. The State party claims that the bailiff’s certified report, prepared in October 2016 based on a telephone conversation, containing the same testimony as was given previously and placed on file in the communication, does not seem to have been submitted to the Canadian authorities. Its late submission damages its credibility. The State party adds that the letters received from the organizations AGIR and Arc-en-ciel d’Afrique, dated 3 February 2017 and 30 January 2017, respectively, do not provide any new information on the basis of which the decisions of the Canadian authorities are likely to be overturned. The State party emphasizes that the author presents himself sometimes as bisexual and sometimes as homosexual and that the information submitted regarding his lover is not credible.

4.6 The State party also indicates that, in assessing the risks in the country of origin, there is no need to examine the human rights situation in Guinea, given that the author’s claims were neither credible nor corroborated by objective evidence. It adds that the risk allegedly faced by the author relates to his family and not to the State and that the author could seek refuge somewhere else rather than staying with his parents after his return to Guinea. Although the State party recognizes that homosexuality is a punishable offence under the Guinean Criminal Code, it stresses that the author did not prove that sexual minorities systematically suffered abuse in Guinea. Moreover, the State party argues that, based on reports of non-governmental organizations, it appears that homosexual persons are not systematically prosecuted in Guinea.

4.7 The State party also submits that the allegations of a violation of article 2 are incompatible with the provisions of the Covenant for the same reasons as the allegations of a violation of article 6. The State party argues that, in the absence of a violation of article 6 of the Covenant, the allegations that article 2 has been violated must be found inadmissible, since article 2 may be invoked only in relation to the violation of another article of the Covenant that confers a right on the author.

4.8 The State party claims that the author has not exhausted all available domestic remedies, given that his application for humanitarian and compassionate consideration is still being processed by the Canadian authorities. It further emphasizes that the author did not submit the bailiff’s report dated 7 October 2016 to the Canadian authorities during his pursuit of domestic remedies and recalls that the Committee has reiterated on several occasions that the author of a communication must have brought a substantive complaint in the domestic courts in respect of any allegation subsequently brought before the Committee. The State party therefore requests the Committee to find the author’s communication inadmissible on the grounds of non-exhaustion of domestic remedies, in accordance with article 5 (2) (b) of the Optional Protocol and rule 96 (f) of the Committee’s rules of procedure (now rule 99 (f)).

4.9 Alternatively, should the Committee declare the communication admissible, the State party requests the Committee to find it to be without merit for the reasons set out above.

Authors’ comments on the State party’s observations

5.1 On 25 November 2017, the author submitted his comments on the State party’s observations. He asks the Committee to reject the State party’s arguments on the grounds that they lack legal basis and constitute a poor factual assessment of the evidence in the file. The author challenges the State’s claim that his allegations are incompatible ratione materiae with the provisions of the Covenant. The
author stands by the allegations and arguments set out in his communication and submits that articles 6 and 7 of the Covenant impose an obligation not to deport a person to a State where there is a risk that his right to life and his right to be protected against torture and cruel, inhuman or degrading treatment will be violated.

5.2 While he recognizes that the greater effectiveness of the Canadian health-care system does not constitute a ground, under articles 6 and 7 of the Covenant, for Canada to accept foreign nationals on its territory, the author nonetheless argues that by imposing on States parties the obligation not to deport an individual to a country where he or she risks death or faces cruel, inhuman or degrading treatment, the Covenant requires them to take note of factual situations that could lead individuals to claim that they face such a risk. The author also asserts that he is vulnerable as a result of the State party’s violation of articles 6 and 7 of the Covenant and that it would be inhuman to deport him to a State where the available health care is more limited. He maintains that his health situation requires particular attention, that the deterioration of his condition poses a threat to his life and that, as a result, failure to take these factors into account would indirectly amount to depriving him of his right to life.

5.3 The author considers that he has submitted all necessary evidence in support of his claims regarding both the deterioration of his health, including his inability to endure a long flight, and his sexual orientation. The author submits that the method used by the Canadian authorities is not relevant in the present case and that the State party should verify whether all persons of the same sexual orientation as him would be at risk. He also considers that the State party should determine whether he faces a direct risk owing to his sexual orientation.

Additional comments from the author

6. On 28 December 2018, the author submitted some additional comments. In these comments he referred to a list of additional documents supporting his claims, in particular with regard to his health situation, his involvement in the activities of non-profit organizations working with homosexual persons and the dangers he might face if returned to Guinea. On 7 March 2019, the author again asked the Committee to request interim measures.

Issues and proceedings before the Committee

Consideration of admissibility

[...]

7.3. The Committee further recalls its jurisprudence to the effect that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5 (2) (b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the author. The Committee notes the author’s claim that he has exhausted all available domestic remedies, given that the Federal Court of Canada rejected his applications for review. The Committee nonetheless notes the State party’s argument that the author has filed an application for humanitarian and compassionate consideration that is still pending before the national authorities and that consequently he has not exhausted all domestic remedies. The Committee notes that the author, in his submissions, has not contested the State party’s assertion that not all remedies have been exhausted. However, it considers that the author is not shielded from deportation to Guinea by virtue of having applied for humanitarian and compassionate consideration. The Committee is therefore of the view that such an application cannot be regarded as an effective remedy in the circumstances of the present case. Accordingly, the Committee finds that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.
The Committee notes the author’s claim that his rights under articles 6 and 7 of the Covenant would be violated if he were returned to Guinea, given that Guinea is known for its lack of respect for the rights of sexual minorities, who are at risk of extrajudicial executions, torture and criminal convictions. The Committee notes the author’s assertion that, because of his past experiences as a victim of homophobic aggression, he faces certain risk in his country of origin. It also notes the State party’s argument that the author has not substantiated his claims regarding his sexual orientation and that the asylum authorities unanimously called into question his bisexuality or homosexuality. The Committee notes that the State party authorities assessed the risks that the author would face in connection with his alleged homosexuality in the event of his return to his country of origin, and it observes that there is nothing to suggest that its assessment is arbitrary.

The Committee notes the author’s claims, on the one hand that his physical and mental health conditions require particular attention by the State party, and on the other hand, that his return to Guinea would amount to torture and cruel treatment. The Committee also notes the State party’s observation that the decisions taken by the officer responsible for the application for humanitarian and compassionate consideration, the officer responsible for the application for a pre-removal risk assessment and the Canada Border Services Agency were based on rigorous analysis and that all those bodies concluded that the author could continue with his treatment in Guinea. The Committee notes the State party’s assertion that the claims related to the author’s health are incompatible ratione materiae with articles 6 and 7 of the Covenant. However, it recalls that its jurisprudence favours a broad interpretation of the right to life, according to which the protection of this right requires that States parties adopt positive measures. In particular, as a minimum, States parties have the obligation to provide access to existing health-care services that are reasonably available and accessible when lack of access to the health care would expose a person to a reasonably foreseeable risk that can result in loss of life. The Committee emphasizes that, in the present case, the author has not explained in what way the State party failed to provide the care necessary for him to enjoy his right to life. The Committee also notes that, in the present case, the medical reports submitted by the author and the other health-related information are not sufficient to demonstrate exceptional circumstances related to his condition such that articles 6 and 7 of the Covenant would be violated in the event of his return to Guinea.

The Committee recalls paragraph 12 of its general comment No. 31 (2004), in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant. The Committee also indicates in the general comment that the risk must be personal and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists. Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author’s country of origin. The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice.

Regarding the author’s claims under article 2 of the Covenant, the Committee recalls that the provisions of article 2 lay down general obligations for States parties that cannot, by themselves and standing alone, give rise to a claim in a communication under the Optional Protocol. The Committee thus considers that the author’s claims to this effect cannot be sustained and that, accordingly, they are inadmissible under article 2 of the Optional Protocol. The Committee further notes that, while the author disagrees with the factual conclusions of the State party authorities, the information before the Committee does not show that those conclusions are manifestly unreasonable. The Committee considers that the author has not adequately demonstrated that the assessment of his asylum case by the Canadian authorities was clearly arbitrary or amounted to a manifest error or a denial of justice.
Accordingly, the Committee considers that the author’s claims under articles 2, 6 and 7 of the Covenant are insufficiently substantiated and therefore inadmissible under article 2 of the Optional Protocol.

8. The Committee therefore decides:

   (a) That the communication is inadmissible under article 2 of the Optional Protocol;

   (b) That the present decision shall be transmitted to the State party and to the author.
**Subject matter:** Deportation to Afghanistan

**Substantive issues:** Non-refoulement

**Articles of the Covenant:** 7

**Articles of the Optional Protocol:** 2

**Background**

1.1 The author is M.I., an Afghan national born in 1997. The author was born in Afghanistan, but moved to Iran with his family at the age of four. He claims to be a victim of a violation by Sweden of his rights under article 7 of the International Covenant on Civil and Political Rights ("the Covenant"). The author is represented by counsel.

1.2 On 24 September 2018, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, requested the State party not to remove the author to Afghanistan while the case was under examination. The same day, the State party decided to stay the enforcement of the removal order.

**Facts as submitted by the author**

2.1 The author has unsuccessfully applied for asylum in Sweden. During the asylum procedure, he referred to his Hazara ethnicity, a conflict he had had with a man in Iran, the general security situation in Afghanistan and his conversion to Christianity. The State party's authorities rejected his application and a removal order entered into force in August 2017. He was found in Austria in May 2018, but returned to Sweden, where he was detained. Two attempts to remove him failed owing to his health and "actions".

2.2 Following his return to Sweden, new circumstances arose when the author contacted a lawyer and an LGBTQ organisation. On 25 May 2018, he submitted an application concerning impediments for the enforcement of the removal order, referring to the new circumstances of his sexual orientation, gender identity and mental health. He had been afraid to invoke these circumstances earlier due to ill-treatment he had suffered in Iran relating to his sexual orientation. In the application, he claimed that according to country of origin information and owing to his sexual orientation, he would be subjected to ill-treatment and persecution in Afghanistan, justifying the granting of international protection. Despite detailed submissions on his experiences living as a homosexual in Iran, a past relationship with a boy there and his explanation of the timing of the submission, the Swedish Migration Agency rejected the application on 28 June 2018. On appeal before the Migration Court, he stated that after exchanges with an organisation for LGBTQ asylum seekers, he had expanded his thoughts on his gender identity and now expressed that he identified as someone in between male and female rather than as a man. He also provided pictures on which he expresses himself in gender non-conforming ways and further detailed his thoughts on his sexual orientation. On 20 July 2018,
the Migration Court rejected the appeal, refusing to grant a new examination on the ground that he had not made a credible claim, without however providing detailed reasons for this conclusion. The Migration Court of Appeal refused to grant leave to appeal on 14 August 2018. No interview was granted to the author to elaborate on the circumstances invoked. The author has since been engaged to a man. No new examination of this fact has been granted nor of the ill-treatment that he would face because of the engagement between two people perceived as male.

The complaint

3. The author submits that the State party has breached his rights under article 7 of the Covenant by deciding to remove him to Afghanistan without examining his sexual orientation and gender identity, despite detailed submissions including his thoughts on the matter, his past relationship with a boy and his experiences as a gay person in Iran, where he was at constant risk of grave punishment. He claims that the decisions by the State party’s authorities are not detailed and do not identify any inconsistencies in his account. He states that according to country of origin information, violence against LGBT groups in Afghanistan is pervasive. Homosexuality is considered un-Islamic and he runs the risk that non-State actors will kill him because of his sexual orientation and gender identity. There is no State protection, as the Afghan police are reported to arrest and imprison people based on real or perceived sexual orientation. Considering the grave punishment and ill-treatment he would face in Afghanistan because he is gender non-conforming and gay and given his mental health, he should be granted an examination on the merits. Further, as his claim is not unfounded and very personal, this should include an interview.

State party’s observations on admissibility and the merits

4.1 On 2 July 2019, the State party submitted its observations on admissibility and merits. It does not contest that the author has exhausted the available domestic remedies. However, it submits that the communication is manifestly ill-founded.

4.2 On the merits, the State party acknowledges that legitimate concerns may be raised about the general human rights situation in Afghanistan, but observes that the general situation alone does not establish that the author’s removal would be contrary to article 7 of the Covenant.

4.3 Additionally, according to the State party, the author has not shown that he would personally face a real risk of being subjected to treatment in breach of article 7 of the Covenant upon return to Afghanistan. In this regard, the State party submits, first, that its authorities explicitly applied domestic legislation reflecting the same principles as those in articles 6 (1) and 7 of the Covenant, in addition to considering other asylum grounds. The State party emphasises that its authorities are well positioned to assess asylum seekers’ claims and that both the Migration Agency and the Migration Court thoroughly examined the author’s case. He had an introductory and an extensive interview before the Migration Agency as well as a hearing before the Migration Court, all in the presence of a counsel and interpreter. He was furthermore invited, through his counsel, to make written submissions and thus had ample opportunity to explain his case. As the authorities had sufficient information to assess his case, and given their expertise in asylum, there is no reason to conclude that the domestic rulings were inadequate or arbitrary or amounted to a denial of justice. The State party concludes that considerable weight must be attached to the assessments of its authorities.

4.4 Second, referring to the asylum procedure, the State party observes that the author applied for asylum in Sweden on 25 July 2015. He claimed that a forced return to Iran would put him at risk of treatment justifying the granting of protection on the ground of a threat against him from the relatives of a person who died in a motorcycle accident in which he was involved. He also claimed that there was a threat against him in Afghanistan due to the general security situation and because he was Hazara. The State party notes that the author does not invoke these circumstances before the Committee.
observes that, other than his Afghan nationality, he has not plausibly demonstrated his claimed identity in the domestic proceedings. Further, he has not contended before the Committee that the general security situation in Afghanistan or the situation of Hazaras is such that any returnee risks exposure to ill-treatment. As neither of these situations constitute grounds for protection, the Migration Agency rejected the asylum application and decided to remove the author to Afghanistan on 13 April 2016.

4.5 On appeal before the Migration Court, the author added to the initial grounds that he had become interested in Christianity, had been attending church activities, had been baptised, and that he would live as a Christian and wear a cross in Afghanistan. The Migration Court noted that his interest in Christianity appeared to have increased significantly in connection with and after the first-instance decision, raising doubts about the credibility of his conversion. His explanation that he had withheld this information owing to his privacy was contradicted by his claim of openly wearing a cross for a year. The Migration Court found his account of his conversion and thoughts about Islam and Christianity to be vague, noting his inability to elaborate on his conviction behind the alleged conversion. The Migration Court concluded that he had not plausibly demonstrated that his conversion was based on a genuine, personal and religious conviction, and, on 15 June 2017, rejected the appeal. The removal decision became final when the Migration Court of Appeal refused to grant leave to appeal on 25 August 2017. Subsequently, the author travelled to Austria to apply for asylum, but was sent back to Sweden on 16 May 2018 pursuant to the Dublin Regulation.

4.6 Third, on the author’s claimed need for protection due to his sexual orientation, the State party notes that he claimed to identify as a homosexual and that information about his sexual orientation had spread on the internet along with his name and photograph. He further claimed that he had a romantic relationship with a boy in Iran and had been subjected to traumatising events there related to his sexual orientation, which negatively affected his mental health. Explaining why he had not invoked these circumstances earlier, he stated that since his arrival in Sweden, he had perceived that homosexuality is associated with shame and had thus not dared to tell anyone. However, he had found a spirit of solidarity with respect to his sexual orientation and gender identity in the detention centre.

4.7 The State party observes that the Migration Agency, in its decision of 28 June 2018, noted that the author invoked this ground only after the removal order had become non-appealable and that he did so only one day before his planned removal, in an application to the Migration Agency for a residence permit pursuant to Chapter 12, Section 18 of the Aliens Act and a re-examination pursuant to Chapter 12, Section 19 of the Aliens Act, citing impediments to the enforcement of the removal order. The Migration Agency found that this lateness, similarly to that of his conversion claim, negatively affected his credibility, and did not consider his explanation for the lateness satisfactory. It found that he had been living in Sweden for three years and had been attending a Swedish school, meaning it could hardly have escaped him that the situation of homosexuals in Sweden is different from that in Afghanistan. His stated shame was implausible also because of his ability to invoke his conversion despite the stigma and shame associated with it. As for his claim of subjection to traumatic events in Iran concerning his sexual orientation and their effect on his mental health, the Migration Agency found that he had stated to be in good health during the asylum proceedings, had provided no documentary evidence of mental health issues and was informed early in the process about the importance of invoking all possible grounds for protection. As he had not mentioned his sexual orientation until his detention and in the absence of an acceptable explanation, the Agency did not consider his account credible, and concluded that no impediments to the enforcement of the removal order had emerged. It therefore decided not to grant a residence permit nor a re-examination.

4.8 On appeal before the Migration Court, the author added to the aforementioned grounds that he no longer identified as a man, claiming that his non-conforming gender identity was an impediment to the enforcement of the removal order. The Migration Court found that he could have invoked his
sexual orientation and gender identity earlier, and that the tardy invocation constituted strong grounds for doubting the veracity of the claim. The Court additionally considered that his claimed gender identity was an escalation of previously invoked asylum grounds and was insufficiently substantiated. It rejected the appeal on 20 July 2018. The Migration Court of Appeal decided not to grant leave to appeal on 14 August 2018.

4.9 The author applied for a residence permit or a re-examination on three more occasions, claiming that information on his sexual orientation had spread on the internet and reached people in Afghanistan who in turn threatened him on social media. He also claimed to be engaged to a man and that this meant that a sexual orientation had been ascribed to him in Afghanistan. The Migration Agency rejected his applications on 30 July, 14 August and 29 August 2018, finding that said grounds were modifications of previously invoked circumstances rather than new ones, that nothing indicated that the information concerned had spread to people constituting a real and current threat to him in Afghanistan and that no details had been provided about who these people were or to substantiate that they would search for him in Afghanistan. The Migration Court rejected the author’s appeal against the final decision on 13 September 2018.

4.10 The State party contends that the author has escalated his asylum account before every domestic examination including at very late stages. As for his alleged conversion, the non-invocation of this ground before the Committee strongly indicates that he has not converted out of a personal and genuine religious conviction. The State party argues that his stated sexual orientation and gender identity are similarly doubtful. On the pictures submitted, the State party observes that most images were taken with filters available to anyone with a smartphone, and that these pictures insufficiently substantiate his claims. The State party concludes that the author’s account is insufficient to conclude that he would run a foreseeable, real and personal risk of treatment contrary to the Covenant.

Author’s comments on the State party’s observations on admissibility and the merits

5.1 On 10 September 2019, the author provided his comments on the State party’s observations. He contests that the communication is manifestly ill-founded, because it contains detailed information and pictures concerning his sexual orientation, gender identity and religion. He reiterates that he has been wrongly deprived of a new examination and interview in relation to these grounds. The scope of the initial submission was limited to his sexual orientation and gender identity, but the information submitted domestically on his conversion still stands. He submits a membership certificate from the Vallersvik Church, where he is an active member. On the timing of the invocation of his sexual orientation, he states that, in conformity with the practice of the Swedish border police, he was not notified about the planned removal.

5.2 The author notes that in F.G. v. Sweden, the European Court of Human Rights found that States are obliged to do a risk assessment of their own motion where they are “made aware of facts, relating to a specific individual, that could expose him to a risk of ill-treatment in breach of [the right to life and the prohibition of torture] upon returning to the country in question”, particularly “where the national authorities have been made aware of the fact that the asylum seeker may, plausibly, be a member of a group systemically exposed to a practice of ill-treatment and there are serious reasons to believe in the existence of the practice in question and in his or her membership of the group concerned.” The author argues that it results from the judgment that the domestic authorities must assess the risk of persecution when new facts arose and that they cannot be rejected simply as invoked late. Further, no single document can prove a person’s genuine identification as LGBTQ or as Christian, and therefore the author can only substantiate his claims through an interview. Moreover, Swedish legislation concerning new examinations sets a very low standard of proof for granting a new examination, requiring only that “it could be assumed” from the claim that the asylum seeker needs protection. The author argues that the information submitted domestically is more than enough to
meet this standard and that the domestic authorities have therefore not conducted an adequate investigation.

5.3 The author reiterates that converted Christians and gay/transgender people in Afghanistan are extremely vulnerable and at risk of being killed by both State and non-State actors, and that the State party should consequently be particularly careful before removing him.

State party's additional observations

6.1 On 5 December 2019, the State party provided additional observations, submitting that the author’s comments contain no new submissions and do not change its position. The State party adds that even if it has not addressed some aspects of the author’s submissions, this should not be interpreted as acceptance of these assertions. It observes that, despite hardly mentioning his alleged conversion in the initial submission, the author now claims that the information submitted domestically still stands, but he does so without arguing why the domestic authorities’ assessment in this regard was inadequate or violated his rights under the Covenant.

6.2 The State party further observes that contrarily to the F.G. v. Sweden case invoked by the author, the Swedish authorities in the present case did consider the grounds invoked after the initial proceedings as new circumstances. However, the authorities did not consider that these circumstances could be assumed to constitute a lasting impediment to the author’s removal, and therefore did not grant a new examination. The present case therefore clearly differs from F.G. v. Sweden.

6.3 The State party notes that in M.K.N. v. Sweden, the European Court of Human Rights found that the applicant had not reasonably explained why he had invoked his homosexual relationship only on appeal against the removal order, more than a year after his arrival in Sweden. Given the circumstances of the case, the Court considered the claimed homosexual relationship not to be credible.

6.4 The State party reiterates that the author had been living in Sweden for at least three years and had been attending a Swedish school before he raised his sexual orientation as a protection ground. He stated having been aware of attitudes towards the LGBTI community in Sweden since spring 2016 and that he had been open about his sexual orientation while living in Sweden, but only mentioned his sexual orientation in pre-removal detention, thus raising serious doubts about his credibility.

Issues and proceedings before the Committee

Consideration of admissibility

[...]

7.3 The Committee notes that the State party does not contest that the author has exhausted all available domestic remedies. Therefore, the Committee considers that it is not precluded under article 5 (2) (b) of the Optional Protocol from examining the communication.

7.4 The Committee notes the State party’s argument that the communication is manifestly ill-founded, arguing that a risk of treatment contrary to article 7 of the Covenant results neither from the general human rights situation in Afghanistan, nor from the author’s account, which is insufficient to conclude that he would run a foreseeable, real and personal risk. The Committee also notes that the author asserts that the communication is not manifestly ill-founded, because it contains detailed information and pictures concerning his sexual orientation, gender identity and religion. He argues that, given the low standard of proof under Swedish law, the evidence submitted and the nature of his claims, he should have been granted a new examination including an interview. Insofar as he invokes his claimed conversion, the Committee finds that the author does not demonstrate that the State party’s authorities erred in finding that he had not shown a genuine, personal and religious conviction, given
that his account was deemed vague and that his explanation of the late invocation was not accepted, as he had been wearing a cross openly for a year.

7.5 The Committee notes that the Swedish migration authorities did not accept the author’s explanation of being afraid to invoke his claimed sexual orientation, based on the absence of proof that he suffered mental health issues, the length of his residence in Sweden and the fact that he attended school there. In particular, the Committee notes that, according to the State party, the author admitted that he was aware of attitudes towards the LGBTI community in Sweden since spring 2016, i.e. two years before he raised the issue of his sexual orientation and gender identity, and that he had been open about his sexual orientation while living in Sweden. In these circumstances, the Committee finds that the author has not shown that the assessment of the domestic authorities, in particular their finding that his claims concerning his sexual orientation and gender identity were not credible, was unreasonable. Moreover, while the author has submitted before it a note dated 16 July 2018 prepared by his counsellor (“kurator”) concerning his mental health, the Committee notes that he does not argue that he submitted the note domestically or that the authorities failed to consider it.

7.6 The Committee recalls paragraph 12 of its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of occurrence of irreparable harm, such as that under articles 6 and 7 of the Covenant. The Committee has also indicated that the risk must be personal and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists. In making this assessment, all relevant facts and circumstances must be taken into consideration, including the general human rights situation in the author’s country of origin. The Committee recalls its jurisprudence according to which considerable weight should be given to the assessment conducted by the State party, and it reiterates that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in a particular case in order to determine whether such a risk exists, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.

7.7 Overall, the Committee considers that the author has not sufficiently substantiated that the evaluations made by the Swedish authorities were clearly arbitrary or amounted to a manifest error or denial of justice. Therefore, without prejudice to the continuing responsibility of the State party to take into account the situation in the country to which the author would be deported and not underestimating the concerns that may legitimately be expressed with respect to the general human rights situation in Afghanistan, the Committee considers that, in the light of the available information regarding the author’s personal circumstances, his claims under article 7 of the Covenant are insufficiently substantiated and are therefore inadmissible under article 2 of the Optional Protocol.

8. The Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;
(b) That the present decision shall be transmitted to the State party and to the author.
Nikolai Alekseev v. Russian Federation, communication No. 2727/2016, decision of 16 October 2020

Keywords: GI, SO, SOGI, SOGIE; G, LG, LGBT, SM; court, discrimination, family, FOE/FOAA, follow-up, GC/GR, jurisprudence, legislation, marriage, measures, propaganda, remedy, reparation, stereotypes, violence

Subject matter: Right to peaceful assembly; non-discrimination

Substantive issues: Unjustified restrictions to the right of peaceful assembly; discrimination against lesbian, gay, bisexual and transgender persons

Articles of the Covenant: 21 and 26

Articles of the Optional Protocol: 2 and 5

Background

1. The author of the communication is Nikolai Alekseev, a national of the Russian Federation born in 1977. He claims that the State party has violated his rights under articles 21 and 26 of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is not represented by counsel.

Facts as submitted by the author

2.1 The author submits that he is an activist for the rights of lesbian, gay, bisexual and transgender persons and is the President of the human rights project for lesbian, gay, bisexual and transgender persons of the Russian Federation, GayRussia.ru. Since May 2006, together with other activists, he has tried to hold peaceful protests (gay pride parades) in Moscow, but the planned demonstrations have been banned by the local authorities.

2.2 On 9 April 2014, together with other activists, the author submitted a notification to the head of Simferopol city administration concerning their intention to hold a gay pride parade in support of the rights and freedoms of gay persons in the Russian Federation and protesting against discrimination against them. The notification informed the authorities of the time, date and place of the planned protest. The notification included guarantees that the participants would respect public order and observe the norms of public morals. The author also informed the authorities of the organizers’ readiness to change the route of the parade if needed. On 11 April 2014, the Simferopol city administration informed the organizers that it would not be able to authorize the event and that, if the author went ahead with its organization, he would be held liable, because the parade would violate legislation banning the promotion of non-traditional sexual relations to minors, it “would provoke a negative reaction from society” and such events violated public order. The author decided not to hold the parade.

2.3 The author thus cancelled the planned parade and, on 5 May 2014, filed a complaint with the Preobrazhensky District Court in Moscow. The author argued in his complaint that laws and
regulations of the Russian Federation do not provide for a ban on parades if the purpose and conduct of the assembly do not contravene the legislation. On 3 June 2014, the Court rejected the complaint.

2.4 The author further complained to the Moscow City Court, which, on 12 August 2014, upheld the lower court’s decision. The appeal in cassation before the panel of judges of the Moscow City Court was also unsuccessful and was rejected on 23 September 2014.

2.5 On 13 January 2016, the author added that, on 5 May 2014, he had submitted a complaint to the Zheleznodorozhny District Court in Simferopol, arguing that the laws and regulations of the Russian Federation do not provide for parades to be banned if their purpose and conduct do not contravene the legislation. On 2 July 2014, the Court rejected the complaint. On 22 July 2014, the author appealed that decision to the Appeal Court of the Republic of Crimea. On 3 December 2014, the Court quashed the decision of 2 July 2014, although it rejected the author’s substantive claims.

