



**United Nations Treaty Bodies' jurisprudence  
on sexual orientation, gender identity,  
gender expression and sex characteristics**

**Policy Paper**

The toolkit on the United Nations Strategic Litigation is a publication of the International Lesbian, Gay, Bisexual, Trans and Intersex Association. It was conceptualised and developed by Kseniya Kirichenko, ILGA World's Senior Officer, Women and UN Advocacy.

The Toolkit includes:

- **Part 1 – Policy Paper**
- **Part 2 – Treaty Bodies' Case Digest:** Treaty Bodies' decisions on 25 LGBT cases: brief description of facts; reasoning and decision; comments; and information on follow-up.
- **Part 3 – Regional Tribunals' Case Digest:** Information on LGBT cases reviewed by the Inter-American Court of Human Rights and the European Court of Human Rights.
- **Part 4 – Table of Treaty Bodies' LGBTI Decisions and Pending Cases:** Information on the reviewed and pending Treaty Bodies' cases on SOGIESC (periodically updated), available at: <https://ilga.org/Treaty-Bodies-jurisprudence-SOGIESC>.

This Policy Paper is a part of ILGA World's Treaty Bodies' Strategic Litigation toolkit. It provides information about the concept, aims and components of strategic litigation in general and on the human rights of LGBTI people specifically. It also contains basic information about Treaty Bodies and their working methods, as well as procedural aspects of bringing individual complaints to the Committees. It presents the analysis of existing Treaty Bodies' jurisprudence on SOGIESC issues and pending cases, and identifies gaps and opportunities for future developments. Further, it includes six regional-specific sections with background information on LGBTI strategic litigation before Treaty Bodies, as well as evidence, recommendations and thoughts on the topic from activists, lawyers and experts working in the regions. Finally, it contains tables with brief information about Treaty Bodies' jurisprudence, pending cases and useful resources and contacts. We hope that this publication, as well as the full toolkit, will help LGBTI advocates in different parts of the world to use litigation strategies more effectively and creatively to bring positive changes to their communities.

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## LIST OF ACRONYMS

<b>ACtHPR</b>	African Court on Human and Peoples' Rights
<b>CAT</b>	Committee against Torture
<b>CAT Convention</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984)
<b>CED</b>	Committee on Enforced Disappearances
<b>CEDAW</b>	Committee on the Elimination of Discrimination against Women
<b>CEDAW Convention</b>	Convention on the Elimination of All Forms of Discrimination against Women (1979)
<b>CERD</b>	Committee on the Elimination of Racial Discrimination
<b>CMW</b>	Committee on Migrant Workers
<b>CRC</b>	Committee on the Rights of the Child
<b>CRC Convention</b>	Convention on the Rights of the Child (1989)
<b>CRPD</b>	Committee on the Rights of Persons with Disabilities
<b>ECtJ</b>	European Court of Justice
<b>ECtHR</b>	European Court of Human Rights
<b>HRCtee</b>	Human Rights Committee
<b>IACtHR</b>	Inter-American Court of Human Rights
<b>ICCPR</b>	International Covenant on Civil and Political Rights (1966)
<b>ICED</b>	International Convention for the Protection of All Persons from Enforced Disappearance (2006)
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights (1966)
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination (1965)
<b>ICRPD</b>	International Convention on the Rights of Persons with Disabilities (2006)
<b>ICMW</b>	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
<b>L / G / B / T / I</b>	lesbian / gay / bisexual / trans / intersex
<b>OP</b>	Optional Protocol
<b>SO / GI / E / SC</b>	sexual orientation / gender identity / gender expression / sex characteristics
<b>SPT</b>	Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment
<b>UN</b>	United Nations

# TABLE OF CONTENT

<b>Preface</b>	<b>8</b>
<b>1. What is Strategic Litigation?</b>	<b>11</b>
<i>Why use strategic litigation?</i>	16
<i>What are the components of strategic litigation?</i>	21
<b>2. Strategic Litigation before Treaty Bodies: Procedural Aspects</b>	<b>24</b>
<i>Treaty Bodies and their working methods</i>	25
<i>Requirements to submitting individual complaints to Treaty Bodies</i>	26
<i>The process of consideration of individual complaints</i>	34
<b>3. Analysis of Treaty Bodies' SOGIESC Case Law</b>	<b>37</b>
<i>Methodology and limitations</i>	38
<i>General overview</i>	39
<i>Themes</i>	41
A. CRIMINALISATION OF SAME-SEX RELATIONS	41
B. ASYLUM SEEKERS	45
C. VIOLENCE / HATE CRIMES / HATE SPEECH	53
D. FREEDOM OF EXPRESSION /	58
FREEDOM OF ASSEMBLY AND ASSOCIATION	58
E. LGBTI FAMILIES	63
F. LEGAL GENDER RECOGNITION	67
<i>Conclusions</i>	70
<b>4. Treaty Bodies' Strategic Litigation: Regional Contexts and Opportunities</b>	<b>72</b>
<i>Asia</i>	73
<i>Africa</i>	77
<i>Europe and Central Asia</i>	82
<i>Latin America and the Caribbean</i>	90
<i>North America</i>	94
<i>Oceania</i>	95
<b>Annex 1</b>	<b>98</b>
<b>Annex 2</b>	<b>102</b>
<b>Annex 3</b>	<b>105</b>
<b>Annex 4</b>	<b>107</b>

# Foreword

Our history as a movement has shown that people of diverse sexual orientations, gender identities and expressions and sex characteristics have often taken the path to the justice system and the courts as their means of last resort to have their voices heard, and their rights affirmed.

Sadly, heading to court does not always ensure that progress will be made, and or rights be recognised. Our communities are no strangers to unjust rulings that keep furthering stat-sponsored discrimination, and continue to build a twisted legitimacy for violence and exclusion of the very people that have come to these institutions for relief.

But when justice works, courts have undeniably re-written historical pages for our communities worldwide, and paved the way for greater freedom, deeper equality and restitutive justice. Unjust laws have been overturned.

Rules were set up to stop harmful practices and require greater protections.

We witnessed the incredible progress that a decision by the justice system can bring about in a country, a region, and across the world in our communities.

Strategic Litigation is one of the most powerful tools to make this happen, and this Toolkit provides guidelines for an instrument that has not yet been widely used by LGBTI defenders at the international level: individual communications to the United Nations Treaty Bodies.

These mechanisms provide defenders on the frontline with opportunities to seek and obtain justice after the exhaustion of domestic remedies, and to benefit from positive developments that happened in other countries and regions.

Referring to the Treaty Bodies means that a case will be analysed by international human rights experts who specialise in different fields and can issue recommendations to national authorities.

And there is tremendous power in such opportunities whereby the existing jurisprudence, compiled in this report, clearly shows how our movement has already shaped the international human rights laws and norms, laying the foundations for change potentially happening anywhere.

Local activist knowledge, resourcefulness and courage are crucial and this is why we are particularly grateful to all the advocates, defenders and litigators from all six ILGA World regions who contributed to this toolkit – committed to sharing their time and best practices to empower others to maybe consider and follow a similar path.

Their experiences show that change is possible.

Progress can be achieved, and we truly believe that UN Treaty Bodies Strategic Litigation may become a space for the global LGBTI movement to claim our voice, exercise our creativity and ultimately bring justice back to our communities.



*Ben Buckland for ILGA World*

**In solidarity,  
Luz Elena Aranda and Tuisina Ymania Brown,  
Co-Secretaries General of ILGA World**

# Preface

For decades, strategic litigation has been used by human rights defenders across the globe. This method has helped LGBTI defenders in particular to achieve positive developments such as the decriminalisation of same-sex relations,<sup>1</sup> legal gender recognition, protection from violence and discrimination, and the recognition of family ties. These developments took place on both a national level, where advocates applied to local or national courts, and a regional level, where LGBTI cases were reviewed by the Inter-American Court of Human Rights (IACtHR) or by the European Court of Human Rights (ECtHR). However, another important opportunity for international strategic litigation has seemingly been overlooked by advocates: United Nations Treaty Bodies' individual communications.

United Nations Treaty Bodies' mechanisms of individual communications<sup>2</sup> provide defenders from different countries, in different regions, an opportunity to obtain justice after the exhaustion of domestic remedies. Using this mechanism defenders can benefit from positive developments achieved in the field by colleagues from other countries, and can contribute to the global process of SOGIESC human rights' evolution.

Applying to Treaty Bodies with individual cases allows advocates to overcome impediments they faced on the national level and to obtain more in-depth analysis of the problem, as well as SMART<sup>3</sup> recommendations for national authorities. Treaty Bodies usually review cases quicker than regional human rights courts. Treaty Bodies' individual communications mechanism also provides opportunities for a case to be analysed by international human rights experts, specialising in distinct fields, such as gender (CEDAW), racial discrimination (CERD) or disability (CRPD).

However, out of more than 1'500 cases reviewed by Treaty Bodies,<sup>4</sup> only 25 addressed issues of sexual orientation and/or gender identity. This statistic clearly shows that the individual complaints mechanism under Treaty Bodies has not been widely used by LGBTI advocates.

Additionally, there is no comprehensive database of Treaty Bodies' jurisprudence and there is no other available collection of up-to-date decisions made by the Committees. This makes it decidedly more difficult for advocates and researchers to access information about SOGIESC developments under Treaty Bodies' individual complaints mechanism.

For this reason, we decided to produce a toolkit for LGBTI defenders. The toolkit will provide infor-

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1 See e.g. the Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, A/HRC/38/43, 11 May 2018, para. 83 ("The Independent Expert is encouraged by findings of the highest courts that signal a path to decriminalization. [...]").

2 The terms "complaint," "communication" and "petition" are used interchangeably in this publication.

3 Specific, measurable, achievable, realistic and time-bound.

4 1155 views adopted by HRCtee (Mar 2016); 3 views adopted by CESCR (Jan 2018); 30 views adopted by CERD (May 2014); 33 views adopted by CEDAW (Aug 2018); 272 views adopted by CAT (Aug 2015); 5 views adopted by CRPD (May 2014). See "Statistical Survey on individual complaints" at the Committees' webpages.

mation and instruments to aid defenders with the consideration, planning and implementation of strategic litigation on SOGIESC issues before Treaty Bodies; thus, bringing positive change to their communities.

The toolkit includes (1) this policy paper, (2) a case digest and, (3) a compilation of LGBTI cases reviewed by the IACtHR and the ECtHR.

This policy paper consists of four chapters and annexes.

The **first chapter** introduces the concept of strategic litigation, its aims and components, as well as some information about the use of strategic litigation by LGBTI advocates.

The **second chapter** provides basic information about Treaty Bodies, their working methods, and procedural aspects of Treaty Bodies' individual complaints mechanism.

The **third chapter** presents an analysis of Treaty Bodies' SOGIESC jurisprudence and pending cases, and identifies gaps and opportunities for future developments. This chapter specifically looks into six topics: the criminalisation of same-sex relations; LGBTI asylum seekers; violence, hate crimes and hate speech; freedom of expression and freedom of assembly and association; LGBTI families; and legal gender recognition.

The **fourth chapter** provides region-specific background information on Treaty Bodies' jurisprudence, as well as evidence, recommendations and thoughts from activists, experts, lawyers, and attorneys working in six different regions.

Finally, annexes include two tables with brief information about LGBTI cases reviewed by, and pending before, Treaty Bodies, as well as lists of useful resources and contacts.

We hope that this toolkit will be useful for defenders working on the rights of LGBTI people in different parts of the world. If you have any comments or suggestions regarding the toolkit, feel free to send them to [untreaties@ilga.org](mailto:untreaties@ilga.org).



**Kseniya Kirichenko,**  
**Senior Officer, Women and UN Advocacy**  
**International Lesbian, Gay, Bisexual,**  
**Trans and Intersex Association (ILGA World)**



“More strategic litigation on LGBT-related human rights issues is needed at all levels, from domestic courts to regional and international tribunals including the UN Treaty Bodies. In a social context in which irrational narratives about LGBT identities often prevail, the rational space of an independent court or tribunal focused exclusively on the law can bring both legal recognition and social awareness. Litigating before the UN Treaty Bodies is an important end in itself, which can encourage redress, develop international human rights law and provide international pressure for better protection

of LGBT people. It can also be a strategy for developing jurisprudence on a particular topic that can be used subsequently in domestic courts around the world. While not necessarily binding, UN Treaty Body decisions are often taken into account by domestic courts and can add weight to local legal arguments. And of course a favourable Treaty Body decision can be used in other non-legal advocacy both in the country at issue and beyond.”

**Téa BRAUN,**  
**Director of the Human Dignity Trust, London UK**





# 1

## What is Strategic Litigation?

**Strategic litigation** (also known as “*impact litigation*”, “*public interest law litigation*”, “*test-case litigation*” or “*cause lawyering*”) may be understood as “the use of litigation to advance a process of legal, social, or other human rights change that goes beyond the immediate goals of the complainant.”<sup>5</sup> It has also been described as a tool which seeks “to use the authority of the law to advocate for social change on behalf of individuals whose voices are otherwise not heard”.<sup>6</sup> In any case, the concept of strategic litigation is not a maths formula, and you may find a myriad of different definitions proposed by academics and practitioners. All of them, however, agree on the fact that strategic litigation implies the use of a legal tool, namely **litigation**, which aims to achieve **broader changes** to make communities’ lives better.

*“Coming Out” LGBT Group, Saint Petersburg, Russia: We understand the term ‘strategic litigation’ to mean conducting court cases related to discrimination on the basis of sexual orientation or gender identity or any other violation of the rights of LGBT individuals, with the goal of garnering systemic positive changes of the situation of LGBT people and activists.*

The *Initiative for Strategic Litigation in Africa* (“ISLA”) is based on the belief that strategic litigation is an immensely strong tool for social change because it helps to reframe the understanding of entitlements before the law and it challenges the legal discourse on women’s rights and sexual rights. ISLA seeks to use the rule of law and African domestic and regional courts to advance women’s human rights and sexual rights. It will be the first Africa-based and -run strategic litigation initiative with a regional focus and expertise on women’s human rights and sexual rights. This is achieved by building networks across the continent that work on strategic litigation.

*ILGA-Europe: Strategic litigation [for ILGA-Europe] is about using European courts to advance the rights of LGBTI people, usually as part of a wider advocacy campaign. The use of European courts to ensure full recognition and implementation of human rights for everyone – irrespective of their sexual orientation, gender identity or sex characteristics – is one of the working methods of ILGA-Europe to achieve full equality for LGBTI people in Europe.*

Strategic litigation has been used by activists and advocates for many decades. Its history started with such names as the *American Civil Liberties Union (ACLU)* and *National Association for the Advancement of Colored People (NAACP)*, who brought legal actions to advance and protect civil rights in the

5 Open Society Justice Initiative: *Strategic Litigation Impacts: Torture in Custody* (November 2017), p. 14.

6 A definition suggested by the Open Society Justice Initiative, see OSJI: *Global Human Rights Litigation Report* (October 2013), p. 5.

United States. Strategic litigation has been a particularly useful tool for so-called “identity-based” movements; ground-breaking judgments on racial segregation, criminalisation of abortion or indigenous people’s rights may spring to mind. Strategic litigation originates from common law systems. However, political reforms, human rights developments and emerging access to justice has allowed advocates from other jurisdictions to also deploy strategic litigation in order to change the environment in their countries.

Notably, strategic litigation has been utilised to advance the rights of LGBTI persons in different regions and sub-regions.<sup>7</sup> We can celebrate numerous litigation victories achieved by LGBTI persons and advocates across the globe. Many of these decisions not only brought justice to survivors of human rights violations, but also changed the situation for the communities standing behind individuals.

For example, courts in India, Ecuador and South Africa found that the criminalisation of consensual same-sex relations were against their national constitutions.<sup>8</sup>

*“History owes an apology to the members of [LGBT] community and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries. The members of this community were compelled to live a life full of fear of reprisal and persecution. This was on account of the ignorance of the majority to recognise that homosexuality is a completely natural condition, part of a range of human sexuality. The misapplication of this provision denied them the Fundamental Right to equality guaranteed by Article 14. It infringed the Fundamental Right to non-discrimination under Article 15, and the Fundamental Right to live a life of dignity and privacy guaranteed by Article 21. [...] The LGBT persons deserve to live a life unshackled from the shadow of being ‘unapprehended felons.’”*

**Navtej Singh Johar v. Union of India,  
the Supreme Court of India, decision of 6 September 2018**

<sup>7</sup> More information on SOGIESC cases see ICJ: [SOGI Casebook Database](#).

<sup>8</sup> *Navtej Singh Johar & Ors. v. Union of India* thr. Secretary Ministry of Law and Justice, Supreme Court of India, [decision](#) of 6 September 2018; *Naz Foundation v. Government of NCT of Delhi and Others*, High Court of Delhi, [decision](#) of 2 July 2009; Case No. 111-97-TC, Constitutional Tribunal of Ecuador, [decision](#) of 27 November 1997; *National Coalition for Gay and Lesbian Equality v. Minister of Justice*, Constitutional Court of South Africa, [judgment](#) of 9 October 1998.

A historic decision adopted by the Supreme Court of Nepal in 2007 recognised the rights of “people of the third gender.”<sup>9</sup> The German Constitutional Court delivered recently a ground-breaking decision requiring a new regulation of sex registration. The Court suggested to either introduce a third gender option besides “male” and “female” or to completely waive the registration.<sup>10</sup> The Constitutional Court of Serbia, a Family Tribunal in Argentina, the Supreme Court of South Korea, the High Court of Kuala Lumpur in Malaysia, and the Lobatse High Court in Botswana, the European Court of Human Rights, to name a few, affirmed trans persons’ rights to legal gender recognition.<sup>11</sup>

*“Recognition of the applicant’s gender identity lies at the heart of his fundamental right to dignity. Gender identity constitutes the core of one’s sense of being and is an integral (part) of a person’s identity. Legal recognition of the applicant’s gender identity is therefore part of the right to dignity and freedom to express himself in a manner he feels [...] comfortable with.”*

***ND v. Attorney General of Botswana and others, the Lobatse High Court, Botswana, decision of 29 September 2017***

There is already also jurisprudence on intersex cases and decisions where petitioners’ claims have been supported by courts.<sup>12</sup>

*In the present case, NN was eight years old. Not only had the urgency of surgical intervention diminished but the child already had a developed gender identity and showed no problems either psychologically or socially. The Court found that a child of eight already had a sense of autonomy, and prior cases established that the need to protect the right of free development grew as a child became more self-aware. The Court therefore concluded that, constitutionally, consent could not be substituted if a child had a full cognitive, social, and emotional understanding of his or her body and a gender identity firmly in place.*

***Sentencia SU 337/99, Constitutional Court of Colombia, decision of 12 May 1999***

9 *Sunil Babu Pant and Others v. Nepal Government and Others*, Supreme Court of Nepal, [order](#) of 21 December 2007.

10 [Case](#): 1 BvR 2019/16, decision of 10 October 2017 (in German); [press release](#) by OII Europe, IVIM-OII Germany, TGEU, and the German Trans\* Association (Bundesvereinigung Trans\*).

11 Uz-3238/2011, Constitutional Court of Serbia, decision of 21 March 2012; In re KFB, Family Tribunal No 1 of Quilmes, Argentina, decision of 30 April 2001; In re Change of Name and Correction of Family Register, Supreme Court of South Korea, decision of 22 June 2006; JG v. Pengarah Jabatan Pendaftaran Negara, High Court of Kuala Lumpur, Malaysia, decision of 25 May 2005; ND v. Attorney General of Botswana and others, the Lobatse High Court, Botswana, decision of 29 September 2017, [press release](#); [B. v. France](#) (application no. 13343/87, judgment of 25 March 1992); [Christine Goodwin v. the United Kingdom](#) (application no. 28957/95, judgment of 11 July 2002).

12 *In re Völling*, Regional Court Cologne, Germany, [decision](#) of 6 February 2008; *Sentencia SU 337/99*, Constitutional Court of Colombia, [decision](#) of 12 May 1999; *Republic of the Philippines v. Jennifer Cagandahan*, Supreme Court of the Philippines, Second Division, [decision](#) of 12 September 2008.

Furthermore, the recognition of same-gender families has been supported by strategic litigation not only in the widely reported cases in the United States, but also in other territories, countries and regions, such as Hong Kong, Colombia and Brazil.<sup>13</sup>

However, national litigation does not always lead to positive decisions. Human rights defenders may lose cases at the national level, or may simply have no access to impartial and independent courts and effective domestic remedies to support their battles. In such cases, international tribunals and other bodies established under international human rights law, could provide additional opportunities.

Notwithstanding well-known regional mechanisms, such as the Inter-American Court of Human Rights (IACtHR), the African Court on Human and Peoples' Rights (ACtHPR), the European Court of Human Rights (ECtHR) and the European Court of Justice (ECtJ), United Nations Treaty Bodies can also review individual cases on human rights violations. Where a violation is found to have occurred, Treaty Bodies can request that the State provide effective remedy to the individual who brought the petition, and to prevent similar violations in the future, sometimes by making concrete steps – for example, adopting legislation, training law enforcement officials or other professional groups, etc. – to change the problem in a more systemic way.

The first Treaty Bodies' case on sexual orientation was reviewed by the HRCtee in 1982 (*Hertzberg et al. v. Finland*). The first decision where the Committee found a violation had occurred was handed down in 1994 (*Toonen v. Australia*). Since then, Treaty Bodies have published at least 23 more decisions on cases related to sexual orientation and gender identity. These cases raised issues relating to the criminalisation of same-sex relations, violence and deportation, freedom of assembly and freedom of expression, recognition of family relations and legal gender recognition.

In this publication, you will find more information on the standards already developed by Treaty Bodies in their jurisprudence on SOGIESC cases, as well as the remaining gaps and opportunities for future developments (see [chapter 3](#)).

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13 *QT v. Director of Immigration*, Court of Final Appeal of the Hong Kong Special Administrative Region, [judgment](#) of 4 July 2018; *Sentencia C-075/07*, Constitutional Court of Colombia, [decision](#) of 7 February 2007; *ADI (Ação Direta de Inconstitucionalidade) 4277 and ADPF (Arguição de Descumprimento de Preceito Fundamental) 132*, Supreme Tribunal Federal of Brazil, [judgment](#) of 5 May 2011.

# Why use strategic litigation?

As already noted, strategic litigation involves bringing justice to an individual, but also encouraging broader changes in law, policy or social attitudes with an ultimate goal to improve the situation for the whole community.

There are various and distinct aims to using strategic litigation; some of these are provided below:

**Table 1:** Strategic Litigation’s Aims

AIM	EXPLANATION	EXAMPLES FOR LGBTI ADVOCATES
To test existing legislation	When legislation is vague or ambiguous, you may not be sure on its actual effect. In this case, you may use strategic litigation in order to test the existing legislation and to obtain its official interpretation, making the law clearer and more predictable.	So-called “anti-propaganda” laws usually contain very vague definitions of prohibited activities. For this reason, LGBTI defenders may not be sure which particular activities fall under this law. They may initiate several cases with different facts to see if specific activities, such as public demonstrations, publications or community meetings, may lead to implementation of the laws. Additionally, even if some activities are not actually tested- for instance, defenders may decide not to initiate a case on bringing up a child in a lesbian family- such situations could still be included into the judges’ analysis.
To implement existing legislation	When legislation has been adopted, but is not being implemented in practice, defenders may wish to remind authorities about already existing instruments and encourage its broader implementation.	Legislation establishing more general provisions- such as an open list of protected grounds in anti-discrimination clauses, or general entitlements for <i>de facto</i> couples- could potentially be beneficial for LGBTI persons, even if the law has not been implemented yet. To enforce the existing provisions, advocates may initiate and bring cases to create precedents that could be used to regulate future situations.

