



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

Compilation and Keywords 2017

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YP 31

General Comments

1. Committee on the Elimination of Discrimination against Women

General Comment No. 35 on gender-based violence against women, updating general recommendation No. 19¹

Keywords: *LBT, LBTI; criminalisation (decriminalisation), discrimination, GC/GR, intersectionality, jurisprudence, legislation, policy, violence, women*

II. Scope

[...]

12. In general recommendation No. 28 and general recommendation No. 33, the Committee confirmed that discrimination against women was inextricably linked to other factors that affected their lives. The Committee, in its jurisprudence, has highlighted the fact that such factors include women's ethnicity/race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital status, maternity, parental status, age, urban or rural location, health status, disability, property ownership, being lesbian, bisexual, transgender or intersex, illiteracy, seeking asylum, being a refugee, internally displaced or stateless, widowhood, migration status, heading households, living with HIV/AIDS, being deprived of liberty, and being in prostitution, as well as trafficking in women, situations of armed conflict, geographical remoteness and the stigmatization of women who fight for their rights, including human rights defenders.² 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 some women to different degrees, or in different ways, meaning that appropriate legal and policy responses are needed.³

[...]

IV. Recommendations

[...]

A. General legislative measures

29. The Committee recommends that States parties implement the following legislative measures:

[...]

(c) Repeal, including in customary, religious and indigenous laws, all legal provisions that are discriminatory against women and thereby enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence. In particular, repeal the following:

[...]

¹ [CEDAW/C/GC/35](#).

² General recommendation No. 33, par 8 and 9. Other general recommendations relevant to intersectional discrimination are general recommendation No. 15 on women and AIDS, No. 18 on women with disabilities, No. 21 on equality in marriage and family relations, No. 24 on women and health, No. 26 on women migrant workers, No. 27 on older women and protection of their human rights, No. 30 on women in conflict prevention, conflict and post-conflict situations, No. 31 on harmful practices, No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women and No. 34 on the rights of rural women. The Committee has also addressed intersectional discrimination in its views on communications (*Jallow v. Bulgaria*, 2012; *S.V.P. v. Bulgaria*, 2012; *Kell v. Canada*, 2012; *A.S. v. Hungary*, 2006; *R. P. B. v. the Philippines*, 2014; *M.W. v. Denmark*, 2016, among others) and inquiries (in particular, concerning Mexico (2005) and Canada (2015)).

³ General recommendation No. 28, para. 18; and report of the inquiry concerning Canada (CEDAW/C/OP.8/CAN/1), para. 197.

- (i) Provisions that allow, tolerate or condone forms of gender-based violence against women, including child or forced marriage and other harmful practices, provisions allowing medical procedures to be performed on women with disabilities without their informed consent and provisions that criminalize abortion, being lesbian, bisexual or transgender, women in prostitution and adultery, or any other criminal provisions that affect women disproportionately, including those resulting in the discriminatory application of the death penalty to women;

[...]

General Comment No. 36 on girls' and women's right to education⁴

Keywords: *LBTI; GI; bullying, children, discrimination, education, GC/GR, harassment, intersectionality, measures, policy, professional groups, stereotypes, violence, women*

VII. The right of access to education

[...]

Physical access: availability of adequate infrastructure

[...]

31. The Committee recommends that States parties take the following measures to ensure the availability of physical facilities for the education of girls and women:

[...]

- (b) Address imbalances in budgetary allocations for disadvantaged and marginalized groups of girls and women based on socioeconomic status, location, ethnicity, gender identity and religious persuasion;

[...]

Lesbian, bisexual, transgender, and intersex students

45. Bullying, harassment and threats against such students by fellow students and teachers constitute barriers to their right to education. Schools perpetuate and reinforce social prejudices, often as a result of the poor implementation of policies by school governance bodies, as well as irregular enforcement of non-discrimination policies by teachers, principals and other school authorities. Limited education and cultural taboos are among the factors that prevent lesbian, bisexual, transgender, and intersex students from achieving social mobility and increase their vulnerability to violence.

46. The Committee recommends that States parties take all appropriate measures to ensure the right of all categories of disadvantaged and marginalized groups to education by eliminating stereotyping and discrimination, removing barriers to access and implementing the following measures:

- (a) Address stereotyping, in particular of indigenous girls and women and of those from minority groups, that puts them at risk in gaining access to education, exposes them to violence in school and the community and on their way to and from school, especially in remote areas;

- (b) Address the low socioeconomic status and living conditions, in particular of indigenous girls and women and of those from minority groups, that are barriers to gaining access to education, in particular in the light of male preference where schooling is concerned in situations of scarce financial resources;

- (c) Ensure, when necessary, in collaboration with donors and humanitarian agencies, that adequate provision is made for the education and safety of all disadvantaged groups of girls and women;

- (d) Ensure that the application of a mandatory dress code and banning of specific clothing does not hamper access to inclusive education, in particular for those of migrant backgrounds;

- (e) Eliminate all forms of discrimination against girls and women with disabilities by identifying and removing legal, physical, social, financial, attitudinal, communication and language barriers within

educational institutions and the community;

(f) Take the measures necessary to ensure non-discrimination against girls and women with disabilities at all levels of education by providing inclusive education in learning environments offering reasonable accommodation;

(g) Ensure the physical accessibility of educational institutions and prevent principals from blocking the enrolment of students with disabilities, in particular girls, and ensure that curricula, teaching materials and pedagogical strategies are tailored to the unique needs of individuals affected by the various forms of disability;

(h) In line with article 4 of the Convention, on temporary special measures, institute incentives to attract and train special education teachers for all levels of education;

(i) Address discrimination against lesbian, bisexual, and transgender, women and girls, and intersex persons by ensuring that policies are in place to address the obstacles that impede their access to education.

[...]

Gender inequality, abuse and sexual violence in schools

[...]

66. Disadvantaged groups of girls are at an increased risk of violence at school because of the multiple forms of discrimination that they face, in particular on the basis of their HIV status, caste, ethnicity, race and religion, which increase the risk of abuse and influence the nature of the violence experienced. Girls with disabilities face discrimination on the basis of both their gender and disability, while lesbian, bisexual, transgender, and intersex children experience both sexism and homophobia.

[...]

2. Committee on the Rights of the Child

General recommendation No. 21 on children in street situations⁵

Keywords: LGBTI; SOGIE; awareness-raising campaign, bullying, children, discrimination, education, family, GC/GR, harassment, HIV/AIDS, intersectionality, measures, police, police misconduct, policy, professional groups, shelters, violence

II. Overall context

[...]

Key observations

[...]

6. Children in street situations are not a homogenous group. Characteristics are diverse in terms of age, sex, ethnicity, indigenous identity, nationality, disability, sexual orientation and gender identity/ expression, among others. This diversity implies different experiences, risks and needs. The nature and time spent physically on the street varies significantly from child to child, as does the nature and extent of relationships with peers, family members, community members, civil society actors and public authorities. Children's relationships can help them survive on the streets and/or perpetuate conditions of violent abuse of their rights. Children engage in a range of activities in public spaces, including work, socialization, recreation/leisure, shelter, sleeping, cooking, washing and engaging in substance abuse or sexual activity. Children may engage in such activities voluntarily, through lack of viable choices or through coercion or force by other children or adults. Children may conduct these activities alone or in the company of family members, friends, acquaintances, gang members, or exploitative peers, older children and/or adults.

[...]

8. Causes, prevalence and experiences of children in street situations differ within and between States. Inequalities based on economic status, race and gender are among the structural causes of the emergence and exclusion of children in street situations. These are exacerbated by material poverty, inadequate social protection, poorly targeted investment, corruption and fiscal (tax and expenditure) policies that reduce or eliminate the ability of poorer people to move out of poverty. Abrupt destabilization, caused by conflict, famine, epidemic, natural disaster or forced eviction, or events leading to displacement or forced migration, further compound the effects of structural causes. Other causes include: violence, abuse, exploitation and neglect at home or in care or educational (including religious) institutions; the death of caregivers; child relinquishment (including through HIV/AIDS); unemployment of caregivers; precarious families; family breakdown; polygamy; exclusion from education; substance abuse and mental ill-health (of children or families); intolerance and discrimination, including against children with disabilities, children accused of witchcraft, former child soldiers rejected by families and children cast out from families as a result of questioning their sexuality or identifying as lesbian, gay, bisexual, transgender, intersex or asexual; and families' inability to accept children's resistance to harmful practices, such as child marriage and female genital mutilation.

A. Articles of overarching relevance in a child rights approach

Article 2 on non-discrimination

[...]

Systemic discrimination

26. Discrimination may be direct or indirect. Direct discrimination includes disproportionate policy approaches to "tackle homelessness" that apply repressive efforts to prevent begging, loitering, vagrancy, running away or survival behaviours, for example, the criminalization of status offences, street sweeps or "round-ups", and targeted violence, harassment and extortion by police. Direct discrimination can include: the refusal by police to take seriously reports by children in street situations of theft or violence; discriminatory treatment within juvenile justice systems; the refusal of social workers, teachers or health care professionals to work with children in street situations; and harassment, humiliation and bullying by peers and teachers in schools. Indirect discrimination includes policies that result in exclusion from basic services, such as health and education, for example by requiring payment or the provision of identity documents. Even if children in street situations are not isolated from basic services, they might be isolated within such systems. Children can face multiple and intersecting forms of discrimination, for example, on the basis of gender, sexual orientation and gender identity/expression, disability, race, ethnicity, indigenous status, immigration status and other minority status, particularly as minority groups are often overrepresented among children in street situations. Children subject to discrimination are more vulnerable to violence, abuse, exploitation, sexually transmitted infections, including HIV, and their health and development are put at greater risk. States are reminded that guaranteeing the right to non-discrimination is not only a passive obligation to prohibit all forms of discrimination, but also requires appropriate proactive measures to ensure effective equal opportunities for all children to enjoy the rights under the Convention. This requires positive measures aimed at redressing a situation of substantive inequality. Systemic discrimination is responsive to, and can therefore be addressed by, legal and policy change. Children in street situations have highlighted the discrimination and negative attitudes by the public they face as a specific concern, and asked for there to be awareness-raising and educational measures to counter them.

Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration⁶

Keywords: *T; SOGI; access to justice, asylum-seekers/refugees, children, consultation, discrimination, family, FOE/FOAA, GC/GR, intersectionality, measures, policy, remedy, sexual violence, violence*

I. Introduction

[...]

3. In the context of international migration, children may be in a situation of double vulnerability as children and as children affected by migration who (a) are migrants themselves, either alone or with their families, (b) were born to migrant parents in countries of destination or (c) remain in their country of origin while one or both parents have migrated to another country. Additional vulnerabilities could relate to their national, ethnic or social origin; gender; sexual orientation or gender identity; religion; disability; migration or residence status; citizenship status; age; economic status; political or other opinion; or other status.

[...]

III. Fundamental principles of the Conventions with regard to the rights of children in the context of international migration

[...]

A. Non-discrimination (articles 1 and 7 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; article 2 of the Convention on the Rights of the Child)

21. The principle of non-discrimination is fundamental and, in all its facets, applies with respect to children in the context of international migration. All children involved in or affected by international migration are entitled to the enjoyment of their rights, regardless of the children's or their parents', legal guardians' or family members' age, gender, gender identity or sexual orientation, ethnic or national origin, disability, religion, economic status, migration/documentation status, statelessness, race, colour, marital or family status, health status or other social conditions, activities, expressed opinions, or beliefs. This principle is fully applicable to every child and his or her parents, regardless of the reason for moving, whether the child is accompanied or unaccompanied, on the move or otherwise settled, documented or undocumented or with any other status.

[...]

C. Right to be heard, express his or her views and participation (article 12 of the Convention on the Rights of the Child)

[...]

39. States parties should adopt measures directed at facilitating the participation of all children in the context of international migration in the design, implementation, monitoring and evaluation of policies that could directly or indirectly affect them, as individuals or a group, including in the fields of social policies and social services. Initiatives should be taken to prepare girls and transgender children to participate actively, effectively and equally with boys at all levels of social, economic, political and cultural leadership. In countries of origin, the participation of children is paramount in developing policies on and in processes aimed at addressing drivers of the migration of children and/or their parents and developing policies in that regard. In addition, States should adopt measures aimed at empowering children affected by international migration to participate on different levels, through consultations, collaborations and child-led initiatives, and at ensuring that civil society organizations, including children associations and child-led organizations, can participate effectively in policy dialogues and processes on children in the context of international migration, at the local, national, regional and international levels. Any limitations on children's freedom of association, including through legally establishing associations, should be removed.

D. Right to life, survival and development (article 9 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; article 6 of the Convention on the Rights of the Child)

[...]

42. In the view of the Committees, the obligation of States parties under article 6 of the Convention on the Rights of the Child and article 9 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families include the prevention and reduction – to the maximum extent possible – of migration-related risks faced by children, which may jeopardize a child's right to life, survival and development. States, especially those of transit and destination, should devote special attention to the protection of undocumented children, whether unaccompanied and separated or with families, and to the protection of asylum-seeking children, stateless children and child victims of transnational organized crime, including trafficking, sale of children, commercial sexual exploitation of children and child marriage. States should also consider the specific vulnerable

circumstances that could face migrant children on the basis of their gender and other factors, such as poverty, ethnicity, disability, religion, sexual orientation, gender identity or others, that may aggravate the child's vulnerability to sexual abuse, exploitation, violence, among other human rights abuses, throughout the entire migratory process. Specific policies and measures, including access to child-friendly, gender-sensitive and safe judicial and non-judicial remedies, should be put in place in order to fully protect and assist such children, aiming to facilitate their ability to resume their lives with their rights as children fully respected, protected and fulfilled.

[...]

Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return⁷

Keywords: *LGBTI; children, GC/GR, intersectionality, sexual violence, violence*

II. Legal obligations of States parties to protect the rights of children in the context of international migration in their territory

[...]

F. Protection from all forms of violence and abuse, including exploitation, child labour and abduction, and sale or traffic in children (articles 11 and 27 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; articles 19, 26, 32, 34, 35 and 36 of the Convention on the Rights of the Child)

[...]

41. It is essential that States take all necessary measures to prevent and combat the illicit transfer and non-return of children as well as the worst forms of child labour, including all forms of slavery, commercial sexual exploitation, the use of children for illicit activities, including begging, and hazardous work, and protect them from violence and economic exploitation. The Committees recognize that children face gender-specific risks and vulnerabilities which should be identified and specifically addressed. In many contexts, girls may be even more vulnerable to trafficking, especially for purposes of sexual exploitation. Additional measures should be taken to address the particular vulnerability of girls and boys, including those who might have a disability, as well as children who are lesbian, gay, bisexual, transgender or intersex persons, to trafficking for the purposes of sexual exploitation and abuse.

[...]

3. Committee against Torture

General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22⁸

Keywords: *SOGI; GC/GR, intersectionality, jurisprudence, refoulement, torture/ill-treatment*

X. Specific requirements for the submission of individual communications under Article 22 of the Convention and interim measures of protection

[...]

C. Merits

[...]

⁷ [CMW/C/GC/4-CRC/C/GC/23](#).

⁸ [CAT/C/GC/4](#) (advanced unedited version).

45. The Committee will assess “substantial grounds” and consider the risk of torture as foreseeable, personal, present and real when the existence of credible facts relating to the risk by itself, at the time of its decision, would affect the rights of the complainant under the Convention in case of his/her deportation. Indications of personal risk may include, but they are not limited to: (a) the complainant’s ethnic background; (b) political affiliation or political activities of the complainant and/or his family members; (c) arrest warrant without guarantee of a fair treatment and trial; (d) sentence in absentia; (e) sexual orientation and gender identity;⁹ (f) desertion from the army or armed groups; (g) previous torture; (h) incommunicado detention or other form of arbitrary and illegal detention in the country of origin; (i) clandestine escape from the country of origin for threats of torture; (j) religious affiliation; (k) violations of the right to freedom of thought, conscience and religion, including violations related to the prohibition of conversion to a religion which is different from the religion proclaimed as State religion and where such a conversion is prohibited and punished in law and in practice; (l) risk of expulsion to a third country where the person may be in danger of being subjected to torture and (m) violence against women, including rape.

[...]

4. Committee on the Rights of Persons with Disabilities

General comment No. 5 (2017) on living independently and being included in the community¹⁰

Keywords: *LGBTQI; SGI, SOGI; GC/GR, intersectionality, support services*

I. Introduction

[...]

8. Article 19 reflects the diversity of cultural approaches to human living and ensures that its content is not biased towards certain cultural norms and values. Living independently and being included in the community is a basic concept of human living around the globe and is applied to the context of disability. It means exercising freedom of choice and control over decisions affecting one’s life with the maximum level of self-determination and interdependence within society. This right must be effectively realized in different economic, social, cultural and political contexts. The right to live independently and be included in the community refers to all persons with disabilities, irrespective of race; colour; descent; sex; pregnancy and maternity; civil, family or carer situation; gender identity; sexual orientation; language; religion; political or other opinion; national, ethnic, indigenous or social origin; migrant, asylum-seeking or refugee status; belonging to a national minority, economic or property status; health status; genetic or other predisposition towards illness; birth and age, or any other status.

[...]

II. Normative content of article 19

[...]

B. Article 19, chapeau

[...]

23. Persons with disabilities of all genders are rights holders and enjoy equal protection under article 19. All appropriate measures should be taken to ensure the full development, advancement and empowerment of women. Lesbian, gay, bisexual, transgender, queer and intersex persons with disabilities must enjoy equal protection under article 19 and therefore respect for their personal relationships. Furthermore, the right to live independently and be included in the community encompasses the protection of persons with disabilities belonging to any age group, ethnic group, scheduled caste or linguistic and/or religious minority, as well as migrant, asylum seeking and refugee persons.

[...]

9 See e.g. communication No. 338/2008, *Uttam Mondal v. Sweden*, decision adopted on 23 May 2011, para. 7.7.

10 [CRPD/C/GC/5](#).

III. Obligations of States parties

[...]

C. Obligation to fulfil

[...]

60. Disability support services must be available, accessible, affordable, acceptable and adaptable to all persons with disabilities and be sensitive to different living conditions, such as individual or family income, and individual circumstances, such as sex, age, national or ethnic origin and linguistic, religious, sexual and/or gender identity. The human rights model of disability does not allow the exclusion of persons with disabilities for any reason, including the kind and amount of support services required. Support services, including personal assistance, should not be shared with others unless it is based on a decision based on free and informed consent.

[...]

5. Committee on Migrant Workers

Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration¹¹

Keywords: *T; SOGI; access to justice, asylum-seekers/refugees, children, consultation, discrimination, family, FOE/FOAA, GC/GR, intersectionality, measures, policy, remedy, sexual violence, violence*

References see above (CRC section)

Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return¹²

Keywords: *LGBTI; children, GC/GR, intersectionality, sexual violence, violence*

References see above (CRC section)

11 [CMW/C/GC/3-CRC/C/GC/22.](#)

12 [CMW/C/GC/4-CRC/C/GC/23.](#)

Decisions on Individual Communications

1. Human Rights Committee

C. v. Australia, communication no. 2216/2012, views of 28 March 2017¹³

Keywords: SO; L; access to justice, anti-discrimination legislation, assisted reproduction, children, court, discrimination, employment, family, follow-up, harassment, health, housing, jurisprudence, legislation, marriage, measures, partnership, policy, prevention, protected grounds, remedy, reparation, same-sex couples

Subject matter: Prohibition of access to divorce proceedings for same-sex couples married abroad

Substantive issues: Equal access to courts and tribunals; discrimination on the basis of sexual orientation

Articles of the Covenant: 14 (1), read in conjunction with 2 (1), and 26

Articles of the Optional Protocol: 1

- 1.1 The author of the communication is C, a citizen of Australia and the United Kingdom of Great Britain and Northern Ireland, born on 12 April 1963. She submits the communication on behalf of herself and her minor daughter, R. She claims to be victim of a violation by Australia of her rights under articles 14 (1), read together with 2 (1), and 26 of the Covenant. The author is represented by counsel.

The facts as submitted by the author

- 2.1 Ms. C lives in the State of Queensland, Australia. For about 10 years she lived with Ms. A as a couple, first in the State of Victoria and then in Queensland. At some point both women committed to undertake fertility treatment and chose a sperm donor. They agreed that C would be the birth mother. Their daughter was born in 2001. They intended at all times to be equal parents to their child. The laws in Queensland at the time did not allow the naming of a second parent of the same sex on a birth certificate. However, under subsequently reformed Queensland and Commonwealth laws both women are now recognized as the legal parents of their daughter. C and A's relationship was at all times financially interdependent and committed. C was the primary income earner and A worked part-time and was the primary homemaker. Their finances were intertwined, with the family home, mortgage, car loans and bank accounts in both their names.
- 2.2 In 2004, as a result of the newly reformed marriage laws in Canada, they travelled to Canada and married pursuant to Canadian law. However, shortly thereafter tensions arose in their relationship and A left the marital home on 22 December 2004. They have been separated since that time and C has been the sole caregiver for the couple's daughter.
- 2.3 Following the separation, C contacted a solicitor to have a financial separation agreement drawn up under the Queensland property division laws for unmarried ("de facto") couples, which had been revised to include same-sex de facto couples. She was advised that there was no access to child support payments through the normal mechanisms. After legal reforms introduced in 2008, C did not attempt to claim child support. On 3 March 2005, C and A entered a binding separation deed under the Queensland de facto property division regime. All contact between them ceased in 2006. No formal custody proceedings have been initiated and the author has been the child's sole parent since 22 December 2004. A has made no contact with her daughter since early 2005 and provides no financial support. She also stopped making payments to the mortgage, which was in both women's

names. C no longer knows A's whereabouts.

- 2.4 The author wishes to formally dissolve her Canadian legal marriage for significant personal as well as practical reasons, including having the option to remarry or enter a civil partnership in the future. Under the Queensland Civil Partnerships Act, partnership cannot be entered into and is rendered void if either party is already married or in another civil partnership. Also, C was left encumbered by debt collectors with questions concerning A's debts, some of which she was unaware of. Furthermore, C regularly travels overseas as part of her work and is concerned that her status as married will deem A to be her legal spouse when travelling to countries (including Canada, the United Kingdom, Denmark and some parts of the United States) which recognize her as married under their domestic laws. This has consequences for issues such as next of kin, should there be an emergency while she is abroad. A divorce order would provide the author with conclusive proof that her relationship with A has formally ended.
- 2.5 Proceedings for divorce orders in Queensland are regulated by the Australian Family Law Act 1975. A divorce order formally and finally dissolves a matrimonial relationship. An inherent requirement in filing a valid application for divorce, and being granted a divorce order by the court, is for a party's marital relationship to be recognized as a "marriage" for the purposes of the Act. The Act does not specifically define what constitutes a "marriage". However, the legal recognition of certain unions such as marriages for the purposes of the Act depends on: (a) The definition of "marriage" and the rules governing the recognition of overseas marriages in the Marriage Act 1961; (b) the common law rules of private international law (when there is an inconsistency, the provisions of the Marriage Act always prevail over those of private international law); and (c) specific provisions in the Family Law Act which deem certain unions to be marriages for purposes of proceedings under that Act.
- 2.6 Section 5 (1) of the Marriage Act defines marriage as "the union of a man and a woman to the exclusion of all others, voluntarily entered into for life". This definition applies across the whole Act, regardless of whether a marriage has been solemnized in Australia or overseas, and reflects the underlying common law definition of marriage in Australia. The Act also provides for recognition of foreign marriages in Australia. Generally, marriages which have been solemnized overseas in accordance with local laws are recognized as valid in Australia, except where specific legislative exceptions apply. In this respect, section 88EA of the Act provides that "a union solemnized in a foreign country between: (a) a man and another man, or (b) a woman and another woman, must not be recognized as a marriage in Australia".
- 2.7 The Marriage Amendment Act 2004 added sections 5 (1) and 88EA to the Marriage Act. The explanatory memorandum indicated that the purpose of the (then) bill was "to give effect to the Government's commitment to protect the institution of marriage by ensuring that marriage means a union of a man and a woman and that same-sex relationships cannot be equated with marriage". The bill also confirmed that unions solemnized overseas between same-sex couples would not be recognized as marriages in Australia.
- 2.8 The author concedes that she has not applied for divorce in Australia. However, any such application (or challenging the likely refusal of any court to hear such an application) would be entirely futile, given the express legislative provisions which deny her eligibility. Furthermore, Australia does not have a federal bill of rights that would allow her to challenge discrimination on the basis of sexual orientation in Commonwealth laws such as the Marriage Act or the Family Law Act. Accordingly, there is no effective judicial or administrative action available in Australia for challenging legislative provisions that discriminate on the basis of sexual orientation. Because her complaint stems from statutory provisions, any finding by the Australian Human Rights Commission that the laws breached her human rights also could result only in a recommendation which would have no binding effects. Only legislative reform passed by Parliament can provide an effective domestic remedy to the author.
- 2.9 The author contends that she has no right to apply for a divorce in any other country with a connection to the subject matter of the communication, namely Canada (where her marriage was solemnized) or the United Kingdom (where she is also a citizen). She cannot get a divorce in Canada because under section 3 (1) of the Canadian Divorce Act 1985 the applicant must be ordinarily resident for a least one year. In the United Kingdom, her Canadian marriage, although not recognized as a

marriage, is recognized as a civil partnership. However, sections 221 (1) and 219 of the Civil Partnership Act 2004 provide that domestic courts have jurisdiction over dissolution or annulment of a civil partnership not registered there if at least one of the partners is habitually resident or domiciled in the United Kingdom, in some cases for at least six months immediately preceding the presentation of the petition. Further, it is not clear that any dissolution order granted by the United Kingdom would be recognized by other States. In view of her personal circumstances, the author is unable to relocate to Canada or the United Kingdom. Being required to reside there for six months to one year in order to be able to apply for a divorce would be a manifestly unreasonable, prejudicial and ineffective remedy.

The complaint

- 3.1 The author claims that the denial under Australian law of access to divorce proceedings for same-sex couples who have validly married abroad and the consequential denial of court-based relief in the form of a divorce order amounts to discrimination on the basis of sexual orientation, contrary to article 14 (1), read together with article 2 (1) (equal access to courts and tribunals), and article 26 (equality before the law) of the Covenant. If she were in an opposite-sex marriage, recognized for the purposes of the Family Law Act, she would be entitled to file an application for divorce and have an Australian court vested with family law jurisdiction hear the application. As she meets all other requirements for such an application to succeed, she would obtain a divorce order. The only distinction made by the law is that her former partner is of the same sex as she. The same-sex nature of her marriage is a characteristic pertaining to her sexual orientation as a lesbian.
- 3.2 Australian laws which deny the author access to court-based divorce mechanisms solely on the basis of her sexual orientation cannot be justified on any objective or reasonable grounds for the following reasons.
- 3.3 Australia generally recognizes foreign marriages for the purposes of divorce, even where these marriages are not recognized in other laws or otherwise allowed to take place in Australia. Same-sex marriages (which cannot be entered into in Australia) are singled out by the Family Law Act and Marriage Act for less favourable treatment than opposite-sex marriages, which also cannot be entered into in Australia. For example, Australia does not allow polygamous marriages to take place in its jurisdiction and bigamy is a criminal offence. Yet, polygamous opposite-sex marriages formed overseas are deemed to be marriages for the purposes of the Family Law Act. Accordingly, a man who marries a second wife overseas would be entitled to seek a divorce order under Australian law, as would his second wife, notwithstanding that the marriage could not be entered into in Australia and would not be recognized generally. The differential treatment between these two forms of non-recognized marriages in the access to divorce suggests that non-objective and discriminatory reasons are behind the less-favourable treatment given to same-sex couples who marry overseas. Further, because of the general recognition of foreign opposite-sex marriages in Australia, other types of marriage which could not be entered into in Australia are also recognized. For instance, marriages between a man and a woman who are both over the age of 16 are recognized in Australia if local laws in the foreign place of marriage allowed the union, despite the fact that the marriageable age in Australia is 18 years. Accordingly, divorce proceedings would be available regarding such marriages.
- 3.4 The denial of access to divorce mechanisms for same-sex couples does not further the objectives of divorce laws in Australia, and may even prevent their realization. These objectives are to facilitate an inexpensive and civil resolution to marital breakdowns in a manner which encourages minimal conflict and protects the welfare of children. Divorce in Australia today involves a nationalized, simplified do-it-yourself process which requires establishing 12 months of continuous separation as the sole ground for divorce. Parties and their legal representatives do not have to attend court hearings if the divorce application is uncontested and there are no minor children, and do not have to establish causes for the breakdown of the marriage. Where there are children of the marriage under 18 years, a court must also be satisfied that proper arrangements have been made for their care, welfare and development, or establish that the divorce order should take effect notwithstanding the absence of such arrangements. Denial of access to divorce proceedings and a divorce order prolongs conflict and prevents separating spouses from formally dissolving their marriage and putting an end to their separation. This places spouses and children at greater risk of psychological and physical health problems and financial and economic stress.

- 3.5 Further, the author is uncertain of her legal position regarding the current relationship recognition scheme in Queensland. She is unable to enter into a civil partnership with her current same-sex partner because she is already “married or in a civil partnership”, yet her marriage is not recognized under federal law for the purposes of dissolving it. Furthermore, Queensland may, as Tasmania has already done, deem her Canadian marriage to be a civil partnership, effectively enlivening retrospective recognition of her defunct marriage at some point in the future. It is difficult to predict what rights (for instance, succession and intestacy) this would enliven for A or her dependents for which C might then be responsible. The author has no legal avenue for correcting her legal marital status and removing this legal uncertainty.
- 3.6 Discriminatory laws directly and indirectly help foster the prejudicial environments which enable homophobic abuse, harassment and discrimination to occur, in addition to being a form of discrimination and harm in and of themselves. Studies have shown that such laws may contribute to negative mental health outcomes for non-heterosexual persons.
- 3.7 There is great public support in Australia for the equal treatment of same-sex couples, another reason why discrimination cannot be considered objectively or reasonably justified. Several politicians, judges, union leaders, religious leaders and notable Australians have expressed support for treating same-sex couples equally in Australia’s marriage law.
- 3.8 Between 1999 and 2004, all states and territories in Australia introduced comprehensive reform to recognize same-sex cohabiting (de facto) couples equally with opposite-sex de facto couples in almost all areas of law, and both opposite-sex and same-sex de facto couples are granted equal entitlements with married couples in almost all areas of law. This included equal recognition for same-sex partners in areas such as inheritance, victim compensation, next of kin and medical decision-making, stamp duties and property division upon the breakdown of a relationship. In 2008, Parliament adopted reforms to recognize same-sex de facto couples equally with heterosexual de facto partners across all areas of federal law, and equalized treatment of de facto and married couples in all remaining areas of discrimination in federal law. These reforms resulted in equal recognition for same-sex couples and their children in such areas as workers’ entitlements, superannuation, government pensions and benefits, access to health entitlements, tax benefits, migration, child support, alimony and property division on the breakdown of a de facto relationship. The right to marry (and divorce) and the recognition of foreign same-sex marriages are the only significant exceptions, an anomaly which suggests that discrimination in this area alone cannot be considered objectively or reasonably justified. The author’s daughter has experienced the additional and significant detriment of being denied a court-based inquiry into whether her care, welfare and development have been secured following her parents’ separation; such inquiry is made in all divorce proceedings.
- 3.9 In addition to the recognition of same-sex partners, all Australian jurisdictions recognize most types of same-sex families (i.e., couples with children) as a legal family. Thus, all jurisdictions now automatically ascribe parental status to the lesbian partner (the co-mother) of a birth mother who has a child through assisted reproductive technology. The co-mother appears with her partner on the child’s birth certificate and has full parental rights. This recognition now applies to C’s family, notwithstanding her separation from A, due to the retrospective nature of the reforms. A is recognized as a legal parent of her and C’s daughter, notwithstanding that their marriage cannot be recognized.
- 3.10 The author cites jurisprudence from different countries finding that denying same-sex couples access to marriage and its corollary benefits under law, including the right to divorce, constitutes unlawful discrimination. She distinguishes the decision of the European Court of Human Rights in *Schalk and Kopf v. Austria*, in which the Court dismissed a claim of discrimination based on denial of access to marriage by a same-sex couple, and contends that Australia should be required to recognize foreign same-sex marriages for purposes of seeking relief under the Family Law Act on the same basis on which Australia already treats opposite-sex married couples in marriages which are not otherwise permitted in Australia. That is, the recognition required by Australia would be on the same incidental basis which enables access to the courts and dissolution of a foreign opposite-sex marriage. The author’s claim is therefore a relatively modest one and squarely within the ambits of articles 14 and 26. She seeks only equal treatment in accessing the family courts in order to dissolve her foreign marriage in the same way that Australia currently affords all other residents who enter into foreign opposite-sex marriages, regardless of whether those marriages are recognized more generally or

otherwise permitted to be entered into in Australia.

- 3.11 The Committee should either distinguish its Views in *Joslin et al. v. New Zealand* on its facts or otherwise find that its reasoning cannot be sustained in the light of the significant social, legal and cultural developments which have taken place since it was adopted.
- 3.12 Should the Committee find a violation of her rights under articles 14 and 26 of the Covenant, the author seeks the following remedies:
- (a) Part VI of the Family Law Act 1975, concerning divorce and nullity of marriage, should be amended to enable persons who have entered into a same-sex marriage to seek relief under the Act on the same terms as persons in opposite-sex marriages;
 - (b) Sections 88B (4) and 88EA of the Marriage Act 1961 should be repealed and the definition of “marriage” in section 5 amended to recognize, for the purposes of Australian law, same-sex marriages validly entered into overseas on the same terms as opposite-sex marriages entered into overseas;
 - (c) Federal anti-discrimination legislation should be introduced which would allow domestic courts to provide an effective remedy for discrimination based on sexual orientation, including discrimination caused by Commonwealth, state or territory laws.

State party’s observations on admissibility and author’s comments thereon

4. The State party’s observations on admissibility and the author’s response are summarized in annex IV to the present document.

State party’s observations on the merits

- 5.1 In its submission dated 27 November 2013, the State party argues that although the fact that Australian law does not recognize same-sex marriage is not the subject of the communication, the author makes a number of statements relevant to the recognition of such marriages rather than to Australian divorce laws. These statements are not relevant as same-sex marriage is not protected by the Covenant, as the Committee held in *Joslin et al. v. New Zealand*. The claims concerning the recognition of same-sex marriage should therefore be disregarded.
- 5.2 According to the Committee’s jurisprudence, in order to establish a breach of article 26 the author must show that: (a) she was subjected to a distinction, exclusion, restriction or preference (differential treatment) on a prohibited ground; and (b) the differential treatment was not legitimate, i.e., not directed towards a legitimate aim, based on reasonable and objective criteria and proportionate to the aim to be achieved.
- 5.3 Equality and non-discrimination do not require identical treatment of all persons in all circumstances. Under Australian law, every couple in Australia, regardless of whether it is a same-sex or opposite-sex relationship, has access to the same mechanisms for resolving disputes, distributing property and determining care arrangements for children under the Family Law Act 1975. Same-sex and opposite-sex couples are treated in the same way and are afforded the same protections and services to resolve disputes upon the breakdown of a relationship. Based on *Joslin* and individual opinions attached to the Views, the refusal to provide a divorce order to same-sex couples will not, in and of itself, violate the author’s rights under article 26. Rather, to establish a violation of this article the author must first show that she has been denied certain rights or benefits (other than the fact that she was unable to obtain a divorce order). The State party maintains that the author has not been subjected to differential treatment for the following reasons.
- 5.4 Because the author is not considered married under Australian law no question arises with respect to getting a divorce in Australia. For the same reason, she is not precluded from entering into a registered relationship under Australian law. Under the Relationships Act 2011, individuals are prevented from entering into a new registered relationship if they are married or already in a registered relation-

ship. However, for the purposes of that Act, a marriage does not include a foreign same-sex marriage, and therefore the author's marriage is not a registered relationship. Hence, the author is able to enter a registered relationship in Queensland. Furthermore, her inability to enter into such a relationship is currently speculative. Therefore, in the absence of any actual interference with the author's rights the Committee should disregard her claim.

- 5.5 The author has not been denied effective court-based relief because Australian legislation has mechanisms to resolve both property and children's matters upon the breakdown of a de facto relationship. According to section 4AA of the Family Law Act, a "de facto relationship" is a relationship between two people either of the same sex or of the opposite sex who are not married or related by family and are living together on a genuine domestic basis. Whether a relationship is a de facto relationship is a question of fact and is determined on a case-by-case basis with reference to factors including the length of the relationship, the nature and extent of the couple's common residence, the degree of financial interdependence and care and support of any children. At the time of the author's separation from A in 2006, the division of property following breakdown of a de facto relationship was covered by state law. The author was thus able to enter a formal separation deed following amendments to the Property Law Act 1974 (Queensland) made by the Discrimination Law Amendment Act 2002 (Queensland). Property matters are now governed by the Family Law Act and allow de facto couples who separated after 1 March 2009 to obtain property settlements on the same principles as those that apply under the Family Law Act to married couples. Furthermore, the author is currently able to access the remedies available in family law courts under the parenting provisions of the Family Law Act. The Act allows parents and all other persons interested in the care and well-being of a child to apply for a parenting order. This would enable the courts to ensure that the care arrangements following the separation are in the daughter's best interest. These remedies were available to the author at the time of her separation. She is also now able to access the Australian Child Support Scheme to apply for child support payments, and has been able to so since 2009.
- 5.6 Some other claimed potential harms, including the author's future treatment in overseas jurisdictions and the impact of discriminatory laws on her child and on homosexual couples in general, are inadmissible and, alternatively, irrelevant to the consideration of the merits, as they do not establish that the author has been personally subject to less favourable treatment.
- 5.7 The author's claim that she is discriminated against because foreign same-sex marriages do not have access to divorce proceedings in circumstances where foreign opposite-sex marriages are granted such access is unfounded. Access to divorce proceedings for foreign marriages is not based on whether the marriage is a same-sex or opposite-sex marriage but whether, in the particular circumstances of each category of foreign marriage, there is a need for access to divorce proceedings. As a general principle, foreign marriages which are not recognized in Australia do not need access to divorce proceedings. However, this is subject to certain exceptions, based on the particular circumstances of those marriages. There are several categories of foreign marriage, each of which is treated differently depending on the circumstances of that marriage.
- 5.8 Under the Marriage Act, a foreign marriage will be recognized in Australia if it was a valid marriage in the foreign country and would be recognized as valid under Australian law if it had taken place in Australia. Foreign marriages which are not recognized in Australia include marriages in which either of the parties was not of marriageable age; either of the parties was already validly married; the consent of either party was not real consent; the parties are in a prohibited relationship, for instance brother and sister; or the union was between two partners of the same sex. While some opposite-sex foreign marriages have access to divorce proceedings in Australia, others do not. For example, some foreign opposite-sex marriages where one party is not of marriageable age, where the consent of one of the parties was not real consent or where the parties are in a prohibited relationship do not have access to divorce proceedings in Australia. As foreign opposite-sex marriages and foreign same-sex marriages are treated in the same manner in access to divorce proceedings, the distinction the author makes between foreign same-sex and foreign opposite-sex marriages is incorrect.
- 5.9 If the Committee does not accept that Australian divorce laws do not amount to differential treatment, the State party submits, in the alternative, that any differential treatment in its divorce laws is permissible, as it amounts to legitimate differential treatment. As applied by the Committee, the test for legitimate differential treatment must be aimed at achieving a purpose which is legitimate; based

on reasonable and objective criteria; and proportionate to the aim to be achieved. Any differential treatment of the author satisfies this test. First, the Australian divorce law framework seeks to ensure that those whose foreign marriages are recognized as valid in Australia can divorce in Australia. This aim is legitimate.

- 5.10 Foreign marriages that are recognized in Australia can obtain divorce orders and marriages that are not recognized cannot. This proscription is laid down in legislation and is therefore objective. It is reasonable that Australia reflect its domestic policy and laws on which parties may marry in its recognition of foreign marriages. The exceptions for polygamous marriages and foreign marriages where the parties are aged between 16 and 18 years are in place for justified reasons. The Matrimonial Causes Act 1959 first and the Family Law Act later deemed polygamous marriages validly entered into overseas as “marriages” for proceedings under that Act, thus allowing access to divorce. The reasonable purpose was to enable parties to foreign polygamous marriages access to the assistance, relief and help provided by the family law courts in relation to (but not limited to) children’s matters, property matters, maintenance matters or divorce. The exception is objective, as it applies equally to those in foreign polygamous marriages.
- 5.11 For foreign marriages of persons between 16 and 18 years, section 88D (3) of the Marriage Act provides that such a marriage will not be recognized in Australia while either party is under 16. Once both parties attain the age of 16, the marriage could be considered valid provided it meets all the other requirements contained in Australian law regarding consent, polygamy, prohibited relationships and same-sex marriage. This exception to the general rule is because once both parties have reached the age of 16 Australian law recognizes their marriage. On this basis, individuals in those marriages are granted access to divorce proceedings. This exception is reasonable and objective because there is a clear policy rationale and it is based on objective criteria, i.e., age.
- 5.12 The differential treatment is proportionate to the aim to be achieved. The provisions in Australian divorce law are a proportionate manner of ensuring that individuals in foreign marriages that are recognized in Australia have the ability to dissolve these marriages. There is no requirement for parties in either a de facto relationship or a marriage to be granted a divorce order as a prerequisite for accessing the family law courts for remedy. All individuals, irrespective of whether their foreign marriage is recognized in Australia, have access to effective systems for the resolution of any family law disputes. Although different legislative provisions may govern relief following the breakdown of a relationship, the same services and protections are accessible to all parties to foreign marriages. Since no group is treated detrimentally, a divorce framework that reflects Australian domestic policy on the recognition of marriage is a proportionate way to achieving its aim.
- 5.13 The State party argues that the author’s claim under article 14 (1), read together with article 2 (1), of the Covenant lacks merit. A right to access courts under article 14 (1) only arises for a criminal charge or a “suit at law”. Since domestic law does not grant an entitlement to a divorce order, there is no determination of rights or obligations or “suit at law” to be heard. Because the author is not considered married, she does not require a divorce order, and so she is seeking a remedy she does not require. There is no right to access the courts in these circumstances. However, the author has access to all other remedies that are accessible as a result of such an order, as the Australian system provides the same protections and entitlements to all individuals upon the breakdown of a relationship. Any practical relief the author would wish to pursue upon gaining a divorce order (such as property settlement) is already accessible to her. She is not being denied the right to settle her claims and therefore is not being denied access to courts under article 14 (1).