2.6 The author further complained to the Supreme Court of the Republic of Crimea, which rejected that appeal on 29 June 2015. The author’s appeal in cassation to the Supreme Court of the Russian Federation was rejected on 14 August 2015.

The complaint

3.1 The author claims that, by denying him and other activists the opportunity to hold a parade, the State party violated his rights under articles 21 and 26 of the Covenant. He submits that he was discriminated against on the basis of his sexual orientation.

3.2 The author claims that the State party violated his right to peaceful assembly as protected under article 21 of the Covenant, as it imposed a blanket prohibition on the parade that he had intended to organize. The authorities’ refusal was not imposed “in conformity with the law” nor was it “necessary in a democratic society”. In particular, national law does not prohibit an assembly whose aims and forms are lawful and peaceful. Moreover, the restriction imposed was not “necessary in a democratic society” and did not pursue any of the legitimate aims mentioned in article 21 of the Covenant. The authorities’ refusal to propose an alternative location for the mass event in question and their assertion that such a parade conducted in a public place where Easter festivities were taking place and close to children’s educational facilities would harm the moral development of minors demonstrated that the authorities’ real aim was to prevent the gay and lesbian minority in the Russian Federation from becoming visible to the public and attracting public attention to their concerns.

State party’s observations on admissibility and the merits

4.1 On 25 July 2016, the State party submitted its observations on admissibility and the merits and requested that the communication be declared inadmissible as not substantiated.

4.2 The State party submits that the decisions of the Zheleznodorozhny District Court and the Appeal Court of the Republic of Crimea were based on the application of the Constitution of the Russian Federation.

4.3 The State party notes that freedom of association and freedom of expression can be subjected to restrictions. Such restrictions should be based on the law, should have a socially meaningful aim and should be proportionate.

4.4 The State party contends that, in the present case, the Appeal Court invoked the Federal Law on Protection of Children from Information Harmful to their Health and Development (arts. 5 (2) (4) and 16 (3)) and the Federal Law on the Basic Guarantees of the Children’s Rights in the Russian Federation (art. 14 (1)), which are aimed at preventing the dissemination of information capable of forming a distorted view of the social equivalence of traditional and non-traditional marriage relations among persons unable to evaluate such information critically and independently. In its decision, the Court
stated that the territory of Gagarin Park, where the parade was supposed to stop, was a public venue where large numbers of people, including children, gathered. There was also a school and a sports and recreation facility on the route of the parade.

4.5 The State party submits that, according to the Federal Law on Assemblies, Meetings, Demonstrations, Marches and Picketing, in cases when the information provided in a notification letter allows the conclusion to be drawn that the purpose or conduct of a proposed public event is not in compliance with the Constitution or other laws, the authorities must inform the organizers that, if the event is held, they will be held liable. The Court found that these provisions obligated the authorities not to authorize a public event until the organizers had rectified the aspects not in compliance with the law.

4.6 The State party notes that, in the present case, the purpose of the assembly was to support the rights and freedoms of homosexual persons in the Russian Federation and protest against discrimination against them. The Court concluded that this attempt to call for tolerance in relation to the presence of lesbian, gay, bisexual and transgender persons in venues that were traditional places of recreation for adults and children and close to the premises of children’s educational facilities would pose a threat to the moral and spiritual development of children. Thus, the Court asserted that the restrictions imposed on the assembly to be held by the author were in accordance with the law. The aim of the restrictions was to protect children from information, propaganda and campaigning which could harm their moral and spiritual development and health. This aim is recognized in the provisions of the international agreements ratified by the Russian Federation.

4.7 The State party observes that the courts of appeal and cassation based their decisions on the provisions and requirements of the Family Code (arts. 1, 12 and 47) and the Law on the Basic Guarantees of the Rights of the Child in the Russian Federation (art. 14), which provide that the State authorities have an obligation to take measures to protect children from harmful information, including propaganda for non-traditional sexual relations. The need for such protection also comes from the jurisprudence of the treaty bodies and the human rights treaties.

4.8 The State party also submits that the day of the planned assembly was the day on which Easter falls. Thus, the courts, having in mind the need to protect children from information that could harm their moral and spiritual development and health, an aim that could only be achieved by imposing a restriction on the rights of the organizer, lawfully concluded that it was not possible to allow the assembly to be held on the proposed date.

4.9 The State party submits that the motive for the refusal to hold the parade did not include any manifestation of intolerance towards persons with non-traditional sexual orientation and was determined only by the need to protect children’s rights.

4.10 The State party observes that the courts lawfully concluded that the local authorities were not obligated to propose another time and venue for the parade, since the aims of the event violated the provisions of the law, in that it was aimed at promoting homosexuality and violating the rights of children.

Author’s comments on the State party’s observations on admissibility and the merits

5.1 On 15 September 2015, the author provided comments on the State party’s observations. He submits that the European Court of Human Rights, in its decision of 21 October 2010 on the case Alekeseyev v. Russia, found that the refusal to allow planned gay pride parades in 2006, 2007 and 2008 revealed a violation of articles 11 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the European on Human Rights).

5.2 The author states that the European Commission for Democracy through Law (the Venice Commission), in its Opinion on the issue of the prohibition of so-called “propaganda of homosexuality” in the light of recent legislation in some member States of the Council of Europe (Opinion 707/2012),
concluded that the statutory provisions prohibiting “propaganda of homosexuality” are incompatible with the provisions of the European Convention on Human Rights and international human rights standards, and therefore recommended that they should be repealed.

Issues and proceedings before the Committee

Consideration of admissibility

[...]

6.3 The Committee notes the author’s claim that all available domestic remedies have been exhausted. It also notes that, in the present case, the State party has not submitted any challenges regarding the exhaustion of all available domestic remedies. Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.4 The Committee also notes the author’s claim that his rights under articles 21 and 26 have been violated since he was denied the opportunity to hold a gay pride parade and he was discriminated against on the basis of his sexual orientation. The Committee considers that these claims have been sufficiently substantiated for the purposes of admissibility. It therefore declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

[...]

7.2 The Committee has taken note of the author’s claim of a violation of his rights under articles 21 and 26 of the Covenant. The Committee recalls its general comment No. 37 (2020), in which it noted that the right of peaceful assembly protects the ability of people to exercise individual autonomy in solidarity with others. Together with other related rights, it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism (para. 1). Moreover, 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 sexual orientation or gender identity (para. 25).

7.3 The Committee further recalled in that same general comment that article 21 of the Covenant protects peaceful assemblies wherever they take place: outdoors, indoors and online and in public and private spaces (para. 6). No restriction on the right of peaceful assembly is permissible unless it is: (a) imposed in conformity with the law; and (b) necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. The onus is on States parties to justify restrictions on the right protected by article 21 of the Covenant and to demonstrate that they do not serve as a disproportionate obstacle to the exercise of that right (para. 36). The authorities must be able to show that any restrictions meet the requirement of legality, and are also both necessary for and proportionate to at least one of the permissible grounds for restrictions enumerated in article 21. Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or cause a chilling effect. Where this onus is not met, article 21 is violated (ibid.).

7.4 The Committee notes, moreover, that States parties have certain positive duties to facilitate peaceful assemblies and to make it possible for participants to achieve their objectives. States must thus promote an enabling environment for the exercise of the right of peaceful assembly without discrimination, and put in place a legal and institutional framework within which the right can be exercised effectively. Specific measures may sometimes be required on the part of the authorities. For example, they may need to block off streets, redirect traffic or provide security. Where needed, States
must also protect participants against possible abuse by non-State actors, such as interference or violence by other members of the public, counterdemonstrators and private security providers.

7.5 In the present case, the Committee observes that both the State party and the author agree that the refusal to permit the holding of a gay pride parade in the centre of Simferopol from 11 a.m. to 1 p.m. on 21 April 2014 was an interference with the author’s right of assembly, but the parties disagree as to whether the restriction in question was permissible.

7.6 The Committee notes the State party’s contention that its decision not to authorize the parade with the announced purpose – promotion of the rights and freedoms of sexual minorities – was necessary and proportionate and the only measure possible in a democratic society in view of the social aim of protecting minors from information detrimental to their moral and spiritual development and health. The Committee also notes the State party’s claims that the parade could outrage the religious and moral sensibilities of other people, that it would provoke a negative reaction from society and illegal action by the section of the population which did not share the author’s position and that it could disrupt traffic. The Committee also notes the information provided by the author that he was willing to guarantee that, while realizing his right to peaceful assembly with the announced purpose, he would respect public order and the norms of public morality and that he had informed the authorities of his readiness to modify the itinerary of the parade.

7.7 In its general comment No. 37 (2020), the Committee noted that 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 (para. 46).

7.8 Restrictions imposed for the protection of “the rights and freedoms of others” may relate to the protection of the Covenant or other human rights of people not participating in the assembly. In the present case, the Committee has a common approach with the European Court of Human Rights and considers that there is no basis on which to assume that the “mere mention of homosexuality”, public expression of homosexual identity or a call for respect for the rights of homosexuals could have a negative effect on minors’ rights and freedoms.

7.9 In its general comment No. 37 (2020), the Committee also recalled that States must leave it to the participants to determine freely the purpose of a peaceful assembly to advance ideas and aspirational goals in the public domain and to establish the extent of support for or opposition to those ideas and goals. Central to the realization of the right of peaceful assembly is the requirement that any restriction must in principle be content neutral, and thus not be related to the message conveyed by the assembly (para. 22). A contrary approach defeats the very purpose of peaceful assemblies as a tool of political and social participation (para. 48). The Committee accordingly considers that, in the present case, the State party’s restrictions on the author’s right to assembly were directly related to the chosen purpose and content of the assembly, namely an affirmation of homosexuality and the rights of homosexual persons.

7.10 The Committee notes the author’s claim that, by refusing to authorize the planned gay pride parade, the authorities subjected him to discrimination on the ground of sexual orientation. The Committee also notes the State party’s claim that the motive for the refusal to authorize the parade did not include any manifestation of intolerance towards persons with non-traditional sexual orientation and was determined only by the need to protect minors’ rights.
7.11 The Committee notes that, in its general comment No. 37 (2020), it recalled that States must not deal with assemblies in a discriminatory manner, for example, on the basis of sexual orientation or gender identity. 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 (para. 25).

7.12 The Committee recalls that, in paragraph 1 of its general comment No. 18 (1989) on non-discrimination, it observed that article 26 of the Covenant entitles all persons to equality before the law and equal protection of the law, prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. With reference to its jurisprudence, the Committee recalls that the prohibition against discrimination under article 26 also covers discrimination based on sexual orientation and gender identity.

7.13 The Committee notes the State party’s claims that the authorities’ decision did not include any manifestation of intolerance towards persons with non-traditional sexual orientation; and that State policy protects minors from factors that negatively influence their spiritual and moral development. The Committee considers, however, that the authorities disagreed with the homosexual content of the proposed parade, expressly drawing a distinction based on sexual orientation and gender identity, and that the decision thus constituted a distinction on grounds prohibited under article 26.

7.14 The Committee further recalls its jurisprudence that not every distinction based on the grounds listed in article 26 of the Covenant amounts to discrimination, as long as it is based on reasonable and objective criteria and pursues a legitimate aim under the Covenant. 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.

7.15 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 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.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of articles 21 and 26 of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to take appropriate steps to provide the author with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this connection, the Committee reiterates that, pursuant to its obligations under article 2 (2) of the Covenant, the State party should review its legislation with a view to ensuring that the rights under articles 21 and 26 of the Covenant may be fully enjoyed in the State party.
10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official language of the State party.

**Nikolai Alekseev v. Russian Federation**, communication No. 2757/2016, decision of 5 November 2020⁹

Keywords: SO, SOGI; G, LG, LGBT, SM; attacks, court, discrimination, FOE/FOAA, follow-up, GC/GR, jurisprudence, legislation, marriage, measures, police, remedy, reparation, stereotypes, violence

**Subject matter:** Right to peaceful assembly; non-discrimination

**Substantive issues:** Unjustified restrictions to the right of peaceful assembly; discrimination against LGBT people

**Articles of the Covenant:** 21 and 26

**Articles of the Optional Protocol:** 2 and 5

**Background**

1. The author is Nikolai Alekseev, a Russian citizen born in 1977. He claims to be a victim of a violation by the Russian Federation of his rights under articles 21 and 26 of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is unrepresented.

**The facts as presented by the author**

2.1 The author submits that he is an LGBT activist, and the President of the Russian LGBT Human Rights Project. Since May 2006, together with others, he has tried to hold peaceful protests ("gay pride parades") in Moscow, which were all banned by the local authorities.

2.2 On 26 September 2014, together with other activists he submitted a notification to the Mayor of Moscow concerning the organizers' intention to hold a gay pride parade in support of tolerance, and the rights and freedom of gays in Russia on the occasion of International Coming Out Day. The notification informed the authorities about the time, date, and place of the event. The notification provided guarantees by the applicant to respect public order and norms of public morality. The author also informed the authorities about their readiness to modify the itinerary of the parade. On 1 October 2014, the Department of Regional Security and Anti-Corruption of Moscow informed the organisers that it wouldn't allow the event because its purposes violate the legislation banning promotion of non-traditional sexual relations among minors, cause moral damage to minors who will eventually see the

---

event, would outrage the religious and moral feelings of others, and “would provoke a negative reaction of the society”. It was also noted that the event would interfere with traffic.

2.3 The authors thus cancelled the planned parade and on 10 October 2014, filed a complaint with the Sverdlov district court of Kostroma, arguing that the laws and regulations do not allow for a ban on parades as long as their purpose and conduct conform to the legislation. In addition, the authorities could take the necessary steps to ensure the peaceful conduct of the event and to protect the participants. An alternative itinerary could be envisaged. On 10 October 2014, the court rejected the complaint and held that there was no violation of the law.

2.4 On 25 October 2014, the author complained to the Kostroma Regional Court. On 8 December 2014, the regional Court confirmed the lower court’s decision. The author’s cassation appeal to the Presidium of Kostroma Region Court was also unsuccessful, and was rejected on 2 February 2015.

2.5 The author further complained to the Supreme Court of the Russian Federation, which rejected the appeal on 17 April 2015.

Complaint

3.1 The author claims that by denying him and other activists an opportunity to hold a parade, the State party violated his rights under article 21 and 26 of the Covenant. He also submits that he was discriminated against based on his sexual orientation.

3.2 He claims that the State party violated his right to peaceful assembly under article 21 of the Covenant, as it imposed a blanket prohibition on the intended parade. The authorities’ refusal was not imposed “in conformity with the law”. In particular, national law does not prohibit an assembly whose aim and the form it takes are lawful and peaceful. Moreover, the restriction imposed was not “necessary in a democratic society” and did not pursue any of the legitimate aims mentioned in article 21 of the Covenant. The authorities’ refusal to propose an alternative location for the event and their assertion that such a parade conducted in a public place would harm minors’ moral and religious feelings, demonstrate that the authorities’ real aim was to prevent the members of the gay and lesbian community in Russia from becoming visible and from attracting public attention to their concerns.

State party’s submissions on admissibility

4.1 On 16 June 2016, the State party submitted its observations on admissibility and requested that the communication should be declared inadmissible pursuant to article 3 of the Optional Protocol as an abuse of the right of submission.

4.2 According to the State party, the submission of a communication on behalf of the victims on the same violations of the human rights as in previous submissions should be considered an abuse of the right of submission. In this regard, the State party observes that there are two other complaints from the author against the refusals to hold gay pride parades in different cities in the Russian Federation during the period of 2009-2015, which are pending consideration in the European Court of Human Rights. In addition, on 21 October 2010, the European Court of Human Rights has already considered three similar complaints by the author.

Author’s comments on the State party’s observations on admissibility

5.1 On 12 July 2016, the author provided comments on the State party’s observations. He submits that his complaint cannot be found inadmissible as an abuse of the right of submission since this complaint relates to a particular case of the refusal to authorise a gay pride parade on 11 October 2014 in Moscow. The author appealed this particular refusal to domestic courts. Also, the complaint against the refusal to allow the parade of 11 October 2014 was not examined under another procedure of international investigation or settlement.
5.2 The author submits that the European Court of Human Rights took decisions on several previous similar complaints, however relating to different facts and dates.

5.3 The author states that the position of the State party assumes that he, as an LGBT activist, should not have a right to submit complaints on past or future violations of his rights, if the alleged violations are similar in substance.

State party’s observations on admissibility and merits

6.1 On 18 October 2016, the State party submitted its observations on admissibility and merits and requested the communication to be declared inadmissible under article 3 of the Optional Protocol.

6.2 The State party notes that the Russian Constitutional Court, having refused to consider the complainant’s motion to clarify its Decision of 23 September 2014 N 24 – П, stated that article 6.21 (1) of the Administrative Code does not allow for an expanded understanding of the prohibition envisaged by this provision. The Court also underlined that in each particular case, the compliance assessment of a planned event includes an examination and evaluation of all circumstances.

6.3 The State party further reiterates the facts of the case and submits that the decision to refuse the gay pride parade was taken by the government of Moscow based on the possible violations of the Law on Protection of Children from Information Harmful to their Health and Development and the Law on the Basic Guarantees of the Rights of the Child in the Russian Federation, whose provisions are aimed at preventing the dissemination of information capable of forming a distorted view of the social equivalence of non-traditional marriage relations among persons deprived of the opportunity to evaluate critically and independently such information. In its decision, the government of Moscow stated that the event had been planned in venues which are popular with families with children and children touristic groups. Thus, they could become involuntary witnesses of the gay pride parade which could result in moral damage. This position was the subject of evaluation and assessment by the relevant domestic courts, and was found to be fully sustained.

6.4 The State party further reiterates its position in relation to the inadmissibility of the complaint, since the aims of the planned gay pride parade were the same as in the complaints by the author to the European Court of Human Rights. Also, the complaints were submitted on similar grounds – the prohibition to hold a mass event in support of rights and freedoms of sexual minorities. The author’s complaint thus constitutes an abuse of the right of submission.

Author’s comments on the State party’s observations on admissibility and merits

7.1 On 21 December 2016, the author provided comments on the State party’s observations. He submits that the European Court of Human Rights in its decision of 21 October 2010, Alekseev v Russia found that the refusal to allow the planned gay pride parades in 2006, 2007 and 2008 amounted to a violation of articles 11 and 14 of the European Convention on Human Rights. According to the author, there is a systematic violation of the sexual minorities’ rights in the Russian Federation.

7.2 The author states that this complaint is not an abuse of his right of submission since only the facts regarding the planned parade on 11 October 2014 were submitted to the Committee.

Issues and proceedings before the Committee

Consideration of admissibility

[...]
applications by the author, which were considered by the European Court of Human Rights on 21 October 2010. These applications concerned the State party refusal to allow the author to conduct a parade regarding the rights of sexual minorities. Two more complaints from the author were pending before the Court. The State party submits that the complaints before the European Court and the present communication are of a similar nature as they have been submitted by the same person, concern the rights of the same group (those belonging to sexual minorities) and concern the actions of the same authorities. The Committee further notes the author’s explanation that the applications before the European Court of Human Rights concerned different factual circumstances, namely the prohibition to hold pride marches or pickets in the years 2006 to 2015, while the present complaint concerns the prohibition to hold a gay pride parade in Moscow in support of the rights of sexual minorities on 11 October 2014.

8.3 The Committee recalls that the concept of “the same matter” within the meaning of article 5, paragraph 2 (a), of the Optional Protocol shall be understood as including the same authors, the same facts and the same substantive rights. The Committee notes that it appears from the information on file that the author’s applications to the European Court of Human Rights concern the same person and relate to the same substantive rights as those invoked in the present communication. However, the Committee observes that the respective applications before the European Court do not relate to the same facts, that is, the particular event at the particular time referred to in the present communication. Consequently, the Committee considers that it is not precluded by article 5, paragraph 2 (a), of the Optional Protocol from examining the present communication, for purposes of admissibility.

8.4 The Committee notes the author’s claim that all available domestic remedies have been exhausted. It also notes that the State party has not challenged the communication on this ground. Accordingly, it considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

8.5 The Committee notes the author’s claim that his rights under articles 21 and 26 have been violated since he was denied an opportunity to hold a gay pride parade and he was discriminated against based on his sexual orientation. The Committee considers that these claims have been sufficiently substantiated for the purposes of admissibility. It therefore declares them admissible and proceeds with their examination of the merits.

Consideration of the merits

9.1 The Committee has considered the present communication in the light of all the information submitted by the parties, in accordance with article 5 (1) of the Optional Protocol.

9.2 The Committee has taken note of the author’s claim of a violation of his rights under articles 21 and 26 of the Covenant. The Committee recalls that the right of peaceful assembly protects the ability of people to exercise individual autonomy in solidarity with others. Together with other related rights it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism. Moreover, ‘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 ... sexual orientation or gender identity.’

9.3 The Committee recalls that article 21 ‘protects peaceful assemblies wherever they take place: outdoors, indoors, and online; in public and private spaces.’ No restriction on the right is permissible unless it is: (a) imposed in conformity with the law; and (b) necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. The onus is on State parties to justify limitations on the right protected by article 21 of the Covenant and to demonstrate that it
does not serve as a disproportionate obstacle to the exercise of the right. The authorities must be able to show that any restrictions meet the requirement of legality, and are also both necessary for and proportionate to at least one of the permissible grounds for restrictions enumerated in article 21. Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or cause a chilling effect. Where this onus is not met, article 21 is violated.

9.4 The Committee notes that States parties moreover have certain positive duties to facilitate peaceful assemblies, and to make it possible for participants to achieve their objectives. States must thus promote an enabling environment for the exercise of the right of peaceful assembly without discrimination, and put in place a legal and institutional framework within which the right can be exercised effectively. Specific measures may sometimes be required on the part of the authorities. For example, they may need to block off streets, redirect traffic, or provide security. Where needed, States must also protect participants against possible abuse by non-State actors, such as interference or violence by other members of the public, counter-demonstrators and private security providers.

9.5 In the present case, the Committee observes that both the State party and the author agree that the failure to authorise a gay pride parade in Moscow on 11 October 2014 was an interference with the author’s right of assembly, but the parties disagree as to whether the restriction in question was permissible.

9.6 The Committee notes the State party’s contention that its decision about the impossibility to hold the parade with the announced purpose – promotion of the rights and freedoms of sexual minorities - was necessary and proportional and the only possible measure in a democratic society for achieving the abovementioned social aim, namely to protect minors from information detrimental to their moral and spiritual development and health. The Committee also notes the State party’s claim that the parade could also outrage religious and moral sensibilities of other people, and that it would provoke a negative reaction of the society and cause some illegal actions from the side of the population who does not share the author’s position as well as that it could disrupt traffic. The Committee also notes the author’s information that he was willing to realize his right to peaceful assembly with the announced purpose, while guaranteeing to respect the public order and norms of public morality and informing the authorities about his readiness to modify the itinerary of the parade.

9.7 The Committee notes that 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. The Committee recalls that ‘Restrictions based on this ground may not, for instance, be imposed because of opposition to expressions of sexual orientation or gender identity.’

9.8 Restrictions imposed on an assembly on the ground that they are for “the protection of the rights and freedoms of others” may relate to the protection of Covenant or other rights of people not participating in the assembly. In this case, the Committee has a common approach with the European Court of Human Rights and considers that there is no basis on which to assume that the “mere mention of homosexuality”, or public expression of homosexual status, or the call for the respect of the rights of homosexuals, could have a negative effect on minors’ rights and freedoms.

9.9 The Committee also recalls that the participants can freely determine the purpose of a peaceful assembly to advance ideas and aspirational goals in the public domain, and to establish the extent of support for or opposition to those ideas and goals. Central to the realisation of the right of peaceful assembly is the requirement that any restrictions must in principle be content neutral, and thus not be related to the message conveyed by the assembly. A contrary approach defeats the very purpose of peaceful assemblies as a tool of political and social participation. The Committee accordingly
considers that in the present case, the State party's restrictions on the author's right to assembly were directly related to the chosen purpose and content of assembly namely an affirmation of homosexuality and the rights of homosexuals.

9.10 The Committee also notes that the State party justifies the denial of permission to hold the parade in question as necessary in the interest of public safety. The Committee notes that freedom of assembly protects demonstrations promoting ideas that may be regarded as annoying or offensive by others and that, in such cases, States parties have a duty to protect the participants in a demonstration in the exercise of their rights against violence by others, including discriminatory attacks. It also notes that an unspecified and general risk of a violent counterdemonstration or the mere possibility that the authorities would be unable to prevent or neutralize such violence is not sufficient to ban a demonstration.

9.11 The Committee also notes that, moreover, the mere fact that there may be some disturbance of the traffic is in itself no a ground to prohibit the assembly, especially where the organizers have indicated their willingness to adjust the location where the demonstrations was going to be held.

9.12 The Committee notes that the State party has not provided the Committee with any information in the present case to support the claim that a "negative reaction" to the author's proposed gay pride parade by members of the public would present a severe threat to their safety and that the police will not have the capacity to contain such a threat. In such circumstances, the obligation on the State party is to facilitate the exercise of the rights by the author under the Covenant and not to contribute to suppressing those rights. The Committee therefore concludes that the State party has not shown that the restriction imposed on the author's rights have been necessary in a democratic society in the interest of public safety, and thus that it violated article 21 of the Covenant.

9.13 The Committee further notes the author's claim that by prohibiting the parade, the authorities subjected him to discrimination on the ground of his sexual orientation in violation of article 26. The Committee also notes the State party's claim that the motive for prohibition of the parade did not include any manifestation of intolerance towards persons with non-traditional sexual orientation, but was strictly determined by the protection of the rights of minors.

9.14 The Committee recalls that, in paragraph 1 of its general comment No. 18 (1989) on non-discrimination, it stated that article 26 entitles all persons to equality before the law and equal protection of the law, prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. With reference to its earlier jurisprudence, the Committee recalls that the prohibition against discrimination under article 26 also extends to discrimination based on sexual orientation and gender identity.

9.15 The Committee considers that the authorities were opposed to the homosexual content of the parade and expressly drew a distinction based on sexual orientation and gender identity which constituted a differentiation based on grounds prohibited under article 26.

9.16 The Committee further recalls its jurisprudence that not every differentiation based on the grounds listed in article 26 of the Covenant amounts to discrimination, as long as it is based on reasonable and objective criteria and it pursues a legitimate aim under the Covenant. 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 why the restriction on the peaceful assembly was based on reasonable and objective criteria. Moreover, no evidence which would point to the existence of factors that might justify such assessment has been advanced.

9.17 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 suppressing those rights. The Committee
further notes that it has previously concluded that the laws banning “promotion of non-traditional sexual relations to minors” in the State party exacerbate negative stereotypes against 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. The Committee accordingly 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 and in pursuit of a legitimate aim under the Covenant. The prohibition therefore amounted to a violation of his rights under article 26 of the Covenant.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of the author’s rights under article 21 and article 26 of the Covenant.

