



**UN Committee on Enforced Disappearances (CED):
16th Session, 8 - 18 April 2019**

State reports reviewed: Chile, Italy, 
Lists of Issues adopted: Bolivia, Slovakia

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RESUME:

- One follow-up LGBTI recommendation to **Peru**:
 - The system of reparations should take a victim's sexual orientation and gender identity into account.
- No SOGIESC questions were issued.
- **Guiding Principles** on the search for missing persons:
 - Take into account the particular needs of LGBTI people.

- **Next Session:** 30 September to 11 October 2019
 - Countries (main review): Bolivia and Slovakia
 - NGO report deadline: 6 Sept 2019 (*tbc*) (to ced@ohchr.org)
 - Countries (for LOI): Mongolia, Nigeria and Switzerland
 - NGO report deadline: 5 July 2019 (*tbc*) (to ced@ohchr.org)

Table of Contents

1. SUMMARY	3
1.1. Concluding Observations.....	3
1.2. Lists of Issues	4
1.3. Guiding Principles	4
2. COMPILATION OF CONCLUDING OBSERVATIONS	5
Peru.....	5
3. COMPILATION OF LISTS OF ISSUES.....	7
4. CIVIL SOCIETY SUBMISSIONS	8
<i>Bolivia</i>	8
<i>Chile</i>	8
<i>Peru</i>	8
5. GUIDING PRINCIPLES	9

1. SUMMARY

The UN Committee on Enforced Disappearances (CED) published two Lists of Issues and three sets of Concluding Observations as a result of its **16th Session** (8 to 18 April 2019).

The Committee issued one SOGIESC¹ recommendation to Peru, which called for considering a victim's sexual orientation and gender identity, among other grounds, in the system of reparations. No SOGIESC questions were adopted in the Lists of Issues.

There were no stand-alone recommendations on LGBTI persons.

1.1. Concluding Observations

During its **16th Session**, the Committee reviewed the initial reports of Chile, Italy and Peru, and adopted Concluding Observations (COs) for each State.

Peru was the only State to receive an LGBTI-inclusive recommendation. The Committee was concerned that Peruvian legislation excludes LGBTI relationships from the definition of a victim's family. While CED did not ask Peru to change the definition of family, it recommended that the system of reparations take into account a victim's sexual orientation and gender identity. CED also asked for the recommendation to be followed up, and for Peru to report on its implementation by April 2020.

Peru's List of Issues (LOI) did not refer to SOGIESC, as is commonly the case when a State receives LGBTI recommendations. However, during the constructive dialogue, CED had asked whether the definition of a victim's family included LGBTI relationships. The Peruvian delegation responded that the legal definition of a couple was male and female, but that they provided differentiated support for LGBTI persons. Peru had also received a report from civil society for the List of Issues mentioning the lack of data and protective mechanisms for LGBTI persons.

The Committee made no SOGIESC references at any point during the reviews of Italy and Chile, although Chile had an NHRI submission which recommended including SOGI in statistics on disappearances. Italy did not receive any civil society submissions.

State	SOGIESC in previous CO*	SOGIESC in LOI**	SOGIESC in the constructive dialogues***	SOGIESC in CSS****	SOGIESC in current CO*
Chile	N/A	No	No	No	No
Italy	N/A	No	No	N/A	No
Peru	N/A	No	Yes	Yes	Yes

* CO – Concluding Observations

** LOI – List of Issues

*** According to press releases and summary records

**** CSS – Civil Society Submissions

Text in bold links to the source material.

¹ SOGIESC: Sexual orientation, gender identity and expression, and sex characteristics

1.2. Lists of Issues

During its 16th Session, the Committee also adopted the first Lists of Issues for Bolivia and Slovakia. None of the questions asked made reference to SOGIESC. However, CED had received an NHRI report for Bolivia on people in prison that made numerous references to LGBT persons. There were no civil society submissions for Slovakia.

The Committee will review and adopt concluding observations for the two States at its **17th Session**, from 30 September to 11 October 2019.

1.3. Guiding Principles

During the 16th Session, the Committee also adopted a set of Guiding Principles for the search for Disappeared Persons. Principle no. 4, “The search should be conducted using a differential approach”, states that the particular needs of LGBTI people should be taken into account in the search for missing persons.

LGBTI persons were originally not included in CED’s Draft Guiding Principles. The Committee made the change after issuing a call for input, during which three NGOs and one UN agency recommended including LGBTI people (NGOs Fundación para la Justicia y el Estado Democrático de Derecho, COMISEDH Peru and Romanian Independent Society of Human Rights – SIRDO, and UN agency OHCHR-Mexico). CED also moved the principle on “(...) using a differential approach” up, from no. 14 to no. 4.