<p>To change the existing legislation</p>	<p>Litigation may affect legislation directly when it challenges provisions potentially violating a constitution or federal laws. Additionally, a media case could provoke debates in legislature or support friendly politicians in bringing legislative proposals to the agenda.</p> <p>Treaty Bodies sometimes specifically request that a State party change its legislation so that it corresponds to the relevant international treaty.</p>	<p>Examples of cases where particular laws were challenged in constitutional courts include those on the criminalisation of same-sex relations, abusive requirements for legal gender recognition or so-called “anti-propaganda” laws.</p> <p>Some specific examples from Treaty Bodies’ SOGIESC jurisprudence include <i>Praded v. Belarus</i> and <i>Nepomnyashchiy v. Russian Federation</i>. In <i>Praded v Belarus</i> the HRCtee requested that the State party review its legislation, in particular the Law on Mass Events, with a view to ensuring that the rights under articles 19 and 21 ICCPR may be fully enjoyed in the country.</p> <p>In <i>Nepomnyashchiy v. Russian Federation</i>, the HRCtee requested that the State party ensured the relevant provisions of the domestic law (including “anti-propaganda” legislation) were made compatible with articles 19 and 26 ICCPR.</p> <p>The same Committee requested Australia revised its legislation on legal gender recognition (<i>G. v. Australia</i>) and same-sex marriage (<i>C. v. Australia</i>) to ensure compliance with the ICCPR.</p>
<p>To prove the problem and to document violations</p>	<p>Under the standard understanding of human rights, the violator of human rights is the State. Therefore, to prove the violation, it is crucial to show the role of the State and to collect concrete evidence to prove it. If your narrative does not have strong proof of the State’s omission, or actions violating human rights, the State authorities may claim that they were not aware of the situation. Involvement of a court system inevitably shows that the State had all the information and was able to influence the situation, but usually did not act in a proper way.</p>	<p>Cases illustrating problems faced by LGBTI communities may serve as a perfect tool for broader advocacy. Litigated cases can be an invaluable source of information about government policies and practices regarding SOGIESC issues for many different stakeholders.</p> <p>For instance, many successful shadow reports submitted by LGBTI activists to Treaty Bodies under country periodic review process were based on descriptions of litigated cases.</p>

<p>To obtain a remedy for an individual</p>	<p>While strategic litigation's ultimate goal is to change a general situation, it does also seek justice for an individual whose rights were violated. Through litigation, they may get recognition of the violation and some sort of a psychological relief, compensation, including monetary, and actual access to the benefits they were deprived of, etc. When Treaty Bodies recognise a violation, they also require a State party to provide the author(s) with an effective remedy, including adequate compensation and reimbursement of any legal costs paid by them. Sometimes Treaty Bodies also prescribe other tangible measures to be taken.</p>	<p>In some countries, advocates were able to get compensation for LGBTI activists who were illegally detained during public demonstrations. Courts awarded the activists monetary compensation, to be paid from the State budget, for suffering and inconvenience caused by illegal acts committed by police officers.</p> <p>Other examples may be: (1) a ruling to change a trans person's documentation when a civil registry refused to do so with an administrative procedure, or (2) a decision to reinstate a person to their job after discriminatory firing.</p> <p>In regard to Treaty Bodies' jurisprudence, in <i>Nepomnyashchiy v. Russian Federation</i>, the HRCtee requested that the State party reimburse the value of the fine paid and any legal costs incurred by the author, as well as to provide appropriate compensation.</p> <p>In <i>G. v. Australia</i>, the same Committee requested the State party to provide the petitioner with a birth certificate consistent with her preferred gender.</p> <p>In <i>X. v. Colombia</i> and in <i>Young v. Australia</i>, the HRCtee obliged the State parties to reconsider the authors' request for a pension without discrimination on grounds of sex or sexual orientation.</p>
<p>To hold perpetrators accountable</p>	<p>When a violation is recognised, perpetrators are usually held accountable through various means and penalties, with the aim to prevent future violations, to provide compensation for the survivor's loss or suffering, to implement retributive punishment and to achieve social justice.</p>	<p>Strategic litigation on LGBTI cases may lead to penalties and punishment for violations of LGBTI persons' rights, be the perpetrators private actors, such as an employer, private doctor or radical anti-LGBTI groups, or State actors, for example police officers or civil registry officials.</p>



<p>To change behavioural patterns</p>	<p>Strategic litigation may lead to a change in behavioural patterns of perpetrators, State actors, community members, etc. Such changes may be the result of a punishment for the recognised violation, or the effect of a positive decision made by a court.</p>	<p>Cases with serious punishment for anti-LGBTI hate crimes could change some violators' behaviour, and could also encourage other LGBTI survivors to report hate crime incidents to police or lawyers bringing more cases to courts. The same goes for many other issues – for example, several positive decisions on legal gender recognition may give a trans organisation providing legal assistance new beneficiaries, who will be willing to request new documents through courts.</p>
<p>To prevent future violations</p>	<p>A successful strategic litigation case may prevent future violations through a direct requirement by a court, or through broader, indirect impact. Even negative decisions sometimes perform a preventive function; for example, when the cost of participation in a court proceeding is higher than those of committing violations. When Treaty Bodies recognise a violation, they also require a State party to take steps to prevent similar violations in the future.</p>	<p>If authorities constantly refuse to authorise LGBTI public demonstrations, challenging each refusal may lead to a change in the pattern. The authorities may decide that it would be easier for them to allow a demonstration than to prepare documentation and participate in court hearings every time.</p>
<p>To change social attitudes</p>	<p>Strategic litigation, paired with media campaigns, may bring social change and shift society's attitudes towards a population group or problem.</p>	<p>Strategic litigation usually involves non-legal components, such as media and communications. On the one hand, the litigation process allows campaigners to keep attention focused on the case and the problem it tackles – for instance, you may prepare press releases for every stage of the litigation, and organise a press conference devoted to the final decision. On the other hand, a court case may help you to show the “human face” of the problem to a wider audience. An excellent example of this is <i>Freeheld</i>, a documentary by Cynthia Wade, showing the story of a woman in her fight against the Ocean County, New Jersey Board of Chosen Freeholders to give her earned pension benefits to her female partner.</p>

Bringing strategic cases to international fora, and particularly to Treaty Bodies, may pursue additional aims, such as:

- Overcoming negative decisions made by national authorities;
- Putting international pressure on the State to take positive action;
- Developing universal standards of SOGIESC human rights that would benefit LGBTI communities and individuals across countries and regions;
- Obtaining more detailed analyses of the problem, more concrete and targeted recommendations; and,
- Accessing stronger follow-up mechanisms than would be available under country periodic review processes.

At the same time, it is also important to take into account **risks and limitations** of strategic litigation, as well as **possible negative effects** that strategic litigation could bring.

First, strategic litigation needs resources for legal work as such: lawyers experienced in litigation and sensitive to the community's needs and vulnerabilities; funds to pay legal fees and lawyers' honorariums; funds to pay fines, when relevant, etc.

Second, strategic litigation could be a time-consuming endeavour, and international strategic litigation require even more time. During all this time, you might need to support the claimant, to keep the media's attention, to continue contacts with relevant authorities, etc.

Third, strategic litigation should be very well planned in terms of procedural rules. If you, for example, fail to exhaust the final available domestic remedy, you will lose the whole case on the international stage notwithstanding all the resources (usually significant) spent already to proceed with the case.

Fourth, the final results of strategic litigation can never be guaranteed. Even when you have a case with the best possible evidences, the most committed and stable complainant, the most talented attorneys and completely independent judges, there is still a chance that you will lose it. With winning a case, you are obtaining positive changes to the whole community. But in the same way, you may in fact run into the backlash affecting not only your complainant, but also a broader circle of people, and for quite a long time. Planning strategic litigation in advance should include consideration of such risks and measures to deal with them.

Fifth, strategic litigation, by definition, involves finding a balance between the individual interests of the claimant and public or community interest pursued by the NGO. It would also be great to discuss this balance in advance.

Sixth, strategic litigation requires, at least to some extent, the existence of independent judiciary and effective implementation system. Otherwise you will simply not be able to achieve desired legal developments.

Seventh, in most cases, strategic litigation cannot bring positive changes alone, and it needs to be accompanied by media campaigns, lobbying or communications with national authorities, etc.

In the next section, we will see how these limitations and risks could be mitigated.

# What are the components of strategic litigation?

Strategic litigation is a method of advocacy with a number of components, of both a legal and non-legal nature.

As per its name, litigation, it includes the usual **legal components**; for example, case selection and analysis, development of legal arguments, collecting relevant evidence and standards to support the position, drafting documentation, actual legal representation in courts, implementation of judgments, etc.

Case selection has a particular meaning in the context of strategic litigation. Under the classic concept of strategic litigation, advocates develop strategies and tactics before they actually have a case. A number of criteria are developed in advance of selecting *one* case from many others which target the same problem. For instance, the criteria would include specific characteristics of a survivor, or specific requirements in regard to circumstances or evidence.

This approach, however, has not always been appropriate for some movements or circumstances. For example, the Open Society Justice Initiative noted in their publication that, “anti-torture litigation is often deployed on an emergency basis and only understood as ‘strategic’ in hindsight.”<sup>14</sup> For LGBTI organisations working in many countries, it might be a big challenge to find even a single person who would be willing and ready to bring their case to officials, and in such circumstances, every case may become strategic.

Implementation or follow-up strategy should also be a part of your analysis and planning, as well as consideration of your activities in the case of a negative decision.

As an advocacy method, strategic litigation may also include other preparations and activities, such as:

## Media and communications

Media campaigns, press releases, press conferences, articles and interviews may help advocates to achieve a broader impact in the case. Sometimes, a strategic litigation case might bring positive results through awareness-raising or changing attitudes among general public or decision-makers, even when the actual court ruling is negative.

Defenders organising strategic litigation may also discuss media strategies with other NGOs and CSOs working on LGBTI issues in their country. They might have information, contacts and ideas that can be useful and important to the media representation of the case.

At the same time, strategic litigation, particularly that focused on marginalised communities, may have some serious risks in terms of media attention; risks which should be considered at the very beginning of the process. In some countries or situations, LGBTI complainants may face serious problems if their identity was revealed to family members, colleagues or neighbours. It can be a very brave, but also risky, step for an LGBTI person to go to a court with their case, and to talk about their SOGIESC in a courtroom. Therefore, if you wish to bring a strategic litigation case in your country, you should think about organising media attention surrounding the case, to avoid the claimant suffering additional stigma or violence. You may decide not to report any details on the case at all, or provide information only to trusted journalists with concrete measures in place so as not to reveal the com-

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14 Open Society Justice Initiative: *Strategic Litigation Impacts: Torture in Custody* (November 2017), p. 14.

plainant's name, address or appearance. It is also advisable to discuss with a complainant not only legal details of their case, but also how you are going to communicate the case to the media and wider society; what are the limitations and requests from the complainant, what are the risks and how you can mitigate them?

## Support for a complainant

As well as being responsible for media attention given to the complainant and their situation, you may organise other activities to support the person through the process. The experience of violence or discrimination in itself may have a deteriorative impact on the person's physical and mental health. Litigation may last for years, if not decades, and the complainant may be required to go back to the traumatic experience again and again. In order to ensure that they are able to go through the litigation process, you may provide them with psychological consultations, peer-to-peer support, funds to pay for medical expenses, means to ensure physical safety or sometimes even relocation. A good practice implemented by some LGBTI groups is to keep in touch with complainants, invite them to community events and to make them feel that the organisation representing them in the strategic litigation case cares about them. Of course, lawyers, psychologists, social workers and/or volunteers supporting the complainant also need supervision and access to their own support when relevant.

## Community awareness-raising

Strategic litigation may be conducted in conjunction with awareness-raising activities for LGBTI communities. You can organise seminars or trainings to tell LGBTI persons about their rights and ways to protect them, to help them recognise cases of violations, to inform them about support you can provide, and to share your plans on future litigation with them. This may help you to get actual complainants with material cases to bring to courts. At a later stage, you can keep the community informed about different stages of litigation, and even get them involved in some activities, such as collection of evidence or support for a complainant by being present in the courtroom. Lastly, you may also inform LGBTI communities about positive decisions taken on issues relevant to them. This could help you show the significance of your work, to build trust among the community, to cultivate pride within the community and to show examples of best practice that they could use themselves.

## Research

Strategic litigation may include a research component for a number of reasons. Research is needed to collect evidence to support a case in court, to put forward new arguments in media communications and to provide a comprehensive picture of the situation to national and international authorities that you plan to engage with. Even if your national legal system does not accept evidence that is not related directly to the facts of a case, such information may be extremely helpful for the international stage of the litigation. Research data could also serve as a basis for *amicus curiae*, third party interventions submitted by other organisations to the court in relation to your case.

Comparative legal research could give the court additional arguments. For example, in the latest case on decriminalisation of same-sex relations in India references were made to cases on the same issue from Belize and Trinidad and Tobago.<sup>15</sup>

Multiple examples of the use of researches in Treaty Bodies' strategic litigation could be found in the ILGA World's Case Digest (See "Case Comments"—"Evidence").

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15 Navtej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law and Justice, Supreme Court of India, [decision](#) of 6 September 2018.

## National advocacy

Strategic litigation may be supported by local or national advocacy efforts. For example, if you have a friendly ombudsperson, ministry or politician, you may inform them of the case, and general issues tackled in the case, such as statistics or similar documented cases. You may ask them to support your case through court intervention, where procedural rules allow it, or by issuing a public statement. You may also discuss with them follow-up activities after obtaining a positive decision and ways to encourage its implementation.

## Engagement with international bodies, including Treaty Bodies outside of their individual communications working method

In order to achieve broader changes in law, policy or social attitudes through strategic litigation it is important to explore different entry points. You may communicate the case and the problem it raises, to different international bodies.

For example, imagine you are planning to submit a case on a discriminatory firing of a lesbian teacher to CEDAW, as you have now exhausted all the effective domestic remedies.

As you will see further in this policy paper, two of the main UN Treaty Bodies' working methods include individual communications (cases of *concrete* violations brought by *concrete* individuals or organisations) and country periodic reviews (where the Committees assess *general* situation with human rights in the country, and civil society may submit so-called "shadow reports" explaining the problems and illustrating them with cases).

Therefore, as well as submitting the case to CEDAW, you may also check when your country will be reviewed by CESCR (the Committee dealing with the right of everyone to the enjoyment of just and favourable conditions of work) and CEDAW (assessing the discrimination against women in the field of employment) under country periodic review process. In these reviews, you can submit shadow reports to the Committees explaining the situation of lesbian women in employment, providing statistics, data, and also explain the situation of your complainant.

If you get specific recommendations from these Committees, this will make your future complaint stronger.

Before exhausting domestic remedies, you may also submit a complaint to the Working Group on the issue of discrimination against women in law and in practice, as well as to the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

The strategic litigation case you submit to CEDAW will now be substantially stronger with the addition of existing documentation in the form of, shadow reports, Committee recommendations and Special Procedure submissions.

After obtaining a decision from CEDAW, you can encourage proper implementation of the Committee's recommendations, providing information on any follow-up activities conducted by the State (or lack thereof) for country periodic reviews by CEDAW and other Committees.

To conclude, strategic litigation includes multiple components and may require considerable resources, funds, time, legal expertise and human energy. However, it can also be an exciting, creative and effective instrument to achieve positive change and make LGBTI persons' lives better.



# **Strategic Litigation before Treaty Bodies: Procedural Aspects**

# Treaty Bodies and their working methods

**United Nations Treaty Bodies** are Committees of independent human rights experts created to monitor implementation of international treaties by their State parties. Currently, there are ten Treaty Bodies attached to nine core human rights treaties.<sup>16</sup> Some of them focus on specific populations (e.g. CEDAW for women and CRPD for persons with disabilities), others' mandate is built around distinct topics (e.g. CAT on torture), while the rest are of a more general or universal nature (e.g. HRCtee).

**Figure 1: United Nations Treaty Bodies**

HRCtee	<ul style="list-style-type: none"> <li>• Human Rights Committee</li> <li>• International Covenant on Civil and Political Rights</li> </ul>
CESCR	<ul style="list-style-type: none"> <li>• Committee on Economic, Social and Cultural Rights</li> <li>• International Covenant on Economic, Social and Cultural Rights</li> </ul>
CEDAW	<ul style="list-style-type: none"> <li>• Committee on the Elimination of Discrimination against Women</li> <li>• Convention on the Elimination of All Forms of Discrimination against Women</li> </ul>
CAT	<ul style="list-style-type: none"> <li>• Committee against Torture</li> <li>• Convention against Torture and Other Cruel, Inhuman or Degrading Treatment</li> </ul>
CRC	<ul style="list-style-type: none"> <li>• Committee on the Rights of the Child</li> <li>• Convention on the Rights of the Child</li> </ul>
CERD	<ul style="list-style-type: none"> <li>• Committee on the Elimination of Racial Discrimination</li> <li>• International Convention on the Elimination of All Forms of Racial Discrimination</li> </ul>
CRPD	<ul style="list-style-type: none"> <li>• Committee on the Rights of Persons with Disabilities</li> <li>• Convention on the Rights of Persons with Disabilities</li> </ul>
CMW	<ul style="list-style-type: none"> <li>• Committee on Migrant Workers</li> <li>• International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</li> </ul>
CED	<ul style="list-style-type: none"> <li>• Committee on Enforced Disappearances</li> <li>• International Convention for the Protection of All Persons from Enforced Disappearance</li> </ul>

All Treaty Bodies, except for the SPT work through three main methods:

## Country periodic reviews:

When States become party to a human rights treaty, they are obliged to submit an initial report, followed by periodic (every four to five years) reports to the relevant Treaty Body. As a result of the review, they receive the Committee's recommendations to improve the human rights situation in the country;

<sup>16</sup> The tenth body, the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) differs from other Committees. It was established pursuant to the Optional Protocol of the Convention against Torture (OPCAT) (2002) and it visits places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

## General recommendations or comments:

A general recommendation (or comment) is a Treaty Body's interpretation of human rights treaty provisions, thematic issues or its methods of work (e.g. HRCtee [General Comment no. 33](#) on the obligations of States parties under the Optional Protocol to the ICCPR, CEDAW [General Recommendation no. 35](#) on gender-based violence against women, or CRPD [General Comment no. 6](#) on equality and non-discrimination). They often seek to clarify the reporting duties of State parties with respect to certain provisions and suggest approaches to implementing treaty provisions. They also allow the Committees to keep the treaties, many of which adopted decades ago, a true living instrument that fit recent social, scientific and any other developments; and

## Individual complaints:

Individual complaints are the very instrument used by human rights advocates in their strategic litigation. Most of the Committees can, under certain conditions, receive petitions from individuals. Any individual who claims that their rights under the treaty have been violated by a State party to that treaty may bring a communication before the relevant Committee, provided that the State has recognised the competence of the Committee to receive such complaints and that domestic remedies have been exhausted. When the Committee reveals a violation, it obliges the State to provide a remedy to the petitioner, and also prevent similar violations in the future.

LGBTI defenders can participate in all three aspects of Treaty Bodies' work. By bringing individual communications to the Committees, defenders can have their cases heard on the international stage, potentially fostering developments of a universal nature. However, not every case can be brought to Treaty Bodies, and some requirements have to be met.

## Requirements to submitting individual complaints to Treaty Bodies

Currently, there are eight Treaty Bodies (HRCtee, CESCR, CEDAW, CAT, CRC, CERD, CRPD and CED) that can receive individual complaints. Each of the Committees has its own procedural rules and requirements when it comes to submitting individual complaints. In this section, you will find general, across the board information on requirements to Treaty Body complaints; however, we strongly recommend, that before sending your complaint, you **check the specific rules adopted by the Committee you are going to apply to**. You can also contact us directly: [untreaties@ilga.org](mailto:untreaties@ilga.org).



## Who can bring an individual complaint?

Complaints to Treaty Bodies may be submitted by **individuals**, claiming to be victims of a violation of any of the rights set forth in the respective international treaty.

Complaints may also be brought by **third parties on behalf** of individuals, provided they have given their written consent (without requirement as to its specific form).

In certain cases, a third party may bring a case without such consent, for example, where a person is in prison without access to the outside world. In such cases, the author of the complaint should state clearly why such consent cannot be provided.

Treaty Bodies do not examine complaints about a general situation filed on behalf of a general class of persons, who cannot be individually identified. For example, a trans group from Kazakhstan cannot submit a case regarding the regulations requiring gender reassignment surgery for legal gender recognition on behalf of the whole trans community in the country. However, if these regulations have been used in a concrete case, for instance, a trans person X. was denied new documentation because they did not perform a surgery, then the trans group can represent X. before a Committee (e.g. HRCtee or CEDAW). The case will be called “X. v. Kazakhstan,” and the group will need to obtain X.’s permission to represent them before the Committee.

## Against whom can an individual complaint be brought?

Treaty Bodies may review complaints brought by individuals **against States**. This means that an individual cannot apply to a Treaty Body with a claim against another individual.

For example, if a lesbian girl from country A. was beaten by her parents because of her sexual orientation, she cannot submit a complaint against her parents to CEDAW. However, she may bring a complaint against country A. to the Committee; her task would be to show how the national authorities failed to protect her – for example, if a police officer refused to register her call, and then a national court rejected her claims.

*Furthermore, the general recommendation [No. 19 on violence against women] addresses the question of whether States parties can be held accountable for the conduct of non-State actors in stating that “... discrimination under the Convention is not restricted to action by or on behalf of Governments ...” and “[U]nder general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”.*

CEDAW: [A.T. v. Hungary](#), communication no. 2/2003, views of 26 January 2005, para 9.2.

## Can an individual bring a complaint against their State?

A State against which a complaint is brought, **should accept both** the “main” international treaty- covenant or convention- and the individual complaint mechanism under this treaty.

Individual complaint mechanisms may be accepted either through ratification of an optional protocol (OP) to the “main” convention, or through a specific declaration made by the State in relation to a procedural article contained in the “main” convention (see *table 2*).

**Table 2:** Acceptance of Treaty Bodies’ individual complaints mechanisms

HRCtee	First OP to the ICCPR
CESCR	OP to the ICESCR
CEDAW	OP to the CEDAW Convention
CAT	Declaration under art. 22 of the CAT Convention
CRC	Third OP on a communications procedure
CERD	Declaration under art. 14 of the ICERD
CRPD	OP to the ICRPD Convention
CMW <sup>17</sup>	Declaration under art. 77 of the ICMW
CED	Declaration under art. 31 of the ICED

You may check whether your country ratified “main” treaties and accepted individual complaint mechanisms in *chapter 4* of this publication (as of 27 August 2018). Up-to-date information on ratifications and acceptance is available here:

- [https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx) (select your country, then see information on what instruments are ratified or accepted); or
- [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/countries.aspx](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx) (select your country, then see what instruments are ratified or accepted, and also access documentation on the country, such as reports, Concluding Observations, views on individual communications, etc).

**Figure 2:** Ratification, reporting & documentation country information

This page provides country specific information on :

- The ratification of international Human Rights treaties
- The reporting cycles
- All the documents related to a reporting cycle

Please select a country ( Republic of Korea )

Note: Click on the collapse/expand icon to view reporting cycles and related documentations

### Ratification, Reporting & Documentation for Republic of Korea

Treaty	Signature Date	Ratification Date, Accession(a), Succession(d) Date
CAT - Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment		09 Jan 1995 (a)
CCPR - International Covenant on Civil and Political Rights		10 Apr 1990 (a)
<b>CEDAW - Convention on the Elimination of All Forms of Discrimination against Women</b>	25 May 1983	<b>27 Dec 1984</b>
CERD - International Convention on the Elimination of All Forms of Racial Discrimination	08 Aug 1978	05 Dec 1978
CESCR - International Covenant on Economic, Social and Cultural Rights		10 Apr 1990 (a)
CRC - Convention on the Rights of the Child	25 Sep 1990	20 Nov 1991
CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	06 Sep 2000	24 Sep 2004
CRC-OP-SC - Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography	06 Sep 2000	24 Sep 2004
CRPD - Convention on the Rights of Persons with Disabilities	30 Mar 2007	11 Dec 2008

### Acceptance of individual complaints procedures for Republic of Korea

Treaty	Signature Date	Ratification Date, Accession(a), Succession(d) Date	Date of acceptance/non acceptance
CAT, Art.22 - Individual complaints procedure under the Convention against Torture			09 Nov 2007
CCPR-OP1 - Optional Protocol to the International Covenant on Civil and Political Rights		10 Apr 1990 (a)	
<b>CEDAW-OP - Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women</b>		<b>18 Oct 2006 (a)</b>	
CERD, Art.14 - Individual complaints procedure under the International Convention on the Elimination of All Forms of Racial Discrimination			05 Mar 1997

Let us imagine that a trans woman from South Korea was refused legal gender recognition in 2015, and the national authorities failed to support her claims. She obtained the final court decision in 2017 and decided to bring her case to CEDAW. Checking the information on the OHCHR website, we can see that South Korea ratified the CEDAW Convention in 1994, and accepted CEDAW individual complaints mechanism in 2006 (see **figure 2**). Therefore, the trans woman can apply to CEDAW with her petition.