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated, including adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this connection, the Committee reiterates that, pursuant to its obligations under article 2 (2) of the Covenant, the State party should review its legislation with a view to ensuring that the rights under article 21 of the Covenant, including organizing and conducting peaceful assemblies and article 26 may be fully enjoyed in the State party.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee’s Views. The State party is also requested to publish the present Views and disseminate them widely in the official language of the State party.
2. Committee on the Elimination of Discrimination against Women

O.N. and D.P. v. Russian Federation, communication No. 119/2017, decision of 24 February 2020

Keywords: SO; L, LBT; access to justice, aggravating circumstance, anti-discrimination legislation, awareness-raising, court, discrimination, domestic violence, GBV, GC/GR, hate crime, intersectionality, investigation, jurisprudence, law enforcement officials, legislation, police, propaganda, prosecution, punishment, remedy, stereotypes, stigmatisation, training, violence, women

Subject matter: Violence and hate crime against two lesbian women, their lack of access to justice and the State Party's failure to bring perpetrators to justice or provide effective remedy

Substantive issues: Access to justice and effective remedy; violence and discrimination against lesbian women based on their sexual orientation

Articles of the Convention: 1, 2 (b) and (g), 5(a)

Background

1. The authors of the communication are O.N. and D.P., Russian citizens born in 1987 and 1991, respectively. They claim that the Russian Federation has violated their rights under articles 1, 2 (b), (c), (e) and (f) and 5 (a) of the Convention on the Elimination of All Forms of Discrimination against Women. [...].

Facts as submitted by the author

2.1 The authors are a lesbian couple, who have maintained a stable relationship for several years.

2.2 On the night of 19 to 20 October 2014, the authors were going home in Saint Petersburg when, at about 12.47 a.m., at a subway station, they noticed two unknown men following them. They continued on their way, followed by the men to the exit from the station, then along the street towards their flat. On their way, the authors openly demonstrated their relationship, hugging, kissing and holding hands. At one point, one of the men attacked the first author from behind, hitting her. He then hit both authors on the head, face and body, shouting homophobic insults and threatening to kill them if he met them again. Meanwhile, the second man filmed the attack with his mobile telephone. Shortly afterwards, the men left.

2.3 Immediately after the incident, the authors refrained from going to the police as they feared for their lives. On the following day, 21 October 2014, they reported it, asking for the matter to be investigated. In their initial submission to the police, they provided an account of the events. On the same day, the first author was examined by a medical doctor. According to the medical report, she had a concussion and a haematoma on her left hip. The second author decided to abstain from a...
medical examination, as her injuries were not visible on 21 October 2014. The next day, 22 October 2014, bruises appeared on her chin and left hip, but remained undocumented. On 30 October 2014, the authors followed up on their complaint to the police, providing a detailed account of the incident and asking for a criminal case to be opened into the physical violence and death threats to which they had been subjected. They stressed, in particular, in their separate applications that the offences had been motivated by hatred in relation to their sexual orientation. The first author supplemented her complaint with a detailed map of the crime scene, containing information about the closed-circuit television cameras installed along the route from the subway station, where they had first encountered the assailants, to the place of the assault.

2.4 On 30 October 2014, an investigator from Moskovsky district police station No. 29 in Saint Petersburg refused to open a criminal case under article 116 (1) of the Criminal Code of the Russian Federation. In his decision, he stated that the impossibility of establishing witnesses and the perpetrators of the alleged crime was grounds for the refusal. On 30 October 2014, the decision was overruled by the deputy prosecutor of the Office of the Prosecutor of the Moskovsky district, in his capacity as supervising prosecutor, who ordered a further inquiry into the incident and instructed the investigator to establish the gravity of the injuries sustained by the authors, collect closed-circuit television video recordings taken from the entrance to the subway station and conduct other inquiry measures necessary in the circumstances relating to the case.

2.5 On 26 November 2014, a medical examination of the first author was conducted. In the report issued on the same date, it was concluded that she had had a haematoma on her left hip. The injury was classified as not having caused any harm to her health. With regard to the previously diagnosed concussion, the expert concluded that the injury could not be confirmed because the materials submitted for examination were insufficient.

2.6 On an unspecified date in 2014, the investigator requested that the closed-circuit television recording be collected from the subway administration. On 7 December 2014, the administration replied, informing the investigator that the recording had been destroyed following the expiration of the seven-day storage period.

2.7 On 9 December 2014, upon completion of the additional inquiries, the investigator again refused to open a criminal case, referring to the absence of a criminal act. On 19 December 2014, that decision was overruled by the supervising prosecutor as unlawful and unfounded. In his decision, the supervising prosecutor indicated that there were grounds for opening a criminal case under article 116 (1) of the Criminal Code. Consequently, the matter was remitted to the investigator. On 14 February 2015, the investigator refused to open a criminal case, referring to the absence of a criminal act. The authors state that they were not informed about these decisions.

2.8 On 3 March 2015, the authors challenged the investigator’s failure to act before the Moskovsky district court under article 125 of the Criminal Procedure Code, contending, with reference to articles 1–3 and 5 (a) of the Convention, that no effective investigation into the incident had been carried out and that the inquiry measures had been insufficient and did not correspond to the specific nature of the crime committed against them, namely violence motivated by their non-traditional sexual orientation. The authors also stated that they had not been informed about the procedural steps taken in their case. On 2 April 2015, they reiterated their arguments, adding that no measures whatsoever had been taken to establish either eyewitnesses or the perpetrators of the crime, that no expert forensic medical examination of the injuries sustained by the first author had been carried out, that the request for the closed-circuit television recording from the entrance to the subway station had not been sent promptly, resulting in irreparable loss of evidence, and that no measures had been taken to obtain video recordings from other security cameras installed along the route from the subway station to the place of the incident.
2.9 On 13 March 2015, the supervising prosecutor overruled the refusal of 14 February 2015 to open a criminal case and remitted the matter to the investigator. In his decision, the supervising prosecutor reiterated that there were sufficient grounds to institute criminal proceedings for battery under article 116 (1) of the Criminal Code.

2.10 On 14 April 2015, the court accepted the authors’ complaint in part, having found that the investigator did not inspect the scene of the incident and thereby failed to comply with the instructions of the supervising prosecutor. The remainder of the authors’ complaint was rejected. On 23 April 2015, the authors appealed that decision before the Saint Petersburg City Court, submitting that no effective investigation into the incident had been carried out, in breach of international obligations under the Convention. They further contended that the court had failed to address all the arguments put forward in their complaint and that the legal qualification of the crime against them as simple battery under article 116 (1) of the Criminal Code disregarded the homophobic motive of the perpetrators. On 7 July 2015, the Saint Petersburg City Court endorsed the court decision of 14 April 2015 and rejected the authors’ complaint, without providing any specific argumentation on the matter.

2.11 On 2 May 2015, the investigator opened a criminal case under article 116 (1) of the Criminal Code. On an unspecified date in May 2015 and on 3 May 2015, respectively, the first and second authors were granted victim status in the case and interviewed. On 21 July 2015, the proceedings were suspended owing to the failure to identify the perpetrators. According to the authors, they were not informed about that decision.

2.12 On 18 June 2015, the authors’ counsel requested the reclassification of the crime, contending that the correct classification should have included the homophobic motive of the act and that it therefore should have fallen under article 116 (2) of the Criminal Code. She argued that the wording of that article contained a broad reference to battery motivated by hatred and hostility in relation to a social group and that, in the authors’ situation, taking into account their self-identification as lesbian women belonging to the lesbian, bisexual and transgender community as a social group, that provision was therefore applicable to their case. On 20 June 2015, the investigator refused the request, stating that, in the absence of the possibility of identifying the perpetrators and, in view of the subjective nature of the motive as an element of the crime, it was impossible to confirm the alleged homophobic motive for the time being. On 6 August 2015, the first author appealed the refusal before the court. In her appeal, she stated that not only had the investigator disregarded the homophobic motive of the crime in the legal qualification given to the offence, but he had also failed to include the death threat as a component of the qualification. On 16 October 2015, the court rejected the complaint, having endorsed the reasoning put forward by the investigator in his decision. The author’s argument relating to the death threat was not addressed. On 22 October 2015, the authors’ counsel appealed this decision before the Saint Petersburg City Court, relying on the same arguments as those advanced by the first author in her own complaint. On 2 December 2015, the Saint Petersburg City Court rejected the complaint and upheld the court’s findings.

2.13 On 29 February 2016, the authors’ counsel challenged before the court the investigator’s failure to act and the decision of 21 July 2015 to suspend the proceedings in the criminal case. In her complaint, she contested the legal qualification of the crime under article 116 (1) of the Criminal Code and the failure by the investigator to take the necessary investigative measures, stating, in particular, that not all theories of the crime had been verified, no closed-circuit television recordings of the crime scene had been examined, no eyewitnesses had been established and no persons identified by the authors as possible witnesses had been summoned or interviewed. The counsel further stated that the authors had not been notified of procedural decisions taken in their case.

2.14 On an unspecified date, the criminal proceedings were resumed. On 19 February 2016, they were suspended owing to the failure to identify a perpetrator. On 13 April 2016, the decision to suspend
the investigation was reversed by the supervising prosecutor, and the case was remitted for further investigation.

2.15 On 18 April 2016, the court terminated the proceedings on the complaint submitted by the authors’ counsel on 29 February 2016, in view of her request to that effect following the decision by the supervising prosecutor of 13 April 2016 to resume the investigation.

2.16 On 10 May 2016, the authors’ counsel requested the investigator to reclassify the crime, taking into account the homophobic motive of the attack. The request was rejected. The counsel was informed about this decision on 20 May 2016.

2.17 According to the authors, on 31 May 2016, they were notified of the results of the expert forensic medical examination of 16 June 2015, ordered by the investigator on 23 May 2015, of which they had not previously been informed. In September 2016, they requested the authorities to inform them about the status of the investigation into their case. No reply was received.

2.18 The authors contend that the available domestic remedy, namely the procedure under article 125 of the Criminal Procedure Code, does not amount to an effective remedy. They refer to the jurisprudence of the European Court of Human Rights, in particular the case of Dobriyeva and others v. the Russian Federation, according to which “such appeals do not appear able to redress the defects in the investigation”, and in the authors’ case, the content of the complaints also contained references to the defects in the investigation, the investigators’ negligence and the reclassification of the crime. Moreover, the national courts reaffirmed their position that the investigators had the procedural freedom to conduct investigations and classify crimes independently. Thus, the authors state that the available domestic remedies are not effective.

Complaint

3.1 The authors claim a violation of articles 1, 2 (b), (c), (e) and (f) and 5 (a) of the Convention on account of the State party’s failure to effectively investigate a violent offence committed by private individuals against them owing to their non-traditional sexual orientation.

3.2 Under articles 1, 2 (b), (c), (e) and (f) of the Convention, the authors submit that the criminal legislative framework and administrative practice in the State party do not correspond to its obligation to effectively protect women against discrimination based on their sexual orientation. In particular, contrary to the Committee’s general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention and its concluding observations on the combined sixth and seventh reports of the Russian Federation (CEDAW/C/USR/CO/7), violence against lesbian, bisexual and transgender based on hatred and bias in relation to their sexual orientation is not directly penalized in the country’s Criminal Code. Although it can be said that certain provisions of the Code, in particular articles 63 (1) and 116 (2), indirectly criminalize homophobic offences, proscribing criminal acts motivated by “hatred and hostility in relation to a social group” and qualifying such acts as aggravated in nature, the national authorities refrain in practice from investigating the homophobic undertones of specific crimes and treat them as ordinary criminal acts.

3.3 Under articles 2 (b)–(f) and 5 (a) and with reference to article 3 of the Convention, the authors submit that, in their particular situation, the national authorities failed to conduct an effective, prompt and independent investigation and take all necessary measures corresponding to the specific nature of the crime against them as lesbian women. Not only did the investigators in the criminal case fail to act promptly to collect and secure evidence, such as closed-circuit television video recordings made on the night of the event, but they also did not take measures to identify possible eyewitnesses of the offence or keep the authors informed about the course of the criminal proceedings. For a long time, the investigator repeatedly refused to open a criminal case. It was only on 2 May 2015 that the case was opened and the incident was qualified under article 116 (1) of the Criminal Code, with complete
disregard for the homophobic context of the criminal act. All subsequent attempts to have the legal classification changed did not yield any positive results.

3.4 Finally, under articles 1, 2 (b), (c), (e) and (f) and 5 (a) of the Convention, the authors claim a violation, by the State party, of its obligations to promote and fulfil women's rights, on account of the stereotypical attitude that has been widely adopted by the national authorities towards violence against lesbian, bisexual and transgender women based on their sexual orientation. According to the authors, their case is demonstrative of the deeply rooted attitude that this form of violence is an ordinary crime that does not require specific action.

3.5 The authors ask the Committee to establish that there has been a violation of articles 1, 2 (b), (c), (e) and (f) and 5 (a) of the Convention and to recommend the State party to provide them with appropriate remedies, including monetary compensation and psychological rehabilitation. They also ask the Committee to recommend the State party to: conduct an effective and timely ex officio investigation into each offence, where there are grounds to believe that it was motivated by hatred towards lesbian, bisexual and transgender women, taking fully into account the specific context of the offence; provide relevant professional training for public officials in order that crimes with homophobic undertones committed against lesbian, bisexual and transgender women are understood to be hate crimes requiring active State intervention; and provide lesbian, bisexual and transgender women who have been victims of hate crimes with adequate psychological, legal and other assistance.

State party's observations on admissibility and the merits

4.1 On 26 April 2018, the State party submitted its observations on the admissibility and the merits of the communication.

4.2 The State party submits that the right to appeal a court decision is established in article 389 (1) of the Criminal Procedure Code of the Russian Federation. However, the authors and their representative did not appeal the decision of the Moskovsky district court of 18 April 2016.

4.3 The State party also submits that the authors and their representative did not file cassation complaints regarding the decision of the Moskovsky district court of 16 October 2015, the decision of the Saint Petersburg City Court of 2 December 2015 and the decision of the Moskovsky district court of 18 April 2016, in accordance with articles 401 (1) (2) and 401 (2) (2).

4.4 In 2016, the chamber for criminal cases of the Supreme Court of the Russian Federation observed that a total of 599 cases were examined regarding decisions that had obtained the force of res judicata. Of those reviewed cases, the court accepted 207 criminal cases for consideration under cassation review, of which it found in favour of the appellant in 200 cases, involving 217 persons. In addition, 13 guilty verdicts were annulled. In 9 of the 13 cases, the case was sent to the lower court for reconsideration. In cases that affected three persons, the crimes charged were reclassified in a lower category. A total of 87 guilty verdicts were changed, and in cases that affected 13 persons the crimes charged were reclassified. In cases that affected 74 persons, the verdicts were left intact, but the courts reduced the sentences. The chamber for criminal cases of the Supreme Court of the Russian Federation considered cassation appeals regarding the decisions of the courts on the level of the subjects of the Russian Federation involving 11 persons, in which the cases were sent for reconsideration under appeal reviews; the decision for 1 person was reversed. In cases that affected 35 persons, the cassation decisions were changed or annulled without reversing the sentence or appeal decision.

4.5 The State party refutes the authors’ claim that the procedure under article 125 of the Criminal Procedure Code does not amount to an effective remedy. It provides the following statistics in support of its position. In 2016, the courts of the Russian Federation considered 127,086 complaints under article 125 of the Criminal Procedure Code, of which it found in favour of the appellant in 6,369 cases.
and of which 29,917 were dismissed. During the first six months of 2017, the courts considered 127,086 complaints, of which 2,822 were satisfied, 11,736 were dismissed, 41,979 were discontinued and 146 special court rulings were rendered, including 92 rulings against preliminary investigation bodies.

4.6 The State party reiterates the facts of the authors’ case and submits that they filed a complaint concerning the inaction of the investigator from Moskovsky district police station No. 29 before the Moskovsky district court on 12 March 2015. Their complaint was partly upheld. The decision was appealed before the Saint Petersburg City Court and was dismissed on 7 July.

4.7 On 19 August, the authors filed a complaint under article 125 of the Criminal Procedure Code before the Moskovsky district court against the refusal to reclassify the crime. The complaint was dismissed on 16 October. On 21 July, the investigation had been suspended because no person had been identified to be charged. The appeal complaint to the Saint Petersburg City Court was dismissed on 2 December.

4.8 On 17 March 2016, the authors’ representative filed a complaint against the inaction of the investigator from Moskovsky district police station No. 29 and the suspension of the criminal case before the Moskovsky district court. On 18 April, the proceedings were discontinued as the decision of the investigator had been revoked by the deputy prosecutor of the Moskovsky district on 13 April. That court decision was not appealed.

4.9 The State party submits that the Office of the General Prosecutor, upon considering the complaint of the authors, did not find any evidence that the authors had been subjected to inhuman or degrading treatment or discrimination based on their sexual orientation. The investigation into their case is still in progress.

4.10 The State party underlines that the authors’ claims concern the consideration or assessment of the circumstances of the criminal case and the application of national law. The refusal to reclassify the crime was legitimate since the motive for an act can be established only when the person who committed the crime is identified. At the same time, the person who committed the crime in the present case had not been found. The State party states that the authors’ access to justice has not been impeded since they could file the same request when the person who committed the crime is identified.

4.11 The State party states that the authors’ argument that a group of people with a particular sexual orientation is considered by the Constitutional Court and in national jurisprudence to be a social group in relation to which hate crimes can be committed does not alter the conclusion of the competent authorities of the State party, since there are not enough data to establish a motive of hatred towards a particular social group in the actions of an unknown person.

4.12 Lastly, the State party considers that there were no violations of the authors’ rights under the Convention.

Author’s comments on the State party’s observations on admissibility and the merits

5.1 On 30 July 2018, the authors contested the State party’s arguments on both the admissibility and merits of their case.

5.2 The authors informed the Committee that the criminal investigation had been resumed after the submission of their complaint to the Committee. On 8 September 2017, the authors were interviewed by the investigator from the Moskovsky district police station. They were informed that the investigation had been resumed in accordance with the decision of the Office of the Prosecutor of
Moskovsky district. The authors were refused permission to obtain copies of new documents relating to their criminal case.

5.3 On 21 September 2017, the authors were invited to take part in the examination of the crime scene for the first time since the attack. The examination of the crime scene was conducted three years after the event took place and thus was not effective.

5.4 On 17 November 2017, the authors’ representative was informed that the investigation into their case had been resumed.

5.5 Having become aware of the decision of the Office of the Prosecutor to cancel the decision to suspend the investigation into the criminal case, the authors’ representative discovered that psycholinguistic expertise had been requested in order to decide whether the representatives of the lesbian, bisexual and transgender community could be considered a social group. On 1 December 2017, the experts concluded that the authors’ sexual orientation was the cause of the physical violence and verbal aggression to which they had been subjected and that the attackers had demonstrated a hostile personal attitude towards lesbians. However, they did not find any signs of incitement to hatred against the lesbian, bisexual and transgender community as the attackers did not seek to promote negative attitudes towards lesbians among other people through their remarks.

5.6 Since December 2017, the authors have not been informed about further developments in the investigation into the crime committed against them.

5.7 On an unspecified date, the authors filed a complaint under article 125 of the Criminal Procedure Code against the inaction of the investigator, since they were not informed about the decision to conduct a psycholinguistic examination and could not apply to amend the questions put before the experts. On 13 March 2018, the Moskovsky district court rejected the complaint since the action of the investigator could not be appealed under article 125 of the Criminal Procedure Code. The authors appealed that decision without success.

5.8 In relation to the exhaustion of domestic remedies, the authors submit that the Human Rights Committee has found that cassation appeals under chapter 47.1 of the Criminal Procedure Code did not constitute an effective remedy in cases in which the investigation into a hate crime against a lesbian, bisexual or transgender person was not effective. The Human Rights Committee believed that such a cassation review contained elements of an extraordinary remedy and considered that the State party must therefore show that there was a reasonable prospect that such a procedure would provide an effective remedy in the circumstances of the case. The authors claim that their case is similar to the above-mentioned case and that the State party’s statistics are very general and do not reflect the number of cases brought under article 125 of the Criminal Procedure Code.

5.9 In relation to the lack of a cassation appeal against the decision of the Moskovksy district court of 18 April 2016, the authors submit that, since the decision to suspend the investigation had already been revoked by the prosecutor, there was no need to appeal it. The authors reiterate their position that the complaint under article 125 of the Criminal Procedure Code does not constitute an effective remedy because it cannot remedy the lack of an effective investigation into a hate crime.

5.10 The authors also submit that, in the Russian Federation, the courts systematically refuse to review matters relating to the legal classification of the fact and the procedural violations of the investigative authorities. The European Court of Human Rights declared that “such appeals do not appear able to redress the defects in the investigation”. Therefore, the authors had no legal avenue to compel the investigator to take into account the discriminatory motive of the crime and take particular investigative actions.
5.11 The authors underline that, under the Convention, gender-based violence constitutes a form of discrimination against women, and some groups of women, such as lesbians, are more vulnerable to discrimination. State parties should provide such groups with proper protection against physical or psychological violence and discrimination. In the present case, the State party ignored its duty, which resulted in violations of the authors’ rights.

5.12 The authors state that the State party failed to ensure that the investigation into their criminal case was effective and timely. They also submit that the statute of limitations for the crime under article 116 of the Criminal Code is two years after the crime is committed, and in their case the term has already passed. Thus, the negligence of the investigative authorities may result in impunity for the attackers and the absence of a remedy for the authors.

5.13 The authors state that, by its refusal to classify their case as a hate crime, the State party showed tolerance towards violence on discriminatory grounds in relation to lesbian, bisexual and transgender persons, in particular lesbian women. The large number of cases of violence against lesbian, bisexual and transgender persons in the Russian Federation has been disclosed in numerous reports and was also reflected in the Committee’s concluding observations on the combined sixth and seventh periodic reports and the eighth periodic report of the Russian Federation (CEDAW/C/RUS/CO/7 and CEDAW/C/RUS/CO/8).

5.14 The authors ask the Committee to establish that articles 1, 2 and 5 of the Convention were violated and to recommend the State party to adopt comprehensive anti-discrimination legislation that will oblige it to take into account a homophobic motive as an aggravating circumstance, to collect statistics in relation to sexual violence, domestic violence and homophobic crimes and to nullify the law on “homosexual propaganda”.

Issues and proceedings before the Committee

Consideration of admissibility

[...]

6.4 The Committee notes that the cassation review procedure set out under article 401 (2) (1) of the Criminal Procedure Code concerns the revision, on points of law only, of court decisions that have entered into force. The decision on whether to refer a case for hearing by the cassation court is discretionary in nature, is not subject to a time limit and is made by a single judge. These characteristics lead the Committee to believe that such a cassation review procedure contains elements of an extraordinary remedy. The State party must therefore show that there is a reasonable prospect that such a procedure would provide an effective remedy in the circumstances of the case. In the present case, the State party submits that, in 2016, the chamber for criminal cases of the Supreme Court of the Russian Federation examined 599 criminal cases, 207 of which were reviewed under the cassation appeal procedure, 200 being “satisfied” (see para. 4.4). The State party failed, however, to provide information and to show that there was a chance of success in cases in which the investigative authorities failed to conduct an effective and timely inquiry and in which the motion for prosecution of a violent crime was not granted. In the absence of any clarification by the State party on the effectiveness of the cassation review procedure in cases similar to the present case, the Committee finds that it is not precluded by article 5 (2) (b) of the Optional Protocol for the purposes of admissibility from examining the communication.

6.5 The Committee also notes the State party’s argument that the authors’ communication concerned how the national investigative authorities considered the facts of the case and applied national legislation and that, in the present case, it cannot be concluded that the actions of the authorities in charge of the criminal proceedings were unlawful or arbitrary or that they limited access to justice.
6.6 The Committee further notes the authors’ submission that the investigative authorities did not initiate a criminal case until seven months after the attack against them, that the criminal case was closed, suspended and reopened several times and that the punishment for the crime under article 116 of the Criminal Code has a two-year statute of limitations from the date on which it was committed. The statute of limitations for the events in question therefore expired on 20 October 2016, and any attempt to bring the perpetrators to justice beyond that date is therefore time-barred.

6.7 In the light of the above factual background, the Committee is of the view that the authors’ claims cannot be regarded as manifestly ill-founded, but that the issues of the admissibility of their claims under the Optional Protocol and the level of substantiation of the claims in the communication are so closely linked to the merits of the case that it would be more appropriate to determine them during the consideration of the merits stage of the proceedings. The Committee considers, therefore, that the authors’ claims under articles 1, 2 (b)–(f) and 5 (a) of the Convention are sufficiently substantiated for purposes of admissibility, and thus declares the communication admissible.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information made available to it by the authors and the State party, in accordance with the provisions of article 7 (1) of the Optional Protocol.

7.2 With regard to the authors’ submission that the actions and inactions of the investigative authorities were based on gender and sexual orientation stereotypes, in violation of article 5 of the Convention, the Committee reaffirms that the Convention places obligations on all State organs and that States parties can be responsible for law enforcement decisions that violate provisions of the Convention. The Committee also emphasizes that the full implementation of the Convention requires States parties not only to take steps to eliminate direct and indirect discrimination and improve the de facto position of women, but also to modify and transform gender stereotypes and eliminate wrongful gender stereotyping, a root cause and consequence of discrimination against women. Gender stereotypes are perpetuated through various means and institutions, including laws and legal systems, and can be perpetuated by State actors in all branches and at all levels of Government and by private actors.

7.3 The Committee recalls that discrimination within the meaning of article 1 of the Convention gender-based violence against women. Such discrimination is not restricted to action by or on behalf of States parties. Rather, under article 2 (e) of the Convention, States parties may also be responsible for private acts, if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.

7.4 The Committee recalls that discrimination against women is inextricably linked to other factors that affect their lives, including being lesbian women. Accordingly, because women experience varying and intersecting forms of discrimination, which have an aggravating negative impact, the Committee acknowledges that gender-based violence may affect women to different degrees or in different ways, meaning that appropriate legal and policy responses are needed.

7.5 The Committee has documented many examples of the negative impact of intersecting forms of discrimination on access to justice, including ineffective remedies, for specific groups of women. The Committee has also noted that, when women from such groups lodge complaints, the authorities frequently fail to act with due diligence to investigate, prosecute and punish perpetrators and/or provide remedies.

7.6 The Committee also recalls that, under article 2 (a) and (c)–(e) of the Convention, the State party has a duty to modify or abolish not only existing laws and regulations, but also customs and practices that constitute discrimination against women. In that regard, the Committee stresses that stereotyping affects women’s rights to a fair trial and that the judiciary must be careful not to create inflexible
standards on the basis of preconceived notions of what constitutes gender-based violence. Criminal laws are particularly important in ensuring that women are able to exercise their human rights, including their right to access to justice, on the basis of equality. States parties are obliged, under articles 2 and 15 of the Convention, to ensure that women have access to the protection and remedies offered through criminal law and that they are not exposed to discrimination within the context of those mechanisms, as victims of criminal acts.

7.7 In the present case, the compliance of the State party with its obligations under article 2 (a) and (c)-(e) of the Convention to eliminate gender stereotypes needs to be assessed in the light of the level of gender sensitivity applied in the handling of the investigation into the authors’ case. In that regard, the Committee notes that the investigative authorities did not initiate a criminal case until seven months after the attack on the authors and that the incident was qualified under article 116 (1) of the Criminal Code, with complete disregard for the homophobic context of the criminal act. All the authors’ subsequent attempts to have the legal classification changed did not yield any positive results. The Committee also notes that the domestic authorities failed to conduct an effective and timely investigation and take all necessary measures corresponding to the specific nature of the crime against the authors as lesbian women. In that connection, the authors claimed that the investigators in the criminal case failed to act promptly in collecting and securing evidence or identify possible eyewitnesses of the offence. They also claimed that the investigators failed to keep the authors informed about the course of the criminal proceedings. The Committee also notes that the criminal investigation was resumed after the submission of the complaint to the State party; however, there is no information about the results of that investigation.