2. COMPILATION OF CONCLUDING OBSERVATIONS

Peru – Concluding Observations – 16th Session, 23 April 2019, initial review²

Medidas de reparación y de protección de los niños contra las desapariciones forzadas (arts. 24 y 25)

Definición de víctima y derecho a la reparación y a una indemnización rápida, justa y adecuada

28. Preocupa al Comité que la Ley de Búsqueda de Personas Desaparecidas Durante el Período de Violencia 1980-2000 (Ley N° 30470) y la Ley que crea el Plan Integral de Reparaciones (PIR) (Ley N° 28592) solo consideren víctimas a las personas desaparecidas y a sus familiares y no a todas las personas a quienes se refiere el artículo 24, párrafo 1, de la Convención, lo cual excluye, por ejemplo, a las parejas de las personas LGTBI. Le preocupa también al Comité que la Ley N° 28592, al no considerar víctimas a los miembros de organizaciones subversivas, los excluya explícitamente de los programas a que se refiere dicha ley (artículo 4), así como la información recibida de que en la práctica esta exclusión se aplica también a sus familiares. El Comité observa que el número de solicitudes recibidas para la inscripción en el Registro Único de Víctimas (RUV) por desaparición forzada es mucho mayor que el número de víctimas registradas. Al respecto, le preocupan los excesivos requisitos para la inscripción en el RUV, lo que podría haber dejado sin acceso a reparación a un gran número de víctimas de desaparición forzada. Preocupa también al Comité que no existan medidas para garantizar la reparación a víctimas de desapariciones forzadas ocurridas después de 2000 (art. 24).

29. El Comité recomienda al Estado parte que tome las medidas necesarias para:

[...]

c) Asegurar que el sistema de reparaciones sea sensible a las condiciones individuales de las víctimas teniendo en cuenta, por ejemplo, su sexo, orientación sexual, identidad de género, edad, origen étnico, situación social y discapacidad, y se ajuste plenamente a lo dispuesto en el artículo 24, párrafos 4 y 5;

[...]

D. Difusión y seguimiento

39. De conformidad con el reglamento del Comité, se solicita al Estado parte que facilite, a más tardar el 18 de abril 2020, información pertinente sobre la aplicación de las recomendaciones formuladas por el Comité que figuran en los párrafos 15 (definición de desaparición forzada y penas apropiadas) 29 (definición de víctima y derecho a la reparación) y 33 (búsqueda de personas desaparecidas) de las presentes observaciones finales.³

² CED/C/PER/CO/1

³ Unofficial translation into English (the official one will be available on a later point):

Measures for reparation and protection of children from enforced disappearance (arts. 24 and 25)

Definition of victim and right to reparation and prompt, fair and adequate compensation

28. The Committee is concerned that the Act on the Search for Persons Disappeared During the Period of Violence 1980-2000 (Act No. 30470) and the Act establishing the Comprehensive Reparations Plan (PIR) (Act No. 28592) consider only disappeared persons and their relatives as victims and not all persons referred to in article 24, paragraph 1, of the Convention, which excludes, for example, couples of LGBT persons. The Committee is also concerned that Act No. 28592, by not considering members of subversive organizations as victims, explicitly excludes them from the programmes referred to in that Act (art. 4), as well as the information received that in practice this exclusion also applies to their family members. The Committee notes that the number of applications

States with no SOGIESC recommendations:

- Chile
- Italy

received for registration in the Registro Único de Víctimas (RUV) for enforced disappearance is much higher than the number of registered victims. In this regard, the Committee is concerned about the excessive requirements for registration in the RUV, which could have left a large number of victims of enforced disappearance without access to reparation. The Committee is also concerned that there are no measures to guarantee reparation to victims of enforced disappearances that occurred after 2000 (art. 24).

29. The Committee recommends that the State party take the necessary steps to:

[...]

(c) Ensure that the reparations system is sensitive to the individual conditions of victims, taking into account, inter alia, their sex, sexual orientation, gender identity, age, ethnicity, social status and disability, and is in full compliance with article 24, paragraphs 4 and 5;

[...]

D. Dissemination and monitoring

39. In accordance with the Committee's rules of procedure, the State party is requested to provide, by 18 April 2020, relevant information on the implementation of the Committee's recommendations contained in paragraphs 15 (definition of enforced disappearance and appropriate penalties), 29 (definition of victim and right to reparation) and 33 (search for disappeared persons) of these concluding observations.

3. COMPILATION OF LISTS OF ISSUES

No SOGIESC questions were asked in the Lists of Issues.

States with no SOGIESC questions:

- Bolivia
- Slovakia

4. CIVIL SOCIETY SUBMISSIONS

Bolivia:

- NHRI submission by [Defensoría del Pueblo](#) for the 16th Session (*stand-alone section on LGBT persons in prison with consistent references to the LGBT population throughout*).

Chile:

- NHRI submission by [INDH - Instituto Nacional de Derechos Humanos](#) for the 16th Session (*recommends that statistics on disappearances include sexual orientation and gender identity*).

Peru:

- Submission by [ODRI “Intersectional rights” - Office for the Defence of Rights and Intersectionality](#) for the 15th Session (*concerned that registries lack data and mechanisms to assess the violence and vulnerabilities of LGBTI people subject to enforced disappearances*).

5. GUIDING PRINCIPLES

Guiding principles for the search for disappeared persons ⁴

Principle 4. The search should follow a differential approach

[...]

5. In cases involving disappeared persons or persons participating in the search who are members of the lesbian, gay, bisexual, transgender and intersex community, have disabilities or are older persons, the bodies responsible for the search should take account of their particular needs.

⁴ CED/C/7, 16 April 2019