## When can an individual complaint be brought?

**Firstly**, as complaints may only be submitted against States which have accepted individual complaints mechanisms, **the date of acceptance** must have occurred before the fact. In other words, the violation must have occurred after the mechanism has been accepted, otherwise it cannot apply. If the facts occurred before this date, a complaint can be brought to the Committee only if they continued after that date.

*The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date (article 4 (2) of the OP to CEDAW Convention; art 2 (f) of the OP to ICRPD Convention).*

**Secondly**, being a subsidiary mechanism, Treaty Bodies may review a case of alleged violation only after national authorities have had a chance to remedy the situation. In other words, prior to submitting a petition to Treaty Bodies, an individual has to **exhaust available domestic remedies**.

There may be no need for exhausting domestic remedies if such remedies are ineffective, not available or unreasonably prolonged.

*The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief (article 4 of the OP to CEDAW Convention).*

*The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged (article 7 (a) of the ICERD).*

*All available domestic remedies have not been exhausted. This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief (article 2 (d) of the OP to ICRPD).*

Particularly, defenders could claim that they cannot refer to domestic remedies when national legislation explicitly excludes LGBTI persons from certain benefits, or explicitly criminalises them, and there is evidence of the application of such laws.

*The Committee notes that it is clear from the legislation that the author would never have been in a position to draw a pension, regardless of whether he could meet all the other criteria under the Veteran's Entitlement Act, as he was not living with a member of the opposite sex. The Committee recalls that domestic remedies need not be exhausted if they objectively have no prospect of success: where under applicable domestic laws the claim would inevitably be dismissed, or where established jurisprudence of the highest domestic tribunals would preclude a positive result. Taking into account the clear wording of the sections of the Veteran's Entitlement Act in question, and noting that the State party itself admits that an appeal to the Commonwealth Administrative Appeals Tribunal would not have been successful, the Committee concludes that there were no effective remedies that the author might have pursued.*

HRCtee: [Young v. Australia](#), communication no. 941/2000, views of 6 August 2003, para 9.4.

**Thirdly**, complaints to some Treaty Bodies must be submitted within a specific time-frame following the exhaustion of domestic remedies.

For example, according to ICERD, State parties may establish a national body which shall be competent to receive and consider petitions from individuals claiming to be victims of a violation of any rights set forth in the ICERD, who have exhausted other available local remedies. In the event of failure to obtain a satisfactory decision from such body, the petitioner shall have the right to communicate the matter to **CERD within six months**.

According to article 3 (2) (a) of the OP to ICESCR and article 7 (h) of the third OP to CRC Convention, **CESCR** and **CRC**, respectively, shall declare a communication inadmissible when it is not submitted **one year** after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it was not possible to submit the communication within that time limit.

However, even if there is no specific time limit established, it is advisable to submit a complaint as soon as possible after the exhaustion of domestic remedies. Delay in submitting the case may make it difficult for the State party to respond properly and for the Treaty Body to evaluate the facts thoroughly. In some cases, submission after a protracted period may result in the case being considered inadmissible by the Committee in question.

For example, according to the **HRCtee's** Rules of Procedure, a communication may constitute an abuse of the right of submission, when it is submitted **5 years** after the exhaustion of domestic remedies by the author of the communication, unless there are reasons justifying the delay taking into account all the circumstances of the communication (rule 96 (c)).

### Is it possible to bring the same case to a Treaty Body and to other international bodies?

If the same case has been submitted to another Treaty Body or to a regional mechanism, such as the IACtHR, ACtHPR or ECtHR, a Committee cannot examine the complaint. This rule aims to prevent unnecessary duplication at the international level.

*The Committee shall declare/consider a communication inadmissible where/when the same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement (article 4(2) of the OP to CEDAW Convention; article 2 (c) of the OP to ICRPD).*

*The Committee shall not consider any communication from an individual unless it has ascertained that the same matter is not being examined under another procedure of international investigation or settlement (article 5 (2) (a) of the first OP to ICCPR).*

However, this rule does not prevent defenders from submitting a communication on the same matter to such mechanisms as UN Special Procedures or Treaty Bodies' periodic country reviews as they represent a non-judicial process and do not involve consideration of the merits of the case.

## What form should a complaint follow and what data should be included therein?

There is no particular format for individual complaints to Treaty Bodies. However, it is strongly recommended to follow these sources when drafting a complaint:

- For **HRCtee**, **CAT** and **CERD** – a model complaint form available in [English](#), [French](#), [Russian](#) and [Chinese](#)
- For **CEDAW** – a factsheet and a model form of submission available in [English](#), [French](#), [Spanish](#), [Russian](#) and [Chinese](#);
- For **CRPD** – a [factsheet](#) and [guidelines](#) available in English, French, Spanish, Russian, Arabic and Chinese;
- For **CRC** – a model complaint form available in [English](#);
- For **CED** – a [guidance and a model form](#) for submission available in English, French, Spanish, Russian, Arabic and Chinese.

In general, a complaint should be in writing, written legibly, preferably typed, and signed (complaints sent by email should be scanned). Only communications presented in one of the United Nations' languages (Arabic, Chinese, English, French, Russian and Spanish) can be accepted.

The complaint customarily includes:

- basic personal information: name, nationality, date of birth, mailing address and email of the person who experienced the alleged violation;
- the consent of the person who experienced the alleged violation, if the complaint is brought on behalf of them by another individual or an organisation;
- information on the State party against which the complaint is directed;
- request for anonymity, if relevant;
- request for interim measures, if relevant;
- the facts on which the complaint is based (preferably in chronological order);
- explanation on why the facts described constitute a violation of the treaty in question;
- steps taken to exhaust domestic remedies;
- information about any another means of international investigation or settlement referred to by the petitioner on the same case; and
- remedies that the author would like to obtain from the State.

Complainants should supply copies of all documents relevant to their claims and arguments, especially administrative or judicial decisions on their claims issued by national authorities. If these documents are not in an official language of the United Nations, a full or summary translation of the documents must be submitted.

The complaint should not exceed 50 pages (excluding annexes). When it exceeds 20 pages, it should also include a short summary of up to five pages highlighting its main elements.

**Request for anonymity:** Treaty Bodies do not accept anonymous complaints. However, a complainant may request in advance that their name not be disclosed when the final decision on the case is published.

**Request for interim measures:** If a complainant fears that they will be the victim of irreparable harm before the Committee has examined the case, an urgent intervention by the Committee, to stop imminent action by a State, may be required. For example, in most of the *non-refoulement* cases on LGBT persons, CAT and HRCtee requested relevant States not to deport complainants to their countries of origin pending the consideration of their cases by the Committees.

**Remedies:** When Treaty Bodies find a violation of the rights enshrined in a relevant treaty, they also recommend specific remedies to be implemented by the State party. Typically, such measures include individual ones (to provide redress to individual victim/survivor), and general ones (to address the situation in broader terms and to prevent similar violations in the future).

Measures recommended by the Committees previously, include: financial compensation, release, investigation, re-trial, commutation of a death sentence, adoption of specific legislation, ratification of international treaties, adoption of protocols to deal with specific issues, conducting trainings for professional groups, etc. (see also **table 1**).

## The process of consideration of individual complaints

The rules for consideration of individual complaints are different for each Committee. In order to know more about these procedures we recommend that you refer to a particular Committee's documentation. However, in general, the process of consideration of individual complaints includes four main stages, namely registration, communications, decision and follow-up.<sup>18</sup>

**Registration:** After receiving an individual complaint, the Committee in question decides whether the registration criteria are fulfilled or not. If needed, the Secretariat may request additional information from the complainant.

**Communications:** After the registration, the case is transmitted to the State so that it may provide comments on the admissibility (formal requirements that the complaint must satisfy) and merits of the complaint (the substance of the complaint, whether or not the petitioner's rights have been violated) within a set time frame, usually six months.

Once the State replies to the complaint, the complainant is offered an opportunity to comment.

When comments have been received from both parties, the case is ready for a decision. If the State party fails to respond, the Committee will take a decision based on the information submitted by the complainant.

**Decision:** The Committees consider each case in a closed session and no oral hearings are conducted as a rule.<sup>19</sup> Therefore, neither the author nor the State party are able to make any oral statements, and the Committee in question takes its decision based on the written information provided by both parties.

Any Committee member who has participated in the decision may request that a summary of their individual opinion be appended to the Committee's views. For example, individual opinions were prepared by HRCtee's members in *Hertzberg et al. v. Finland*, *Toonen v. Australia*, *X. v. Sweden* and *C. v. Australia*.

The decision adopted by a Committee is transmitted to the complainant and the State party simultaneously. There is no appeal against the Committees' decisions and therefore their decisions are final. Final decisions on the merits (generally called views) or inadmissibility are posted in full on the OHCHR website as part of the Committees' jurisprudence.

**Follow-up:** If a Committee concludes that a violation of a treaty has taken place, the State is invited to provide information, within 90 or 180 days, on the steps it has taken to implement the recommendations. The State's response is then transmitted to the complainant for comment. If the State party fails to take appropriate action, the Committee keeps the case under consideration under the

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18 For more detail see also: International Service for Human Rights (ISHR): *The Simple Guide to Treaty Bodies*, pp. 29–32; and OHCHR: *Fact-sheet #7 - Individual Complaint Procedures under the United Nations Human Rights Treaties*, pp. 6–12.

19 In 2017, the HRCtee adopted the *Guidelines on making oral comments concerning communications*. The Committee decided that it would consider, in appropriate cases, raising complex issues of fact or domestic law or important questions of interpretation of the ICCPR, inviting the parties to provide their comments orally before the Committee.



follow-up procedure. A dialogue is thus pursued with the State party and the case remains open until satisfactory measures are taken.

Generally speaking, there is no unified position on what is the legal nature of Treaty Bodies' views on individual cases, either in academia, or among the legal practitioners.<sup>20</sup>

The HRCtee's [General Comment no. 33](#) notes that “[w]hile the function of the Human Rights Committee in considering individual communications is not, as such, that of a judicial body, the views issued by the Committee under the Optional Protocol exhibit some important characteristics of a judicial decision. They are arrived at in a judicial spirit, including the impartiality and independence of Committee members, the considered interpretation of the language of the Covenant, and the determinative character of the decisions.”<sup>21</sup> But then it also states that “[t]he views of the Committee under the Optional Protocol represent an authoritative determination by the organ established under the Covenant itself charged with the interpretation of that instrument.”<sup>22</sup>

A recent decision by Spain's Supreme Court about implementation of the CEDAW decision in a domestic violence individual complaint case represents a perfect example of how Treaty Bodies' views could be perceived by national authorities, and particularly judiciary. The Court enforced compliance with the CEDAW recommendations, and recognized the violation of the author's rights by Spain, ordering the Government to pay 600,000 EUR as compensation for the moral damages she had suffered. When reaching its decision, the Supreme Court acknowledged that the provisions of international treaties to which Spain is a party, form part of its law and that the recommendations of CEDAW are binding in nature. Therefore, the findings of the Committee need to be effectively respected and applied so that the rights and liberties provided for in such treaties are “real and concrete” in Spain.<sup>23</sup> A similar decision was made, for example, by the Russian Supreme Court in a case related to gender-based discrimination in employment where CEDAW found that the State party had violated the author's rights.<sup>24</sup>

Therefore, there can be different ways in different countries and jurisdictions to implement the Treaty Bodies' decisions. Information about concrete follow-up measures and dialogues on LGBT cases reviewed by Treaty Bodies, as well as examples of using the case law in new complaints, you may find in the Case Digest that is a part of ILGA World's Treaty Bodies' Strategic Litigation Toolkit.

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20 See e.g. International Law Association, [Final Report of the Impact of Findings of the United Nations Human Rights Treaty Bodies](#) (2004); Mechlem, K. Treaty Bodies and the Interpretation of Human Rights, *Vanderbilt Journal of Transnational Law* 45 (2009), pp. 905–947; Niemi, H. [National Implementation of Findings by United Nations Human Rights Treaty Bodies: A Comparative Study](#). (Institute for Human Rights, Åbo Akademi University, 2003); Ulfstein, G., Individual complaints. In Keller, H. and Ulfstein, G. (eds.), *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge; Cambridge University Press, 2012), pp. 73–115; Ulfstein, G., The Human Rights Treaty Bodies and Legitimacy Challenges. In Grossman, N., Cohen, H.G., Follesdal, A. and Ulfstein, G. (eds.), *Legitimacy and International Courts* (Cambridge; Cambridge University Press, 2018), pp. 284–304; van Alebeek, R. and Nollkaemper, P.A. The legal status of decisions by human rights treaty bodies in national law. In Keller, H. and Ulfstein, G. (eds.), *UN human rights treaty bodies: law and legitimacy* (Cambridge; Cambridge University Press, 2012), pp. 356–413.

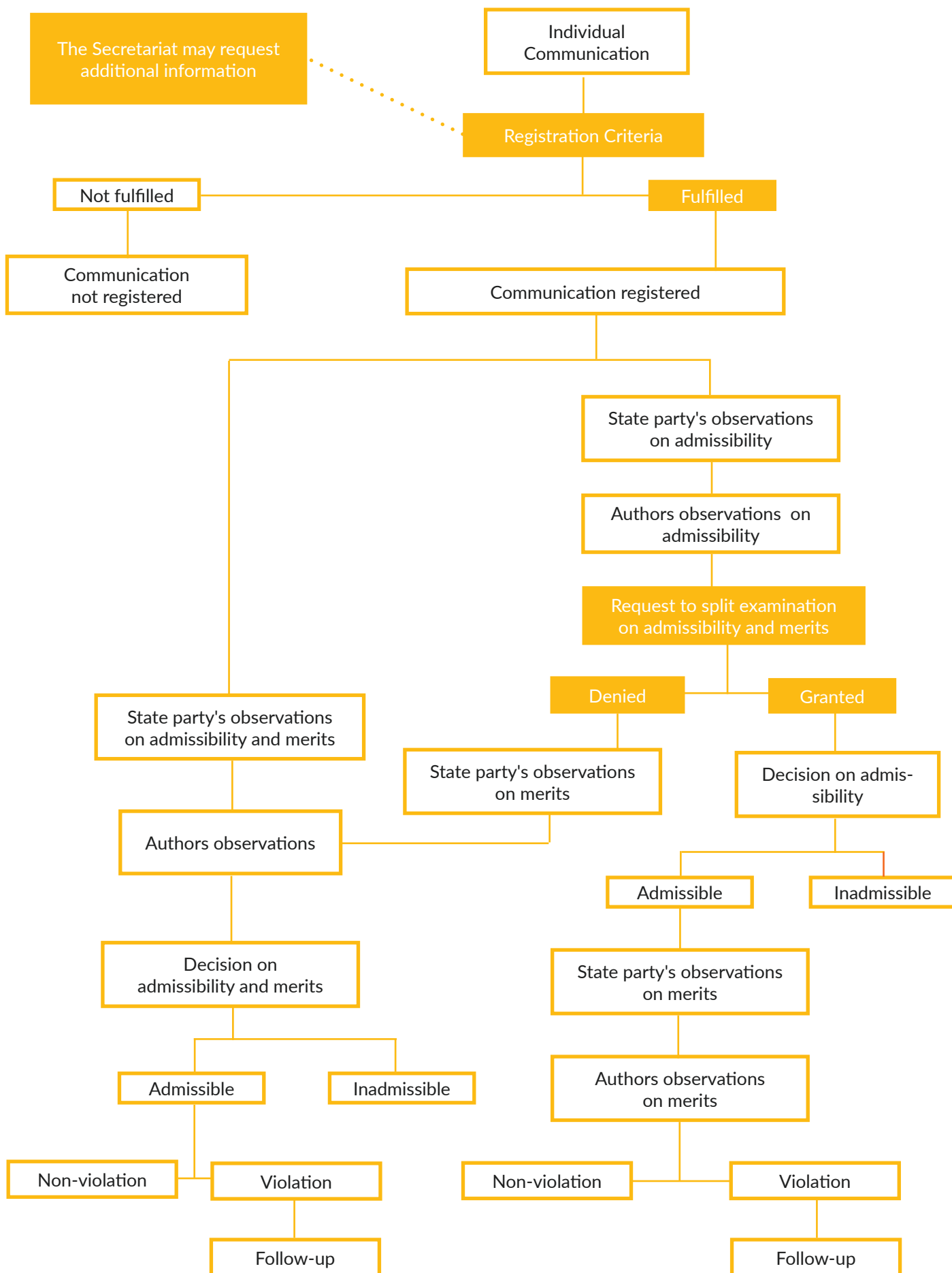
21 HRCtee: *General Comment no. 33 (2008), The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights*, para. 11.

22 Ibid, para. 13.

23 See OHCHR: [Spain sets milestone in international human rights law, say UN women's rights experts](#) (press release, 8 November 2018).

24 46-KG17-24, Supreme Court of the Russian Federation, [decision](#) of 24 July 2017.

Figure 3: Case processing flow chart<sup>25</sup>



25 OHCHR: *Factsheet #7 - Individual Complaint Procedures under the United Nations Human Rights Treaties*, p. 12. Available at: <http://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf> (accessed on 18 April 2018).

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# **Analysis of Treaty Bodies' SOGIESC Case Law**

## Methodology and limitations

This research was conducted by analysing the views and decisions on individual communications made by all Treaty Bodies, as well as information about follow-up activities organised after the views were published.<sup>26</sup>

The main challenge encountered during this research was the lack of any comprehensive database of Treaty Bodies' documentation in general, and their jurisprudence specifically. This seems to be a real weakness of the Treaty Bodies' jurisprudence compared with, for example, the ECtHR system, [HUDOC](#).

While there is an OHCHR jurisprudence platform (<http://juris.ohchr.org>)- based on a database designed and developed by the Netherlands Institute of Human Rights (SIM) of Utrecht University- it provides limited search tools (for example, full-text search is not integrated), and some of the Committees' views, particularly recent or earlier ones, are not included on the platform. As well as the aforementioned platform, we also analysed information presented at the Committees' session pages (where the most recent views are published).

Additionally, while the majority of views are made in English and are subsequently translated into other United Nations languages, a small number of them do not have English versions published, which has, at times, limited this analysis.

Consequently, as accessing views and decisions has sometimes been limited by language and gaps in data, it is possible that a small number of documents are missing from the research.

When it comes to pending cases, the current management of publicly available information is even more challenging. Only recently have some of the Treaty Bodies started publishing information about registered complaints (information that is highly valuable for our advocacy).<sup>27</sup> At the same time, some Committees do not have a system in place at all, and the HRCtee, the main deliverer of Treaty Bodies' jurisprudence, only published a non-comprehensive list of cases registered in 2017.<sup>28</sup>

To overcome this challenge, we have sent out an open call for information using SOGIESC mailing lists, our newsletters and professional networks- still, there is quite limited feedback. If you have information about any cases submitted to Treaty Bodies that you could share with ILGA World, we would appreciate your input (information may be sent to [untreaties@ilga.org](mailto:untreaties@ilga.org)).

Summary tables with basic information about cases reviewed by Treaty Bodies and those pending can be found in annexes to this publication.

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26 Obtained from United Nations documentation, human rights reports and other sources.

27 CESCR: *Table of pending cases*; CEDAW: *Table of pending cases*; CRC: *Table of pending cases*; CRPD: *Table of pending cases*.

28 HRCtee: *Table of registered cases 2017*.

## General overview

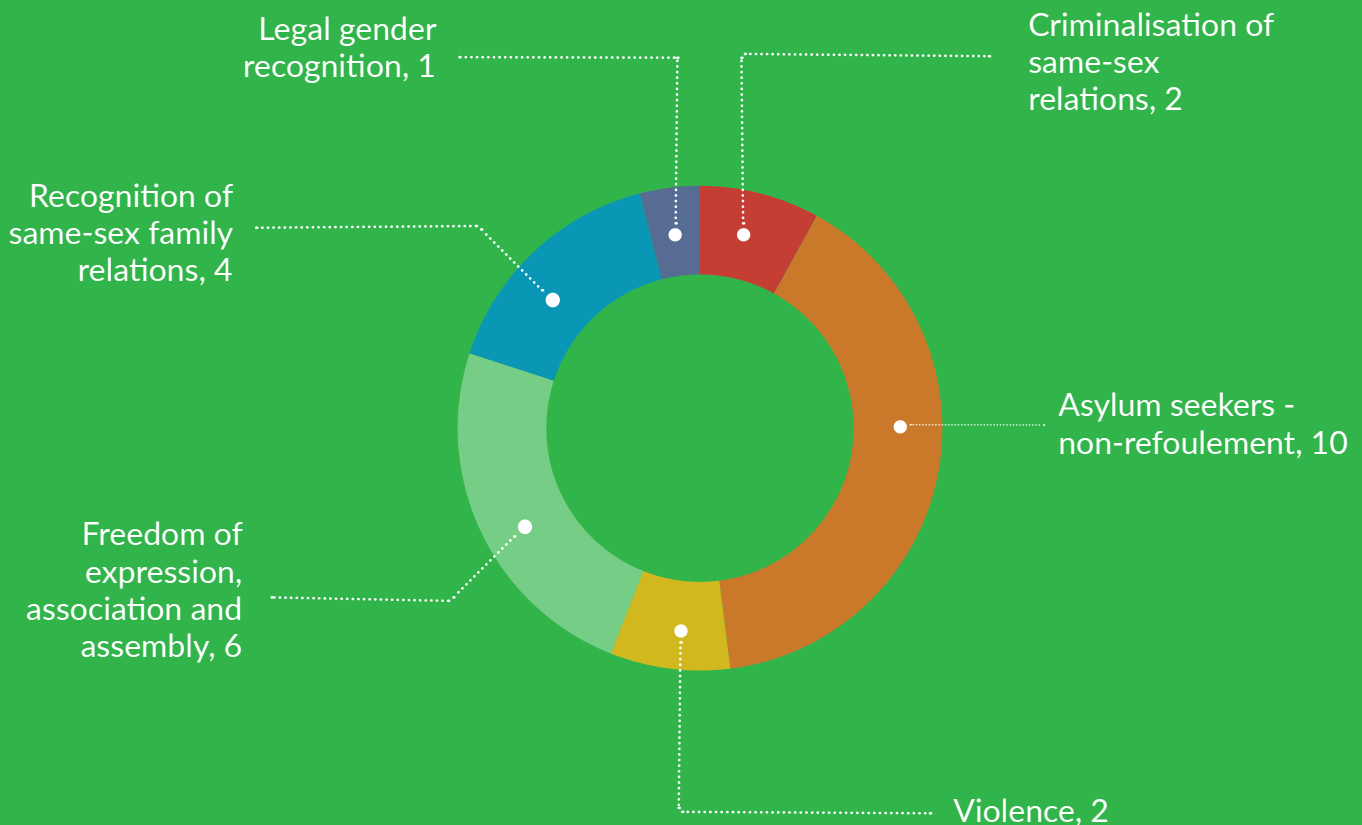
Overall, the Committees have published 25 views and decisions addressing sexual orientation or gender identity since 1982. More than a half of them (14 cases) were made during 2013–2018.

All the views and decisions were produced by two Committees, the HRCtee (19 cases) and CAT (six cases).

In 18 cases, the Committees concluded that State parties violated the rights enshrined in the relevant treaties, in one case the claims were considered inadmissible, and in the rest of the cases (six views) violations were not found.