Authors comments on the State party’s observations on the merits

- 6.1 The author commented on the State party’s observations in her submission of 17 February 2014. She maintains that *Joslin* is not directly relevant to the present communication. She seeks equal treatment only in accessing the family courts in order to dissolve her foreign marriage in the same way that the State party currently affords most other residents who enter into opposite-sex foreign marriages. If the Committee considers that *Joslin* is relevant, the interpretation of article 23 should be reconsidered, as international jurisprudence has evolved since those Views were adopted. If the Committee accepts that *Joslin* remains an appropriate interpretation for a denial of rights or benefits to same-sex couples that are available to married couples, the author’s claim remains valid. The

State party mischaracterizes what is offered to same-sex de facto and opposite-sex de facto couples on the breakdown of a relationship. The appropriate comparison to the author's situation is not the breakdown of an opposite-sex relationship but the breakdown of a foreign marriage. Australia provides access to divorce to most opposite-sex foreign married couples, including in some cases those in marriages not otherwise recognized or allowed to be entered into in Australia.

- 6.2 The de facto regime does not offer all the rights and benefits an opposite-sex couple would be entitled to, for example, a court may not grant a divorce order if the parties have not made suitable arrangements for the future care of their children. The failure to provide a divorce also means that in an increasing number of jurisdictions the author remains married, and there is a very significant difference between the author's wish to be treated as someone whose marriage has ended and the State party's wish to treat the author as if her marriage had never existed.
- 6.3 The Marriage Act implements the State party's ratification of the Convention on Celebration and Recognition of the Validity of Marriages. However, the Convention leaves open the possibility that if a same-sex marriage is valid under the law in which it is celebrated it is to be treated equally with any other marriage. The State party's exclusion of same-sex marriages in the Marriage Act significantly departs from private international law rules and demonstrates differential treatment on a prohibited ground. Had Australia legislated objectively and proportionately, it would not have excluded all same-sex foreign marriages from recognition, even if only for access to divorce, but may have limited its non-recognition to marriages it could justify as repugnant on legitimate and objective public policy considerations. Indeed, the State party's contention that the author does not need access to divorce mechanism is contradicted by the State party's own account of the legislative changes put in place to ensure that people in polygamous marriages are granted access to court-based relief, including divorce, notwithstanding that Australian law does not recognize multiple spouses or otherwise permit a person to marry more than one spouse at a time. The relative ease in which such a remedy has been provided to persons in foreign polygamous marriages highlights the disproportionate and discriminatory treatment of same-sex couples who have married overseas. Further, in recognizing certain foreign marriages between two persons who would be too young to marry in Australia, the State party offers more latitude to foreign law which sets lower marriageable ages than it is prepared to offer to foreign laws which allow same-sex marriages. In fact, nothing in the State party's submission actually states why it is reasonable or proportionate to exclude same-sex couples who have validly married overseas from accessing a mechanism for dissolving their marriage which is otherwise available to opposite-sex couples who marry overseas and whose marriages, like the author's, were monogamous, consensual, non-incestuous and between persons of legal age.
- 6.4 The author disagrees that divorce proceedings do not fall under the concept of "suit at law". Her suit at law relates to the termination of her marriage and associated rights and obligations. The author also reiterates that she does not have the access to the court she needs and that her daughter did not have access to an inquiry into her welfare. As a result, her daughter has potentially been denied an ability to maintain some form of relationship with A.

Issues and proceedings before the Committee

Consideration of admissibility

- 7.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the claim is admissible under the Optional Protocol.
- 7.2 The Committee has ascertained, as required by article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under any other procedure of international investigation or settlement.
- 7.3 With regard to the requirements of article 5 (2) (b) of the Optional Protocol, the Committee notes the author's claim that the filing of an application for divorce would be futile and that it would have no real prospect of success, given the express legislative provisions which deny her eligibility to bring such an application before any Australian court. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) have been met.

- 7.4 The Committee notes the State party's argument that the author's claims are inadmissible *ratione loci*, under article 1 of the Optional Protocol and article 2 (1) of the Covenant. The State party indicates that foreign same-sex marriages are not recognized under Australian law and, consequently, Australian law provides no mechanism to invalidate such marriages. While the State party accepts that the author is in its jurisdiction, her claim requires Australia to provide a remedy for an action that occurred outside its jurisdiction and has no legal effect within its jurisdiction. Furthermore, some of the author's claims concern hypothetical consequences of her Canadian marriage that may occur outside Australia. Finally, the State party argues that some of the author's claims are too general or speculative and that, with respect thereto, the author lacks victim status under article 1 of the Optional Protocol.
- 7.5 The Committee notes that the author claims that she is uncertain of her legal position in Australia and that she does not have a legal avenue for correcting her marital status and removing the legal uncertainty domestically. To the extent that the author claims direct effects in Australia as her country of residence by the lack of access on an equal legal basis to divorce proceedings, the Committee considers that her communication is not inadmissible *ratione loci* under article 1 of the Optional Protocol.
- 7.6 The Committee notes the author's claim regarding the harm faced by her daughter and her request that her daughter be considered as co-author of the communication (see annex IV). She argues that the denial of access to court-based divorce proceedings has prevented the author from harnessing procedural mechanisms which might have assisted her daughter in maintaining some form of relationship with her co-mother and improve the prospects for seeking child support from her estranged spouse. The Committee considers, however, that the author has failed to show that her daughter's legal situation is hampered by the author's lack of access to divorce proceedings. According to the State party's submission, under the Family Law Act the author is able to access the remedies available in family law courts, including an application for a parenting order. Nor has the author demonstrated that her daughter tried unsuccessfully to maintain some form of relationship with her co-mother or that the author was unable to seek child support from her estranged spouse. Accordingly, the Committee concludes that this part of the communication is inadmissible under article 1 of the Optional Protocol.
- 7.7 In view of the foregoing, the Committee considers the claims under articles 14 and 26 of the Covenant sufficiently substantiated, declares the communication admissible insofar as it appears to raise issues under these provisions with respect to the author and proceeds with its consideration of the merits.

Consideration of the merits

- 8.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.
- 8.2 The Committee takes note of the author's claims that the denial under Australian law of access to divorce proceedings for same-sex couples validly married abroad amounts to discrimination on the basis of sexual orientation and that access to divorce proceedings for same-sex marriages, which cannot be entered into in Australia, is singled out in Australian law for less favourable treatment than for opposite-sex marriages which also cannot be entered into in Australia, such as polygamous and underage marriages. The Committee also takes note of the author's claims regarding the difficulties she experiences in her daily life as a result of not being able to access a court-based divorce mechanism and the anxiety and feelings of humiliation that she endures as a result of the uncertainty about her marital status, for instance when she has to make declarations concerning her marital status. The author states that she is not considered ever to have been married in Australia. She is however considered married in some countries where she travels for work, but "divorced" is the only status that accurately identifies her personal situation. For the author, there is a significant difference between being treated as someone whose marriage has ended versus someone whose marriage never existed. The Committee also notes that the State party contends that the author's discrimination claim is unfounded; that, as a general principle, foreign marriages which are not recognized in Australia do not need access to divorce proceedings; that this principle has exceptions based on the particular circumstances of those marriages; and that there are several categories of foreign marriage, each of

which is treated differently. For example, some foreign opposite-sex marriages where one party is not of marriageable age, where the consent of one of the parties was not real consent or where the parties are in a prohibited relationship do not have access to divorce proceedings in Australia. In the State party's view, as foreign opposite-sex marriages and foreign same-sex marriages are at times treated in the same manner in respect of access to divorce proceedings, the distinction the author makes between foreign same-sex and foreign opposite-sex marriages is incorrect.

- 8.3 The Committee notes that the author is precluded from accessing divorce proceedings in Australia because her same-sex foreign marriage is not recognized under sections 5 (1) and 88EA of the Marriage Act of Australia, whereas couples in some specific categories of opposite-sex foreign marriage which also would not be recognized if they had been entered into in Australia do have access to divorce proceedings. Within the latter category, the author refers to polygamous marriages and marriages where the parties are aged between 16 and 18 years, which are not deemed to be marriages for the purposes of the Marriage Act yet are subject to divorce proceedings in Australia under the Family Law Act, whereas same-sex marriages are not recognized and do not have access to such proceedings. The Committee considers that this situation constitutes differential treatment.
- 8.4 The Committee recalls its jurisprudence according to which article 26 not only entitles all persons to equality before the law as well as equal protection of the law, but also 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. The Committee also recalls its jurisprudence according to which the prohibition against discrimination under article 26 comprises discrimination based on sexual orientation, and that not every differentiation of treatment will constitute discrimination if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant. The test for the Committee is therefore whether it has been shown that the differential treatment in the author's access to divorce proceedings in Australia following her same-sex foreign marriage with respect to persons who entered opposite-sex foreign marriages meets the criteria of reasonableness, objectivity and legitimacy of aim.
- 8.5 The Committee notes the State party's contentions that the Australian divorce law framework is aimed at ensuring that those whose foreign marriages are recognized as valid in Australia have the ability to divorce in Australia and that this aim is legitimate; that the proscription of divorce for foreign marriages not recognized in Australia is laid down in legislation and is therefore objective; and that the exceptions to this rule are based on objective and reasonable criteria. According to the State party, it is reasonable that Australia reflect its domestic policy and laws on which parties may marry in its law on recognition of foreign marriages and divorce. The State party indicates that the purpose of the exception for foreign polygamous marriages is to enable parties to foreign polygamous marriages access to the assistance, relief and help provided by the family law courts in relation to (but not limited to) children's matters, property matters, maintenance matters or divorce. As to foreign marriages of persons between 16 and 18 years, the State party states that once the parties attain the age of 16 the marriage could be considered valid under Australian law.
- 8.6 The Committee considers that the State party's explanation as to the reasonableness, objectivity and legitimacy of the distinction for the differential treatment between the two above-mentioned categories of foreign marriage not recognized in Australia and foreign same-sex marriages is not persuasive, and that compliance with domestic law does not in and of itself establish the reasonableness, objectiveness or legitimacy of a distinction. In particular, the Committee notes that the State party fails to provide a reasonable justification for why the reasons provided for recognizing the exceptions do not also apply to the author's foreign same-sex marriage. For example, the State party has failed to provide any explanation of why its stated reason for providing divorce proceedings for unrecognized foreign polygamous marriages does not apply equally to unrecognized foreign same-sex marriages. In the absence of more convincing explanations from the State party, the Committee considers that the differentiation of treatment based on the author's sexual orientation to which she is subjected regarding access to divorce proceedings is not based on reasonable and objective criteria and therefore constitutes discrimination under article 26 of the Covenant.
- 8.7 Having reached the above conclusion the Committee will not examine the author's claim under article 14 (1), read together with article 2 (1), of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it reveals a violation of article 26 of the Covenant.
10. In accordance with 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 to provide the author with full reparation for the discrimination suffered through the lack of access to divorce proceedings. The State party is also under an obligation to take steps to prevent similar violations in the future and to review its laws in accordance with the present Views.
11. 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 or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy where a violation has been established, 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 Committee's Views and to have them widely distributed.

G. v. Australia, communication no. 2172/2012, views of 17 March 2017¹⁴

Keywords: GI, SO, SOGI; T; access to justice, anti-discrimination legislation, court, data collection, discrimination, employment, family, follow-up, GC/GR, gender reassignment surgeries, gender reassignment treatment, harassment, health, jurisprudence, legislation, LGR, marriage, measures, partnership, prevention, privacy, protected grounds, psychiatric assessment, remedy, reparation, same-sex couples, stigmatisation, surgical/medical intervention, women, YP

Subject matter: Refusal to have the gender marker changed on the birth certificate of a married transgender person

Substantive issues: Right to privacy and family; right to non-discrimination; right to an effective remedy

Articles of the Covenant: 2 (1), 2 (3), 17 and 26

Articles of the Optional Protocol: 1, 2

1. The author of the communication is G., a national of Australia born in 1974. She claims that the State party has violated her rights under articles 2 (3), 17, and 26 together with 2 (1) of the Covenant. The Optional Protocol entered into force for the State party on 25 December 1991. The author is represented by counsel.

The facts as submitted by the author

- 2.1 The author is male-to-female transgender. She was born in New South Wales, Australia, and was registered as male at birth. In 2000, the author began hormone treatment, because she identified as female. On 11 April 2002, she had her name on her birth certificate changed to G. Shortly thereafter, the author also had her name changed on her driver's licence, Medicare card and bank and credit cards. In 2005, the author applied to the State party's authorities for an interim passport for the purpose of travelling abroad to undergo gender reassignment surgery. On 7 July 2005, she was issued with a passport valid until 7 July 2006, listing her as female. On 3 September 2005, she married her current partner, who is female. In October 2005, the author underwent sex affirmation surgery.
- 2.2 As a matter of law, in Australia sex is no longer considered on a purely biological basis or fixed at birth but rather is a question of fact to be determined by looking at all the relevant circumstances, including both psychological and physical characteristics, as well as the purpose for which the deter-

mination is to be made. Gender reassignment is lawful in Australia and post-operative transgender individuals are provided with the opportunity to be legally recognized as their reassigned sex and are protected from discrimination on transgender grounds.

- 2.3 In Australia, state and territory Governments administer legislation in relation to the registration of births, deaths and marriages. All states and territories have legislation that allows a transgender individual to alter their passport or obtain an identity document that reflects their reassigned sex. In New South Wales, the legislation that enables this is the New South Wales Births, Deaths and Marriages Registration Act 1995. Under the Act, the New South Wales Registry of Births, Deaths and Marriages (hereinafter referred to as the New South Wales Registry) maintains a register of all recordable events, such as births, name changes, changes in sex and so on. Certificates, such as a change of name certificate or a birth certificate, are a reflection of the information recorded in the register. The New South Wales Government amended the Births, Deaths and Marriages Registration Act 1995 by the New South Wales Transgender (Anti-Discrimination and Other Acts) Amendment Act 1996, which allows an individual over the age of 18 who has undergone a sex affirmation procedure and who is not married to apply to New South Wales Registry to have their sex changed in the register and have a new birth certificate issued. The new certificate does not reveal that the person is transgender.
- 2.4 The Federal Government has implemented anti-discrimination legislation that prohibits discrimination on the basis of disability, race, age and sex. The federal Sex Discrimination Act 1984 prohibits discrimination on the basis of marital status but it does not prohibit discrimination against persons who are sex and gender diverse. Section 40 (5) of the federal Sex Discrimination Act 1984 specifically permits state and territory Governments to “refuse to make, issue or alter an official record of a person’s sex if a law of a State or Territory requires the refusal because the person is married”.
- 2.5 The New South Wales Anti-Discrimination Act 1977 prohibits discrimination on transgender grounds in work, education, and the provision of goods, services and accommodation. The Act distinguishes between persons who have changed their birth certificate, either in New South Wales or elsewhere, known as recognized transgender persons, and those who have not changed their birth certificate. Persons who have not changed their birth certificate are protected from discrimination on the basis of being transgender persons, however they do not have a legal right to be treated as their reassigned sex.
- 2.6 On 10 January 2006, the author applied to the New South Wales Registry to have her sex changed on her birth certificate, from male to female. Her application was rejected on 12 January 2006. In 2007, the author applied for and received her passport in which it was stated that she was female. On 27 October 2008 and 27 July 2010, the author again applied to have her sex changed on the birth certificate, but was refused on 21 November 2008 and 30 July 2010 respectively. In a letter dated 30 July 2010, the New South Wales Registry stated that under section 32B (1) (c) of the Births, Deaths and Marriages Registration Act 1995, a person must be unmarried at the time of their application to register a change of sex. In this context, the author submits that she is in a loving relationship with her spouse and does not intend to apply for a divorce.
- 2.7 Under the State party’s identification systems, the most important identity documents are the so-called cardinal documents, and a birth certificate is the primary cardinal document for persons born in Australia. Secondary documents, such as passports and driving licences, are not considered the source data of a person’s identity but rather as trusted evidence of the person’s identity. For the purpose of the majority of laws in Australia, an individual will be treated as being of the sex recorded on their birth certificate. However, since 2007, an individual is able to obtain a passport denoting their reassigned sex even without changing their birth certificate. This can lead to a confusing situation where a person will have conflicting identity documents.
- 2.8 An individual is often required by various organizations and service providers to produce their birth certificate to prove their identity, including when applying for some employment positions. It is stated on the author’s birth certificate that she was born male but presents and identifies as female, which is evidence to persons viewing her birth certificate that she is transgender. This is not only an invasion of privacy but can expose an individual concerned to vilification, harassment and discrimination. In the author’s case, it can and does lead to negative treatment, such as questioning

and suspicion of fraud. She has also found it hard to obtain employment. For the reasons explained in paragraph 2.5 above, the author will not receive protection from discrimination against women under the New South Wales Anti-Discrimination Act 1977, and she can be refused employment where the jobs are only available to women and can be refused access to women-only spaces such as women-only gyms.

- 2.9 All domestic remedies have been exhausted. There are no avenues available within New South Wales to appeal the decision of the New South Wales Registry. First, the Administrative Decisions Tribunal may interpret and construe the legislation but it does not have the power to alter the legislation or to examine legislation to ensure that it conforms with the country's human rights obligations. An application to the Tribunal would therefore be futile.
- 2.10 Second, since the New South Wales Registry's decision to refuse the author's application was made in order to comply with the requirement under section 32B (1) (c) of the Births, Deaths and Marriages Registration Act 1995, that decision was lawful pursuant to section 54 of the New South Wales Anti-Discrimination Act 1977 and thus a complaint to the Anti-Discrimination Board would also be futile. Furthermore, the Anti-Discrimination Board's recommendations are not binding and the New South Wales Government is not required to act upon them. Indeed, in 2001 the Board reviewed the Births, Deaths and Marriages Registration Act 1995 with regard to transgender discrimination. It found that the requirement that an individual not be married was unnecessarily restrictive and constituted discrimination on the basis of marital status. The Board recommended that the marital status requirement be removed from the Births, Deaths and Marriages Registration Act 1995. This recommendation has not been implemented by the New South Wales Government.
- 2.11 An application to the Federal Court of Australia seeking a declaration that section 32B (1) (c) of the Births, Deaths and Marriages Registration Act 1995 is invalid, as inconsistent with the Sex Discrimination Act 1984, would not provide an effective remedy to the author. She refers to a similar case in which the Federal Court held in 2006 that there was no inconsistency between section 32B (1) (c) of the Births, Deaths and Marriages Registration Act 1995 and section 22 of the Sex Discrimination Act 1984. The Federal Court established that the Sex Discrimination Act 1984 only applies to state and territory legislation to the extent that it gives effect to the obligations of Australia under the Convention on the Elimination of All Forms of Discrimination against Women. Since the Births, Deaths and Marriages Registration Act 1995 discriminates against women and men equally, the Sex Discrimination Act 1984 did not, at that time, apply. The Full Court of the Federal Court upheld the original decision. Since the Full Court's decision, the Sex Discrimination Act 1984 has been amended to include section 40 (5) (see para. 2.4 above).
- 2.12 In October 2010, the author filed a complaint with the Australian Human Rights Commission, alleging discrimination on the ground of sex and marital status under section 22 of the Sex Discrimination Act 1984. On 14 April 2011, the complaint was terminated by the Commission as misconceived, on the basis that section 22 did not apply to the conduct of the New South Wales Registry and that, as such, the conduct was outside the Commission's jurisdiction. The author argues that, in the light of section 40 (5) of the Sex Discrimination Act 1984, an appeal of the Commission's decision to the Federal Court or to the Federal Magistrates Court would be futile.
- 2.13 The Commission can examine enactments, and proposed enactments, for the purpose of ascertaining their consistency with human rights. Under these powers, the Commission has made the following comments with regard to sex recognition on birth certificates for married persons:
- (a) The Commission recommends that marital status should not be a relevant consideration as to whether or not a person can request a change in legal sex. It is the Commission's view that a person should not be forced to end their marriage in order to have a change in sex legally recognized.
- (b) Under international human rights law, discrimination on the basis of a protected attribute or characteristic, including marital status, is prohibited. As a party to the relevant international instruments, Australia is obliged to ensure that it takes all necessary steps to ensure that legislation does not impermissibly discriminate against a person based on their marital status.
- (c) As the law currently stands, there does not appear to be any legal basis upon which a person

can challenge the discrimination against married persons inherent in relevant state and territory legislation dealing with amendments to birth certificates. In the Commission's view, this puts Australia in breach of its international obligations in relation to marital status discrimination. Legislative change is therefore required to remedy this situation.

(d) [...] Recommendation: Marital status should not be a relevant consideration as to whether or not a person can request a change in legal sex.

- 2.14 The Commission's report and recommendations were provided to the federal and state Governments for consideration, but have not been implemented. As they are non-binding, the federal and state Governments are not required to act upon them. The author concludes that no effective remedy is available to her under the Australian Human Rights Commission Act 1986.

The complaint

- 3.1 The author claims that the refusal to change her sex on her birth certificate, unless she divorces from her spouse, constitutes direct arbitrary interference with her right to privacy under article 17 of the Covenant. While it is lawful for organizations and individuals to require a person to provide a copy of their birth certificate as proof of identity, there is no reasonable basis and no legitimate justification for the requirement that an individual be unmarried in order to change their sex on their birth certificate. The author claims, therefore, that the marital status requirement constitutes an interference which is not reasonable and which does not comply with the provisions, aims and objectives of the Covenant. Furthermore, the State party has failed to take appropriate legislative measures to prevent such interference, by virtue of section 40 (5) of the Sex Discrimination Act 1984.
- 3.2 The author argues that the invasion of privacy stems from the fact that her current sex is different from that recorded on the birth certificate. The birth certificate therefore reveals private information about the fact that she is transgender. The author submits that her privacy includes the right to control information about the fact that she is transgender and about her medical history. The interference with the right arises when information is revealed to the public by a requirement of law or without the individual's consent. The author also claims that the concept of privacy includes the right of an individual to protection of personal autonomy and to have freedom to establish the details of their identity, including their sex.
- 3.3 Requiring her to divorce from her spouse in order to obtain a birth certificate that correctly identifies her sex is an arbitrary interference with the author's right to family under article 17. While the State party has a broad understanding of the term "family", which includes families where the couples are of the same sex, providing them with the same social and legal rights as de facto heterosexual couples, the author cannot change her birth certificate because she is married. This constitutes an interference with the author's right to family which is not reasonable and does not comply with the provisions, aims and objectives of the Covenant.
- 3.4 By failing to implement legislation that prohibits discrimination on the basis of marital and transgender status and that guarantees to all persons equal and effective protection against such discrimination, the State party violated the author's rights under articles 2 (1) and 26 of the Covenant.
- 3.5 Furthermore, in violation of article 2 (3) of the Covenant, the State party failed to provide the author with an effective remedy in relation to the above-mentioned violations.
- 3.6 In the light of the above, the author requests the Committee to make a finding that: (a) section 32B (1) (c) of the Births, Deaths and Marriages Registration Act 1995 violates articles 2 (1), 17 and 26; (b) section 40 (5) of the Sex Discrimination Act 1984 violates articles 2 (1), 17 and 26; and (c) part 3A of the New South Wales Anti-Discrimination Act 1977 violates articles 2 (1) and 26. She also requests that she be allowed to change her sex on her birth certificate to female, and that the State party be directed to take appropriate legislative measures to ensure that these violations do not continue.

State party's observations on admissibility and the merits

- 4.1 On 8 July 2013, the State party provided its observations on the admissibility and the merits. On the facts, the State party notes that, on 20 April 2006, the author applied for an Australian passport, stating in the application that her gender was female. Her initial passport application was unsuccessful, as she was unable to obtain an alteration of the sex recorded on her birth certificate due to section 32B (1) (c) of the Births, Deaths and Marriages Registration Act 1995. However, on appeal, the Administrative Appeals Tribunal referred the passport application back to the Minister for Foreign Affairs and Trade with a direction that a passport should be issued to the author noting her female gender. The sex on the author's passport was subsequently changed.
- 4.2 The State party does not contest that the author has exhausted domestic remedies, but submits that she has not sufficiently substantiated her claims and that they should be declared inadmissible. The author has not demonstrated how she has suffered specific and direct harm from not being able to change the sex on her birth certificate, except to state in general terms that she suffers "negative treatment" and "has found it hard to obtain employment". The State party submits that there is no evidence that it has interfered with the author's privacy or family in any way.
- 4.3 The State party notes that the author has obtained a passport with her new sex, and that although birth certificates are considered cardinal documents in Australia, in practice there are very limited circumstances where she would be required to show her birth certificate as the primary means of identification. For example, in New South Wales, driving licences do not specify gender, and under the Financial Transaction Reports Act 1988, passports are given the same "point value" as birth certificates.
- 4.4 Should the Committee find the claims to be admissible, they should be declared without merit. Regarding the claims under article 17, the State party does not dispute that privacy under this provision includes protection of a person's identity, for example of their gender identity. However, this article does not create a "right to privacy" but a right to freedom from arbitrary or unlawful interference with privacy. The term "unlawful" means that no interference can occur, except in cases provided for by law. With respect to whether there is unlawful interference with the author's privacy, the Births, Deaths and Marriages Registration Act 1995 does not constitute unlawful interference with privacy.
- 4.5 The *travaux préparatoires* indicate that the term "arbitrary" in article 17 was intended to cover interferences that are unreasonable. The term "arbitrary" also contains elements of injustice and unpredictability. The State party interprets "reasonable" interferences with privacy as measures that are based on reasonable and objective criteria and are proportional to their purpose.
- 4.6 It is unclear from the author's claims whether she is referring to interference with privacy in circumstances where individuals or organizations request her birth certificate or interference with privacy with respect to the operation of sections 32B (1) (c) and 32D (3) of the Births, Deaths and Marriages Registration Act 1995. In this respect, the author has failed to provide clear examples of where she has experienced any actual interference with her privacy, as noted. Furthermore, interference with privacy is not arbitrary when based on objective and reasonable criteria that are proportionate to the aim.
- 4.7 Section 32B (1) (c) was inserted into the Births, Deaths and Marriages Registration Act 1995 by the New South Wales Transgender (Anti-Discrimination and Other Acts) Amendment Act 1996 to ensure that amendments granting certain transgender persons the right to apply for new birth certificates showing their new sex would operate consistently with section 5 (1) of the Marriage Act 1961, which defines marriage as being between a man and a woman. As noted in the second reading speech for the New South Wales Transgender (Anti-Discrimination and Other Acts) Amendment Act 1996, "the legislation is not intended to overturn the provisions of the Commonwealth Marriage Act. Thus, a new certificate will not be issued where the applicant is married".
- 4.8 The State party reiterates that any perceived interference with the author's privacy has not been sufficiently substantiated. Even if the Committee considers that there has been interference, such interference is not disproportionate. Sections 32B (1) (c) and 32D (3) of the Births, Deaths and Marriages Registration Act 1995 are based on a legitimate aim under the Covenant and are reasonable

and proportionate to the aim of ensuring consistency with the definition of marriage in the Marriage Act 1961.

- 4.9 Likewise, should the Committee find the author's claims regarding interference with her family under article 17 to be admissible, no such interference has taken place. Australia has not compelled the author to change her family circumstances and there has not been any interference with her family by reason of the Births, Deaths and Marriages Registration Act 1995. Even if the Committee considers that interference with the author's family has arisen, such interference is not arbitrary, because the exemption in sections 32B (1) (c) and 32D (3) of the Births, Deaths and Marriages Registration Act 1995 is reasonable and proportionate to the legitimate aim of ensuring consistency with the definition of marriage. Accordingly, the author's arguments regarding arbitrary interference with the family lack merit.
- 4.10 With respect to the author's claims under article 2 of the Covenant, the State party submits that those claims can only be considered in conjunction with article 17 and that the author failed to articulate the claims of discrimination under those articles. Therefore, should the Committee find the author's claims under article 17 inadmissible and/or without merit, then her claims under article 2 would also be inadmissible *ratione materiae*.
- 4.11 The State party recognizes that the obligation to protect individuals from discrimination on the basis of sexual orientation extends to ensuring that unmarried same-sex couples are treated in the same way and entitled to the same benefits as unmarried heterosexual couples and that any distinction in treatment must fulfil the criteria for legitimate differential treatment under international law. However, any distinction in the enjoyment of the author's rights under article 17 is based on legitimate differential treatment.
- 4.12 The State party submits that the right to marry under article 23 of the Covenant only applies to heterosexual marriages. The European Court of Human Rights has also adopted this approach, holding that no obligation is imposed upon States under the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) to recognize same-sex marriage. Sections 32B (1) (c) and 32D (3) of the Births, Deaths and Marriages Registration Act 1995 were introduced to ensure consistency with the Marriage Act 1961, which constitutes a legitimate aim under the Covenant. Furthermore, the distinction under these sections is based on reasonable and objective criteria, namely that a person must be unmarried in order to change the sex on their birth certificate should they have undergone a sex affirmation procedure. These criteria are not arbitrary, as they are predictable in their operation and sufficiently precise. The State party submits, therefore, that these provisions are a reasonable, necessary and appropriate means of achieving their aim of enabling transgender persons to change their birth certificate, while ensuring consistency with the Marriage Act 1961.
- 4.13 The distinction between married and unmarried persons who have undergone a sex affirmation procedure and request to amend their sex on their birth certificate is a proportionate measure to ensure consistency with the definition of marriage under the Marriage Act 1961 and to avoid the uncertainty about the status of marriages that would have arisen if the exemption in the Births, Deaths and Marriages Registration Act 1995 had not been enacted. Sections 32B (1) (c) and 32D (3) of the said act go no further than is necessary to achieve their objective and are therefore not disproportionate means of achieving that aim.
- 4.14 With respect to the author's claims under article 26 of the Covenant, the State party submits that the term "other status" under articles 2 and 26 of the Covenant includes "marital status" as well as "gender identity". In contrast to article 2, article 26 is a stand-alone right that will be breached if the author does not enjoy equality before the law or equal protection of the law with others, on the basis of discrimination on a prohibited ground. Article 26 encompasses two complementary rights to equality. The first relates to equality before the law, which is a procedural requirement that is not directed at legislation but rather exclusively at its enforcement. The second right, to equal protection of the law, relates to the substance of the laws imposed by public authorities. The State party understands that the author's claims of discrimination under article 26 with respect to domestic anti-discrimination legislation and the Births, Deaths and Marriages Registration Act 1995 concern the latter aspect of article 26.

- 4.15 The right to equality of the law imposes two distinct obligations on States parties: namely, that national legislatures must take positive measures to enact laws specifically prohibiting discrimination and must refrain from discrimination when enacting legislation. The State party recalls that the author has claimed that section 32B (1) (c) of the Births, Deaths and Marriages Registration Act 1995 is discriminatory on the basis of “marital status” and “gender identity”, and that there are no available domestic remedies with respect to domestic anti-discrimination legislation. The State party reiterates its argument that any alleged distinction in treatment under sections 32B (1) (c) and 32D (3) of the Births, Deaths and Marriages Registration Act 1995 on the basis of “other status” is reasonable, proportionate and objective, and that the aim of the treatment is to achieve a purpose which is legitimate under the Covenant.
- 4.16 The author has not demonstrated how the New South Wales Anti-Discrimination Act 1977 discriminates against her on the basis of “other status”. It recalls the author’s claim that under the said act, a transgender person who has undergone sex affirmation surgery and changed the sex on their birth certificate is considered to be a recognized transgender person and can legally require others to treat them as their reassigned sex, whereas a person who is not a recognized transgender person can only insist on being treated as their reassigned sex when reasonable with regard to all the circumstances (see paras. 2.4, 2.5 and 2.8 above).
- 4.17 In this context, the State party acknowledges that section 4 of the New South Wales Anti-Discrimination Act 1977 defines a recognized transgender person as a person whose record of their sex has been altered on their birth certificate, under part 5A of the Births, Deaths and Marriages Registration Act 1995. It notes, however, that under section 38A of the New South Wales Anti-Discrimination Act 1977, a transgender person is defined as a person, whether or not the person is a recognized transgender person: (a) who identifies as a member of the opposite sex by living, or seeking to live, as a member of the opposite sex; or (b) who has identified as a member of the opposite sex by living as a member of the opposite sex; or (c) who, being of indeterminate sex, identifies as a member of a particular sex by living as a member of that sex, and includes a reference to the person being thought of as a transgender person, whether the person is, or was, in fact a transgender person.
- 4.18 Part 38C of the New South Wales Anti-Discrimination Act 1977 provides that it is unlawful for an employer to discriminate against a person on transgender grounds in employment. Section 54 of the New South Wales Anti-Discrimination Act 1977 also provides that nothing in the legislation renders unlawful anything done by a person if it was necessary for the person to do it in order to comply with the requirement of another Act.
- 4.19 With respect to the author’s claims summarized in paragraph 2.8 above, in circumstances where a relevant job is only available to women, refusal of employment may constitute discrimination on transgender grounds under section 38B (1) (a) of the New South Wales Anti-Discrimination Act 1977 and would therefore breach section 38C of the said act. The same provisions apply with regard to refusal of access to female-only gyms. The State party reiterates that the author has not provided any evidence of specific instances where she has suffered detriment or harm. Even if the Committee considers such claims to be substantiated, the State party submits that the author’s claims under article 26 with respect to the New South Wales Anti-Discrimination Act 1977 lack merit.
- 4.20 Should the Committee consider that there has been a distinction in treatment on the basis of marital status (“other status”) with respect to the operation of the New South Wales Anti-Discrimination Act 1977, the State party reiterates that the legislation has a legitimate aim of ensuring consistency with the Marriage Act 1961.
- 4.21 As to the author’s claims regarding article 2 (3) of the Covenant, the State party submits that there is no obligation to provide a remedy, as there has been no breach of articles 2, 17 and 26.

Author’s comments on the State party’s observations

- 5.1 In her comments of 12 November 2014, the author states that consistency between birth registrations and the Marriage Act 1961 is not a legitimate aim consistent with the objectives and aims of the Covenant. Nor is the State party’s refusal to provide legal recognition of the author’s sex on her birth certificate reasonable or proportionate to achieving such an aim.

- 5.2 The author states that in July 2013, the Sex Discrimination Act 1984 was amended to include protection against discrimination on the basis of sexual orientation, gender identity and intersex status. As a result, the Act now protects against discrimination in the provision of services. Section 40 (5) of the Act, however, remained unchanged to exempt state and local laws requiring refusal to alter an official record of a person's sex because the person is married. The State party had the opportunity to amend the legislation to provide protection to persons in the author's position, but failed to do so.
- 5.3 In July 2013, the Attorney-General's Department, of the Federal Government, released the "Australian Government guidelines on the recognition of sex and gender", to be applied by all federal government departments and agencies that maintain personal records and/or collect sex and/or gender information. The guidelines specify that the Government of Australia will recognize as sufficient evidence of a person's sex and/or gender either: (a) a statement from a registered medical practitioner or registered psychologist; (b) a valid travel document of the Government of Australia, such as a passport; or (c) an amended birth certificate or gender recognition certificate. However, the guidelines do not apply to state government departments or to private entities. It is also up to each agency to determine whether a birth certificate is necessary. Thus, there is no guarantee that a birth certificate will not be requested, nor an indication of whether or when it would be valid to request one.
- 5.4 It is noted in the guidelines that where there is conflicting information in official documents, the department or agency may seek further information and supporting evidence to corroborate a person's identity. Thus, where a person's passport may state one sex but their birth certificate states another, the department or agency is empowered to ask for further information to establish their identity.
- 5.5 The author refers to a recent judgment of the European Court of Human Rights. The case concerned a married transgender woman in Finland who wished to obtain a new female identity number. At present, the laws in Finland do not allow a person to change their legal sex by obtaining a new identity number if they are married. They can, however, choose to have their marriage converted to a civil union. The Court found that, while there had been a breach of privacy under article 8 of the European Convention on Human Rights, it was reasonable and proportionate given that same-sex marriage was not recognized. In considering whether the interference with privacy was within the margin of appreciation allowed to States within the European system, however, the Court placed considerable weight on the fact that the applicant could obtain recognition of her marriage as a civil union. The author submits that this is not an option available to her or in Australia generally. In addition, the case can be distinguished because article 14 of the European Convention on Human Rights requires equality only in enjoyment of Convention rights, while article 26 of the Covenant is a stand-alone provision regarding equality before the law.
- 5.6 With respect to admissibility, the author states that the refusal to allow a change of sex on her birth certificate, a document that prima facie establishes her legal identity for all other laws, is sufficient to establish an interference with her privacy and her status as a victim under article 17. The Committee has long recognized that identity is an important aspect of privacy, and that privacy "refers to the sphere of a person's life in which he or she can freely express his or her identity, be it by entering into relationships with others or alone". Restricting or prohibiting a person from establishing even small details of their identity, such as the spelling of a surname, is an interference with the right to privacy. The European Court of Human Rights has also reiterated that "a post-operative transsexual may claim to be a victim of a breach of his or her right to respect for private life ... on account of the lack of legal recognition of his or her change of gender", citing numerous cases. The State party has not indicated why a failure to legally recognize her sex by way of a change on her birth certificate does not amount to such an interference.
- 5.7 With regard to the State party's argument that there is a limited number of circumstances in which the author would be required to show her birth certificate as the sole means of identification and that she has failed to give any such example, the author maintains that the failure to amend her birth certificate is sufficient to establish victim status and a breach of article 17. However, should the Committee require further argument, the author submits that: (a) examples of actual requests are not required, as the threat of potential future requests is sufficient; and (b) whether a birth certificate is requested as the primary means of identification, or as one of a number of means, is immaterial. By producing her birth certificate, the author would be forced to reveal the fact that she is transgender.

- 5.8 The author contends that the possibility of being asked for a birth certificate is itself a “harm” establishing a violation. The Committee has held that domestic legislation may be incompatible with the Covenant even where it has not been directly implemented in regard to the particular author. As such, it is not necessary for the author to show a particular case where her birth certificate has had to be shown. It is sufficient for her to demonstrate the uncertainty and stress associated with knowing that it may need to be shown for employment, insurance, wills or estate purposes. Furthermore, the Committee has found cases to be admissible where a particular discriminatory law allows for the possible performance of other discriminatory acts. Thus, the Committee has found that a law creating the possibility that men might be deported on a discriminatory basis, and the resulting stress they suffered, was sufficient. The uncertainty around when and where the author may be asked for a birth certificate itself has been a cause of great stress and anxiety for her. The stigma and stress associated with the potential for her transgender identity to be revealed by showing a birth certificate has also influenced the author’s choice of career and study. She has avoided applying for roles where a birth certificate may be requested, and she has withdrawn from processes where a birth certificate was requested, such as university applications. The author adds that her concerns are justified given that discrimination and stigma around transgender persons is still high in Australia, including in New South Wales.
- 5.9 Moreover, although the author maintains that she does not need to establish actual requests, she was recently asked to present a birth certificate to the administrators of her father’s will in order to prove her relationship to her father, given that a birth certificate is, among other things, recognition of a change of name and of paternity.
- 5.10 As to the State party’s argument that no interference with the author’s family has occurred as it has not “compelled” her to obtain a divorce, she submits that this approach is incorrect. She has a right to be recognized as female on her birth certificate and she also has a right to be free from arbitrary interference with her family. Her enjoyment of one right cannot be made contingent on declining to exercise another right.
- 5.11 The author submits that discrimination on the basis of sexual orientation is not relevant here. However, should the State party’s arguments be found relevant by the Committee, the State party’s characterization of its obligations is incorrect. The Committee has previously held that distinctions between married and unmarried heterosexual couples were reasonable and objective because “the couples in question had the choice to marry or not, with all the ensuing consequences”. However, same-sex couples do not have the opportunity to choose to marry in Australia. Thus, the obligation to treat unmarried same-sex and unmarried heterosexual couples equally is not a suitable comparison.
- 5.12 The author disagrees with the State party’s observations regarding article 26 of the Covenant. She claims that under the current legislation in Australia, she is not afforded equal protection compared with a non-transgender woman or compared with an unmarried transgender woman. She is thus discriminated against on the basis of her marital status, her transgender identity and/or a combination of both. Both fall within the concept of “other status” in article 26. She also disputes that consistency with the Marriage Act 1961 is a legitimate aim. Although in *Joslin v. New Zealand* the Committee could not find that “by mere refusal to provide for marriage between homosexual couples” the State had breached Covenant rights, that does not mean that preventing same-sex couples from being married is a legitimate aim.
- 5.13 The author states that both the United Nations High Commissioner for Human Rights and the Yogyakarta Principles have called for legal recognition of gender identity regardless of marital status, and that this view has been widely supported. Given the view that legal recognition of sex can and should occur regardless of marital status, there is little support for the claim that consistency with the Marriage Act 1961 can be a legitimate aim. Furthermore, the nature of any interference must also be in accordance with the provisions, aims and objectives of the Covenant. As such, the interference cannot be based on discriminatory grounds, as outlined in articles 2 and 26 of the Covenant. Given that the interference in the author’s case constitutes discrimination on the basis of marital status and gender identity or a combination of both, it is not consistent with the provisions, aims and objectives of the Covenant.

- 5.14 However, should the Committee accept the State party's arguments about consistency with the Marriage Act 1961 being a legitimate aim, the author argues that the State party's refusal to allow a change of sex on her birth certificate is not reasonable or proportionate in the particular circumstances. Given the importance afforded to a person's gender identity in terms of privacy by the Committee, the European Court of Human Rights and the Office of the United Nations High Commissioner for Human Rights, and in the Yogyakarta Principles, the test for proportionality is high. The State party's approach to sex and gender recognition and marital recognition is flexible. It does not require a person to have consistent gender information across all official documentation. According to the State party's own submissions, a person may have "male" on their passport but "female" on their birth certificate.
- 5.15 Recognition of foreign marriages in Australia also is not consistent. Part VA of the Marriage Act 1961 provides that, except in certain circumstances, a foreign marriage that was valid in the local country at the time when it was solemnized will be recognized in Australia (see sect. 88C). For the purpose of determining whether an existing marriage is valid under Australian law, the relevant time is the moment at which the marriage was solemnized, not any subsequent date. Section 88EA of the Marriage Act 1961 provides that any union solemnized between two persons of the same sex must not be recognized as a marriage in Australia. However, should a then-heterosexual couple marry overseas and one person subsequently change their sex, including with the relevant change to their official documentation, the marriage would continue to be valid under Australian legislation.
- 5.16 In the light of the inconsistencies in the approach to gender identity on documentation and to recognition of marriages in Australia, the author argues that the State party has failed to demonstrate why a change in sex on a birth certificate would result in irreconcilable and unacceptable conflict with the Marriage Act 1961. As such, the laws preventing married persons from changing their sex on a birth certificate are neither reasonable nor proportionate. The author also submits that marital status should not be a barrier to legal recognition of gender identity. It is possible to allow legal recognition of a change of sex without requiring a pre-existing marriage to end. Austria, Germany and Switzerland all allow for this.
- 5.17 With regard to the State party's claim that any discrimination that may exist under article 26 of the Covenant is nevertheless for a legitimate aim and is reasonable and proportionate, the author argues that those submissions should not be accepted for the reasons outlined above.