7.8 The Committee further notes the State party’s submission that the Office of the General Prosecutor, having considered the authors’ complaint, did not find any proof that they had been subjected to inhuman or degrading treatment or discrimination based on their sexual orientation. The investigation into their case is still in progress and there are not enough data to establish a motive of hatred towards a particular social group in the actions of an unknown person. The Committee notes that, read in full, these facts indicate 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.

7.9 The Committee recalls its concluding observations on the combined sixth and seventh periodic reports of the Russian Federation (CEDAW/C/RUS/CO/7), in which it expressed its concern about acts of violence against lesbian, bisexual and transgender women and called upon the State party to provide effective protection against violence and discrimination against women based on their sexuality, in particular through the enactment of comprehensive anti-discrimination legislation that includes the prohibition of multiple forms of discrimination, including on the grounds of sexual orientation. It also urged the State party to intensify its efforts to combat discrimination against lesbian, bisexual and transgender women, including by launching an awareness-raising campaign aimed at the general public, as well as providing appropriate training to law enforcement officials. In its concluding observations on the eighth periodic report of the Russian Federation (CEDAW/C/RUS/CO/8), the Committee remained concerned about reported barriers that women were facing when seeking justice, including social stigma and negative stereotypes, a lack of awareness of their rights and limited knowledge of the Convention, the Optional Protocol thereto and the Committee’s general recommendations regarding the role of law enforcement officials in the strict application of legislation prohibiting gender-based discrimination against women.
7.10 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.

7.11 In the light of the above, the Committee considers that the manner in which the authors' case was addressed by the State party's police and prosecutorial authorities constitutes a violation of the authors' rights under articles 1, 2 (a) and (c)–(e) and 5 (a) of the Convention. Specifically, the Committee recognizes that they have suffered moral damage and prejudice. They were subjected to fear and anguish by the State organs that ought to give prompt, impartial and effective consideration of their complaints, in particular the police, which failed to conduct an efficient, impartial and timely investigation into their case and bring the perpetrators to justice.

8 Acting under article 7 (3) of the Optional Protocol and in the light of the above considerations, the Committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the authors' rights under articles 1, 2 (b)–(g) and 5 (a) of the Convention.

9 The Committee makes the following recommendations to the State party:

(a) Concerning the authors of the communication: provide appropriate remedies, including monetary compensation and psychological rehabilitation, commensurate with the gravity of the violations of their rights;

(b) General:

(i) Ensure timely gender-sensitive training for police and investigative authorities on the Convention, the Optional Protocol thereto and the Committee's general recommendations, in particular general recommendations No. 19, No. 28, No. 33 and No. 35, in order that crimes with homophobic undertones committed against lesbian women be understood as gender-based violence or hate crimes requiring active State intervention;

(ii) Comply with its due diligence obligations to respect, protect and fulfil the human rights of women, including lesbians, and the right to be free from all forms of gender-based violence;

(iii) Investigate promptly, thoroughly, impartially and seriously all allegations of gender-based violence against women for which there are grounds to believe that such violence was motivated by hatred towards lesbians, fully taking into account the specific context of the offence, ensure that criminal proceedings are initiated in all such cases, bring the alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and impose appropriate penalties;

(iv) Provide lesbians, who are victims of violence with safe and prompt access to justice, including free legal aid where necessary, in order to ensure that they have access to available, effective and sufficient remedies and rehabilitation in line with the guidance provided in the Committee's general recommendation No. 33.

10 In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.
3. Committee against Torture

H.T. v. Switzerland, communication No. 888/2018, decision of 30 December 2020

Keywords: asylum-seekers/refugees, court, criminalisation (decriminalisation), detention, investigation, jurisprudence, measures, remedy, same-sex couples, torture/ill-treatment

Subject matter: Deportation of a lesbian woman to Cameroon
Substantive issue: Non-refoulement
Articles of the Convention: 3 and 22

Background

1.1 The complainant is H.T., a citizen of Cameroon, born in 1967. She applied for asylum in Switzerland but her application was denied. She claims that returning her to Cameroon would constitute a violation by the State party of her rights under article 3 of the Convention, since she would be subjected to torture and other cruel, inhuman or degrading treatment or punishment. The State party made the declaration under article 22 (1) of the Convention on 2 December 1986. The complainant is represented by counsel, Alfred Ngoyi wa Mwanza of the BUÇOFRAS association.

1.2 The complainant requested that the Committee grant interim measures during its consideration of her complaint. On 23 October 2018, the Committee, acting through its Rapporteur for new complaints and interim measures, decided not to grant this request.

1.3 On 3 February 2020, at the request of the State party, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to examine the admissibility of the complaint separately from the merits.

The facts as presented by the complainant

2.1 The complainant entered Switzerland on 2 November 2001 and lodged an asylum application. In a decision of 22 February 2002, the Swiss authorities decided not to examine the merits of her asylum application and ordered her removal from the territory. On 19 April 2002, the complainant married Mr. R., a Swiss and Italian national born in 1962, residing in the canton of Zurich. As a result of the marriage, she was granted a residence permit and then a permanent residence permit in the canton of Zurich.

2.2 In 2015, the complainant travelled to Yaoundé, Cameroon. There she met M.K., a woman of Cameroonian origin, married to a Congolese man and living in Yaoundé. The two women maintained a secret romantic relationship given that homosexual relations are criminalized in Cameroon. Throughout 2015, they managed to keep their relationship a secret.

2.3 In January 2016, the complainant returned to Yaoundé at the invitation of M.K. and continued her relationship with her. On 20 January 2016, they were caught by M.K.’s husband in the family home. The complainant managed to escape and leave the country immediately, after bribing immigration

---

officials at the airport through the intermediary of a friend. After she left, legal proceedings were initiated against her and M.K. for homosexuality. M.K. was arrested and admitted the facts. She remains in custody pending trial. The complainant is therefore wanted by the Cameroonian authorities to appear and testify. Since then, the complainant has not returned to Cameroon.

2.4 On 21 September 2017, the aliens police of the canton of Zurich revoked the complainant’s permanent residence permit and ordered her removal from Switzerland by 21 December 2017. This decision became enforceable and, on 2 January 2018, the complainant was placed in administrative detention by the Zurich cantonal police pending her return to Cameroon. On 5 January 2018, she submitted an asylum application verbally.

2.5 On 1 February 2018, the complainant was summoned by the State Secretariat for Migration for a hearing at her place of detention on the grounds for her asylum application. The hearing was attended by a male member of the Secretariat staff responsible for the hearing, a representative of an independent charitable organization, a minute-taker and an interpreter. The complainant’s legal representative was not informed of the hearing, despite the fact that the complainant had signed a written power of attorney giving him the power to represent her. In a decision of 14 February 2018, the State Secretariat rejected her asylum application and ordered her deportation from Switzerland. On 27 February 2018, the complainant submitted an appeal to the Federal Administrative Tribunal. By judgment of 15 March 2018, the Tribunal overturned the decision of the State Secretariat and returned the case for a hearing in the presence of the complainant’s legal representative, which took place on 9 May 2018. To substantiate the grounds for her asylum application, the complainant produced an article from the Cameroonian newspaper *Le Courrier* of 29 February 2016 about her love affair with M.K. and the proceedings initiated against her by the Cameroonian authorities.

2.6 In a decision of 11 June 2018, the State Secretariat for Migration rejected the complainant’s application for asylum, ordered her removal from Switzerland and ordered the execution of this measure. On 9 July 2018, the complainant appealed against this decision. In its judgment of 21 August 2018 ending the proceedings, the Federal Administrative Tribunal declared the appeal inadmissible. Thus, the State Secretariat’s decision of 11 June 2018 became enforceable.

2.7 The complainant claims that the Swiss authorities rejected her asylum application on the grounds that some of her allegations were implausible, without taking into account other relevant elements of her case. She based her claim for asylum on the situation she faced as a homosexual in Cameroon, having been caught in a sexual act with her female partner. This behaviour is punishable both criminally and socially in Cameroon. The fact that some elements of the complainant’s statement at her hearing on 9 May 2018 were contradictory should not call into question the plausibility of her account, in accordance with the principle of the balance of probabilities. Several other elements of the case support the credibility of the reasons for the asylum application. The contradictions noted during her hearing can be explained by the fact that the complainant is mentally unwell as a result of her administrative detention, especially since learning that legal proceedings had been instituted against her in her country of origin. Furthermore, the lower authority based its decision on the fact that the complainant had misled the Swiss authorities about her identity when she first applied for asylum in 2001. This fact is not relevant to the examination of her second asylum application. In the course of the proceedings under the law on foreign nationals, the complainant had handed over to the Swiss authorities her Cameroonian passport, which proved her identity. As to the fact that the passport was issued in 2015 and that she might be subjected to persecution in the event of her return to Cameroon, the complainant notes that she contacted the Cameroonian authorities at the time of her 2015 trip, during which she met her partner. Thus, the passport was processed prior to the events during her 2016 trip that gave rise to the grounds for asylum.
2.8 The complainant is in administrative detention and faces deportation. Because of her homosexual relationship with M.K., she is facing legal proceedings that have been described as unfair on the grounds that Cameroon is one of the many African countries that criminalize homosexuality. Article 347-1 of the Cameroonian Criminal Code stipulates that: “Any person who has sexual relations with a person of the same sex shall be punished with 6 months' to 5 years' imprisonment and a fine of 20,000 to 200,000 francs.”

2.9 The complainant was caught in the middle of a sexual act at M.K.’s home. M.K. has admitted the facts and is still in detention awaiting trial. The complainant considers that the acts in question meet the requirements of article 347-1 of the Cameroonian Criminal Code and that she therefore risks imprisonment of between 6 months and 5 years and a fine.

The complaint

3.1 The complainant alleges a violation of article 3 of the Convention in respect of her return to Cameroon, where she risks being detained by the Cameroonian authorities. The publicity surrounding her case and her homosexuality, which was revealed to everyone, including her family, friends and other acquaintances, in the Le Courrier newspaper of 29 February 2016, puts her at risk of torture and other cruel, inhuman or degrading treatment or punishment.

3.2 The complainant states that judicial proceedings conducted in Cameroon against persons accused of homosexuality take place in appalling conditions and that conditions of detention are deplorable, since such persons are not only punished by law but are also rejected by society and their relatives in light of African and, more specifically, Cameroonian culture.

State party's observations on admissibility

4.1 In a note verbale of 6 December 2018, the State party challenged the admissibility of the communication due to non-exhaustion of the available domestic remedies. The State party submits that it is clear from the Federal Administrative Tribunal's judgment of 15 March 2018 that the Federal Office for Migration (now the State Secretariat for Migration), in its decision of 22 February 2002, did not examine the merits of the complainant's first asylum application lodged on 2 November 2001. Because of her marriage to an Italian-Swiss national, the complainant obtained a permanent residence permit in 2007, which the Migration Office of the canton of Zurich revoked on 21 September 2017 since, among other things, she had been convicted of serious crimes and offences. This revocation became final because the appeal of 25 October 2017 was filed past the deadline.

4.2 The complainant was arrested on 2 January 2018 and on 4 January 2018 was placed in detention prior to deportation. The Coercive Measures Court of the canton of Zurich, the Administrative Court of the canton of Zurich and the Federal Tribunal examined and confirmed the legality of her detention. On 5 January 2018, the complainant filed a second asylum application. On 1 February 2018, the State Secretariat for Migration heard her reasons before rejecting the application in a decision issued on 14 February 2018. Ruling on the complainant’s appeal, on 15 March 2018 the Federal Administrative Tribunal overturned the decision of the State Secretariat for Migration and returned the case to the lower court for a new decision. On 9 May 2018, the State Secretariat conducted a new hearing with the complainant, in the presence of her legal representative. In a decision of 11 June 2018, the State Secretariat rejected her asylum application. Acting through her legal representative, the complainant lodged an appeal before the Federal Administrative Tribunal on 9 July 2018. In a decision of 25 July 2018, the examining magistrate of the Tribunal rejected the application for free legal aid, considering that the appeal had no chance of success, and gave the complainant until 9 August 2018 to pay the advance on procedural costs of 750 Swiss francs. Since the complainant did not pay the advance on costs as requested, the Tribunal did not proceed to examine the appeal of 9 July 2018 and concluded the proceedings by decision of 21 August 2018.
4.3 The State party recalls that, under article 22 (5) (b) of the Convention, the Committee does not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. This rule does not apply where it has been established that the application of those remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief to the individual. According to the Committee's jurisprudence, the illusory nature of the remedy may, in general, be overlooked if the author of a communication has furnished no evidence that such remedies would be unlikely to succeed. In its practice, the Committee has previously noted that, in principle, it is not within the scope of its competence to evaluate the prospects of success of domestic remedies, but only whether they are proper remedies for the determination of the author's claims. In keeping with the Committee's practice, a remedy is shown not to be proper when it has no suspensive effect or when the cost of the procedure is too high.

4.4 In this case, the interim ruling on the appeal's chances of success and the advanced payment of costs was taken by the single investigating judge. If the fees are paid in advance, the judgment on the merits can be handed down by the single judge, provided that a second judge concurs, in accordance with article 111 (e) of the Asylum Act (No. 142.31) of 26 June 1998. Failing such agreement, the judgment on the merits is handed down by a panel of three judges, in accordance with article 21 (1) of Act No. 173.32 of 17 June 2005 on the Federal Administrative Tribunal, in conjunction with article 105 of the Asylum Act. Thus, the interim ruling did not prejudge the ruling on the merits. Moreover, it is not apparent from the file that the request for the complainant to pay costs in advance prevented her from exhausting this remedy.

4.5 Therefore the State party concludes that the complainant did not exhaust the available domestic remedies.

**Issues and proceedings before the Committee**

**Consideration of admissibility**

[...]

5.3 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it cannot consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies.

5.4 The Committee notes that the State party challenged the admissibility of the communication on the basis of non-exhaustion of the available domestic remedies. It takes note of the State party's argument that: (a) the complainant submitted a second asylum application in 2018; (b) the State Secretariat for Migration heard her reasons before rejecting the application; (c) the Federal Administrative Tribunal overturned the State Secretariat's decision and returned the case to the lower authority for a new decision; and (d) the State Secretariat conducted a new hearing with the complainant, in the presence of her legal representative, and again rejected the application for asylum. The complainant, represented by her legal counsel, again lodged an appeal with the Federal Administrative Tribunal; the investigating judge dismissed the application for free legal aid, taking the view that the action had no chance of success, and set the complainant a time limit for payment of the advance on the costs of the proceedings. The Committee notes that, since the complainant did not pay the advance on costs as requested, the Tribunal did not proceed with her appeal.

5.5 The State party asserts that, if the complainant had paid the fee for the procedure, the judge could have ruled on her application for review and that, in the absence of such a payment, the application must be considered inadmissible. The Committee notes that, having failed to pay the review application fees, the complainant showed a lack of due diligence in her efforts to see the extraordinary review process through to its conclusion. It also notes that she has never claimed to be unable to afford to pay the required fees within the prescribed time limit and finds that she has not provided a
satisfactory explanation as to why she did not pay them. The Committee recalls that the opening of a new asylum application gives the applicant the right to stay in Switzerland until the procedure is completed and that the complainant has not provided any information to the contrary. The Committee is therefore of the view that domestic remedies have not been exhausted in accordance with article 22 (5) (b) of the Convention.

6. The Committee therefore decides:

(a) That the communication is inadmissible under article 22 (5) (b) of the Convention;

(b) That this decision shall be transmitted to the State party and to the complainant.
1. Committee on Economic, Social and Cultural Rights

Belgium – Concluding Observations – 67th Session, 26 March 2020, 5th review

Keywords: SC; I, LGBTI; action plan, consultation, decision-making process, free and informed consent, health, legislation, medical/health care, policy, surgical/medical intervention, trainings

Intersex persons

54. 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;

(b) Provide greater information on intersexuality and train health-care personnel on the health needs and human rights of intersex persons, including their right to autonomy and physical integrity;

(c) Ensure that intersex persons and organizations continue to be consulted and participate in the development of research, legislation and policies concerning their rights.

12 E/C.12/BEL/CO/5.
Keywords: SOGI; asylum-seekers/refugees, discrimination, legislation, measures

B. Ongoing implementation of the Covenant

10. Please describe the impact of the measures, including legislative measures, taken to combat discrimination, especially discrimination against migrants, asylum seekers, refugees and persons with disabilities and discrimination on the grounds of gender identity and/or sexual orientation, in particular with respect to the exercise of economic, social and cultural rights.
Keywords: SOGI; discrimination, gender reassignment, legislation, marriage, measures, same-sex couples

Non-discrimination (art. 2 (2))

9. Please provide an update on: (a) the procedure and conditions of gender reassignment; (b) the status of the same-sex marriage bill, which was presented to the Chamber of Deputies in 2018; and (c) the measures taken to combat prejudice and discrimination based on sexual orientation and gender identity.
Democratic Republic of the Congo – List of Issues – 66th PSWG, 31 March 2020, 6th review

Keywords: LGBTI; asylum-seekers/refugees, discrimination, education, health, housing, IDPs, legislation

Non-discrimination (art. 2)

11. Please provide information, including statistical data, on the enjoyment of the rights to health, education, housing, water and sanitation by disadvantaged groups (children, persons with disabilities, internally displaced persons and refugees, indigenous peoples, persons with albinism, and lesbian, gay, bisexual, transgender and intersex persons). [...] Please also specify whether the State party envisages adopting comprehensive legislation to protect against discrimination in all areas.
Keywords: SOGI; discrimination, measures

Non-discrimination (art. 2 (2))

9. Please indicate what measures the State party has taken to ensure that the abolition of the Directorate for Sexual Diversity does not have a negative impact on the monitoring and effective implementation of Executive Decree No. 56 on the elimination of all forms of discrimination in the civil service on the grounds of gender identity or sexual orientation.

16 E/C.12/SLV/Q/6.
Keywords: SOGI; discrimination, intersectionality, investigation, measures, punishment

Non-discrimination (art. 2 (2))

9. Please give details of the specific measures that have been adopted to combat structural discrimination, and explain their concrete impact. In the context of the exercise of economic, social and cultural rights, please describe any programmes in place to reduce inequality gaps, discrimination on the basis of gender identity and/or sexual orientation, and multiple and intersectional discrimination against Maya, Xinca and Garifuna indigenous peoples, Afro-Guatemalans, women, persons with disabilities and migrants. Please provide information on the steps taken to establish mechanisms for the reporting, investigation and punishment of discrimination, in particular discrimination against indigenous peoples. Please also provide details of any affirmative action to promote non-discrimination and equal treatment in the State party.

**Guinea – Concluding Observations – 67th Session, 30 March 2020, initial review**

Keywords: SO; anti-discrimination legislation, awareness-raising, criminalisation (decriminalisation), discrimination, GC/GR, HIV/AIDS, legislation, remedy, same-sex couples, stereotypes

**Non-discrimination**

18. While recognizing that the constitutional and legislative framework of the State party contains anti-discrimination provisions, including in the areas of employment, health and education, the Committee notes the lack of a comprehensive anti-discrimination law. Furthermore, discrimination on the basis of sexual orientation is not a prohibited ground of discrimination and article 274 of the Criminal Code criminalizes sexual relations between consenting adults of the same sex. [...].

19. Recalling its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, the Committee recommends that the State party:

   (a) Adopt a comprehensive anti-discrimination law, prohibiting all direct and indirect discrimination on any grounds, including sexual orientation;

   (b) Repeal article 274 of the Criminal Code; [...]

   (d) Ensure the effective implementation of existing legislation on discrimination and access to effective remedies for victims;

   (e) Carry out awareness-raising campaigns to combat stereotypes about individuals and groups at risk of discrimination, such as persons living with HIV/AIDS and persons with albinism.

---

18 E/C.12/GIN/CO/1.
Keywords: LGBTI; HRDs, legislation, measures

A. General Information

4. In light of the Committee’s previous concluding observations (E/C.12/TJK/CO/2-3, para. 10), please indicate the measures taken to ensure that the amendments to the Public Associations Act are not misinterpreted or abused to obstruct the activities of civil society organizations. Please also provide information on the application of article 14 of the Law on non-governmental associations, and on the measures taken not to abuse or misinterpret the article to impede the registration of civil society organizations, especially those working for the rights of lesbian, gay, bisexual, transgender and intersex persons. Furthermore, please provide information on the status of a draft law on non-commercial organizations, and indicate the measures taken to ensure that civil society organizations and human rights defenders can work without fear of reprisals.

Keywords: SOGI; LGBTI, T; anti-discrimination legislation, discrimination, intersectionality, LGR

B. Issues relating to the general provisions of the Covenant (arts. 1–5)

Non-discrimination (art. 2 (2))

9. With reference to the information provided by the State party (E/C.12/TJK/4, para. 44), please clarify whether the bill on protection against discrimination provides for a definition of direct, indirect, multiple and intersectional discrimination, as noted by the Committee, and whether it gives a comprehensive list of prohibited grounds of discrimination, including age, birth, disability, sexual orientation and gender identity, and other status, and indicate the timeline for the adoption of the bill. Please also provide information on the progress made by the interministerial working group in harmonizing non-discrimination provisions in legislation relating to economic, social and cultural rights. Furthermore, please indicate any steps taken to adopt legislation and procedures for legal recognition of gender of transgender persons and the efforts made to combat social stigma, misconceptions and discrimination against lesbian, gay, bisexual, transgender and intersex persons.
Non-discrimination

10. While recognizing the explicit prohibition of workplace discrimination on the grounds of gender identity and sexual orientation in the Labour Code, the Committee is concerned that the Law on the Principles of Preventing and Combating Discrimination in Ukraine lacks such protected grounds. It is also concerned at reports that the State party’s authorities often do not apply article 161 of the Criminal Code to cases of discrimination on the grounds of sexual orientation and gender identity. The Committee is further concerned that the legislative framework to protect against discrimination is fragmented and does not include the concept of multiple discrimination or provide for effective remedies against different forms of discrimination (art. 2 (2)).

11. The Committee recommends that the State party:

(a) Ensure that discrimination based on sexual orientation or gender identity is explicitly prohibited in the Law on the Principles of Preventing and Combating Discrimination in Ukraine;

(b) Provide the necessary training to law enforcement officers, judiciary personnel and other legal professionals on how to handle cases of discrimination on the basis of sexual orientation and gender identity, including under article 161 of the Criminal Code;

(c) Strengthen its efforts to eliminate negative stereotypes and stigmatization of lesbian, gay, bisexual, transgender and intersex persons, including through awareness-raising campaigns for the public, health-care providers, social workers, law enforcement and other public officials;

(d) Adopt a comprehensive and coherent anti-discrimination legal framework by expediting pending legislative reforms on the harmonization of antidiscrimination laws and strengthening remedies for discrimination, taking into account the Committee’s general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

---

20 E/C.12/UKR/CO/7.
Keywords: LGBTI; anti-discrimination legislation, awareness-raising, criminalisation (decriminalisation), education, employment, GC/GR, housing, measures, medical/health care

Non-discrimination (art. 2 (2))

7. Please indicate whether the State party intends to adopt a comprehensive antidiscrimination law, taking into account general comment No. 20 (2009) on nondiscrimination in economic, social and cultural rights. Describe the steps taken to combat discrimination against the most disadvantaged and marginalized groups, such as Roma/Lyuli, persons with disabilities and lesbian, gay, bisexual, transgender and intersex persons, regarding access to health care, employment, housing and education. Please specify what steps have been taken, if any, to decriminalize homosexuality. Please provide information on the measures taken to raise awareness, especially among marginalized and disadvantaged persons, to prevent human trafficking, including the budgetary allocation for this purpose.

21 E/C.12/UZB/Q/3.
2. Human Rights Committee

Armenia – List of Issues – 129th PSWG, 26 August 2020, 3rd review

Keywords: LGBT; discrimination, harassment, homophobia, investigation, measures, prosecution, punishment, stigmatisation, violence

Non-discrimination (arts. 2, 19, 20 and 26)

4. With reference to the previous concluding observations (para. 10), please describe the measures taken by the State party to effectively address social stigmatization, harassment, violence and discrimination against lesbian, gay, bisexual and transgender persons. Please comment on reports of: (a) the lack of prompt and effective investigations into cases of violence against lesbian, gay, bisexual and transgender persons, and of prosecution and punishment of perpetrators; and (b) the prevalence of homophobic and transphobic rhetoric by politicians and other public officials, with impunity. […]

Keywords: LGBT; attacks, FOE/FOAA, harassment, HRDs, investigation, prosecution

Freedom of expression (arts. 19 and 20)

20. With reference to the previous concluding observations (para. 26), please respond to continued reports of harassment and intimidation of and attacks against journalists, including online journalists, human rights defenders, particularly women, and lesbian, gay, bisexual and transgender human rights defenders and environmental activists, including those working on issues concerning gold mining operations. Please explain the measures in place to ensure that all allegations of such acts are investigated and perpetrators are prosecuted and punished. […]

---

22 CCPR/C/ARM/Q/3.
Keywords: SOGI; discrimination, HIV/AIDS, legislation, measures, prevention, remedy, stigmatisation, violence

Non-discrimination (arts. 2, 7, 24, 25 and 26)

7. Please indicate whether the State party is planning to adopt comprehensive legislation that: (a) clearly defines and criminalizes direct and indirect discrimination in both public and private settings; (b) contains a list of the grounds of discrimination provided by article 2 of the Covenant, including sexual orientation, gender identity and disability; and (c) provides victims with effective remedies against all forms of discrimination, including multiple discrimination. In the light of the Committee’s previous concluding observations (paras. 13–14), please provide information on the measures taken to prevent and combat acts of discrimination, stigmatization and violence against: (a) persons with disabilities; (b) persons with albinism; (c) persons living with HIV/AIDS; (d) children born out of wedlock; and (e) persons belonging to ethnic or religious minorities. Please also provide information on the efforts undertaken to combat discrimination and social stigmatization based on sexual orientation or gender identity and indicate whether the State party plans to amend its legislation to criminalize all forms of incitement to hatred and violence against the persons affected.

23 CCPR/C/BFA/QPR/2.
Keywords: SOGI; anti-discrimination legislation, discrimination, legislation, measures

Non-discrimination (arts. 2 and 25)

7. In light of the Committee’s previous recommendations (CCPR/C/KHM/CO/2, paras. 7–9), please describe the legislative and other measures taken during the current reporting period to combat discriminatory laws and social practices based on sex, sexual orientation, gender identity, race and ethnicity, religion, disability and indigenous status. Please include information on steps taken to collect information on minority and marginalized groups and their needs and to develop comprehensive anti-discrimination legislation, including provisions that prohibit discrimination on all relevant grounds, and measures taken to ensure equal access to government services.