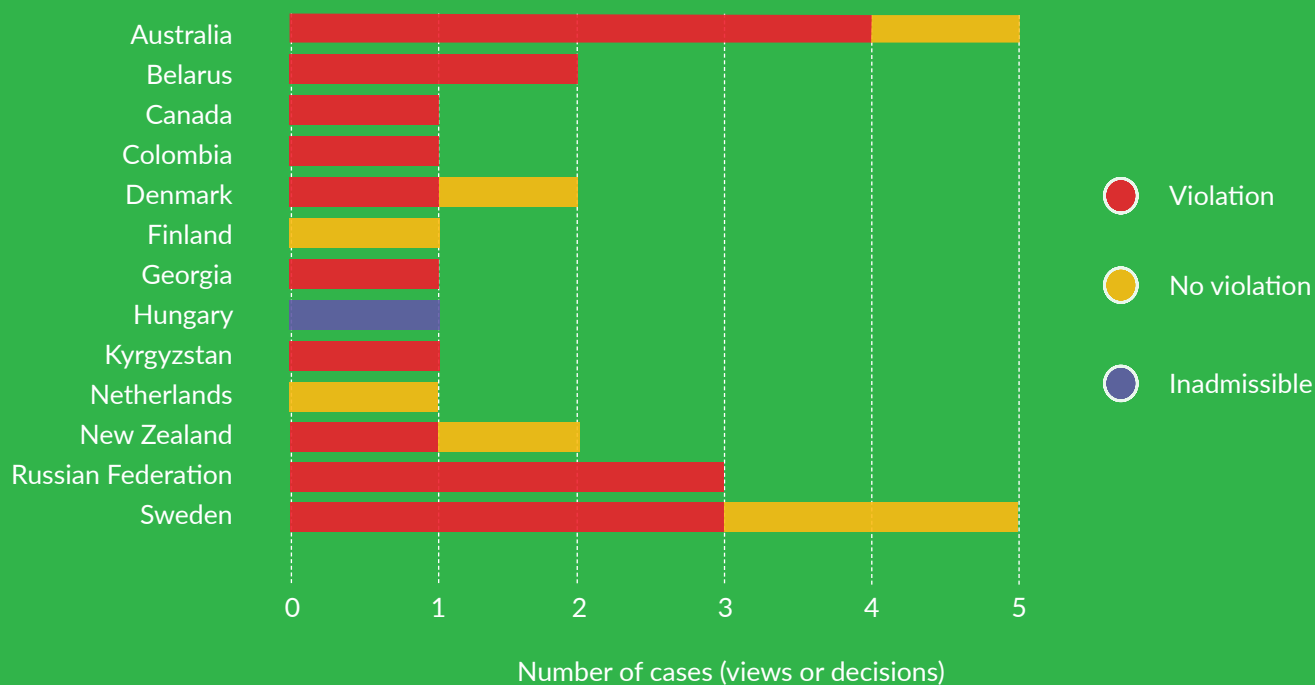
The cases reviewed by the Committees can be divided into six categories, according to the issues they address (see **figure 4**). The majority of cases addressed the situation of LGBT asylum seekers and the *non-refoulement* rule. Significant developments have also been achieved with regard to other issues. Yet, there are many themes relevant for LGBTI communities, for instance, discrimination in employment, health care systems, education and services, that have not been raised before Treaty Bodies; more in-depth analysis of the existing gaps and opportunities for future strategic litigation is provided for below.

Figure 4: LGBT cases reviewed by Treaty Bodies: Topics



Cases reviewed by the Committees so far were brought against 12 countries, with Australia and Sweden having the highest number of complaints (five complaints against each of them) (see **figure 5**).

**Figure 5: LGBT cases reviewed by Treaty Bodies: Countries**



It is also important to note that the reviewed cases often involve more than one country; the complainants in *non-refoulement* cases came from Afghanistan, Bangladesh, Cameroon, Costa Rica, Iran, Lebanon, Malaysia and Uganda.

# Themes

This section is split into six themed sections:

- criminalisation of same-sex relations;
- asylum seekers;
- violence, hate crimes and hate speech;
- freedom of expression, freedom of assembly and association;
- LGBTI families; and
- legal gender recognition.

Each section will present information on SOGIESC cases reviewed by Treaty Bodies, cases pending before Treaty Bodies, identified gaps in the jurisprudence, and opportunities for future development.

## A. CRIMINALISATION OF SAME-SEX RELATIONS

### Violation cases

The first Treaty Bodies' case on the rights of LGBTI persons, where a violation was disclosed, was the truly ground-breaking decision (view) of *Toonen v. Australia*<sup>29</sup>, adopted by HRCtee in 1994.

This case concerned the Tasmanian Criminal Code's prohibition of sexual contact between consenting adult men in private. Degrading statements made by public officials, and prohibiting activists from disseminating information on, and advocating for, decriminalisation were reported in the complaint.

The HRCtee stated for the first time that adult consensual sexual activity in private is covered by the concept of "privacy", and that references to "sex" in ICCPR articles 2 (1) and 26 cover sexual orientation.

The Committee noted that even though the provisions in question had not been implemented for decades, there was still no guarantee that such actions could be brought in the future.

The Australian government brought two arguments to support the criminalisation of same-sex relations, namely public health and moral grounds. However, the HRCtee did not agree with this position. It noted that criminalisation would not help to prevent HIV/AIDS spreading, but instead could impede access to public health programmes for many people. The Committee further noted that moral issues could not be seen exclusively as a matter of domestic concern. With the exception of Tasmania, all laws criminalising same-sex relations had been repealed throughout Australia, and relevant provisions were not deemed essential as they were not enforced in practice.

Consequently, the Committee concluded that the provisions of the Tasmanian Criminal Code did not

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29 HRCtee: Communication No. 488/1992 of 25 December 1991, views of 31 March 1994, [CCPR/C/50/D/488/1992](#).

meet the “reasonableness” test, and that they arbitrarily interfered with Mr. Toonen’s rights (article 17 in conjunction with article 2 (1) ICCPR). The HRCtee required Australia to repeal relevant provisions. According to the *Australia Remedy*,<sup>30</sup> Australia responded to this landmark decision by enacting the *Human Rights (Sexual Conduct) Act 1994 (Cth)* which effectively decriminalised consenting sexual activity between adults throughout Australia and prohibited laws that arbitrarily interfere with the sexual conduct of adults in private. Tasmania subsequently amended its Criminal Code, making it consistent with the Committee’s views.

The case significantly impacted future jurisprudence on sexual orientation – not only within the United Nations, but regionally and nationally. It has been cited by national courts on cases addressing the criminalisation of same-sex relations (e.g. [Navtej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law and Justice](#), India, 2018; [Naz Foundation v. Government of NCT of Delhi and Others](#), India, 2009; [National Coalition for Gay and Lesbian Equality v. Minister of Justice](#), South Africa, 1998) and other issues. References to *Toonen* have also been made by regional human rights courts, such as the IACtHR (see e.g. [Atala Riffo and Daughters v. Chile](#), 2012) or the ECtHR (see e.g. [Fretté v. France](#), 2002; [Vallianatos and Others v. Greece](#), 2013).

Another case concerning criminalisation was *Dean v. Australia*<sup>31</sup>, reviewed by the HRCtee in 2009. However, this case was not about consensual same-sex relations between adults, but about prosecution for same-sex relations with a minor. While the author claimed that he was discriminated against because of his sexual orientation, as he has been treated more harshly than “non-homosexuals” in respect of sentencing, the Committee found this part of his claims inadmissible.

## Pending cases:

- CEDAW: [\[...\] v. Sri Lanka](#), communication No. 134/2018 (articles 2, 5 and 16 CEDAW). Criminalisation of lesbian and bisexual women in Sri Lanka.

The complaint in this communication challenges the criminalisation of lesbian and bisexual women in Sri Lanka. The complainant seeks a declaration from the CEDAW Committee that the criminal law currently in force violates the CEDAW Convention.

The author was born and resides in Sri Lanka. She is a prominent lesbian human rights activist working in Sri Lanka on issues relating to equality and non-discrimination of the LGBT community in the country and internationally. The author has experienced significant harassment, discrimination and stigma, from both state and private actors due to being a lesbian woman who does not conform to gender stereotypes in Sri Lanka. The criminal law, and the discrimination and stigma that it engenders, have had a significant impact on both her public and private life, in violation of Articles 2(a)(d)(e)(f)(g), 5 and 16 of the CEDAW Convention.

Since 1995, following an amendment to the Penal Code, Sri Lanka has criminalised consensual same

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30 Remedy Australia (2014), *Follow-up Report on violations by Australia of ICERD, ICCPR & CAT in individual communications (1994–2014)*, pp. 42–43.

31 HRCtee: Communication no. 1512/2006 of 8 September 2006, views of 17 March 2009, [CCPR/C/95/D/1512/2006](#).



sex intimacy between women in violation of the author's rights under the Convention. Lesbian and bisexual women in Sri Lanka are thus inadequately and unequally protected by the law, making them particularly vulnerable to discrimination, violence, stigmatisation and marginalisation, all of which is compounded as a result of the intersection of their sex and sexual orientation. The law as it stands fails to respect, protect and guarantee women's rights to sexual autonomy and other fundamental human rights, and denies their human dignity.

### Identified gaps:

1. While female same-sex relations are still criminalised in 45 States,<sup>32</sup> so far, no cases on this have been reviewed by Treaty Bodies – including CEDAW. For that reason, the [...] *v. Sri Lanka* (see above) might be of the paramount importance for the development of the Treaty Bodies' jurisprudence.
2. The same goes for the criminalisation of same-sex relations between adolescents, which can be punished with penalties ranging from flogging to the death penalty in some countries. While no cases of this nature have been reviewed by Treaty Bodies, notably CRC, this problem has been addressed by country-specific recommendations and general comments.<sup>33</sup>
3. No individual cases on criminalisation of gender identity and gender expression have been reviewed by Treaty Bodies. At the same time, there is a number of ways gender expression and gender identity are criminalised; so-called “cross-dressing” laws and “impersonation” laws are the most common. So-called “cross-dressing” laws can be found in the penal codes of at least eight jurisdictions, and severely restrict the right to freedom of expression. This problem has also already been addressed during country periodic reviews and in the general comments.<sup>34</sup>
4. As well as the “general” criminalisation of consensual same-sex relations, there is also the problem of criminalising such relations in specific circumstances – for instance, in South Korea same-sex acts are punished according to the Military Criminal Act.<sup>35</sup> The *Toonen* case's position could be further developed by individual communications addressing such situations.

32 ILGA: Carroll, A. and Mendos, L.R., *State Sponsored Homophobia 2017: A world survey of sexual orientation laws: criminalisation, protection and recognition* (Geneva; ILGA, May 2017), p. 8.

33 See e.g. CRC: *Concluding Observations, Iran* (14 March 2016), [CRC/C/IRN/CO/3-4](#), paras. 31–32; *Concluding Observations, Maldives* (14 March 2016), [CRC/C/MDV/CO/4-5](#), paras. 40–41; *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, para. 34.

34 See e.g. HRCtee: *Concluding Observations, Kuwait* (11 August 2016), [CCPR/C/KWT/CO/3](#), paras. 12–13; CESCR: *General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 23.

35 See e.g. CESCR: *Concluding Observations, Republic of Korea* (19 October 2017), [E/C.12/KOR/CO/4](#), paras. 24–25.

5. The problem of criminalisation can also be addressed through other intersections – for example, by CRPD or CERD, or in relation to the criminalisation of sex work.<sup>36</sup>
6. Relying on recommendations made to State parties under country periodic reviews, advocates can also refer to the Committees' cases on particularly harmful or degrading practices employed by national authorities when investigating criminal cases on same-sex consensual relations between adults.<sup>37</sup>
7. Finally, it might be an effective strategy to address the problem of criminalisation of SOGIE through its economic, health, social or cultural implications. One of the arguments brought up by the Australian government in *Toonen* was about public health considerations and HIV; the HRCtee was forced to assess this argument and offer a broader analysis of the consequences of criminalisation on access to healthcare. As such, submissions to Committees such as CESCR, enable a different approach to decriminalisation; by highlighting the socio-economic violations it is responsible for. Notably, this Committee has already looked into some aspects of this problem in its Concluding Observations and general comments.<sup>38</sup>

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36 CEDAW recommended several countries to decriminalise same-sex work (in general, without any linkage with SOGIESC), see e.g. **CEDAW: Concluding Observations, Armenia** (25 November 2016), [CEDAW/C/ARM/CO/5-6](#), paras. 18–19; *Concluding Observations, Burundi* (25 November 2016), [CEDAW/C/BDI/CO/5-6](#), paras. 28–29; *Concluding Observations, Canada* (25 November 2016), [CEDAW/C/CAN/CO/8-9](#), paras. 32–33; *Concluding Observations, Russian Federation* (20 November 2015), [CEDAW/C/RUS/CO/8](#), paras. 25–26.

37 See e.g. recommendations on anal examinations, **CAT: Concluding Observations, Tunisia** (10 June 2016), [CAT/C/TUN/CO/3](#), paras. 41–42.

38 See e.g. **CESCR: Concluding Observations: Burundi** (16 October 2015), [E/C.12/BDI/CO/1](#), paras. 17–18; *Concluding Observations: Namibia* (23 March 2016), [E/C.12/NAM/CO/1](#), paras. 21–22; *General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 23.

## B. ASYLUM SEEKERS

So far, LGBT asylum seekers' situation has been addressed by Treaty Bodies' jurisprudence with regard to only one aspect, namely, the *non-refoulement* rule. This rule prohibits States from returning individuals to countries where they face a risk of torture and other forms of ill-treatment. It is explicitly contained in article 3 CAT, but also recognised in practice by HRCtee and other Treaty Bodies as an inherent part of the general and absolute prohibition of torture and other forms of ill-treatment.

Cases on LGBT individuals claiming the violation of the *non-refoulement* rule amounted to 40% (10 cases) of all SOGIESC-related views and decisions made by Treaty Bodies.

Of these 10 cases, half (five) were against Sweden, two against Denmark, and three cases were against the Netherlands, Canada and Hungary. The communications' authors came from Afghanistan, Bangladesh, Cameroon, Costa Rica, Iran, Lebanon, Malaysia and Uganda.

Half of the petitions (five) were submitted by those who identified as gay men, two – bisexual men, one – a lesbian woman, and another one – a trans woman.<sup>39</sup>

Half of the cases (five) were reviewed by HRCtee, and the other half (five) by CAT.

In most of the cases, interim measures had been ordered and State parties were required not to deport complainants to their countries of origin, pending the consideration of their cases by the Committees.

In half of the cases, violations were found (three cases by HRCtee and two cases by CAT). In four cases the Committee decided that there was no violation (three by CAT and one by HRCtee). In one case, reviewed by HRCtee, the author's claims were found inadmissible (because she had been provided with refugee status by the State party).

Treaty Bodies have developed several general criteria for the assessment of complaints related to the *non-refoulement* rule. Thus, the risk of torture in a receiving State must "go beyond mere theory or suspicion." It must also be established that the "danger of being tortured" is "personal and present."<sup>40</sup> It follows from these rules that the very fact of criminalisation of same-sex activities (or, presumably, gender identity, gender expression and sex characteristics) in a country, does not mean that any LG-B(TI) individual's deportation to this country would *per se* constitute a violation of their rights.

It is difficult to identify particular factors related to LGBTI persons' risk in their country of origin that would necessarily lead a Committee to recognise the risk of torture or ill-treatment and, consequently, of the violation of the *non-refoulement* rule in a case of deportation. Instead, each case is analysed individually, and many factors are taken into account. As a result, one can sometimes see contradictory or even frustrating conclusions. For example, in *E.A. v. Sweden*, a case of a gay man from Lebanon, CAT failed to find a violation and even included in its views the following paragraph:

<sup>39</sup> In *Z.B. v. Hungary*, an author was a woman whose sister was lesbian, and both of them faced violence in their country of origin (Cameroon) based on sexual orientation of the author's sister. However, the author's claims were not related directly to the assessment of these facts.

<sup>40</sup> See e.g. CAT: General Comment No. 1 (1998): Implementation of article 3 of the Convention in the context of article 22, paras. 6 and 7.

*“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.” (para. 9.6).*

However, in general, CAT and HRCtee found violations of the *non-refoulement* rule in LGB cases where a combination of factors were involved. Such factors included, the criminalisation of same-sex relations, religious beliefs of the author and/or their political or social activities, the author’s previous experience of violence based on their sexual orientation, and sources of information confirming that the current situation in the country is that LGBTI people face enormous level of violence, harassment and intimidation, and police or other officials do not protect victims/survivors.

Development of Treaty Bodies’ jurisprudence on LGBT individuals and the *non-refoulement* rule has led to a formulation of relevant standards in the Committees’ General Recommendations and recommendations made under the country periodic review process.<sup>41</sup> For instance, CAT’s recent [general comment No. 4 \(2017\)](#) on the implementation of article 3 of the Convention in the context of article 22 States:

*“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: [...] sexual orientation and gender identity [...]” (para. 45).*

<sup>41</sup> See e.g. HRCtee: *Concluding Observations, Namibia* (22 April 2016), CCPR/C/NAM/CO/2, paras. 35–36 (recommendation to “include persecution based on sexual orientation and gender identity among the grounds for protection against refoulement”); CAT: *Concluding Observations, Namibia*, CAT/C/NAM/CO/2, paras. 26–27 (recommendation to “ensure that individuals at risk of persecution owing to their sexual orientation or gender identity are no subject to refoulement and have equal access to asylum without discrimination”).

Moreover, in a [statement](#) devoted to the International Day for the Victims of Torture in 2016, the CAT Chair, Jens Modvig, stated:

*“LGBTI persons are at risk of torture and ill-treatment wherever they may be deprived of their liberty, be it in prison, in healthcare facilities or in immigration detention. That is why the Committee is striving to protect LGBTI people from being forcibly sent back to countries where, based on their sexual orientation, gender identity or sex characteristics, they may face torture, criminalization, detention, ill-treatment and even murder.”*

## No violation cases

The first two cases on *non-refoulement* and sexual orientation were made by CAT, and in both cases the Committee did not find a violation.

In *K.S.Y. v. Netherlands*,<sup>42</sup> the author, a gay man from Iran, claimed that his rights were violated by the Netherlands as his application for asylum had been rejected. He stated that he had been convicted in Iran for being a gay and even sentenced to death. He also claimed that he had been subjected to torture in Iran. However, the Committee noted that his explanations were inconsistent and contradictory, and that there was “no active policy of prosecution of charges of homosexuality in Iran.”

In *E.J.V.M. v. Sweden*,<sup>43</sup> the author was a bisexual man from Costa Rica who reported multiple incidents relating to violence against him and his partner, a trans person, in Costa Rica. The author’s applications for asylum were rejected by Canada and then by Sweden. The Committee found no violation stating that the danger of being subjected to torture in Costa Rica in the future did not go beyond “mere theory or suspicion.”

In *E.A. v. Sweden*,<sup>44</sup> also reviewed by CAT, the author was a gay man from Lebanon, whose application for asylum had been rejected by the Swedish authorities. The author, being a minor, arrived in Sweden with his mother and two sisters. He met his male partner seven years later in Sweden. His sexual orientation had reportedly been revealed by Lebanese authorities and the author’s relatives in Lebanon. He claimed that he might be charged with “homosexuality” in Lebanon, and might be subjected to honour-relative violence or even killing if returned to Lebanon. CAT decided that the Swedish authorities had not violated the author’s rights as, “not every homosexual man in Lebanon” was a target of persecution by authorities, and that the author provided no evidence of any real threat from his relatives.

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42 CAT: Communication No. 190/2001 of 5 January 2001, views of 15 May 2003, [CAT/C/30/D/190/2001](#).

43 CAT: Communication No. 213/2002 of 17 May 2002, views of 14 November 2003, [CAT/C/31/D/213/2002](#).

44 CAT: Communication No. 690/2015 of 20 July 2015, views of 11 August 2017, [CAT/C/61/D/690/2015](#).

Finally, the only HRCtee case on *non-refoulement* where no violation was found, was *M.Z.B.M. v. Denmark*.<sup>45</sup> In this case, a transgender woman from Malaysia, who was a registered Muslim but considered herself Hindu, was subjected to violence in her country of origin, and was not able to get legal gender recognition. She also reported that after her initial application for asylum had been rejected, she became aware of the fact that a case was opened against her in a Sharia court in Malaysia. However, her application for reopening the asylum case was rejected by the authorities of Denmark. The Committee noted that the author did not provide sufficient information about her persecution as a result of her conversion to Hinduism (and in this part her claims were declared inadmissible). The Committee further noted that the author's explanations were not sufficiently substantiated and consistent, that the charges against her had not been pursued for some years, and that he travelled abroad without any problems before leaving Malaysia.

## Violation cases

The first Treaty Bodies' *non-refoulement* case where a violation was found was *Uttam Mondal v. Sweden*<sup>46</sup>, reviewed by CAT. In this case, the author was a gay man from Bangladesh who was reportedly subjected to violence and persecution in his country of origin because of his political activity, sexual orientation, and because he was a Hindu. His application for asylum in Sweden was rejected. The Committee decided that Sweden had violated the author's rights. It mentioned that the State party's argument that Bangladeshi authorities had not actively persecuted gay people did not rule out that such persecution could occur. It further noted that the notion of "local danger" invoked by the State party did not provide for measurable criteria and was not sufficient to dissipate the personal danger. Finally, the Committee considered that the State party did not provide a sufficient argument on how lapse of time had diminished the risk of persecution based on the complainant's sexual orientation. Taking into account the author's situation as a whole, namely his political activities in the past and the risk of persecution on the basis of his sexual orientation, combined with the fact that he belonged to a minority Hindu group, the Committee considered that Mr. Mondal had provided sufficient evidence to show that he personally ran a real and foreseeable risk of being subjected to torture upon returning to Bangladesh.

On 15 July 2010, the Migration Board in Sweden decided to grant Mr. Mondal a permanent residence permit.

Another case reviewed by CAT where violation was found was *J.K. v. Canada*.<sup>47</sup> In this case, an author was a gay man and an LGBT activist from Uganda who had been subjected to violence and harassment by officials and neighbours because of his activities and sexual orientation. The Committee noted that the State party had acknowledged that the situation for LGBTI persons in Uganda was problematic and that it worsened after the Anti-Homosexuality Act was adopted. The Committee noted specifically that, after the adoption of the Act, there were reports indicating that LGBTI persons had

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45 HRCtee: Communication No. 2593/2015 of 31 March 2015, views of 20 March 2017, [CCPR/C/119/D/2593/2015](#).

46 CAT: Communication No. 338/2008 of 30 November 2007, views of 23 May 2011, [CAT/C/46/D/338/2008](#).

47 CAT: Communication No. 562/2013 of 29 September 2013, views of 23 November 2015, [CAT/C/56/D/562/2013](#).

been beaten and groped by police and other detainees while in custody. The Committee therefore considered that the author might be at risk of torture or ill-treatment upon returning to Uganda, taking into account not only his sexual orientation, but also his militancy in LGBTI organisations and the fact that he could be detained pursuant to the criminal charges brought against him.

On 1 November 2016, Canada submitted to the Committee that the J.K.'s application for permanent residence had been approved on 6 September 2016, subject to the standard condition that the complainant cohabit in a conjugal relationship with his spouse for a continuous period of two years from the date of approval.

Three other cases on *non-refoulement* where violations had been found, were reviewed by HRCtee.

In *X. v. Sweden*,<sup>48</sup> the author was a bisexual man from Afghanistan who applied for an asylum in Sweden, initially referring to persecution in his country of origin due to his political activity. Following his rejection, he applied for asylum once again, this time referring to his sexual orientation and persecution he had been subjected to because of this while living in Afghanistan. The Swedish authorities rejected the new application, stating that the author had not given a valid excuse as to why he had not revealed his sexual orientation initially. Consequently, the author was deported to Afghanistan where he was living a very difficult life, hiding and moving from city to city, between Afghanistan and Pakistan. The Committee noted that the State party's migration authorities rejected the author's application not on the ground of X's unchallenged sexual orientation, and its impact on the author in the particular circumstances in Afghanistan, but rather on the ground that the sexual orientation claim had been invoked at a later stage in the asylum process. The Committee also noted that the Swedish authorities found that X. would not face any risk of torture in Afghanistan, even though they themselves referred to international reports about criminalisation of same-sex relations with a maximum sentence of death. Therefore, HRCtee found that Sweden had violated the author's rights.

The author was granted a residence permit and support in facilitating his return to Sweden. Non-repetition measures were put in place, including the adoption and dissemination of legal briefs concerning the assessment of the risk alleged by asylum seekers in relation to sexual orientation for the use of migration officials.