Issues and proceedings before the Committee

Consideration of admissibility

- 6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the claim is admissible under the Optional Protocol.
- 6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.
- 6.3 The Committee notes the author's claim that all available domestic remedies have been exhausted. In the absence of any objection by the State party in this connection, the Committee considers that the requirement of article 5 (2) (b) of the Optional Protocol has been met.
- 6.4 The Committee notes the State party's argument that the author has not demonstrated that she has suffered specific and direct harm from not being able to change the sex on her birth certificate, thus failing to sufficiently substantiate her claims under article 17 of the Covenant. The Committee recalls that a person can only claim to be a victim in the sense of article 1 of the Optional Protocol if he or she is actually affected, and while it is a matter of degree how concretely this requirement should be taken, no individual can in the abstract, by way of an *actio popularis*, challenge a law or practice claimed to be contrary to the Covenant. If the law or practice has not already been concretely applied to the detriment of that individual, it must be applicable in such a way that the alleged victim's risk of

being affected is more than a theoretical possibility.

- 6.5 The Committee notes that in the present case, the legal regime challenged has already been enforced directly against the author. She has applied three times for a birth certificate consistent with her sex, and those requests have been rejected under domestic law. The Committee also notes that a birth certificate is a vital official identification document that is commonly required for the purposes of official personal identification. In Australia, it is a cardinal form of identification that can be required under national, state and territorial law. Birth certificates also are official forms of identification frequently required by private entities and foreign governments. The Committee therefore considers that the author has demonstrated that the possession of a government-issued birth certificate that identifies her as male, and the prospect of having to produce her birth certificate to fulfil various identification requirements, thus revealing the fact that she is transgender, satisfies the victim requirement within the meaning of article 1 of the Optional Protocol. The Committee notes, in addition, that the author states that she has suffered negative treatment such as questioning and suspicion of fraud, has found it hard to obtain employment, and has altered her behaviour to avoid revealing her birth certificate. She also cites a specific incident where she was requested to present a birth certificate to the administrators of her father's will in order to prove her relationship to her father. Consequently, the Committee considers that there are no obstacles to the admissibility of the communication under article 1 of the Optional Protocol, as far as the author's claims regarding article 17 of the Covenant are concerned.
- 6.6 The Committee notes the State party's argument that the author's claims under article 2 (1) together with article 26 of the Covenant should be declared inadmissible for insufficient substantiation. The author claims in this respect that, by not allowing her to obtain a birth certificate that correctly identifies her sex, she is not afforded equal protection before the law, compared with a non-transgender woman or compared with an unmarried transgender woman, and that she is thus discriminated against on the basis of her marital status, her transgender identity and/or a combination of both. In view of the information provided, the Committee considers that the author has sufficiently substantiated her claims under article 26 for the purposes of admissibility.
- 6.7 The author has raised her claim under article 26 together with article 2 (1). While recalling its jurisprudence that article 2 can be invoked by individuals only in conjunction with other substantive articles of the Covenant, the Committee does not consider examination of whether the State party violated its non-discrimination obligations under article 2 (1), when read in conjunction with article 26, to be distinct from examination of the violation of the author's rights under article 26. The Committee therefore considers it unnecessary to review the author's claims under article 2 (1) of the Covenant.
- 6.8 The author also contends that, in violation of article 2 (3) of the Covenant, the State party failed to implement legislation that prohibits discrimination on the basis of marital and/or transgender status and that guarantees to all persons equal and effective protection against such discrimination, thus failing to afford her an effective remedy. The Committee recalls its jurisprudence that article 2 (3) can be invoked by individuals only in conjunction with other substantive articles of the Covenant, and therefore considers that the author's claims under article 2 (3) are inadmissible under article 3 of the Optional Protocol.
- 6.9 In view of the foregoing, the Committee declares the communication admissible, insofar as it appears to raise issues under articles 17 and 26 of the Covenant, and proceeds with its consideration of the merits.

Consideration of the merits

- 7.1 The Committee has considered the present communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.
- 7.2 The author contends that the State party's refusal to change her sex on her birth certificate, unless she divorces from her spouse, constitutes arbitrary or unlawful interference with her privacy and family within the meaning of article 17 of the Covenant. In this regard, the Committee recalls its jurisprudence that "privacy" under article 17 "refers to the sphere of a person's life in which he or

she can freely express his or her identity, be it by entering into relationships with others or alone". It is the established jurisprudence of the Committee, and undisputed by the parties, that this includes protection of a person's identity, such as their gender identity. The Committee notes the author's argument that the invasion of privacy stems from the fact that her sex is different from that recorded on the birth certificate; that her birth certificate thus reveals private information about the fact that she is transgender, as well as her medical history; and that under the current legislation in Australia, the only way to obtain a birth certificate that correctly reflects her sex is to divorce from her spouse, thus interfering with her family. In this context, the author's asserts that she is in a loving relationship with her spouse and does not intend to apply for a divorce.

- 7.3 The Committee also notes that sections 32B (1) (c) and 32D (3) of the Births, Deaths and Marriages Registration Act 1995 explicitly require that a person be unmarried at the time of their application to register a change of sex and to have a new birth certificate issued, and that the wording of the said sections does not allow for any exceptions from this requirement. Furthermore, section 40 (5) of the Sex Discrimination Act 1984 specifically permits state and territory Governments to "refuse to make, issue or alter an official record of a person's sex if a law of a State or Territory requires the refusal because the person is married". In the circumstances, the Committee considers that the operation of these provisions to deny the author a birth certificate consistent with her sex unless she gets a divorce interferes with her privacy and family.
- 7.4 An interference with privacy or family under article 17 must not be arbitrary or unlawful. The requirement for a person to be unmarried at the time of their application to register a change of sex and to have a new birth certificate issued is provided for by domestic law. The Committee should thus consider whether the interference is arbitrary. The Committee recalls its jurisprudence that the concept of arbitrariness is intended to guarantee that any interference should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. Any interference with privacy and family accordingly must be proportionate to the legitimate end sought and necessary in the circumstances of any given case.
- 7.5 The Committee notes the State party's contention that any perceived interference with the author's privacy and family is not arbitrary, since the exemption in sections 32B (1) (c) and 32D (3) is reasonable and proportionate to the legitimate aim of ensuring consistency with section 5 (1) of the Marriage Act 1961, which defines marriage as being between a man and a woman. The State party argues that these provisions go no further than necessary to achieve this legitimate objective, and therefore are not disproportionate.
- 7.6 The Committee observes that the author and the State party disagree over whether consistency with the Marriage Act 1961 constitutes a legitimate aim under the Covenant. The State party submits that the right to marry under article 23 of the Covenant only applies to heterosexual marriages. The author in turn argues that, while failure to provide for marriage between same-sex couples itself may not breach Covenant rights under the Committee's jurisprudence, consistency between birth registrations and the Marriage Act 1961 is not a legitimate aim consistent with the objectives and aims of the Covenant, and nor is the refusal to provide legal recognition of the author's sex on her birth certificate reasonable or proportionate to achieving such an aim.
- 7.7 Irrespective of this issue, the Committee questions the necessity and proportionality of the interference with the stated aim. First, the Committee notes that a change in sex on another kind of official identification — a passport — is allowed. The State party has already issued the author first with an interim passport and then with a regular passport, indicating her sex as female. The State party has not provided any explanation why a change in sex on a birth certificate would result in irreconcilable and unacceptable conflict with the Marriage Act 1961 if the author remains married, whereas a change in sex on her passport in identical circumstances is allowed. Nor has the State party explained why it is in the State party's interest to issue documents with conflicting identity markers, or documents containing identity information that is not consistent with the actual personal situation, since such documents would mislead a government office, passport control etc. as to the true identity of the bearer. Second, the State party's legal regime leaves to individual state and territorial Governments the decision whether to refuse or allow changes to a married transgender person's sex on a birth certificate. The State party has not explained why denying altered birth certificates to married transgender persons is necessary to ensure consistency with the Marriage Act 1961, when federal

law allows state and territorial Governments to issue precisely such birth certificates.

- 7.8 The Committee notes the author's contention that there are further inconsistencies in the State party's approach to gender identity on issues regarding documentation and recognition of marriages. Namely, section 88EA of the Marriage Act 1961 provides that any union solemnized in a foreign country between two persons of the same sex must not be recognized as a marriage in Australia. However, should a then-heterosexual couple marry overseas and one person subsequently change their sex, including changing their official documentation in the foreign State, the marriage would continue to be valid in Australia. Thus, it is unrefuted that had these same facts occurred overseas — had the author married her current spouse, completed gender reassignment surgery and changed the sex on her birth certificate, before returning to Australia — her marriage would be recognized in Australia. The State party has not explained, inter alia, why recognition of foreign marriages based on the official documentation at the time the marriage was solemnized is consistent with the Marriage Act 1961, but equivalent treatment of marriages solemnized in Australia is not.
- 7.9 Moreover, the author contends, and the State party does not dispute, that gender reassignment is lawful in Australia and post-operative transgender individuals are provided with the opportunity to be legally recognized as their reassigned sex and are protected from discrimination on transgender grounds. The author was validly married in Australia. Following her gender reassignment, she was lawfully issued with passports designating her as female, and changed her name on, inter alia, her birth certificate, passport, driver's licence and Medicare card. It is also uncontested that as a result of her gender reassignment, the author has lived on a day-to-day basis in a loving, married relationship with a female spouse, which the State party has recognized in all respects as valid. There is no apparent reason for refusing to conform the author's birth certificate to this lawful reality.
- 7.10 In *Toonen v. Australia*, the Committee pointed to, inter alia, the inconsistency of the State party's legal regime and to the lack of consensus and enforcement regarding the provisions at issue which implied that they were not deemed essential to the State's stated aim. Likewise in the present case, in light of the above-mentioned considerations and in the absence of convincing explanations from the State party, the Committee is of the view that the interference with the author's privacy and family is not necessary and proportionate to a legitimate interest, and is therefore arbitrary within the meaning of article 17 of the Covenant.
- 7.11 The Committee notes the author's claim that she is being discriminated against on the basis of her marital and/or transgender status, in violation of article 26 of the Covenant, because the State party does not allow her to obtain a birth certificate that correctly identifies her sex as long as she remains married to her spouse. It also notes the State party's contention that the distinction between married and unmarried persons who have undergone a sex affirmation procedure and request to amend their sex on their birth certificate is proportionate to the aim of ensuring consistency with the definition of marriage under the Marriage Act 1961.
- 7.12 The Committee recalls its general comment No. 18 (1989) on non-discrimination (para. 1), in which it is 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. In this context, the Committee observes that the prohibition against discrimination under article 26 encompasses discrimination on the basis of marital status and gender identity, including transgender status. The Committee also recalls that not every differentiation based on the grounds listed in article 26 amounts to discrimination, as long as it is based on reasonable and objective criteria, in pursuit of an aim that is legitimate under the Covenant. The test for the Committee therefore is whether, in the circumstances of the present communication, the differential treatment between married and unmarried persons who have undergone a sex affirmation procedure and request to amend their sex on their birth certificate meets the criteria of reasonableness, objectivity and legitimacy of aim.
- 7.13 The Committee notes that both the Anti-Discrimination Board (in 2001) and the Australian Human Rights Commission (in 2009) found that the requirement that an individual be unmarried was unnecessarily restrictive and constituted discrimination on the basis of marital status. Consequently, they recommended that marital status should not be a relevant consideration as to whether or not a

person can request a change in legal sex.

- 7.14 The Committee considers that by legally recognizing gender reassignment and prohibiting discrimination against transgender persons, the State party is providing protection against discrimination. However, by denying transgender persons who are married a birth certificate that correctly identifies their sex, in contrast to unmarried transgender and non-transgender persons, the Government is failing to afford the author, and similarly situated individuals, equal protection under the law as a married transgender person. In this regard, the Committee reiterates the considerations discussed in paragraphs 7.5-7.9 above, that the distinction being drawn by the State party is not necessary and proportionate to a legitimate interest, and therefore is unreasonable.
- 7.15 In the above-mentioned circumstances and in the absence of convincing explanations from the State party, the Committee considers that the differential treatment between married and unmarried persons who have undergone a sex affirmation procedure and who request to amend their sex on their birth certificate is not based on reasonable and objective criteria, and therefore constitutes discrimination on the basis of marital and transgender status, under article 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 17 and 26 of the Covenant.
9. In accordance with 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 provide the author with a birth certificate consistent with her sex. The State party is also under an obligation to prevent similar violations in the future. In this regard, consistent with its obligations under article 2 (2) of the Covenant, the State party should revise its legislation to ensure compliance with the Covenant.
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 or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable 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 to have them widely disseminated.

M.Z.B.M. v. Denmark, communication no. 2593/2015, views of 20 March 2017¹⁵

Keywords: GI; T; access to justice, arrest, asylum-seekers/refugees, court, criminalisation (decriminalisation), data collection, detention, discrimination, gender impersonation laws, gender reassignment surgeries, gender reassignment treatment, HRD, investigation, jurisprudence, law enforcement officials, LGR, police, police misconduct, privacy, prosecution, punishment, refoulement, sexual violence, torture/ill-treatment, violence, women

Subject matter: Deportation of a transgender woman to Malaysia

Substantive issues: Risk of torture or ill-treatment; arbitrary or unlawful interference with privacy; freedom of thought, conscience and religion; equality before the law; prohibition of discrimination

Articles of the Covenant: 7, read in conjunction with 17 (1), 18 (1) and 26

Articles of the Optional Protocol: 2 and 3

- 1.1 The author of the communication is M.Z.B.M., a national of Malaysia born in 1977. She claims that her forcible return to Malaysia would violate her rights under article 7, read in conjunction with articles 17 (1), 18 (1) and 26, of the Covenant. She is represented by counsel. The Optional Protocol entered into force for the State party on 23 March 1976.
- 1.2 On 1 April 2015, pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from deporting the author to Malaysia while her case was under consideration by the Committee.

Factual background

- 2.1 The author was born as a man and grew up in Seramban district, north of Kuala Lumpur. She is ethnically Malay and a registered Muslim, but she considers herself Hindu. At the age of 16, the author left her family and moved to Kuala Lumpur. She also started wearing women's clothing and receiving female hormone treatment. She worked at a restaurant and volunteered for a local non-governmental organization. Her voluntary work consisted of working in the streets to assist those living with HIV and transgender persons. In 1998 or 1999, the author was raped by several unknown individuals.
- 2.2 In 2007, the author underwent gender reassignment surgery in Thailand. However, she continues to appear as a male on her Malaysian identity card since it is not possible for the gender on the card to be changed. She also appears as a Muslim on her identity card.
- 2.3 Between 2001 and 2010, on several occasions after being stopped on the street and having her identity card checked, the author was taken into custody by Malaysian police for up to 24 hours and physically and sexually abused. On one occasion, the author went to a police station in Kuala Lumpur to report the rape, but the police refused to register her complaint, after which she did not dare to report any further abuse.
- 2.4 According to the author, in April 2012, the police in Melaka took her to an office of the Department of Islamic Affairs, where she was detained until the following day. Prior to her release, photographs were taken of the tattoo on her hand, as it is not permitted for a Muslim in Malaysia to have tattoos or to change religion. They also took her women's shoes, since it is forbidden for men to wear women's clothing. Upon her release, representatives of the Department of Islamic Affairs informed her that her case would be sent for adjudication.
- 2.5 The author arrived in Denmark on 25 January 2014 and applied for asylum on 4 February 2014. Following three interviews with the Danish Immigration Service held on 24 February, 3 March and 16 April 2014, respectively, her asylum application was rejected on 28 August 2014. The Danish Immigration Service found the author's account of her detention and sexual abuse by the police in Malaysia to be inconsistent and implausible, in particular in the light of the fact that the author had left Malaysia to travel to India, Singapore and Thailand, and on more than 20 occasions for short periods of time. The Danish Immigration Service also considered it implausible that the author had to wait until January 2014 to leave Malaysia due to lack of funds as she had claimed, taking into consideration her frequent overseas travel, including holidays in India in October 2013. The Danish Immigration Service also noted that the author had not been charged with any criminal offence and that she had not been detained between her last arrest in April 2012 and her departure in January 2014.
- 2.6 On 19 December 2014, the Refugee Appeals Board upheld the decision of the Danish Immigration Service. The Board noted that, despite the threat by the Department of Islamic Affairs that had allegedly been made in April 2012, there had been no follow-up to any potential criminal proceedings against the author, and that until her departure in January 2014, the author had travelled legally in and out of Malaysia on several occasions. The Board concluded that the author would not be exposed to a real risk of persecution if returned to Malaysia.
- 2.7 On 25 February 2015, the author requested the reopening of her case based on the fact that there was a case pending against her before the sharia court in Melaka, where she was being charged with posing as a woman and wearing women's clothing, which could entail a fine or imprisonment of up

to six months. The author had obtained a copy of the undated court documents through her family. On 10 March 2015, the Board assessed the new evidence, but rejected the author's request for the reopening of her case, arguing that there was no new information of significance. According to the Danish Immigration Service's translation of the sharia court documents, the case against the author appeared to be under investigation, pending its transmission to the prosecutor's office. In the heading of the letter sent by the sharia court to the author's sister, there appears the word "closed". The Board noted that it was not certain whether the author would be found guilty as no proceedings had taken place. On 25 March 2015, the author renewed her request for the reopening of her case based on an alleged mistake by the Board in translating a word as "closed" instead of "confidential". On 30 March 2015, the Board rejected the author's request, arguing that the revised translation did not alter the fact that neither the Department of Islamic Affairs nor anyone else had followed up on the charges against the author since April 2012, and that, since that date, the author had been able to travel legally in and out of the country without facing any difficulties until her departure in January 2014, and that she had not faced any further detention or abuse.

The complaint

- 3.1 The author claims that her forced return to Malaysia would violate article 7 of the Covenant as she would risk being submitted to sexual violence by the Malaysian police. The author alleges that, as a transgender woman, she is part of an extremely vulnerable minority group. The seriousness of the risk that she faces is based on her gender identity and appearance, which are not in accordance with sharia law and for which she was subjected to sexual violence and discrimination by the Malaysian authorities in the past.
- 3.2 The author also claims a violation of article 7, read in conjunction with article 18 (1), of the Covenant, because her conversion from Islam to Hinduism, which is not permitted by sharia law in Malaysia, puts her at risk of imprisonment upon her return to Malaysia.
- 3.3 The author also claims a violation of article 7, read in conjunction with articles 17 (1) and 26, of the Covenant because, in the context of the case pending against her before the sharia court, her gender identity and appearance are being made public, thereby violating her right to privacy. Additionally, in the light of her national identity documents, if sentenced to imprisonment, she would be held together with men, thereby exposing her to further abuse.

State party's observations on admissibility and the merits

- 4.1 In its observations dated 1 October 2015, the State party argues that the communication is inadmissible or, alternatively, without merit. The State party also describes the nature and legal basis of proceedings before the Danish Refugee Appeals Board.
- 4.2 Regarding the facts of the case, the State party provides an account of the author's statements before the Danish authorities. The author stated that she had not officially converted to Hinduism because it was not permitted by Islam and she would have faced problems with the Islamic authorities. In one of the interviews, she stated that the last time that she had been detained by police officers and forced to perform oral sex had been in December 2012, whereas in a later interview, she stated that she had been last detained and sexually abused in 2010. Regarding her travels, the author stated that she had travelled to Thailand more than twenty times and to Singapore about fifteen times.
- 4.3 The State party argues that the author has failed to provide sufficient grounds for believing that her return to Malaysia would violate article 7 of the Covenant.
- 4.4 With regard to the author's claims under articles 17, 18 and 26 of the Covenant, the State party notes that the author is seeking to apply State obligations under these articles in an extraterritorial manner. Her allegations of violations under these provisions are not based on treatment that the author has suffered in Denmark or a territory under its effective control and therefore the State party cannot be held responsible for these alleged violations. The Committee has never considered a complaint on its merits regarding the removal of a person who feared violation of provisions other than articles 6 and 7 of the Covenant in the receiving State. Therefore, these claims should be declared inadmissible.

- 4.5 On the merits, the State party argues that the author's removal to Malaysia would not expose her to a real risk of being subjected to treatment covered by article 7 of the Covenant. To grant a residence permit under section 7 (1) of the Aliens Act of Denmark, the Board requires the existence of a well-founded fear of being subjected to specific, individual persecution of a certain severity if returned to the country of origin, which should be supported by objective facts. When assessing whether this fear is well founded, the Board takes into account, inter alia, the information on persecution available prior to the asylum seeker's departure from their country of origin.
- 4.6 In her communication to the Committee, the author has failed to provide any new specific information on her situation other than what was already provided and assessed by the Board on 19 December 2014, and 10 March and 30 March 2015. In those decisions, the Board considered the grounds for asylum and the supporting documents and background information provided by the author, including the sharia court documents. The Board conceded that the author had had gender reassignment surgery and that she had been detained for brief periods of time, including in April 2012. However, the Board could not consider it a fact that the author had been sexually abused. Her statements concerning the rapes raised a significant amount of uncertainty concerning the circumstances, number of perpetrators and incidents and the towns or cities where these had occurred. On the whole, the Board did not find it probable that the author had been the victim of this kind of assault. With regard to the alleged threat made by the Department of Islamic Affairs to institute legal proceedings against the author in April 2012, the Board emphasized that no steps had been taken to follow up on that threat since April 2012, and that the author had travelled in and out of the country on numerous occasions since that date and until her departure in January 2014. The Board also noted that most of the incidents referred to by the author had taken place several years earlier and that the author, to a great extent, was able to live a tolerable life in her country of origin, including with her family in Serambam, where her mother was a great support. The Board had concluded that the author had failed to render it probable that she would face a risk of persecution in case of return.
- 4.7 The State party notes that the Board did not presume that the author would have to conceal her gender or religious identity on her return to avoid abuse. The author had informed local police about her gender and religious identity, despite which she was able to live a normal life without being subjected to abuse. In its assessment, the Board took into account the author's particular vulnerability.

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

- 5.1 On 5 February 2015, the author submitted that she had sufficiently shown that substantial grounds existed for believing that her return to Malaysia would violate article 7 of the Covenant.
- 5.2 With regard to the State party's statement that she is seeking to apply articles 17, 18 and 26 in an extraterritorial manner, the author clarifies that she is arguing that her previous experience combined with available background information on the situation of transgender women in Malaysia confirm that, as a woman, her rights to private life and to freedom of religion would be violated in Malaysia. These factors taken together increase the author's risk of being subjected to cruel, inhuman or degrading treatment or punishment if returned.
- 5.3 The author notes that having undergone gender reassignment surgery and taken female hormones — together with the fact that she is 170 cm tall, weighs 105 kg and has a shoe size of 44 — she appears as an unusually large woman and that this external appearance gives rise to suspicion of whether she is a man dressed in women's clothing. It is most likely for this reason that the author has been subjected to frequent identity checks by the Malaysian police and that she would be again at risk of those checks. Also, in the context of those checks, the tattoos on her chest, left hand and her back would also be uncovered. Based on that, she would be transferred to the sharia court for the case that is pending against her.
- 5.4 The author cites several reports by governmental and non-governmental organizations on the situation of transgender people in Malaysia. In particular, a report by Human Rights Watch notes that discrimination against transgender people is pervasive and that the Federal Court decided in October 2016 to overrule a lower court decision that had declared unconstitutional a provision in the Islamic

law of the Negeri Sembilan State criminalizing cross-dressing. According to a report by the Department of State of the United States of America, transgender individuals are often charged under the Minor Offences Act for “indecent behaviour” and may be fined or, in the case of repeat convictions, sentenced to up to three months’ imprisonment.

Issues and proceedings before the Committee

Consideration of admissibility

- 6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether it is admissible under the Optional Protocol.
- 6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement.
- 6.3 The Committee notes the author’s claim that she has exhausted all effective domestic remedies available to her. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.
- 6.4 The Committee takes note of the author’s claim that her return to Malaysia puts her at risk of imprisonment due to her alleged conversion to Hinduism, in violation of article 7, read in conjunction with article 18 (1), of the Covenant, as conversion is not permitted by sharia law in Malaysia. The Committee notes, however, the State party’s submission that the author informed the Danish authorities that she had not formally converted to Hinduism. Furthermore, in this connection, the author has not provided the Committee with any details regarding her alleged conversion, or the consequences thereof. She has not claimed that the alleged case against her before the sharia court in Melaka is related to her joining Hinduism, or that she has otherwise been subjected to persecution as a result of her conversion, nor has she provided any details regarding the likely risk and nature of such persecution if she were returned. Accordingly, the Committee concludes that this claim is insufficiently substantiated and therefore inadmissible pursuant to article 2 of the Optional Protocol.
- 6.5 The Committee notes the State party’s argument that the author is seeking to apply articles 17 and 26 of the Covenant in an extraterritorial manner. It notes, however, that the author has clarified that her claims before the Committee are based primarily on article 7 and that the risk to her rights under articles 17 and 26 underscore the increased risk that she would be subjected to cruel, inhuman or degrading treatment or punishment if she were returned to Malaysia. The Committee therefore considers that the author’s allegations under articles 17 and 26 cannot be dissociated from the allegations under article 7, which must be determined on the merits.
- 6.6 The Committee notes the State party’s argument that the author’s claims under article 7 of the Covenant are insufficiently substantiated. The Committee notes, however, that as a transgender individual the author is part of a particularly vulnerable group in Malaysia, that she claims to have been repeatedly detained and subjected to sexual abuse as a result of her appearance and gender identity, which do not correspond with her identity document and are contrary to sharia law, and that she has argued that her return to Malaysia would expose her to a risk of further police harassment and abuse. The Committee therefore considers that the author has sufficiently substantiated, for the purposes of admissibility, her claims under article 7, read in conjunction with articles 17 (1) and 26, of the Covenant, based on her gender identity.
- 6.7 In the light of the above, the Committee declares the communication admissible insofar as it appears to raise issues under article 7, read in conjunction with articles 17 (1) and 26, of the Covenant, and proceeds with its consideration of the merits.

Consideration of the merits

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

- 7.2 The Committee takes note of the author's claim that, if returned to Malaysia, she would face the risk of being submitted to sexual violence by the Malaysian police based on her gender identity. The author states that her appearance, given her dressing in women's clothes and following her gender reassignment surgery and hormonal treatment, does not correspond with her identity documents, for which she has been detained on several occasions, submitted to sexual abuse by the Malaysian police and charged with a criminal offence under the sharia law of the State of Melaka, which could entail a fine or imprisonment of up to six months. She alleges that her appearance makes it likely that she will be subjected to continued checks if she is returned to Malaysia given her past experience and the general context of criminalization and persecution of transgender women, as confirmed by international reports submitted by the author, and that her tattoos increase the risk that she will be transferred to the sharia court. She states that, in the context of the case pending against her before the sharia court in Melaka, her gender identity is being made public, in violation of her right to privacy. She further states that, based on her national identity documents, if imprisoned, she would be held together with men, thereby exposing her to further abuse.
- 7.3 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 their obligation 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 article 7 of the Covenant, which prohibits cruel, inhuman or degrading treatment or punishment. 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. 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 denial of justice.
- 7.4 In the present case, the Committee notes that the State party has acknowledged the author's change of gender and the fact that she may have been detained in the past. However, both the Danish Immigration Service and the Refugee Appeals Board thoroughly examined the author's claims and evidence presented, but found the allegations of detention and, in particular, sexual abuse to be poorly substantiated and inconsistent on several grounds, including the number, time and location of the alleged incidents and the number of perpetrators. In this regard, the Committee notes that the author described those incidents in a generic manner in her communication. Regarding the alleged criminal proceedings against the author under sharia law and the threats of imprisonment made in 2012 as a result, the Board also reviewed the sharia court documents presented by the author but noted that the charges against her had not been pursued since April 2012 and that, between that date and her final departure in January 2014, the author had frequently travelled abroad without ever experiencing any difficulties, and that she had not been detained or otherwise harassed during that time. In the light of these trips abroad, the Board also questioned the author's claim that the reason for delaying her departure until January 2014 was her lack of financial means.
- 7.5 The Committee notes that the author has failed to identify any irregularity in the decision-making process or any risk factor that the State party's authorities failed to take properly into account. While the author has challenged the factual conclusion reached by the Danish immigration authorities, she has not explained how the proceedings before these authorities were arbitrary or otherwise amounted to a denial of justice.
- 7.6 In the light of the foregoing, the Committee cannot conclude that the removal of the author to Malaysia would constitute a violation of her rights under article 7, read in conjunction with articles 17 (1) and 26, of the Covenant.
8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the author's removal to Malaysia would not violate her rights under article 7, read in conjunction with articles 17 (1) and 26, of the Covenant.

2. Committee against Torture

D.C. and D.E. v. Georgia, communication no. 573/2013, views of 12 May 2017¹⁶

Keywords: arrest, bullying, detention, jurisprudence, law enforcement officials, police, police misconduct, sexual violence, stigmatisation, torture/ill-treatment, violence

Subject matter: Torture and ill-treatment upon arrest

Substantive issues: Torture; torture – prompt and impartial investigation; treatment of prisoners

Articles of the Covenant: 1, 11, 12, 13, 16 and 22

1. The complainants are D.C., a national of Georgia born on 10 May 1955, and his son D.E., also a national of Georgia, born on 21 March 1980. [...]

The facts as submitted by the complainants

- 2.1 The first complainant is a medical doctor by profession and worked for a non-governmental organization. The second complainant lives on a pension that he receives from the State as a result of his incapacity which is due to diabetes.
- 2.2 On 10 October 2010, around 4.30 p.m., officers of the criminal police arrested the first complainant in the yard of the home of his son – the second complainant – and forced him to enter a vehicle. The arresting officers then threatened the first complainant and hit him with their fists on his body and head. The officers falsified the first complainant's arrest record to obscure the duration of time that he spent in their custody; they incorrectly recorded that he was first detained at 5.40 p.m. and was delivered to a police station at 9.10 p.m., and recorded that there were no visible injuries on his body.
- 2.3 The second complainant called the police in order to find out what had happened to his father, and police officers came to the second complainant's apartment. When he refused to let them enter, one of the police officers hit him over the head with the handle of his pistol. While he was partially stunned, the officer reached into the pocket of the second complainant's coat to take the keys to his apartment and planted four bullets from a Makarov pistol in his pocket. The officers entered the apartment, where they planted a cartridge with bullets and 20 ampoules of morphine. The second complainant was then also arrested; his arrest record states that he was delivered to the police station at 9.10 p.m. The wound he incurred from being hit by the arresting officer was noted in the arrest record as being the sole injury found on him at that time.
- 2.4 The authorities accused the complainants of kidnapping and illegal possession of ammunition and narcotics. They were interrogated for about eight hours, during which time they were kept handcuffed, beaten, kicked, strangled and threatened that they would be thrown out of the window. The second complainant was burned with a cigarette and subjected to attempted rape. The officers threatened to inflict further harm on them and to arrest other family members of the complainants if the complainants did not admit to committing the crimes. Police officers and officers from the Prosecutor's Office, in particular one with the initials T.A., participated in the torture.

[...]

Complainants' comments on the State party's observations on admissibility

[...]

- 5.3 The complainants contest the State party's claim that the second complainant never raised with the domestic authorities his allegations concerning attempted rape and being burned with cigarettes. The complainants also note the risks that arise for prisoners who raise allegations of sexual assault, as they are likely to be labelled as homosexuals and exposed to a high risk of abuse by other prisoners. The complainants also state that on 15 April 2014 they obtained a medical expert's report concerning the second complainant, which reveals a scar on his hand resulting from local exposure to a high temperature, and a scar on his left buttock, consistent with his allegations of attempted rape. The complainants sent that report, together with a description of the treatment they endured, to numerous State institutions, including the President, the Ombudsman, the President of the Supreme Court and the Parliamentary Committees.

[...]

E.A. v. Sweden, communication no. 690/2015, decision of 11 August 2017¹⁷

Keywords: SO; G, LGBT; access to justice, anal examination, arrest, asylum-seekers/refugees, criminalisation (decriminalisation), data collection, detention, discrimination, domestic violence, family, GC/GR, harassment, health, honour crimes, HRD, jurisprudence, law enforcement officials, media, partnership, police, police misconduct, privacy, prosecution, psychiatric assessment, refoulement, stigmatisation, torture/ill-treatment, violence

Subject matter: Deportation of a gay man to Lebanon

Substantive issues: Non-refoulement; prevention of torture

Articles of the Covenant: 3 and 22

Background

- 1.1 The complainant is E.A., a Lebanese national born in 1992. He sought asylum in Sweden but his application was rejected and he risks deportation to Lebanon. He claims that his deportation would put him under the risk of torture or other forms of inhuman or degrading treatment by Lebanese authorities and would constitute a violation by Sweden of article 3 of the Convention.
- 1.2 On 27 July 2015, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to deport the complainant while the complaint was being considered.

The facts as presented by the complainant

- 2.1 The complainant is a homosexual man born in the southern part of Lebanon who now lives in Sweden. Since 2013, he has had a Swedish same-sex partner. While his mother has accepted his sexual orientation, his father, who lives in Israel, does not know about it and, the complainant claims, would never accept it. The complainant and his mother decided not to inform his father or other relatives about his sexual orientation. However, a friend of the complainant saw him with his boyfriend and revealed the information to his relatives in Lebanon. The Lebanese authorities also know about his sexual orientation. The complainant's story has been in the newspapers in Sweden and, although the articles did not reveal his name, the Lebanese embassy there informed him that they knew the articles referred to him.
- 2.2 The complainant came to Sweden with his mother and two sisters in 2006, when he was a minor. The family applied for asylum on the ground of his father's involvement in fighting for the Government of Israel. Their claim was rejected in 2007 by the Migration Agency and in 2008 by the Migration Court.

On 9 March 2013, the day the expulsion order became statute-barred, the complainant applied again for asylum on the grounds that he was a homosexual man and as such was at risk of being detained and tortured by police and would be at risk of ill-treatment by his relatives if returned to Lebanon. The complainant's request for asylum was rejected on 17 September 2014 by the Migration Agency. His appeal was rejected on 17 December 2014 by the Migration Court. On 16 February 2016, the Migration Court of Appeal refused leave to appeal and the decision to expel the complainant became final.

The complaint

3. The complainant claims that article 534 of the Lebanese Criminal Code criminalizes "unnatural sexual intercourse", which is punishable by up to one year of imprisonment. In practice, homosexual relations fall under that law. The complainant states that homosexual men arrested under article 534 are abused by the police in detention. He alleges that, if deported to Lebanon, he would be at a risk of torture or other forms of inhuman or degrading treatment from the police. He would risk honour-related violence or killing by his relatives and would not be able to turn for protection to the authorities.

State party's observations on admissibility and the merits

- 4.1 In its observations dated 14 March 2016, the State party submits that the communication should be considered inadmissible as manifestly unfounded. Should the Committee find the communication admissible, the State party submits that there will be no violation of article 3 of the Convention if the complainant is returned to Lebanon.
- 4.2 The State party notes that the well-founded fear of persecution due to sexual orientation constitutes part of the asylum criteria according to the Swedish Aliens Act, both when the risk is posed by the authorities or when the authorities fail to afford sufficient protection from persecution by private individuals. On 15 October 2015, the Migration Agency issued its latest general legal positions to guide and facilitate the assessment of lesbian, gay, bisexual and transgender-related cases, which are processed by specialists trained in that area.
- 4.3 On the facts of the case, the State party provides detailed information concerning several asylum and residence proceedings initiated by the complainant before the domestic authorities. The State party further assesses the complainant's claims by addressing two conditions established by the Committee in its jurisprudence: the general human rights situation in Lebanon and the personal risk for the complainant to be subjected to torture, following his return.
- 4.4 Regarding the general human rights situation, the State party submits that there is no consistent pattern of gross, flagrant or mass violations of human rights in Lebanon. According to the Country Report on Human Rights Practices for 2014 by the United States Department of State, article 534 of the Lebanese Criminal Code is rarely applied and, when applied, it often results in a fine. It was reported that the number of cases of harassment of lesbian, gay, bisexual and transgender activists had recently decreased and that, in 2009, an important judgment had been delivered stating that the homosexual acts were not unnatural because they were consensual. The report stated that other judges had later made similar decisions. According to the report, with reference to the non-governmental organization Helem, there had been fewer than 10 prosecutions under article 534 of the Criminal Code in 2010. According to the statement from the Swedish embassy in Amman, there were no ongoing trials under that article in 2013. The State party concludes that the current human rights situation in Lebanon, including as regards human rights of lesbian, gay, bisexual and transgender persons, does not in itself suffice to establish that the forced removal of the complainant would breach State party's obligations under article 3 of the Convention. Accordingly, there is a need for the complainant to show that he would be personally at risk of being subjected to treatment in violation of article 3 of the Convention.
- 4.5 As to the personal risk upon return, the complainant raised before the Committee the same claims that have been considered by the domestic authorities, namely, that he risks being subjected to torture, inhuman or degrading treatment or punishment by Lebanese authorities, as well as by his family, owing to his sexual orientation, if returned to his country of origin. The State party points out

that several provisions of the Aliens Act reflect the same principles as article 3 of the Convention. The State party also notes that the Migration Agency and the Migration Court conducted a thorough examination of the case, having sufficient information to ensure a well-informed, transparent and reasonable assessment of the complainant's protection needs. In that regard, the State party refers to paragraph 9 of the Committee's general comment No. 1 (1997) on the implementation of article 3, in which the Committee stated that it was for the courts of the States parties to the Convention and not for the Committee to evaluate the facts and evidence in a particular case, unless it could be ascertained that the manner in which such facts and evidence were evaluated was clearly arbitrary or amounted to a denial of justice. The State party submits that there is no reason to consider that in the present case the decisions of the domestic authorities were inadequate, arbitrary or amounted to a denial of justice.

- 4.6 The State party notes that the complainant's new claim for asylum was considered despite being submitted at a late stage, when he had a duty of either leaving Sweden or re-applying for asylum. Regarding the alleged threat from his father and relatives, apart from his own assumption that his relatives might have become aware of his sexual orientation, the complainant had not submitted any evidence of a concrete and individual threat towards him other than the general situation for lesbian, gay, bisexual and transgender persons. His father had lived in Israel for many years, yet the complainant made no mention any previous instances of violence from him. The complainant has personally not lived in Lebanon since he was a minor and has never suffered any past mistreatment in his country of origin. Now he is an independent and educated adult and there is no evidence in the case to substantiate that any of his relatives would pose a real threat to him that would amount to treatment under article 3 of the Convention.
- 4.7 As for the threat from the authorities, the State party notes that, although lesbian, gay, bisexual and transgender persons are a vulnerable group in Lebanon, article 534 of the Criminal Code is rarely applied and is not in itself sufficient to constitute a real and personal risk for the complainant being subjected to the treatment in breach of article 3 of the Convention, especially since there is no evidence that the authorities are actively persecuting homosexuals. The State party concludes that the complainant's claims are not based on grounds that go beyond a mere theory or suspicion and that his return to Lebanon would not constitute a violation of article 3 of the Convention.

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

- 5.1 In his comments to the State party's observations dated 29 August 2016, the complainant claims that, according to many reliable sources, article 534 of the Criminal Code is still applied in practice to arrest and torture homosexuals and that he therefore faces an individual threat. He claims that the State party has not presented any real and substantial evidence supporting the position that article 534 of the Criminal Code would not be applied in practice today. Even if the prison term is substituted with a fine, it constitutes a criminal record, which is often requested to have access to jobs, services, etc., and which thus increases risk of social discrimination. Despite the efforts in the country to make lesbian, gay, bisexual and transgender persons more accepted, being a homosexual in Lebanon is still a risk. The complainant concludes that, because the law criminalizing homosexual relations is applied in Lebanon, he will be personally at a foreseeable and real risk of being subjected to torture if returned there. He will not be able to live openly with his sexuality without having to face a well-grounded fear of being arrested, subjected to anal examinations, imprisoned and tortured in prison.
- 5.2 As for the threat from his relatives, the complainant maintains that the State party has accepted as a fact that they know about his homosexuality. They are conservative people and homosexuality is deeply stigmatized in Lebanon. Many lesbian, gay, bisexual and transgender persons in Lebanon are subjected to physical and mental violence by their families and some become victims of honour crimes and domestic violence. Therefore, there is a strong probability that he will be persecuted by his family. It is impossible to prove more than this.

Additional submissions by the parties

6. On 18 November 2016 and 15 May 2017, the State party reiterated its initial position presented in the observations of 14 March 2016 that the general situation in Lebanon does not warrant protec-

tion measures towards the complainant and that the complainant has failed to establish a personal risk of treatment in violation of article 3 of the Convention upon his return.

- 7.1 The complainant submitted his additional comments to the State party's observations on 15 December 2016 claiming that, in view of the many human rights reports referred to in his previous submissions, there is obvious and general risk for every homosexual person to be persecuted and tortured in Lebanon, and that he, as a homosexual man, therefore faces a well-founded fear of persecution upon return. The information provided earlier about social rejection of homosexuals and the fact that the relatives of the complainant are aware of his sexual orientation is sufficient to conclude that there is a risk that he will be persecuted by his family if returned to Lebanon.
- 7.2 On 26 January 2017, the complainant submitted a new report dated 29 November 2016 by the Swedish Migration Agency on cases concerning lesbian, gay, bisexual and transgender persons in Lebanon, and claimed that the report proves that article 534 of the Criminal Code had been used to a greater extent in 2016, that people had been kept in detention only because they were suspected of being homosexual, and that anal examinations were still performed. The complainant also produced in support of his claims a statement by the former president of the Swedish Federation for Lesbian, Bisexual, Transgender and Queer Rights, who represented him in the domestic proceedings, dated 3 January 2017, and a certificate from the Swedish Red Cross psychotherapist, dated 16 January 2017, in which it was stated that the complainant suffered from a complex post-traumatic stress disorder owing to the uncertainty surrounding his situation and the unfair decisions by the authorities in his case. The complainant stated that the domestic authorities had insisted he contact the Lebanese embassy to request a passport for his residence permit proceedings. The embassy had been unable to issue a passport for him, but now he was certainly registered by the Lebanese authorities and, according to him, "the information on his situation is probably reported to the Security Service of Lebanon".