---

24 CCPR/C/KHM/Q/3.
Central African Republic – Concluding Observations – 128th Session, 30 April 2020, 3rd review

Keywords: SOGI; anti-discrimination legislation, court, decision-making process, discrimination, family, remedy, stereotypes, women

Non-discrimination and gender equality

12. In the light of the Committee’s previous concluding observations (CCPR/C/CAF/CO/2, para. 9), the State party should:

(a) Adopt a comprehensive anti-discrimination law that makes provision for effective remedies in case of violation to ensure that its legal framework provides comprehensive and effective protection against discrimination in all areas, including the private sphere, and on any ground of discrimination, including sex, colour, language, religion, political or other opinion, national or social origin, disability, sexual orientation and gender identity, or any other status;

(b) Mainstream the gender dimension throughout the transitional justice process, including in the practice of the Special Criminal Court;

(c) Ensure the effective participation of women in public life, in particular by strengthening initiatives to educate and sensitize the public in order to combat gender stereotypes regarding the subordination of women to men and their respective roles and responsibilities in the family and society.
Paragraph 9: Internal armed conflict

The State party should continue and intensify its efforts to prevent violations of Covenant rights and to give effect to the rights of victims of the armed conflict to truth, justice and full reparation. It should, in particular, ensure that:

(c) Effective protection and care is afforded to the most vulnerable persons and communities, in particular women, children, older adults, persons with disabilities, lesbian, gay, bisexual, transgender and intersex persons, Afro-Colombians and indigenous peoples;

Summary of the State party’s reply

(c) The National Protection Unit provides protection to human rights defenders. As at 31 July 2017, the Protection and Assistance Programme within the Attorney General’s Office was handling 525 cases involving 1,654 protected individuals;

Committee’s evaluation

Discontinued - [B]: Information/action partially satisfactory

The Committee notes the information provided on the protection of human rights defenders, but regrets the lack of disaggregated information provided on the specific measures taken to ensure that effective protection and care is afforded to the most vulnerable persons and communities, in particular women, children, older adults, persons with disabilities, lesbian, gay, bisexual, transgender and intersex persons, Afro-Colombians and indigenous peoples.

The information requested should be included in the State party’s next periodic report due [by 4 November 2020].

26 CCPR/C/128/3/Add.1.
Keywords: SOGI; discrimination, harassment, HIV/AIDS, law enforcement officials, legislation, measures, prevention, stigmatisation, remedy, violence

Non-discrimination (arts. 2, 3 and 26)

7. With reference to article 15 of the Constitution, please indicate whether the State party intends to enshrine in its Constitution a general prohibition of discrimination and to adopt comprehensive legislation that: (a) provides a clear definition of and criminalizes both direct and indirect discrimination; (b) contains a complete list of prohibited grounds for discrimination, including sexual and gender identity and disability; and (c) provides effective remedies for victims. Please describe the measures taken to combat and prevent in practice acts of discrimination, stigmatization and violence against persons living with HIV and persons with disabilities. Please provide information on measures taken to prevent and combat acts of discrimination against persons on the grounds of their sexual orientation or gender identity and respond to allegations that: (a) persons frequently suffer stigmatization, discrimination and violence on the grounds of their sexual orientation or gender identity; and (b) members of law enforcement agencies allegedly harass individuals because of their sexual orientation or gender identity, claiming that homosexuality is prohibited, in order to extort money from them.

27 CCPR/C/COG/QPR/3.
**Dominica – Concluding Observations – 128th Session, 24 April 2020, initial review**

Keywords: SOGI; LGBT; anti-discrimination legislation, awareness-raising, criminalisation (decriminalisation), discrimination, killings, legislation, psychiatry, same-sex couples

**Discrimination on the basis of sexual orientation and gender identity**

14. The Committee is concerned that discrimination on the basis of sexual orientation and gender identity is not prohibited under the Constitution or in the State party’s domestic laws and that same-sex relations between consenting adults remain criminalized under the 1998 Sexual Offences Act with penalties including up to 25 years in prison and forced psychiatric treatment. While noting the State party’s position that the common law criminalization of same-sex relations between men (sodomy) is not enforced in practice, the Committee is concerned at the current intention to retain the law, and at the continued discriminatory effect of the law on lesbian, gay, bisexual and transgender persons. In this regard, the Committee is concerned that in the 2009 case of Clem Philbert v. the State, a murder conviction was quashed because the victim was considered to have made “unnatural advances” towards the accused, leading to a situation of “justifiable homicide” (arts. 2, 6, 7, 17 and 26).

15. The State party should take appropriate steps to:

   (a) Address discriminatory attitudes and stigma towards lesbian, gay, bisexual and transgender persons, including through comprehensive awareness-raising and sensitization activities;

   (b) Enact comprehensive legislation providing full and effective protection against discrimination in all spheres and containing an exhaustive list of prohibited grounds of discrimination, including sexual orientation and gender identity;

   (c) Amend all relevant laws, including sections 14 and 16 of the 1998 Sexual Offences Act, in order to decriminalize consensual sexual relations between adults of the same sex;

   (d) Consider restricting any use of legal defences that are based solely upon a victim’s sexuality or gender identity.

---

28 CCPR/C/DMA/COAR/1.
Keywords: SOGI; LGBT; anti-discrimination legislation, criminalisation (decriminalisation), discrimination, harassment, HIV/AIDS, homophobia, investigation, prevention, prosecution, remedy, same-sex couples, stigmatisation, violence

Non-discrimination (arts. 2, 19–20 and 26)

5. Please provide further information on the steps taken to ensure that the State party’s legal framework: (a) provides full and effective protection against direct, indirect and multiple discrimination in all spheres, including in the private sphere, and on all the grounds prohibited under the Covenant, including sexual orientation and gender identity; and (b) provides for effective remedies in judicial and administrative proceedings for victims of discrimination. Please indicate if the State party intends to adopt comprehensive antidiscrimination legislation to address the above requirements.

6. Bearing in mind the Committee’s previous concluding observations (para. 12), please indicate whether the State party intends to consider decriminalizing sexual relations between consenting adults of the same sex. Please report on the measures taken to: (a) address social stigmatization, harassment, violence and discrimination against lesbian, gay, bisexual and transgender persons and persons living with HIV/AIDS; (b) combat and prevent homophobic and transphobic rhetoric by politicians and other public officials; and (c) encourage the reporting of acts of violence and discrimination against lesbian, gay, bisexual and transgender individuals, investigate all allegations of such acts and prosecute and punish perpetrators.

29 CCPR/C/ETH/Q/2.
Keywords: SGI; discrimination, HIV/AIDS, legislation, measures, prevention, remedy, stigmatisation, violence

Non-discrimination (arts. 2–3 and 26)

7. With reference to the Committee’s previous concluding observations (para. 8), please provide information on the measures taken to ensure that the non-discrimination provisions contained in articles 2, 3 and 26 of the Covenant are reflected in the Constitution. Please describe the steps taken to adopt comprehensive legislation that: (a) clearly defines and establishes the offences of direct and indirect discrimination; (b) contains a comprehensive list of prohibited grounds of discrimination, including sexual and gender identity and disability; and (c) provides victims with effective remedies. Please outline the measures adopted to combat and prevent acts of discrimination, stigmatization and violence against persons living with HIV and persons with disabilities.
Georgia – List of Issues – 130th Session, 19 January 2021, 5th review

Keywords: GI, SOGI; LGBTI; attacks, discrimination, FOE/FOAA, harassment, hate crimes, homophobia, HRDs, investigation, legislation, measures, prosecution, stigmatisation, violence

Non-discrimination (arts. 2, 19–20 and 26)

5. Bearing in mind the Committee’s previous concluding observations (para. 8), please report on the measures taken to address the social stigmatization and harassment of, and violence and discrimination against lesbian, gay, bisexual, transgender and intersex persons and defenders advocating for their rights. Please indicate the measures taken to ensure, in practice, their right to peaceful assembly and freedom of expression, including by providing adequate protection to lesbian, gay, bisexual, transgender and intersex persons from violent attacks by members of extremist groups. Please respond to reports of: (a) the authorities’ failure to promptly and effectively investigate cases of violence based on sexual orientation and gender identity, to identify hate crimes and to prosecute and punish perpetrators; (b) the underreporting of hate crimes, including for reasons of social stigmatization and lack of trust in the authorities; and (c) the prevalence of homophobic and transphobic rhetoric by politicians, public officials and religious figures. Please also describe the current legislation and procedures concerning change of civil status in line with gender identity.

31 CCPR/C/GEO/Q/5.
Keywords: SOGI; anti-discrimination legislation, criminalisation (decriminalisation), discrimination, investigation, measures, prosecution, protected grounds, remedy

**Non-discrimination (arts. 2, 3, 23, 25 and 26)**

6. Please report on measures adopted to develop dedicated anti-discrimination legislation that: (a) extends beyond discrimination in employment; (b) provides a clear definition of and criminalizes direct and indirect discrimination; (c) contains a comprehensive list of prohibited grounds of discrimination, including sexual orientation and gender identity; and (d) provides for effective judicial and administrative remedies for victims. Please include statistical information on complaints of discrimination received during the period under review, along with an indication of the basis of discrimination, the nature of investigations conducted and their outcome, and any redress provided to victims.

Keywords: LGBTI, T; arrest, criminalisation (decriminalisation), detention, discrimination, investigation, killings, measures, police, police misconduct, prosecution, stigmatisation, torture/ill-treatment, violence

8. Please indicate all measures adopted to combat and prevent acts of discrimination, stigmatization and violence against lesbian, gay, bisexual, transgender and intersex persons. Please respond to allegations of: (a) ill-treatment of transgender individuals in police custody and prisons; and (b) the failure by the police to investigate all allegations of discrimination and violence against lesbian, gay, bisexual and transgender persons, including murders, and to bring perpetrators to justice. Please report on any steps taken to repeal sections 352 to 354 of the Criminal Law (Offences) Act, which criminalize sexual relations between consenting adults of the same sex, and on the number of people who have been arrested, detained and prosecuted under those provisions.

---

32 CCPR/C/GUY/QPR/3.
Discrimination based on sexual orientation (arts. 2 and 26)

10. Bearing in mind the Committee’s previous concluding observations (CCPR/C/HTI/CO/1, para. 9), please explain how the bills adopted by the Senate of the Republic prohibiting same-sex marriage and “all public expressions of support for homosexuality and advocacy of such acts”, and concerning “certificates of good conduct”, under which homosexuality is allegedly a ground for refusing to issue such a certificate, are compatible with the provisions of the Covenant. Please also indicate whether the State party plans to adopt a law prohibiting discrimination on the basis of sexual orientation and gender identity. Lastly, please describe the steps taken to combat the social stigma attached to the lesbian, gay, bisexual and transgender population, and the results achieved.

33 CCPR/C/HTI/Q/2.

The State party should, as a matter of urgency, take practical steps:

(a) To provide effective protection to, inter alia, human rights defenders, journalists, trade unionists, environmental activists, indigenous persons and lesbian, gay, bisexual, transgender and intersex persons who are subjected to acts of violence and intimidation; […]

(f) To collect disaggregated data on assaults and murders among human rights defenders, journalists, trade unionists, environmental activists, indigenous persons and lesbian, gay, bisexual, transgender and intersex persons.

Summary of the State party’s reply

(a) A technical committee held 103 meetings in 2018 on the Act on the Protection of Human Rights Defenders. Between April 2017 and June 2018, the authorities implemented 1,242 protective measures agreed between the protection mechanism’s technical committee and the persons affected, and processed a total of 1,044. There had been a decrease in the number of deaths of human rights defenders; […]

(f) The Public Prosecution Service has a section for investigations into the death of persons belonging to vulnerable groups, which keeps a register of murders, homicides and attempted murders. The State party provided data on complaints regarding deaths of journalists or social communicators and lesbian, gay, bisexual, transgender and intersex persons as at 2018. The Public Prosecution Service is working to establish a database that guarantees respect for the gender identity of complainants.

Committee’s evaluation

Discontinued - [B]: Information/action partially satisfactory

(a) The Committee welcomes the meetings held by the technical committee as part of the efforts to implement the Act on the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Officials, and notes the decrease in the number of deaths of human rights defenders. It requests information on measures taken to (a) implement further the Defenders Act, including through the establishment of necessary institutions; and (b) offer further protection to human rights defenders, journalists, trade unionists, environmental activists, indigenous persons and lesbian, gay, bisexual, transgender and intersex persons who are subjected to acts of violence and intimidation. […]

(f) The Committee takes note of the data on assaults against and the murder of human rights defenders, journalists, trade unionists, environmental activists, indigenous persons and lesbian, gay, bisexual, transgender and intersex persons. It requests updated information on the establishment of a database by the Public Prosecution Service that guarantees respect for the gender identity of complainants from the moment their complaint is submitted.

The information requested should be included in the State party’s next periodic report due [by 28 July 2021].

---

34 CCPR/C/130/2/Add.3
Keywords: LGBTI, T; discrimination, gender reassignment surgeries, hate crimes, hate speech, legislation, LGR, measures, same-sex couples, torture/ill-treatment

Non-discrimination and equality between men and women (arts. 2, 3, 25 and 26)

8. With reference to the Committee’s previous concluding observations (CCPR/C/CHNHKG/CO/3, para. 23), please indicate any steps taken to recognize same-sex partnerships and to address discrimination faced by same-sex couples. Please provide an update on any legislative developments for the recognition of transgender persons and clarify the compatibility with the Covenant of certain requirements for the legal recognition of gender reassignment, such as deprivation of reproductive ability and gender confirmation surgery. Please indicate the measures taken to protect lesbian, gay, bisexual, transgender and intersex persons, particularly from hate speech and hate crimes; to facilitate their right to hold events such as gay pride parades; and to respond to reports of inhumane and degrading treatment experienced by transgender persons in custody, including intrusive and humiliating full-body searches, solitary confinement and lack of access to hormone treatment.

35 CCPR/C/CHN-HKG/Q/4.
Keywords: SOGI; anti-discrimination legislation, court, discrimination, HIV/AIDS, measures, policy, redress

Non-discrimination (arts. 2, 19, 20 and 26)

4. Please provide updates on any measures taken, on the national and subnational levels, to adopt a comprehensive anti-discrimination law and strengthen legal frameworks, public policies and institutions to counter laws, regulations and practices that discriminate on the grounds of sexual orientation and gender identity, race, ethnicity, disability and HIV/AIDS status. Please provide statistical information on complaints of discrimination received by national courts, the national human rights institution, and the Ombudsman of the Republic of Indonesia during the period under review, along with an indication of the alleged basis of discrimination, and any redress provided to victims.

Keywords: T; access to justice, domestic violence, GBV, health, marriage, measures, prevention, privacy, redress, sexual abuse/violence, sterilisation, violence, women

Violence against women, and domestic violence (arts. 2, 3, 6, 7 and 26)

8. Please provide an update on measures to address and prevent gender-based violence, including domestic violence against women, girls and transgender persons and harmful practices, including female genital mutilation, child marriage and the flogging of women for offences. Please include information on measures taken: (a) to ensure access to justice for women with disabilities, including with regard to the status of the draft bill on the elimination of sexual violence and the implementation of local regulation No. 1/2011 on redress for Papuan women who have been victims of violence and human rights violations; and (b) to protect women with disabilities in mental health institutions and social protection centres from sexual violence. Please comment on reports of forced sterilization of women with disabilities and lack of privacy for women in mental health institutions and social protection centres.

Keywords: LGBTI; education, FOE/FOAA

Freedom of expression (arts. 19 and 20)

19. Please report on the efforts made by the State party to respect and ensure freedom of expression. Please respond to reports of: (a) increasing constraints on opinions expressed in the context of academic debates, political engagement or similar activity, including the prohibition of certain research topics in higher education institutions, such as issues relating to Papua, the mass killings in Indonesia in 1965 and the rights of lesbian, gay, bisexual, transgender and intersex persons; [...].

36 CCPR/C/IDN/QPR/2.
Iraq – List of Issues – 129th PSWG, 17 August 2020, 6th review

Keywords: SOGI; awareness-raising, court, discrimination, exclusion, investigation, killings, law enforcement officials, legislation, stigmatisation, violence

Non-discrimination and equality between men and women (arts. 2, 3, 18, 23 and 26)

7. With reference to the Committee’s previous concluding observations (paras. 11–12) and the information provided by the State party (paras. 39–40), please comment on reports of persistent allegations of acts of discrimination and violence against persons on the basis of their real or perceived sexual orientation or gender identity, as well as the social stigmatization and social exclusion of those persons. In that regard, please provide updated information on the investigation into the killing of the actor and model, Karar Nushi, in Baghdad on 2 July 2017. Please also provide information on any awareness-raising campaigns to promote sensitivity and tolerance among law enforcement officers, prosecutors, courts and the general public with regard to sexual orientation and gender identity. Please indicate whether the State party is considering revising articles 394 and 401 of the Criminal Code.

37 CCPR/C/IRQ/Q/6.
Keywords: SO; LGBTI; discrimination, legislation, measures

Non-discrimination (arts. 2–3, 14, 20, 23 and 26–27)

7. Bearing in mind the Committee’s previous recommendations (CCPR/C/IRL/CO/4, para. 23), please indicate the legislative and other measures taken within the reporting period to combat laws and social practices which are discriminatory on the basis of sex, Roma and Traveller status, race, sexual orientation, religion, disability and/or nationality status. Please include information on: (a) how the effective application of the Equal Status Act 2000 is ensured, including a summary of complaints brought under this legislation during the reporting period and their outcomes; (b) the outcomes of equality-related strategies, such as the National Traveller and Roma Integration Strategy 2017–2021, the LGBTI+ National Youth Strategy 2018–2020 and the Migrant Integration Strategy 2017–2020, as well as when the National LGBTI+ Inclusion Strategy will be in place; [...]
Kenya – List of Issues – 128th Session, 1 July 2020, 4th review

Keywords: SOGI; LGBTI; access to justice, anti-discrimination legislation, arrest, awareness-raising, court, criminalisation (decriminalisation), detention, discrimination, education, harassment, HIV/AIDS, housing, law enforcement officials, legislation, measures, medical/health care, same-sex couples, violence

Non-discrimination (arts. 2 and 26)

4. Please indicate which legislative and other measures have been taken to combat discriminatory laws and social practices based on sex, sexual orientation, gender identity, religion, disability, albinism, socioeconomic status, HIV/AIDS status, ethnic affiliation and political affiliation. Please include information about steps taken to develop comprehensive anti-discrimination legislation.

5. In light of the previous recommendations of the Committee (CCPR/C/KEN/CO/3, para. 8; and CCPR/CO/83/KEN, para. 27), please report on measures taken to decriminalize sexual relations between consenting adults of the same sex. In this regard, please include information on the 2019 High Court ruling on petition No. 150 of 2016, which upheld sections 162 and 165 of the Penal Code criminalizing sexual relations between consenting adults of the same sex. Please also elaborate on measures taken by the State party (a) to protect lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals against harassment, discrimination and violence perpetrated by both State officials and private individuals, including discrimination against them in relation to housing, the provision of goods and services, education and health care, and in the form of extortion and arbitrary arrest and detention by law enforcement officials, and of barriers to access to justice; and (b) to raise awareness about the principles of universality of human rights and of nondiscrimination among the population at large.

Keywords: LGBTI; asylum-seekers/refugees, detention

Treatment of aliens, including refugees, asylum seekers and migrants, and population displacement (arts. 2, 6, 7, 9, 13 and 26)

18. Please report on the protections in place for non-citizens in the State party, including refugees, asylum seekers and migrants. Please include information about: [...] (c) efforts to provide protections to all refugees and asylum seekers, including LGBTI individuals, in camps such as the Kakuma Refugee Camp and Kalobeyei Integrated Settlement; (d) reports of individuals, including refugees and asylum seekers, being detained solely on the basis of unauthorized access to the State party’s territory; [...].

Keywords: LGBTI; court, FOE/FOAA

Freedom of expression (arts. 19 and 20)

21. Please report on efforts by the State party to fully uphold freedom of expression. Please provide information about: (a) implementation of the 2017 High Court judgments ruling that sections 132 and 194 of the Penal Code were unconstitutional; (b) application of section 181 of the Penal Code, including the extent to which such provisions have been used in relation to LGBTI-related online content; (c) the compatibility of the Computer Misuse and Cybercrimes Act, of 2018, with the Covenant; and (d) reports of repression of the cultural expressions of LGBTI persons.

---

39 CCPR/C/KEN/Q/4.
Keywords: SOGI; LGBTI; arrest, awareness-raising, detention, discrimination, employment, family, harassment, hate speech, health, housing, investigation, law enforcement officials, measures, prevention, privacy, stigmatisation, violence

Discrimination on the grounds of sexual orientation and gender identity (arts. 2, 7, 9, 17, 19, 21 and 26)

8. Please report on measures taken or planned: (a) to prevent and combat all forms of discrimination based on sexual orientation and gender identity, including in employment, housing, health and family law; (b) to address harassment and violence against lesbian, gay, bisexual, transsexual and intersex (LGBTI) individuals; and (c) to raise awareness about principles of non-discrimination among state officials and the population at large. Respond to reports of social stigmatization, harassment, violence and discrimination against LGBTI individuals by state officials and private individuals, including extortion and arbitrary arrest and detention by law enforcement officials. Report on measures taken to investigate interventions in the private life, hate speech and discrimination against LGBTI representatives in connection with the 2020 parliamentary elections.

40 CCPR/C/KGZ/Q/3.
Keywords: SOGI; anti-discrimination legislation, criminalisation (decriminalisation), discrimination, education, harassment, IDPs, legislation, measures, medical/health care, prevention, prosecution, same-sex couples

Non-discrimination (arts. 2 and 26–27)

5. Please describe the legislative and other measures taken to prevent and combat discrimination, in particular against migrants, internally displaced persons, persons harassed, threatened or prosecuted because of their sexual orientation or gender identity and persons belonging to minorities, including the Amazigh, Tuareg and Tebu ethnic groups and the Tawurghan community, especially in the areas of health care, education, citizenship and participation in public affairs. In particular, indicate the grounds of discrimination that are prohibited in national legislation, including in Law No. 10 (2013) and in the Penal Code, and indicate whether the State party intends to adopt comprehensive anti-discrimination legislation that contains all the grounds prohibited under the Covenant. Please also indicate whether it plans to decriminalize same-sex consensual relations.

---

41 CCPR/C/LBY/QPR/5.
Keywords: SO; I, LGBTI; action plan, free and informed consent, legislation, redress, surgical/medical intervention

Discrimination against lesbian, gay, bisexual, transgender and intersex persons (arts. 2 and 26)

7. Please provide updated information on the implementation of the 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 without the free and informed consent of the intersex person and the amendment of legislation that results in the restriction of the right to donate blood on the basis of sexual orientation alone. Furthermore, pending the adoption of relevant legislation, please indicate what mechanisms are in place to stop non-consensual sex-change surgery and to enable survivors of such surgery to obtain redress.

42 CCPR/C/LUX/Q/4.
Keywords: T; legislation, LGR, measures, same-sex couples

Non-discrimination and equality between men and women (arts. 2, 3, 25 and 26)

5. Please indicate any steps taken to legally recognize transgender persons and to enable them to change the gender marker on their birth records and identity documents, and provide information on the outcome of the study conducted by the Legal Reform Advisory Committee in this regard. Please also indicate the extent to which Macao, China, has taken steps to provide legal recognition of and protection for same-sex couples, and the measures taken or envisaged to extend the purview of Law No. 2/2016 to protect same-sex couples under the law.
8. Please indicate the legislative and other measures taken within the reporting period to address laws and social practices that discriminate on the basis of sex, sexual orientation, religion, disability, migration status and nationality. Please include information on whether comprehensive anti-discrimination legislation is in place, including provisions that prohibit discrimination on all the grounds listed above.

Keywords: LGBTI; criminalisation (decriminalisation), discrimination, follow-up, harassment, HRDs, investigation, killings, stigmatisation, violence

9. Please provide information on progress towards the implementation of the Committee’s previous recommendation (para. 8) on the decriminalization of sexual relations between consenting adults of the same sex, and measures taken to combat the stigmatization and marginalization of lesbian, gay, bisexual, transgender and intersex persons. Please respond to reports of harassment of and attacks against organizations and individuals who promote the rights of lesbian, gay, bisexual, transgender and intersex persons, including information about the results of any investigations into the murder in April 2017 of Yameen Rasheed, a human rights defender and blogger who had written in support of those rights.
Paragraph 12: Discrimination on the grounds of sexual orientation and gender identity

The State party should intensify its efforts to combat stereotypes and prejudices against lesbian, gay, bisexual, transgender and intersex persons, and ensure that acts of discrimination and violence directed against them are investigated, that perpetrators are prosecuted, and if convicted, punished with appropriate penalties, and that victims are provided with full reparation. The State party should also promote and guarantee freedom of expression, association and peaceful assembly for lesbian, gay, bisexual, transgender and intersex persons, and should abstain from any unjustified interference with the exercise of these rights and ensure that any restrictions imposed comply with the strict requirements of articles 19, 21 and 22 of the Covenant and are not applied in a discriminatory manner. The State party should consider legal recognition and protection of same-sex couples.

Summary of the State party’s reply

(a) The State party states that discrimination on the basis of sexual orientation and gender identity is considered a crime and is regulated by article 14.1 of the Criminal Code. In 2018, the Ministry of Justice and Home Affairs conducted a training session for law enforcement officers on the rights of lesbian, gay, bisexual and transgender persons to ensure effective implementation of the Criminal Code, and the National Legal Institute is currently researching implementation of anti-discrimination laws. Many complaints of discrimination were initially misclassified owing to the tendency of lesbian, gay, bisexual and transgender citizens to “conceal themselves”. In the future, cases of discrimination on the basis of sexual orientation and gender identity will be registered as such in the newly established crime information database.

From August to November 2017, a project on improving sexual health-care services in Ulaanbaatar for at-risk populations, including female prostitutes, males who have sex with males and persons living with HIV/AIDS, was implemented with the support of the Canada Fund for Local Initiatives. Short-term training programmes are conducted for physicians and medical professionals on sexual orientation, stigma and discrimination;

(b) No information was provided regarding legal measures to recognize and protect same-sex couples.

Committee’s evaluation

Discontinued - [B]: Information/action partially satisfactory

The Committee welcomes the State party’s efforts to train law enforcement and medical professionals on the rights of lesbian, gay, bisexual and transgender persons. It also welcomes the State party’s creation of a crime information database, but requires information on when it was established, what its impact has been and how the State party ensures that the victims are protected and that complaints of discrimination are properly entered in the database. The Committee reiterates its request for information on additional measures taken to combat stereotypes and discrimination against lesbian, gay, bisexual, transgender and intersex individuals in the broader population.

Discontinued - [B]: Information/action not satisfactory
The Committee regrets the lack of information on the following: (i) measures taken to promote and guarantee freedom of expression, association and peaceful assembly for lesbian, gay, bisexual, transgender and intersex persons; (ii) whether investigations and prosecutions for complaints of discrimination against lesbian, gay, bisexual, transgender and intersex persons are conducted in practice; and (c) the legal status of same-sex couples. The Committee reiterates its recommendation.

The information requested should be included in the State party’s next periodic report [due by 28 July 2022].
Montenegro  – List of Issues prior to reporting – 128th Session, 6 May 2020, 2nd review

Keywords: LGBTI; discrimination, hate crimes, hate speech, legislation, measures, prosecution

Non-discrimination, rights of minorities and prohibition of advocacy of national, racial or religious hatred (arts. 2, 20, 26 and 27)

8. With reference to the previous concluding observations (para. 8), please outline the measures taken to combat discrimination and prejudice against lesbian, gay, bisexual, transgender and intersex persons and to address the reported rise in hate crime and hate speech towards them and the insufficient prosecution of such acts. Please also report on the status of the draft law on civil partnership.