In *M.I. v. Sweden*,<sup>49</sup> the author was a lesbian woman from Bangladesh who reportedly suffered sexual violence at the hands of the police, forced marriage and domestic violence. Her female partner was allegedly kidnapped. Swedish authorities rejected her application for asylum stating, *inter alia*, that: (1) her explanation was not supported by any written evidence, (2) that the violent acts committed against her were just criminal acts by individuals that had to be dealt with by the Bangladeshi authorities, and (3) that her detention and rape at the hands of the police were acts of misconduct that had to be reported to the authorities. Her second application was supported by additional evidence, including an application to the Bangladeshi police, a newspaper article, a medical certificate, and human rights reports on the situation of LGBT persons in Bangladesh. The second application was also rejected. The Committee observed that the author's sexual orientation and her allegations of rape by

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48 HRCtee: Communication No. 1833/2008 of 26 November 2008, views of 1 November 2011, [CCPR/C/103/D/1833/2008](#).

49 HRCtee: Communication No. 2149/2012 of 7 May 2012, views of 25 July 2013, [CCPR/C/108/D/2149/2012](#).

Bangladeshi policemen were not challenged by the State party. It also observed that M.I.'s sexual orientation was in the public domain, that same-sex acts were criminalised, and that LGBT people were stigmatised in Bangladeshi society; all this constituted an obstacle to the investigation and sanction of acts of persecution against LGBT persons. The Committee considered that inconsistencies and ambiguities of the author's position mentioned by the State party did not undermine the reality of the feared risks.

On 1 November 2013, the Migration Board decided to grant the author permanent residence in Sweden. Several projects and activities of the Swedish Migration Board were put in place to enhance the Board's competence in LGBT issues.

Finally, in *M.K.H. v. Denmark*,<sup>50</sup> the author was a gay man, also from Bangladesh, who was reportedly subjected to violence, rejected by his family and expelled from his village. His application for asylum had been rejected by Denmark. The Committee noted that the State party had not considered that the author could be a minor or that he was a Muslim. Further, the State party had not explained why his self-identification as a gay person and his allegations of a real risk of persecution or abuse, as well as his explanation of incidents that took place in Bangladesh, had been rejected. The Committee further noted the author's claims that no protection could be expected from the national authorities and that criminalisation of same-sex relations and societal stigma constituted an obstacle to the investigation and to the sanction of acts of persecution against LGBT persons. Consequently, the Committee considered that, when assessing the risk faced by the author, Denmark failed to adequately take into account evidence, including M.K.H.'s version of the events he had faced in Bangladesh, the documents he provided and the available background information about the risks faced by LGBT people in Bangladesh, thereby arbitrarily dismissing the author's claims. Denmark was obliged to proceed to a review of the author's claim, and to refrain from expelling the author while his request for asylum was under reconsideration.

On 25 October 2016, the Refugee Appeals Board (RAB) reopened the author's asylum case. The RAB accepted as a fact that the author was gay, and that he could not return to his village, for that reason. However, the RAB determined that there was no basis for assuming that the author risked persecution. Despite the difficult conditions for gay people in Bangladesh, the author, who had not become known as gay outside his village, could be expected to take up residence elsewhere, for example in the town where he resided for four and a half months after being banished from his village. Consequently, the RAB upheld the previously made decision, and the author was ordered to leave Denmark.

The HRCtee decided to close the follow-up dialogue, with a note of satisfactory implementation of the Committee's recommendation.

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50 HRCtee: Communication No. 2462/2014 of 26 September 2014, views of 12 July 2016, [CCPR/C/117/D/2462/2014](#).



## Pending cases:

- HRCtee: *[...] v. Canada*, communication No. 2957/2017 (articles 7, 23, 24 and 27 IC-CPR). Deportation to Guinea; fear of persecution based on sexual orientation (bisexuality).
- HRCtee: *[...] v. Canada*, communication No. 2962/2017 (articles 6(1), 7, 9, 13, 14, 17 and 26 ICCPR). Risk of death and inhuman treatment on grounds of sexual orientation in case of deportation to Senegal.
- HRCtee: *[...] v. Canada*, communication No. 3027/2016 (articles 6, 7 and 9 ICCPR). Removal to Turkey, mental health, political/religious/LGBTQI issues.
- CRC: *A.B. v. Finland*, communication No. 51/2018 (articles 3 and 22 CRC). Deportation of a Russian female same-sex couple and their 7-year-old child to Russia.

## Identified gaps:

1. Whilst some *non-refoulement* cases involved complainants who identified as gay or bisexual men and lesbian and trans women, there are yet to be any cases reviewed that have been brought by intersex persons. Taking into account the Committees' jurisprudence on the *non-refoulement* rule in the context of FGM<sup>51</sup>, intersex defenders are encouraged to consider submitting such cases not only to CAT and HRCtee, but other to Treaty Bodies too. Another factor that could support intersex claims on such cases would be country-specific recommendations made by Treaty Bodies on non-consensual and unnecessarily surgeries and other forms of medical treatment towards intersex children.<sup>52</sup>
2. Similarly, there have been no complaints reviewed by Treaty Bodies on *non-refoulement* of LGBTI parents with children, even though in some countries such families might face particular risks. For instance, adopted children could be taken out of the family, or the family might have previous experience of being harassed by private or public individuals. CRC seems to be the most suited forum for such cases, and a pending case *A.B. v. Finland* may open the door for new developments.

51 See e.g.: CRC: *I.A.M. v. Denmark*, Communication No. 3/2016 of 12 February 2016, views of 25 January 2018, [CRC/C/77/D/3/2016](#) (deportation of a girl to Somalia, where she would allegedly risk being forcefully subjected to FGM; violation of articles 3 and 19 CRC); CEDAW: *M.N.N. v. Denmark*, Communication No. 33/2011 of 8 May 2010, views of 15 July 2013, [CEDAW/C/55/D/33/2011](#) (deportation of a woman to Uganda, where she would allegedly risk being forcefully subjected to FGM; communication was not sufficiently substantiated and therefore inadmissible).

52 See e.g. sections on intersex in chapters on individual Committees of [ILGA's Annual Treaty Body Reports](#).

3. One *non-refoulement* case of a lesbian woman was reviewed by HRCtee (*M.I. v. Sweden*), and another (*M.Z.B.M. v. Denmark*), brought by a trans woman, was also reviewed by the same Committee. CEDAW could also be a space to refer lesbian and bisexual women's and trans and intersex persons' communications, especially when it comes to specific forms of gender-based violence faced by LBT women such as so-called "corrective rapes", forced marriages, honour killings or trans murders. Notably, in its [General Recommendation No. 32 \(2014\)](#) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW did mention LBT. In the case *S.O. v. Canada*,<sup>53</sup> the Committee rejected the State party's claim that CEDAW Convention did not contain an obligation of *non-refoulement*. The Committee stressed that, under article 2 (d) of the CEDAW Convention, State parties undertake to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity with this obligation. It further stressed that, according to its established jurisprudence, article 2 (d) of the CEDAW Convention encompasses the obligation of State parties to protect women from being exposed to a real, personal and foreseeable risk of serious forms of gender-based violence, irrespective of whether such consequences would take place outside the territorial boundaries of the sending State party. The Committee further recalled that gender-based violence is a form of discrimination against women. However, it affirmed that what amounts to serious forms of gender-based violence, triggering the protection afforded under article 2 (d) of the CEDAW Convention, depends on the circumstances of each case and is determined by the Committee on a case-by-case basis at the merits stage.
4. All the cases related to the situation of asylum seekers reviewed by Treaty Bodies so far were related to *non-refoulement*. At the same time, in periodic country reviews, several Committees have already addressed a wider array of topics, including violations against LGBTI asylum seekers by fellow asylum seekers or officials.<sup>54</sup> With this in mind, lawyers working with relevant communities might think of bringing individual complaints related to the violations of LGBTI asylum seekers' rights throughout the refugee determination procedure. In this regard, not only could CAT and HRCtee be considered, but also other Committees, CERD in particular.

53 CEDAW: Communication No. 49/2013 of 21 February 2013, decision of 27 October 2014, [CEDAW/C/59/D/49/2013](#).

54 See e.g. CEDAW: *Concluding Observations, Costa Rica* (24 July 2017), [CEDAW/C/CRI/CO/7](#), paras. 38–39 (recommendation to "adopt guidelines for appropriately addressing the protection of transgender women throughout the refugee determination procedure"); CERD: *Concluding Observations, Netherlands* (24 September 2015), [CERD/C/NLD/CO/19-21](#), paras. 33–34 (recommendation to "take measures of protection with regard to [LGBTI] persons seeking asylum, because of their particular vulnerability").

## C. VIOLENCE / HATE CRIMES / HATE SPEECH

The two cases on violence in the context of sexual orientation reviewed by Treaty Bodies so far addressed the topic indirectly. In both cases, the issue raised by the authors was of particularly cruel treatment towards male detainees suspected of having committed sexual acts with other men.

### Violation cases

In *Ernazarov v. Kyrgyzstan*,<sup>55</sup> the main issue was the death of a person, convicted of “forced sodomy”, in a police station, allegedly as a result of inter-prisoner violence against gay men and sex-offenders. However, HRCtee only analysed the procedural guarantees that were not provided for by national authorities, rather than the problem of hostile attitudes and aggression against gay or bisexual men in detention.

Another case, *D.C. and D.E. v. Georgia*,<sup>56</sup> addressed the vulnerability of a detained person subjected to torture, including attempted rape, by police. In their complaints to CAT, the two authors noted “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” (para. 5.3).

In both cases, the Committees found violations of the ICCPR and CAT Convention, respectively. However, sexual orientation was only mentioned briefly.

### Pending cases:

- HRCtee: *Krikkerik v. Russian Federation*, communication No. 2992/2017 (articles 2, 7, 17 and 26 of the ICCPR). Hate crime, lack of effective investigation.

Sasha Krikkerik was an advocate for the rights of LGBTI people in Russia. Krikkerik and her colleagues were physically and verbally attacked on two instances by unknown assailants; once, when leaving the St Petersburg Pride Parade and the other during a private meeting. Russian authorities failed to either investigate or act on these attacks.<sup>57</sup>

- HRCtee: *[...] v. Kyrgyzstan*, communication No. 2998/2017 (articles 2(3)(a), 7, 9(1), 14(3)(g) and 26 ICCPR). Ill-treatment in detention, forced confession, undocumented detention, discrimination based on sexual orientation.
- CEDAW: *Kirichenko v. Russian Federation*, communication No. 98/2016 (articles 2, 5 (a) and 7 (c) of the CEDAW Convention). LGBT rights, hate speech.

55 HRCtee: Communication No. 2054/2011 of 11 March 2011, views of 25 March 2015, [CCPR/C/113/D/2054/2011](#).

56 CAT: Communication No. 573/2013 of 1 July 2013, views of 12 May 2017, [CAT/C/60/D/573/2013](#).

57 ISHR: [ISHR intervenes in international legal proceedings against Russia](#).

On 19 September 2013, a Saint Petersburg legislature member and author of a local anti-propaganda law, Vitaly Milonov, came to the opening of the Queer Culture Festival. He publicly insulted the festival's participants and volunteers by calling them "animals," "AIDSy," "fags," etc. When K., a lawyer with "Coming Out" LGBT Group, who was concerned about impending fighting, called the police, Milonov verbally attacked her, calling her a snitch and using the Russian derogatory term for "dyke" ("fingerer") twice. The incident was captured on video and heard and witnessed by many people.

After the incident, K. reported it to the prosecutor's office, seeking administrative proceedings against the MP for the insult and discrimination. Her request was denied on the grounds that Milonov's impunity as a member of parliament could not be waived. She tried to appeal the decision without success.

K. also attempted to sue Milonov, requesting that a district court find a violation of her right to privacy and non-discrimination and award non-pecuniary damages. However, both the first instance and the courts of appeal denied her claims.<sup>58</sup>

- CEDAW: [...] *v. Russian Federation*, communication No. 119/2017 (articles 1, 2 and 5 CEDAW). Hate crime, lack of effective investigation, sexual orientation, gender-based discrimination.

In 2014, two unidentified men attacked a lesbian couple returning home on the last subway train in Saint Petersburg. The men saw the women hugging on the escalator and followed them; on the street, one of the men attacked the women while shouting homophobic statements, and the other man recorded the attack on his phone camera. Before running away, the attacker said he would kill the women if he ever saw them again. While the incident was reported to police, no effective investigation followed. Notably, the attack was not considered as hate-based on the ground of sexual orientation.<sup>59</sup>

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58 "Coming Out" LGBT Group: *Strategic Litigation as a Method for Defending and Advancing Rights of LGBT People: the experience of "Coming Out" LGBT Group (2012-2015)*, pp. 24–25.

59 *Ibid.*, pp. 20–21.

## Identified gaps:

1. In general, Treaty Bodies have not deeply analysed SOGIESC-related problems of violence, hate speech and hate crimes. However, pending cases, particularly three cases against Russia, two of them on the lack of effective investigations into violence committed against an LGBT activist and a lesbian couple, respectively, and another case on hate speech and humiliation against a female LGBT activist and lawyer, could potentially fill this gap, at least partially.
2. Nevertheless, LGBTI defenders and attorneys are encouraged to think further about bringing strategic litigation cases on violence and hate crimes to Treaty Bodies. In general, the Committees have developed a range of established approaches towards the problem of anti-LGBTI violence committed by both officials and private actors. Specifically, they have recommended that State parties facilitate reporting of such cases; ensure effective investigation into such cases, prosecution and punishment, as well as reparation measures; adopt and implement hate crime legislation where the motivation of perpetrators is recognised as an aggravating circumstance; provide trainings for judiciary staff and police officers; and, to collect relevant data, etc.<sup>60</sup> They have also addressed more specific topics, such as utilizing the “unjust provocation” concept to anti-LGBTI violence,<sup>61</sup> access to shelters,<sup>62</sup> domestic violence in same-sex families,<sup>63</sup> and so-called “corrective rapes”.<sup>64</sup>
3. CEDAW might be an appropriate space for bringing cases on particular forms of violence experienced by LBQ women or trans and intersex persons, as well as barriers faced by them in accessing justice.<sup>65</sup> Violence against trans sex workers might also be referred to Treaty Bodies, particularly CEDAW.<sup>66</sup>

60 See e.g.: **CAT**: *Concluding Observations, Ecuador* (11 January 2017), [CAT/C/ECU/CO/7](#), paras. 49–50; *Concluding Observations, Honduras* (26 August 2016), [CAT/C/HND/CO/2](#), paras. 49–50; *Concluding Observations, Mongolia* (5 September 2016), [CAT/C/MNG/CO/2](#), paras. 29–30; *Concluding Observations, Namibia* (1 February 2017), [CAT/C/NAM/CO/2](#), paras. 30–31; **CEDAW**: *Concluding Observations, Albania* (25 July 2016), [CEDAW/C/ALB/CO/4](#), paras. 38–39; *Concluding Observations, Argentina* (25 November 2016), [CEDAW/C/ARG/CO/7](#), paras. 20–21; *Concluding Observations, Belarus* (25 November 2016), [CEDAW/C/BLR/CO/8](#), paras. 46–47; *Concluding Observations, Estonia* (18 November 2016), [CEDAW/C/EST/CO/5-6](#), paras. 36–37; *Concluding Observations, Netherlands* (24 November 2016), [CEDAW/C/NLD/CO/6](#), paras. 23–24; *Concluding Observations, Turkey* (25 July 2016), [CEDAW/C/TUR/CO/7](#), paras. 22–23; **CESCR**: *Concluding Observations, Macedonia* (15 July 2016), [E/C.12/MKD/CO/2-4](#), paras. 25–26; **HRCtee**: *Concluding Observations, Azerbaijan* (16 November 2016), [CCPR/C/AZE/CO/4](#), paras. 8–9; *Concluding Observations, Colombia* (17 November 2016), [CCPR/C/COL/CO/7](#), paras. 16–17; *Concluding Observations, Costa Rica* (21 April 2016), [CCPR/C/CRI/CO/6](#), paras. 11–12; *Concluding Observations, Ecuador* (11 August 2016), [CCPR/C/ECU/CO/6](#), paras. 11–12; *Concluding Observations, Jamaica* (22 November 2016), [CCPR/C/JAM/CO/4](#), paras. 17–18; *Concluding Observations, Poland* (23 November 2016), [CCPR/C/POL/CO/7](#), paras. 15–16; *Concluding Observations, South Africa* (27 April 2016), [CCPR/C/ZAF/CO/1](#), paras. 20–21.

61 **CEDAW**: *Concluding Observations, Turkey* (25 July 2016), [CEDAW/C/TUR/CO/7](#), paras. 22–23.

62 **HRCtee**: *Concluding Observations, South Africa* (27 April 2016), [CCPR/C/ZAF/CO/1](#), paras. 20–21.

63 **CEDAW**: *Concluding Observations, Republic of Korea* (9 March 2018), [CEDAW/C/KOR/CO/8](#), para. 23 (b).

64 **CAT**: *Concluding Observations, Cameroon* (15 November 2017), [CAT/C/CMR/CO/5](#), paras. 43–44; **CEDAW**: *Concluding Observations, South Africa* (5 April 2011), [CEDAW/C/ZAF/CO/4](#), paras. 39–40; **HRCtee**: *Concluding Observations, Namibia* (22 April 2016), [CCPR/C/NAM/CO/2](#), para. 9.

65 See particularly **CEDAW**: *General Recommendation No. 35 (2017) on gender-based violence against women, updating General Recommendation No. 19*, paras. 12 and 29.

66 Recommendations on violence against sex workers not related to SOGIESC see e.g. **CAT**: *Concluding Observations, Namibia* (1 February 2017), [CAT/C/NAM/CO/2](#), paras. 38–39; **CEDAW**: *Concluding Observations, Bangladesh* (25 November 2016), [CEDAW/C/BGD/CO/8](#), paras. 20–21; *Concluding Observations, Honduras* (25 November 2016), [CEDAW/C/HND/CO/7-8](#), paras. 24–25; *Concluding Observations, Russian Federation* (20 November 2015), [CEDAW/C/RUS/CO/8](#), paras. 25–26; **HRCtee**: *Concluding Observations, Ghana* (9 August 2016), [CCPR/C/GHA/CO/1](#), paras. 13–14.

4. CERD and CRPD may be considered for cases on violence based on intersecting grounds where anti-LGBTI prejudices are aggravated by hatred against particular racial or ethnic groups, indigenous people, migrants or persons with disabilities.<sup>67</sup>
5. Cases on violence and bullying against LGBTI children and children from LGBTI families, as well as LGBTI students, might be brought to Treaty Bodies, particularly CRC,<sup>68</sup> CEDAW<sup>69</sup> and CESCR.<sup>70</sup>
6. So-called “conversion therapies” could be also addressed in individual communications to Treaty Bodies, taking into account several Committees’ recommendations made in their Concluding Observations<sup>71</sup> and general comments.<sup>72</sup>
7. The issue of hate speech could also be brought before Treaty Bodies. While no jurisprudence on this has been developed by the Committees so far, one case of this nature is pending before CEDAW. Claims related to hate speech- including those in the digital sphere- could be supported by statements already made by Treaty Bodies in their Concluding Observations<sup>73</sup> and General Recommendations.<sup>74</sup> For CEDAW, the issue of hate speech could be analysed through the prism of gender role stereotyping and prejudice (article 5 of the CEDAW Convention), and for CERD and CRPD intersectionalities between SOGIESC and race, ethnicity, indigenous or migrant status, or disability may be addressed with regards to hate speech.

67 CERD and CRPD have reviewed individual petitions related to hate crimes or hate speech (not related to SOGIESC). Intersectional forms of discrimination based on SOGIESC and race or disability have also been addressed in the Committee’s country-specific recommendations under periodic review process and in General Comments. See e.g. **CERD**: *Concluding Observations, Argentina* (11 January 2017), [CERD/C/ARG/CO/21-23](#), paras. 35–36; *Concluding Observations, Germany* (30 June 2015), [CERD/C/DEU/CO/19-22](#), para. 16; *Concluding Observations, Netherlands* (24 September 2015), [CERD/C/NLD/CO/19-21](#), paras. 25–26; *Concluding Observations, Uruguay* (12 January 2017), [CERD/C/URY/CO/21-23](#), paras. 27–28; **CRPD**: *Concluding Observations, Canada* (8 May 2017), [CRPD/C/CAN/CO/1](#), paras. 9–10, 19–20 and 45–46; *Concluding Observations, Colombia* (30 September 2016), [CRPD/C/COL/CO/1](#), paras. 56–57; *Concluding Observations, Iran* (10 May 2017), [CRPD/C/IRN/CO/1](#), paras. 12–13 and 18–19; *Concluding Observations, Lithuania* (11 May 2016), [CRPD/C/LTU/CO/1](#), paras. 15–16; *Concluding Observations, Morocco* (25 September 2017), [CRPD/C/MAR/CO/1](#), paras. 20–21; *Concluding Observations, Uganda* (12 May 2016), [CRPD/C/UGA/CO/1](#), paras. 8–9; *General Comment No. 6 (2018) on equality and non-discrimination*, paras. 21, 33 and 34.

68 See e.g. **CRC**: *Concluding Observations, Haiti* (24 February 2016), [CRC/C/HTI/CO/2-3](#), paras. 22–23; *Concluding Observations, Latvia* (14 March 2016), [CRC/C/LVA/CO/3-5](#), paras. 26–27; *Concluding Observations, Maldives* (14 March 2016), [CRC/C/MDV/CO/4-5](#), paras. 26–27; *Concluding Observations, United Kingdom* (12 July 2016), [CRC/C/GBR/CO/5](#), paras. 48–49; *General Comment No. 13 (2011): The right of the child to freedom from all forms of violence*, para. 72 (g); *General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, paras. 33–34.

69 **CEDAW**: *Concluding Observations, Fiji* (9 March 2018), [CEDAW/C/FJI/CO/5](#), paras. 37–38; *Concluding Observations, Malaysia* (9 March 2018), [CEDAW/C/MYS/CO/3-5](#), paras. 35–36; *General Comment No. 36 on girls’ and women’s right to education*, paras. 45–46.

70 In its Concluding Observations CESCR usually refers to general measures against discrimination based on SOGIESC in different spheres, including education. An example of particular recommendation on anti-LGBTI bullying see e.g. **CESCR**: *Concluding Observations, Russian Federation* (16 October 2017), [E/C.12/RUS/CO/6](#), paras. 56–57.

71 See e.g. **CRC**: *Concluding Observations, Russian Federation* (25 February 2014), [CRC/C/RUS/CO/4-5](#), paras. 55–56; **HRCtee**: *Concluding Observations, Republic of Korea* (3 December 2015), [CCPR/C/KOR/CO/4](#), paras. 14–15; **CEDAW**: *Concluding Observations, Ecuador* (11 March 2015), [CEDAW/C/ECU/CO/8-9](#), paras. 18–19; **CAT**: *Concluding Observations, China* (3 February 2016), [CAT/C/CHN/CO/5](#), paras. 55–56.

72 **CESCR**: *General Comment No. 22 (2016) on the right to sexual and reproductive health*, para. 23; **CRC**: *General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, para. 34.

73 See e.g. **HRCtee**: *Concluding Observations, Azerbaijan* (16 November 2016), [CCPR/C/AZE/CO/4](#), paras. 8–9; *Concluding Observations, Burkina Faso* (17 October 2016), [CCPR/C/BFA/CO/1](#), paras. 13–14; *Concluding Observations, Italy* (1 May 2017), [CCPR/C/ITA/CO/6](#), paras. 10–11; *Concluding Observations, Poland* (23 November 2016), [CCPR/C/POL/CO/7](#), paras. 15–16; *Concluding Observations, Slovakia* (22 November 2016), [CCPR/C/SVK/CO/4](#), paras. 14–15; *Concluding Observations, Slovenia* (22 November 2016), [CCPR/C/SVN/CO/3](#), paras. 7–8; **CEDAW**: *Concluding Observations, Armenia* (25 November 2016), [CEDAW/C/ARM/CO/5-6](#), paras. 44–45; *Concluding Observations, Norway* (22 November 2017), [CEDAW/C/NOR/CO/9](#), paras. 22–23; **CAT**: *Concluding Observations, Armenia* (26 January 2017), [CAT/C/ARM/CO/4](#), paras. 31–32; **CESCR**: *Concluding Observations, Republic of Korea* (19 October 2017), [E/C.12/KOR/CO/4](#), para. 56.