Issues and proceedings before the Committee

Consideration of admissibility

- 8.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.
- 8.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any complaint unless it has ascertained that all available domestic remedies have been exhausted. The Committee notes that, in the present case, the State party has not challenged the admissibility of the complaint on this ground.
- 8.3 The Committee takes note of the State party's argument that the complaint should be declared inadmissible for lack of substantiation. The Committee however considers that the arguments before it raise substantive issues under article 3 of the Convention that should be dealt with on the merits and not on admissibility considerations alone. As the Committee finds no further obstacles to admissibility, it declares the present complaint admissible.

Consideration of the merits

- 9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.
- 9.2 In the present case, the issue before the Committee is whether the return of the complainant to Lebanon would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.
- 9.3 The Committee must evaluate whether there are substantial grounds for believing that the com-

plainant would be personally in danger of being subjected to torture upon return to Lebanon.

- 9.4 In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of the evaluation is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.
- 9.5 The Committee recalls its general comment No. 1, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being highly probable (para. 6), the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a foreseeable, real and personal risk. The Committee also recalls that, although under the terms of its general comment No. 1 it is free to assess the facts on the basis of the full set of circumstances in every case, considerable weight is given to the findings of fact that are made by organs of the State party concerned (para. 9), while at the same time it is not bound by such findings and instead has the power, provided by article 22 (4) of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.
- 9.6 The Committee refers to the concluding observations on the initial report of Lebanon dated 30 May 2017, where it expressed concern over isolated incidents of ill-treatment of men suspected of being homosexual who had been held in custody by Internal Security Forces officers. At the same time, the Committee notes that the reported incidents cannot be viewed as constituting a general and widespread practice towards homosexual men. It also notes that, in 2015 and in 2016, 76 arrests per year were made under article 534 of the Criminal Code. While expressing its concern over the existence of a provision that enables criminal prosecution of homosexuals, the Committee is not able to conclude, from the information before it, that every homosexual man in Lebanon is a target of persecution by the authorities.
- 9.7 The Committee notes the complainant's allegations that, because his relatives are aware that he is homosexual, he will be in danger of honour-related violence with no means of seeking protection from the authorities. In that regard, the Committee observes that, although the complainant claims that his relatives have known about his sexual orientation at least since 2013, he did not provide information about any concrete threats from his family and relatives. The Committee also notes the complainant's claim that the authorities know about his sexual orientation from the embassy staff, and that they will persecute him upon return to Lebanon. The Committee thus finds that the complainant's allegations that he would be at a personal risk of treatment contrary to article 3 of the Convention are hypothetical and do not go beyond mere theory or suspicion. The Committee concludes that the complainant has not discharged the burden of presenting an arguable case according to the Committee's general comment No. 1.
10. In the light of the considerations above, and on the basis of all the information submitted by the complainant, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that his forcible removal to his country of origin would expose him to a foreseeable, real and personal risk of torture within the meaning of article 3 of the Convention.
11. The Committee, acting under article 22 (7) of the Convention, decides that the complainant's removal to Lebanon by the State party would not constitute a breach of article 3 of the Convention.

Lists of Issues and Concluding Observations

1. Committee on Economic, Social and Cultural Rights

Argentina – List of Issues – 61st PSWG, 19 October 2017, 4th review¹⁸

Keywords: *GI, SOGI; T; anti-discrimination legislation, discrimination, employment, legislation, LGR, measures, violence*

Non-discrimination (art. 2 (2))

8. Please provide information on the measures taken to tackle the discrimination and violence experienced by persons on the basis of their sexual orientation or gender identity in many fields of public life. Please indicate to what extent measures have been taken to fully enforce anti-discriminatory legal provisions, such as those on an employment quota for persons with disabilities and those contained in Gender Identity Law No. 26.743 of 2012 and the Provincial Bill (No. 14.783) on a Transgender Labour Quota of 2015.

Keywords: *SO; assisted reproduction, family, health, measures, service provision, SRHR*

Right to physical and mental health (art. 12)

24. Please indicate to what extent the measures taken by the State party address the reports of health insurance companies requesting information about the marital status and sexual orientation of beneficiaries as concerns providing coverage for reproductive health services under Act No. 26.862 of 2013 on assisted reproduction.

Keywords: *I; children, decision-making process, free and informed consent, health, IGM, sterilisation, surgical/medical intervention*

Intersex persons

49. The Committee is concerned that children born with intersex variations are subject to early surgeries and medical interventions before they are able to provide full and informed consent (art. 12).
50. The Committee recommends that the State party study and implement the recommendations put forward in the 2013 report of the Senate Community Affairs References Committee entitled “Involuntary or coerced sterilisation of intersex people in Australia”.

Keywords: *anti-discrimination legislation, discrimination, employment, marriage, same-sex couples*

Non-discrimination (art. 2 (2))

7. Please clarify whether national anti-discrimination legislation is effective in preventing Churches from discriminating against adherents of other faiths in the matter of employment in non-ecclesiastical appointments in Church-run institutions such as schools, hospitals and nursing homes. Please also clarify whether the legislation prohibits Churches from dismissing non-ecclesiastical employees who contract same- sex marriages.

Keywords: *SOGI; I; children, data collection, discrimination, hate crimes, health, legislation, LGR, measures, prevention, surgical/medical intervention, violence*

8. Please provide statistical data on the number of surgeries performed on intersex infants and children. Please indicate the measures taken to address the challenges, physical and mental, faced by intersex infants and children. Please indicate the impact of the decision to allow a third gender option on birth certificates in 2013 on the situation of intersex infants and children. Please also provide information on the measures taken to combat and prevent discrimination and violence based on sexual orientation and gender identity and indicate whether the State party has the intention to make explicit reference to homophobia in its hate crime legislation.

Keywords: LGBTI; discrimination, education, employment, GC/GR, housing, measures, policy, social security, TSM

Discrimination against minorities

18. The Committee is concerned that various groups, including ethnic minorities, migrants, persons with disabilities, domestic workers, lesbian, gay, bisexual, transgender and intersex persons, refugees and asylum seekers, face de facto discrimination in the State party in many areas covered by the Covenant, including employment, social security, education, housing and standard of living (art. 2 (1)).
19. The Committee recommends that the State party continue to assess the root causes of systemic and structural discrimination against minority groups. The Committee also recommends that the State party benefit from available findings in studies on discrimination in order to develop policies and programmes with specific goals and targets aimed at combating prejudice. The Committee further recommends that the State party take all necessary measures, including temporary special measures as appropriate, to ensure the equal enjoyment of the Covenant rights by all. The Committee refers the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

Keywords: SC; I; children, consultation, decision-making process, free and informed consent, health, IGM, surgical/medical intervention

Intersex children

48. The Committee is concerned that the State party's practice of early surgery and medical interventions on intersex children, which are not necessary for physical health and alters their sex characteristics, do not respect their right to free, prior and informed consent (art. 12).
49. The Committee recommends that the State party review the practice of early surgery and medical interventions on intersex children, in order to make sure that they are mature enough to be consulted on their preferred treatments on the basis of their informed choices and consent.

Keywords: SOGI; access to justice, anti-discrimination legislation, discrimination, employment, GC/GR, intersectionality, legislation, protected grounds, remedy

Non-discrimination

19. The Committee is concerned that the legal provisions regarding non-discrimination within the State party, including articles 25-27 of the Constitution, only prohibit discrimination on grounds of race, religion, caste, sex, residence or place of birth in respect of access to places of public entertainment or resort and places not intended for religious purposes only, as well as in respect of appointment to positions of public service. It is also concerned at the absence of comprehensive anti-discrimination legislation (art. 2).
20. The Committee recommends that the State party consider revising articles 25-27 of the Constitution with a view to ensuring that the Constitution prohibits discrimination on all grounds, including colour, language, political or other opinion, national or social origin, property, disability, sexual orientation and gender identity or other status. It also recommends that the State party adopt comprehensive anti-discrimination legislation prohibiting all direct, indirect and multiple forms of discrimination, on any ground, and providing for effective remedies for victims of discrimination, including through judicial and administrative proceedings. The Committee draws the attention of the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

Keywords: SOGI; awareness-raising campaign, criminalisation (decriminalisation), discrimination, measures

Criminalization of same-sex relations

21. The Committee is concerned that same-sex relations between consenting adults is criminalized (art. 2).
22. The Committee recommends that the State party decriminalize same-sex relations between consenting adults and take the measures necessary to raise public awareness and combat discrimination based on sexual orientation and gender identity.

Keywords: SOGI; anti-discrimination legislation, discrimination, legislation, measures

Non-discrimination (art. 2 (2))

11. Please provide information on legislative, administrative and other measures taken to eliminate and prohibit discrimination on the basis of sexual orientation and gender identity.

Keywords: SOGI; LGBTI; anti-discrimination legislation, awareness-raising campaign, criminalisation (decriminalisation), discrimination, health, housing, legislation, measures, same-sex couples, service provision, social security, SRHR

Discrimination on the grounds of sexual orientation and gender identity

24. The Committee is concerned at the criminalization of same-sex acts in the military criminal act. The Committee is also concerned that the persons involved in same-sex relationships are exposed to discrimination in the enjoyment of several Covenant rights. Moreover, it is concerned at reports of discriminatory attitudes and acts against lesbian, gay, bisexual, transgender and intersex persons in many fields of public life (art. 2 (2)).
25. The Committee recommends that the State party take effective measures to eliminate de jure and de facto discrimination against lesbian, gay, bisexual, transgender and intersex persons. In particular, it recommends that the State party:
- (a) Abrogate the provision of the military criminal act, which criminalizes same-sex acts;
 - (b) Revise legal and regulatory provisions that are discriminatory or have a discriminatory effect, such as those relating to social security, reproductive health and housing;
 - (c) Ensure that the comprehensive anti-discriminatory law to be adopted also prohibits discrimination on the grounds of sexual orientation and gender identity;
 - (d) Conduct awareness-raising campaigns to counter prejudices regarding lesbian, gay, bisexual, transgender and intersex persons.

Keywords: LGBTI; discrimination, hate speech, health, measures, suicide

Suicide

55. While noting the implementation of successive plans to address the high level of suicide in the State party and the system of gatekeepers that has been introduced, the Committee regrets the lack of information about measures taken to tackle the societal root causes of the still high rate of suicide in the State party.
56. The Committee recommends that the State party strengthen efforts to prevent suicide, including by addressing its societal root causes, including undue stress in education and employment, poverty among older persons and discrimination and hate speech experienced by certain groups, such as lesbian, gay, bisexual, transgender and intersex persons.

23 [E/C.12/KOR/Q/4.](#)

24 [E/C.12/KOR/CO/4.](#)

Republic of Moldova – List of Issues – 60th PSWG, 3 March 2017, 3rd review²⁵

Keywords: SOGI; anti-discrimination legislation, discrimination, legislation

Non-discrimination (art. 2 (2))

8. Please provide information on the steps taken to ensure that the national anti-discrimination legislation, including the Constitution and the Law on Ensuring Equality (2012), effectively prohibit discrimination on any ground, including health status, wealth, social origin and sexual orientation and gender identity, in all aspects of life.

Republic of Moldova – Concluding Observations – 62nd session, 19 October 2017, 3rd review²⁶

Keywords: SOGI; access to justice, anti-discrimination legislation, discrimination, GC/GR, intersectionality, legislation, remedy

Non-discrimination

18. The Committee is concerned that anti-discrimination provisions, including law No. 121 on ensuring equality, do not provide for the prohibition of discrimination on the grounds referred to in article 2 (2) of the Covenant and in all aspects of life, or address multiple and intersectional discrimination (art. 2 (2)).
19. The Committee recommends that the State party review its anti-discrimination legislation, particularly the law on ensuring equality, with a view to providing for the prohibition of all direct, indirect and multiple forms of discrimination on all grounds, including health status, wealth, social origin, sexual orientation and gender identity. Such a law should provide for effective remedies for victims of discrimination, including within judicial and administrative proceedings. It draws the attention of the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

25 [E/C.12/MDA/Q/3](#).

26 [E/C.12/MDA/CO/3](#).

Russian Federation – List of Issues – 60th PSWG, 9 March 2017, 6th review²⁷

Keywords: *LGBT; access to justice, court, data collection, discrimination, education, employment, hate crimes, health, investigation, jurisprudence, measures, service provision*

Non-discrimination (art. 2 (2))

12. Please provide information on discriminatory practices employed against lesbian, gay, bisexual and transgender individuals in access to employment, health-care services and education, detailing any disciplinary or judicial measures undertaken in relation to such practices. Please also provide statistical data covering the years 2013-2016 on investigations launched into reported attacks against lesbian, gay, bisexual and transgender individuals, including rulings of relevant court cases.

Russian Federation – Concluding Observations – 62nd session, 16 October 2017, 3rd review²⁸

Keywords: *SOGI; LGBT, T; anti-discrimination legislation, discrimination, GC/GR, legislation, LGR, marriage, prosecution, protected grounds, punishment, same-sex couples, stigmatisation*

Non-discrimination

22. The Committee is concerned about the continuous absence of comprehensive anti-discrimination legislation, despite the information provided by the delegation on existing anti-discrimination provisions, including in the State party's Constitution and Criminal Code. The Committee is also concerned about the prevalence of societal stigma and discrimination, in particular on the grounds of disability, ethnicity, sexual orientation, gender identity or health status (art. 2).
23. The Committee recommends that the State party take steps to adopt comprehensive anti-discrimination legislation, encompassing all grounds of discrimination, including sexual orientation and gender identity, taking into account the Committee's general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights. It also recommends that the State party:
 - (a) Recognize that individuals in same-sex relationships are entitled to equal enjoyment of Covenant rights, including by extending to them benefits reserved to married couples, and repeal or amend all legislation, including Federal Law No. 135, that could result in discrimination, prosecution and punishment of people because of their sexual orientation or gender identity;
 - (b) Put in place a quick, transparent and accessible procedure for legal gender recognition, to facilitate the enjoyment of Covenant rights by transgender persons;
 - (c) Take all the necessary steps to prevent and combat societal discrimination against lesbian, gay, bisexual and transgender persons, persons with disabilities, stateless persons, persons belonging to minorities, including Roma, indigenous peoples, people working in the sex industry and drug users, and ensure the equal enjoyment of Covenant rights.

Keywords: *LGBT; bullying, children, education, family, GC/GR, harassment, policy*

Right to education

56. The Committee notes the progress made in increasing access to quality education by the general population and the substantial level of public spending on education. The Committee remains, however, concerned about the:

[...]

 - (c) Instances of harassment in schools, including against lesbian, gay, bisexual or transgender children or children of lesbian, gay, bisexual or transgender families; [...]
57. The Committee recommends that the State party pursue its efforts towards achieving universal access to quality education. In doing so, the State party should ensure just and fair distribution of resources across the regions and pay particular attention to rural areas. The Committee also recommends that the State party:

27 [E/C.12/RUS/Q/6.](#)

28 [E/C.12/RUS/CO/6.](#)

[...]

(b) Implement a zero-tolerance policy against harassment in schools, paying particular attention to lesbian, gay, bisexual or transgender children or children of lesbian, gay, bisexual or transgender families, and ensure effective protection of victims of bullying and their families;

[...]

(e) Take into account the Committee's general comment No. 13 (1999) on the right to education.

South Africa – List of Issues – 61st PSWG, 1 November 2017, initial report²⁹

Keywords: *I; children, data collection, decision-making process, free and informed consent, health, IGM, legislation, LGR, measures, surgical/medical intervention*

Non-discrimination (art. 2 (2))

7. Please provide information on the measures taken to effectively implement the Alteration of Sex Description and Sex Status Act. Please also provide information on the number of surgeries performed on intersex infants and children; on the measures taken to address the severe physical and mental risks facing intersex infants and children undergoing such surgery without free and informed consent; and whether the State party intends to address the problems caused by the performance of such surgery.

Keywords: LGBTI; discrimination, legislation, measures, policy

Non-discrimination (art. 2 (2))

9. Please provide information on the measures taken by the State party to repeal all legal and regulatory provisions that discriminate or have discriminatory effects on lesbian, gay, bisexual, transgender and intersex persons, and on policies adopted to protect them against discrimination.

Keywords: SOGI; anti-discrimination legislation, GC/GR, legislation, protected grounds

Non-discrimination

13. The Committee is concerned that the State party has not yet adopted a comprehensive anti-discrimination law. It also notes with concern that although the Constitution establishes the principle of equality and non-discrimination under article 12 (2), prohibiting discrimination on the grounds of race, religion, language, caste, sex, political opinion and place of birth, it does not include the grounds of colour, national or ethnic origin, disability, sexual orientation or gender identity (art.2).
14. **The Committee recommends that the State party adopt a comprehensive anti-discrimination law, in accordance with article 2 of the Covenant. It also recommends that it expand the non-discrimination clause in article 12 (2) of the Constitution to include, inter alia, the grounds of colour, national or ethnic origin, disability, sexual orientation or gender identity. The Committee draws the State party's attention to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.**

Keywords: SOGI; LGBTI; criminalisation (decriminalisation), discrimination, education, employment, hate speech, health, housing, internet, law enforcement officials, medical professionals, professional groups, trainings, violence

17. The Committee is concerned that consensual same-sex sexual conduct continues to be criminalized. It is concerned that discrimination against lesbian, gay, bisexual, transgender and intersex persons is widespread, including in law enforcement, employment, health care, housing and education, and that lesbian, gay, bisexual, transgender and intersex persons have been subjected to threats and attacks on social media on the basis of their sexual orientation or gender identity (art. 2).
18. **The Committee urges the State party to amend the Penal Code with a view to decriminalizing consensual same-sex sexual conduct. It recommends that the State party take urgent steps to combat and prevent violence against lesbian, gay, bisexual, transgender and intersex persons, and to ensure their equal enjoyment of all human rights, in particular their right to health, education, work and housing. It also recommends that the State party develop and implement training programmes to educate and sensitize law enforcement officers, teachers, health-care workers and public employees on issues affecting lesbian, gay, bisexual, transgender and intersex persons.**

30 [E/C.12/LKA/Q/5.](#)

31 [E/C.12/LKA/CO/5.](#)

Keywords: *GI; anti-discrimination legislation, discrimination, education, employment*

Non-discrimination (art. 2 (2))

5. Please indicate whether the State party intends to establish comprehensive anti-discrimination legislation. Please provide information on the implementation of those provisions of laws that prohibit discrimination in the State party, in particular in the fields of education and employment, and whether those provisions effectively prohibit discrimination on all grounds, including national or social origin and gender identity, in all aspects of life. Please indicate what measures have been taken to combat and prevent discrimination against persons with disabilities, in particular with respect to the right to education and housing.

Keywords: SOGI; discrimination, education, employment, health, measures, service provision, SRHR

Non-discrimination (art. 2 (2))

7. Please provide information and statistical data on the impact of the measures taken to combat discrimination against persons with disabilities. Please also provide information on the impact of the measures taken to combat discrimination on the grounds of sexual orientation and/or gender identity, particularly with respect to access to employment, education and health services, including sexual and reproductive health services.

2. Human Rights Committee

Algeria – List of Issues – 121st session, 24 November 2017, 4th review³⁴

Keywords: SGI; access to justice, anti-discrimination legislation, discrimination, intersectionality, legislation, protected grounds, remedy

Non-discrimination (art. 2, 3, 13, 25, 26 and 27)

7. In view of the constitutional guarantee of the right to non-discrimination, please provide more information on the legal framework for combating discrimination and indicate, in particular, whether there is comprehensive anti-discrimination legislation (a) providing a clear definition of direct, indirect and multiple discrimination, whether occurring in public or in private, and clearly criminalizing all forms of the practice, (b) including an exhaustive list of the prohibited grounds for discrimination set forth in the Covenant, including sexual identity and gender and disability, and (c) providing effective judicial and administrative remedies for victims.

Keywords: LG, T; court, criminalisation (decriminalisation), discrimination, hate speech, jurisprudence, measures, stereotypes, stigmatisation, violence

8. In particular, please describe the measures taken to combat and prevent acts of discrimination, stigmatization, violence and hate speech against (a) migrants and asylum seekers, (b) the Mozabite people, (c) the Amazigh people, and (d) lesbian, gay, transsexual and transgender persons. In this regard, please describe the measures that the State party intends to take to (a) combat the widespread stereotyping and stigmatization directed against homosexuals, and (b) revise article 338 of the Criminal Code criminalizing private sexual activity between consenting adults of the same sex. Please provide examples of judicial decisions relating to combating discrimination that have been handed down in the past five years.

Keywords: SOGII; anti-discrimination legislation, legislation, LGR, measures

B. Positive aspects

3. The Committee commends the State party for its commitment to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It welcomes the following measures taken by the State party:

[...]

- (d) The amendments to the Sex Discrimination Act 1984, prohibiting discrimination on the basis of sexual orientation, gender identity and intersex status, in 2013;
- (e) The adoption of the Australian Government Guidelines on the Recognition of Sex and Gender of July 2013.

Keywords: SOGII; I; children, decision-making process, free and informed consent, health, IGM, stereotypes, sterilisation, surgical/medical intervention

Sexual orientation, gender identity and intersex status

25. The Committee is concerned that infants and children born with intersex variations are sometimes subject to irreversible and invasive medical interventions for purposes of gender assignment, which are often based on stereotyped gender roles and are performed before the children concerned are able to provide fully informed and free consent (arts. 3, 7, 9, 17, 24 and 26).
26. The State party should give due consideration to the recommendations the Senate Standing Committee on Community Affairs made in its 2013 inquiry report on involuntary or coerced sterilization of intersex persons, and move to end irreversible medical treatment, especially surgery, of intersex infants and children, who are not yet able to provide fully informed and free consent, unless such procedures constitute an absolute medical necessity.

Keywords: SOGII; T; adolescents, children, court, decision-making process, family, gender reassignment surgeries, gender reassignment treatment, health, LGR, marriage, medical professionals, service provision, surgical/medical intervention

27. The Committee notes that Family Court authorization is required for stage two hormone treatment for young people diagnosed with gender dysphoria. It is concerned that the delays and costs associated with obtaining the Court's authorization may compromise the success of such hormone treatment for the individuals concerned and cause them psychological harm, and welcomes the State party's willingness to reconsider the role of the Family Court in such matters. The Committee is also concerned that most states and territories require transgender persons to undergo surgical or medical treatment and be unmarried as a prerequisite for changing the legal record of their sex on cardinal documents (arts. 7, 17 and 26).

28. The State party should:

- (a) Consider ways to expedite access to stage two hormone treatment for gender dysphoria, including by removing the need for court authorization in cases featuring uncontested agreement among parents or guardians, the child concerned and the medical team, as long as the treatment is provided in accordance with the relevant medical guidelines and standards of care;
- (b) Take the measures necessary to remove surgery and marital status requirements for sex change on birth, death and marriage certificates, taking into account the Committee's Views in communication No. 2172/2012, *G. v. Australia*.

Keywords: SOGII; LGBTI; decision-making process, discrimination, family, legislation, marriage, policy, same-sex couples, stigmatisation

29. The Committee is concerned about the explicit ban on same-sex marriage in the Marriage Act 1961, which results in discriminatory treatment of same-sex couples, including in matters relating to divorce of couples who married overseas. While noting that the State party is currently conducting a voluntary, non-binding postal survey on the legalization of same-sex marriage, the Committee is of the view that

resort to public opinion polls to facilitate upholding rights under the Covenant in general, and equality and non-discrimination of minority groups in particular, is not an acceptable decision-making method and that such an approach risks further marginalizing and stigmatizing members of minority groups (arts. 17 and 26).

30. The State party should revise its laws, including the Marriage Act, to ensure, irrespective of the results of the Australian Marriage Law Postal Survey, that all its laws and policies afford equal protection to lesbian, gay, bisexual, transgender and intersex persons, couples and families, also taking into account the Committee's Views in communications No. 2172/2012, *G. v. Australia*, and No. 2216/2012, *C. v Australia*.

Keywords: SOGI; access to justice, anti-discrimination legislation, discrimination, remedy

Non-discrimination, equality between men and women and the rights of minorities (arts. 2, 3, 18, 23, 26 and 27)

5. Please indicate what steps have been taken to adopt comprehensive anti-discrimination legislation that outlaws discrimination on the grounds addressed by the Covenant, including race, colour, sex, language, religion, political or other opinion, national or social origin, property and birth or other status, as well as sexual orientation and gender identity, disability and age. Please provide information on the judicial and administrative remedies available in cases of discrimination. Please provide detailed information on the steps taken to ensure the rights of all persons with disabilities and the accomplishments of the national strategy on the rights of persons with disabilities (2012–2016), as well as on any successor strategy.

Keywords: SOGI; awareness-raising campaign, court, criminalisation (decriminalisation), discrimination, law enforcement officials, legislation, measures, prosecution

9. Please 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 to promote sensitivity and tolerance among law enforcement officers, prosecutors, courts and the general public. Please respond to reports that persons have been prosecuted for same-sex conduct under provisions of the Penal Code regarding, inter alia, “debauchery” and “obscenity”.

Keywords: *criminalisation (decriminalisation), legislation*

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

4. [...] Please clarify the status under domestic law of same-sex relationships between consenting adults and about the possibility in law to terminate a pregnancy with the consent of the woman (ibid., para. 46).

Keywords: *SOGL; LGBT, T; access to justice, awareness-raising campaign, anti-discrimination legislation, criminalisation (decriminalisation), discrimination, education, employment, harassment, investigation, legislation, prosecution, protected grounds, punishment, remedy, same-sex couples, service provision, stigmatisation, surgical/medical intervention, violence*

Non-discrimination

11. While noting that pursuant to article 28 of the Constitution the State will not discriminate against citizens on the limited grounds of religion, race, caste, sex or place of birth, the Committee is concerned that the anti-discrimination bill, 2015, has not yet been adopted and that discrimination against certain groups continues to occur, such as:

[...]

(e) Criminalization under section 377 of the Penal Code of consensual sexual acts between same-sex couples, which are termed “unnatural behaviour”, stigmatization, harassment and violence against lesbian, gay, bisexual and transgender persons, barriers to assistance in seeking employment of “hijras”, who are considered as transgender persons, by the administration of invasive and humiliating medical examinations to prove transgender status (arts. 2-3 and 26-27).

12. The State party should ensure that the anti-discrimination bill, 2015, protects against direct and indirect discrimination in the public and private sphere based on a comprehensive list of grounds for discrimination, including colour, descent, caste, national or ethnic origin, religion, sexual orientation and gender identity, disability and other status, and provide for effective remedies in case of violations. The State party should also accelerate the adoption of this bill and ensure its effective implementation. It should also develop education campaigns for schools, government officials and the general public to promote tolerance and appreciation for diversity and non-discrimination. Furthermore, the State party should:

[...]

(e) Decriminalize consensual sexual acts between same-sex couples, provide protection to lesbian, gay, bisexual and transgender persons from violence and harassment by ensuring that all cases are promptly investigated and that perpetrators are prosecuted and punished with appropriate sanctions, and eliminate barriers to employment and violations to the dignity of “hijras”.

37 [CCPR/C/BGD/Q/1](#).

38 [CCPR/C/BGD/CO/1](#).

Bosnia and Herzegovina – List of Issues Prior to Reporting – 115th session, 24 November 2015, 3rd review³⁹

Keywords: SO; access to justice, anti-discrimination legislation, data collection, discrimination, hate crimes, law enforcement officials, legislation, measures, police, police misconduct, prosecution, punishment, violence

Equality, non-discrimination and hate crimes (arts. 2 and 26)

9. Please indicate the measures taken to combat discrimination and violence based on sexual orientation, as well as the steps taken to enforce the state-level law prohibiting discrimination based on sexual orientation and to review entity-level laws. Please provide data on the number of persons that have been attacked because of their sexual orientation, including by police or other security forces, and specify whether perpetrators have systematically been prosecuted and punished.

Bosnia and Herzegovina – Concluding Observations – 119th session, 13 April 2017, 3rd review⁴⁰

Keywords: SOGI; LGBT; access to justice, hate crimes, investigation, law enforcement officials, police, prosecution, punishment, stereotypes, trainings, violence

Gender discrimination

25. While welcoming the adoption of amendments to the Law on Prohibition of Discrimination and an annual plan for the implementation of the gender action plan, the Committee is concerned about the persistent low rates of participation of women in political life and in the labour market. It is also concerned about reports that police officers do not investigate attacks against lesbian, gay, bisexual and transgender persons, especially during public assemblies (arts. 2-3 and 26).
26. The State party should redouble its efforts to increase the representation of women in political life and to fully integrate them in the labour market. It should also ensure effective identification, recording, investigation, prosecution and adequate punishment of acts of violence motivated by sexual orientation or gender identity of victims, and intensify its efforts to combat stereotypes and prejudice against lesbian, gay, bisexual and transgender persons, including by providing training to law enforcement officials.

39 [CCPR/C/BIH/QPR/3](#).

40 [CCPR/C/BIH/CO/3](#).

Cameroon – List of Issues Prior to Reporting – 103rd session, 29 November 2011, 5th review⁴¹

Keywords: SO; court, criminalisation (decriminalisation), data collection, detention, discrimination, follow-up, hate crimes, measures, prevention, sexual violence, violence

Equal rights of men and women and prohibition of discrimination (arts. 2, 3 and 26)

8. With regard to one of the recommendations in the Committee's previous concluding observations (para. 12), please provide information on the status of homosexuals in Cameroon. Please indicate the measures taken to date in order to decriminalize consensual sexual relations between adults of the same sex and to bring the Penal Code into line with the Covenant. Please provide statistics for the period 2010–2013, including statistics broken down by sex, age and ethnicity, on the number of persons arrested under article 347 (a) of the Penal Code. Please also indicate the progress of the proceedings in the Roger Jean-Claud Mbede case. Please list the measures taken by the State party to prevent acts of violence against individuals on account of their real or supposed sexual orientation. Lastly, please provide information on the measures taken by the State party to protect homosexual prisoners from discrimination, sexual abuse and physical violence.

Cameroon – Concluding Observations – 121st session, 30 November 2017, 5th review⁴²

Keywords: SOGI; LGBTI; access to justice, anti-discrimination legislation, criminalisation (decriminalisation), detention, discrimination, internet, investigation, law enforcement officials, legislation, protected grounds, punishment, reparation, violence

Discrimination on grounds of sexual orientation and gender identity

13. The Committee reiterates its concerns about section 347 bis of the Penal Code, which criminalizes sexual relations between consenting adults of the same sex. It is concerned as well about section 83 of Act No. 2010/012 of 21 December 2010 on cybersecurity and cybercrime, which criminalizes the sexual propositioning of an adult of the same sex by means of electronic communication. The Committee also deplores the alleged existence of: (a) discrimination against lesbian, gay, bisexual, transgender and intersex persons; (b) pretrial detention of lesbian, gay, bisexual, transgender and intersex persons for extended periods of time, in violation of section 221 of the Code of Criminal Procedure; and (c) acts of violence committed against such persons in places of detention by both other detainees and prison staff (arts. 2, 7, 9, 17 and 26).
14. The State party should consider reviewing section 347 bis of the Penal Code and section 83 of Act No. 2010/012 and should take all appropriate steps with a view to: (a) enacting 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; and (b) protecting lesbian, gay, bisexual, transgender and intersex persons, safeguarding their fundamental human rights and ensuring that all cases of discrimination or violence are, without fail, investigated, that the perpetrators are brought to justice and convicted, and that the victims receive adequate compensation.

41 [CCPR/C/CMR/Q/5](#).

42 [CCPR/C/CMR/CO/5](#).

Keywords: SOGI; access to justice, anti-discrimination legislation, discrimination, legislation, measures, protected grounds, punishment, remedy

Discrimination, gender equality and harmful traditions (arts. 2, 3, 17, 23, 25 and 26)

5. With reference to the Committee's previous concluding observations (para. 7), please indicate whether the State party has taken steps to establish a definition of discrimination and appropriate penalties in its legislation. Please also provide information on the measures taken to ensure that the State party's legislation: (a) prohibits all forms of discrimination in all spheres; (b) contains a comprehensive list of prohibited grounds of discrimination, which should include sexual orientation and gender identity; and (c) provides for effective administrative and judicial remedies.

Keywords: *LGBTI; access to justice, data collection, hate crimes, hate speech, internet, investigation, legislation, measures, media, prosecution, protected grounds*

Non-discrimination, equality between men and women (arts. 2, 3, 20, 25, 26 and 27)

6. Please provide information on the measures taken to address the reported proliferation of hate speech against Roma, migrants, Muslims, Jews and lesbian, gay, bisexual, transgender and intersex persons, including by politicians at the national and local levels and by high-level officials and in the media, as well as physical attacks against members of minority groups. Please indicate the measures taken to increase the investigation and prosecution rate for such crimes and provide relevant statistical data on the number of complaints, investigations and prosecution and their outcome. Please indicate the measures taken to address the dissemination of hatred against such people through web pages and social media providers registered outside the country. Please also indicate whether the State party is considering revising the Criminal Code, in particular sections 352, 355 and 356, to cover a wider range of grounds on which hate speech and crimes are based. Please further provide information on the implementation of the Fight Against Extremism Strategy.

Keywords: *adoption, children, court, family, jurisprudence, legislation, measures, partnership, same-sex couples*

10. Please provide information on the measures taken to implement the judgment of the Constitutional Court that section 13 (2) of the Registered Partnership Act is unconstitutional and that the provision should be repealed. Please indicate whether there are any plans to recognize the right of same-sex couples to adopt a child.

Keywords: *SO; adolescents, detention, hate crimes, hate speech, law enforcement officials, measures, prevention, torture/ill-treatment*

Right to liberty and security of person, treatment of persons deprived of their liberty, fair trial and independence of the judiciary (arts. 7, 9, 10, 14, and 24)

17. Please indicate the measures taken to prevent and prohibit ill-treatment by prison officers, including physical ill-treatment and verbal abuses of a racist nature and based on presumed sexual orientation, particularly against juveniles. Please also provide information on the measures taken by the State party to respond to a number of allegations that inmates with learning disabilities suffered humiliation by the custodial staff at Brno Remand Prison and on the measures to prevent such incidents from reoccurring. Furthermore, please comment on the conditions of work of prisoners and provide updated information on monthly wages and the deduction of imprisonment costs from prisoners' salaries.

Keywords: SOGI; anti-discrimination legislation, criminalisation (decriminalisation), discrimination, measures, prosecution, protected grounds, reparation, violence

Non-discrimination

13. The Committee is concerned about allegations that some individuals have been: (a) subjected to discrimination and violence because of their sexual orientation or gender identity; and (b) prosecuted under article 176 of the Criminal Code (concerning activities contrary to public decency) because of their sexual orientation. While taking note of the comments made orally by the delegation, the Committee recalls that, although it respects the diversity of cultures and moral values in the world, they must always be subordinate to the Covenant principles of universality and non-discrimination in the enjoyment of human rights. The Committee is also concerned about the lack of measures to address reported cases of discrimination and violence against persons with albinism and about the absence of comprehensive anti-discrimination legislation (arts. 2, 6, 7, 17 and 26).
14. The State party should: (a) take effective measures to prevent discrimination and acts of violence based on discrimination, and ensure that victims receive full reparation; (b) guarantee the protection and enjoyment, on an equal footing, of Covenant rights for all persons with albinism; (c) ensure that no one is prosecuted under article 176 of the Criminal Code by reason of sexual orientation or gender identity; and (d) 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.

Dominican Republic – List of Issues – 119th session, 27 April 2017, 6th review⁴⁶

Keywords: SOGI; LGBTI, T; access to justice, awareness-raising campaign, data collection, discrimination, employment, follow-up, harassment, investigation, legislation, measures, police, prevention, punishment, reparation, stigmatisation, violence, women

Sexual orientation and gender identity (arts. 6, 7, 17 and 26)

5. Bearing in mind the Committee's previous concluding observations (CCPR/C/DOM/CO/5, para. 16), please provide information on the measures taken to prevent, punish and eradicate, fully and effectively, the social stigmatization, harassment, discrimination and violence suffered by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, especially transgender women. Please provide disaggregated statistical information on the complaints received, investigations conducted, penalties imposed, reparation provided and the assistance and compensation offered to victims of such violations, including the measures adopted to give effect to the relevant provisions of the Criminal Code of 2016. Please also provide information on the extent of the discrimination suffered by LGBTI persons in the police force, including the steps taken to repeal the relevant articles of Act No. 285-66. In addition, please provide information on the awareness-raising campaigns conducted with a view to eradicating violence based on sexual orientation and gender identity.

Keywords: SOGI; access to justice, awareness-raising campaign, measures, reparation, violence, women

Violence against women, including domestic violence, sexual orientation and gender identity (arts. 3, 6, 7, 14, 17 and 26)

7. Bearing in mind the Committee's previous concluding observations (CCPR/C/DOM/CO/5, para. 11), and in the light of the Attorney General's November 2016 announcement of a comprehensive action plan to combat gender-based violence in all spheres, please describe the measures taken during this period to prevent, punish, provide comprehensive victim support and, in short, eradicate sexual and gender-based violence, including measures to encourage the filing of complaints and guarantee effective access to justice, as well as protective measures, especially in rural areas, and specific legislative measures. Please describe the steps taken to establish a national statistical register on these issues and provide the following information: (a) the number of femicides and rapes recorded during the reporting period, including in 2016; (b) the number of complaints of gender-based violence received per year; (c) the number of temporary restraining orders issued; (d) the prosecutions carried out, sentences handed down and penalties imposed; (e) the reparation provided to victims; and (f) the current capacity of shelters for victims of gender-based violence, indicating whether the shelters cover existing demand. Please provide information on the training dispensed to the staff of judicial institutions and the police on violence against women, including sexual harassment and domestic violence, since the adoption of the Committee's previous concluding observations. Please also provide information on the awareness-raising campaigns conducted to condemn violence against women, fight the social stigmatization of victims, encourage the filing of complaints and explain the reparations available, including programmes targeting marginalized groups. Please describe the results of the Strategic Plan for the Prevention, Detection, Handling and Punishment of Violence against Women and Domestic Violence (2011-2016), and the steps being taken to replace it. Lastly, please provide information on the incidence of underage marriage and the measures taken to address this issue.

Dominican Republic – Concluding Observations – 121st session, 27 November 2017, 6th review⁴⁷

Keywords: SOGI; LGBTI, T; access to justice, anti-discrimination legislation, awareness-raising campaign, discrimination, hate crimes, investigation, law enforcement officials, legislation, LGR, police, police misconduct, punishment, reparation, same-sex couples, stereotypes, trainings, violence

Non-discrimination

9. The Committee is concerned at the lack of a comprehensive legal framework against discrimination and at reports regarding systematic racial discrimination against persons of Haitian descent, the vulnerable situation of Haitian migrants and the violence and assaults to which they are subjected. It is further concerned at reports of discrimination experienced by persons with disabilities in terms of access to basic services, education and employment, as shown, for example, by the low employment rate

⁴⁶ [CCPR/C/DOM/Q/6](#).

⁴⁷ [CCPR/C/DOM/CO/6](#).

among women with disabilities. It is also concerned at reports of discrimination, violence and assault, including by the police, against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons and, in particular, at the high rate of violence against transgender persons. The Committee regrets the lack of information on investigations, trials and penalties in cases of discrimination and violence against these persons (arts. 2, 3, 25, 26 and 27).

10. The State party should take the necessary steps to ensure full protection against discrimination and to eradicate, in law and in practice, stereotypes and discrimination against persons of Haitian descent, including Haitian migrants, persons with disabilities and LGBTI persons, by inter alia increasing the number of training programmes for law enforcement personnel and awareness-raising campaigns promoting tolerance and respect for diversity. In addition, it should adopt laws to prohibit discrimination and hate crimes on grounds of sexual orientation or gender identity and fully recognize the equality of same-sex couples and the legal identity of transgender persons. It should also ensure that cases of discrimination and violence committed by individuals or State officials are systematically investigated, that those held to be responsible are punished with appropriate penalties and that victims have access to comprehensive reparation.

Keywords: SOGI; LGBTI, T; access to justice, anti-discrimination legislation, awareness-raising campaign, discrimination, follow-up, hate crimes, law enforcement officials, legislation, LGR, punishment, reparation, same-sex couples, stereotypes, trainings

D. Dissemination and follow-up

36. In accordance with rule 71 (5) of the Committee's rules of procedure, the State party is requested to provide, by 10 November 2019, relevant information on its implementation of the Committee's recommendations made in paragraphs 10 (non-discrimination), 16 (voluntary termination of pregnancy and reproductive rights) and 26 (statelessness).

Keywords: SOGI; LGBTI; anti-discrimination legislation, arrest, criminalisation (decriminalisation), legislation, measures, protected grounds, stereotypes, violence

Non-discrimination towards LGBTI (arts. 2 and 26)

29. Please provide updated information on the State party's efforts to decriminalize same sex relationships by repealing sections 144-147 of the Criminal Code, 1965, as amended in 2005. Please also describe measures taken to deal with stereotypes in society with regard to homosexuality, which is largely considered to be taboo and repugnant to cultural values and to protect lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals from arbitrary arrests and violence. Please provide an update on the measures taken to adopt a comprehensive equality and non-discrimination law that expands the grounds for non-discrimination to include sexual orientation and gender identity.

Keywords: *GI; T; adoption, children, detention, family, measures, legislation, LGR, same-sex couples*

Non-discrimination and equality (arts. 2, 3, 9, 17, 26 and 27)

6. Please report on measures taken to ensure respect for the rights of same-sex couples, and on any steps taken towards the legal recognition of same-sex couples, including with respect to adoption rights. Please provide information on proposals to revoke or amend article 321 of the Criminal Code. Please provide information on detentions, particularly of transgender persons, based on the Act on Policing and Harmonious Social Relations. Please also provide information on efforts to adopt a gender identity law.

Keywords: *LGBTI; access to justice, data collection, domestic violence, family, investigation, killings, legislation, measures, prosecution, punishment, reparation, sexual violence, shelters, stereotypes, stigmatisation, support services, violence, women*

Violence against women (arts. 3 and 7)

7. In the light of the Committee's previous concluding observations (see CCPR/C/HND/CO/1, para. 7), please comment on the steps taken to address femicide, domestic violence, sexual abuse and other forms of violence against women, and include information on the measures taken at the family, community and State levels. Please provide disaggregated data on the number of deaths resulting from each type of crime, complaints, investigations and prosecutions and the sentences imposed and the compensation received by victims or relatives. Please also disaggregate that information by women of African descent, indigenous women, lesbian, gay, bisexual, transgender and intersex persons and sex workers. Please provide information on the measures adopted to: (a) ensure that victims overcome stigma and fear of reprisals when lodging a complaint; (b) ensure that protection measures, including shelters, counselling centres and assistance, are available to victims and witnesses of violence; (c) guarantee access to justice, including compensation; (d) ensure that those responsible are prosecuted and punished; (e) change social and cultural patterns and stereotypes; and (f) ensure the effective implementation of article 118-A of the Criminal Code on femicide.