---

46 CCPR/C/MNE/QPR/2.
Keywords: SOGI; LGBTI, T; detention, discrimination, investigation, measures, prevention, violence, women

Non-discrimination (arts. 2, 3, 26 and 27)

6. Please explain the measures taken to prevent and to provide protection from violence and discrimination based on sexual orientation or gender identity, particularly in respect of transgender persons in detention, and the impact of those measures. Please provide information on: (a) the number of complaints received regarding violence against lesbian, gay, bisexual or transgender persons; (b) investigations conducted and their outcomes, including the sentences handed down to perpetrators; and (c) the reparative measures granted to victims. Please also 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. In this context, please comment on the initiative of the Ombudsman's Office to establish clear protocols in partnership with government entities to prevent discrimination and violence against vulnerable segments of the population, including lesbian, gay, bisexual, transgender and intersex persons.
Philippines – List of Issues – 128th Session, 30 June 2020, 5th review

Keywords: SOGI; anti-discrimination legislation, discrimination, HIV/AIDS, legislation, measures

Non-discrimination (arts. 2 and 25)

6. Please indicate legislative and other measures taken during the current reporting period to combat discriminatory laws and social practices based on sex, sexual orientation, gender identity, religion, ethnicity, disability, indigenous status, socioeconomic status, HIV/AIDS status, and political affiliation. Please include information about steps taken to develop comprehensive anti-discrimination legislation, including provisions that prohibit discrimination on the basis of sexual orientation and gender identity in line with the Committee’s previous recommendation (CCPR/C/PHL/CO/4, para. 10).

48 CCPR/C/PHL/Q/5.
Portugal – Concluding Observations – 128th Session, 28 April 2020, 5th review

Keywords: LGBT; awareness-raising, data collection, discrimination, GC/GR, hate crimes, hate speech, internet, investigation, law enforcement officials, legislation, measures, media, policy, prevention, reparation, stereotypes, trainings, violence

Hate speech and hate crimes

14. While noting the legislative and other measures taken by the State party to combat hate speech and hate crimes, the Committee is concerned about reports of intolerance, prejudice, hate speech and hate crimes against vulnerable and minority groups, including Roma, African descendants, Muslims and lesbian, gay, bisexual and transgender persons, particularly in the media and on social networks. The Committee is further concerned at the low number of complaints and lack of information on convictions of hate crimes and information on penalties imposed, which is covered by the State party statistical secrecy policy (arts. 2, 19, 20 and 26).

15. The State party should:

(a) Strengthen its efforts to combat intolerance, stereotypes, prejudice and discrimination towards vulnerable and minority groups, including Roma, African descendants, Muslims and lesbian, gay, bisexual and transgender persons, by, inter alia, increasing training for law enforcement personnel, prosecutors and the judiciary and conducting awareness-raising campaigns promoting sensitivity and respect for diversity among the general public;

(b) Increase its efforts to prevent hate speech and hate crimes and ensure that any advocacy of national, racial or religious hatred, hostility or violence is prohibited by law, in accordance with articles 19 and 20 of the Covenant and the Committee’s general comment No. 34 (2011) on the freedoms of opinion and expression;

(c) Encourage the reporting of hate crimes and hate speech and ensure that such crimes are identified and registered, including through the establishment of a comprehensive, disaggregated data-collection system;

(d) Strengthen the investigation capacity of law enforcement officials on hate crimes and criminal hate speech, including on the Internet, and ensure that all cases are systematically investigated, that perpetrators are held accountable with penalties commensurate with the crime and that victims have access to full reparation.

Sexual orientation, gender identity and intersexuality

16. While welcoming the recent adoption of Law No. 38/2018, the Committee notes with concern reports that children born with intersex traits are sometimes subjected to invasive and irreversible medical procedures aimed at assigning them with a sex, that such actions are often based on a stereotyped vision of gender roles and that they are carried out before the persons in question are of an age to give their free and informed consent (arts. 3, 7, 9, 17, 24 and 26).

17. 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.

Keywords: I; children, free and informed consent, legislation, measures, stereotypes, surgical/medical intervention

49 CCPR/C/PRT/CO/5.
informed consent, except in cases where such interventions are absolutely necessary for medical reasons.
Non-discrimination (arts. 2, 3, 14, 20, 23, 26 and 27)

6. Please indicate the legislative and other measures taken, since the State party's accession to the Covenant, to combat laws and social practices that are discriminatory on the basis of sex, sexual orientation, religion, race, ethnicity, disability and nationality status. Please include information about the steps taken to develop comprehensive antidiscrimination legislation, including provisions that prohibit discrimination on the above grounds.
Russian Federation – List of Issues – 129th PSWG, 14 August 2020, 8th review\(^5\)

Keywords: LGBTI; detention, family, HRDs, investigation, killings, torture/ill-treatment, violence, women

Accountability for alleged human rights violations committed in the North Caucasus federal area (arts. 2, 6, 7, 9, 14, 16 and 17)

3. Please provide up-to-date information, including statistics, on the progress in the investigation of the serious past and ongoing human rights violations, including abduction, extrajudicial killings, torture and ill-treatment, secret detention and acts of violence against women and lesbian, gay, bisexual, transgender and intersex individuals, in the North Caucasus, including the murder of human rights defender Natalia Estemirova. Inform the Committee about the status of the investigation of cases of enforced disappearance in the region and whether family members of disappeared persons are informed of the progress of investigations and on the identification of their remains.

Keywords: SOGI; LGBTI; attacks, court, detention, discrimination, employment, family, FOE/FOAA, harassment, hate crimes, health, homophobia, honour crimes, housing, killings, legislation, measures, prevention, same-sex couples, torture/ill-treatment, violence

Discrimination on the grounds of sexual orientation and gender identity (arts. 2, 7, 9, 17, 19, 21 and 26)

6. Please report on recent measures taken or planned to prevent and combat all forms of discrimination based on sexual orientation and gender identity, including in employment, housing, health and family law, and to address harassment and violence against such individuals. Indicate whether attacks against lesbian, gay, bisexual, transgender and intersex individuals are defined in domestic law as “hate crimes”. Respond to allegations of mass detention, raids, harassment and torture perpetrated against individuals due to their sexual orientation and gender identity by the Chechen authorities, the reported so-called “honour killings” of lesbian, gay, bisexual, transgender and intersex individuals by families in Chechnya and measures taken to address such allegations. Provide information about cases in which the laws prohibiting the promotion of non-traditional sexual relations to minors have been applied and whether the State party is considering repealing those laws, including in view of the decision of the European Court of Human Rights in the case Bayev and others v. Russia. Clarify the measures taken to ensure for lesbian, gay, bisexual, transgender and intersex persons the right to peaceful assembly, including in view of the decision of the European Court of Human Rights in the case Alekseyev v. Russia. Please respond to concerns that the recent amendments to the Constitution limit the rights of same-sex couples and may contribute to homophobic attitudes in society.

\(^5\) CCPR/C/RUS/Q/8.
**Somalia – List of Issues prior to reporting – 128th Session, 5 May 2020, initial review**

Keywords: SOGI; anti-discrimination legislation, criminalisation (decriminalisation), discrimination, legislation, protected grounds, remedy

**Non-discrimination and equality between men and women (arts. 2, 3, 23, 25 and 26)**

7. In the light of article 11 of the Provisional Constitution, please clarify if there is comprehensive legislation that (a) provides a clear definition of and criminalizes direct and indirect discrimination; (b) contains a comprehensive list of prohibited grounds of discrimination, including sexual orientation, gender identity and disability; and (c) provides effective remedies for victims. [...] .

Keywords: SOGI; arrest, awareness-raising campaign, court, criminalisation (decriminalisation), data collection, death penalty, detention, discrimination, legislation, measures, prosecution

8. Please provide information on the number of people who have been arrested, detained and prosecuted for same-sex sexual activity by virtue of article 409 of the Penal Code and whether the State party intends to repeal that provision to ensure compliance with its obligations under articles 2, 17 and 26 of the Covenant. Please comment on information received that in some southern regions of Somalia, certain Islamic “courts” subject to the control of insurgents have imposed a death penalty for consensual, same-sex sexual relations, allegedly relying on Sharia law. Please also provide information on the legal and practical measures taken to combat discrimination on the basis of sexual orientation and gender identity, including any awareness-raising campaigns.
Keywords: SOGI; LGBTI; arrest, criminalisation (decriminalisation), discrimination, employment, follow-up, harassment, housing, legislation, measures, medical/health care, police misconduct, stigmatisation, violence

Non-discrimination and equality between men and women (arts. 2, 3, 25 and 26)

6. With reference to the previous concluding observations (para. 8) and to the State party’s periodic report (CCPR/C/LKA/6, paras. 28–30), please clarify whether the recommendation to include an explicit prohibition of discrimination on the grounds of sexual orientation and gender identity in the draft Constitution has been accepted, and report on: (a) any progress in amending sections 365, 365A and 399 of the Penal Code that are used to criminalize lesbian, gay, bisexual, transgender and intersex conduct; and (b) measures taken to address effectively the reported discrimination against and social stigmatization of lesbian, gay, bisexual, transgender and intersex persons, including violence, police harassment and extortion (including through arrests under the Vagrants Ordinance 1841), and discrimination in access to housing, health care and employment.
Non-discrimination

16. The State party should expedite the adoption and ensure the implementation of legislation in line with the Covenant by incorporating a definition of direct and indirect discrimination, including in the private sphere, which contains an exhaustive list of the grounds for discrimination enumerated in the Covenant and covers sexual orientation and gender identity. It should also ensure that this legislation provides sufficient guarantees of effective civil, administrative or other remedies for any type of discrimination, including multiple discrimination.

Discrimination on grounds of sexual orientation and gender identity

19. The Committee welcomes the recent court decision allowing the association Shams, which works to protect the rights of lesbian, gay, bisexual, transgender and intersex persons, to operate legally, but notes with concern that discrimination against lesbian, gay, bisexual, transgender and intersex persons persists in law and in practice. Consensual relations between same-sex partners are defined as an offence (sodomy) under article 230 of the Criminal Code, and article 226 of the Code, which penalizes gross indecency, is frequently used as an excuse to harass members of sexual minorities. Persons suspected of being homosexuals continue to be compelled by the courts to undergo anal examinations (arts. 2, 6, 19, 20 and 26).

20. The State party should repeal article 230 of the Criminal Code and provide law enforcement officials with training on respect for diverse sexual orientations and gender identities. In addition, it should recognize associations for the protection of the rights of lesbian, gay, bisexual, transgender and intersex persons, combat discrimination and harassment of sexual minorities and prohibit intrusive medical examinations that have no medical justification.

---

54 CCPR/C/TUN/CO/6.
Keywords: SM; hate crimes, measures, police

Non-discrimination (arts. 2, 3 and 26)

9. Please provide information on measures taken to address the reported increase in hate crimes, which are mainly racially motivated or directed against members of sexual minorities. Please also comment on information received that hate crimes are underreported and on the difficulties and inaccuracies encountered by the police in dealing with such crimes. Please also comment on the low rate of convictions related to hate crimes.

Keywords: LGBTI; bullying, detention, health, prevention, suicide, trainings, women

Right to life and conditions of detention (arts. 6, 9, 10 and 14)

15. [...]. Please provide information on efforts to, inter alia, provide prevention training to prison officials, combat bullying in custody facilities, and provide adequate protection and mental health and other services to prisoners. Please also provide information on efforts to address causes of suicide and self-harm among vulnerable populations in prison, including women, racial and ethnic minorities, and lesbian, gay, bisexual, transgender and intersex persons.
Keywords: SOGI; anti-discrimination legislation, discrimination, legislation, LGR, protected grounds

Anti-discrimination legal framework

8. The Committee remains concerned that the existing legal framework does not afford full and effective protection against direct, indirect and multiple discrimination in the public and private sectors and on all the grounds prohibited under the Covenant. It regrets the delegation’s affirmation that there are no plans to adopt comprehensive anti-discrimination legislation (arts. 2 and 26).

9. The State party should:

(a) Adopt comprehensive legislation prohibiting discrimination, including multiple, direct and indirect discrimination, in all spheres, in both the public and the private sectors, on all the grounds prohibited under the Covenant, including colour, political or other opinion, national origin, property, birth, sexual orientation and gender identity or other status;

(b) Guarantee effective remedies for victims of discrimination in judicial and administrative proceedings.

Discrimination on the grounds of sexual orientation and gender identity

10. The Committee remains concerned about continuing reports of discrimination, harassment and violence, including extortion, arbitrary arrest, torture and sexual abuse, against lesbian, gay, bisexual and transgender persons by State officials and private individuals, including in places of deprivation of liberty, and about the mandatory disclosure of private medical information. It is also concerned by the high level of impunity for these crimes, manifested in the lack of investigations into acts of violence against lesbian, gay, bisexual and transgender persons. The Committee also remains concerned that consensual same-sex relations between adult males continue to be criminalized under article 120 of the Criminal Code, which renders lesbian, gay, bisexual and transgender persons unable to report violence and discrimination against them for fear of prosecution. The Committee is further concerned about the lack of clarity in the procedure for legal recognition of gender reassignment and about reports that in practice such recognition requires hospitalization in a psychiatric clinic for a minimum of one month (arts. 2, 7, 17, 23 and 26).

11. The State party should:

(a) Take effective measures to combat any form of social stigmatization, harassment, hate speech, discrimination or violence against persons based on their sexual orientation or gender identity, including by providing training for law enforcement personnel, prosecutors and the judiciary, and by conducting awareness-raising campaigns promoting sensitivity and respect for diversity among the general public;
(b) Ensure that cases of discrimination and violence against persons belonging to these groups that are committed by individuals or State agents are systematically investigated, that perpetrators are punished with appropriate penalties and that victims receive full reparation;

(c) Repeal article 120 of the Criminal Code;

(d) 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.
Yemen – List of Issues prior to reporting – 130th Session, 22 December 2020, 6th review

Keywords: SO; anti-discrimination legislation, discrimination, intersectionality, legislation, measures, prosecution, punishment, remedy, TSM

Non-discrimination (art. 2 and 26)

7. Please provide information on the national legislation against discrimination and to what extent it is applied in conformity with the Covenant, particularly regarding the prohibited grounds of discrimination and the implementation of temporary special measures to remedy discriminatory situations. Provide information, including statistical data, on the effectiveness of remedies available to victims. Please indicate whether the State party envisages bringing the anti-discrimination provisions of the draft constitution into line with the Covenant, especially as regards non-citizens’ rights. Moreover, indicate whether the State party intends to (a) adopt comprehensive anti-discrimination legislation that contains all grounds prohibited under the Covenant and covers direct, indirect and intersecting forms of discrimination, (b) review applicable laws and, where necessary, amend those that are discriminatory or lead to discrimination. In this regard, with reference to the Committee’s previous recommendations (CCPR/C/YEM/CO/5, para. 13), please report on steps taken to repeal or amend all legislation which provides for or could result in prosecution and punishment of people because of their sexual orientation.

---

57 CCPR/C/YEM/QPR/6.
Keywords: SOGI; arrest, criminalisation (decriminalisation), detention, discrimination, harassment, measures, prevention, prosecution, same-sex couples, stigmatisation, violence

Non-discrimination (arts. 2–3 and 26)

8. In light of the Committee’s previous concluding observations (para. 24), please provide information on whether the State party intends to repeal the criminalization of consensual same-sex relationships between adults to ensure compliance with its obligations under articles 2, 17 and 26 of the Covenant. Please provide information on the number of people who have been arrested, detained and prosecuted for same-sex sexual relations in the past five years. Please respond to reports of discrimination, stigmatization, harassment and violence, including while in police custody, on the basis of sexual orientation or gender identity, and provide information on the measures taken to prevent and combat such acts.

58 CCPR/C/ZMB/Q/4.
Keywords: SOGI; LGBTI; anti-discrimination legislation, court, criminalisation (decriminalisation), discrimination, hate crimes, hate speech, HIV/AIDS, investigation, measures, prevention, redress, remedy, same-sex couples, stigmatisation, violence

Non-discrimination (arts. 2, 19–20 and 26)

6. Please provide information on the measures taken to ensure that the State party’s antidiscrimination legal framework, including the Prevention of Discrimination Act of 1998, provides: (a) full and effective protection against direct, indirect and multiple discrimination in all spheres, including in the private sphere, and on all the grounds prohibited under the Covenant, including sexual orientation and gender identity; and (b) effective remedies in judicial and administrative proceedings for victims of discrimination. Please indicate all legislative and other measures taken to combat and prevent hate crimes, hate speech, and other acts of discrimination, stigmatization and violence, particularly against persons with disabilities, HIV/AIDS or albinism, and lesbian, gay, bisexual, transgender and intersex persons. Please indicate whether the State party intends to decriminalize sexual relations between consenting adults of the same sex. Please provide statistical data on complaints of discrimination brought to the courts during the last eight years, along with an indication of the basis of discrimination, the nature of investigations conducted and their outcome, and any forms of redress provided to victims.
3. Committee on the Elimination of Discrimination against Women

Azerbaijan – List of Issues – 77th PSWG, 11 March 2020, 6th review

Keywords: BT; asylum-seekers/refugees, discrimination, family, GBV, IDPs, intersectionality, legislation, measures, prevention, sexual violence, women

Disadvantaged groups of women

21. Please provide information on the measures taken to address intersecting forms of discrimination faced by women with disabilities, refugee and internally displaced women, older women, Lezgin women and women belonging to other ethnic minority groups, women heads of household and lesbian, bisexual and transgender women in legislation, policies and programmes related to gender equality. Please provide more information on the impact, including details regarding the 500 beneficiaries, of the project on the prevention of sexual and gender violence in communities of internally displaced persons and response measures (para. 29) and on whether the State Committee for Family, Women and Children’s Affairs continued that project after 2018. Please outline the measures adopted by the State party to ensure that women and girls belonging to other disadvantaged groups who are victims of gender-based violence are provided with support services.

60 CEDAW/C/AZE/Q/6.
Bolivia – List of Issues – 78th PSWG, 27 July 2020, 7th review

Keywords: SOGI; T, LBTI; discrimination, legislation, LGR, measures, remedy, trainings, violence, women

Lesbian, bisexual, transgender and intersex women

20. According to the information before the Committee, an article of Act No. 807 on Gender Identity (2016), which established an administrative procedure for changing the name, sex and image of transsexual and transgender persons, was declared unconstitutional after the law entered into force. Please provide updated information on the measures taken to remedy this situation and ensure the rights of lesbian, bisexual, transgender and intersex women. Please also provide information on measures taken to systematically include issues on gender equality, non-discrimination and non-violence based on sexual orientation and gender identity in teacher training, as provided for in the Productive Socio-Community Education Model established in the Avelino Siñani-Elizardo Pérez Education Act No. 070.

---

61 CEDAW/C/BOL/Q/7.
Brazil – List of Issues prior to reporting – 79th PSWG, 17 November 2020, 8th and 9th review

Keywords: SO; LGBT; access to justice, court, discrimination, measures, remedy, stigmatisation, women

Women's access to justice

5. Please provide information on the achievements made and challenges encountered in ensuring women's access to justice in cases of gender-based discrimination, especially for women belonging to disadvantaged and marginalized groups. Please elaborate on the efforts undertaken to increase access for women and girls to free legal aid, shift the burden of proof in such cases and provide judicial remedies, and on measures taken to combat the fear of potential stigmatization and victimization for affected women. Please also provide information on the progress made in enabling women to invoke their rights to equality and non-discrimination, including to lodge legal complaints and seek remedies for violations of their rights. Please indicate the outcomes of such cases and whether the Convention has been invoked directly before the courts. Please provide data, disaggregated by sex, age, disability, ethnicity, nationality and sexual orientation (see resolutions No. 11 of 18 December 2014 and No. 12 of 16 January 2015 of the National Council on Anti-Discrimination and Promotion of the Rights of Lesbians, Gays, Bisexuals, Transvestites and Transsexuals), on the number of cases of gender-based discrimination reported over the past four years and on cases in which compensation was awarded to victims.

Keywords: SO; LGBT; domestic violence, GBV, investigation, legislation, measures, prosecution, sexual abuse/violence, support services, violence, women

Gender-based violence against women

10. Please provide updated data on: (a) cases of gender-based violence against women, including femicide (see the Feminicide Law No. 13.103/2015) and domestic violence (see the Maria da Penha Law No. 11.340/2006), for the past four years, disaggregated by age, disability, ethnicity, nationality, sexual orientation (see resolutions No. 11 of 18 December 2014 and No. 12 of 16 January 2015 of the National Council on Anti-Discrimination and Promotion of the Rights of Lesbians, Gays, Bisexuals, Transvestites and Transsexuals), and the relationship between the perpetrator and the victim; (b) the number of investigations, prosecutions, convictions and sanctions imposed, as well as the number of restraining orders issued; and (c) compensation awarded and the number of women victims of gender-based violence who have been provided with legal assistance and relevant support services. Please state the specific measures that have been adopted to address the low reporting and conviction rates for rape, including rape and sexual abuse of girls. Please inform the Committee of progress made in amending the Penal Code with a view to adopting a definition of rape based on lack of free consent.

---

Bulgaria – Concluding Observations – 75th Session, 10 March 2020, 8th review

Keywords: I; action plan, awareness-raising, free and informed consent, GC/GR, health, IGM, medical/health care, SDGs, sexuality education, SRHR, surgical/medical intervention, torture/ill-treatment, violence, women

Health

33. The Committee notes with concern: [...] (d) Reports of largely irreversible medical surgery performed on intersex women.

34. Recalling its general recommendation No. 24 (1999) on women and health and target 3.7 of the Sustainable Development Goals, with the aim of ensuring universal access to sexual and reproductive health-care services, as well as its previous recommendation (CEDAW/C/BGR/CO/4–7, para. 36), the Committee recommends that the State party: [...] (e) Develop and implement a rights-based health-care protocol for intersex women and ensure that intersex women are not subjected to surgery or treatment without their free, informed and prior consent.

Keywords: LBTI; discrimination, GBV, intersectionality, measures, violence, women

Women and girls facing multiple and intersecting forms of discrimination

39. The Committee is concerned that women and girls with disabilities, lesbian, bisexual and transgender women and intersex persons continue to face intersecting forms of discrimination and gender-based violence.

40. The Committee recommends that the State party urgently implement targeted measures to achieve substantive equality for women and girls in all stages of life who face intersecting forms of discrimination, such as women and girls with disabilities, lesbian, bisexual and transgender women and intersex persons.

---

63 CEDAW/C/BGR/CO/8.
Paragraph 25 (b):

Expedite the adoption of the draft law on the right of women to a life free from violence (bill No. 11077-07) and ensure that the intersecting nature of violence and discrimination is recognized under the law, in particular with regard to migrant women, indigenous women, women with disabilities and lesbian, bisexual and transgender women and intersex persons.

Assessment:

The Committee notes that the draft law on the right of women to a life free from violence (bill No. 11077-07) has not been adopted and it is at the second stage in the Senate Women's Committee. While noting the information provided by the State party that the draft law aims at recognizing different forms of violence against women, children, older persons and persons with disabilities, the Committee considers that it does not recognize intersecting forms of discrimination against migrant women, indigenous women, women with disabilities, women and lesbian, bisexual and transgender women and intersex persons. The Committee considers that the State party took some steps to implement the recommendation. It considers that the recommendation has been partially implemented.

The Committee considers that the information provided by the State party is thorough and extensive, and responds directly to the recommendation. It thus considers that the quality of the information provided is satisfactory.

Results:

The Committee recommends that, in relation to paragraph 25 (b) of the concluding observations, the State party provide, in its next periodic report [due in March 2022], information on actions taken to:

Expedite the adoption of the draft law on the right of women to a life free from violence (bill No. 11077-07) and ensure that the intersecting nature of violence and discrimination is recognized under the law, in particular with regard to migrant women, indigenous women, women with disabilities and lesbian, bisexual and transgender women and intersex persons.
Disadvantaged groups of women

19. [...] Please address reports of abuse of women and girls in detention, including ill-treatment of transgender women, by security and prison personnel. Please indicate steps taken to ensure that conditions for women and girls in places of detention meet international human rights standards.
Germany – List of issues prior to reporting – 77th PSWG, 11 March 2020, 9th review

Keywords: T; awareness-raising, discrimination, gender reassignment, legislation, measures, police, trainings, women

Disadvantaged groups of women

20. Please indicate the steps taken to revise the Transgender Act to harmonize it with international standards of non-discrimination and to alleviate and simplify the conditions under which gender reassignment treatment can be obtained. Please provide information on the measures taken to eliminate discrimination against transgender women, including by means of awareness-raising campaigns and appropriate capacity-building for police officers and the judiciary (para. 46).
Temporary special measures

7. Please provide information about policies, programmes and plans on the development of temporary special measures to achieve substantive equality between women and men, particularly with reference to the participation of women in public decision-making and political life, and to promote women’s equal representation in all areas of the Convention where they are underrepresented or disadvantaged, including education and employment, in accordance with article 4 (1) of the Convention and the Committee’s general recommendation No. 25 (2004) on temporary special measures. Please elaborate on the groups of women targeted by temporary special measures, the short- and long-term goals of such measures and whether they have been implemented in the public and the private sector, as well as the budget allocated and the time frames for implementing such measures. Please also inform the Committee about temporary special measures adopted to address multiple and intersecting forms of discrimination against women with disabilities, refugee and asylum-seeking women, Roma women, older women, lesbian, bisexual and transgender women and women belonging to minorities.

---

67 CEDAW/C/GRC/QPR/8.
Japan – List of Issues prior to reporting – 77th PSWG, 11 March 2020, 9th review

Keywords: LBT; access to justice, counselling, discrimination, education, employment, health, intersectionality, measures, shelters, support services, women

Rural women and disadvantaged groups of women

23. [...]. Please provide detailed information on the steps taken to address the intersecting forms of discrimination faced by women from indigenous, ethnic and other minority groups, including Ainu, Buraku and Zainichi Korean women, women with disabilities, lesbian, bisexual and transgender women, migrant women, older women and widows, in such areas as education, employment, health and participation in political and public life. Please also indicate the specific measures taken to ensure their access to justice and other services, such as shelters, social services and legal and psychological counselling.

68 CEDAW/C/JPN/QPR/9.
Women’s access to justice

13. The Committee welcomes the fact that the State party provides State-funded legal aid to all applicants below the income or assets threshold. In particular, it welcomes the fact that, since 2018, women in special circumstances, including victims of gender-based violence seeking temporary protection orders, are exempted from the threshold requirement regardless of their residential status. The Committee is nevertheless concerned that women who are victims of multiple or intersecting forms of discrimination are unable to gain access to justice owing to barriers related to accessibility, the absence of procedural and age-appropriate accommodations, the existence of temporary guardianship and partial legal capacity regimes and a lack of awareness of the legal remedies and compensation mechanisms available to them.

14. In the light of its general recommendation No. 33 (2015) on women’s access to justice, the Committee recommends that the State party:

(a) Continue its efforts to ensure effective access to justice, full inclusion and accessibility for disadvantaged or marginalized women, such as women belonging to ethnic minority groups, in particular Roma women, women who are non-citizens, refugee, asylum-seeking, migrant, rural and older women, women with disabilities, lesbian, bisexual and transgender women and intersex persons;

(b) Repeal the legal provisions concerning substituted decision-making in order to restore the full legal capacity of all women through a supported decision-making regime and ensure the provision of judicial, procedural and age-appropriate accommodations;

(c) Raise awareness among women of the remedies available to them to claim violations of their rights, including before the Office of the Ombudsperson.