74 See e.g. **CRC**: *General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, para. 48.

8. Another recourse would be further developing approaches on violence against LGBTI persons in detention. As well as the two cases analysed in the beginning of this section, conditions of LGBTI detainees and problems faced by them have been addressed by several Committees, particularly in their Concluding Observations. Relevant recommendations included measures to improve the situation of LGBTI and specifically trans detainees,<sup>75</sup> and concrete recommendations were made on the separation of transgender women from male detainees<sup>76</sup>.
9. Lastly, but significantly, the problem of intersex genital mutilation and other forms of coercive medical treatment, have never been reviewed by Treaty Bodies as part of their individual communication working method. Nevertheless, most of the Committees have addressed the issue in their Concluding Observations and general comments. Among measures recommended by Treaty Bodies on the issue are: (1) development and implementation of rights-based health-care protocols; (2) ensuring that no intersex child is subjected to unnecessary surgery or treatment, and that that intersex children are involved, to the greatest extent possible, in decision-making about their treatment and care; (3) protecting the rights of intersex children concerning physical and mental integrity, autonomy and self-determination; (4) providing intersex children and their families with adequate counselling and support; (5) ensuring effective remedy for victims, including redress and compensation; (6) education and training for medical and psychological professionals on intersex issues; (7) ensuring that intersex children have access to identity documents that correspond with their identity; and, (8) extending free access to surgical interventions and medical treatment, related to their intersex condition, to intersex children between the ages of 16 and 18.<sup>77</sup> Taking into account these developments, as well as jurisprudence on FGM, defenders might consider bringing individual petitions from intersex persons to Treaty Bodies.

75 See e.g. **CEDAW**: *Concluding Observations, Paraguay* (22 November 2017), [CEDAW/C/PRY/CO/7](#), paras 44–45; **CAT**: *Concluding Observations, Argentina* (24 May 2017), [CAT/C/ARG/CO/6](#), paras. 35–36; *Concluding Observations, Armenia* (26 January 2017), [CAT/C/ARM/CO/4](#), paras 31–32; *Concluding Observations, Belarus* (14 May 2018), [CAT/C/BLR/CO/5](#), paras. 29–30; *Concluding Observations, Honduras* (26 August 2016), [CAT/C/HND/CO/2](#), paras. 49–50; *Concluding Observations, Panama* (28 August 2017), [CAT/C/PAN/CO/4](#), paras. 44–45; **HRCtee**: *Concluding Observations: Cameroon* (30 November 2017), [CCPR/C/CMR/CO/5](#), paras. 13–14.

76 See e.g.: **CAT**: *Concluding Observations, Namibia* (1 February 2017), [CAT/C/NAM/CO/2](#), paras. 30–31 (concerns that “transgender women have been placed together with male detainees, exposing them to a high risk of sexual assault” and a recommendation to “take all necessary measures to protect [LGBTI] persons from threats and any form of violence, particularly in places of detention, including by separating transgender women from male detainees”). However, such a solution is quite controversial. For another solution see e.g. the ECtHR’s decision on *X. v. Turkey* (application No. 24626/09, judgment of 9 October 2012), where the placement of the applicant, a gay man, in long-term solitary confinement, taken as a measure to protect him from other prisoners, was found a breach of articles 3 (prohibition of torture) and 14 (prohibition of discrimination) of the Convention for the Protection of Human Rights and Fundamental Freedoms.

77 See e.g. **CAT**: *Concluding Observations, Austria* (27 January 2016), [CAT/C/AUT/CO/6](#), paras. 44–45; *Concluding Observations, Denmark* (4 February 2016), [CAT/C/DNK/CO/6-7](#), paras. 42–43; *Concluding Observations, France* (10 June 2016), [CAT/C/FRA/CO/7](#), paras. 34–35; *Concluding Observations, Switzerland* (7 September 2015), [CAT/C/CHE/CO/7](#), para. 20; **CEDAW**: *Concluding Observations, France* (25 July 2016), [CEDAW/C/FRA/CO/7-8](#), paras. 18–19; *Concluding Observations, Germany* (9 March 2017), [CEDAW/C/DEU/CO/7-8](#), paras. 23–24; *Concluding Observations, Ireland* (9 March 2017), [CEDAW/C/IRL/CO/6-7](#), paras. 24–25; *Concluding Observations, Italy* (24 July 2017), [CEDAW/C/ITA/CO/7](#), paras. 41–42; *Concluding Observations, Netherlands* (24 November 2016), [CEDAW/C/NLD/CO/6](#), paras. 21–22; *Concluding Observations, Switzerland* (25 November 2016), [CEDAW/C/CHE/CO/4-5](#), paras. 24–25; **CRC**: *Concluding Observations, Chile* (30 October 2015), [CRC/C/CHL/CO/4-5](#), paras. 48–49; *Concluding Observations, Denmark* (26 October 2017), [CRC/C/DNK/CO/5](#), para. 24; *Concluding Observations, France* (23 February 2016), [CRC/C/FRA/CO/5](#), paras. 47–48; *Concluding Observations, Ireland* (1 March 2016), [CRC/C/IRL/CO/3-4](#), paras. 39–40; *Concluding Observations, Kenya* (21 March 2016), [CRC/C/KEN/CO/3-5](#), paras. 29–30; *Concluding Observations, Nepal* (8 July 2016), [CRC/C/NPL/CO/3-5](#), paras. 41–42; *Concluding Observations, New Zealand* (21 October 2016), [CRC/C/NZL/CO/5](#), para. 25; *Concluding Observations, South Africa* (27 October 2016), [CRC/C/ZAF/CO/2](#), paras. 39–40; *Concluding Observations, Switzerland* (26 February 2015), [CRC/C/CHE/CO/2-4](#), paras. 42–43; *Concluding Observations, United Kingdom* (12 July 2016), [CRC/C/GBR/CO/5](#), paras. 46–47; *General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, para. 34; **CESCR**: *Concluding Observations, Australia* (11 July 2017), [E/C.12/AUS/CO/5](#), paras. 49–50; *Concluding Observations, Netherlands* (6 July 2017), [E/C.12/NLD/CO/6](#), paras. 48–49; *General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 59; **CRPD**: *Concluding Observations, Chile* (13 April 2016), [CRPD/C/CHL/CO/1](#), paras. 41–42; *Concluding Observations, Germany* (13 May 2015), [CRPD/C/DEU/CO/1](#), paras. 37–38; *Concluding Observations, Italy* (6 October 2016), [CRPD/C/ITA/CO/1](#), paras. 45–46; *Concluding Observations, Morocco* (25 September 2017), [CRPD/C/MAR/CO/1](#), paras. 36–37; *Concluding Observations, United Kingdom* (3 October 2017), [CRPD/C/GBR/CO/1](#), paras. 40–41; *Concluding Observations, Uruguay* (30 September 2016), [CRPD/C/URY/CO/1](#), paras. 43–44; *General Comment No. 3 (2016) on women and girls with disabilities*, paras. 32 and 44; **HRCtee**: *Concluding Observations, Australia* (1 December 2017), [CCPR/C/AUS/CO/6](#), paras. 25–26; *Concluding Observations, Switzerland* (22 August 2017), [CCPR/C/CHE/CO/4](#), paras. 24–25.

## D. FREEDOM OF EXPRESSION / FREEDOM OF ASSEMBLY AND ASSOCIATION

Six SOGIESC cases on freedom of expression and freedom of assembly have been reviewed by Treaty Bodies, all by the HRCtee.

One case was against Finland, two other cases – against Belarus, and three cases – against Russian Federation.

In all but one case, the HRCtee found a violation of relevant ICCPR articles (19 or 21, or 19 taken in conjunction with 26).

One case was concerned with censoring radio and TV programmes on sexual orientation, two other cases were on administrative sanctions for “propaganda of homosexuality,” and four cases concerned freedom of assembly.

### No violation cases

The first case, *Hertzberg et al. v. Finland*,<sup>78</sup> was reviewed by the HRCtee in 1982, before *Toonen*, and concerned the censorship of radio and TV programmes. Finnish authorities, including bodies of the State-controlled Finnish Broadcasting Company (FBC), censured, or imposed sanctions against participants in, programmes dealing with “homosexuality”. At the heart of the dispute was a provision of the Finnish Penal Code according to which, “*public engagement in an act violating sexual morality*,” as well as “*public encouragement of indecent behaviour between persons of the same sex*” were punished with an imprisonment or a fine. The authors of the complaint had been involved in radio or TV programmes where issues such as discrimination against gay persons and their lives were discussed. The authors also claimed that “*it was extremely difficult, if not impossible, for a journalist to start preparing a programme in which gay people were portrayed as anything else than sick, disturbed, criminal or wanting to change their sex.*” The Committee did not find any violation; this was mainly on the basis that a certain margin of discretion must be accorded to the responsible national authorities, as public morals differed widely. It decided that it could not question the decision of the responsible bodies of the FBC, that radio and TV were not the appropriate forums to discuss issues related to “homosexuality”, as far as a programme could be judged as encouraging same-sex behaviour. The Committee also noted that the audience of radio and TV programmes could not be controlled, and in particular, harmful effects on minors could not be excluded.

This view was adopted more than 30 years ago, and in the following cases on freedom of assembly the Committee changed its position drastically.

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78 HRCtee: Communication No. 061/1979 of 7 August 1979, views of 2 April 1982, U.N. Doc. Supp. No. 40 (A/37/40) at 161 (1982).



## Violation cases

Two cases, *Fedotova v. Russian Federation*<sup>79</sup> and *Nepomnyaschiy v. Russian Federation*,<sup>80</sup> concerned administrative fines imposed on the authors, LGBT activists, who participated in public picketing nearby children’s libraries. The authors were charged with “propaganda of homosexuality among minors” and ordered to pay fines.

In the *Fedotova* case, HRCtee found that the State violated the author’s rights guaranteed by article 19 of the ICCPR (freedom of expression). It observed that the wording of the applied national legislation was ambiguous as to whether the term “*homosexuality (sexual act between men or lesbianism)*” referred to one’s sexual identity or sexual activity, or both. It further considered that the State did not show that a restriction on the right to freedom of expression in relation to “propaganda of homosexuality” – as opposed to propaganda of heterosexuality or sexuality generally – among minors, was based on reasonable and objective criteria and was necessary for one of the legitimate purposes. The Committee noted:

*“[...] by displaying posters that declared ‘Homosexuality is normal’ and ‘I am proud of my homosexuality’ near a secondary school building, the author has not made any public actions aimed at involving minors in any particular sexual activity or at advocating any particular sexual orientation. Instead, she was giving expression to her sexual identity and seeking understanding for it” (para 10.7).*

In *Nepomnyaschiy*, reviewed six years later, HRCtee also found violations of articles 19 and 26 of the ICCPR. It developed the approach taken in *Fedotova*; while in the earlier case, the Committee analysed articles 19 and 26 of the ICCPR together, in the later one it provided more detailed exploration of each of the articles. Markedly, it referred to discrimination on grounds of both sexual orientation and gender identity. It also noted that, “*the restriction limited the ability of individuals, including adolescents, to receive information and education about sexual orientation*” and mentioned negative effects of the “anti-propaganda” legislation: “*[These laws] exacerbate negative stereotypes against individuals on grounds of sexual orientation and gender identity and represent a disproportionate restriction of their rights under the Covenant*” (para. 7.5).

While noting that the State party invoked the aim to protect the morals, health, rights and legitimate interests of minors, the Committee considered that the State had not shown that the restriction on expression under national and regional law relating to “propaganda of homosexuality”, was based on reasonable and objective criteria. Moreover, no evidence had been advanced which would point to the existence of factors that might justify such a distinction. Consequently, there had been a violation of article 26 of the ICCPR (equality and non-discrimination).

79 HRCtee: Communication No. 1932/2010 of 10 February 2010, views of 31 October 2012, [CCPR/C/106/D/1932/2010](#).

80 HRCtee: Communication No. 2318/2013 of 5 October 2013, views of 17 July 2018, [CCPR/C/123/D/2318/2013](#).

With regard to article 19 of the ICCPR (freedom of expression), the Committee reiterated its reasoning provided in *Fedotova*. It added “the restriction imposed on the author was not limited to sexually explicit obscenities, but constituted a blanket restriction on legitimate expressions of sexual orientation” (para. 7.8).

While a national court reopened the case of I.F. and then dismissed it for procedural grounds, further legislative developments in the country barely complied with the HRCtee’s conclusions. Prohibition of “propaganda”, initially only being implemented in regional laws, was expanded to the national level in 2013; this, in spite of the Committee views and many other recommendations made to the Russian Federation by different international human rights bodies and structures.

Petitions on cases *Alekseev v. Russian Federation*,<sup>81</sup> *Praded v. Belarus*<sup>82</sup> and *Androsenko v. Belarus*<sup>83</sup> were brought by LGBT activists who were prevented from organising and/or participating in LGBT public demonstrations against the execution of gay persons in Iran, in front of the Iranian Embassies in Moscow and in Minsk, respectively. In the *Alekseev* case, national officials refused to authorise the event claiming that it would trigger “a negative reaction in society” and could lead to “group violations of public order which can be dangerous to its participants.” In the case of *Praded and Androsenko*, the activists started a peaceful demonstration, but were apprehended, brought to a police station, charged with violation of the established procedure on organisation of gatherings, and then fined.

In all three cases, arguments related to sexual orientation or the public demonstrations’ aims were not discussed as such, and the petitioners did not develop arguments on discrimination against them. However, the three cases were analysed by the HRCtee within the framework of freedom of assembly alone (*Alekseev*)- together with freedom of expression in *Praded* and *Androsenko*. The Committee found violations in all the three cases.

In *Alekseev*, HRCtee stated that the State had not provided any information to support the claim that a “negative reaction” to the author’s proposed picket by members of the public would involve violence or that the police would be unable to prevent such violence if they properly performed their duty. Therefore, the restriction on the author’s rights was not necessary in a democratic society in the interest of public safety.

In *Praded and Androsenko*, the Committee concluded that the State had not justified why the apprehension of the authors and imposition of fines were necessary and proportionate to the declared purpose of the restriction, namely, ensuring the security and safety of the embassy. In the absence of any pertinent explanations from the State, HRCtee considered that due weight must be given to the authors’ allegations, and found a violation of the authors’ rights under article 19 and 21 of the ICCPR.

The follow-up dialogues on the cases are ongoing.

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81 HRCtee: Communication No. 1873/2009 of 25 March 2009, views of 25 October 2013, [CCPR/C/109/D/1873/2009](#).

82 HRCtee: Communication No. 2092/2011 of 20 June 2010, views of 10 October 2014, [CCPR/C/112/D/2029/2011](#).

83 HRCtee: Communication No. 2092/2011, of 20 June 2010, views of 30 March 2016, [CCPR/C/116/D/2092/2011](#).

## Pending cases:

- HRCtee: [Savolainen v. Russian Federation](#), communication No. 2830/2016 (articles 19, 21 and 26 ICCPR). Denial of permission to hold a trans rally to LGBT activists.

On 31 March 2013, the International Transgender Day of Visibility, Ruslan Savolainen, together with two other LGBT activists, planned to hold several stationary meetings (pickets), in different venues in Saint Petersburg. In order to do this, they submitted requests to hold the pickets to the relevant authorities. However, the authorities dismissed all the requests and the pickets were not held.

The author complained to the district court against the City Administration's refusal to permit the holding of the picket. He claimed that the prohibition of the picket was unsubstantiated, as information about the planning of the event did not automatically makes the author's picket impossible to conduct.<sup>84</sup> He further claimed that the alternative venue proposed by the City Administration- in a remote location- would not serve the purpose of the planned picket and would not reflect its social and political significance. The district court ruled that the City Administration's actions were not unlawful.

The author submitted an appeal against the district court's decision to the City Court, but it upheld the decision. Instead of examining the grounds of the City Administration's decision, the City Court noted that the venue proposed by the author was located near the children's theatre, and recalled the prohibition of the dissemination of information *"that exploits children's interest in sex" or "rejects family values"* among minors. The Court further stressed that *"the family legislation of the Russian Federation is based on the necessity to strengthen the traditional family relations based on mutual love and respect between men and women, and their children [...], and does not provide a possibility of raising children in same-sex families"*; the picket's participants' *"attempt to distribute [...] leaflets and other means of visual propaganda, which appeal to tolerance towards transgender and transsexual persons and other gender minorities [...] must be considered as impossible as it represents a potential threat to moral and spiritual development of children"*, and, *'consequently, the [City Administration's] refusal to approve the picket [...] does not violate the organizer's rights, as the rejection in fact prevented the dissemination, in the close proximity to a cultural institute offering theatrical productions to children [...], of the information that could form a distorted view of social equivalence of traditional and non-traditional marriage relations among persons who, due to their age, do not have the ability to independently and critically assess such information'*.<sup>85</sup>

- HRCtee: [\[...\] v. Russian Federation](#), communication No. 2943/2017 (articles 21 and 26 ICCPR). Denial of permission to hold rallies on LGBT issues to LGBT activists.
- HRCtee: [\[...\] v. Russian Federation](#), communication No. 2953/2017 (articles 21 and 26 ICCPR). LGBT activists refused authorisation to hold rallies.
- HRCtee: [\[...\] v. Russian Federation](#), communication No. 2954/2017 (articles 21 and 26 ICCPR). LGBT activists refused authorisation to hold rallies.

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<sup>84</sup> The City Administration informed R.S., the picket's organiser, that another event had already been planned at the same venue, and therefore the LGBT picket could not be conducted. R.S. claimed in court that the City Administration could not use the argument about other event planning to effectively prohibit the LGBT event.

<sup>85</sup> "Coming Out" LGBT Group: *Strategic Litigation as a Method for Defending and Advancing Rights of LGBT People: the experience of "Coming Out" LGBT Group (2012-2015)*, pp. 38–39.

## Identified gaps:

1. So far, there have been no SOGIESC petitions reviewed by Treaty Bodies on freedom of association. At the same time, restrictions on registration on LGBTI NGOs is a reality for SOGIESC activists from many countries in different regions. While there has been success in national courts on the topic,<sup>86</sup> it is still challenging. HRCtee might be an appropriate forum to deal with such cases, as the ICCPR explicitly protect the freedom of association (article 22 of the ICCPR), and on several occasions restrictions on LGBTI association were addressed in the Committee's country periodic reviews.<sup>87</sup> While other treaties do not list freedom of association explicitly, relevant issues could be framed in the context of participation in political, public and cultural rights and human rights defenders' situations (e.g. articles 7 and 8 of the CEDAW Convention or articles 29 and 30 of the ICRPD).<sup>88</sup> As well as restrictions on registration or operation of non-governmental organisations, issues related to funds could be addressed in individual petitions to the Committees (for instance, where LGBTI groups are persecuted for receiving foreign grants).
2. It might also be possible to develop practice on cases related to restrictions on dissemination of LGBTI-related information. For example, there may be cases where adolescents cannot access objective information on issues related to SOGIESC,<sup>89</sup> or where LGBTI organisations are not allowed to work with adolescents or to disseminate information about HIV. Another example would be censoring media (this problem was addressed by HRCtee in *Hertzberg et al. v. Finland*, but more than thirty years later, the Committee would probably reach another conclusion) or website blocking.
3. Freedom of assembly and freedom of expression in relation to public demonstrations have been addressed in several cases already, and more cases are pending. However, these cases concerned the State's prohibition of LGBTI demonstrations or persecution of their participants. This topic could be expanded with cases where LGBTI events were impeded by third parties, such as ultra-right or fundamentalist anti-LGBTI groups, and police or other officials did not exercise *due diligence* (see also **section C** on cases related to violence, hate crimes and hate speech).
4. Advocates might also think about gender expression cases in the context of freedom of expression. Dress-code rules in schools that do not take into account trans persons, or gender impersonation laws, are just some examples of such potential cases.

86 See e.g. Southern Africa Litigation Centre, [A Victory for the Right to Freedom of Association: The LEGABIBO case](#). In Kenya, the National Gay and Lesbian Human Rights Commission won its case in 2015, but then the NGO Board appealed the High Court's decision allowing NGLHRC to register, and the case was heard on 18 July 2018. A judgement is expected on 23 November 2018. See more on this on the NGLHRC's [website](#).

87 See e.g. HRCtee: *Concluding Observations, Burundi* (27 October 2014), [CCPR/C/BDI/CO/2](#), para. 8; *Concluding Observations, El Salvador* (9 May 2018), [CCPR/C/SLV/CO/7](#), paras. 37–38; *Concluding Observations, Mongolia* (22 August 2017), [CCPR/C/MNG/CO/6](#), paras. 11–12; *Concluding Observations, Mozambique* (30 October 2013), [CCPR/C/MOZ/CO/1](#), para. 22; *Concluding Observations, Russian Federation* (24 November 2009), [CCPR/C/RUS/CO/6](#), para. 27; *Concluding Observations, South Africa* (23 March 2016), [CCPR/C/ZAF/CO/1](#), paras. 40–41; *List of Issues, Honduras* (24 November 2016), [CCPR/C/HND/Q/2](#), para. 20.

88 See also country-specific recommendations, e.g. CEDAW: *Concluding Observations, Malaysia* (14 March 2018), [CEDAW/C/MYS/CO/3-5](#), paras. 49–50.

89 See e.g. CRC: *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, paras. 33 and 60.

## E. LGBTI FAMILIES

Four cases on LGBTI families have been reviewed by Treaty Bodies. All four cases involved same-sex couples; an additional case, *G. v. Australia*, involved the divorce requirement for legal gender recognition, and will be referred to in the next section. All the cases were reviewed by the HRCtee.

Of the four cases on same-sex relations, two were about marriage, and two concerned the petitioners' benefits and rights after the death of their same-sex partner. Only in the first case, *Joslin et al. v. New Zealand*, did the Committee find no violation. In the three later cases, the Committee decided that State parties (Australia and Colombia) violated the authors' rights enshrined in the ICCPR.

### No violation cases

*Joslin et al. v. New Zealand*<sup>90</sup>- the first Treaty Bodies' case on same-sex family relationships- was reviewed by the HRCtee in 2002. In this case, two lesbian couples claimed their rights had been violated by the State's rejection of their applications on marriage. The primary basis for the rejection was an argument that, according to the Marriage Act, marriage was defined as between a man and a woman. The HRCtee did not find any violations of articles 16, 17, 23 and 26 of the ICCPR referring to the wording of the right enshrined in the article 23 (2) of the ICCPR ("*The right of men and women...*"), as distinct from references to "*every human being*," "*everyone*" or "*all persons*" referred to in other articles.

Notably, the authors did not refer to any distinct challenges they faced because they were denied access to legal marriage. In their concurring individual opinion, two Committee members added that the conclusion of this case "*should not be read as a general statement that differential treatment between married couples and same-sex couples not allowed under the law to marry would never amount to a violation of article 26 [of the ICCPR].*" They also wrote that "*a denial of certain rights or benefits to same-sex couples that are available to married couples may amount to discrimination [...], unless otherwise justified on reasonable and objective criteria.*"

### Violation cases

In *Young v. Australia*,<sup>91</sup> the author was refused a pension as a veteran's dependant after the death of his partner. The Committee found a violation of article 26 of the ICCPR, stating that the State failed to provide arguments on how the distinction between same-sex partners, excluded from pension benefits under law, and unmarried heterosexual partners granted such benefits, was reasonable and objective. The same conclusion was made in *X. v. Colombia*,<sup>92</sup> where the author was refused a pension transfer after his partner's death.

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90 HRCtee: Communication No. 902/1999 of 30 November 1998, views of 17 July 2002, [CCPR/C/75/D/902/1999](#).

91 HRCtee: Communication No. 941/2000 of 29 June 1999, views of 6 August 2003, [CCPR/C/78/D/941/2000](#).

92 HRCtee: Communication No. 1361/2005 of 13 January 2001, views of 30 March 2007, [CCPR/C/89/D/1361/2005](#).

Finally, the most recent decision, *C. v. Australia*,<sup>93</sup> was concerned with the denial of access to divorce proceedings for a lesbian couple married abroad. The author's marriage was not recognised in Australia as a marriage, and consequently she was not able to get a divorce. The Committee compared the author's situation, as a person wishing to obtain a divorce after concluding her same-sex marriage abroad, with one of different-sex couples, whose foreign (polygamous and underage) marriages, normally not recognised in Australia, could nevertheless be dissolved. The Committee concluded that the State failed to provide a reasonable justification for why the reasons provided for recognising the exceptions for the two situations (foreign polygamous and underage different-sex marriages), were not also applied to the author's foreign same-sex marriage. The Committee found that the differentiation of treatment based on sexual orientation, to which Ms. C. had been subjected, was not based on reasonable and objective criteria and therefore constituted discrimination.