Keywords: *LGBTI; data collection, family, FOE/FOAA, HRD, investigation, killings, measures, prosecution, punishment, reparation, violence*

Right to privacy, freedom of expression and association and peaceful assembly (arts. 9, 17, 19, 21, 22 and 25)

20. In the light of the Committee's previous concluding observations (see CCPR/C/HND/CO/1, para. 17), please provide information on the measures taken to: (a) prevent acts of violence against human rights defenders, journalists, media and legal professionals, persons responsible for the administration of justice, leaders of indigenous communities, persons of African descent, peasant leaders, environmentalists, members of the lesbian, gay, bisexual, transgender and intersex community and other activists; (b) prevent anti-union discrimination by the State party and by employers, including efforts to suppress freedom of association and collective bargaining; (c) implement the law on the protection of human rights defenders, journalists, social communicators and justice officials; (d) effectively decriminalize defamation, slander and libel; and (e) ensure that journalists and human rights defenders can carry out their activities without fear of reprisals and without being criminalized. Please also provide information on the process of registering non-governmental organizations, and on the number of organizations that have been refused registration, particularly organizations that protect the rights of lesbian, gay, bisexual, transgender and intersex persons. Please provide data disaggregated at least by gender on the number of complaints, investigations, prosecutions, convictions, sentences and the compensation received by victims or relatives regarding attacks on the above-mentioned persons, including updated information on the killings of Berta Cáceres, Nelson Noé García and René Martínez. [...]

Keywords: *SOGI; LGBTI, T; anti-discrimination legislation, discrimination, hate crimes, LGR, same-sex couples*

49 [CCPR/C/HND/Q/2](#).

50 [CCPR/C/HND/CO/2](#).

Non-discrimination

10. The Committee is concerned about the discrimination experienced by women, the Afro-Honduran community, indigenous peoples and persons living in rural areas. The Committee is also concerned that too few indigenous peoples and Afro-Hondurans are part of representative political bodies or the Government. The Committee is further concerned about the discrimination experienced by lesbian, gay, bisexual, transgender and intersex persons, including with respect to the rights of same-sex couples and the identity of transgender persons (arts. 2, 3, 25, 26 and 27).
11. **The State party should ensure comprehensive protection against discrimination, including discrimination against women, the Afro-Honduran community and indigenous peoples and discrimination on grounds of sexual orientation and gender identity. The State party should strengthen the National Institute for Women, in particular through an increase in its budget and the effective implementation of the Second Gender Equality and Equity Plan, 2010-2022. It should also ensure that the equality of same-sex couples and the identity of transgender persons are fully recognized and that lesbian, gay, bisexual, transgender and intersex persons are fully protected against hate crimes. The State party should adopt measures to increase the number of indigenous persons and Afro-Hondurans in public and political life.**

Keywords: *LGBTI; access to justice, data collection, detention, education, FOE/FOAA, hate speech, HRD, investigation, killings, law enforcement officials, legislation, professional groups, punishment, reparation, stigmatisation, trainings, violence*

Freedom of expression, freedom of association and violence against human rights defenders

40. The Committee remains extremely concerned at the acts of violence and intimidation and the persistently high murder rates among, inter alios, human rights defenders, journalists, trade unionists, environmental activists, indigenous persons and lesbian, gay, bisexual, transgender and intersex persons, and which are committed by State officials and private individuals and result in the death of persons such as Berta Cáceres who were protected under precautionary measures issued by the Inter-American Commission on Human Rights. The Committee is also concerned about the excessive recourse to provisions on defamation and other criminal offences against persons exercising their rights to freedom of expression, freedom of assembly and freedom of association and about the continued stigmatization of such persons by government officials. The Committee is further concerned by the conviction on 7 June 2017 of three students of the National Autonomous University of Honduras and by the criticism that members of the Government, among others, levelled at the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Office of the National Commissioner for Human Rights in relation to their work promoting respect for the right to peaceful protest. While the Committee notes the adoption of the Act on the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Officials, it regrets that it has not been adequately implemented. The Committee also notes the fact that defamation, libel and insult do not carry a prison sentence (arts. 6, 7, 19, 21 and 22).
41. **The State party should, as a matter of urgency, take practical steps to:**
 - (a) Provide effective protection to, inter alios, 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;
 - (b) Increase training and education programmes on the importance of freedom of expression, freedom of association and freedom of assembly for law enforcement officers, military personnel, staff of private security companies, judges and prosecutors;
 - (c) Ensure that all allegations concerning intimidation, threats and assault are investigated promptly, thoroughly, independently and impartially, that the perpetrators are brought to justice and duly punished in accordance with the gravity of the offence and that victims receive full reparation;
 - (d) Set up a mechanism to ensure that acts of violence and threats against human rights defenders are properly investigated and are not treated as ordinary offences; consider introducing a protocol for the Attorney General's Office on the investigation of such offences; and extend the jurisdiction of the Unit for the Protection of Human Rights Defenders to include offences committed by private individuals;
 - (e) Consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious cases, and imprisonment is never an appropriate penalty;

(f) 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.

Keywords: LGBTI; data collection, FOE/FOAA, follow-up, killings, violence

D. Dissemination and follow-up

49. In accordance with rule 71 (5) of the Committee's rules of procedure, the State party should provide, within one year following the adoption of the present concluding observations, relevant information on its implementation of the Committee's recommendations made in paragraphs 17 (voluntary termination of pregnancy), 21 (right to life), 41 (freedom of expression and human rights defenders) and 47 (rights of minorities and indigenous peoples).

Italy – List of Issues – 117th session, 26 July 2016, 6th review⁵¹

Keywords: SOGI; access to justice, adoption, anti-discrimination legislation, children, discrimination, family, intersectionality, legislation, partnership, protected grounds, remedy, same-sex couples

Non-discrimination, equality between men and women, rights of minorities and prohibition of advocacy of national, racial or religious hatred (arts. 2, 3, 20, 23, 25, 26 and 27)

3. Please clarify whether the anti-discrimination provisions of article 3 of the Constitution cover all the prohibited grounds of discrimination in articles 2 (1), 3 and 26 of the Covenant. Please indicate what legislation has been put in place to ensure that non-citizens enjoy equal protection and recognition before the law. Please also indicate what measures the State party plans to take to recognize the adoption rights of same-sex couples and to protect the rights of children living in same-sex parent families, which are not covered by the recently adopted civil unions law. Please indicate whether steps have been or are being taken to adopt comprehensive anti-discrimination legislation that, inter alia, addresses discrimination in the private sphere; prohibits all direct, indirect and multiple forms of discrimination; contains a comprehensive list of prohibited grounds of discrimination, including sexual orientation and gender identity; and provides for effective remedies in judicial and administrative proceedings.

Keywords: SOGI; access to justice, data collection, hate crimes, investigation, police misconduct, professional groups, prosecution, punishment

6. Please provide information on the measures taken to combat the persistent stigmatization, stereotyping and racially pejorative discourse against Roma, Sinti, Caminanti and non-citizens, including asylum seekers, by politicians and public officials, as well as in the media. Please indicate the steps taken to increase convictions and prosecutions for racially motivated crimes, including racist hate speech, racial discrimination and hate crimes on grounds of sexual orientation and gender identity, and provide information on the number of cases investigated and the number of prosecutions and convictions, particularly in cases involving politicians and public officials, including police officers. Please clarify whether article 3 of Act No. 205/1993, which provides for racial motives to be considered aggravating circumstances for ordinary crimes, is applied to all hate crimes, either as the sole motivation or not, and whether the provision is applied by courts of all levels in a consistent manner.

Italy – Concluding Observations – 119th session, 1 May 2017, 6th review⁵²

Keywords: legislation, measures, partnership, policy, same-sex couples

B. Positive aspects

3. The Committee welcomes the legislative, institutional and policy measures taken by the State party, including the adoption of:
 - (a) Law No. 76 of 20 May 2016 (regulating same-sex civil unions and cohabitation);

[...]

Keywords: SOGI; access to justice, anti-discrimination legislation, discrimination, intersectionality, legislation, measures, protected grounds, remedy

Anti-discrimination legislation

8. The Committee is concerned that article 3 of the Constitution does not contain a comprehensive list of prohibited grounds of discrimination and that existing anti-discrimination legislation addresses only some grounds of discrimination, in limited spheres (arts. 2 and 26).
9. The State party should take all measures necessary, including the adoption of comprehensive anti-discrimination legislation, to ensure that its legal framework: (a) provides full and effective protection against discrimination in all spheres, including in the private sphere, and prohibits direct and indirect discrimination; (b) comprehensively addresses all grounds of discrimination, including colour, national origin, citizenship, birth, disability, age, sexual orientation and gender identity and any other status; and (c) provides for effective remedies in cases of violations, including in cases of multiple and intersectional discrimination.

51 [CCPR/C/ITA/Q/6](#).

52 [CCPR/C/ITA/CO/6](#).

Keywords: SOGI; LGBTI; adoption, assisted reproduction, children, discrimination, family, hate crimes, hate speech, legislation, partnership, same-sex couples, service provision

Discrimination on the grounds of sexual orientation and gender identity

10. While welcoming the adoption of Law No. 76 of 20 May 2016, the Committee remains concerned that the law does not provide same-sex couples the right to adopt children and does not afford full legal protection to children living in same-sex families. It is also concerned about the continued denial of access to in vitro fertilization under Law No. 400/2004 and about the prevalence of discrimination and hate speech against lesbian, gay, bisexual, transgender and intersex persons (arts. 2, 23-24 and 26).
11. **The State party should review relevant legislation and consider allowing same-sex couples to adopt children, including the biological children of one of the partners in the couple, and ensuring the same legal protection for children living in same-sex families as for those living in heterosexual families. The State party should provide for equal access to in vitro fertilization. It should also intensify its efforts to combat discrimination, hate speech and hate crimes against lesbian, gay, bisexual, transgender and intersex persons.**

Keywords: SOGI; anti-discrimination legislation, discrimination, intersectionality, protected grounds

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

5. With reference to the previous concluding observations (para. 11), please indicate whether steps have been or are being taken to adopt comprehensive anti-discrimination legislation that addresses discrimination, including in the private sphere; prohibits direct, indirect and multiple discrimination; and contains a comprehensive list of prohibited grounds of discrimination, including colour, language, political or other opinion, national origin, property, birth, sexual orientation, gender identity and other status. Please also report on measures to eliminate all discriminatory provisions regarding the status of children born out of wedlock.

Keywords: LGBTI, T; access to justice, detention, discrimination, education, employment, gender reassignment surgeries, hate speech, health, law enforcement officials, LGR, marriage, measures, partnership, same-sex couples, service provision, social security, sterilisation, stigmatisation, suicide, torture/ill-treatment

7. In the light of the previous concluding observations (para. 11), please report on progress made in combating homophobic and transphobic discourse by politicians and discrimination and stigma against lesbian, gay, bisexual, transgender and intersex individuals, particularly in their access to employment, education, health care, welfare and legal services, including through the education system. Please also: (a) report on measures taken to address the higher than average suicide rate among those individuals; (b) clarify whether steps have been taken towards official recognition of same-sex unions at the national level; (c) explain how certain requirements for legal recognition of gender reassignment, such as deprivation of reproductive organs or reproductive ability, gender confirmation surgery and unmarried status, are compatible with the Covenant; and (d) address reports that transgender prisoners have been mistreated in detention facilities.

Jordan – List of Issues – 119th session, 11 April 2017, 5th review⁵⁴

Keywords: SOGI; access to justice, anti-discrimination legislation, discrimination, intersectionality, protected grounds, remedy

Non-discrimination and equality between men and women (arts. 2-3, 23-24 and 26)

3. Please indicate whether steps have been taken or are being taken to adopt comprehensive anti-discrimination legislation that, inter alia, addresses discrimination in the private sphere; prohibits all direct and indirect discrimination and multiple forms of discrimination; contains a comprehensive list of prohibited grounds for discrimination, including sex, sexual orientation and gender identity; and provides for effective remedies in judicial and administrative proceedings. In that regard, please provide information on the outcome and impact of the National Strategy for Women 2013-2017 and the national plan for the promotion of women's political and economic participation 2012-2013.

Jordan – Concluding Observations – 121st session, 4 December 2017, 5th review⁵⁵

Keywords: SOGI; anti-discrimination legislation, awareness-raising campaign, measures, protected grounds

Non-discrimination and equality

8. Notwithstanding the first paragraph of article 6 of the Constitution, which provides for equality before the law, the Committee regrets the lack of comprehensive anti-discrimination legislation with all the grounds set forth in the Covenant, including gender, sexual orientation and gender identity, and is concerned about discriminatory provisions, which affect women's equal rights, under the Personal Status Act. It is particularly concerned about early marriages, involving girls under the age of 18 years, the permissibility of polygamy, issues of inheritance and the inability of Jordanian women to pass their nationality to their children (arts. 2-3, 23-24 and 26).
9. The State party should take all the measures necessary to ensure that its legal framework contains a comprehensive list of grounds for discrimination, including gender, sexual orientation and gender identity, and bring its legislation, including the Personal Status Act, into conformity with the Covenant. The State party should take steps to ensure that women are not subjected to any form of discrimination, in law and in fact, inter alia in matters of marriage, divorce, inheritance or the transmittal of nationality to their children or their spouse. It should continue to strengthen its efforts to address discriminatory traditions and customs, including early marriage and polygamy. The State party should institute public awareness campaigns aimed at promoting gender equality and non-discrimination.

54 [CCPR/C/JOR/Q/5](#).

55 [CCPR/C/JOR/CO/5](#).

Keywords: SOGI; access to justice, anti-discrimination legislation, discrimination, intersectionality, protected grounds, remedy

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

4. Please indicate whether any steps have been taken to adopt comprehensive anti-discrimination legislation that, inter alia, addresses discrimination in the private sphere; prohibits all direct and indirect discrimination and multiple forms of discrimination; contains a comprehensive list of prohibited grounds for discrimination, including race, colour, sex, political or other opinion, property, birth, sexual orientation, gender identity and other status; and provides for effective remedies in judicial and administrative proceedings.

Liechtenstein – List of Issues – 118th session, 22 November 2016, 2nd review⁵⁷

Keywords: SO, SOGI; anti-discrimination legislation, awareness-raising campaign, discrimination, hate speech, intersectionality, law enforcement officials, legislation, measures, partnership, professional groups, protected grounds, same-sex couples, trainings

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

5. Please indicate whether steps have been or are being taken to adopt comprehensive anti-discrimination legislation that addresses discrimination in all spheres, including in the private sphere, and that prohibits direct, indirect and multiple discrimination. In this respect, please also indicate whether the State party plans to amend article 283 of the Criminal Code so that it covers other prohibited grounds of discrimination, in line with article 2 (2) of the Covenant, such as language, nationality, sexual orientation and gender identity, and so that it addresses all forms of hate speech. Please provide information about measures taken to train judges, prosecutors and lawyers on articles 33 (5) and 283 of the Criminal Code, to raise awareness about those provisions among the general public and to encourage reporting. With reference to paragraphs 139 and 140 of the State party's report, please provide information on other measures taken, besides the adoption of the law on registered partnerships for same-sex couples, to combat prejudice on the basis of sexual orientation.

Liechtenstein – Concluding Observations – 120th session, 21 August 2017, 2nd review⁵⁸

Keywords: legislation, measures, partnership, same-sex couples

B. Positive aspects

3. The Committee welcomes the following legislative measures taken by the State party:

[...]

- (c) The entry into force of the law on registered partnerships of same-sex couples, in 2011.

⁵⁷ [CCPR/C/LIE/Q/2](#).

⁵⁸ [CCPR/C/LIE/CO/2](#).

Keywords: SOGI; access to justice, anti-discrimination legislation, discrimination, intersectionality, protected grounds, remedy

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

3. Please indicate whether steps have been taken or are being taken to adopt comprehensive anti-discrimination legislation that, inter alia, addresses discrimination in the private sphere; prohibits all direct and indirect discrimination and multiple forms of discrimination; contains a comprehensive list of prohibited grounds for discrimination, including sex, language, political or other opinion, property, birth, sexual orientation, gender identity and other status; and provides for effective remedies in judicial and administrative proceedings.

Keywords: LGBTI; access to justice, anal examination, arrest, blackmailing, bullying, children, court, criminalisation (decriminalisation), discrimination, education, hate speech, HIV/AIDS, jurisprudence, law enforcement officials, legislation, measures, police, prosecution, surgical/medical intervention, torture/ill-treatment, violence

4. Please respond to concerns that the vaguely worded article 534 of the Penal Code that criminalizes “any sexual intercourse contrary to the order of nature” continues to be used to arrest and prosecute lesbian, gay, bisexual, transgender and intersex individuals, including for sexual relations between consenting adults of the same sex, despite such an interpretation of the provision being questioned in a few domestic court rulings, and reports that the number of arrests under this article has been on the rise. Please respond to the following allegations and report on measures taken to address them: (a) discrimination, hate speech and homophobic attitudes, and bullying in schools, against lesbian, gay, bisexual, transgender and intersex individuals; (b) arbitrary arrests, forced HIV testing at police stations, violence, torture and ill-treatment of lesbian, gay, bisexual, transgender and intersex individuals by law enforcement officers and blackmail by other persons; (c) instances of anal examinations, despite the ban on such practices in 2012; and (d) impunity for such acts and the lack of legal protection of lesbian, gay, bisexual, transgender and intersex individuals.

Keywords: LGBTI; access to justice, detention, law enforcement officials, torture/ill-treatment

Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment (arts. 6 and 7)

12. Please comment on reports of torture and ill-treatment of persons deprived of liberty by law enforcement officials, including of sex workers, drug users and lesbian, gay, bisexual, transgender and intersex individuals by the Internal Security Forces, and on the reported impunity for such acts. [...]

Keywords: SOGI; LGBTI; access to justice, anti-discrimination legislation, criminalisation (decriminalisation), data collection, detention, discrimination, hate speech, HRD, investigation, law enforcement officials, legislation, measures, police, police misconduct, professional groups, punishment, reparation, violence

Non-discrimination (arts. 2, 6, 7, 13, 14, 17, 25 and 26)

7. Please indicate the extent to which domestic law prohibits all forms of discrimination on the basis of sexual orientation and gender identity. Please explain all measures being taken to combat hate speech and violence against lesbian, gay, bisexual, transgender and intersex persons, including defenders and activists. Please respond to widespread allegations that the police and justice system discriminate against those persons, including through lengthy detention without trial, failure to investigate complaints and reprisals against victims of violence. Please provide information on the number of complaints received relating to violence against lesbian, gay, bisexual, transgender and intersex persons, including by police officers, the investigations conducted, prosecutions pursued, the penalties imposed and any reparation provided to victims. Please provide information on the penalties for “deviate sexual intercourse” under article 14 (74) of the Penal Code, on any enforcement of this law and any plans to repeal it.

Madagascar – List of Issues – 118th session, 2 December 2016, 4th review⁶¹

Keywords: SOGI; LGBT; anti-discrimination legislation, discrimination, measures, protected grounds, stigmatisation

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

5. Does the State party plan to adopt comprehensive legislation prohibiting discrimination and containing a comprehensive list of prohibited grounds for discrimination, including discrimination based on sexual orientation and gender identity? Please provide information on discrimination based on ethnicity and caste in the State party. Please describe the measures taken by the State party to combat and prevent the stigmatization of and discrimination against (a) persons living with or affected by HIV/AIDS and (b) the lesbian, gay, bisexual and transgender (LGBT) community.

Madagascar – Concluding Observations – 120th session, 22 August 2017, 4th review⁶²

Keywords: SOGI; LGBTI; anti-discrimination legislation, discrimination, legislation, measures, protected grounds, remedy, stigmatisation

Anti-discrimination framework

15. The Committee remains concerned about the lack of a comprehensive anti-discrimination law that clearly defines and prohibits direct and indirect discrimination and lists prohibited grounds of discrimination. In that regard, it is particularly concerned about the situation of: (a) persons living with HIV/AIDS; and (b) lesbian, gay, bisexual, transgender and intersex persons, who are subjected to stigmatization and discrimination (arts. 2, 3 and 26).
16. The State party should: (a) adopt comprehensive legislation to combat racism and discrimination that includes a definition of direct and indirect discrimination, including on grounds of sexual orientation and gender identity; (b) ensure that all victims of discrimination have access to effective remedies; and (c) take all necessary interim measures, pending the adoption of comprehensive legislation, to combat and prevent stigmatization and discrimination aimed at persons living with HIV/AIDS and lesbian, gay, bisexual, transgender and intersex persons.

61 [CCPR/C/MDG/Q/4](#).

62 [CCPR/C/MDG/CO/4](#).

Mauritius – List of Issues – 119th session, 12 May 2017, 5th review⁶³

Keywords: SOGI; anti-discrimination legislation, criminalisation (decriminalisation), data collection, discrimination, employment, investigation, legislation, measures

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

9. Please provide more information on section 250 of the Criminal Code, by virtue of which “any person who is guilty of the crime of sodomy or bestiality shall be liable to penal servitude for a term not exceeding five years” and indicate whether the State party plans to amend that section. Taking into account the Equal Opportunities Act, please indicate whether the State party has taken measures to forbid discrimination based on sexual orientation or gender identity in contexts other than that of employment. Please provide figures on complaints made to the Equal Opportunity Commission and on investigations into any cases of discrimination based on sexual orientation and gender identity. Please explain whether the State party has taken any measures to fight homophobia and to empower affected individuals about their rights.

Mauritius – Concluding Observations – 121st session, 11 December 2017, 5th review⁶⁴

Keywords: SOGI; LGBT; access to justice, anti-discrimination legislation, awareness-raising campaign, criminalisation (decriminalisation), discrimination, hate speech, investigation, law enforcement officials, legislation, marriage, measures, partnership, police, professional groups, prosecution, punishment, trainings, violence

Discrimination against lesbian, gay, bisexual and transgender persons

9. The Committee is concerned about reported cases of hate speech and violence, including death threats, brutality and humiliation, against lesbian, gay, bisexual and transgender persons. The Committee is also concerned that lesbian, gay, bisexual and transgender persons are not authorized to officially enter marriage or civil partnerships and are denied other rights relating to personal status. The Committee is further concerned that the provision of article 250 of the Criminal Code of Mauritius, which criminalizes “sodomy” and “bestiality”, has not yet been repealed (arts. 2 and 23).
10. The State party should firmly prevent and protect lesbian, gay, bisexual and transgender persons from all forms of discrimination based on sexual orientation and gender identity, and include this as grounds of discrimination in all relevant legislation, including in the Criminal Code. The State party should also take all the necessary measures to eradicate discrimination against lesbian, gay, bisexual and transgender persons with regard to marriage or civil partnerships and repeal article 250 of the Criminal Code. Furthermore, the State party should ensure that all complaints of violence, including death threats and brutality, owing to discrimination against lesbian, gay, bisexual and transgender persons are registered by the police and investigated, and that those responsible are duly prosecuted and, if convicted, sanctioned with appropriate penalties. Moreover, the State party should train police officers, judges and prosecutors and conduct awareness-raising campaigns for the general public on the rights of lesbian, gay, bisexual and transgender persons.

63 [CCPR/C/MUS/Q/5](#).

64 [CCPR/C/MUS/CO/5](#).

Mongolia – List of Issues – 118th session, 21 November 2016, 6th review⁶⁵

Keywords: SOGI; access to justice, anti-discrimination legislation, discrimination, intersectionality, protected grounds, remedy

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

3. In reference to the Committee's previous recommendation (see CCPR/C/MNG/CO/5, para. 7), please indicate whether steps have been or are being taken to adopt comprehensive anti-discrimination legislation that addresses discrimination, including in the private sphere; prohibits direct, indirect and multiple discrimination; contains a comprehensive list of prohibited grounds for discrimination, including colour, political or other opinion, sexual orientation, gender identity, birth and other status; and provides for effective remedies in judicial and administrative proceedings.

Keywords: SOGI; LGBTI; access to justice, adolescents, children, discrimination, domestic violence, family, harassment, investigation, measures, police misconduct, same-sex couples, violence

Discrimination on grounds of sexual orientation and gender identity (arts. 2 and 26)

5. With reference to the Committee's previous recommendation (see CCPR/C/MNG/CO/5, para. 9), please report on measures taken to effectively address the prevalent discrimination and violence on the grounds of sexual orientation and gender identity. Please respond to allegations of verbal abuse, harassment and physical attacks against lesbian, gay, bisexual, transgender and intersex persons, including by police officers; domestic violence against young lesbian, gay, bisexual, transgender and intersex persons perpetrated by their parents and siblings; and reported impunity for such acts owing to fear of reporting on the part of the persons concerned and failure to register and investigate such complaints by the competent authorities. Please report on the measures taken to ensure respect for the rights of same-sex couples and whether any steps have been taken towards the legal recognition of same-sex couples.

Keywords: LGBTI; FOE/FOAA, law enforcement officials

Freedoms of expression, peaceful assembly and association (arts. 19, 21 and 22)

21. Please respond to reports of violation of the freedoms of expression, association and peaceful assembly by lesbian, gay, bisexual, transgender and intersex persons and activists in connection with the annual Equality and Pride Days from 28 August to 6 September 2015 when authorities denied and obstructed access to Chinggis Square on 28 and 29 August 2015 and forcibly removed walkers for equality from the Square.

Mongolia – Concluding Observations – 120th session, 22 August 2017, 6th review⁶⁶

Keywords: SOGI; access to justice, anti-discrimination legislation, discrimination, measures, remedy

Equality and non-discrimination

9. While noting the adoption of the strategy and action plan on the implementation of the Law on the Promotion of Gender Equality, the Committee remains concerned about low representation of women in the public and private sectors, especially in senior managerial positions. The Committee welcomes the inclusion of a provision prohibiting any act of discrimination based on nationality, occupation, religious belief, opinion, education, sexual orientation, gender identity or health conditions, in the new Criminal Code. It is nevertheless concerned about the absence of other prohibited grounds of discrimination stipulated in the Covenant. Moreover, it remains concerned about the lack of comprehensive anti-discrimination legislation and the insufficiency of measures taken to address discriminatory practices (arts. 2, 3 and 26).
10. The State party should strengthen its efforts to increase representation of women in the public and private sectors, especially in senior managerial positions. It should also ensure that all the prohibited grounds of discrimination stipulated in article 26 of the Covenant are adequately reflected in its legislation. Furthermore, the State party should adopt comprehensive anti-discrimination legislation that addresses discrimination in both the public and private spheres, including direct and indirect discrim-

65 [CCPR/C/MNG/Q/6](#).

66 [CCPR/C/MNG/CO/6](#).

ination, and that provides effective remedies in judicial and administrative proceedings.

Keywords: SOGI; LGBTI; access to justice, discrimination, FOE/FOAA, harassment, hate crimes, investigation, legislation, prosecution, punishment, reparation, same-sex couples, stereotypes, violence

Discrimination on the grounds of sexual orientation and gender identity

11. The Committee is concerned about reports of violence, harassment and attacks against lesbian, gay, bisexual, transgender and intersex persons, about the failure of the State party to investigate, prosecute and punish such attacks, thus contributing to a culture of impunity and about the prevalence of prejudices and discrimination based on sexual orientation and gender identity. The Committee is also concerned about notable obstacles to the exercise of freedom of assembly by persons belonging to the lesbian, gay, bisexual, transgender and intersex community, which further exacerbates their vulnerable status in Mongolian society. The Committee also regrets the absence of legal recognition and protection of same-sex couples (arts. 2, 6, 7, 19, 21, 22 and 26).
12. **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.**

Keywords: SOGI; LGBTI; access to justice, discrimination, FOE/FOAA, follow-up, investigation, prosecution, punishment, reparation, same-sex couples, stereotypes, violence

Dissemination and follow-up

42. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on the implementation of the recommendations made by the Committee in paragraphs 12 (discrimination on the grounds of sexual orientation and gender identity), 18 (violence against women and children, including domestic violence) and 22 (right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment) above.

Keywords: *LGBTI; asylum-seekers/refugees, discrimination, harassment, hate speech, investigation, prosecution, violence*

Treatment of aliens, including refugees and asylum seekers (arts. 7 and 13)

24. Please report on measures taken to:

[...]

(b) Combat harassment, threats, discrimination and violence against lesbian, gay, bisexual, transgender and intersex persons, asylum seekers or refugees in reception facilities, and ensure the effective investigation and prosecution of those responsible for such acts;

[...]

Pakistan – List of Issues – 118th session, 15 November 2016, initial review⁶⁸

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

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

3. Please clarify whether the anti-discrimination provisions of articles 25-27 of the Constitution cover all prohibited grounds of discrimination in line with articles 2 (1), 3 and 26 of the Covenant. Please also indicate what efforts have been made by the State party to adopt comprehensive anti-discrimination legislation that, inter alia, addresses discrimination in the private sphere; prohibits all direct, indirect and multiple forms of discrimination; contains a comprehensive list of prohibited grounds for discrimination, including religion, sexual orientation and gender identity; and provides for effective remedies in judicial and administrative proceedings. Please indicate whether the State party intends to decriminalize same-sex relations between consenting adults.

Pakistan – Concluding Observations – 120th session, 23 August 2017, initial review⁶⁹

Keywords: SOGI; I, LGBTI; anti-discrimination legislation, criminalisation (decriminalisation), discrimination, intersectionality, measures, prevention, protected grounds, punishment, remedy

Non-discrimination

11. The Committee is concerned that the non-discrimination provisions adopted by the State party, including articles 25 to 27 of the Constitution, do not afford protection against discrimination on all the grounds prohibited under the Covenant. It is also concerned that same-sex relations between consenting adults are criminalized. While welcoming the information about progress made in the State party on the situation of intersex persons, the Committee regrets the absence of information from the delegation on effective measures to prevent and punish all forms of discriminations against lesbian, gay, bisexual, transgender and intersex persons (arts. 2, 3 and 26).
12. The State party should take all necessary measures, including the adoption of comprehensive anti-discrimination legislation, to ensure that its legal framework:
 - (a) Provides full and effective protection against discrimination in all spheres, including the private sphere, and prohibits direct, indirect and multiple discrimination;
 - (b) Includes a comprehensive list of grounds for discrimination, including colour, language, political or other opinion, national or social origin, property, disability, sexual orientation and gender identity or other status;
 - (c) Provides for effective remedies in cases of violation. It should also decriminalize same-sex relations between consenting adults.

⁶⁸ [CCPR/C/PAK/Q/1](#).

⁶⁹ [CCPR/C/PAK/CO/1](#).

Keywords: SOGI; LGBTI; awareness-raising campaign, discrimination, investigation, legislation, measures, policy, prevention, prosecution, punishment, reparation, support services, violence

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

6. Please provide information on the legislative, public policy and awareness-raising measures adopted, as well as information about prevention, monitoring and protection mechanisms, with a view to the eradication of discrimination on the basis of sexual orientation and gender identity. Please provide information on the measures taken to ensure that acts of discrimination are investigated, the perpetrators are prosecuted and punished, and the victims obtain redress. Please provide information on the measures adopted to prevent violence against lesbian, gay, bisexual, transgender and intersex persons. Please also describe any existing specialized protocols for the assistance of lesbian, gay, bisexual, transgender and intersex victims.

Romania – List of Issues Prior to Reporting – 110th session, 25 April 2014, 5th review⁷¹

Keywords: *GI, SO; discrimination, education, health, legislation, LGR, measures*

Non-discrimination, equal rights of men and women, incitement to national, racial or religious hatred, equality before the law, and rights of persons belonging to minorities (arts. 2 (para. 1), 3, 20, 26 and 27)

9. Please indicate the measures adopted to combat discrimination on the grounds of sexual orientation, including societal discrimination, and discrimination in public education and in the health care system. Please indicate any steps taken to adopt comprehensive legislation allowing a change to civil status based on gender identity.

Romania – Concluding Observations – 121st session, 11 December 2017, 5th review⁷²

Keywords: *GI, SOGI; LGBTI; access to justice, discrimination, education, employment, hate crimes, hate speech, investigation, legislation, LGR, measures, reparation, stereotypes, violence*

Discrimination on the grounds of sexual orientation and gender identity

15. The Committee is concerned about reports of discrimination against lesbian, gay, bisexual, transgender and intersex persons, especially in employment and education, incidents of verbal and physical attacks against such persons and stereotypical attitudes and prejudice against them. The Committee is also concerned about reports of attempts to revise domestic law that would limit rights guaranteed under the Covenant. It is further concerned about the lack of clarity in legislation and procedures concerning the change of civil status with respect to gender identity (arts. 2 and 26).
16. The State party should take measures to eliminate discrimination and combat stereotypical attitudes and prejudices against lesbian, gay, bisexual, transgender and intersex persons; ensure that acts of discrimination and violence against such persons are investigated, that perpetrators are held accountable and that victims have access to reparation. It should ensure that legislation concerning the change of civil status with respect to gender identity is clear and applied in accordance with the rights guaranteed under the Covenant.

71 [CCPR/C/ROU/QPR/5](#).

72 [CCPR/C/ROU/CO/5](#).

Keywords: SOGI; criminalisation (decriminalisation), discrimination, employment, housing, legislation, measures, same-sex couples, violence

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

6. Please provide information on the measures taken in law and in practice to protect persons from discrimination and violence based on sexual orientation and gender identity, including in housing and employment. Please also provide information on any plans to remove the provisions that criminalize sexual relations between same-sex adult couples.

Serbia – List of Issues – 117th session, 29 July 2016, 3rd review⁷⁴

Keywords: LGBTI, T; data collection, discrimination, follow-up, hate speech, investigation, legislation, measures, prosecution, violence

Non-discrimination and prohibition of advocacy of national, racial or religious hatred (arts. 2, 3, 20 and 26)

3. Please provide information on measures taken, and their impact, to address effectively: (a) discrimination against women, persons with disabilities, older persons, and migrants and asylum seekers; and (b) discrimination, hate speech and violence against lesbian, gay, bisexual, transgender and intersex persons, and discrimination against persons with HIV and social stigma associated therewith. Please indicate whether there has been any follow-up to the recommendations made by the Commissioner for the Protection of Equality in June 2013 with respect to legislation pertaining to the rights of transgender persons. Please also report on measures taken to ensure effective investigation of and prosecution for offences motivated by hatred, and provide information on the number of cases reported, investigations and prosecutions initiated, and their outcome.

Serbia – Concluding Observations – 119th session, 10 April 2017, 3rd review⁷⁵

Keywords: SOGI; aggravating circumstance, hate crimes, investigation, legislation, prosecution, punishment

Hate crimes

10. The Committee is concerned that, despite the State party's efforts to prevent offences motivated by hatred, hate crimes, particularly against Roma, continue to be a serious problem in the State party. While noting the amendments to article 54 (a) of the Criminal Code introducing aggravating circumstances for crimes committed by individuals who feel hatred for a particular race, religion, nationality or ethnicity, sex, sexual orientation or gender identity, it regrets that the State party has not provided any example of the practical implementation of those amendments (arts. 2, 6, 20 and 26).
11. The State party should: (a) increase its efforts to promote tolerance for persons belonging to ethnic, national, racial, religious and other minorities, including persons belonging to the Roma community; and (b) effectively implement article 54 (a) of the Criminal Code, including by ensuring that hate crimes are identified and promptly investigated, that alleged perpetrators are prosecuted and, if convicted, that they are punished with appropriate sanctions.

Keywords: SOGI; LGBTI; discrimination, health, legislation, LGR, measures, stigmatisation, surgical/medical intervention, violence

Discrimination against lesbian, gay, bisexual, transgender and intersex persons and persons with HIV

12. The Committee is concerned that: (a) the number of acts of discrimination, intolerance and violence against lesbian, gay, bisexual, transgender and intersex persons remains very high; (b) the legal consequences of adjusting or changing one's sex are not currently regulated by any legal framework and there is no right to a preferred gender in the absence of surgical intervention; and (c) persons with HIV continue to face discrimination and violations of their right to privacy, particularly within the context of health care (arts. 2, 7, 16 and 26).
13. The State party should: (a) strengthen measures to eradicate all forms of social stigmatization, discrimination and violence against persons based on their sexual orientation and gender identity or HIV status; and (b) implement a procedure for legal gender recognition that is compatible with the provisions of the Covenant.

⁷⁴ [CCPR/C/SRB/Q/3](#).

⁷⁵ [CCPR/C/SRB/CO/3](#).

Swaziland – List of Issues – 119th session, 13 April 2017, initial review⁷⁶

Keywords: SOGI; anti-discrimination legislation, discrimination, intersectionality, legislation, measures, protected grounds

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

5. Please provide information on the measures taken in law and in practice to ensure protection from all forms of discrimination in the public and private sectors, including direct, indirect and multiple discrimination, and on all grounds protected by the Covenant, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, sexual orientation, gender identity, and to ensure the application of those measures in customary law. In particular, please provide information on whether sexual orientation, gender identity and marital status are included as prohibited grounds for discrimination under domestic legislation, including the Constitution.

Keywords: SOGI; LGBTI; criminalisation (decriminalisation), data collection, discrimination, employment, health, HIV/AIDS, housing, investigation, legislation, measures, prevention, prosecution, punishment, reparation, violence

6. Please provide information on measures taken in law and in practice to protect persons from discrimination and violence based on sexual orientation and gender identity, including in housing and employment, and to promote tolerance. Please provide information on complaints regarding violence against lesbian, gay, bisexual, transgender and intersex persons, and any investigations and prosecutions pursued, punishments imposed on offenders and reparations made to victims. Please address any plans to remove the common law criminalization of same-sex relations between men. Please provide disaggregated statistical data on the number of persons who have been infected with HIV and who have died from HIV- and AIDS-related illnesses. Please provide information on efforts to intensify education and awareness-raising among all parts of the population to combat societal stigma and discrimination against persons living with HIV/AIDS, including in employment. Please address specific measures to provide protection and support for women and girls and to end traditional practices that contribute to the spread of HIV, including the practice of wife inheritance, as well as efforts to develop prevention, testing and treatment programmes specifically targeting youth and the lesbian, gay, bisexual, transgender and intersex community.

Swaziland – Concluding Observations – 120th session, 23 August 2017, initial review⁷⁷

Keywords: SO, SOGI; LGBTI; criminalisation (decriminalisation), data collection, detention, discrimination, employment, hate crimes, housing, investigation, killings, law enforcement officials, legislation, measures, police, prevention, professional groups, punishment, reparation, service provision, sexual violence, stereotypes, trainings, violence

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

18. The Committee is concerned that discrimination on the basis of sexual orientation and gender identity is not clearly prohibited under the Constitution, or in the State party's domestic laws. It is also concerned at reports that reveal that lesbian, gay, bisexual, transgender and intersex persons frequently face discrimination, particularly in accessing adequate housing and employment. It is further concerned about reports of violence against lesbian, gay, bisexual, transgender and intersex persons, including the murder of two individuals directly linked to their sexual orientation and the rape of a gay man in detention. 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 State party's current intention to retain the law, and at the law's continued discriminatory effect on lesbian, gay, bisexual, transgender and intersex persons (arts. 2, 6, 7, 17 and 26).
19. The State party should revise its laws to clearly prohibit discrimination on the basis of sexual orientation and gender identity, in all contexts, and take the measures necessary to ensure that such persons can fully enjoy all the human rights enshrined in the Covenant. It should also:
 - (a) Vigorously combat stereotypes and negative attitudes towards persons on the basis of their sexual orientation or gender identity;
 - (b) Train and sensitize police officers, prosecutors and members of the judiciary to identify dis-

⁷⁶ [CCPR/C/SWZ/Q/1](#).

⁷⁷ [CCPR/C/SWZ/CO/1](#).

crimination and violence against lesbian, gay, bisexual, transgender and intersex persons;

(c) Adopt legislation explicitly prohibiting hate crimes against lesbian, gay, bisexual, transgender and intersex persons;

(d) Adopt robust measures to effectively prevent acts of discrimination and violence against such persons and ensure that all acts of violence against them are effectively investigated, perpetrators are brought to justice and punished with appropriate sanctions and victims are compensated. It should also collect comprehensive data on cases of violence against persons on the basis of their sexual orientation or gender identity;

(e) Criminalize the rape of men and repeal the common law crime of sodomy.

Keywords: *LGBTI; discrimination, health, HIV/AIDS, legislation, stigmatisation*

Discrimination against persons living with HIV/AIDS

20. While acknowledging the considerable efforts made by the State party to promote and protect the life and health of persons living with HIV/AIDS, the Committee remains concerned at the continued high number of infections in the State party and the persistence of stigma and discrimination against such persons. The Committee is also concerned at the absence of laws prohibiting discrimination on the basis of HIV/AIDS (arts. 2, 6 and 26).

21. The State party should:

(a) Continue and step up intervention to address the needs of key populations, in particular women, youth, sex workers and the lesbian, gay, bisexual, transgender and intersex community, including persons in rural areas;

(b) Redouble its efforts to combat the high level of HIV/AIDS-related stigma and discrimination among the general population;

(c) Ensure that discrimination against persons with HIV/AIDS is legally prohibited in all contexts and that such laws are enforced effectively in practice.

Switzerland – List of Issues Prior to Reporting – 112nd session, 25 November 2014, 4th review⁷⁸

Keywords: *SOGI; anti-discrimination legislation, court, discrimination, jurisprudence, legislation, measures*

Non-discrimination and equality (arts. 2, paras. 1, 3, 26 and 27)

8. Please describe the legislative or administrative measures taken, including any recent court decisions, to protect against discrimination on the grounds of sexual orientation or gender identity.

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

Rights of the child (arts. 7 and 24)

22. Please comment on the reports of premature surgery and other medical treatment to which intersex children are subjected. Please indicate the number of intersex children who have undergone sex assignment surgery during the reporting period.

Switzerland – Concluding Observations – 120th session, 22 August 2017, 4th review⁷⁹

Keywords: *SOGI; anti-discrimination legislation, legislation, protected grounds*

Anti-discrimination framework

16. The Committee takes note of the Federal Act on Gender Equality and the Federal Act on the Elimination of Discrimination against People with Disabilities. It nevertheless remains concerned about the lack of a comprehensive anti-discrimination law that clearly defines and prohibits discrimination, lists prohibited grounds of discrimination and provides victims with effective civil and administrative remedies.