69 CEDAW/C/LVA/CO/4-7.
Keywords: T; arrest, detention, GBV, harassment, HRDs, killings, police, prosecution, redress, sexual abuse/violence, torture/ill-treatment, women

Gender equality and the rights of women in the current political and socioeconomic context

1. In the light of resolution 40/2 adopted by the Human Rights Council at its fortieth session, held from 25 February to 22 March 2019, concerning the serious political and human rights crisis triggered in April 2018 in the context of social demonstrations and the impact of human rights violations on the promotion and protection of gender equality and the rights of women, please inform the Committee about measures taken to tackle all forms of gender-based violence against women, particularly those affecting women human rights defenders and social activists who were taking part in the protests, including physical and sexual violence, reprisals, harassment, the disproportionate use of force by the police, unlawful arrests and arbitrary detentions, ill-treatment and intimidation. Please provide information on the number of women subjected to detention in connection with the protests of 2018 or human rights advocacy and mechanisms to protect them against torture and ill-treatment. Please also provide information on prosecutions and convictions of perpetrators of human rights violations in connection with the social, political and human rights crisis, and redress provided for women victims of extrajudicial violence and women relatives of victims of extrajudicial killings, victims of torture and relatives of persons who died in the context of the protests of 2018, including women human rights defenders, journalists, and transgender women.

Keywords: LBT; discrimination, intersectionality, legislation, measures, policy, women

Definition of discrimination and legislative and policy framework

4. [...] Please also report on [...] measures, including policies and programmes, to address the situation of migrant, asylum-seeking and refugee women, older women, and lesbian, bisexual and transgender women.

---

70 CEDAW/C/NIC/Q/7-10.
Keywords: I; access to justice, gender reassignment, legislation, LGR, prevention, prosecution, reparation, sterilisation, women

Health

43. [...]. Furthermore, the Committee notes with concern: [...]

(e) The subjection of women with disabilities, in particular those living in institutions, to forced sterilization, and the performance of gender reassignment surgery on intersex persons for the purpose of legal gender recognition and victims’ limited access to justice.

44. [...]. Furthermore, the Committee recommends that the State party: [...]

(e) Ensure that perpetrators of forced sterilizations are prosecuted and adequately punished, prevent unnecessary gender reassignment surgery in law and in practice, identify and eliminate the barriers preventing victims from gaining access to justice and ensure that they have access to effective reparation, including compensation.

---

71 CEDAW/C/PAK/CO/5.
Gender-based violence against women

10. [...] Information before the Committee indicates the prevalence of several forms of gender-based violence against women, together with forms of violence targeting specific groups, such as indigenous women, women of African descent, women deprived of liberty, women human rights defenders, lesbian, bisexual, transgender and intersex women and women with disabilities. Please elaborate on measures taken to address the root causes and combat all forms of gender-based violence against women, including physical, psychological and sexual violence and femicide.

Keywords: LBTI; GBV, intersectionality, killings, measures, sexual violence, violence, women

11. With reference to the legislative framework governing gender-based violence against women and in particular to Plenary Agreement No. 001-2016/CJ-116, please provide information about: (a) measures taken to harmonize the definition and scope of femicide with international standards; (b) measures taken to encourage and facilitate reporting of cases of gender-based violence against women, including sexual violence against women with disabilities in institutions, women living in rural areas and lesbian, bisexual, transgender and intersex women; (c) the number and location of shelters for women who are victims of gender-based violence throughout the country and measures taken to ensure that such shelters are accessible by women with disabilities; and (d) redress and rehabilitation services for women facing all forms of violence. Please provide updated statistical data on prosecutions and convictions of perpetrators of gender-based violence against women, including femicide, in the past five years, disaggregated by the age of the victim, the relationship between the perpetrator and the victim, the type of sentence imposed and other relevant characteristics, and report on the reparations, rehabilitation and compensation provided.

---

72 CEDAW/C/PER/Q/9.
Reiterating its previous concluding observations (CEDAW/C/KOR/CO/7, para. 15), the Committee recommends that the State party adopt a comprehensive anti-discrimination law that prohibits discrimination against women, including direct, indirect and intersecting forms of discrimination affecting disadvantaged groups of women, such as women living in poverty, women belonging to ethnic, racial, religious and sexual minority groups, women with disabilities, women refugees and asylum seekers, stateless and migrant women, rural women, single women, adolescents and older women, as defined in article 1 of the Convention and in line with the Committee’s general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention.

Assessment:

The Committee takes note of the information that the State party has been conducting research to draft an anti-discrimination law and included the development of the legislative framework for anti-discrimination in its third National Action Plan for the Promotion and Protection of Human Rights (2018-2022). The Committee considers that the State party is endeavouring towards implementation of the recommendation. Nonetheless, the outcome remains, therefore, it considers that the recommendation has not been implemented.

The Committee considers that the information provided by the State party is thorough and extensive, and responds directly to the recommendation. It thus considers that the quality of the information provided is satisfactory.

Results:

The Committee recommends that, in relation to paragraph 13 of the concluding observations, the State party provide, in its next periodic report [due in March 2022], information on actions taken to:

Expedite the development and adoption of a comprehensive anti-discrimination law that prohibits discrimination against women, including direct, indirect and intersecting forms of discrimination affecting disadvantaged groups of women, such as women living in poverty, women belonging to ethnic, racial, religious and sexual minority groups, women with disabilities, women refugees and asylum seekers, stateless and migrant women, rural women, single women, adolescents and older women, as defined in article 1 of the Convention and in line with the Committee’s general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention.

Keywords: SOGI; domestic violence, family, follow-up, GBV, GC/GR, intersectionality, legislation, SDGs, violence, women

Paragraph 23:

23. The Committee refers to its previous recommendations (CEDAW/C/KOR /CO/7, para. 21) and, taking into account its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, and recalling target 5.2 of the Sustainable Development Goals.
Development Goals, recommends that the State party strengthen its efforts to combat gender-based violence against women and: […]

(b) Amend the Act on Special Cases concerning the Punishment, etc. of Crimes of Domestic Violence, to ensure that the safety of the victims and their families becomes its primary purpose, by, among other things, extending its applicability to same-sex couples or families and all women, regardless of their sexual orientation or gender identity; abolish the system of suspending charges in home protection cases on condition of undergoing counselling or training on domestic violence, and prohibit the use of reconciliation and mediation in such cases; ensure that perpetrators are criminally punished under statutory sanctions; and adopt a policy of mandatory arrest for crimes of domestic violence in cases in which restraining orders are breached; […].

Assessment:

The Committee welcomes that the State party introduced a bill to amend the Act on Special Cases concerning the Punishment etc. of Crimes of Domestic Violence to the National Assembly in November 2019. It also notes that the bill includes provisions of an additional emergency measure to immediately separate the victim from the perpetrator, the punishment of the perpetrator for violation of restraining order, and other ad hoc measures. Nevertheless, the Committee is concerned about the lack of information on whether the amendment of the Act adopted in March 2020 included these provisions. The Committee also regrets the absence of information on its applicability to same-sex couples or families and whether the State party took measures to: (a) abolish the system of suspending charges on domestic violence on condition of undergoing counselling or training; and (b) prohibit the use of reconciliation and meditation in cases of domestic violence. The Committee considers that the State party took some steps to implement the recommendation. It considers that the recommendation has been partially implemented.

The Committee notes that the information provided by the State party is thorough and extensive, but it fails to respond fully to the recommendation. It thus considers that the quality of the information provided is partially satisfactory.

Results:

The Committee recommends that, in relation to paragraph 23 of the concluding observations, the State party:

1. Clarify, in its next periodic report [due in March 2022], the status of the bill to amend the Act on Special Cases concerning the Punishment, etc. of Crimes of Domestic Violence, which includes provisions of an additional emergency measure to immediately separate the victim from the perpetrator and the punishment of the perpetrator for violation of restraining order and other ad hoc measures; and if the amended Act extends its applicability to same- sex couples or families and all women, regardless of their sexual orientation or gender identity; [...].
Definition of discrimination

10. The Committee commends the State party’s various strategic plans and legislative framework to advance women’s rights. However, it notes with concern that the Law on Ensuring Equality between Women and Men and the Law on the Enforcement of Equality do not explicitly protect women from intersecting forms of discrimination, including on grounds of sexual orientation, as provided for in some national legislation.

11. The Committee recommends that the State party amend the Law on Ensuring Equality between Women and Men and/or the Law on the Enforcement of Equality to include a comprehensive definition of discrimination against women that covers, in addition to direct and indirect discrimination, discrimination in the public and private spheres and intersecting forms of discrimination, in accordance with article 1 of the Convention.

Access to justice

12. The Committee is concerned about women's limited access to justice in the State party, in particular: [...] (b) The barriers faced by victims of hate speech and women belonging to disadvantaged groups in accessing legal aid; [...].

13. Recalling its general recommendation No. 33 (2015) on women's access to justice, the Committee recommends that the State party: [...] (b) Raise awareness among women, including those belonging to ethnic minority groups, women with disabilities, migrant women, older women and lesbian, bisexual and transgender women, about their rights and the legal remedies available to them to claim those rights; [...].

---

74 CEDAW/C/MDA/CO/6.
**Russian Federation – List of Issues – 78th PSWG, 27 July 2020, 9th review**

Keywords: SOGIE; LBT; arrest, discrimination, free and informed consent, intersectionality, law enforcement officials, legislation, measures, police, policy, surgical/medical intervention, trainings, violence, women

**Disadvantaged groups of women**

19. Please provide information on measures taken to address, in legislation, policies and programmes related to gender equality, intersecting forms of discrimination faced by women with disabilities, including information on measures to ensure that the right to free and informed consent is guaranteed with regard to all medical interventions and treatments. Please describe measures taken to protect lesbian, bisexual and transgender women from discrimination and violence, including with regard to training provided to police and law enforcement officials, including in the North Caucasus region. Please provide information on the number of women arrested in the North Caucasus region on the basis of their sexual orientation, gender identity or gender expression.
Keywords: LBT; access to justice, GBV, measures, SRHR, violence, women

Disadvantaged groups of women

22. Please provide information on measures taken by the State party to ensure that older women, women and girls with disabilities and lesbian, bisexual and transgender women have effective access to justice, protection from gender-based violence, sexual and reproductive health services and income-generating opportunities.

76 CEDAW/C/VCT/QPR/9.
Disadvantaged groups of women

19. Please provide up-to-date data, disaggregated by relevant factors, on the enjoyment by disadvantaged groups of women, including women and girls with disabilities, lesbian, bisexual and transgender women, intersex persons and older women, of their rights and of access to basic services and accessible infrastructure, for example schools, workplaces and public spaces, and on measures to tackle the intersecting forms of discrimination and violence that such persons face.
Women's access to justice

4. Please also provide information on the progress made in enabling women to invoke their rights, including to lodge complaints through the legal system and to seek remedies for violations of their rights. Please indicate the outcomes of such cases and whether the Convention has been invoked before the courts. Please provide data, disaggregated by sex, ethnic origin, sexual orientation and disability, on the number of cases of discrimination reported over the past four years and on cases in which compensation was awarded to victims.

Keywords: LBTI; GBV, prosecution, shelters, support services, violence, women

Gender-based violence against women

10. Please provide details and outcomes of research conducted on the prevalence of gender-based violence against women and its root causes, as well as data, disaggregated by sex, age, ethnicity or minority status and relationship between the victim and the perpetrator, on the number of prosecutions and convictions. Please provide information on the implementation of programmes to eliminate gender-based violence and harmful practices against Roma women and girls, lesbian, bisexual, transgender and intersex women and women and girls with disabilities, as well as on their outcomes. Please supply information on the enforcement and monitoring of compliance, to ensure that the protection orders are of sufficient duration to protect the women on behalf of whom such orders have been issued. Please mention steps taken to fund organizations that provide support services to victims, including with regard to shelters and rehabilitation, and efforts made to ensure their accessibility.

Keywords: LBTI; access to justice, awareness-raising, free and informed consent, GC/GR, health, investigation, legislation, measures, redress, remedy, SRHR, sterilisation, surgical/medical intervention, trainings, women

Health

19. Please report on the advances made towards monitoring public and private health centres, including hospitals and clinics, that perform sterilization procedures, so as to ensure their full compliance with national legislation and regulations on the prohibition of forced sterilization and towards the imposition of appropriate sanctions in the event of a breach. Please indicate whether systematic and regular training has been provided to all relevant personnel in public and private health centres on how to ensure free, prior and informed consent for medical interventions in the field of women's reproductive health, including sterilization. Please provide information on the measures taken to raise awareness among Roma women, women with disabilities and lesbian, bisexual, transgender and intersex women of their sexual and reproductive rights and on ways to seek redress in cases of violations thereof, including with regard to cases that occurred in the past. Please describe steps undertaken to ensure that complaints regarding forced sterilization filed by Roma women, women with disabilities and lesbian, bisexual, transgender and intersex women are duly investigated and that victims of such practices have access to remedies and redress that are adequate, effective, promptly granted, holistic and proportionate to the gravity of the harm suffered, in line with the Committee's general recommendation No. 33 (2015) on women's access to justice.

78 CEDAW/C/SVK/QPR/7.
Disadvantaged and marginalized groups of women

21. Please provide details on the status of the collection of data, disaggregated by sex, age, ethnicity, geographical location and socioeconomic background, in all areas covered by the Convention on multiple and intersecting forms of discrimination, including on Roma women and women of other ethnic minorities, migrant, refugee and asylum-seeking women, women with disabilities and lesbian, bisexual, transgender and intersex women. [...].

Keywords: LBTI; asylum-seekers/refugees, data collection, discrimination, intersectionality, women

25. Transgender and intersex women. Please provide information on the progress made in reviewing legislation to guarantee the rights of transgender and intersex women and girls and ensure that they are free from non-consensual medical treatment, including by abolishing the requirement of compulsory sterilization and surgery for transgender women who wish to obtain legal recognition of their gender. Please provide information on efforts made by the State party to review its legislation to prohibit, as a separate crime, hate speech on the grounds of sexual orientation. Please report on measures taken to ensure that the prohibition of hate crimes and hate speech under the Anti-Discrimination Act and the Criminal Code is strictly enforced and that judges, prosecutors, police officers and other law enforcement officials are adequately trained to recognize and effectively address such incidents. Please indicate steps taken towards the public condemnation of racially motivated and homophobic discourse and violence, including hate speech or hate crimes related to race or sexual orientation in the media and on the internet, and indicate efforts made to strengthen and promote tolerance and respect for diversity.
Gender-based violence against women

13. Reportedly, some women, such as lesbian, bisexual and transgender women, refugees, women living with disabilities and women and girls with albinism, are more exposed to gender-based violence than other women. Please provide disaggregated statistical data on the interaction of sex and any other relevant factors such as gender, race, ethnicity, age, disability, sexual orientation, socioeconomic status and albinism in relation to violence, including sexual violence. Please indicate legislation, policies and programmes that address and protect the rights and needs of women and girls at risk of or affected by intersecting forms of discrimination and violence.

Disadvantaged groups of women

22. Please indicate the measures taken to implement the Committee’s previous recommendation on the enactment of comprehensive anti-discrimination legislation that includes the prohibition of intersecting forms of discrimination against women belonging to disadvantaged groups on grounds including race, ethnicity, age, sexual orientation, socioeconomic status, disability, HIV/AIDS status and albinism (CEDAW/C/ZAF/CO/4, para. 40). Please also provide information on measures taken to prevent discrimination and violence against women migrants and asylum seekers, and their children, from other African countries.
Access to justice

6. Please provide information on the measures taken to ensure that women, including internally displaced women, Roma women, women with disabilities, rural women, older women, lesbian, bisexual and transgender women and women living with HIV, are aware of their rights under the Convention and of the legal remedies available to them. In the light of the Committee's previous concluding observations (para. 19), please also provide information on the measures taken to eradicate barriers impeding women's effective access to justice, including financial barriers, corruption and the gender stereotypes employed by law enforcement officials, and indicate the number of beneficiaries of free legal aid.

Lesbian, bisexual and transgender women and intersex persons

23. Please clarify whether the State party's anti-discrimination laws, in particular Act No. 5207-VI of 6 September 2012 on the principles of preventing and combating discrimination in Ukraine, explicitly protect lesbian, bisexual and transgender women and intersex persons, whether the prohibition of hate crimes in the State party's national legislation covers hate crimes committed against those persons, whether gender reassignment is legally recognized and which steps have been taken to prevent intrusive medical or surgical treatment without prior, free and informed consent. In the light of the Committee's previous concluding observations (para. 46), please indicate any measures taken to provide training and guidelines to law enforcement officials on non-discrimination and the protection of lesbian, bisexual and transgender women and intersex persons, in particular during public protests and events, to ensure the investigation and prosecution of any acts of hate speech and violence against lesbian, bisexual and transgender women and intersex persons and to provide shelter and assistance to lesbian, bisexual and transgender women and intersex persons who are victims of violence.
Uzbekistan – List of issues – 78th PSWG, 27 July 2020, 6th review

Keywords: SOGI; discrimination, intersectionality, legislation, women

Definition of non-discrimination

4. Please indicate how the State party plans to incorporate into national legislation, including the Act on the Guarantees of Equal Rights and Opportunities for Women and Men (2019), a definition of discrimination against women that prohibits direct and indirect discrimination in the public and private spheres, including intersecting forms of discrimination, in accordance with articles 1 and 2 of the Convention, including on the basis of sexual orientation and gender identity.

Keywords: SOGI; discrimination, education, sexuality education

Education

16. [...]. Please elaborate on the results of the review of school textbooks and curricula (para. 103) and the availability of gender equality education and age-appropriate sexuality education (CEDAW/C/UZB/CO/5, para. 24 (b)), including education to promote tolerance and non-discrimination based on sexual orientation and gender identity.

---

81 CEDAW/C/UZB/Q/6.
Keywords: LB TI; abuse, awareness-raising, detention, discrimination, education, employment, GBV, harassment, hate speech, health, intersectionality, measures, prosecution, stigmatisation, violence, women

Disadvantaged groups of women

45. The Committee notes with concern the stigmatization and increasing risk of violence, exploitation and abuse for women and girls with disabilities. It also notes with concern reports of hate speech, stigma and discrimination against lesbian, bisexual and transgender women and intersex persons in the fields of education, health, employment and justice. It is further concerned about reports of the detention of women with young children and of sexual harassment and abuse against women in detention.

46. The Committee recommends that the State party:

(a) Eliminate intersecting forms of discrimination against women and girls with disabilities, as well as against lesbian, bisexual and transgender women and intersex persons, raise public awareness about their human rights and prosecute and adequately punish the perpetrators of violence against them;

(b) Promote the use of alternatives to detention, especially for pregnant women, mothers with young children and women heads of household, improve the conditions in female detention facilities in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) and enhance the measures to protect women in detention from gender-based violence, including through regular monitoring and independent and confidential complaint mechanisms.

---

82 CEDAW/C/ZWE/CO/6.
4. Committee on the Rights of the Child

Austria – Concluding Observations – 83rd Session, 6 March 2020, 5th and 6th review

Keywords: I; abuse, awareness-raising, children, free and informed consent, GC/GR, measures, prevention, support services, surgical/medical intervention, trainings

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;

(b) Gather data with a view to understanding the extent of instances of unnecessary medical or surgical treatment performed on intersex children, which constitute a harmful practice, so that children at risk can be more easily identified and their abuse prevented;

(c) Continue to take preventive and protection measures to address female genital mutilation, including the provision of social, psychological, medical and rehabilitative services and training of relevant professionals and awareness-raising programmes.

83 CRC/C/AUT/CO/5-6.
Keywords: LGBT; bullying, children, violence

III. Main areas of concern and recommendations

4. The Committee reminds the State party of the indivisibility and interdependence of all the rights enshrined in the Convention and emphasizes the importance of all the recommendations contained in the present concluding observations. The Committee would like to draw the State party’s attention to the recommendations concerning the following areas, in respect of which urgent measures must be taken: violence, including corporal punishment (para. 21), sexual exploitation and abuse (para. 23), family environment and children deprived thereof (paras. 26 and 28), children with disabilities (para. 31) and the administration of child justice (para. 43).

Keywords: SOGI; anti-discrimination legislation, children, education, health, HIV, intersectionality, medical/health care, punishment, SDGs

C. General principles (arts. 2, 3, 6 and 12)

Non-discrimination

15. Noting that the principle of non-discrimination is enshrined in article 6 of the Law on the Rights of the Child and that research is being conducted on the necessity of comprehensive anti-discrimination legislation, and recalling target 10.3 of the Sustainable Development Goals, the Committee recommends that the State party:

(a) Establish comprehensive anti-discrimination legislation that ensures protection against all forms of direct, indirect and multiple discrimination, including based on sexual orientation and gender identity;

(b) Ensure that all children have access to education, medical care and social benefits on an equal basis, particularly children living in poverty, rural children, children without parental care, Roma children, migrant and stateless children, children with disabilities and children in institutions;

(c) Remove all barriers for the admission of children living with HIV to educational institutions and to health recovery, including by revising relevant regulations.

Keywords: LGBT; abuse, awareness raising, bullying, children, data collection, domestic violence, GC/GR, investigation, prevention, professional groups, prosecution, SDGs, trainings, violence

E. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

Violence, including corporal punishment

20. Noting the reinstallation of the national hotline for violence against children and the steps taken to address domestic violence, the Committee is seriously concerned about: [...]

(e) Prevalent peer violence, including bullying, in schools, institutions and communities and online, especially in relation to lesbian, gay, bisexual and transgender children and children with disabilities; [...].

21. Recalling its general comments No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and No. 13 (2011) on the right of the

---

84 CRC/C/BLR/CO/5-6.
child to freedom from all forms of violence, as well as target 16.2 of the Sustainable Development Goals, the Committee urges the State party to: [...] 

(d) Formulate, with the involvement of children, a comprehensive strategy for preventing, combating and monitoring all forms of violence against children, including bullying and online violence, paying particular attention to lesbian, gay, bisexual and transgender children and children with disabilities; [...] .

Keywords: SOGI; LGBT; adolescents, children, counselling, discrimination, education, GC/GR, health, HIV/AIDS, policy, sexuality education, SDGs, SRHR, support services

H. Basic health and welfare (arts. 6, 18 (3), 24, 26, 27 (1)–(3) and 33)

Adolescent health

34. The Committee welcomes the efforts of the State party to reduce the incidence of sexually transmitted infections and the abortion rate among children, and the adoption of the national strategy on the improvement of child and adolescent health. Recalling its general comments No. 4 (2003) on adolescent health and development in the context of the Convention and No. 20 (2016) on the implementation of the rights of the child during adolescence and targets 3.5 and 5.6 of the Sustainable Development Goals, the Committee recommends that the State party: [...] 

(b) Adopt a comprehensive sexual and reproductive health policy for adolescents and introduce sexual and reproductive health education into the mandatory school curriculum, with a focus on non-discrimination and sexual and reproductive rights, directing special attention to preventing adolescent pregnancy, high-risk sexual behaviour, HIV/AIDS and sexually transmitted infections and to the issues of sexual orientation and gender identity;

(c) Improve adolescents’ access to contraceptives, confidential testing for sexually transmitted infections and HIV, and counselling without parental consent;

(d) Train health professionals to support lesbian, gay, bisexual and transgender children; [...].
Chile – List of issues prior to reporting – 85th PSWG, 31 March 2020, 6th and 7th review

Keywords: LGBTI; adolescents, children, discrimination, education, health, legislation, measures

B. General principles (arts. 2, 3, 6 and 12)

Non-discrimination

9. Please provide information on measures taken to address and eliminate discrimination against girls, indigenous children, children with disabilities, migrant children and lesbian, gay, bisexual, transgender and intersex children, particularly in accessing education and health services. Please provide information on the number of cases filed for discrimination against children under Law No. 20.609. Please inform the Committee as to how the draft law that would provide for “preventive identity checks”, allowing the police to check the identity documents of children older than 14 years, will not discriminate against adolescents, particularly those from disadvantaged backgrounds. Please also provide information on the reported 70,317 preventive identity checks carried out on children under the age of 18 under Law No. 20.931 of 5 July 2016.

Keywords: I; children, health, medical/health care, policy, surgical/medical intervention

D. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

Harmful practices

15. [...]. Please also provide information on the finalization and implementation of a rights-based health-care protocol for intersex children to ensure that no child is subjected to unnecessary surgery or treatment.

Keywords: SC; I; children, surgical/medical intervention, violence

D. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

38. Please provide data, disaggregated as described in paragraph 33 above, on: [...]

(e) The number of intersex children who have undergone surgery or treatment related to their sexual characteristics.
Keywords: children, criminalisation (decriminalisation), discrimination, legislation, same-sex couples, SDGs

C. General principles (arts. 2, 3, 6 and 12)

Non-discrimination

18. The Committee is concerned about the prevalence of discriminatory legislation, in particular the Crimes Act, in which consensual sexual activity between boys is criminalized, as well as the Cook Islands Act, in relation to the rights of adopted children.

19. Taking note of target 10.3 of the Sustainable Development Goals, the Committee recommends that the State party repeal the discriminatory provisions in its legislation to ensure respect for the rights set forth in the Convention.
Costa Rica – Concluding Observations – 83rd Session, 4 March 2020, 5th and 6th review

Keywords: SOGI; LGBTI; children, bullying, data collection, harassment, hate speech, intersectionality, policy

III. Main areas of concern and recommendations

5. The Committee reminds the State party of the indivisibility and interdependence of all the rights enshrined in the Convention and emphasizes the importance of all the recommendations contained in the present concluding observations. The Committee would like to draw the State party’s attention to the recommendations concerning the following areas, in respect of which urgent measures must be taken: dissemination, awareness-raising and training (para. 15); non-discrimination (para. 17); right to life, survival and development (para. 20); violence against children, particularly abuse and neglect (para. 27); gender-based violence and sexual abuse (para. 29); and children deprived of a family environment (para. 33).

Keywords: LGBTI; adolescents, children, consultation, policy, trainings

A. General measures of implementation (arts. 4, 42 and 44 (6))

Cooperation with civil society

13. The Committee notes the engagement of civil society organizations promoting children’s rights in public policy mechanisms, such as the National Integral Child Protection System. Recalling its previous concluding observations (CRC/C/CRI/CO/4, para. 24), the Committee recommends that the State party facilitate the involvement of children and adolescent organizations, including organizations of children with disabilities, and indigenous and lesbian, gay, bisexual, transgender and intersex children, in the formulation, implementation and monitoring of public policies and programmes concerning their rights. This should include the allocation of necessary resources to such organizations and the building of their capacities to engage in social dialogue at the community and national levels, including the Legislative Assembly.

Keywords: LGBTI; bullying, children, harassment, hate speech, intersectionality

B. General principles (arts. 2, 3, 6 and 12)

Non-discrimination

16. The Committee, while noting the 2015 constitutional reform recognizing the State party as a multi-ethnic and pluralistic society, and the adoption of the national policy for a society free from racism, racial discrimination and xenophobia for the period 2014–2025, is concerned about:

(c) Information about hate speech mainly affecting children in situations of migration, as well as refugee and asylum-seeking children, and lesbian, gay, bisexual, transgender and intersex children.

17. With reference to targets 5.1 and 10.3 of the Sustainable Development Goals, the Committee recommends that the State party:

(c) Strengthen campaigns to counter hate speech, harassment, bullying and negative portrayal affecting migrant, asylum-seeking and refugee children, and lesbian, gay, bisexual, transgender and intersex children.