### Pending cases:

- HRCtee: [...] *v. Albania*, communication No. 3031/2017 (articles 17, 23 and 26 ICCPR). Recognition of same-sex partnership.

### Identified gaps:

1. As demonstrated in the above analysis, with regard to family relations between same-sex partners, Treaty Bodies' jurisprudence has already made some progress. The HRCtee recognised discrimination in cases where same-sex partners were denied rights granted to different-sex unmarried partners (or to both different-sex unmarried and married couples). However, there have still been no cases on particular benefits and rights provided to only married same-sex couples, but not to same-sex couples; no cases on rights and benefits other than pension – for example, family reunification or visitation rights;<sup>94</sup> and no cases on the lack access to the very institution of partnership or marriage for same-sex couples, let alone the benefits and rights it enables.<sup>95</sup> While in *Joslin et al. v. New Zealand*, the HRCtee did not find any violation and provided a restrictive interpretation of article 23 (2) of the ICCPR, the views were adopted 16 years ago, when the global situation with regard to same-sex relationship recognition was different. Since then, the Committees themselves, particularly CESCR, CEDAW and HRCtee, have developed a bulk of country-specific

93 HRCtee: Communication No. 2216/2012 of 27 April 2012, views of 28 March 2017, [CCPR/C/119/D/2216/2012](#).

94 On visitation rights see CEDAW: *Concluding Observations, Guatemala* (22 November 2017), [CEDAW/C/GTM/CO/8-9](#), paras. 44–45 (ensure that partner visitation rights are respected, without discrimination towards lesbian and transgender women); *Concluding Observations, Paraguay* (22 November 2017), [CEDAW/C/PRY/CO/7](#), paras 44–45 (recommendation to guarantee partner visits and visits of family members for all women, including for lesbian women and “transsexuals”).

95 For example, in *Oliari and Others v. Italy* (application nos. 18766/11 and 36030/11, judgment of 21 July 2015) the ECtHR reviewed a complaint by three homosexual couples, that under Italian legislation they did not have the option to get married or enter into any other type of civil union. The Court considered that the legal protection available to same-sex couples in Italy did not only fail to provide for the core needs relevant to a couple in a stable committed relationship, but it was also not sufficiently reliable. A civil union or registered partnership would be the most appropriate way for same-sex couples like the applicants to have their relationship legally recognised.

recommendations related to recognition of same-sex relations.<sup>96</sup>

2. When it comes to family and children, no SOGIESC cases have been reviewed by Treaty Bodies so far. At the same time, some recommendations on access to assisted reproductive technologies, filiation and adoption rights were made to countries under periodic review process.<sup>97</sup> Additionally, the CRC has referred specifically to children from same-sex or LGBTI families and the need to protect them from discrimination.<sup>98</sup> However, this topic has received even less attention than same-sex partnership recognition.
3. Therefore, while in theory cases on violations of the rights of children and their parents in LGBTI families could be brought to Treaty Bodies, strategies and tactics for such cases should be worked through particularly carefully. CEDAW, HRCtee and CRC might be the best Committees to refer to with such cases, taking into account country-specific recommendations made by the first two organs, and the general mandate of the CRC.

96 See e.g. **CEDAW**: *Concluding Observations, Chile* (9 March 2018), [CEDAW/C/CHL/CO/7](#), paras. 50–51 (adopt a draft Law on Same-Sex Marriage); *Concluding Observations, Honduras* (25 November 2016), [CEDAW/C/HND/CO/7-8](#), paras. 48–49 (consider practices from countries in the region that allow the registration of same-sex partnerships); *Concluding Observations, Liechtenstein* (20 July 2018), [CEDAW/C/LIE/CO/5](#), paras. 41–42 (analyse the effects of the law recognizing same-sex partnership to determine if equality of treatment between registered partnership and marriage has been achieved in practice); *Concluding Observations, Monaco* (9 November 2017), [CEDAW/C/MCO/CO/1-3](#), paras. 45–46 (revise existing laws to ensure that lesbian couples have access to marriage or, as a minimum, to an officially registered union); **CESCR**: *Concluding Observations, Costa Rica* (21 October 2016), [E/C.12/CRI/CO/5](#), paras. 20–21 (take the necessary legislative and administrative measures to recognize the rights of same-sex couples); *Concluding Observations, Russian Federation* (16 October 2017), [E/C.12/RUS/CO/6](#), paras. 22–23 (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); *Concluding Observations, The Former Yugoslav Republic of Macedonia* (15 July 2016), [E/C.12/MKD/CO/2-4](#), paras. 25–26 (take all measures necessary to ensure that same-sex couples have access to advantages now reserved for married couples); **HRCtee**: *Concluding Observations, Colombia* (17 November 2016), [CCPR/C/COL/CO/7](#), paras. 16–17 (continue efforts to uphold the rights of same-sex couples in practice); *Concluding Observations, Dominican Republic* (27 November 2017), [CCPR/C/DOM/CO/6](#), paras. 9–10 (fully recognize the equality of same-sex couples); *Concluding Observations, Honduras* (22 August 2017), [CCPR/C/HND/CO/2](#), paras. 10–11 (ensure that the equality of same-sex couples [is] fully recognized); *Concluding Observations, Hungary* (9 May 2018), [CCPR/C/HUN/CO/6](#), paras. 19–20 (prohibit discrimination on all grounds, including sexual orientation and gender identity, and in all spheres and sectors, including education, employment, marriage and family arrangements); *Concluding Observations, Mauritius* (11 December 2017), [CCPR/C/MUS/CO/5](#), paras. 9–10 (take all the necessary measures to eradicate discrimination against LGBT persons with regard to marriage or civil partnerships); *Concluding Observations, Mongolia* (22 August 2017), [CCPR/C/MNG/CO/6](#), paras. 11–12 (consider legal recognition and protection of same-sex couples); *Concluding Observations, Poland* (23 November 2016), [CCPR/C/POL/CO/7](#), para. 16 (e) (review the legal status of same-sex couples and parents, with a view to ensuring their enjoyment of the right to non-discrimination in law and in fact).

97 **CEDAW**: *Concluding Observations, Chile* (9 March 2018), [CEDAW/C/CHL/CO/7](#), paras. 50–51 (ensure filiation and parental rights are protected); *Concluding Observations, Luxembourg* (9 March 2018), [CEDAW/C/LUX/CO/6-7](#), paras. 50–51 (harmonize the treatment of all women, including those in *de facto* unions and same-sex relationships, with regard to the recognition of paternity in cases of medically assisted procreation and to the adoption of stepchildren, regardless of their civil status); *Concluding Observations, Monaco* (9 November 2017), [CEDAW/C/MCO/CO/1-3](#), paras. 45–46 (revise existing laws to ensure that lesbian couples have access to adoption); **HRCtee**: *Concluding Observations, Colombia* (17 November 2016), [CCPR/C/COL/CO/7](#), paras. 16–17; *Concluding Observations, Italy* (1 May 2017), [CCPR/C/ITA/CO/6](#), paras. 10–11 (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; provide for equal access to in vitro fertilization).

98 **CRC**: *Concluding Observations, Ecuador* (26 October 2017), [CRC/C/ECU/CO/5-6](#), para. 16; *Concluding Observations, Nepal* (8 July 2016), [CRC/C/NPL/CO/3-5](#), paras. 26–27; *Concluding Observations, New Zealand* (21 October 2016), [CRC/C/NZL/CO/5](#), para. 15.

4. One important thing to consider is the demonstration of how the rights of children and parents are violated because of legal or practical shortcomings. For instance, in *J.A.B.S. v. Costa Rica*,<sup>99</sup> a CRC's case concerning the refusal of the national authorities to register the author's twin sons, born by a surrogate mother in the United States, under the author's surname and the egg donor's maiden name. The Committee declared the claims inadmissible, as manifestly ill-founded. The main reason for the conclusion was that CRC had not been provided with convincing arguments demonstrating that in the situation in question, the children's rights were impeded.
5. However, there might be more arguable grounds in instances where LGBTI persons have been limited in the exercise of their parental rights, or denied the possibility to adopt a child on the discriminatory basis of their SOGIESC; HRCtee, CESCR and CEDAW being the most relevant Committees. In this sense, the already reviewed ECtHR's and IACtHR's cases could be recalled.<sup>100</sup>
6. Another set of issues that potentially fall within 'LGBTI family' is intersex children and their parents or families. While no intersex cases have been reviewed by Treaty Bodies so far, advocates could bring petitions relating to intersex children and their family members in the context of consultations and consent to medical interventions. These aspects have been addressed by several Treaty Bodies in their Concluding Observations.<sup>101</sup>

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99 CRC: Communication No. 5/2016 of 19 September 2015, views of 17 January 2017, [CRC/C/74/D/5/2016](#).

100 IACtHR: *Atala Riffo and Daughters v. Chile* (case 12.502, judgment of 24 February 2012); ECtHR: *E.B. v. France* (application No. 43546/02, judgment of 22 February 2006); *Salgueiro da Silva Mouta v. Portugal* (application No. 33290/96, judgment of 21 December 1999).

101 See fn. 51.



## F. LEGAL GENDER RECOGNITION

Until recently, Committees did not have any jurisprudence on cases brought by trans persons. In March 2017, a case on the *non-refoulement* of a trans person (*M.Z.B.M. v. Denmark*), and another on legal gender recognition, have been reviewed by the HRCtee.

### Violation cases

In *G. v. Australia*,<sup>102</sup> the author was a trans woman who underwent hormonal treatment and gender reassignment surgery, and obtained a new passport, but was not able to get her gender marker changed on her birth certificate. She was rejected because legal gender recognition was only permitted by law if the person concerned was not married.

The HRCtee concluded that the State violated the author's rights guaranteed by articles 17 and 26 of the ICCPR.

The Committee reasoned that, regarding article 17 of the ICCPR, a person's identity, and gender identity particularly, were covered by this article. Refusal by the authorities to provide the author with a new birth certificate constituted an interference with her privacy and family. The Committee noted a number of inconsistencies, such as the fact that the author's name and legal gender had been amended in several documents, including her passport, but the authorities still refused provide her with a new birth certificate. Taking into account that gender reassignment was lawful in Australia, that the author had been lawfully issued with a variety of documents, and that she had lived on a day-to-day basis in a loving, married relationship with a female spouse- which the State party had recognised in all respects as valid- the Committee found no apparent reason for refusing to change the author's birth certificate to "*this lawful reality*." Based on these considerations, the Committee decided that the interference with the author's privacy and family was not necessary and proportionate to a legitimate interest, and was therefore arbitrary within the meaning of article 17 of the ICCPR.

On article 26 of the ICCPR, the Committee observed that marital status and gender identity, including transgender status, were protected from discrimination. By denying married trans persons a birth certificate that correctly identifies their gender, in contrast to unmarried trans and cisgender persons, the State party was failing to afford the author, and similarly situated individuals, equal protection under the law as a married trans person. This treatment was not based on reasonable and objective criteria, and therefore constituted discrimination on the basis of marital and transgender status, under article 26 of the ICCPR.

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102 HRCtee: Communication No. 2172/2012 of 2 December 2011, views of 17 March 2017, [CCPR/C/119/D/2172/2012](#).

## Identified gaps:

1. *G. v. Australia* was the first case reviewed by Treaty Bodies concerning the specific situation of trans persons. It creates a foundation for any future developments of the Committees' jurisprudence on gender identity and gender expression issues. At the same time, *G. v. Australia* involved only one aspect of LGR procedure, namely, the requirement not to be married. Moreover, the situation in Australia was quite specific, as G. was able to obtain many documents reflecting her gender identity, including a passport, and there was no uniformity on regulation of LGR throughout the country. Taking the case into account-but also approaches developed by Treaty Bodies under the country periodic review process- advocates could think of many different issues related to legal gender recognition and other particular challenges faced by trans communities to be brought to Treaty Bodies as individual complaints.
2. On legal gender recognition, the following issues could be addressed by the Committees: the lack of legal gender recognition procedure;<sup>103</sup> abusive requirements for legal gender recognition,<sup>104</sup> including medical requirements,<sup>105</sup> such as surgeries and sterilisation,<sup>106</sup> psychiatric diagnosis and compulsory confinement in a psychiatric in-

103 **CESCR:** *Concluding Observations, Costa Rica* (21 October 2016), [E/C.12/CRI/CO/5](#), paras. 20–21 (absence of LGR as a barrier to effective access to work, education and health services); **HRCtee:** *Concluding Observations, Romania* (11 December 2017), [CCPR/C/ROU/CO/5](#), paras. 15–16 (lack of clarity in legislation and LGR procedures); *Concluding Observations, Serbia* (10 April 2017), [CCPR/C/SRB/CO/3](#), paras. 12–13 (no legal framework for LGR and surgery requirement); **CEDAW:** *Concluding Observations, Fiji* (9 March 2018), [CEDAW/C/FJI/CO/5](#), paras. 51–52 (lack of LGR procedure); *Concluding Observations, Kyrgyzstan* (11 March 2015), [CEDAW/C/KGZ/CO/4](#), paras. 33–34 (absence of LGR procedure and recommendation to finalize and adopt an expeditious, transparent and accessible LGR procedure); *Concluding Observations, Monaco* (9 November 2017), [CEDAW/C/MCO/CO/1-3](#), paras. 45–46 (no LGR legislation).

104 **HRCtee:** *Concluding Observations, Kazakhstan* (9 August 2016), [CCPR/C/KAZ/CO/2](#), paras. 9–10 (stringent conditions for LGR); *Concluding Observations, Republic of Korea* (3 December 2015), [CCPR/C/KOR/CO/4](#), paras. 14–15 (restrictive requirements for LGR and recommendation to facilitate access to LGR).

105 **HRCtee:** *Concluding Observations, Australia* (1 December 2017), [CCPR/C/AUS/CO/6](#), paras. 27–28 (surgical or medical treatment and be unmarried as required for LGR); **CEDAW:** *Concluding Observations, Australia* (20 July 2018), [CEDAW/C/AUS/CO/8](#), paras. 49–50 (medical procedures requirements for LGR); *Concluding Observations, Switzerland* (25 November 2016), [CEDAW/C/CHE/CO/4-5](#), paras. 38–39 (review the civil courts' decisions requiring surgical or hormonal treatment for LGR).

106 **CESCR:** *Concluding Observations, Lithuania* (24 June 2014), [E/C.12/LTU/CO/2](#), para. 8 (surgery as LGR requirement); **HRCtee:** *Concluding Observations, Australia* (1 December 2017), [CCPR/C/AUS/CO/6](#), paras. 27–28 (surgical or medical treatment and be unmarried as required for LGR); *Concluding Observations, Slovakia* (22 November 2016), [CCPR/C/SVK/CO/4](#), paras. 14–15 (sterilization requirement for LGR); *Concluding Observations, Serbia* (10 April 2017), [CCPR/C/SRB/CO/3](#), paras. 12–13 (no legal framework for LGR and surgery requirement); **CEDAW:** *Concluding Observations, Belgium* (14 November 2014), [CEDAW/C/BEL/CO/7](#), paras. 44–45 (psychiatric assessment and compulsory sterilisation or surgery as LGR requirements, lengthy and burdensome LGR procedure, recommendation to remove these requirements and adopt an expeditious, transparent and accessible LGR procedure); *Concluding Observations, Finland* (10 March 2014), [CEDAW/C/FIN/CO/7](#), paras. 28–29 (infertility and sterilisation LGR requirements); *Concluding Observations, Montenegro* (24 July 2017), [CEDAW/C/MNE/CO/2](#), paras. 46–47 (surgery requirement for LGR and recommendation to facilitate the procedure); *Concluding Observations, Switzerland* (25 November 2016), [CEDAW/C/CHE/CO/4-5](#), paras. 38–39 (review the civil courts' decisions requiring surgical or hormonal treatment for LGR); **CAT:** *Concluding Observations, China (Hong Kong)* (3 February 2015), [CAT/C/CHN-HKG/CO/5](#), paras. 28–29 (removal of reproductive organs, sterilisation and genital reconstructions as LGR requirements, recommendation to remove such requirements).

stitution<sup>107</sup> and particular family status;<sup>108</sup> burdensome or lengthy procedures,<sup>109</sup> or procedures that are not transparent and accessible,<sup>110</sup> and change of name not being related directly to change of gender marker,<sup>111</sup> etc.

3. While legal gender recognition has been addressed in the jurisprudence of the HRCtee, other Treaty Bodies could be considered for such cases, especially if advocates can demonstrate particular aspects or consequences of the problem, or intersectional issues involved in the process. For instance, cases where trans women are denied jobs or education prohibited for women could be brought to CEDAW. Petitions from trans persons who are migrants or refugees, and for this reason are denied access to proper legal gender recognition, might be sent to CERD. Disability considered by authorities as an impediment for legal gender recognition could be addressed in a communication to CRPD. CESCR could review cases on concrete violations faced by trans persons due to shortcomings in legal gender recognition regulation – for example, in the field of public health, employment, education, water and sanitation or housing.

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107 **HRCtee:** *Concluding Observations, Ukraine* (22 August 2013), [CCPR/C/UKR/CO/7](#), paras. 10 (compulsory confinement of persons requiring a “change (correction) of sex” in a psychiatric institution for up to 45 days); **CEDAW:** *Concluding Observations, Belgium* (14 November 2014), [CEDAW/C/BEL/CO/7](#), paras. 44–45 (psychiatric assessment and compulsory sterilisation or surgery as LGR requirements, lengthy and burdensome LGR procedure, recommendation to remove these requirements and adopt an expeditious, transparent and accessible LGR procedure). Notably, in June 2018, the WHO released the 11<sup>th</sup> revision of the ICD (to be considered by the World Health Assembly in May 2019) where “transsexualism” has no longer presented in the chapter on mental and behavioural disorders, and instead a new category related to trans identities has been created in a chapter on conditions related to sexual health. The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, has written substantially on it in his recent [report](#) presented to the UN General Assembly in July 2018.

108 **HRCtee:** *Concluding Observations, Australia* (1 December 2017), [CCPR/C/AUS/CO/6](#), paras. 27–28 (surgical or medical treatment and be unmarried as required for LGR); *Concluding Observations, Ireland* (19 August 2014), [CCPR/C/IRL/CO/4](#), para. 7 (divorce LGR requirement).

109 **CEDAW:** *Concluding Observations, Belgium* (14 November 2014), [CEDAW/C/BEL/CO/7](#), paras. 44–45 (psychiatric assessment and compulsory sterilisation or surgery as LGR requirements, lengthy and burdensome LGR procedure, recommendation to remove these requirements and adopt an expeditious, transparent and accessible LGR procedure); *Concluding Observations, Montenegro* (24 July 2017), [CEDAW/C/MNE/CO/2](#), paras. 46–47 (surgery requirement for LGR and recommendation to facilitate the procedure).

110 **CESCR:** *Concluding Observations, Russian Federation* (16 October 2017), [E/C.12/RUS/CO/6](#), paras. 22–23 (put in place a quick, transparent and accessible LGR procedure); **CEDAW:** *Concluding Observations, Belgium* (14 November 2014), [CEDAW/C/BEL/CO/7](#), paras. 44–45 (psychiatric assessment and compulsory sterilisation or surgery as LGR requirements, lengthy and burdensome LGR procedure, recommendation to remove these requirements and adopt an expeditious, transparent and accessible LGR procedure); *Concluding Observations, Kyrgyzstan* (11 March 2015), [CEDAW/C/KGZ/CO/4](#), paras. 33–34 (absence of LGR procedure and recommendation to finalize and adopt an expeditious, transparent and accessible LGR procedure).

111 **CEDAW:** *Concluding Observations, France* (25 July 2016), [CEDAW/C/FRA/CO/7-8](#), paras. 46–47 (concerning conditions for change of names and recommendation to replace the judicial procedure with a declaration before a registry officer or a notary).

## Conclusions

For the past three decades, Treaty Bodies have accumulated a portfolio of jurisprudence on LGBT cases. These cases addressed six areas, namely, the criminalisation of same-sex relations; asylum seekers; violence, hate speech and hate crimes; freedom of expression, assembly and association; LGBTI families; and legal gender recognition. However, gaps and opportunities still remain.

**Firstly**, so far, only HRCtee and CAT have reviewed LGBT cases. Advocates are encouraged to consider other Committees, such as CEDAW, CERD, CESCR, CRC or CRPD, as they could explore new interpretations of issues, or tackle issues covered by their particular mandates.

**Secondly**, defenders could think about bringing cases on issues that fall within the six existing areas, but could also touch on new areas or aspects not analysed by the Committees so far.

For **criminalisation**, it could be on the criminalisation of same-sex female relations, relations between adolescents, the criminalisation of certain forms of gender expression, the criminalisation of same-sex relations in particular conditions, such as in the military, or certain degrading practices used by authorities when investigating cases on same-sex relations. Defenders could also bring cases challenging specific consequences of criminalisation for economic, social and cultural rights, or implications related to disability or race, ethnicity, indigenous or migrant status.

For LGBTI **asylum seekers'** cases, advocates can bring complaints on behalf of intersex and trans persons, LBQ women or LGBTI persons with children, as well as cases related to mistreatment and inadequate conditions in asylum centres.

On **violence**, new cases could be brought on hate crimes and hate speech and lack of effective investigation into such incidents; on violence and bullying in educational settings; on specific forms and consequences of violence experienced by LBQ women and trans and intersex persons; on the so-called "conversion therapies"; on violence in detention; and, on intersex genital mutilation and other coercive medical treatment.

Regarding **freedom of expression, assembly and association**, advocates are encouraged to consider cases on freedom of association, including restrictions on registration or operation of LGBTI organisations and problems related to funding; on impediments for dissemination of information on SOGIESC, including website blocking, media censorship, access to information for adolescents or on HIV; on impediments to LGBTI demonstrations created by private actors, such as anti-LGBTI groups, and an ineffective response to it by authorities; and, on gender expression as part of freedom of expression.

On **LGBTI families**, further cases could be brought regarding the lack of access to institutions, such as marriage, for same-sex couples or particular rights and benefits they are denied because of it; access to assisted reproductive technologies, filiation and adoption, as well as parental rights; and, families of intersex children, when it comes to information provided to them and consent for medical treatment.

Regarding **legal gender recognition**, the *G. v. Australia* case seems to open new opportunities for individual complaints related to legal gender recognition procedures. This includes, where they are not adopted in a country at all, or where they are abusive. Cases revealing particular consequences or

intersectional aspects of the LGR procedures' shortcomings could be reviewed by the HRCtee, but also by other Treaty Bodies.

While no cases on **discrimination** on grounds of SOGIESC in employment, education, health care, housing and other areas have been reviewed by Treaty Bodies so far, this area could be developed in future petitions.

**Thirdly**, most of the LGBT cases reviewed by Treaty Bodies, were brought from a limited number of countries; this situation reveals a significant regional imbalance. Of the 25 views and decisions adopted by the Committees since 1982, 16 cases came from countries in Europe and Central Asia, 6 cases from Oceania (Australia and New Zealand), one case from LAC region (Colombia), and another from North America (Canada). No cases against Asian (except for Central Asia, namely, Kyrgyzstan) or African countries have been reviewed by Treaty Bodies so far. This situation could be partly explained by objective factors, such as the number of ratifications in different regions or access to effective regional mechanisms, particularly IACtHR for LAC. At the same time, defenders coming from underrepresented regions or sub-regions are encouraged to consider strategic litigation before Treaty Bodies and to inform partners about their needs and possible support required for such work.