⁷⁸ [CCPR/C/CHE/QPR/4.](#)

⁷⁹ [CCPR/C/CHE/CO/4.](#)

dies. It also takes note of article 261 bis of the Criminal Code but finds it regrettable that, to date, only discrimination on grounds of race, ethnicity or religious affiliation is expressly criminalized. In addition, it is concerned about reports indicating that persons with disabilities are not sufficiently aware of their rights under the Federal Act on the Elimination of Discrimination against People with Disabilities (arts. 2, 3 and 26).

- 17. The State party should: (a) adopt comprehensive civil and administrative legislation against discrimination that includes a definition of discrimination, both direct and indirect, and an expanded list of prohibited grounds of discrimination, including sexual orientation and gender identity; (b) amend its criminal law to expand the prohibited grounds of discrimination ; and (c) ensure that persons with disabilities are informed of their rights under the Federal Act on the Elimination of Discrimination against People with Disabilities.**

Keywords: I; access to justice, children, decision-making process, free and informed consent, health, IGM, investigation, measures, reparation, support services, surgical/medical intervention

Intersex persons

24. The Committee takes note of the work of the National Advisory Commission on Biomedical Ethics regarding intersexuality and of the 6 July 2016 press statement by the Federal Council. It remains concerned, however, that the performance of surgical procedures on intersex children, causing physical and mental suffering, is still not strictly regulated. It also wishes to express concern that the conduct of surgery without consent has not yet given rise to any inquiry, sanction or reparation (arts. 3, 7, 24 and 26).
- 25. The State party should: (a) take all necessary measures to ensure that no child undergoes unnecessary surgery intended to assign sex; (b) see to it that medical records are accessible and that inquiries are launched in cases where intersex persons are subjected to treatment or surgical procedures without their effective consent; and (c) ensure that psychological assistance and reparation, including compensation, are provided for victims of needless surgical procedures.**

Thailand – List of Issues – 117th session, 12 August 2016, 2nd review⁸⁰

Keywords: SOGI; court, discrimination, education, employment, jurisprudence, legislation, measures

Non-discrimination and equality (arts. 2 (1), 3, 26 and 27)

7. Please describe the legislative or administrative measures and any recent court decisions taken to protect against discrimination on the grounds of sexual orientation or gender identity, including discrimination in employment and accessing education.

Thailand – Concluding Observations – 119th session, 25 April 2017, 2nd review⁸¹

Keywords: SO; LGBTI; anti-discrimination legislation, discrimination, legislation, measures, violence

Non-discrimination

11. While welcoming the Gender Equality Act (2015) and the State party's efforts to prevent and address discrimination on the basis of gender and sexual orientation, the Committee notes with concern that section 17 of such Act allows for exceptions to gender discrimination on grounds of religion and national security. It is also concerned about reports of discrimination and violence against lesbian, gay, bisexual, transgender, intersex, indigenous and stateless people, and about reports of travel restrictions on migrants who have regularized their status (arts. 2-3, 12 and 26).
12. The State party should ensure full protection against discrimination and in particular, consider amending the Gender Equality Act (2015) to eliminate any limitation on the protection against gender-based discrimination. The State party should intensify measures to ensure that lesbian, gay, bisexual, transgender, intersex, indigenous and stateless people and migrants do not suffer from discrimination and violence.

80 [CCPR/C/THA/Q/2](#).

81 [CCPR/C/THA/CO/2](#).

Turkmenistan – List of Issues – 117th session, 29 July 2016, 2nd review⁸²

Keywords: SOGI; access to justice, anti-discrimination legislation, discrimination, intersectionality, protected grounds, remedy

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

3. Please indicate whether steps have been or are being taken to adopt comprehensive anti-discrimination legislation that addresses discrimination, including in the private sphere; prohibits direct, indirect and multiple discrimination; contains a comprehensive list of prohibited grounds for discrimination, including colour and sexual orientation and gender identity; and provides for effective remedies in judicial and administrative proceedings.

Keywords: SOGI; arrest, criminalisation (decriminalisation), detention, discrimination, measures

4. With reference to the Committee's previous recommendation (see CCPR/C/TKM/CO/1, para. 21), please provide information on measures taken to decriminalize sexual relations between consenting adults of the same sex and to combat discrimination on the grounds of sexual orientation and gender identity. Please respond to allegations of arbitrary arrests and detention, threats and other abuses perpetrated on the basis of sexual orientation and gender identity.

Turkmenistan – Concluding Observations – 119th session, 20 April 2017, 2nd review⁸³

Keywords: SOGI; anti-discrimination legislation, discrimination, intersectionality, legislation, measures, protected grounds, remedy

Anti-discrimination framework

6. The Committee is concerned that: (a) national legislation lacks consistency regarding the prohibited grounds of discrimination and only certain legislative acts contain an open list of prohibited grounds including "other status or circumstances"; (b) the current legal framework does not afford protection against discrimination on all the grounds prohibited under the Covenant, including sexual orientation and gender identity (arts. 2 and 26).
7. The State party should take measures, including by considering adopting a comprehensive anti-discrimination law, to ensure that the relevant legal framework: (a) provides adequate and effective protection against all forms of discrimination, including in the private sphere; (b) prohibits direct, indirect and multiple discrimination, in line with the Covenant and other international human rights standards; (c) contains a comprehensive list of grounds of discrimination prohibited under the Covenant, including sexual orientation and gender identity; and (d) provides for access to effective and appropriate remedies for victims of discrimination.

Keywords: SOGI; LGBT; access to justice, arrest, criminalisation (decriminalisation), detention, discrimination, investigation, punishment, stigmatisation, violence

Discrimination and violence on grounds of sexual orientation and gender identity

8. The Committee remains concerned (see CCPR/C/TKM/CO/1, para. 21) about the criminalization of sexual relations between consenting adults of the same sex, punishable with imprisonment of up to two years, and about the State party's argument that homosexuality contradicts its culture. It is also concerned about discrimination against and social stigmatization of lesbian, gay, bisexual and transgender persons, including violence, arbitrary arrests and detention and other abuses perpetrated on the basis of sexual orientation and gender identity with total impunity (arts. 2, 7, 9, 17 and 26).
9. While acknowledging the diversity of morality and cultures internationally, the Committee recalls that State laws and practices must always be subject to the principles of universality of human rights and of non-discrimination and that a failure to comply with the obligations contained in the Covenant cannot be justified by reference to political, social, cultural or economic considerations within the State. The State party should: (a) decriminalize sexual relations between consenting adults of the same sex with a view to bringing its legislation in compliance with the Covenant; (b) put an end to the social stigmatization of homosexuality; and (c) ensure that no form of discrimination or violence against persons based on their sexual orientation or gender identity is tolerated and that all such cases are properly investigated and sanctioned.

82 [CCPR/C/TKM/Q/2](#).

83 [CCPR/C/TKM/CO/2](#).

3. Committee on the Elimination of Discrimination against Women

Barbados – Concluding Observations – 67th session, 24 July 2017, 5th-8th review⁸⁴

Keywords: *LBT, LBTI; children, education, GC/GR, health, medical professionals, SRHR, trainings, women*

Health

35. The Committee notes with concern that the austerity measures taken by the State party have had negative effects on women's access to health services. It is also concerned about the following:
- (a) The lack of age-appropriate and comprehensive education on sexual and reproductive health and rights, including on responsible sexual behaviour, the lack of family planning services and the high level of unmet contraception needs among women and girls;
 - (b) The limited information available to lesbian, bisexual and transgender women and girls on sexual and reproductive health and rights and the insufficient training of medical personnel on the special needs of lesbian, bisexual, transgender and intersex women;
 - (c) The lack of information on the prevalence of cervical and breast cancer in the State party and on the treatment available to women and girls;
 - (d) The prevalence of HIV/AIDS among women in the State party.
36. In line with its general recommendation No. 24 (1999) on women and health, the Committee calls upon the State party:
- (a) To ensure that the health sector receives appropriate budget allocations and improve women's access to high-quality health care;
 - (b) To intensify age-appropriate education on sexual and reproductive health and rights in schools and the dissemination of information on family planning and available, accessible and affordable contraceptive methods in order to reduce the number of unwanted and early pregnancies;
 - (c) To improve access to information on sexual and reproductive health and rights for lesbian, bisexual, transgender and intersex women and girls and train medical personnel to respond to their specific health needs;
 - (d) To collect disaggregated data on the prevalence of cervical and breast cancer in the State party and provide training to medical and health professionals on the early detection of those diseases, including in rural areas;
 - (e) To intensify the implementation of strategies to combat HIV/AIDS, in particular preventive strategies, and continue to provide free antiretroviral treatment to all women and girls with HIV/AIDS.

Keywords: *LBT; anti-discrimination legislation, discrimination, intersectionality, women*

Other disadvantaged groups of women

43. The Committee is concerned at the absence of anti-discrimination legislation prohibiting intersecting forms of discrimination. It is also concerned about discrimination against migrant women, women belonging to religious minority groups and lesbian, bisexual and transgender women.
44. The Committee recommends that the State party ensure equal rights and opportunities for women who face intersecting forms of discrimination, in particular migrant women, women belonging to religious minority groups and lesbian, bisexual and transgender women.

Keywords: *LBTI; data collection, discrimination, intersectionality, women*

Women facing intersecting forms of discrimination

24. In the light of the Committee's previous concluding observations (para. 44), please provide comprehensive disaggregated statistical data on the situation of disadvantaged groups of women, such as ethnic and religious minorities, migrant women, older women, women with disabilities and lesbian, bisexual and transgender women and intersex persons, in all areas covered by the Convention, in addition to information on specific programmes. [...]

Keywords: *legislation, partnership, same-sex couples, stereotypes*

Stereotypes and harmful practices

5. Please provide information about the current status of the draft legislation to confront gender stereotypes listed in paragraph 71 of the report, in particular the draft law to eradicate child marriage, and the draft law for recognising de facto unions between same sex couples. [...]

Keywords: *LBTI; awareness-raising campaign, investigation, measures, prevention, prosecution, punishment, reparation, violence, women*

Gender-based violence against women

16. The Committee notes the legislative framework of the State party for the prevention and elimination of gender-based violence against women, as well as the measures adopted to ensure access to shelters for women who are victims of gender-based violence. Nevertheless, it notes with concern:

[...]

- (f) The prevalence of gender-based violence against lesbian, bisexual and transgender women and intersex persons in the State party.

17. The Committee recommends that the State party:

[...]

- (f) Raise public awareness, in cooperation with civil society organizations, about violence against lesbian, bisexual and transgender women and intersex persons and adopt measures to prevent, investigate, prosecute and adequately punish hate crimes against them and provide reparation, including compensation, to victims.

Keywords: *T; access to justice, court, investigation, measures, police, prosecution, service provision, sex work, sexual violence, women*

Trafficking and exploitation of prostitution

20. The Committee notes with concern:

- (a) That the State party is a country of origin, transit and destination for trafficking in persons for purposes of sexual exploitation and forced labour, as well as the heightened risk of sex trafficking for women and children in the Pacific coastal zones and for transgender persons and migrant women and girls; [...]

21. The Committee recommends that the State party:

- (a) Allocate sufficient human, technical and financial resources to the implementation of the strategic plan of the National Coalition against the Smuggling of Migrants and Trafficking in Persons and strengthen measures, especially at the local level and in border areas, to identify and refer women and girls who are victims of trafficking to the appropriate social services;
- (b) Expedite the process to bring the definition of “trafficking in persons” in its legislation into conformity with the Trafficking in Persons Protocol and relevant international human rights standards, including the Convention;
- (c) Build the capacity of the judiciary and the police to effectively investigate cases of trafficking and exploitation of prostitution in a gender-sensitive manner, so as to increase the number of prosecutions and convictions of perpetrators.

Keywords: *T; asylum-seekers/refugees, detention, discrimination, GC/GR, intersectionality, women*

86 [CEDAW/C/CRI/Q/7](#).

87 [CEDAW/C/CRI/CO/7](#).

Migrant, refugee and asylum-seeking women

38. The Committee notes that male and female asylum seekers are entitled to work in the State party after having been recognized as such. Nevertheless, it is concerned at:

(a) Intersecting forms of discrimination against migrant women, in particular those in an irregular situation;

[...]

(d) The inadequate conditions in migrant detention centres for transgender women throughout the refugee determination procedure.

39. The Committee recommends that the State party:

(a) Assess the problems faced by migrant women, including those in an irregular situation, in every phase of the migration process and eliminate discrimination against them, in line with the Committee's general recommendation No. 26 (2008) on women migrant workers;

[...]

(d) Adopt guidelines for appropriately addressing the protection of transgender women throughout the refugee determination procedure.

Keywords: *LBTI; data collection, discrimination, intersectionality, legislation, measures, policy, TSM, women*

Intersecting forms of discrimination and data collection

40. The Committee is concerned about the insufficient legislation and public policies to tackle multiple forms of discrimination against indigenous women, women of African descent, migrant, asylum-seeking and refugee women, women with disabilities, older women, lesbian, bisexual and transgender women and intersex persons and the limited disaggregated information concerning them.

41. The Committee recommends that the State party adopt legislative and other measures, including temporary special measures, to protect women in the above-mentioned groups from intersecting forms of discrimination and collect statistical data disaggregated by sex and age for all the above-mentioned groups in all areas covered by the Convention, in both the public and private spheres.

Keywords: *data collection, legislation, partnership, same-sex couples*

Marriage and family relations

24. Please provide the Committee with the results of the study on the economic consequences of divorce on both spouses, focusing on gender-based disparities, which was commissioned by the Ministry of Justice and Public Order in 2016 as previously recommended by the Committee (CEDAW/C/CYP/CO/6–7, para. 36 (b)). Please clarify whether the study covered the economic consequences of dissolution of cohabitation, given that the law providing for opposite-sex and same-sex cohabitation and civil unions was adopted only in 2015 and that as at January 2017 only 88 such civil unions had been solemnized (para. 175).

Keywords: LBTI; discrimination, intersectionality, legislation, policy, women

Equality and non-discrimination against women and intersecting forms of discrimination

3. Please indicate how the State party addresses intersecting forms of discrimination against women, such as through legislation and public policies designed to ensure the equality of women with men, including indigenous women, women of African descent, women with disabilities, asylum-seeking and refugee women, women living in precarious urban settlements and lesbian, bisexual, transgender and intersex women.

Keywords: SO; LBTI; harassment, hate crimes, IDP, measures, professional groups, stereotypes

Stereotypes and harmful practices

7. [...] The Committee further wishes to be informed about measures to sanction hate crimes against lesbian, bisexual, transgender and intersex women, including harassment by public officials, threats and other human rights violations in the context of internal displacement, as well as the measures being taken to confront gender-based stereotypes that encourage harm on the basis of sexual orientation.

Keywords: SOGI; LBTI; access to justice, anti-discrimination legislation, awareness-raising campaign, discrimination, employment, family, harassment, hate crimes, investigation, law enforcement officials, legislation, medical professionals, professional groups, prosecution, punishment, same-sex couples, support services, trainings, violence, women

Lesbian, bisexual, transgender and intersex women

42. The Committee notes amendments to the Penal Code increasing the penalties for hate crimes based on sexual orientation and gender identity, as indicated in Articles 129 and 155 of the Penal Code, and the introduction of a Helpline and a dedicated space for security and access to justice for these women. However, the Committee is concerned at the increasing number of harassment cases, threats, intimidation and violence against LBTI women, including by law enforcement officials. The Committee is also concerned at the high vulnerability of LBTI women to gang violence, and at reports of violence directed at their families, partners, employers and customers.

43. The Committee recommends that the State party:

- (a) Put in place mechanisms to ensure the enforcement of legislation against discrimination by law enforcement officials, prosecute hate crimes based on sexual orientation and gender identity, and ensure through monitoring that such cases are duly investigated and adequately punished;
- (b) Intensify efforts to combat discrimination against women based on their sexual orientation and gender identity, including efforts to sensitize general public, and ensure continuous capacity building for law enforcement officials and health service providers.

89 [CEDAW/C/SLV/Q/8-9.](#)

90 [CEDAW/C/SLV/CO/8-9.](#)

Keywords: *LBTI; children, data collection, discrimination, education, reparation, women*

Lesbian, bisexual, transgender and intersex women and girls

20. Please provide information on the safeguards in place to protect lesbian, bisexual, transgender and intersex women and girls from discrimination at school. In the light of reports that a boarding school student was ordered to be a day scholar as a result of being perceived as a lesbian, please provide updated information on whether the student has been able to return to the boarding school and has received any form of compensation. Please provide additional information on whether there have been any other cases where students have suffered from any discriminatory treatment by the school administration for being, or being perceived as, lesbian, bisexual, transgender or intersex.

Germany – List of Issues – 66th PSWG, 2 August 2016, 7th-8th review⁹²

Keywords: *T; measures, media, stereotypes, women*

Stereotypes and harmful practices

7. [...] Please specify the measures taken to address the stereotyped portrayal in the media of women, including women belonging to minority groups and migrant women, as well as transgender persons (paras. 32-36).

Keywords: *I, TI; children, decision-making process, education, free and informed consent, health, IGM, investigation, legislation, medical professionals, reparation, surgical/medical intervention, trainings*

9. Reference is made to the amendment of 2013 to the Civil Status Act under which parents do not need to enter the sex of the child when registering a birth if it cannot be unequivocally established (para. 202). It is also indicated that that amendment will be evaluated and possibly extended (para. 203), on the basis of the work of the interministerial working group on intersexuality/transsexuality (para. 204). Please indicate whether the State party is planning: (a) to ensure the effective application of legal and medical standards following the best practice of the people concerned or their legal representatives granting informed consent to medical and surgical treatment of intersex people; (b) to investigate incidents of surgical and other medical treatment of intersex people without their effective consent and adopt legal provisions in order to provide redress to the victims of such treatment, including adequate compensation; (c) to educate and train medical and psychological professionals on the range of sexual, and related biological and physical, diversity; and (d) to properly inform patients and their parents of the consequences of unnecessary surgical and other medical interventions for intersex people.

Germany – Concluding Observations – 66th session, 9 March 2017, 7th-8th review⁹³

Keywords: *T; discrimination, legislation, measures, media, stereotypes*

Stereotypes

21. The Committee welcomes the legislative and other measures taken to address discriminatory stereotypes and notes the pilot projects relating to the portrayal of transgender persons in the media. [...]

Keywords: *I, TI; access to justice, children, decision-making process, education, family, free and informed consent, GC/GR, health, IGM, legislation, measures, medical professionals, remedy, support services, surgical/medical intervention*

Harmful practices

23. The Committee welcomes the adoption of legislative and other measures to combat harmful practices, including the forty-seventh Criminal Law Amendment Act (2013) prohibiting female genital mutilation and the establishment of an inter-ministerial working group on intersexuality/transsexuality. Nevertheless, the Committee is concerned about:

[...]

(d) The lack of clear legislative provisions prohibiting the performance of unnecessary medical procedures on infants and children of indeterminate sex until they reach an age at which they are able to provide their free, prior and informed consent;

(e) Inadequate support and the lack of effective remedies for intersex persons who have undergone medically unnecessary surgical procedures at a very early age, often with irreversible consequences, resulting in long-term physical and psychological suffering.

24. In the light of 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 (2014) on harmful practices, the Committee recommends that the State party:

[...]

(d) Adopt clear legislative provisions explicitly prohibiting the performance of unnecessary sur-

92 [CEDAW/C/DEU/Q/7-8.](#)

93 [CEDAW/C/DEU/CO/7-8.](#)

gical or other medical treatment on intersex children until they reach an age at which they can provide their free, prior and informed consent; provide the families of intersex children with adequate counselling and support; and ensure that the German Medical Association provides information to medical professionals on the legal prohibition of unnecessary surgical or other medical interventions for intersex children;

(e) Ensure the effective access to justice, including by amending the statute of limitations, of intersex persons who have undergone unnecessary surgical or other medical treatment without their free, prior and informed consent; and consider the proposal of the German Ethics Council to establish a State compensation fund.

Keywords: T, TI; awareness-raising campaign, court, discrimination, gender reassignment treatment, health, legislation, LGR, police, psychiatric assessment, service provision, trainings, women

Transgender women

45. The Committee notes as positive the establishment of an inter-ministerial working group on intersexuality/transsexuality, and the possible revision of the Transgender Act. Nevertheless, it is concerned about:

(a) The burdensome conditions set for gender reassignment treatment for transgender women (namely, the requirement of two experts' reports and the lengthy period of 12 to 18 months of treatment, often experienced as psychopathologization) required before gender reassignment can be granted, and the unreasonable barriers set up by health insurance companies regarding the coverage of the costs of such treatment;

(b) Incidents of discrimination against transgender women.

46. The Committee recommends that the State party:

(a) 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, and ensure that health insurance companies reimburse the costs for such interventions without unreasonable barriers;

(b) Strengthen efforts to eliminate discrimination against transgender persons, including through awareness-raising campaigns and appropriate training for police officers and the judiciary.

Keywords: *LBTI; anti-discrimination legislation, awareness-raising campaign, discrimination, GC/GR, intersectionality, legislation, protected grounds, women*

Definition of discrimination and legislative framework

10. The Committee notes with appreciation that the right to equality is enshrined in article 4 of the Constitution and that the State party has made efforts to adopt laws and mechanisms for the advancement of women. It remains concerned, however, about the absence of a comprehensive article in the Constitution on the right to non-discrimination, in line with articles 1 and 2 (b) of the Convention, as well as of legislation on the prohibition of all forms of discrimination, including sanctions for such discrimination. It is also concerned about the insufficient measures taken to modify or repeal existing discriminatory laws and regulations and about the lack of implementation and visibility of the Convention in the State party.
11. Recalling its general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, the Committee reiterates its previous recommendation (CEDAW/C/GUA/CO/7, para. 12) and calls upon the State party:
 - (a) To apply in its legislation the comprehensive definition of discrimination against women and girls contained in article 1 of the Convention and to prohibit all discrimination against women, in accordance with article 2 (b), and to ensure that that legislation covers all prohibited grounds of discrimination, includes protection from discrimination for indigenous women, Garifuna women, women with disabilities, lesbian, bisexual and transgender women and intersex persons, in the public and private spheres, and covers intersecting forms of discrimination;
 - (b) To review its legislation, especially its Civil Code and Penal Code, to ensure compliance with the Convention, and to repeal any provisions that discriminate against women;
 - (c) To raise awareness about the Convention and women's rights in particular among women and among all civil servants and the general public.

Keywords: *LBTI; access to justice, action plan, court, data collection, GC/GR, hate crimes, investigation, killings, legislation, police, prevention, prosecution, punishment, reparation, sexual violence, shelters, support services, violence, women*

Gender-based violence against women

20. The Committee notes with appreciation the creation of the branch of the Office of the Public Prosecutor with national jurisdiction over femicide and of the specialized courts on femicide and other forms of violence against women. Given the retrogression of the institutions responsible for the protection of women from violence and of the measures advanced in the previous reporting period, the Committee welcomes the recent reactivation of the National Coordination Office for the Prevention of Domestic Violence and Violence against Women and the policy on decent and transformative reparation in cases of sexual violence, forced pregnancy and forced maternity in girls and adolescents. However, the Committee remains concerned about the following:
 - (a) Pervasiveness of gender-based violence against women and girls in the State party, including the alarming and increasing rates of femicide, hate crimes against lesbian, bisexual and transgender women and intersex persons, domestic violence, and rape and incest resulting in forced pregnancy, and the absence of reliable disaggregated data and of effective preventive strategies;
 - (b) Low number of prosecutions of perpetrators and the lenient sentences imposed on them, which result in systemic impunity, and the failure to provide reparation to victims;
 - (c) Insufficient resources allocated to the prevention of such violence and to victim support services, including shelters;
 - (d) Reports of sexual violence perpetrated by medical personnel and the coercive sterilization of women with disabilities, including women who are institutionalized in the Federico Mora Mental Health Hospital;
 - (e) Lack of standardized gender-sensitive protocols for investigating and prosecuting cases of gen-

der-based violence against women and girls and the insufficient capacity and availability of specialized courts on femicide and other forms of violence against women throughout the territory.

21. Recalling its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, the Committee recommends that the State party implement its previous recommendation on the subject and to strengthen the National Coordination Office for the Prevention of Domestic Violence and Violence against Women (CEDAW/C/GUA/CO/7, para. 22). It also recommends that the State party:

(a) Implement, as a matter of priority and within a specific time frame, a national plan for the prevention of gender-based violence against women, including indigenous women and women of African descent, women living in poverty, women with disabilities and lesbian, bisexual and transgender women and intersex persons, and establish a centralized system for the collection of data on gender-based violence against women, disaggregated by age and the relationship between the victim and the perpetrator;

(b) Ensure that all crimes committed against women and girls, in particular femicide, are investigated by the police, that perpetrators are prosecuted and adequately punished and that victims are provided with adequate reparations;

(c) Allocate sufficient resources to ensure that shelters for women who are victims of gender-based violence are fully operational throughout the State party and ensure that women who are victims of gender-based violence have effective access to medical treatment, psychological counseling, legal assistance and other support services;

(d) Ensure that all cases of sexual violence and of forced sterilization committed against women and girls with disabilities are duly investigated, that perpetrators are prosecuted and adequately punished and that any medical procedure is carried out only with the free and informed consent of those concerned, in accordance with international standards;

(e) Allocate sufficient human, technical and financial resources to strengthen and expand the geographical coverage of specialized courts on femicide and other forms of violence against women, harmonize the different laws and regulations on gender-based violence against women, enhance coordination among the different institutions responsible for their implementation and adopt the use of the Latin American model protocol for the investigation of gender-related killings of women to ensure the gender-sensitive investigation and prosecution of all cases of gender-based violence against women and girls.

Keywords: *LBTI; access to justice, detention, FOE/FOAA, HRD, investigation, law enforcement officials, legislation, policy, prosecution, punishment, sexual violence, stigmatisation, violence, women*

Women human rights defenders

28. The Committee takes note of the information provided by the State party on the ongoing elaboration of the public policy for the protection of human rights defenders. Nevertheless, the Committee notes with concern that women human rights defenders in the State party, including indigenous women defending land rights and environmental resources, women advocating protection from gender-based violence and women defending the human rights of lesbian, bisexual and transgender women and intersex persons, are increasingly subject to attacks, sexual violence, intimidation, stigmatization, criminalization of their activities, illegal detention and defamation campaigns against them. It is also concerned that social protest is oppressed by using gender-based violence, including sexual violence, against women activists. It notes with concern the overall impunity for perpetrators of gender-based violence and other rights violations against women human rights defenders, as well as alleged cases of collusion between law enforcement officials and perpetrators.

29. The Committee recommends that the State party:

(a) Ensure the protection of women human rights defenders from violence and intimidation, including through the adoption and implementation of the public policy on the protection of human rights defenders and the protocol of the Office of the Public Prosecutor on the investigation of cases of rights violations against human rights defenders;

(b) Ensure the prompt investigation, prosecution and punishment of all abuses against women human rights defenders, taking into account the specific risks that women face;

- (c) **Guarantee that women human rights defenders and activists can freely carry out their work protecting women's human rights and exercise their rights to freedom of peaceful assembly and association.**

Keywords: L, T; *detention, discrimination, investigation, same-sex couples, torture/ill-treatment, violence, women*

Women in detention

- 44. The Committee notes with appreciation recent the pilot initiatives, which have received international support, on penitentiary reform, including non-custodial alternatives to the pretrial detention of women and men, such as electronic monitoring bracelets. The Committee is concerned, however, that 50 per cent of the women being held in custody are in pretrial preventive detention. It notes with concern the overcrowded and deplorable conditions in places of detention for women, as well as reported cases of gender-based violence, the depriving of lesbian and transgender women of partner visits and the use of isolation as punishment. It also notes with concern the inadequate accommodation of pregnant women and women in detention with their children.
- 45. The Committee recalls the **United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders** and the **United Nations Standard Minimum Rules for the Treatment of Prisoners** and recommends that the State party:
 - (a) **Continue its penitentiary reform efforts and reduce overcrowding through the promotion of non-custodial alternatives to pretrial detention;**
 - (b) **Ensure that women in detention have adequate access to health care, nutrition and hygiene;**
 - (c) **Promptly investigate all alleged cases of ill-treatment and violence against women in detention and ensure that partner visitation rights are respected, without discrimination towards lesbian and transgender women;**
 - (d) **Provide alternatives to detention for pregnant women and mothers with young children, taking into account the best interests of the child.**

Keywords: *jurisprudence, legislation, marriage, same-sex couples*

Marriage and family relations

25. Please provide information on any legal developments, since the previous consideration of the State party's report in 2005, regarding the proposed family law bill and attempts to safeguard the rights of women with respect to the family home. Please provide information on the economic situation of women and children in the aftermath of divorce. Please also provide information on the legal regulations (statutory and case law) in place governing the distribution of property upon divorce or dissolution of a de facto union (opposite or same sex).

Keywords: *GI; children, family, legislation, LGR*

B. Positive aspects

4. The Committee welcomes the progress achieved since its consideration in 2005 of the State party's combined fourth and fifth periodic reports (CEDAW/C/IRL/4-5) in undertaking legislative reforms, in particular the adoption of the following legislation:

[...]

(b) The Gender Recognition Act, in 2015, which provides that, from 16 years of age, the preferred gender of a person will be fully recognized by the State party for all purposes;

(c) The Children and Family Relationships Act, in 2015, which protects the rights of children of diverse families, including girls, in relation to guardianship and custody;

[...]

Keywords: *I; children, consultation, decision-making process, health, IGM, surgical/medical intervention*

Stereotypes and harmful practices

24. The Committee welcomes the State party's efforts to combat discriminatory gender stereotypes and harmful practices such as female genital mutilation following the adoption of the Criminal Justice (Female Genital Mutilation) Act in April 2012. The Committee is, however, concerned that:

[...]

(b) Medically irreversible and unnecessary sex assignment surgery and other treatments are reportedly performed on intersex children.

25. The Committee recommends that the State party:

[...]

(b) Develop and implement an appropriate rights-based health-care protocol for intersex children, which ensures that children and their parents are properly informed of all options and that children are, to the greatest extent possible, involved in decision-making about medical interventions and that their choices are fully respected.

95 [CEDAW/C/IRL/QPR/6-7.](#)

96 [CEDAW/C/IRL/CO/6-7.](#)

Keywords: SOGI; anti-discrimination legislation, children, discrimination, education, legislation, protected grounds

Education

42. The Committee welcomes the high level of literacy and education in the State party and the measures taken to further improve access by women and girls to good-quality education, in particular with regard to women and girls from ultra-Orthodox communities, including the five-year programme aimed at integrating them into the education system. The Committee also welcomes the amendment in 2014 to the Rights of Pupils Law to include sexual orientation and gender identity as prohibited grounds of discrimination against pupils. [...]

Keywords: *LBT; legislation, partnership, same-sex couples, women*

B. Positive aspects

5. The Committee takes note of the adoption of Act No. 76/2016, in May 2016, which recognizes the right of lesbian, bisexual and transgender women to enter into same-sex civil unions and cohabitation.

Keywords: *LBTI; access to justice, anti-discrimination legislation, court, discrimination, GC/GR, hate crimes, intersectionality, legislation, policy, trainings, women*

Legislative framework and access to justice

17. The Committee notes the numerous laws and regulations with the aim of combating sex-based discrimination and making gender equality a reality, in particular Legislative Decree No. 5/2010, supplementing and amending the Code of Equal Opportunities between Women and Men. It also notes the implementation of the joint programme of the Council of Europe and the European Union on access to justice for Roma, Sinti and Caminanti Women, in partnership with the National Office against Racial Discrimination. The Committee is concerned, however, about:

- (a) The limited effectiveness of the State party's anti-discrimination legislation;
- (b) The unsystematic protection against discrimination afforded to lesbian, bisexual and transgender women and intersex persons;
- (c) The difficulties faced by women in claiming their rights owing to legal illiteracy, the costs and length of procedures, insufficient legal aid, gender bias within the judiciary and the lack of reparation;
- (d) The insufficient integration of the prohibition of intersecting forms of discrimination into national laws and public policies.

18. In line with its general recommendation No. 33 (2015) on women's access to justice, the Committee recommends that the State party:

- (a) Strengthen the legislative framework on gender equality and eliminate sex-based or gender-based discrimination;
- (b) Amend article 3 of the Constitution and Act No. 205/199 3 to protect lesbian, bisexual and transgender women and intersex persons from intersecting forms of discrimination or hate crimes;
- (c) Accord priority to measures to expedite legal proceedings and improve the treatment of victims of gender-based violence against women and to eliminate gender stereotyping within the judiciary;
- (d) Ensure that intersecting forms of discrimination are adequately addressed by courts, including through training for judges and lawyers.

Keywords: *I; children, consultation, decision-making process, free and informed consent, GC/GR, health, IGM, surgical/medical intervention*

Health

41. The Committee is concerned about:

[...]

- (e) The fact that intersex children are subjected to irreversible surgery for intersex variation and other medical treatment without their free and informed consent.

42. The Committee, recalling its general recommendation No. 24 (1999) on women and health, recommends that the State party:

[...]

(e) Develop and implement a rights-based health-care protocol for intersex children, ensuring that children and their parents are appropriately informed of all options, that the children are involved, to the greatest extent possible, in decision-making about medical interventions and that their choices are respected and that no child is subjected to unnecessary surgery or treatment.

Keywords: *LBTI; anti-discrimination legislation, criminalisation (decriminalisation), GC/GR, intersectionality, UPR, women*

Anti-discrimination legislation

10. The Committee notes with concern the lack of comprehensive anti-discrimination legislation in the State party, including the absence of clear and complete protection against intersectional discrimination in the Constitution, and the fact that homosexual acts remain criminalized.
11. In line with general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, the recommendation accepted by Kenya during the universal periodic review process in 2015 (A/HRC/29/10, para. 142.41) on the adoption of a comprehensive anti-discrimination law affording protection to all individuals and the statement by the State party during the dialogue regarding public consultations on comprehensive legislation and the hope that homosexuality would find a place in it, the Committee recommends that the State party exercise due diligence to protect all women, including lesbian, bisexual and transgender women and intersex persons, against discrimination by adopting comprehensive anti-discrimination legislation affording such protection.

Keywords: *LBTI; access to justice, arrest, conversion therapy, criminalisation (decriminalisation), discrimination, education, employment, gender impersonation laws, harassment, health, intersectionality, killings, legislation, measures, policy, sexual violence, torture/ill-treatment, violence, women*

Lesbian, bisexual and transgender women and intersex persons

21. According to information before the Committee, lesbian, bisexual and transgender women and intersex persons face multiple forms of discrimination and violence in the State party, including arbitrary arrests, violence, including sexual violence, murder, harassment and torture, as well as discrimination in education, employment, health care and access to justice. Please indicate what measures have been taken to protect such women from discrimination and violence, as well as to revise the laws and policies that are discriminatory on these bases, such as the prohibition of consensual relations between women and of “men posing as women” and vice versa, and policies aimed at “rehabilitating” or “curing” lesbian, bisexual and transgender women and intersex persons.

Keywords: *LBTI; access to justice, asylum-seekers/refugees, data collection, measures, violence, women*

Refugees and asylum-seeking women

21. The State party provides no information on the situation of refugee and asylum-seeking women or on asylum claims based on gender-related persecution. Please specify what measures have been taken to fill existing protection gaps concerning the rights of female refugees and asylum seekers. Please also specify what measures are in place to protect women in transit, especially those travelling from Central America, who face acute risks of kidnapping, disappearance, sexual assault, trafficking and extortion. Please indicate what mechanisms are in place to encourage refugee and asylum-seeking women to file complaints with the authorities without fear of deportation. In that regard, please specify how many women were deported within the reporting period, indicating their country of origin. Please also provide statistics on the number of lesbian, bisexual, transgender and refugee and asylum-seeking women and intersex persons who have been subjected to gender-based violence in the State party, stating whether the alleged perpetrators have been brought to justice. Please indicate whether efforts have been undertaken to establish a formal mechanism to identify persons in need of international protection, including women refugees, stateless women and victims of trafficking in persons. Please indicate whether a comprehensive strategy has been adopted to identify, prevent and respond to situations of sexual and gender-based violence affecting refugee and asylum-seeking women and girls, and to ensure that they have adequate access to shelters, as well as medical and psychosocial counselling services, in accordance with general recommendation No. 35.

Keywords: *LBTI; measures, stereotypes, women*

Stereotypes and harmful practices

7. In its previous concluding observations (para. 18), the Committee expressed its concern about the persistence of harmful practices and discriminatory stereotypes concerning the roles and responsibilities of women and men in the family and society. Please provide information on the implementation and monitoring of measures subsequently taken by the State party, including awareness-raising campaigns, and their impact and results, to change such stereotypes. Please also specify measures taken to address the stereotyped portrayal of women, including women belonging to minority groups, migrant women, lesbian, bisexual and transgender women and intersex persons.

Keywords: *LBTI; discrimination, education, employment, health, intersectionality, measures, women*

Disadvantaged women

19. Please provide detailed information on the intersecting forms of discrimination faced by women with disabilities, migrant women and lesbian, bisexual and transgender women and intersex persons and indicate what measures are in place to eliminate such discrimination, in particular in the areas of education, employment, health and participation in political and public life. -

Keywords: *SO; L, LBTI, T, TI; adoption, aggravating circumstance, anti-discrimination legislation, children, family, hate crimes, hate speech, legislation, LGR, marriage, partnership, protected grounds, same-sex couples, violence, women*

Lesbian, bisexual, transgender and intersex women

45. The Committee notes the constitutional prohibition of discrimination in articles 17 and 32, as well as in Law No. 1.299 of 2005 on freedom of public expression, which prohibits incitement to hatred and violence against an individual on the ground of sexual orientation. It notes with concern, however, the lack of anti-discrimination legislation protecting women who are lesbian, bisexual, transgender or intersex beyond these laws. It also notes with concern that:
- (a) Violence based on sexual orientation or on being transgender or intersex is not considered an aggravating factor in the Criminal Code;
 - (b) There is no legislation allowing for change of sex marker in official documents.
46. The Committee recommends that the State party provide lesbian, bisexual, transgender and intersex women with the necessary protection from discrimination and violence and:
- (a) Adopt specific anti-discrimination legislation and criminal law provisions explicitly recognizing violence based on sexual orientation or on being transgender or intersex as an aggravating factor;
 - (b) Revise existing laws to ensure that lesbian couples have access to marriage or, as a minimum, to an officially registered union, as well as to adoption;
 - (c) Adopt legislation allowing for change of sex marker in official documentation for transgender women.

103 [CEDAW/C/MCO/Q/1-3.](#)

104 [CEDAW/C/MCO/CO/1-3.](#)

Montenegro – List of Issues – 67th PSWG, 25 November 2016, 2nd review¹⁰⁵

Keywords: SOGI; anti-discrimination legislation, discrimination, legislation, measures, prevention

Constitutional and institutional mechanisms

1. In response to the Committee's previous concluding observations, please provide information on measures taken to implement the provision preventing direct and indirect discrimination based on sex, sexual orientation and gender identity of the Law on the Prohibition of Discrimination (2010) ([CEDAW/C/MNE/CO/1](#), para. 4 (b)). Please also provide information on court proceedings during which the provisions of the Convention were directly invoked or applied.

Montenegro – Concluding Observations – 67th session, 24 July 2017, 2nd review¹⁰⁶

Keywords: T; discrimination, employment, policy, stereotypes, women

Employment

32. The Committee appreciates the measures taken by the State party to address horizontal and vertical segregation in the formal employment sector, including through the labour law, which is currently being further amended. However, it notes the following with concern:

(a) That the unemployment rate among women remains disproportionately high, in particular among women belonging to minority groups, such as Roma, Ashkali and Egyptian women, women with disabilities and transgender women;

[...]

33. The Committee recommends that the State party create more opportunities for women to gain access to formal employment, including by adopting and implementing policies, with time-bound targets and indicators, to reverse discriminatory gender stereotypes in order to eliminate occupational segregation and achieve the substantive equality of women and men in the labour market, including in traditionally male fields, through intensified technical and vocational training for women in those areas. It also recommends that the State party:

(a) Adopt measures to effectively implement the principle of equal pay for work of equal value and to narrow and close the gender wage gap, including by applying gender-neutral analytical job classification and evaluation methods and regular pay surveys;

(b) Develop a confidential and safe system for filing complaints relating to discrimination on the basis of sex or gender in employment, ensure that victims have effective access to such means of redress and impose timely and commensurate sanctions for employers engaging in discriminatory practices;

[...]

Keywords: SOGI; LBT, LGBT, T; anti-discrimination legislation, awareness-raising campaign, discrimination, legislation, LGR, measures, prosecution, punishment, sterilisation, surgical/medical intervention, violence, women

Lesbian, bisexual and transgender women

46. The Committee notes the measures taken by the State party to address discrimination against lesbian, bisexual and transgender women, including the strategy for improvement of the quality of life of lesbian, gay, bisexual and transgender people, 2013-2017, and the prohibition of discrimination on the basis of sexual orientation and gender identity in the Law on the Prohibition of Discrimination and the Law on Gender Equality. However, it is concerned about the severe discrimination and gender-based violence against lesbian, bisexual and transgender women, widely considered diseased by society. It is also concerned about the legal requirement for transgender persons to undergo a surgical intervention in order to obtain legal recognition.

47. The Committee recommends that the State party raise awareness to combat discrimination, including common misconceptions about lesbian, bisexual and transgender women. It further recommends that

105 [CEDAW/C/MNE/Q/2](#).

106 [CEDAW/C/MNE/CO/2](#).

the State party:

- (a) Apply a policy of zero-tolerance of discrimination and violence against lesbian, bisexual and transgender women, including by prosecuting and adequately punishing perpetrators;
- (b) Facilitate the procedure for legal recognition of a sex change, including by removing the requirement to undergo sterilization.

Keywords: SOGI; anti-discrimination legislation, discrimination, GC/GR, women

Legislative and institutional framework

3. With reference to paragraph 7 of the State party report (CEDAW/C/NER/3-4), please indicate whether article 22 of the Constitution of 25 November 2010 can be directly invoked in court. In its previous concluding observations, the Committee noted the lack of an explicit definition of discrimination against women, in accordance with article 1 of the Convention, which prohibits direct and indirect discrimination in the State party's legislation (CEDAW/C/NER/CO/2, para.11). Please inform the Committee on any steps taken with a view to adopting comprehensive anti-discrimination legislation that specifically prohibits all forms of discrimination against women, in all fields of life and addressed to State and private actors, in accordance with articles 1 and 2 of the Convention, including direct and indirect discrimination, on all grounds as referred to in general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention. Furthermore, please inform on any steps taken to prohibit discrimination based on sexual orientation and gender identity. Please also inform on the efforts made towards adoption of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.