---

87 CRC/C/CRI/CO/5-6.
Keywords: SOGI; LGBTI; bullying, children, counselling, data collection, harassment, policy, prevention, privacy, remedy, support services, violence

D. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

Violence against children, particularly abuse and neglect

26. The Committee is deeply concerned about: […]

   (b) Harassment and bullying experienced by children in schools and the community on the basis of their sex orientation or gender identity;

27. With reference to its general comment No. 13 (2011) on the right of the child to freedom from all forms of violence, and taking note of target 16.2 of the Sustainable Development Goals on ending all forms of violence against children, the Committee urges the State party to: […]

   (d) Strengthen its efforts to combat cyberbullying and harassment against lesbian, gay, bisexual, transgender and intersex children and ensure child-friendly accessible complaint mechanisms in schools, or through electronic platforms safeguarding the privacy of child victims;

   (e) Ensure unified data collection concerning violence against children, disaggregated by age, sex, disability, geographical location, sexual orientation and gender identity, ethnic and national origin, and socioeconomic background, and use such data as the basis of public policies; […].
France – List of issues prior to reporting – 87th PSWG, 8 October 2021, 6th review

Keywords: I; children, free and informed consent, IGM, measures, medical professionals, professional groups, surgical/medical intervention, trainings

D. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

Harmful practices

23. Please provide information about the extent and type of harmful practices to which children are exposed, and inform the Committee about the measures taken to: (…)

(b) Ensure that no intersex child is subjected to unnecessary surgery or treatment; to ensure that the child’s free, prior and informed consent is obtained for necessary interventions; and to educate medical and psychological professionals on the negative consequences of unnecessary medical interventions on intersex children.

---

88 CRC/C/FRA/QPR/6.
Keywords: LGBTI; asylum-seekers/refugees, children, criminalisation (decriminalisation), discrimination, intersectionality, legislation, measures, same-sex couples, stigmatisation

2. General principles (arts. 2, 3, 6 and 12)

Non-discrimination

12. Please provide information on the measures taken to prohibit discrimination against children on all grounds and in all aspects of life, including multiple and intersectional discrimination. Please also provide information on the measures taken to address discrimination against and stigmatization of children belonging to ethnic, religious, cultural, linguistic and minority groups, children born to unmarried parents, children living in poverty, working children, children in street situations, children living in rural areas, asylum-seeking, refugee and migrant children, children with disabilities, children with albinism, and lesbian, gay, bisexual, transgender and intersex children, including on whether steps have been taken to amend the Criminal Code to remove the provisions criminalizing same-sex relationships.
Keywords: SOGI; abuse, bullying, data collection, legislation, prevention, support services, trainings, violence

Part I

5. Please provide information on: progress made in implementing the actions on bullying and the plans to strengthen teacher training to prevent, detect and address different forms of violence, including violence based on sexual orientation and gender identity, and to toughen sanctions for abuse by teachers; any mechanisms monitoring the implementation of Laws No. 3500/2006 and No. 4322/2015; any complaints mechanisms and support services for children; and efforts made to improve the collection of data on children victims of violence.

Keywords: I; adolescents, children, education, health, measures, medical/health care, sexuality education, trainings

7. Please specify how the measures taken have contributed to improving access to health care and quality education for all children. Also, please inform the Committee on progress made in strengthening the teaching capacity and integrating children’s rights and sexual education into school curricula and teacher training courses. Please specify what efforts have been made: to improve school infrastructure and transportation; ensure safe access to schools; provide and maintain a sufficient number of certified playgrounds for young children and spaces for adolescents; and increase the provision of early childcare. Please provide information on the measures taken to address the issues related to intersex children.

---

90 CRC/C/GRC/Q/4-6.
III. Main areas of concern and recommendations

4. The Committee reminds the State party of the indivisibility and interdependence of all the rights enshrined in the Convention and emphasizes the importance of all the recommendations contained in the present concluding observations. The Committee would like to draw the State party’s attention to the recommendations concerning the following areas, in respect of which urgent measures must be taken: violence, including sexual violence, abuse and neglect (para. 24), children deprived of a family environment (para. 28), children with disabilities (para. 30), adolescent health (para. 33), education (para. 36) and asylum-seeking, refugee and migrant children (para. 39).

Keywords: LGBTI; access to justice, bullying, children, education, prevention, sexual abuse, support services, violence

C. General principles (arts. 2, 3, 6 and 12)

Non-discrimination

16. With reference to target 10.3 of the Sustainable Development Goals and recalling its previous recommendations (CRC/C/HUN/CO/3-5, para. 20), the Committee urges the State party:

(a) To implement its laws that prohibit discrimination against children in marginalized and disadvantaged situations, such as girls, children with disabilities, Roma children, migrant and unaccompanied children and lesbian, gay, bisexual, transgender and intersex children, and to take measures to educate the public about equality and non-discrimination and to expand its programmes in schools;

(b) To strengthen its measures aimed at eliminating discrimination against Roma children, through the adoption of a national action plan with a particular focus on education, health, child protection services and housing, and to increase support to the anti-segregation working groups created in 2017; [...].

Keywords: LGBTI; access to justice, children, GC/GR, investigation, measures, prevention, SDGs, sexual violence, support services, violence

E. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

Violence, including sexual violence, abuse and neglect

23. The Committee is seriously concerned about:

(a) The lack of information on a national strategy to prevent and address all forms of violence against children, including sexual abuse, including specific measures targeting girls, Roma children, asylum-seeking and migrant children and lesbian, gay, bisexual, transgender and intersex children; [...].

24. With reference to its general comment No. 13 (2011) on the right of the child to freedom from all forms of violence, recalling target 16.2 of the Sustainable Development Goals and recalling its previous recommendations (CRC/C/HUN/CO/3-5, paras. 30, 32 and 35), the Committee urges the State party:
(a) To develop a national strategy to prevent and address all forms of violence against children, including sexual abuse, paying particular attention to girls and children in disadvantaged situations, including children with disabilities, children in alternative care, Roma children, lesbian, gay, bisexual, transgender and intersex children, and asylum-seeking, refugee and migrant children, and to ensure that the strategy clearly informs children about the procedures available for reporting cases of violence; [...].

Keywords: LGBTI; abuse, bullying, children, education, prevention, support services

I. Education, leisure and cultural activities (arts. 28–31)

Education, including early childhood education and care

35. The Committee welcomes the introduction of early childhood education from the age of 3 years, the creation of the working group on diversity education, and the creation of the MONDO card game and the “Wise Up!” programme to teach children about their rights. However, the Committee is seriously concerned about: [....]

(d) The bullying, abuse and exclusion faced by children in schools, in particular lesbian, gay, bisexual, transgender and intersex children; [...].

36. The Committee, recalling its previous recommendations (CRC/C/HUN/CO/3-5, para. 53), urges the State party to: [....]

(d) To intensify its efforts to prevent and address bullying in schools, including online bullying, and to provide support to child victims, in particular lesbian, gay, bisexual, transgender and intersex children; [...].
Ireland – List of issues prior to reporting – 87th PSWG, 18 November 2020, 5th-6th review

Keywords: LGBTI; children, discrimination, measures

II. Rights under the Convention and the Optional Protocols thereto

B. General principles (arts. 2, 3, 6 and 12)

Non-discrimination

10. Please provide information on:

(a) The impact of relevant strategies in eliminating discrimination against children, such as the national strategy for the inclusion of Travellers and Roma, 2017–2021, the migrant integration strategy, the strategy on lesbian, gay, bisexual, transgender and intersex young people, 2018–2020, and the national strategy for the inclusion of persons with disabilities, 2017–2021; (...)

(c) Measures taken to eliminate, in practice, discrimination against children belonging to ethnic minority groups, including Traveller and Roma children, children of minority faith or non-faith backgrounds, children with disabilities, children living in poverty, including those experiencing homelessness, lesbian, gay, bisexual, transgender and intersex children, refugee, asylum-seeking and migrant children, children with an irregular migration status and children of unmarried parents.

Keywords: I; adolescence, children, IGM, investigation, LGR, measures, remedy, support services, surgical/medical intervention

D. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

Harmful practices

19. Please inform the Committee about the measures taken to:

(a) Prevent the unnecessary medical or surgical treatment of intersex children, investigate related cases and provide adequate counselling, support and access to effective remedies for children subjected to such treatment;

(b) Allow children below 16 years of age to achieve legal recognition of their preferred gender, including by simplifying the relevant procedures.

Keywords: SOGI; discrimination, education, health, measures, sexuality education, SRHR

H. Education, leisure and cultural activities (arts. 28–31)

Education

27. Please inform the Committee about the measures taken to: (...) (e) Revise the content of sexual and reproductive health education to include material on non-discrimination, contraception, gender stereotypes, sexual orientation and gender identity; (...).

Keywords: I; children, data collection, surgical/medical intervention

III. Statistical information and data

D. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)
38. Please provide data, disaggregated as described in paragraph 33 above, on (...) (c) Intersex children who have received non-urgent and irreversible surgical or other procedures.
Kiribati – List of Issues – 85th PSWG, 8 April 2020, 2nd to 4th review

Keywords: LGBT, I; adolescents, children, discrimination, measures

Part I

4. Please provide information on the measures taken to:

(a) Combat discrimination against children in marginalized and disadvantaged situations, including children living in poverty, children with disabilities, and lesbian, gay, bisexual and transgender adolescents and intersex children;

(b) Ensure that the principle of the best interests of the child is consistently applied in all legal and administrative proceedings affecting children, including in education, custody and divorce cases and adoption processes;

(c) Provide specialized training on the Convention to all professionals working for and with children;

(d) Promote the meaningful participation of children at all levels of society, including through awareness-raising programmes.

93 CRC/C/KIR/Q/2-4.
Keywords: LGBT; children, discrimination, education, health, measures, service provision

Part I

4. Please indicate measures taken (...) (c)To ensure that all children, including non-Kuwaiti (Bidoon and migrant) and lesbian, gay, bisexual and transgender children, can enjoy their rights under the Convention without discrimination and can access all services, including those related to health and education; (...).
New Zealand – List of issues prior to reporting – On-line PSWG, 21 July 2020, 6th review

Keywords: LGBTI; asylum-seekers/refugees, children, discrimination, stigmatisation

C. General principles (arts. 2, 3, 6 and 12)

Non-discrimination

9. Please provide information on the measures taken to: [...]  
   (b) Combat negative attitudes towards children in vulnerable situations, in particular Maori and Pasifika children, children belonging to ethnic minority groups, asylum-seeking, refugee and migrant children, children with disabilities, lesbian, bisexual, gay, transgender and intersex children and children living with persons belonging to those groups, including any affirmative action taken;
   (c) Address cases of discrimination against children by applying disciplinary, administrative or penal sanctions, where appropriate.

Keywords: I; children, free and informed consent, health, medical/health care, medical professionals, surgical/medical intervention

D. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

Harmful practices

17. Please provide information on the measures taken to: [...]  
   (b) Develop and implement a rights-based health-care protocol for intersex children to ensure that no child is subjected to unnecessary surgery or treatment and that the child’s free, prior and informed consent is obtained for necessary interventions and educate medical and psychological professionals on the negative consequences of unnecessary medical interventions on intersex children.

Keywords: SC; I; abuse, investigations, prosecution, sexual abuse, surgical/medical intervention, violence

D. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

38. Please provide data, disaggregated as described in paragraph 32 above, on the following:  
   (a) The number of reported cases of violence and abuse against children, including sexual abuse, the investigations conducted, the prosecutions carried out and the sentences delivered, further disaggregated by type of offence, whether it occurred in State care and type of disability, if applicable;
   (b) The number of intersex children who have undergone surgery or treatment related to their sexual characteristics.

---

95 CRC/C/NZL/QPR/6.
Keywords: LGBT; children, discrimination, measures

Part I

3. Please specify the measures taken to (...) (b) Prevent and address discrimination regarding children born to unmarried couples, children in street situations, lesbian, gay, bisexual and transgender children, indigenous children, children affected by armed conflict and children in conflict with the law; (...).
Sweden – List of issues prior to reporting – On-line PSWG, 23 July 2020, 6th and 7th review

Keywords: LGBTI; asylum-seekers/refugees, children, discrimination

B. General principles (arts. 2, 3, 6 and 12)

Non-discrimination

11. Please provide information on the measures taken to: […]
   (b) Eliminate, in practice, discrimination against children in marginalized and disadvantaged situations, including children in disadvantaged socioeconomic situations, children in alternative care, asylum-seeking, refugee and migrant children, Roma and Sami children, children of African descent and lesbian, gay, bisexual, transgender and intersex children; […].

Keywords: I; children, counselling, discrimination, prevention, remedy, support services, surgical/medical intervention

D. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

Harmful practices

20. Please inform the Committee about the measures taken to:
   (a) Prevent the unnecessary medical or surgical treatment of intersex children and provide adequate counselling, support and access to effective remedies for children subjected to such treatment during childhood, including the statute of limitations for raising a claim against such treatment; […].

Keywords: GI; LGBTI; asylum-seekers/refugees, children, health, service provision

G. Basic health and welfare (arts. 6, 18 (3), 24, 26, 27 (1)–(3) and 33)

Health, including mental health, and health services

24. Please provide information on the measures taken to:
   (a) Ensure prompt and efficient access to high-quality health services for children in disadvantaged or marginalized situations, including children in alternative care, children living in poverty, asylum-seeking and refugee children and children who do not identify with the gender given to them at birth; […]
   (f) Address the high incidence of depression, mental illness and self-harm, and the causes thereof, in particular among girls, asylum-seeking children, children with disabilities and lesbian, gay, bisexual, transgender and intersex children.

Keywords: I; children, surgical/medical intervention

D. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

40. Please provide data, disaggregated as described in paragraph 34 above, on the following: […]
   (d) Intersex children who have received non-urgent and irreversible surgical or other procedures.
Tuvalu – Concluding Observations – 84th Extraordinary Session, 31 March 2020, 2nd to 5th review

Keywords: awareness-raising, anti-discrimination legislation, criminalisation (decriminalisation), discrimination, legislation, measures, same-sex couples, SDGs

C. General principles (arts. 2, 3, 6 and 12)

Non-discrimination

16. The Committee is concerned about:

(a) The prevalence of discriminatory provisions in the State party’s legislation despite the Committee’s previous recommendations (CRC/C/TUV/CO/1, para. 24), in particular the Tuvalu Lands Code 1962 and the Native Lands Act 1956, which discriminate against women and girls in relation to land inheritance rights and child custody, as well as the Penal Code 1965, which criminalizes consensual sexual activity between boys; [...].

17. Taking note of target 10.3 of the Sustainable Development Goals, the Committee recommends that the State party:

(a) Use the constitutional review process to ensure that the Constitution provides protection from discrimination on all prohibited grounds, including gender, disability, birth and other status, in line with article 2 of the Convention;

(b) Amend its discriminatory laws, in particular the Tuvalu Lands Code 1962, the Native Lands Act 1956 and the Penal Code 1965, and enact antidiscrimination legislation;

(c) Develop policies and awareness-raising measures to address the root causes of de facto discrimination, including against girls, children with disabilities and children living in the outer islands.
Keywords: I; children, IGM, surgical/medical intervention

Part I

5. Please describe the steps taken [...] (e) To ensure that intersex children are not subjected to unnecessary medical or surgical procedures.
Keywords: LGBTI; children, discrimination, measures

Part I

5. Please describe the concrete measures taken to:

(a) Eliminate discrimination against girls and children in vulnerable situations, including (...)(v) Lesbian, gay, bisexual, transgender and intersex children; (...).
Keywords: LGBTI; asylum-seekers/refugees, children, discrimination, education, health, HIV/AIDS, measures

C. General principles (arts. 2, 3, 6 and 12)

Non-discrimination

9. Please provide information on initiatives taken to eliminate, in practice, discrimination against children in marginalized and disadvantaged situations, namely in accessing education and health, particularly for children with disabilities, children with albinism, girls, children belonging to religious minorities, children living with HIV/AIDS, children with a migrant background and refugee, asylum-seeking and undocumented children. Please also provide information on the measures taken to eliminate discrimination against lesbian, gay, bisexual, transgender and intersex children.
5. Committee against Torture

Bolivia – List of Issues – 69th Online Session, 5 June 2020, 3rd review

Keywords: LGBTI; detention, measures

Article 11

16. Please provide information on the steps taken by the State party to meet the special needs of women, minors and indigenous persons deprived of liberty. Please indicate whether there are protocols in place to meet the special needs of other groups of prisoners, such as persons with disabilities, older persons and lesbian, gay, bisexual, transgender or intersex persons. With regard to paragraphs 37 and 38 of the periodic report, please clarify the normative framework governing the detention of juvenile offenders. Please indicate whether the detention of juvenile offenders in prisons is allowed. Please also provide a detailed description of the measures taken to ensure that remand prisoners are separated from convicted prisoners and that adult offenders are separated from juvenile offenders in all detention facilities.

102 CAT/C/BOL/Q/3.
Keywords: SOGIE; LGBT; hate crimes, investigation, measures, prosecution, violence

Article 16

24. Taking into account the Committee’s previous concluding observations (paras. 36 – 37), please indicate what concrete measures have been taken by the State party to combat violence against individuals based on their actual or perceived sexual orientation or gender identity and expression. In particular, please provide statistical data, disaggregated by age, sex and ethnicity of the victims, on complaints, investigations, prosecutions and convictions in cases of hate crimes against lesbian, gay, bisexual and transgender persons.

103 CAT/C/BIH/QPR/7.
Botswana – List of Issues prior to reporting – Cancelled Session due to COVID-19, 29 December 2020, initial review

Keywords: SOGI; asylum-seekers/refugees, GBV, investigation, law enforcement officials, police, prosecution, refoulement, torture/ill-treatment, trainings

**Article 10**

13. Please provide information on training programmes conducted by the State party with a view to ensuring that all public officials, including, in particular, members of the armed forces, police officers, law enforcement officials, prison officers and immigration and border control officers: (a) have a full understanding of the provisions of the Convention and are aware that violations will not be tolerated and will be investigated, and that those responsible will be prosecuted; (b) treat persons in a vulnerable situation appropriately, with due regard for their age, gender, cultural or ethnic affiliation and sexual orientation or gender identity; and (c) are aware of the principle of non-refoulement and the provisions guaranteeing the right to asylum and facilitating the identification of applicants who may be victims of torture, human trafficking and gender-based violence. [...].

---

104 CAT/C/BWA/QPR/1.
Keywords: SM; aggravating circumstance, asylum-seekers/refugees, discrimination, hate crimes, HRDs, investigation, law enforcement officials, legislation, prevention, prosecution, redress, remedy, reparation, violence

Article 16

16. With reference to the Committee’s previous concluding observations (paras. 29 and 30), please provide updated information on:

(a) Steps taken during the period under review to define hate crimes in national legislation, to establish protocols to prevent them, and to ensure that, in criminal prosecution of offences, motivation by discrimination constitutes an aggravating circumstance; and to ensure that excessive use of force by law enforcement officials against members of vulnerable minority communities, such as Roma, Muslims and their places of worship, migrants, refugees and asylum seekers, Turks, Jews, persons of African descent, and members of sexual minorities, as well as human rights activists defending them, is promptly investigated, that perpetrators are prosecuted and punished with appropriate sanctions, and that victims are provided with remedies and redress, including reparation for damages;

(b) Steps taken during the period under review to systematically investigate violence and hate crimes against vulnerable minority groups, prosecute perpetrators, convict and punish them if found guilty; [...].

\[105\] CAT/C/BGR/QPR/7.
Keywords: SO, SOGI; LGBT; anal examination, corrective rape, criminalisation (decriminalisation), discrimination, hate crimes, HRDs, investigation, legislation, measures, police, prevention, prosecution, same-sex couples, torture/ill-treatment, violence

Article 16

27. Given the recent reports of torture and ill-treatment, including anal examinations, of lesbian, gay, bisexual and transgender persons by the police, and of violence based on actual or perceived sexual orientation, including “corrective rape” by private individuals, please indicate whether the State party is considering repealing article 347-1 of the Criminal Code, which criminalizes consensual relations between adults of the same sex, and article 83 of Law No. 2010/012 of 21 December 2010 Relating to Cybersecurity and Cybercriminality in Cameroon, which criminalizes sexual proposals to an adult of the same sex using electronic means of communication, and announcing a moratorium on its application in the meantime. Please also indicate (a) the measures taken to prevent, investigate, prosecute and secure convictions for violence based on sexual orientation and gender identity and (b) the measures in place to protect lesbian, gay, bisexual and transgender persons and the human rights defenders who assist them, including to encourage victims to report such cases. Please provide data on cases of hate crime identified since 2017, disaggregated by grounds for discrimination, including sexual orientation or gender identity, age group, sex and ethnic origin or nationality of the victim and whether the perpetrator was a public official. Please also provide information on the outcome of the investigations and prosecutions conducted in each case and the sentences and penalties imposed.
Keywords: LGBTI; investigation, killings, prosecution, violence

Article 16

25. Regarding paragraphs 176 and 178 of the periodic report, please provide information on the steps taken to investigate and criminally prosecute acts of violence and killings of lesbian, gay, bisexual, transgender and intersex persons.

107 CAT/C/IRQ/Q/2.
Keywords: LGBTI; detention, measures, medical/health care, women

Article 11

15. Please provide information on the State party’s efforts to meet the special needs of women, minors and persons with disabilities in detention. Please indicate whether protocols are in place to meet the needs of other groups of prisoners with special needs, such as persons with disabilities, older persons and lesbian, gay, bisexual, transgender and intersex persons. Please provide information on concrete measures taken by the State party to address concerns about deficiencies in access to appropriate mental health care. What measures have been taken to ensure that prison search procedures are not degrading to inmates or visitors?

Keywords: LGBTI; asylum-seekers/refugees, hate crimes, measures, violence

Article 16

26. Please provide information on any measures taken by the State party to combat racially-motivated violence and hate crimes against persons of minority groups and noncitizens, including persons of African descent, refugees and migrants, Roma, Sinti and Camminanti communities and lesbian, gay, bisexual, transgender and intersex persons.
Keywords: GI; LGBT, T; adolescents, detention, discrimination, legislation, measures, women

Article 11

16. In connection with the previous concluding observations (paras. 22 and 24) and paragraphs 204 to 213, 228 and 229 of the periodic report, please clarify whether the State party intends, as required by domestic law, to establish separate correctional facilities for women and adolescents in addition to those it already has. Please also indicate what steps have been taken to eliminate the practice of holding convicted and accused persons in police lock-ups. As transgender women deprived of their liberty are held in the same cells as men – transgender persons’ gender identity is not recognized under the laws on the prison system – and as degrading treatment of transgender women during strip searches in wards with men has been documented, please indicate whether the State party has taken the necessary measures, including legislative ones, to ensure that lesbian, gay, bisexual and transgender persons in detention are treated in accordance with international standards and without discrimination.
Keywords: LGBTI; detention, measures

Article 11

18. In the light of the previous concluding observations (paras. 16 and 17 (c)), please provide information on the steps taken by the State party to meet the special needs of women and minors in detention. Please indicate whether protocols are in place to meet the needs of other groups of prisoners with special needs, such as persons with disabilities, older persons and lesbian, gay, bisexual, transgender and intersex persons.
Keywords: LGBTI; adolescents, detention, discrimination, measures, police, women

Article 11

16. With reference to the preceding concluding observations (paras. 26 and 27), please provide information on the steps taken to improve detention conditions at police stations and detention centres and to ensure that detainees awaiting trial in prison are housed separately from convicted prisoners and that men are held separately from women and adolescents are held separately from adults in police detention facilities. [...] Please also provide information on the measures taken to ensure that the rights of persons deprived of their liberty who are particularly vulnerable, such as women and lesbian, gay, bisexual, transgender and intersex persons, are treated with respect in accordance with international standards and without discrimination of any kind. [...].

111 CAT/C/PRY/QPR/8.
6. Committee on the Rights of Persons with Disabilities

Chile – List of Issues prior to reporting – 14th PSWG, 13 October 2020, 2nd to 4th review

Keywords: I; children, legislation, sterilisation, women

Protecting the integrity of the person (art. 17)

14. Please provide information on:

(a) Amendments to Act No. 20.584 and Decree No. 570 to end the involuntary sterilization of persons with disabilities, in particular women and girls with intellectual or psychosocial disabilities, and surgeries on intersex children; [...]

---

112 CRPD/C/CHL/QPR/2-4.
Keywords: LGBTI; discrimination, GC/GR, intersectionality, investigation, legislation, measures, prevention, redress, remedy

B. Specific rights (arts. 5–30)

Equality and non-discrimination (art. 5)

2. Please provide information on the measures taken:

(a) To ensure that legislation, including the Law of Georgia on Social Protection of Persons with Disabilities, complies with the Convention, taking into account the Committee’s general comment No. 6 (2018) on equality and non-discrimination, and that it provides equal and effective legal protection against all forms of discrimination on the basis of disability, including multiple and intersectional discrimination and discrimination against lesbian, gay, bisexual, transgender and intersex persons with disabilities; […]

(c) To prevent, investigate and sanction all forms of discrimination against persons with disabilities, and to ensure effective, accessible and affordable access to remedies and redress for all persons with disabilities.

Keywords: SOGI; LGBTI; intersectionality, measures, torture/ill-treatment, women

Freedom from torture or cruel, inhuman or degrading treatment or punishment (art. 15)

14. Please provide information on: […]

(c) The measures taken and planned to improve the safety of lesbian, gay, bisexual, transgender and intersex persons with disabilities in closed institutions.

Keywords: SOGI; LGBTI; access to justice, data collection, intersectionality, measures, prevention, prosecution, support services, torture/ill-treatment, violence, women

Freedom from exploitation, violence and abuse (art. 16)

15. Please provide information on:

(a) The measures taken to prevent, prohibit and prosecute all forms of exploitation, violence and abuse against persons with disabilities, including women and girls with disabilities and lesbian, gay, bisexual, transgender and intersex persons with disabilities, particularly in rural areas, and to ensure the availability of accessible reporting mechanisms; […]

(c) Current statistical data on cases of exploitation of and violence and abuse, including sexual abuse, against persons with disabilities, disaggregated by sex, age, sexual orientation, gender identity and geographical location.
Keywords: LGBTI; discrimination, intersectionality, measures, remedy

B. Specific rights (arts. 5–30)

Equality and non-discrimination (art. 5)

3. Please provide information on: […]

(e) The measures taken to combat multiple and intersectional forms of discrimination, to ensure de facto equality of persons with disabilities belonging to ethnic minorities, English-speaking persons with disabilities, persons with rare diseases, and lesbian, gay, bisexual, transgender and intersex persons with disabilities, and to ensure their access to effective remedies in case of discrimination.

Keywords: TI; conversion therapy, measures, sterilisation

Protecting the integrity of the person (art. 17)

16. Please provide information on the measures taken to ensure the right of persons with disabilities to respect for their physical and mental integrity on an equal basis with others, including protection against forced sterilization and mandatory conversion surgery, particularly with respect to transgender and intersex persons with disabilities.
Keywords: LGBTQI; counselling, GBV, measures, violence

B. Specific rights (arts. 5–30)

Freedom from exploitation, violence and abuse (art. 16)

13. Please provide information on:

(a) Measures taken to protect persons with disabilities, including women, girls and LGBTQI+ persons with disabilities, from domestic and gender-based violence, and to facilitate the reporting of violence, and access to crisis counselling, security planning and other protective measures taken under the reforms adopted in 2015 (CAT/C/KAZ/4, paras. 154–162); [...].

---

115 CRPD/C/KAZ/Q/1.
Qatar – List of Issues prior to reporting – 14th PSWG, 20 October 2020, 2nd to 4th review

Keywords: LGBTI; measures, sterilisation

B. Specific rights (arts. 5–30)

Protecting the integrity of the person (art. 17)

16. Please inform the Committee as to whether the State party has fully prohibited the forced sterilization of women with disabilities and about measures taken to protect the integrity of lesbian, gay, bisexual, transgender and intersex persons with disabilities.