Keywords: LBT; discrimination, measures, prevention, women

Disadvantaged groups of women

21. Please provide information on measures taken to prevent discrimination against and provide support to women in disadvantaged and vulnerable situations, including women with disabilities, lesbian, bisexual and transsexual women, older women, women affected by HIV/AIDS, women descending from victims of slavery and former victims of slavery, and single mothers.

Keywords: SO; children, discrimination, intersectionality, measures, violence, women

Disadvantaged groups of women

43. The Committee notes with concern the multiple forms of discrimination that women and girls face in the State party. It is particularly concerned:

[...]

(d) At reports of intersecting discrimination and violence against women and girls caused by homophobia;

[...]

44. The Committee recommends that the State party:

[...]

(d) Take measures to address homophobia and protect affected women and girls;

[...]

Keywords: *LBTI; action plan, hate speech, intersectionality, legislation, measures, remedy, women*

Stereotypes and harmful practices

22. The Committee welcomes the measures taken by the State party to combat harmful practices within its territory and abroad, including the adoption of legislation specifically criminalizing child and/or forced marriage and female genital mutilation and the comprehensive, periodically renewed action plan, which can be characterized as a good practice, to combat those harmful practices and crimes in the name of so-called honour. It also welcomes the fact that the State party was one of the first countries to criminalize hate speech, including online sexual hate speech and online revenge porn. The Committee is nevertheless concerned that:

- (a) There are currently no reliable statistics on the number of women who have been subjected to forced marriage or female genital mutilation;
- (b) Section 185 of the Penal Code does not include gender hate speech;
- (c) Childhood and adolescence has become increasingly commercialized, gendered and sexualized, resulting in omnipresent negative gender stereotypes and giving rise to intimate partner violence, a youth culture that is increasingly marked by the objectification and sexualization of girls and girls presenting themselves in a highly sexual manner;
- (d) The prosecution and police authorities have noted the influence of pornography in abuse cases, resulting, for example, in a significant increase, by 60 per cent in 2016, in reported rape cases in which the alleged perpetrator is a child;
- (e) There are no plans to systematically address various forms of stereotypes stemming from negative attitudes about women and girls belonging to certain racial, ethnic and religious groups, leading to multiple forms of discrimination.

23. The Committee recommends that the State party:

- (a) Systematically collect disaggregated data on harmful practices in the State party and report them to the Committee in its next periodic report;
- (b) Strengthen primary and secondary education on gender stereotypes, prejudice, gender identity and gender roles, including on various forms of stereotypes affecting minority women and girls, in particular Sami women and women with a migrant background;
- (c) Allocate resources for research into the root causes and possible impact of oversexualized representations of girls and women in the media and the possible connections between sexualization and pornography and the root causes of gender-based violence, in particular in relation to girls;
- (d) Step up the implementation of the action plan against hate speech, which should provide for a monitoring mechanism to assess the impact of the measures taken and design remedial action, with a special focus on women facing intersecting forms of discrimination based on gender and racially, ethnically, religiously and nationalistically motivated hate speech, lesbian, bisexual and transgender women and intersex persons, and women with disabilities;
- (e) Amend section 185 of the Penal Code to add gender to the list of actions that qualify as criminal hateful expressions.

Keywords: *LBTI; asylum-seekers/refugees, GC/GR, honour crimes, legislation, sexual violence, women*

Refugee and asylum-seeking women and girls

44. While the Committee welcomes the fact that gender-related persecution, including that of lesbian, bisexual and transgender women and intersex persons, is a relevant factor in asylum case decisions in the State party, and that rape, forced sterilization or abortion, female genital mutilation, bride burning and killings in the name of so-called honour may also constitute persecution, the Committee is nonetheless concerned that the tightening of the laws relating to refugees and asylum seekers may have a disproportionately negative impact on women and girls.

45. In line with its general recommendations No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women and No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations, the Committee calls upon the State party to continue to apply a gender-sensitive approach in receiving refugee and asylum-seeking women and in considering asylum claims, thereby ensuring that the protection needs of asylum-seeking and refugee women and girls arriving in the State party are addressed as a priority concern.

Keywords: *T; access to justice, detention, discrimination, intersectionality, legislation, women*

Access to justice

2. The report refers to a number of legislative Protocols that have been adopted by the State party to improve access to justice for disadvantaged groups, including persons with psychosocial disabilities (Res. No. 224/15), as well as transgender persons (Res. No. 744/15), and older persons (Res. No. 790/15) deprived of liberty (para.13). It further notes the adoption of a National Programme on Women Deprived of Liberty (Res. No. 168/15) (para. 14). Please indicate whether a gender perspective has been applied in the development of these protocols as a means of preventing intersectional discrimination against women deprived of liberty, and specify whether its impact has been evaluated.

Keywords: *LBTI; anti-discrimination legislation, discrimination, intersectionality, legislation, UPR, women*

Legal and institutional framework

10. The Committee remains concerned at delays in the adoption of several pieces of legislation, including the anti-discrimination bill. It is also concerned at the insufficient implementation of the provisions of existing legislation and that this legislative gap may result in a lack of specific measures for the realization of the rights of women in the State party, especially those who face intersecting forms of discrimination.
11. The Committee, recalling its previous concluding observations (CEDAW/C/PRY/CO/6, para. 13), recommends that the State party expedite the adoption of the bill prohibiting all forms of discrimination, which should include a definition of discrimination, in line with article 1 of the Convention, cover direct and indirect discrimination and discrimination in the public and private spheres and recognize intersecting forms of discrimination, including discrimination against lesbian, bisexual and transsexual women and intersex persons, in accordance with the recommendations that enjoyed the support of the State party in the second cycle of the universal periodic review (see A/HRC/32/9, paras. 102.38 and 102.52–102.56). The Committee further recommends that the State party comprehensively review its legislation to eliminate all discriminatory provisions.

Keywords: *LBTI; discrimination, intersectionality, media, stereotypes, violence, women*

Discriminatory stereotypes

18. The Committee welcomes initiatives taken by the State party to raise the awareness of State media about gender-sensitive communication and to provide training for the communication directorates of State institutions. It is nevertheless concerned at the persistence of discriminatory stereotypes in this regard and at intersecting forms of discrimination against women based on their sex, ethnicity, disability and marital status, as well as against lesbian, bisexual and transsexual women and intersex persons. It is concerned that these stereotypes underpin discrimination and gender-based violence against women, including sexual and domestic violence and femicide, as well as sexual abuse at school and in the workplace. The Committee is further concerned about the prevalence of discriminatory gender stereotypes in the media, in particular sexist portrayals of women.

19. The Committee recommends that the State party:

- (a) Put in place, without delay, a comprehensive strategy to raise public awareness of the concept of gender and eliminate patriarchal attitudes and stereotypes that discriminate against women, which should include education and campaigns to raise awareness, targeting women and men at all levels of society, including community and religious leaders, and focus particularly on recognizing the value and dignity of women and empowering them to participate in decision-making processes in the community and in society at large, and should involve the engagement of civil society organizations and mass media organizations in the implementation of the strategy;
- (b) Encourage the adoption of a code of conduct for advertising in public and private media, with

110 [CEDAW/C/PRY/Q/7](#).

111 [CEDAW/C/PRY/CO/7](#).

a view to avoiding discriminatory stereotypes and media practices (CEDAW/C/PRY/CO/6, para. 19), and re-establish an entity monitoring the portrayal of women in public and private media;

(c) Expand gender-sensitive training to private media, encouraging them to convey positive images of women and their equal status with men in public and private life and to eliminate women's portrayal as sexual objects.

Keywords: *LBTI, T; access to justice, data collection, hate speech, investigation, prosecution, punishment, violence, women*

Gender-based violence against women

20. The Committee welcomes the adoption of legislation on the comprehensive protection of women against all forms of violence, including femicide. It takes note of the establishment of an inter-institutional forum for prevention, response, follow-up and protection to women in situations of violence and of a single registry of public services provided to victims of gender-based violence. However, it notes with concern:

[...]

(d) Hate speech and acts of violence against transsexual women, and the absence of investigations into and prosecutions and convictions of the perpetrators of such acts;

(e) The lack of a unified, coordinated and coherent system for collecting data on gender-based violence (CEDAW/C/PRY/CO/6, para. 20), as provided for in article 29 of the Act on integral protection of women against all forms of violence.

21. The Committee recommends that the State party:

[...]

(d) Ensure that all allegations of sexual harassment and gender-based violence, including against transsexual women, are investigated, prosecuted and punished with sanctions commensurate with the gravity of the crime;

(e) Establish a unified, coordinated and coherent system for collecting data on gender-based violence (CEDAW/C/PRY/CO/6, para. 20) and allocate adequate resources for its functioning, ensuring that the system includes data disaggregated by sex, age and relationship between the victim and perpetrator, on femicide, violence against lesbian, bisexual and transsexual women and intersex persons, women who are victims of trafficking and women in prostitution, as well as on the number of investigations, prosecutions, convictions and on the sentences imposed on perpetrators of such acts.

Keywords: *LBTI; discrimination, health, measures, medical professionals, punishment, service provision, SRHR, stigmatisation, women*

Health

36. The Committee welcomes the adoption of the current national sexual and reproductive health plan and the introduction of guidelines on the provision of comprehensive post-abortion services, requiring full confidentiality and medical secrecy for women who undergo an abortion. It also takes note of initiatives taken through the "Code Red" strategy to reduce maternal mortality and the distribution of health and birth kits to family health units, which extend to rural and indigenous areas. It is concerned, however, at:

[...]

(f) Women in prostitution, women with disabilities, lesbian, bisexual and transsexual women and intersex persons and women living with HIV/AIDS facing difficulties in gaining access to health services and facing discrimination and mistreatment by health-care personnel.

37. The Committee recalls its previous concluding observations (CEDAW/C/PRY/CO/6, para. 31) and recommends that the State party:

[...]

(f) Ensure access to health services for all women and girls, including women and girls living with HIV/AIDS, women and girls with disabilities, women and girls in prostitution and lesbian, bisexual and transsexual women and intersex persons, and take measures to punish discriminatory treatment

against them and address their stigmatization and social exclusion.

Keywords: L, T; *access to justice, detention, discrimination, family, harassment, investigation, law enforcement officials, prosecution, punishment, same-sex couples, sexual violence, violence, women*

Women in detention

44. The Committee welcomes the use, since 2013, by the State party of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). Nevertheless, it notes with concern:

[...]

(c) Discrimination against lesbian women through the refusal of partner visits and against adolescent mothers who are denied the right to keep their children in their care;

(d) Reports of violence against women in detention and of abuse of transsexual detainees.

45. The Committee recommends that the State party:

[...]

(c) Guarantee partner visits and visits of family members for all women, including for adolescent mothers, lesbian women and transsexuals;

(d) Ensure that women are able to file reports about abusive conduct by guards and supervising staff in detention centres, including with respect to sexual violence, intimidation or harassment, that such reports are promptly, independently and impartially investigated and prosecuted and that perpetrators are adequately punished.

Keywords: *SO; anti-discrimination legislation, GC/GR, hate crimes, legislation*

Legal status of the Convention and legislative and institutional framework

3. Despite the Committee's recommendation in its previous concluding observations (CEDAW/C/KOR/CO/7, para. 15), the State party appears to have made slow progress towards the adoption of a comprehensive anti-discrimination law in line with articles 1 and 2 of the Convention and the Committee's general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, that includes a clear prohibition of all forms of discrimination, both direct and indirect, and that takes into account article 2 (4) of the National Human Rights Commission Act (2005), which prohibits discrimination based on sexual orientation. The National Human Rights Commission proposed, in the third national action plan for the promotion and protection of human rights, covering the period 2017-2021, the adoption of an anti-discrimination law. Please provide information on the efforts to accelerate the process and provide a specific time frame. Does the State party envisage making the anti-discrimination law applicable to the private sector and prohibiting misogyny and related hate crimes and online sexual violence and harassment?

Keywords: *SM; adolescents, education, health, measures, sexuality education, SRHR*

Education

15. In view of the information before the Committee that the national standard on sex education, which was introduced by the Ministry of Education in 2015 and implemented in every school as at March 2017, excludes a number of important sexual and reproductive health and rights issues, please provide updated information on the measures taken to continuously revise school curricula to ensure that they include age-appropriate education on sexual and reproductive health and rights at all school levels in order to combat early pregnancies and inform adolescents about sexually responsible behaviour, with a gender perspective and taking into account the rights of sexual minorities and developments in the fields of education and health.

Keywords: SOGI; discrimination, stereotypes, women

Stereotypes

7. The Committee, in its previous concluding observations (CEDAW/C/SGP/CO/4, para. 21), expressed concern about the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men within the family and society and the discriminatory traditional cultural attitudes that continue to utilize the concept of “head of household”, a role assigned to men. What measures, other than the amendment of the Income Tax Act referred to in paragraph 5.19 of the report, have been taken to effectively combat and eliminate such stereotypes? Please also clarify whether a comprehensive strategy to modify or eliminate patriarchal attitudes and stereotypes that discriminate against women, including those based on sexual orientation and gender identity, has been adopted, as recommended by the Committee.

Keywords: LGBTI; awareness-raising campaign, discrimination, education, legislation, media, policy, stereotypes, women

Lesbians, bisexual and transgender women and intersex persons

40. The Committee expresses its concern that lesbians, bisexual and transgender women and intersex persons face discrimination in various areas of life and that their situation is often exacerbated by the policies of the State party, including its media policy.
41. The Committee recommends that the State party ensure that lesbians, bisexual and transgender women and intersex persons are effectively protected against all forms of discrimination in law and in practice, including by undertaking educational and awareness-raising campaigns to combat discriminatory stereotypes, including in its media policies.

113 [CEDAW/C/SGP/Q/5](#).

114 [CEDAW/C/SGP/CO/5](#).

Sri Lanka – List of Issues – 66th PSWG, 29 July 2016, 8th review¹¹⁵

Keywords: SGI, SO; LBT; anti-discrimination legislation, criminalisation (decriminalisation), discrimination, intersectionality, measures, violence, women

Gender-based violence against women

16. Please clarify the statement that “the provisions of the Penal Code (sections 365 and 365A) which criminalize sexual activity between two consenting adults of the same sex does not detract from the Constitutional guarantee under Article 12 of the Constitution on protection from discrimination on the grounds of sexual orientation or sexual identity” (para. 36). Please provide a detailed account of the measures in place to guarantee the protection of lesbian, bisexual and transgender women who are subject to gender-based violence against women and intersecting forms of discrimination on the basis of their sexual orientation and gender identity ([CEDAW/C/LKA/CO/7](#), para. 25 (g)).

Sri Lanka – Concluding Observations – 66th session, 3 March 2017, 8th review¹¹⁶

Keywords: SO, SOGI; anti-discrimination legislation, court, discrimination, intersectionality, legislation, policy, women

Legal Framework for prohibition of discrimination against women

10. The Committee welcomes the ongoing reform process of the Constitution. However, it remains concerned about the limited participation of women in that process. It takes note of the reply of the state party concerning the proposal of the sub-committee on Fundamental Rights of the Constitutional Assembly to specifically include sexual orientation and gender identity as a ground of non-discrimination, in order to clarify any uncertainty as to whether discrimination based on sexual orientation is prohibited under the Right to Equality. However, the Committee observes a lack of clarity on the state party's acceptance of this proposal. Furthermore, the Committee notes with concern that although article 12(2) of the Constitution guarantees equality of women and men:
- (a) It does not prohibit direct and indirect discrimination against women, as required in article 1 of the Convention;
 - (b) Article 16(1) of the Constitution does not allow judicial review for discriminatory laws which existed prior to the enactment of the Constitution; and,
 - (c) Laws and policies do not address intersectional discrimination.
11. The Committee recommends that the State party, within a clearly defined timeframe:
- (a) Ensure women's full participation in the process of drafting the new Constitution;
 - (b) Give due consideration to the proposal made by the sub-committee on Fundamental Rights of the Constitutional Assembly to include sexual orientation and gender identity as a prohibited ground of discrimination;
 - (c) Incorporate into domestic legislation, the principle of equality and non-discrimination in line with articles 1 and 2 of the Convention, as previously recommended ([CEDAW/C/LKA/CO/7](#), para. 15);
 - (d) Repeal Article 16(1) of the Constitution to introduce judicial review of all laws; and,
 - (e) Adopt and implement policies and programs which address intersectional discrimination including caste-based discrimination.

Keywords: SM; decision-making process, education, employment, GC/GR, legislation, measures, support services, TSM, women

Temporary special measures

20. The Committee reiterates its previous concern ([CEDAW/C/LKA/CO/7](#), para. 20) regarding the absence of information on the use of temporary special measures to accelerate the achievement of substantive

115 [CEDAW/C/LKA/Q/8](#).

116 [CEDAW/C/LKA/CO/8](#).

equality between men and women in all areas of the Convention.

21. In line with article 4, paragraph 1, of the Convention and the Committee's [general recommendation No. 25 \(2004\)](#) on temporary special measures, the Committee recommends that the State party adopt temporary special measures with specific targets and incentives, outreach and support programmes, legal sanctions, special budget allocations, and other proactive results-oriented measures, to accelerate the achievement of substantive equality of women and men, particularly in public and political life and in decision-making, education and employment, and with special attention to women from ethnic, religious and sexual minorities, women heads of households, internally displaced women and women with disabilities.

Keywords: SM; access to justice, arrest, blackmailing, harassment, legislation, police, police misconduct, punishment, SDGs, sex work, sexual violence, support services, violence, women

Trafficking and exploitation of prostitution

26. The Committee welcomes the adoption, in 2016, of the National Strategic Plan to Monitor and Combat Human Trafficking (2015-2019). However, it notes the challenges in its implementation and reiterates its concern (CEDAW/C/LKA/CO/7, para. 26) about the low number of investigations, prosecutions, and convictions of traffickers. The Committee also notes with concern the reliance on the offence of procurement, article 360[a] of the Penal Code, in prosecutions rather than article 360[c] of the Penal Code, which provides for trafficking as a criminal offence. It is further concerned that minimum age limits for the migration of female domestic workers may perpetuate trafficking. The Committee further reiterates its concern (CEDAW/C/LKA/CO/7, para. 28) that the Vagrants Ordinance is used by the police to arbitrarily arrest women in prostitution, using their possession of condoms as evidence of engaging in prostitution, and to subject these women to harassment, sexual bribery and extortion.
27. The Committee reiterates its previous recommendations (CEDAW/C/LKA/CO/7, paras. 27 and 29) and draws attention to Sustainable Development Goal 5, target 5.2, to eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation, and recommends that the State party:

[...]

(d) Address the legal gaps that impede the prosecution of traffickers under Article 360[c] of the Penal Code;

[...]

(g) Repeal the Vagrants Ordinance Act and, in the interim, impose penalties on police officers who misuse the Act to harass women in prostitution as well as sexual minority women, and ensure that victims are provided with gender-sensitive protection and support, including exit programmes for women wishing to leave prostitution.

Keywords: SOGI; anti-discrimination legislation, children, discrimination, legislation, SDGs, women

Legislative framework and definition of discrimination

1. In accordance with the State party's obligations under articles 1 and 2 of the Convention and in line with Sustainable Development Goal 5, target 5.1, to end all forms of discrimination against all women and girls everywhere, please update the Committee on the status of the draft law on equal treatment of women and men and indicate whether it: (a) integrates a definition of discrimination against women in line with article 1 of the Convention, prohibiting direct and indirect discrimination by both public and private actors, in accordance with article 2 of the Convention (para. 25); and (b) includes the protection of all women from discrimination, including on the basis of sexual orientation and gender identity.

Keywords: SM; action plan, discrimination, health, HIV/AIDS, measures, stigmatisation

Health

17. Please inform the Committee as to whether the national strategic plan to combat HIV/AIDS (2014-2020) in the State party includes measures to address the issues identified in the report as requiring priority attention, namely: (a) preventing the contraction of HIV/AIDS by high-risk groups, particularly women in prostitution and women in the interior; (b) the need to reduce stigma and discrimination against women and sexual minorities living with HIV; and (c) the implementation of HIV prevention programmes targeting married women and women in other conjugal relations (para. 156).

Thailand – List of Issues – 67th PSWG, 25 November 2016, 6th-7th review¹¹⁸

Keywords: *LBTI; discrimination, education, employment, health, housing, measures, service provision, stigmatisation, TSM, violence, women*

Disadvantaged groups of women

19. Please provide information on the measures taken to eliminate discrimination against women belonging to disadvantaged groups, such as women with disabilities, older women, indigenous women, ethnic or religious minority women (including ethnic Muslim women from Southern Border Provinces), women migrant workers, refugee and asylum-seeking women and LBTI women, and what specific measures are in place, including temporary special measure, to ensure that women of disadvantaged groups have access to education, health services, employment, housing and legal status and are protected from social stigma and gender based violence

Thailand – Concluding Observations – 67th session, 24 July 2017, 6th-7th review¹¹⁹

Keywords: *LBT; access to justice, consultation, court, harassment, HRD, investigation, measures, prosecution, punishment, remedy, violence, women*

Women human rights defenders

30. The Committee expresses serious concern that women human rights defenders, in particular those advocating for land rights, protection of the environment and the rights of indigenous women, rural women, lesbian women, bisexual women, transgender women and Muslim women in the southern border provinces, have increasingly become targets of lawsuits, harassment, violence and intimidation by authorities and business enterprises because of their work.

31. The Committee recommends that the State party:

- (a) Adopt and implement, without delay, effective measures for the protection of women human rights defenders to enable them to freely undertake their important work without fear or threat of lawsuits, harassment, violence or intimidation, including by improving the effectiveness, in consultation with women human rights defenders, of the Witness Protection Office within the Ministry of Justice;
- (b) Effectively investigate, prosecute and adequately punish all cases of harassment, violence and intimidation against women human rights defenders and provide effective remedies to victims

¹¹⁸ [CEDAW/C/THA/Q/6-7](#).

¹¹⁹ [CEDAW/C/THA/CO/6-7](#).

Keywords: SO; children, discrimination, employment, intersectionality, stereotypes, women

Stereotypes

7. In its previous concluding observations, the Committee reiterated its concern about the persistence of traditional stereotypes regarding the roles and responsibilities of women and men in the family and in society at large, which represented a significant impediment to the implementation of the Convention and were root causes of women's disadvantaged position in political life, the labour market and other areas (([CEDAW/C/UKR/CO/7](#), para. 24). There have been discriminatory statements by high-ranking State officials (e.g., para. 66), and it is indicated that work undertaken to counter stereotypes is "unsystematic" (para. 180). Please provide information on the efforts made and envisaged since the submission of the report to counter the persistent patriarchal attitudes and deep-rooted stereotypes regarding the roles of women and men in the family and in society, together with stereotypical attitudes towards those women and girls who experience multiple forms of discrimination on account of their ethnicity, age, disability, sexual orientation and other characteristics, such as internally displaced women, older women and women living with HIV/AIDS.

Keywords: LBT; access to justice, children, GC/GR, investigation, law enforcement officials, measures, prevention, prosecution, punishment, remedy, reparation, sexual violence, trainings, violence, women

General context

10. The Committee welcomes the State party's efforts and commitment towards peacebuilding, the consolidation of the rule of law and sustainable development. It notes that, since the beginning of the conflict, in April 2014, and the temporary occupation and unrecognized annexation of the Autonomous Republic of Crimea and the city of Sevastopol by the Russian Federation (see General Assembly resolutions [68/262](#) and [71/205](#)), the State party has been facing a dramatic situation marked by human suffering, economic instability and the rise of violence and insecurity. The Committee notes that hostilities continue, notwithstanding the signing of the Minsk agreements. Despite the State party's efforts, the prevailing impunity for human rights violations and abuses committed in the context of the crisis in and around the State party, in particular some areas of the Donetsk and Luhansk regions, has had a severe impact on civilians, in particular women and girls in disadvantaged situations, such as internally displaced women, rural women, older women, women with disabilities, Roma women, lesbian, bisexual and transgender women and women from other minorities. In particular, the Committee is concerned that this situation, along with pervasive corruption, has contributed to an increase in the level of violence against women by State and non-State actors and to the reinforcement of traditional and patriarchal attitudes that limit women's and girls' enjoyment of their rights. The Committee is also concerned at the lack of information on the situation in territories outside the effective control of the State party as a result of restricted access for the representatives of the Organization for Security and Cooperation in Europe and other international organizations. The Committee reminds the State party of the urgent need to strengthen the positive agenda set up to consolidate the rule of law and underlines the crucial role of women as a force for peace and for rebuilding stability.

11. In line with its general recommendation No. 30, the Committee calls upon the State party:

- (a) To ensure that the rule of law is enforced and that justice is delivered efficiently, without delay and with a gender-sensitive approach;
- (b) As a priority, to establish measures to effectively combat corruption and impunity and comply with its due diligence obligation to prevent, investigate, prosecute and punish violence perpetrated against women and girls by State and non-State actors;
- (c) To provide systematic training on human rights, in particular on women's rights, to all law enforcement officials and the military and establish and enforce a strict code of conduct in order to effectively guarantee respect for human rights;

120 [CEDAW/C/UKR/Q/8](#).

121 [CEDAW/C/UKR/CO/8](#).

- (d) In the context of the Minsk agreements, to reject demands for amnesty to be given to those persons suspected, accused or convicted of war crimes, crimes against humanity or gross violations of human rights, including conflict-related sexual violence, recalling that amnesties are impermissible if they interfere with victims' right to an effective remedy, including reparation, or if they restrict victims' and societies' right to know the truth about violations of human rights and humanitarian law.

Keywords: *LBT; discrimination, employment, IDP, intersectionality, measures, service provision, sexual violence, women*

Internally displaced women

16. The Committee is concerned at the increasing number of internally displaced women and girls in the State party, who are in need of a long-term intervention to ensure, among other things, their access to basic services and protection. While noting the adoption of the Act on Ensuring the Rights and Freedoms of Internally Displaced Persons in October 2014, as well as a number of resolutions and decrees on assistance to internally displaced women, the Committee is concerned at the lack of implementation measures. The Committee is further concerned that internally displaced women, including older women, women with disabilities, Roma women and lesbian, bisexual and transgender women, are at a heightened risk of being or have been subjected to sexual violence and sexual exploitation, face the exacerbation of the already difficult living conditions and difficulties with regard to access to registration as internally displaced persons and to freedom of movement, as well as limited employment opportunities. [...]

17. The Committee urges the State party to:

- (a) Address the specific needs of the different groups of internally displaced women who are subjected to multiple forms of discrimination, including widows, women with disabilities, older women, Roma women and lesbian, bisexual or transgender women, and provide long-term interventions to address the needs of internally displaced women and girls;
- (b) Ensure the effective implementation of the Act on Ensuring the Rights and Freedoms of Internally Displaced Persons by issuing regulations to enable it to be made operational;
- (c) Ensure that internally displaced women and girls have adequate access to health services, education, food, shelter, free movement, registration, social benefits and opportunities to secure justice and durable solutions, as well as sustainable employment opportunities.

Keywords: *LBT; anti-discrimination legislation, discrimination, education, harassment, hate speech, health, intersectionality, law enforcement officials, legislation, medical professionals, police, shelters, stereotypes, support services, trainings, violence, women*

Lesbian, bisexual and transgender women

45. The Committee is concerned at reports of discrimination, harassment and hate speech, based on negative stereotypes, against lesbian, bisexual and transgender women and the lack of shelters for lesbian, bisexual and transgender women who are victims of violence. It is also concerned at the lack of information on health services and rights available to lesbian, bisexual and transgender women, as well as the lack of training of medical personnel with regard to their needs.
46. The Committee recommends that the State party provide the necessary protection against discrimination and violence against lesbian, bisexual and transgender women, in particular through the adoption of anti-discrimination legislation and the revision of the existing discriminatory laws that prohibit intersecting forms of discrimination, and provide access to shelter and assistance for lesbian, bisexual and transgender women who are victims of violence, as well as training to medical personnel and the police and law enforcement officials.

4. Committee on the Rights of the Child

Argentina – List of Issues – 78th PSWG, 31 October 2017, 5th-6th review¹²²

Keywords: *LGBTI; adolescents, children, discrimination, education, prevention*

5. Please report on the steps taken to project a positive image of adolescence and to prevent discrimination against adolescents, with special emphasis on adolescents who are living in poverty in urban centres or in the streets, migrants, members of indigenous groups, pregnant adolescents and minors who are lesbian, gay, bisexual, transgender or intersex persons. Please also report on the measures adopted to make certain that school regulations ensure that no child or adolescent will be discriminated against.

Keywords: *LGBTI; bullying, children, education, harassment, trainings, violence*

H. Education, leisure and cultural activities (arts. 28, 29, 30 and 31)

Education, including vocational training and guidance

38. The Committee welcomes the progress in reaching near universal primary education enrolment and the adoption of the strategic document entitled “Bhutan Education Blueprint 2014-2024”. The Committee is however concerned about:

[...]

(g) The occurrence of peer violence and sexual harassment in schools, also affecting lesbian, gay, bisexual, transsexual and intersex children.

39. The Committee recommends that the State party:

[...]

(g) Develop and implement initiatives to combat violence, sexual harassment and bullying among children in schools, including towards lesbian, gay, bisexual, transsexual and intersex children, and train teachers and students to resolve conflicts peacefully, to create an environment of tolerance and respect;

(h) Seek technical assistance from UNICEF in the implementation of these recommendations.

Keywords: LGBTI; children, discrimination, legislation, measures, stereotypes

Stereotypes

3. Please inform the Committee of any legislative and practical measures taken or under consideration to eliminate discrimination against girls, children born out of wedlock, children with disabilities, lesbian, gay, bisexual, transsexual and intersex children, refugee or asylum-seeking children, internally displaced children, albino children and indigenous children.

Keywords: LGBTI; anti-discrimination legislation, children, discrimination, legislation, stigmatisation

Non-discrimination

14. The Committee welcomes the adoption of article 242 of the amended Penal Code prohibiting discrimination on the grounds of race, religion, sex or health status. It is concerned, however, about the persistent discrimination against children in marginalized and disadvantaged situations, including girls, children born out of wedlock, children with disabilities, children with HIV/AIDS, children with albinism, indigenous children, children in street situations, children suspected of association with Boko Haram, refugee, asylum-seeking and internally displaced children, and the lack of an overall strategy to combat such discrimination. The Committee is deeply concerned about the State party's rejection during the dialogue of the identity of lesbian, gay, bisexual, transgender and intersex children and the stigmatization and discrimination experienced by such children.
15. The Committee, reiterating its previous recommendation (see CRC/C/CMR/CO/2, para. 28), urges the State party to:
 - (a) Adopt and implement comprehensive legislation, accompanied by a global strategy, to protect all children against discrimination, especially girls, children born out of wedlock, children with disabilities, children with HIV/AIDS, children with albinism, indigenous children, children in street situations, children suspected of association with Boko Haram, refugee, asylum-seeking and internally displaced children;
 - (b) Recognize the identity of lesbian, gay, bisexual, transgender and intersex children and protect them against discrimination in law and in practice;
 - (c) Conduct awareness-raising and educational programmes, including campaigns, targeting children, families, communities and religious and traditional leaders, on eliminating all forms of discrimination against children.

124 [CRC/C/CMR/Q/3-5](#).

125 [CRC/C/CMR/CO/3-5](#).

Keywords: LGBT; anti-discrimination legislation, awareness-raising campaign, children, data collection, discrimination, measures, professional groups

Non-discrimination

15. While noting the persistent discrimination against children in vulnerable and marginalized situations, including children with disabilities, children with HIV/AIDS, children accused of witchcraft, children with albinism, indigenous children, lesbian, gay, bisexual and transgender children, demobilized child soldiers and internally displaced children, and the lack of an overall strategy to combat such discrimination, the Committee recommends that the State party adopt comprehensive legislation prohibiting discriminatory behaviour on any grounds. The Committee, reiterating its previous recommendation (see CRC/C/COD/CO/2, para. 29), also urges the State party to:

- (a) Take all measures, including administrative measures, to ensure the implementation of legislation protecting children against discrimination;
- (b) Adopt a comprehensive strategy to eliminate discrimination on any grounds and against all vulnerable groups;
- (c) Conduct studies to identify and act on causes of discrimination, carry out awareness-raising activities in order to combat such discrimination, and train professionals working with and for children.

Keywords: SO; LGBTI; anti-discrimination legislation, awareness-raising campaign, children, discrimination, employment

Non-discrimination

12. While noting that discrimination is generally prohibited by law, the Committee recommends that the State party:

[...]

(b) In view of discrimination based on disability or sexual orientation being prohibited solely in relation to employment, adopt specific anti-discrimination legislation explicitly prohibiting discrimination in all areas against children with disabilities and lesbian, gay, bisexual, transgender and intersex children;

(c) Continue taking awareness-raising measures to combat all forms of discrimination against children from ethnic minorities, asylum-seeking, refugee or Roma children, children with disabilities, and lesbian, gay, bisexual, transgender or intersex children.

Keywords: I; access to justice, children, decision-making process, education, family, free and informed consent, health, IGM, investigation, legislation, medical professionals, reparation, support services, surgical/medical intervention, trainings

Harmful practices

24. In view of ongoing surgical interventions on intersex children, the Committee recommends that the State party:

(a) Ensure that no one is subjected to unnecessary medical or surgical treatment during infancy or childhood, guarantee bodily integrity, autonomy and self-determination for the children concerned and provide families with intersex children with adequate counselling and support;

(b) Develop and implement a child rights-based health-care protocol for intersex children, setting out the procedures and steps to be followed by health teams;

(c) Undertake investigation of incidents of surgical and other medical treatment of intersex children without informed consent and adopt legal provisions in order to provide redress to the child victims of such treatment, including adequate compensation;

(d) Educate and train medical and psychological professionals on the range of sexual and related biological and physical diversity and on the consequences of unnecessary surgical and other medical interventions for intersex children.

Ecuador – List of Issues – 76th PSWG, 9 March 2017, 5th-6th review¹²⁸

Keywords: *LGBTI; adolescents, children, discrimination, measures*

4. Please provide information on measures taken to combat the social stereotypes and prejudices that stigmatize children born into single-parent families and/or out of wedlock. Please provide information on the measures taken to eliminate discrimination against children and adolescents with disabilities, children and adolescents of African descent and lesbian, gay, bisexual, transgender and intersex (LGBTI) children and adolescents.

Keywords: *LGBTI; children, bullying, harassment, internet, measures, remedy, reparation, violence*

7. Please provide information on steps taken to combat all forms of violence against children and adolescents, including sexual violence within and outside the home and at school, corporal punishment in all settings and bullying, including online harassment, in particular with regard to children with disabilities and lesbian, gay, bisexual, transgender and intersex children. Please provide information on measures to protect, rehabilitate and compensate children and adolescents who have suffered violence and to bring those responsible to justice.

Ecuador – Concluding Observations – 76th session, 26 October 2017, 5th-6th review¹²⁹

Keywords: *LGBTI; children, consultation, legislation, policy*

Cooperation with civil society

14. The Committee strongly recommends that the State party:

[...]

- (b) Systematically and meaningfully involve non-governmental organizations working in the field of children's rights, including children's organizations, organizations representing indigenous peoples and other nationalities and lesbian, gay, bisexual, transgender and intersex children, in the development, implementation, monitoring and evaluation of laws, policies and programmes relating to children's rights.

Keywords: *LGBTI; children, discrimination, family, legislation, same-sex couples, stigmatisation*

Non-discrimination

16. The Committee recommends that the State party ensure full protection against discrimination on all grounds and in coordination with a wide range of stakeholders, including girls, and:

[...]

- (c) Adopt a strategy, specific legal provisions and clear guidelines for public authorities aimed at upholding non-discrimination against children on any grounds and combating stigma against children of single-parent families, children born to persons deprived of their liberty, children in families composed of same-sex couples and lesbian, bisexual, gay, transgender and intersex children;

[...]

128 [CRC/C/ECU/Q/5-6.](#)

129 [CRC/C/ECU/CO/5-6.](#)

Keywords: SOGI; adolescents, children, discrimination, intersectionality, measures, reparation

2. Please provide information on measures to combat and eliminate multiple discrimination and prejudice against children and adolescents based on sex, their belonging to an indigenous people, disability, migration status, asylum or refugee status, social status, gender identity and sexual orientation. Please also indicate what reparation is available to children and adolescents under existing protection mechanisms, such as the criminal definition of discrimination and the public policy to counter racial discrimination.

Keywords: LGBTI; children, consultation, GC/GR

Respect for the views of the child

16. While noting the various initiatives of the High Council for Childhood in this regard, including the institutionalization of the National Youth Parliament, the Committee, in line with its general comment No. 12 (2009) on the right of the child to be heard, recommends that the State party:

[...]

- (e) Promote inclusive participation in the Lebanese National Youth Parliament by ensuring that eligible children from all communities, children in situations of poverty, refugee children, children with disabilities and lesbian, gay, bisexual, transgender and intersex children are able to participate fully, and provide the Lebanese National Youth Parliament with adequate support and resources.

Moldova – List of Issues – 76th PSWG, 28 February 2017, 5th review¹³²

Keywords: *LGBTI; children, discrimination, measures, violence*

3. [...] Please provide information on measures taken to respect the identity of lesbian, gay, bisexual, transgender and intersex children and to protect such children from violence and discrimination.

Moldova – Concluding Observations – 76th session, 20 October 2017, 4th-5th review¹³³

Keywords: *LGBTI; awareness-raising campaign, children, discrimination, education, legislation, measures, police, trainings*

Non-discrimination

15. While noting the efforts of the State party in preventing and combating discrimination, the Committee recommends that the State party:

- (a) Intensify efforts to ensure the effective elimination of any form of discrimination against children with disabilities, children belonging to ethnic minorities, in particular Roma children, lesbian, gay, bisexual, transgender and intersex children, and other groups of children in vulnerable situations, including children living in poverty, children remaining behind while their parents migrate abroad, and children in street situations. Such measures should include, among other things, the modification of relevant laws, continued training on police sensitivity and responsiveness to minorities, and awareness-raising campaigns and education, especially at the community level and in schools;

[...]

132 [CRC/C/MDA/Q/4-5](#).

133 [CRC/MDA/CO/4-5](#).

Keywords: *LGBTI; anti-discrimination legislation, children, discrimination*

3. Please inform the Committee about measures taken to implement existing anti-discrimination legislation in practice, and indicate whether discrimination against lesbian, gay, bisexual, transgender and intersex children is prohibited by law.

Keywords: *LGBT; access to justice, anti-discrimination legislation, awareness-raising campaign, children, discrimination, education, measures, professional groups, stereotypes*

Non-discrimination

15. The Committee is seriously concerned about the growing and persistent inequality in the State party and reports of increasing instances of discrimination, with impunity, against children in marginalized and disadvantaged situations, such as children from low-income families, migrant and unregistered children, children from rural areas, children with disabilities, children from ethnic and linguistic minority groups and indigenous groups, and lesbian, gay, bisexual and transgender children, particularly in schools and dormitories.
16. The Committee urges the State party to adopt concrete measures to strengthen compliance with its legislation prohibiting such discrimination and to eliminate stereotypes and attitudes leading to discrimination, including by:
 - (a) Encouraging reporting of cases of discrimination;
 - (b) Ensuring prompt and appropriate action against the perpetrators;
 - (c) Implementing awareness-raising and educational activities targeting children, families and professionals working with and for children, such as teachers, social workers, personnel of childcare institutions and local government officials.

Keywords: *LGBT; awareness-raising campaign, children, consultation, education, family, GC/GR*

Respect for the views of the child

18. Recalling its previous recommendation (CRC/C/MNG/CO/3-4, para. 32) and, with reference to its general comment No. 12 (2009) on the right of the child to be heard, the Committee recommends that the State party:
[...]
 - (c) Conduct programmes and awareness-raising activities to promote the meaningful and empowered participation of all children within the family, community and schools, with particular attention to girls and to children in vulnerable situations, such as lesbian, gay, bisexual and transgender children and children with disabilities.

134 [CRC/C/MNG/Q/5](#).

135 [CRC/C/MNG/CO/5](#).

Keywords: *LGBT; children, data collection, discrimination, education, measures, professional groups*

5. Please provide information on the scope and causes of discrimination against lesbian, gay, bisexual and transgender children, children from ethnic and national minority groups and from indigenous groups, such as Sami children, and migrant, refugee and asylum-seeking children. Please indicate what measures are being taken to combat such discrimination, including those targeting staff in institutions that deal with children, such as schools and child welfare services (see CRC/C/NOR/5-6, para. 34).

Keywords: SOGI; children, discrimination, legislation, measures

4. Please provide information on the measures taken to implement the Committee's previous recommendation to ensure that non-citizen children are afforded equal and adequate access to health, education and social services (see CRC/C/15/Add.149, para. 33). Please also inform the Committee on the measures taken, including legislative measures, to protect children against discrimination on the basis of sexual orientation and gender identity.

Romania – List of Issues – 75th PSWG, 4 November 2016, 5th review¹³⁸

Keywords: *LGBT; children, discrimination, measures*

2. Please inform the Committee about the measures taken to prohibit and eradicate de facto discrimination, in particular against Roma children, children with disabilities, lesbian, gay, bisexual and transgender children, children living in poverty, children in alternative care, migrant, asylum-seeking and refugee children and children in rural areas.

Romania – Concluding Observations – 75th session, 13 July 2017, 5th review¹³⁹

Keywords: *LGBTI; anti-discrimination legislation, awareness-raising campaign, children, discrimination, education, employment, health, service provision, stigmatisation*

Non-discrimination

16. While noting the information provided by the State party on two orders aimed at preventing school segregation and law No. 331/2015 amending the asylum legislation, the Committee remains deeply concerned that:
 - (a) Roma children; children with disabilities; asylum-seeking and refugee children; lesbian, gay, bisexual, transgender and intersex children; and children living in remote rural areas continue to face discrimination with regard to access to education, health care, employment and a decent standard of living;
 - (b) Girls continue to be subject to multiple gender-based discrimination, particularly when they are in marginalized and disadvantaged situations, and are more exposed to violence and exclusion.
17. The Committee urges the State party to ensure full implementation of relevant existing laws prohibiting discrimination, including by enforcing appropriate monitoring and complaints mechanisms, strengthening public education campaigns to address stigmatization of and discrimination against Roma children; children with disabilities; girls; asylum-seeking and refugee children; and lesbian, gay, bisexual, transgender and intersex children; and, in particular, to ensure their equal access to education, health care, employment and a decent standard of living. The Committee also recommends that, when addressing stigmatization of and discrimination against Roma children, the State party ensure that it is done in a sensitive way, to avoid aggravating their segregation.

138 [CRC/C/ROU/Q/5](#).

139 [CRC/C/ROU/CO/5](#).

Saint Vincent and the Grenadines – List of Issues – 74th PSWG, 15 November 2016, 2nd-3rd review¹⁴⁰

Keywords: LGBTI; children, criminalisation (decriminalisation), measures

4. Please provide information on measures taken to respect the identity of lesbian, gay, bisexual, transgender and intersex children, including the elimination of criminalization of homosexual conduct.

Saint Vincent and the Grenadines – Concluding Observations – 74th session, 13 March 2017, 2nd-3rd review¹⁴¹

Keywords: SO; LGB; adolescents, awareness-raising campaign, children, criminalisation (decriminalisation), discrimination, health, policy

Non-discrimination

22. The Committee is also concerned at de jure and de facto discrimination against lesbian, gay and bisexual children, in particular the criminalization of consensual same-sex conduct between men under the Criminal Code (1990), which may penalize boys above 16 years of age for same-sex sexual activity. It is also concerned about the perception, reflected in policies and practices, that lesbian, gay and bisexual children have a psychosocial disorder.
23. The Committee recommends that the State party repeal the legal provisions criminalizing same-sex conduct between males above 16 years of age, that it raise public awareness of the equality of and the importance of not discriminating against lesbian, gay and bisexual people and that it fully respect the diversity of children's sexual orientation.

140 [CRC/C/VCT/Q/2-3](#).

141 [CRC/C/VCT/CO/2-3](#).

Keywords: *LGBTI; children, discrimination, measures*

3. Please provide information on the outcome of the action plans (2009-2011 and 2013-2015) established through the Strategy for Improvement of the Status of Roma in the Republic of Serbia (see CRC/C/SRB/2-3, para. 41). Please inform the Committee about any other measures taken to prohibit and eradicate the continuing discrimination against Roma children, children in alternative care, children with disabilities, migrant children, refugee and asylum seeking children, children living in remote areas, children in street situations and lesbian, gay, bisexual, transgender and intersex children.

Serbia – Concluding Observations – 74th session, 7 March 2017, 2nd-3rd review¹⁴³

Keywords: *LGBT; access to justice, anti-discrimination legislation, children, discrimination, education, health, housing, service provision*

Non-discrimination

22. The Committee welcomes the initiatives introduced by the State party to address discrimination, particularly against Roma children. However, it is concerned about:

[...]

(b) The fact that Roma children, as well as children with disabilities, migrant, refugee and asylum-seeking children, minority children, children living in remote areas, children in street situations, children with HIV/AIDS, and lesbian, gay, bisexual and transgender children, continue to face discrimination with regard to access to education, health care and adequate housing;

(c) The commission for protection against discrimination's lack of a special unit to deal with cases of discrimination against children.

23. The Committee urges the State party to:

(a) Ensure full implementation of relevant existing laws prohibiting discrimination, including by strengthening public education campaigns to address negative social attitudes towards Roma children, children with disabilities, minority children, refugees and asylum-seeking children, migrant children, children in street situations, lesbian, gay, bisexual and transgender children and children with HIV/AIDS;

[...]

(c) Ensure the availability of sufficient human, technical and financial resources for the effective implementation of the national strategy for the prevention of and protection against discrimination for the period 2014-2018;

(d) Introduce a specific mechanism within the commission for protection against discrimination to address cases of discrimination against children.

Keywords: *LGBT; bullying, children, education, GC/GR, internet, professional groups, SDGs, trainings, violence*

Freedom of the child from all forms of violence

32. The Committee notes as positive the efforts made by the State party to develop a child protection system, in particular through the adoption of the general protocol on the protection of children from abuse and violence and the regulations on the protocol for action taken by institutions in response to violence, along with the corresponding multidisciplinary teams established at the municipal and community levels to implement the mechanisms. Despite the progress made, the Committee is seriously concerned about:

[...]

(d) The widespread instances of violence in schools, particularly at the primary school level, often perpetrated against children with disabilities and lesbian, gay, bisexual and transgender children, as

142 [CRC/C/SRB/Q/2-3](#).

143 [CRC/C/SRB/CO/2-3](#).

well as instances of cyberbullying;

(e) The inadequate implementation of the general protocol, the regulations and the relevant special protocols, the lack of a general understanding as to what constitutes violence against children and the limited ability of professionals to recognize cases, as well as insufficient cooperation and information sharing at the interdepartmental level and among relevant agencies and inadequate follow-up.

33. With reference to general comment No. 13 (2011) on the right of the child to freedom from all forms of violence and target 16.2 of the Sustainable Development Goals on ending, inter alia, all forms of violence against children, the Committee urges the State party to:

(a) Establish legislative and other measures to ensure mandatory compliance with the general protocol on the protection of children from abuse and violence and the relevant special protocols aimed at protecting children from abuse and violence, and ensure that sufficient human, financial and technical resources are available to ensure implementation;

(b) In coordination with the office of the ombudsman, in its capacity as the national preventive mechanism, establish a monitoring mechanism to ensure that all children in institutions and alternative care are free from all forms of torture and inhumane or degrading treatment, and ensure that they have access to a confidential, safe and child-friendly mechanism for complaints related to their deprivation of liberty, their conditions of detention or internment and their treatment;

(c) Ensure that preventative mechanisms are established to protect children with intellectual and other psychosocial impairments from any kind of physical or sexual violence and establish compulsory training courses on violence against children for all relevant professionals;

(d) Strengthen national programmes to address violence in schools, with support from the Ministry of Education, Science and Technological Development and teacher training agencies to establish standards, mentoring programmes and peer review in order to tackle violence in schools, and provide training, including for parents, on the risks of (cyber)bullying;

(e) Develop a public awareness campaign as a means of changing prevailing attitudes in relation to violence against children and move towards zero tolerance;

(f) Ensure efficient cooperation, coordination and data sharing between child protection services, the police and the justice system;

(g) Seek technical cooperation from the United Nations Children's Fund (UNICEF) and the World Health Organization as a means of addressing the above-mentioned issues.

5. Committee against Torture

Argentina – List of Issues Prior to Reporting – 44th session, 2 August 2010, 5th-6th review¹⁴⁴

Keywords: SM; data collection, discrimination, measures, prevention, punishment, torture/ill-treatment

Article 2

12. Please provide updated information on measures taken to adequately prevent, combat and punish discrimination and other ill-treatment against vulnerable groups, including members of indigenous communities, sexual minorities, women, and persons reporting acts of torture and ill-treatment, as well as measures taken to safeguard their physical integrity. Please provide information on the impact and effectiveness of these measures in reducing cases of such acts.

Article 14

Keywords: SM; data collection, discrimination, investigation, prosecution, punishment, reparation, torture/ill-treatment

33. [...]

- (d) Please provide statistical data on the number of complaints, investigations, prosecutions, convictions and sanctions regarding discrimination and other ill-treatment of vulnerable groups, including members of indigenous communities and other ethnic groups, sexual minorities, women, persons reporting acts of torture and ill-treatment and political groups, as well as on compensation provided to victims.

Argentina – Concluding Observations – 60th session, 24 May 2017, 6th review¹⁴⁵

Keywords: SOGI; T; detention, discrimination, investigation, law enforcement officials, legislation, LGR, measures, police, police misconduct, policy, prosecution, punishment, torture/ill-treatment, violence, women

Detention and ill-treatment motivated by discrimination

35. The Committee reiterates the concern that it expressed in its previous concluding observations (see CAT/C/CR/33/1, para. 6 (g)) with regard to discrimination on the basis of racial profiling and the ill-treatment and violent intrusion into the homes of persons of African descent and migrants from other Latin American countries by the security forces. The Committee is also concerned about reports of degrading searches of transgender and transvestite persons on the public street or in police stations and their detention in humiliating conditions, particularly in Buenos Aires province. Although it welcomes the measures mentioned by the State party delegation to improve the integration of transgender women in detention, the Committee continues to be concerned about the lack of implementation of such programmes in provincial prisons and police stations. The Committee notes with concern that 3,470 complaints of discrimination were lodged in 2016, almost twice the number lodged the previous year, and regrets the lack of information on the follow-up to those complaints (arts. 2 and 16).

36. The State party should:

- (a) Issue clear instructions to the security forces at both federal and provincial level to observe the prohibition of discrimination against persons in detention and respect the dignity of such persons when they are subjected to a body search, in cases where such a search is strictly necessary and where there is no alternative;
- (b) Ensure that all cases of arbitrary detention, violence towards and ill-treatment of persons because of their foreign origin, sexual orientation or gender identity are investigated, with a view to prosecuting and punishing the perpetrators of such acts and suspending the officials involved; and
- (c) Ensure the adoption of policies and programmes specifically aimed at the integration and protection of persons detained on the basis of their sexual orientation or gender identity, at both federal and provincial level, and ensure full compliance with the Gender Identity Act No 26743.

¹⁴⁴ [CAT/C/ARG/Q/5-6.](#)

¹⁴⁵ [CAT/C/ARG/CO/6.](#)

Keywords: *I; children, consultation, decision-making process, follow-up, free and informed consent, health, IGM, reparation, surgical/medical intervention*

Article 16

30. In the light of the Committee's previous concluding observations (para. 45), please provide updated information on:

- (a) The measures taken to ensure that no child is subjected to non-urgent medical or surgical procedures intended to decide the sex of the child; that such procedures are postponed until the child is mature enough to make a fully informed decision; and that all intersex persons subjected to such procedures without their consent are adequately compensated;
- (b) The procedures for informed consent for surgical interventions and whether that includes independent counselling, inter alia, by intersex persons and their organizations.

Keywords: LGBT; HRD, measures

Article 16

31. Please inform the Committee on measures taken to address concerns regarding the hostile environment for journalists and human rights defenders and activists, particularly those working on the rights of lesbian, gay, bisexual and transgender people.

Bosnia and Herzegovina – Concluding Observations – 61st session, 22 December 2017, 6th review¹⁴⁸

Keywords: SOGI; LGBTI; awareness-raising campaign, court, data collection, hate crimes, investigation, law enforcement officials, police, policy, prevention, prosecution, punishment, stereotypes, trainings, violence

Violence against lesbian, gay, bisexual, transgender and intersex persons

36. The Committee is concerned at reports that lesbian, gay, bisexual, transgender and intersex persons and advocates for those persons continue to be attacked, threatened and intimidated and that none of the cases reported to the police and the prosecutor's office have been tried before the courts since 2015. The Committee regrets the lack of systematically compiled data on hate crimes based on sexual orientation and gender identity (arts. 2, 12–13 and 16).
37. The Committee calls on the State party to publicly condemn threats and attacks on lesbian, gay, bisexual, transgender and intersex persons and their advocates and to effectively protect those persons against threats and attacks based on gender identity, sexual orientation and activities. To that end, the State party should:
- (a) Promptly, thoroughly and impartially investigate all threats and attacks targeting those persons, prosecute perpetrators and, if found guilty, punish them in accordance with the gravity of their acts;
 - (b) Provide training to law enforcement officials and the judiciary on hate crimes, particularly on the basis of sexual orientation and gender identity, and systematically monitor such crimes;
 - (c) Compile statistical data, disaggregated by age, sex and ethnicity of victims, on complaints, investigations, prosecutions and convictions in cases of hate crimes against lesbian, gay, bisexual, transgender and intersex persons, raise awareness to counter prejudice and stereotypes, and adopt relevant policies to combat and prevent hate crimes.

147 [CAT/C/BIH/Q/6](#).

148 [CAT/C/BIH/CO/6](#).

Cameroon – List of Issues Prior to Reporting – 54th session, 11 June 2015, 5th review¹⁴⁹

Keywords: LGBT, LGBTI; access to justice, arrest, criminalisation (decriminalisation), harassment, HIV/AIDS, investigation, killings, measures, police, police misconduct, punishment, torture/ill-treatment

Article 16

29. Please comment on reports that lesbian, gay, bisexual and transgender people continue to be subjected to arbitrary arrest and ill-treatment by the police.³³ In this regard, please provide information on the steps taken to address such harassment. Please also provide information on current legislation regarding consensual relations between adults of the same sex. Please also inform the Committee of the measures taken to protect those defending the rights of lesbian, gay, bisexual, transgender and inter-sex persons (LGBTI) and to punish the perpetrators of acts of violence and intimidation against them. Please include information on the specific measures taken in connection with the investigations into the murder in Yaoundé on 15 July 2013 of Éric Ohena Lembembe, the executive director of the Cameroonian Foundation for AIDS and a journalist committed to defending the rights of LGBTI persons.

Cameroon – Concluding Observations – 62nd session, 15 November 2017, 5th review¹⁵⁰

Keywords: SOGI; LGBT; access to justice, corrective rape, criminalisation (decriminalisation), detention, harassment, HRD, investigation, killings, sexual violence, torture/ill-treatment, violence

Violence on grounds of sexual orientation or gender identity

43. The Committee is concerned that consensual relations between same-sex adults are still an offence in the State party. It is also concerned by reports that cases of violence, harassment, “corrective rape” and murder against lesbian, gay, bisexual and transgender (LGBT) persons, and against the human rights defenders who report these violations, are not subject to thorough investigation (arts. 2, 12, 13 and 16).

44. The State party should:

- a) Repeal article 347-1 of the Criminal Code criminalizing consensual relations between same-sex adults and, in the interim, declare a moratorium on its enforcement;
- b) Take all necessary steps to protect LGBT persons, especially in places of detention, and the human rights defenders who provide them with assistance;
- c) Ensure that allegations of violations on grounds of sexual orientation or gender identity, including acts of torture, ill-treatment and “corrective rape”, are investigated promptly, thoroughly and impartially.

149 [CAT/C/CMR/QPR/5](#).

150 [CAT/C/CMR/CO/5](#).

Keywords: SOGI; GT; *detention, investigation, killings, measures, sexual violence, violence, women*

Article 16

31. In the light of the preceding concluding observations (para. 27), please indicate what practical measures have been taken by the State party to combat violence against individuals based on their sexual orientation or gender identity, in particular sexual assaults and murders of gay persons and transgender women. In particular, please provide information on the outcome of the investigations and on disciplinary and/or criminal proceedings concerning the death of Carlos Torres at the prison located at 14-20, Highway 32, Puente Aranda on 5 December 2015.

Keywords: SOGI; discrimination, domestic violence, education, hate crimes, legislation, prevention, violence

Article 16

31. Please provide:

- (a) Information on steps taken to prevent, combat and punish violence against women and children, as recommended by the Committee in its previous concluding observations (CAT/C/ITA/CO/4, para. 23). Also, please provide updated information on the status of the Bill on “Awareness raising and prevention measures as well as the repression of crimes against the individual or within the household, on account of sexual orientation, gender identity and any other reason of discrimination” (Chamber Act No. 2169).
- (b) Statistical data on the number of complaints relating to violence against women and children and on the related investigations, prosecutions, and sanctions, as well as on compensation provided to victims.

Keywords: SOGI; access to justice, anal examination, detention, harassment, HIV/AIDS, investigation, law enforcement officials, police, police misconduct, prosecution, reparation, sexual violence, surgical/medical intervention, torture/ill-treatment

Allegations of torture and ill-treatment

14 The Committee takes note of the State party's affirmation that the practice of torture is not widespread in Lebanon and that any instances of torture are isolated events that do not in any way correspond to State policy. However, the Committee remains concerned at various consistent reports that security forces and military personnel continue to routinely use torture against suspects in custody, including children, who are often held incommunicado, primarily to extract confessions that are to be used in criminal proceedings or as a form of punishment for acts that the victim is believed to have committed. It regrets that the State party dismissed or did not respond to the requests for information as to whether investigations were under way into widely reported cases, such as the alleged beating of journalist Rami Aysha by members of the military police or the alleged torture of Ghassan Shehab al-Suleiman al-Slaybi and others during detention at the Ministry of Defence. The Committee remains concerned about allegations of harassment, arbitrary detention, torture and ill-treatment, including beatings, sexual abuse, anal examinations and forced HIV testing, of men suspected of being homosexual held in custody by Internal Security Forces officers (arts. 2, 11-13 and 15-16).

15. The Committee urges the State party to:

[...]

(c) Take effective measures to prevent police abuse based on real or perceived sexual orientation and gender identity, ensure that all cases are investigated and prosecuted, perpetrators brought to justice and victims provided with redress. The State party should prohibit anal searches or tests for men suspected of homosexuality and ensure that body searches are conducted only in exceptional cases and by the least intrusive means possible, with full respect for the dignity of the person.

Keywords: *SOGIE; investigation, measures, prosecution, violence*

Article 16

30. Please provide information on the measures taken to ensure that all crimes and acts of violence that target persons on the basis of their sexual orientation or gender expression or identity are properly and promptly investigated and prosecuted.

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

Article 16

32. Please comment on reports of premature surgery and other medical treatment to which intersex children are subjected (see the submissions of Intersex Trust Aotearoa New Zealand, and StopIGM.org and Zwischengeschlecht.org to the Committee against Torture in 2017). Please indicate the number of intersex children who have undergone sex assignment surgery during the reporting period.

Keywords: SOGI; T; blackmailing, detention, investigation, law enforcement officials, police, police misconduct, torture/ill-treatment, violence

Violence and arbitrary detention on grounds of sexual orientation or gender identity

44. The Committee is troubled by reports alleging that transgender persons are subjected to ill-treatment, extortion and arbitrary detention by members of the National Police (arts. 2, 12, 13 and 16).
45. The State party should ensure the personal safety of transgender persons in all spheres, including in places of detention. It should also ensure that assaults motivated by a person's sexual orientation or gender identity are investigated and the persons responsible brought to justice.

Keywords: SO; court, law enforcement officials, medical professionals, trainings, torture/ill-treatment

Article 10

18. In light of the Committee's previous recommendations (para.17), please provide updated information on the instruction and training provided for medical and law enforcement personnel, judicial officials and other persons involved with custody, interrogation or treatment of persons under State or official control on matters related to the prohibition of torture and ill-treatment. Please specify who conducts and who undergoes the training, if the Convention is made known in the course of such programmes, and how the State party evaluates the effectiveness and impact of the programmes. Furthermore, please elaborate on:

[...]

(c) Information on any training that ensures appropriate and respectful treatment of women, juveniles, ethnic/religious minorities, or persons with different sexual orientation, particularly regarding forms of torture that disproportionately affect members of these groups.

Keywords: SO; data collection, hate crimes, legislation, measures, prosecution, punishment, violence

Article 16

42. Please indicate measures taken to prevent and punish violence against members of religious, racial, and ethnic minority communities. Please provide

(a) Information on whether the State party incorporated in its Criminal Code an offence to punish acts of intolerance and incitement to hatred and violence based on sexual orientation as hate crimes, and if it has, provide statistics on the number and type of prosecutions under this provision and the sentences imposed;

[...]

Keywords: G, LGBTI; criminalisation (decriminalisation), legislation, measures, punishment, violence

Abuses in the military

35 The Committee is concerned at reports of a large number of cases of violence and abuse, including sexual, physical and verbal abuse, in the military, which has sometimes resulted in deaths. It is also concerned at the small number of such cases that have resulted in indictments. In addition, the Committee is concerned about the use of “guardhouse detention” as a disciplinary measure, by which a soldier can be detained for 15 days without a warrant, based only on the decision of the commanding officer. It is also concerned about repeated crackdowns on gay soldiers on the grounds that they have violated article 92-6 of the Military Criminal Act, which criminalizes consensual sexual relations between same-sex adults (arts. 2, 4, 11-14 and 16).

36. The State party should:

[...]

(f) Consider repealing article 92-6 of the Military Criminal Act and take all measures necessary to punish violent actions against lesbian, gay, bisexual, transgender and intersex persons in the military;

[...]

Keywords: *LGBTI; court, data collection, follow-up, harassment, hate crimes, investigation, law enforcement officials, prevention, prosecution, punishment, remedy, reparation, trainings, violence*

Follow-up questions from the previous reporting cycle

2. With reference to the previous concluding observations (para. 19) and the State party's follow-up replies,⁵ please provide updates on:
 - (a) The steps taken to prevent violence, harassment and intimidation against human rights defenders, journalists, Lesbian, Gay, Bisexual, Transgender and Intersex persons and ethnic minorities, in particular the Roma community;
 - (b) The number of complaints and police reports, investigations, prosecutions, convictions and punishments handed down for crimes committed against human rights defenders, journalists, Lesbian, Gay, Bisexual, Transgender and Intersex persons, broken down by type of offence and investigating authority, and the reparations and rehabilitation provided to victims. Please update the Committee on the murder cases of the journalists Radislava Dada Vujasinovic, Milan Pantic and Slavko Ćuruvija, and the beating of Davor Pašalić; and
 - (c) Training provided to law enforcement, judiciary and public officials on hate crimes and the application of legal provisions for hate crimes, indicating the number of cases where such provisions were actually applied.

Keywords: SOGI; hate crimes, investigation, measures, prosecution, violence

Article 16

31. Please provide information on the measures taken to ensure that all crimes and acts of violence that target persons on the basis of their sexual orientation or gender identity are properly and promptly investigated and prosecuted.

Keywords: *I; children, follow-up, health, IGM, measures, surgical/medical intervention*

Article 16

27. In light of the Committee's previous concluding observations (para. 20), please indicate the measures taken to guarantee respect for the physical integrity and autonomy of intersex individuals, so that no one is subjected during childhood to non-urgent medical or surgical procedures intended to determine the sex of the child.

Keywords: LGBTI; blackmailing, data collection, investigation, police, punishment, sexual violence, torture/ill-treatment

Article 16

37. Please provide information on the efforts made by the State party to encourage lesbian, gay, bisexual transgender and intersex people to come forward with allegations of torture, ill-treatment, sexual abuse and extortion by police or abuse by non-State actors and to protect complainants from reprisals. Please also provide data on any investigations and convictions undertaken by the authorities in response to such allegations.

Keywords: LGBTI; data collection, discrimination, follow-up, hate crimes, investigation, law enforcement officials, prosecution, trainings, violence

Article 16

6. With reference to the Committee's previous concluding observations (para. 13), please provide data on the number of complaints received during the reporting period and information on investigations into and prosecutions for acts of violence committed against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, including the attacks against the LGBTI Support Centre in Skopje; please also provide information on efforts to ensure that prosecutions take into consideration any discriminatory motives and that adequate training is provided to law enforcement personnel.

6. Committee on the Rights of Persons with Disabilities

Armenia – Concluding Observations – 17th session, 8 May 2017, initial review¹⁶⁴

Keywords: *LGBT; action plan, consultation, decision-making process, legislation, policy, support services*

A. General principles and obligations (arts. 1-4)

5. The Committee is concerned about:

- (a) The insufficient and selective consultation of representative organizations of persons with disabilities, including the lack of appropriate support and reasonable accommodation, when drafting disability-related legislation, policies, strategies and action plans;
- (b) The use of the concepts of prevention and treatment of disability in the revised Constitution (art. 48) and in the newly adopted comprehensive plan for 2017-2021 on social inclusion of persons with disabilities;
- (c) The fact that the draft law on the protection of the rights of persons with disabilities and their social inclusion is not in line with the Convention, including the concept of disability, and provides for the prevention and treatment of disability and for legal incapacity;
- (d) The fact that the State party has not yet ratified the Optional Protocol to the Convention;
- (e) The medically based determination of disability, which relies on impairments without considering social barriers and individual requirements for social participation;
- (f) The lack of awareness of public servants working with persons with disabilities regarding the rights of those persons;
- (g) The lack of concrete, effective and transparent measures taken by the National Commission for Persons with Disabilities to implement the Convention.

6. The Committee recommends that the State party:

- (a) Take the measures necessary to ensure the full and equal involvement of persons with disabilities, through their representative organizations, in the process of decision-making for and drafting of all disability-related legislation, policies, strategies and action plans. The State party should also provide appropriate support and reasonable accommodation to ensure the participation of representatives of all persons with disabilities, including women, children, refugees and asylum seekers, lesbian, gay, bisexual and transgender persons, persons with psychosocial and intellectual disabilities, persons with hearing and visual impairments, persons living with HIV/AIDS, persons living in rural areas and persons in need of a high level of support, in consultation processes;

[...].

Keywords: SC; decision-making process, free and informed consent, health, IGM, legislation, measures, SRHR, surgical/medical intervention

Protecting the integrity of the person (art. 17)

20. Please provide information on the measures taken to harmonize the legal frameworks at the national, state and territory levels that, in the absence of the free, prior and informed consent of the person concerned, prohibit the following:

- (a) Sterilization of children and adults with disabilities;
- (b) Administration of unnecessary medical interventions, with particular attention to an individual's sexual and reproductive health and to people born with variations of sex characteristics.

Keywords: *LGBTI; anti-discrimination legislation, legislation, policy*

A. General principles and obligations (arts. 1-4)

9. The Committee notes with concern:

- (a) That the provisions of the Convention have yet to be appropriately incorporated into legislation and policies across sectors and levels of government;
- (b) The uneven application of the Convention and the Committee's jurisprudence by the judiciary and law enforcement officials, including the police;
- (c) The lack of legislation and public policies to protect the rights of persons with disabilities who identify as lesbian, gay, bisexual, transgender or intersex.

10. The Committee recommends that the State party:

- (a) Take leadership in convening provinces and territories in order to ensure a pan-Canadian approach to implementation and enact a comprehensive national action plan for implementing the Convention in collaboration with provincial and territorial governments and in consultation with persons with disabilities through their representative organizations. The State party should ensure that such an action plan includes benchmarks and a time frame for its implementation;
- (b) Set up a mechanism aimed at ensuring that legislation at the provincial and territorial levels that is to be updated further includes specific measures to implement the obligations of the State party under the Convention;
- (c) Strengthen the human, financial and technical resources of the Office for Disability Issues at the federal level and ensure appropriate formal and permanent mechanisms for coordination with provincial and territorial governments;
- (d) Raise awareness among and develop capacity-building programmes for the judiciary and law enforcement officials about the Convention as a legally enforceable human rights instrument, the human rights model of disability and its principles, and the jurisprudence of the Committee, including its general comments and its Views on individual communications adopted, and inquiry procedures undertaken, under the Optional Protocol.

Keywords: *GI; LGBTI; awareness-raising campaign, consultation, data collection, stereotypes*

Awareness-raising (art. 8)

19. The Committee is concerned about the lack of information about indigenous persons with disabilities, given that they represent one of the most marginalized populations. It is also concerned about stereotypes and harmful messages in public campaigns about autistic persons. It is further concerned about the absence of information on awareness campaigns to promote the rights of persons with intellectual disabilities and to combat attitudinal barriers and prejudices against lesbian, gay, bisexual, transgender and intersex persons with disabilities.

20. The Committee recommends that the State party:

[...]

- (e) Undertake, in collaboration with representative organizations of persons with disabilities, research aimed at enhancing understanding of diverse gender identities and monitoring attitudinal barriers faced by lesbian, gay, bisexual, transgender and intersex persons with disabilities;

[...]

Keywords: *GI; T; gender reassignment surgeries, gender reassignment treatment, health, measures, service provision, SRHR, surgical/medical intervention*

Health (art. 25)

45. The Committee is concerned about barriers faced by women with disabilities in accessing services for

safe abortion, owing to a lack of access to information on and services related to sexual and reproductive health rights and the limited number of clinics that provide termination of pregnancy services. The Committee also notes with concern the stigma and attitudinal barriers faced by persons with disabilities in gaining access to medical tests and treatment for sexually transmitted diseases, owing to prejudices that consider persons with disabilities “asexual” and the refusal of health-care services. It is further concerned that persons with disabilities continue to face physical, financial and attitudinal barriers in accessing information and health-care services, including with regard to sexual and reproductive health and rights, and notably abortion, and that the cost of medication remains a significant obstacle.

46. The Committee recommends that the State party:

- (a) Adopt measures to ensure universal coverage of health services for all persons with disabilities, including indigenous persons with disabilities, and that services are accessible, affordable and culturally sensitive, and prevent the denial of health-care services, including abortion;**
- (b) Take measures to provide persons with disabilities with information in accessible formats about their sexual and reproductive health;**
- (c) Conduct training to ensure that health-care practitioners are aware of the rights of persons with disabilities under the Convention and have the tools to provide appropriate advice for persons with disabilities, including women with disabilities;**
- (d) Establish special measures to ensure that people with disabilities, including transgender and gender-diverse persons with disabilities, have equal access to health services, including surgical and medical abortion services, and gender-affirming comprehensive health care.**

Keywords: SO; *discrimination, intersectionality, measures*

Equality and non-discrimination (art. 5)

6. Please provide information on concrete plans or measures adopted and implemented to address intersectional discrimination on the grounds of disability, age, sex and sexual orientation.

Keywords: *LGBTI; data collection, discrimination, policy*

Equality and non-discrimination (art. 5)

7. Please provide information about the situation of persons with disabilities who are members of ethnic, religious, linguistic minorities or who are lesbian, gay, bisexual, transgender or intersex, and on the safeguards in place to ensure they are equally included in public policies and programmes for the protection of persons with disabilities.

Keywords: *SOGI; anti-discrimination legislation, conversion therapy, discrimination, health, legislation, remedy, surgical/medical intervention*

Equality and non-discrimination (Article 5)

12. The Committee is concerned about:

[...]

- (b) Multiple and cross-discrimination against persons with disabilities, in particular persons with psychosocial and / or intellectual disabilities, and discrimination against persons who are wrongly considered as disabled, in particular because of their gender identity and their sexual orientation, which requires medical treatment;

[...]

13. The Committee recommends that the State party:

- (a) To make disability a ground of discrimination in domestic law and to prohibit direct and indirect discrimination based on disability, multiple discrimination and cross-discrimination, including discrimination by association;

[...]

- (c) To remove laws that limit the rights of persons with psychosocial and / or intellectual disabilities and to combat discrimination against persons who are considered to be disabled by reason of their gender identity or sexual orientation, by prohibiting forced medical treatment and providing for appropriate remedies and remedies;

[...]

Keywords: *SO; awareness-raising campaign, media*

Awareness-raising (art. 8)

18. The Committee is concerned at the lack of public campaigns, including in the media, to raise awareness of the dignity and worth of persons with disabilities.

19. The Committee recommends that the State party:

[...]

- (c) To engage in dialogue in society and to prevent the emergence of confusion between having a different sexual orientation and being handicapped.

¹⁶⁸ [CRPD/C/IRN/Q/1](#).

¹⁶⁹ [CRPD/C/IRN/CO/1](#).

Keywords: *GI, SO; awareness-raising campaign, education, intersectionality, stigmatisation*

Awareness-raising (art. 8)

20. The Committee is concerned about negative perceptions of persons with disabilities in society. It is also concerned about attitudes that stigmatize on the basis of gender and sex identity and its association with disability, and the confusion that can arise from having a different sexual orientation and being a person with disabilities.

21. The Committee recommends that the State party:

[...]

(d) Develop awareness-raising campaigns and conduct a revision of educational materials to prevent the confusion that can arise from having a different sexual orientation and being a person with disability.

Keywords: *I; awareness-raising campaign, decision-making process, free and informed consent, health, IGM, legislation, sterilisation, surgical/medical intervention*

Protecting the integrity of the person (art. 17)

36 The Committee notes with concern that persons with disabilities in the State party, particularly intersex persons with disabilities, are subjected to corrective surgeries and to the practice of forced sterilization, including forced chemical castration.

37. The Committee recommends that the State party prohibit and criminalize the practice of corrective surgeries on intersex persons with disabilities, in the absence of prior and informed consent, and the practice of forced sterilization, including forced chemical castration. It also recommends that the State party raise awareness of such practices as harmful and strengthen mechanisms aimed at ensuring that the informed consent of persons with disabilities is given for any medical and surgical treatment.

Keywords: *I; access to justice, SDGs, sexual violence, torture/ill-treatment, violence*

Freedom from exploitation, violence and abuse (art. 16)

11. Please provide information on:

- (a) How women, children, intersex people and elderly persons with disabilities experiencing abuse, ill-treatment, sexual violence and/or exploitation are protected and have access to justice in line with target 16.3 of the Sustainable Development Goals;

[...]

Keywords: *I; decision-making process, free and informed consent, health, IGM, legislation, measures, sterilisation, surgical/medical intervention*

Protecting the integrity of the person (art. 17)

12. Please explain measures to criminalise sterilisation of women and girls with disabilities and intersex people by consent of any third party rather than their own free and informed consent.

Keywords: *I; consultation, legislation, measures, support services*

General principles and obligations (arts. 1-4)

10. The Committee is concerned about:

- (a) The challenges facing organizations of persons with disabilities, including organizations representing women, children and intersex persons with disabilities, in accessing support and being consulted and actively involved in the implementation of the Convention;

[...]

11. The Committee recommends that the State party:

- (a) Allocate financial resources to support organizations representing persons with disabilities, including women and children with disabilities, and develop mechanisms to ensure the inclusive, strategic and active involvement of organizations of persons with disabilities, including women, children and intersex persons, in the planning and implementation of all legislation and measures that affect the lives of persons with disabilities;

[...]

Keywords: *I; access to justice, consultation, hate crimes, measures, prevention, SDGs, sexual violence, torture/ill-treatment, violence*

Freedom from exploitation, violence and abuse (art. 16)

38. The Committee is concerned about abuse, ill-treatment, sexual violence and exploitation of women, children, intersex persons and elderly persons with disabilities, and the insufficient measures to prevent all forms of exploitation, violence and abuse against persons with disabilities. It is also concerned at reports of cases of disability hate crime, in the absence of consistent data collection and differences in legal provisions for sentencing different types of hate crime, particularly in England and Wales.

39. The Committee recommends that the State party, in close collaboration with organizations of persons with disabilities, and in line with target 16.3 of the Sustainable Development Goals:

- (a) Establish measures to ensure equal access to justice and to safeguard persons with disabilities, particularly women, children, intersex persons and elderly persons with disabilities from abuse,

171 [CRPD/C/GBR/Q/1.](#)

172 [CRPD/C/GBR/CO/1.](#)

ill-treatment, sexual violence and exploitation;

[...]

Keywords: *I; decision-making process, free and informed consent, health, IGM, legislation, sterilisation, surgical/medical intervention*

Protecting the integrity of the person (art. 17)

40. The Committee is concerned that persons with disabilities, including women, intersex persons, girls and boys, reportedly continue to be subjected to involuntary medical treatment, including forced sterilization and conversion surgeries.
41. The Committee recommends that the State party repeal all types of legislation, regulations and practices allowing any form of forced intervention or surgery, and ensure that the right to free, prior and informed consent to treatment is upheld and that supported decision-making mechanisms and strengthened safeguards are provided, paying particular attention to women, intersex persons, girls and boys.

7. Committee on the Elimination of Racial Discrimination

Australia – Concluding Observations – 94th session, 26 December 2017, 18th-20th review¹⁷³

Keywords: SOGI; LGBTQI; data collection, discrimination, health, measures, service provision, suicide

Socioeconomic situation of indigenous peoples

23. The Committee is deeply concerned that indigenous peoples continue to experience high levels of discrimination across all socioeconomic indicators, including education, health care, employment and housing. Among other things, the Committee is concerned about the low life expectancy, low level of school attainment and high dropout rates at all school levels, and poor housing conditions, including overcrowding, especially for those living in the Northern Territory, where the homelessness rate is nearly 15 times the national average. The Committee is also concerned that indigenous peoples, including those living in remote areas, face discrimination in access to social security benefits, notably through the mandatory income-management scheme and the community development programme. The Committee is also concerned about the reportedly high rate of suicide among indigenous peoples, and in particular lesbian, gay, bisexual, transgender, queer and intersex individuals. [...]

24. The Committee recommends that the State:

[...]

(d) Collect data disaggregated by ethnicity, indigenous peoples, age, gender, disability, sexual orientation and gender identity, on the extent of suicide and report on the measures adopted to address it.

8. Committee on Migrant Workers

Guatemala – List of Issues Prior to Reporting – 27th session, 12 October 2017, 2nd review¹⁷⁴

Keywords: SO; discrimination, policy, violence

A. General Information

2. In the light of the information before the Committee about the absence of a comprehensive, rights-based public policy in the area of migration, please indicate what short- and long-term comprehensive policies and programmes the State party intends to implement and what the expected results of the programmes are to address and prevent irregular migration of Guatemalans, particularly from a rights-based perspective. Please provide information on relevant regional initiatives that are being undertaken in collaboration with other Central American States and with Canada, Mexico and the United States of America in order to avoid forced migration in the region in a coordinated and comprehensive manner. Please include information on efforts to counter the various forms of violence prevailing in the region, poverty, discrimination based on gender, ethnicity, sexual orientation and other grounds and the extreme economic inequality in countries of origin.

Keywords: LGBTI; data collection, health, legislation, measures, service provision

Articles 25-30

22. With reference to the previous concluding observations (para. 33), please provide information on the measures taken by the State party to ensure, in law and in practice, that all migrant workers and members of their families, including those in an irregular situation, have adequate access to health-care services, including urgent medical care. Please provide differentiated information for women, children, migrant workers in situations of sexual exploitation, domestic workers, lesbian, gay, bisexual, transgender and intersex persons and Guatemalan migrant workers and members of their families who have been deported, including those with disabilities. Please indicate what actions, including awareness-raising, the Guatemalan Social Security Institute has taken to incorporate women migrant domestic workers into the Special Protection Programme for Domestic Workers, and how many women migrant domestic workers have enrolled in the programme.

Keywords: *LGBT; discrimination, employment, SDGs, service provision, violence*

Causes of migration and prevention of irregular migration

62. The Committee notes with concern reports that emigration is mostly driven by poverty, unemployment, social exclusion and discrimination, including violence targeting lesbian, gay, bisexual and transgender persons, which may put Jamaican migrant workers and members of their family in precarious and/or insecure situations.
63. The Committee recommends that the State party invest in sufficient social protection systems to ensure that poverty, other social factors or discrimination do not force people into situations of precarious labour migration and, within the context of the 2030 Agenda for Sustainable Development and other international and national policy initiatives, promote decent work opportunities for people at home.

Keywords: *LGBTI; awareness-raising campaign, children, court, education, employment, health, law enforcement officials, measures, medical professionals, professional groups, trainings*

A. General Information

6. Please provide information on the measures taken by the State party during the last five years to promote and raise awareness of the Convention throughout its territory, including through coordination with federal and municipal authorities. Please also include updated information on measures taken to provide permanent and continuous training to officials involved in the protection of migrants' rights, including public prosecutors, judges, magistrates and personnel involved in the administration of justice, as recommended by the Committee (see CMW/C/MEX/CO/2, para. 22) and to federal, state and municipal officials working in child protection agencies and in the areas of employment and labour rights; members of the security forces; teachers; health workers; representatives of civil society institutions; representatives of organizations of Mexicans abroad; and the general public. In all cases, specify the budgets allocated to the training programmes and explain how they address issues relating to gender; children; lesbian, gay, bisexual, transgender and intersex persons; indigenous peoples; people of African descent; racial discrimination; and victims of trafficking and other crimes in the context of migration.

Keywords: *LGBTI; consultation, legislation*

7. Please provide information on the implementation of the Convention, including details on opportunities and resources to facilitate the participation of representatives of civil society working on issues related to the rights of migrant workers; children; women; lesbian, gay, bisexual, transgender and intersex persons; indigenous peoples; and people of African descent, particularly in the context of migration. Please indicate whether civil society organizations were involved in drafting the replies to the present list of issues.

Keywords: *LGBTI; detention, GC/GR, measures, torture/ill-treatment*

Articles 8 to 23

16. Please provide information on the pilot project on alternatives to detention that was launched in 2015 by the National Institute for Migration and COMAR as a way to validate and enhance procedures for the identification, referral and subsequent processing of detained migrants and asylum seekers. Please indicate how that initiative complies with the provisions of the 2011 Migration Act. Indicate as well whether the project takes account of the special protection needs of vulnerable migrants and asylum seekers who are being held in detention, such as pregnant women, victims or survivors of violence or torture and members of the lesbian, gay, bisexual, transsexual and intersex community. Please provide, in particular, information on other measures implemented to ensure that the State party is in full compliance with the Convention, on the basis of the Committee's general comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, particularly with regard to the use of detention only as an exceptional measure and one of last resort, the obligation to give priority to alternative measures to deprivation of liberty and the duty to cease the practice of placing migrant children in detention.

Keywords: *LGBTI; detention, GC/GR, prevention, support services*

18. Bearing in mind article 16 of the Convention and general comment No. 2 of the Committee, please provide the following information:

[...]

- (c) Whether specific protocols or procedures exist to identify, prevent the detention of and provide assistance to persons in special situations of vulnerability, such as asylum seekers, pregnant or nursing women, victims of human trafficking or domestic violence, members of the lesbian, gay, bisexual, transsexual and intersex community, children and adolescents;

[...]

Keywords: SO; data collection, SDGs

Data Collection

15. The Committee takes note of the efforts made to design a migration information and statistics network and create a disaggregated database for trafficking in persons. It is concerned at the lack of disaggregated qualitative and quantitative data to evaluate respect for all the rights of migrants and members of their families provided for under the Convention, other treaties and domestic legislation in force in the State party.
16. The Committee recommends that, in line with target 17.18 of the Sustainable Development Goals and following an approach based on human rights, gender equality and non-discrimination, the State party:
[...]
(c) Include the situation of all migrant workers and members of their families for whom Mexico is a country of origin, transit, destination or return and compile data disaggregated, inter alia, by sex, age, nationality, ethnic origin, migratory status, disability and sexual orientation.

9. Committee on Enforced Disappearances

Cuba – Concluding Observations – 12th session, 19 April 2017, initial review¹⁷⁸

Keywords: SOGI; children, legislation, measures, prosecution, reparation

Measures to provide reparation and to protect children against enforced disappearance (arts. 24 and 25)

Right to obtain reparation and prompt, fair and adequate compensation

31. The Committee takes note of the information provided by the State party on legislation governing matters relating to compensation and reparation for harm or damage arising from unlawful conduct or acts. It is, however, concerned that domestic law does not provide for a comprehensive system of reparation that fully meets the requirements of article 24 (4) and (5) of the Convention (art. 24).
32. The Committee recommends that the State party adopt the measures necessary to guarantee that domestic legislation provides for a comprehensive system of reparation that fully meets the requirements of article 24 (4) and (5) of the Convention and other international standards on the subject; that it be sensitive to victims' individual characteristics, taking into account, for example, their sex, sexual orientation, gender identity, age, ethnic origin, social status and disability; and that it should apply even where criminal proceedings have not been instituted against the alleged perpetrators.