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# **Treaty Bodies' Strategic Litigation: Regional Contexts and Opportunities**

## Relevant cases:

- *K.S.Y. v. Netherlands*, CAT, 2003 (deportation of a gay man to Iran, no violation)
- *Uttam Mondal v. Sweden*, CAT, 2011 (deportation of a gay man to Bangladesh, **violation**)
- *X. v. Sweden*, HRCtee, 2011 (deportation of a bisexual man to Afghanistan, **violation**)
- *M.I. v. Sweden*, HRCtee, 2013 (deportation of a lesbian woman to Bangladesh, **violation**)
- *M.K.H. v. Denmark*, HRCtee, 2016 (deportation of a gay man to Bangladesh, **violation**)
- *M.Z.B.M. v. Denmark*, HRCtee, 2017 (deportation of a trans woman to Malaysia, no violation)
- *E.A. v. Sweden*, CAT, 2017 (deportation of a gay man to Lebanon, no violation)

## Pending cases:



- *[...] v. Sri Lanka*, CEDAW, 134/2018, registered in 2018 (criminalisation of lesbian and bisexual women in Sri Lanka)

## Acceptance of individual complaint procedures\*:

- **HRCtee** – 6 countries
- **CESCR** – 1 country
- **CAT** – 1 country
- **CEDAW** – 10 countries
- **CRC** – 2 countries
- **CRPD** – 8 countries
- **CERD** – 1 country

## Acceptance of individual complaint procedures\*

COUNTRY	HRCtee	CESCR	CAT	CEDAW	CRC	CRPD	CERD
Afghanistan	NA	NA	NA	NA	NA	2012	NA
Bahrain	NA	NA	NA	NA	NA	NA	NA
Bangladesh	NA	NA	NA	2000	NA	2008	NA
Bhutan	NA	NA	NA	NA	NA	NA	NA
Brunei Darussalam	NA	NA	NA	NA	NA	NA	NA
Cambodia	2004	NA	NA	2010	NA	2007	NA
China	NA	NA	NA	NA	NA	NA	NA
DPR Korea	NA	NA	NA	NA	NA	NA	NA
India	NA	NA	NA	NA	NA	NA	NA
Indonesia	NA	NA	NA	2000	NA	NA	NA
Iran	NA	NA	NA	NA	NA	NA	NA
Iraq	NA	NA	NA	NA	NA	NA	NA
Israel	NA	NA	NA	NA	NA	NA	NA
Japan	NA	NA	NA	NA	NA	NA	NA
Jordan	NA	NA	NA	NA	NA	2007	NA
Kuwait	NA	NA	NA	NA	NA	NA	NA
Laos	NA	NA	NA	NA	NA	NA	NA
Lebanon	NA	NA	NA	NA	NA	2007	NA
Malaysia	NA	NA	NA	NA	NA	NA	NA
Maldives	2006	2011	NA	2006	2012	NA	NA
Mongolia	1991	2010	NA	2002	2015	2009	NA
Myanmar	NA	NA	NA	NA	NA	NA	NA
Nepal	1991	NA	NA	2007	NA	2010	NA
Oman	NA	NA	NA	NA	NA	NA	NA
Palestine	NA	NA	NA	NA	NA	NA	NA
Pakistan	NA	NA	NA	NA	NA	NA	NA
Philippines	1989	NA	NA	2003	NA	NA	NA
Qatar	NA	NA	NA	NA	NA	2007	NA
Republic of Korea	1990	NA	2007	2006	NA	NA	1997
Saudi Arabia	NA	NA	NA	NA	NA	2008	NA
Singapore	NA	NA	NA	NA	NA	NA	NA
Sri Lanka	1997	NA	NA	2002	NA	NA	NA
Syria	NA	NA	NA	NA	NA	2009	NA
Thailand	NA	NA	NA	2000	2012	2016	NA
Timor-Leste	NA	2009	NA	2003	NA	NA	NA
United Arab Emirates	NA	NA	NA	NA	NA	2008	NA
Viet Nam	NA	NA	NA	NA	NA	NA	NA
Yemen	NA	NA	NA	NA	NA	2009	NA

 Ratification/Acceptance  
 Signature

\* as of 26 August 2018





“Most East Asian and South East Asian countries do not accept individual communication procedures to UN Treaty Bodies. What needs to be done before using these procedures is to ratify Optional Protocols or to accept related the article. These procedures are crucially important for this region from two stand points. One is because it is the only way to apply international human rights law directly in the international sphere. There are no effective

regional human rights monitoring system like ECtHR, IAHR and ACHPR. Another point is that people in this region tend to put too much value on family or society as a whole rather than individuals. These attitudes sometimes compel LGBTI individuals to endure their hardship alone, and that leads to human rights violations been unresolved in their own countries.

Though individual complaints procedures are mostly not available in this region, knowing the cases on LGBTI rights reviewed by UN Treaty Bodies are indeed quite useful. The interpretations of Treaty Bodies are authoritative, highly respectable and practically helpful. It sometimes crystalizes General Comments/ Recommendations by Treaty Bodies- General Comments are very easy to read and more precisely interpret TB articles. In countries which do not ratify Optional Protocols, General Comments are more directly reliable than views in communications. These interpretations are used as international human rights standards in State Reporting Processes in every treaty. As a member State of human rights treaties, every country must duly consider the practical interpretation of the Treaty Bodies. It can also be applied to national litigation according to their judicial systems, and also have good effect on non-legal advocacies.”

**Hiroyuki TANIGUCHI, Ph.D.**  
**Associate Professor, Kanazawa University, Japan**



“The most significant aspect of the UN Treaty Bodies’ strategic litigation is the power it gives to an individual, or a group of individuals, who belong to the most marginalised parts of society; that their never-heard-before voice is heard by the highest authorities in the international human rights community. The UN Individual Complaint Procedure gives a unique tool to the LGBTI people in countries where there is little or no chance of acquiring any justice and redress in the cases of discrimination and violence

based on sexual orientation and gender identity.

Although using this mechanism to achieve meaningful changes in laws and policies in countries which have ratified the optional protocols to the international treaties is strategic, it is equally important to initiate international campaigns to urge countries which have not ratified the optional protocols, yet. If you look at the list of the Asian countries which have not recognised the right for their citizens or residents, you would easily conclude that those are the same countries where the human rights of the LGBTI people are dreadfully violated. Therefore, the LGBTI individuals in those countries are in more dire need of holding their governments to account at the international level so that their basic rights are respected at local and national levels.”

**Shadi SADR**  
**Executive Director, Justice for Iran (JFI)**

# Africa

## Relevant cases:

- *J.K. v. Canada*, CAT, 2015 (deportation of a gay man and LGBT activist to Uganda, violation)
- *Z.B. v. Hungary*, HRCtee, 2018 (deportation of a woman, who allegedly suffered violence against her, based on her sister's sexual orientation, in Cameroon, to Serbia, where she was raped and captured, inadmissible)

## Pending cases:

- *[...] v. Canada*, HRCtee, 2957/2017, registered in 2017 (deportation to Guinea; fear of persecution based on sexual orientation (bisexuality))
- *[...] v. Canada*, HRCtee, 2962/2017, registered in 2017 (risk of death and inhuman treatment on grounds of sexual orientation in case of deportation to Senegal)



## Acceptance of individual complaint procedures\*:

- **HRCtee** – 35 countries
- **CESCR** – 4 countries
- **CAT** – 11 countries
- **CEDAW** – 27 countries
- **CRC** – 1 country
- **CRPD** – 28 countries
- **CERD** – 5 countries

## Acceptance of individual complaint procedures\*

COUNTRY	HRCtee	CESCR	CAT	CEDAW	CRC	CRPD	CERD
Algeria	1989	NA	1989	NA	NA	2007	1989
Angola	1992	2013	NA	2007	NA	2013	NA
Benin	1992	2013	NA	2000	2013	2012	NA
Botswana	NA	NA	NA	2007	NA	NA	NA
Burkina Faso	1999	2012	NA	2005	NA	2009	NA
Burundi	NA	NA	2003	2001	NA	2014	NA
Cameroon	1984	NA	2000	2005	NA	2008	NA
Cape Verde	2000	2014	NA	2011	2012	NA	NA
Central African Republic	1981	2016	NA	2016	NA	2016	NA
Chad	1995	NA	NA	2012	NA	2012	NA
Comoros	NA	NA	NA	NA	NA	NA	NA
Congo	1983	2009	NA	2008	NA	2014	NA
Côte d'Ivoire	1997	NA	NA	2012	2013	2007	NA
Democratic Republic of the Congo	1976	2010	NA	NA	NA	2015	NA
Djibouti	2002	NA	NA	NA	NA	2012	NA
Egypt	NA	NA	NA	NA	NA	NA	NA
Equatorial Guinea	1987	NA	NA	2009	NA	NA	NA
Eritrea	NA	NA	NA	NA	NA	NA	NA
Ethiopia	NA	NA	NA	NA	NA	NA	NA
Gabon	NA	2014	NA	2004	2012	2014	NA
Gambia	1988	NA	NA	NA	NA	2015	NA
Ghana	2000	2009	2009	2011	2013	2012	NA
Guinea	1993	NA	NA	NA	NA	2008	NA
Guinea-Bissau	2013	2009	2013	2009	2013	2013	NA
Kenya	NA	NA	NA	NA	NA	NA	NA
Lesotho	2000	NA	NA	2004	NA	NA	NA
Liberia	2004	NA	NA	2004	NA	2007	NA
Libya	1989	NA	NA	2004	NA	NA	NA
Madagascar	1971	2009	NA	2000	2012	2007	NA

Malawi	1996	NA	NA	2000	NA	NA	NA
Mali	2001	2009	NA	2000	2012	2008	NA
Mauritania	NA	NA	NA	NA	NA	2012	NA
Mauritius	1973	NA	NA	2008	2012	2007	NA
Morocco	NA	NA	2006	NA	2012	2009	2006
Mozambique	NA	NA	NA	2008	NA	2012	NA
Namibia	1994	NA	NA	2000	NA	2007	NA
Niger	1986	2014	NA	2004	NA	2008	NA
Nigeria	NA	NA	NA	2004	NA	2010	NA
Rwanda	NA	NA	NA	2008	NA	2008	NA
Sao Tome and Principe	2017	NA	NA	2017	NA	NA	NA
Senegal	1978	2009	1996	2000	2012	2007	1982
Seychelles	1992	NA	2001	2011	2013	2007	NA
Sierra Leone	1996	NA	NA	2000	NA	2007	NA
Somalia	1990	NA	NA	NA	NA	NA	NA
South Africa	2002	NA	1998	2005	NA	2007	1998
South Sudan	NA	NA	NA	2015	NA	NA	NA
Sudan	NA	NA	NA	NA	NA	2009	NA
Swaziland	NA	NA	NA	NA	NA	2012	NA
Togo	1988	2009	1987	NA	NA	2011	2015
Tunisia	2011	NA	1988	2008	NA	2008	NA
Uganda	1995	NA	NA	NA	NA	2008	NA
United Republic of Tanzania	NA	NA	NA	2006	NA	2009	NA
Zambia	1984	NA	NA	2008	NA	2008	NA
Zimbabwe	NA	NA	NA	NA	NA	2013	NA

 Ratification/Acceptance  
 Signature

\* as of 26 August 2018



### **The impact of individual complaint mechanisms for LGBTI human rights defenders in Africa**

The ten UN human rights Treaty Bodies, or Committees, fulfil a number of vital functions in the human rights system. They supervise State parties' compliance with their obligations under the various treaties, monitor progress, and provide public scrutiny on realisation efforts. They assist States in assessing achievements and in identifying implementation gaps. They try to in-

duce changes to law, policy and practice in member States and provide guidance on the measures needed to realise rights at the national level. These UN Treaty Bodies stimulate and inform national human rights dialogue. Some of these Treaty Bodies afford individual redress. Most of these Treaty Bodies contain individual complaint mechanisms that are vested with the ability to decide on individual complaints.

LGBTI human rights defenders in Africa could use the individual complaint mechanism within the UN Treaty Bodies. The idea of individual human rights, particularly as an outgrowth of human rights violations for LGBTI individuals in Africa, has become an anchor of the international legal system. International human rights law is grounded on asserting the rights of all including those who identify as sexual minorities in Africa and, subsequently, on ensuring that States guarantee and respect these rights. The individual complaint mechanism could be a primary way in which LGBTI human rights defenders hold States accountable for human rights violation. Thus, unlike other regimes of international law, there is an automatic place for the LGBTI individual within the international human rights law system.

In Africa, individuals who identify as LGBTI continue to face discrimination and violence due to their real or perceived sexual orientation. Human rights violations within the African region is real. Recently, the African Commission on Human & Peoples Rights passed resolution 275 calling upon African countries to curb violence against people who identify as either lesbian or gay. The African Commission also has the mandate to deal with individual communications. Unlike the UN Treaty Bodies, where individual communications are only allowed when a State party has signed and ratified the treaty concerned, individual communications to the African commission are automatic once the State has signed and ratified the African Charter on Human & Peoples Right. All African countries, with the exception of South Sudan, have signed and ratified the African Charter.

Therefore, LGBTI individuals can use the African Commission to lodge complaints of human rights violations. Unfortunately, no complaint of such nature has been lodged with the African Commission.

At least theoretically, the individual complaint mechanism used in international human rights law allows the individual to bring their claims to a body that is regarded without bias, compared to domestic courts. These bodies allow LGBTI individuals, whose voices are frequently not given attention or value at the domestic level, to have a greater power and influence in asserting their rights. The growth of the individual complaint mechanism within well-accepted international human rights law treaties has resulted in the placement of the individual in a different sphere than has been traditionally accepted as part of the international system. Consequently, the individual complaint mechanism has in the past empowered LGBTI individuals to be international actors.

As an international actor in the human rights system, LGBTI individuals in Africa are able to express their voice directly, without the need to seek representation from the State or a non-governmental organisation. The Human Rights Committee has been the one UN Treaty Body that has been active on the rights of LGBTI people. Importantly, the First Optional Protocol to the International Covenant on Civil and Political Rights establishes an individual complaint mechanism, allowing individuals to complain to the Human Rights Committee about the violation of the Covenant. To date, of the 54 African countries, more than thirty have signed and ratified this Optional Protocol. Specifically, in this context, the LGBTI individual has been granted a place of primacy under the international human rights system. Indeed, by definition, the individual is at the centre of the individual complaint mechanism. Therefore, a determination of the violations done to the LGBTI individual takes precedence over other considerations which often characterise international legal adjudications, such as the wishes of the States involved.

**William ASEKA**  
**Project Officer – SOGIE Unit**  
**Centre for Human Rights, University of Pretoria**

# Europe and Central Asia

## Relevant cases:

- *Hertzberg et al. v. Finland*, HRCtee, 1982 (censuring radio and TV programmes dealing with sexual orientation, no violation)
- *K.S.Y. v. Netherlands*, CAT, 2003 (deportation of a gay man to Iran, no violation)
- *E.J.V.M. v. Sweden*, CAT, 2003 (deportation of a bisexual man to Costa Rica, no violation)
- *Uttam Mondal v. Sweden*, CAT, 2011 (deportation of a gay man to Bangladesh, **violation**)
- *X. v. Sweden*, HRCtee, 2011 (deportation of a bisexual man to Afghanistan, **violation**)
- *Fedotova v. Russian Federation*, HRCtee, 2012 (administrative fine for “gay propaganda among minors” for displaying LGBT posters, **violation**)
- *M.I. v. Sweden*, HRCtee, 2013 (deportation of a lesbian woman to Bangladesh, **violation**)
- *Alekseev v. Russian Federation*, HRCtee, 2013 (refusal to authorise a picket against execution of gay people in Iran, **violation**)
- *Praded v. Belarus*, HRCtee, 2014 (arrest and imposition of a fine for holding of a peaceful assembly against the killing of gay people in Iran without prior authorisation, **violation**)
- *Ernazarov v. Kyrgyzstan*, HRCtee, 2015 (death of a person convicted of “forced sodomy” in a police station as a result of inter-prisoner violence against gay men and sex-offenders, **violation**)
- *Androsenko v. Belarus*, HRCtee, 2016 (arrest and imposition of a fine for holding of a peaceful assembly against the killing of gay people in Iran without prior authorisation, **violation**)
- *M.K.H. v. Denmark*, HRCtee, 2016 (deportation of a gay man to Bangladesh, **violation**)
- *M.Z.B.M. v. Denmark*, HRCtee, 2017 (deportation of a trans woman to Malaysia, no violation)
- *D.C. and D.E. v. Georgia*, CAT, 2017 (vulnerability of a detained person subjected to torture, including attempted rape, by police, **violation**)
- *E.A. v. Sweden*, CAT, 2017 (deportation of a gay man to Lebanon, no violation)
- *Nepomnyaschiy v. Russian Federation*, HRCtee, 2018 (administrative fine for “gay propaganda among minors” for displaying LGBT posters, **violation**)
- *Z.B. v. Hungary*, HRCtee, 2018 (deportation of a woman, who allegedly suffered from violence based on her sister’s sexual orientation in Cameroon, to Serbia, where she had been raped and captured, inadmissible)



## Pending cases:

- *Kirichenko v. Russian Federation*, CEDAW, 98/2016, registered in 2016 (discrimination, hate speech)
- *Savolainen v. Russian Federation*, HRCtee, 2830/2016, registered in 2016 (denial of permission to hold a trans rally to LGBT activists)
- *[...] v. Russian Federation*, CEDAW, 119/2017, registered in 2017 (hate crime, lack of effective investigation, sexual orientation, gender-based discrimination)
- *Krikkerik v. Russian Federation*, HRCtee, 2992/2017, registered in 2017 (hate crime, lack of effective investigation)
- *[...] v. Russian Federation*, HRCtee, 2943/2017, registered in 2017 (denial of permission to hold rallies on LGBT issues to LGBT activists)
- *[...] v. Russian Federation*, HRCtee, 2953/2017, registered in 2017 (LGBT activists refused authorisation to hold rallies)
- *[...] v. Russian Federation*, HRCtee, 2954/2017, registered in 2017 (LGBT activists refused authorisation to hold rallies)
- *[...] v. Kyrgyzstan*, HRCtee, 2998/2017, registered in 2017 (ill-treatment in detention, forced confession, undocumented detention, discrimination based on sexual orientation)
- *[...] v. Albania*, HRCtee, 3031/2017, registered in 2017 (recognition of same-sex partnership)



### Acceptance of individual complaint procedures\*:

- HRCtee – 50 countries
- CESCR – 11 countries
- CAT – 40 countries
- CEDAW – 49 countries
- CRC – 24 countries
- CRPD – 32 countries
- CERD – 39 country

## Acceptance of individual complaint procedures\*

COUNTRY	HRCtee	CESCR	CAT	CEDAW	CRC	CRPD	CERD
Albania	2007	NA	NA	2003	2013	NA	NA
Andorra	2006	NA	2006	2002	2014	2014	2006
Armenia	1993	2009	NA	2006	NA	2007	NA
Austria	1987	NA	1987	2000	2012	2008	2002
Azerbaijan	2001	2009	2002	2001	NA	2009	2001
Belarus	1992	NA	NA	2004	NA	NA	NA
Belgium	1994	2014	1999	2004	2014	2009	2000
Bosnia and Herzegovina	1995	2012	2003	2002	2018	2010	NA
Bulgaria	1992	NA	1993	2006	NA	2008	1993
Croatia	1995	NA	1992	2001	2017	2007	NA
Cyprus	1992	NA	1993	2002	2017	2011	1993
Czech Republic	1993	NA	1996	2001	2015	2007	2000
Denmark	1972	NA	1987	2000	2015	2014	1985
Estonia	1991	NA	NA	NA	NA	2012	2010
Finland	1975	2014	1989	2000	2015	2016	1994
France	1984	2015	1988	2000	2016	2010	1982
Georgia	1994	NA	2005	2002	2016	2009	2005
Germany	1993	NA	2001	2002	2013	2009	2001
Greece	1997	NA	1988	2002	NA	2012	NA
Hungary	1988	NA	1989	2000	NA	2007	1989
Iceland	1979	NA	1996	2001	NA	2007	1981
Ireland	1989	2012	2002	2000	2014	NA	2000
Italy	1978	2015	1989	2000	2016	2009	1978
Kazakhstan	2009	2010	2008	2001	NA	2008	2008
Kyrgyzstan	1994	NA	NA	2002	NA	NA	NA
Latvia	1994	NA	NA	NA	NA	2010	NA
Liechtenstein	1998	NA	1990	2001	2017	NA	2004
Lithuania	1991	NA	NA	2004	2015	2010	NA
Luxembourg	1983	2015	1987	2003	2016	2011	1996

Malta	1990	NA	1990	NA	2012	2012	1998
Monaco	NA	NA	1991	2016	2014	NA	2001
Montenegro	2006	2013	2001	2006	2013	2009	2006
Netherlands	1978	2009	1988	2002	NA	NA	1971
Norway	1972	NA	1986	2002	NA	NA	1976
Poland	1991	NA	1993	2003	2013	NA	1998
Portugal	1983	2013	1989	2002	2013	2009	2000
Republic of Moldova	2008	NA	2011	2006	NA	NA	2013
Romania	1993	NA	NA	2003	2012	2008	2003
Russian Federation	1991	NA	1991	2004	NA	NA	1991
San Marino	1985	2015	2015	2005	NA	2008	2008
Serbia	2001	NA	2001	2003	2012	2009	2001
Slovakia	1993	2012	1995	2000	2013	2010	1995
Slovenia	1993	2009	1993	2004	2012	2008	2001
Spain	1985	2010	1987	2001	2013	2007	1998
Sweden	1971	NA	1986	2003	NA	2008	1971
Switzerland	NA	NA	1986	2008	2017	NA	2003
Tajikistan	1999	NA	NA	2014	NA	NA	NA
The FYR Macedonia	1994	2013	NA	2003	2012	2011	1999
Turkey	2006	NA	1988	2002	2017	2015	NA
Turkmenistan	1997	NA	NA	2009	NA	2010	NA
Ukraine	1991	2009	2003	2003	2016	2010	1992
United Kingdom	NA	NA	NA	2004	NA	2009	NA
Uzbekistan	1995	NA	NA	NA	NA	NA	NA

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\* as of 26 August 2018



“UN Treaty bodies play a crucial role in uncovering human rights violations and providing redress to victims of such violations. There is a great potential for this, particularly through strategic litigation, to further advance human rights of LGBTI people. Importantly, for ILGA-Europe’s members, the UN Treaty bodies provide the opportunity for redress for those who do not have access to regional mecha-

nisms, such as the European Court of Human Rights or European Court of Justice, thus becoming an essential avenue for the LGBTI communities from the Central Asian countries and Belarus.

Cross-fertilisation between regional and international human rights bodies is an important aspect of strategic litigation. The specialised approach and expertise of UN Treaty bodies has contributed vastly to developing human rights law in various fields. This exchange and complementarity between the fora has already proven to strengthen the laws to protect LGBTI rights, and let’s hope that there will be a growing trend for a greater protection.”

**Arpi AVETISYAN**  
Senior Litigation Officer, ILGA-Europe



“I urge litigators to seriously consider engaging in litigation before UN Treaty Bodies. Victims and litigators in many European countries often choose to focus exclusively on the European Court of Human Rights, to the detriment of other options at the international level. Although the European Court is a tried and tested formula, that has resulted in a rich body of case law on LGBTI rights, Treaty Bodies offer opportunities that may have been unfairly or unreasonably ignored.

For some countries, particularly from Central Asia, the Treaty Bodies may be the only available forum at the international level, all the more critical in the absence of a fair hearing at the national level. For all other countries, Treaty Bodies litigation may offer considerable procedural advantages in comparison to the European Court of Human Rights, such as speedier resolution times, less strict admissibility requirements or more leverage at the execution stage. Significantly, Treaty Bodies may have substantive remits that go beyond the jurisdiction of the European Court of Human Rights, as well as more specialised or sophisticated understanding of some issues related to LGBTI rights, such as intersectionality or social justice.

The two avenues (the European Court and Treaty Bodies respectively) need not exclude the other. A responsible and more effective litigation strategy may opt to spread cases more widely. This would then result in pressure for social change being brought to bear from more directions, thus maximising the opportunities for social change to occur.”

**Constantin COJOCARIU**

**International human rights lawyer and consultant  
specialising in transgender rights litigation**



“First of all, applying to UN Treaty Bodies is often the last (and for LGBT applicants sometimes the only) opportunity to obtain recognition of the fact that what happened to them was real, and their rights were violated as the authorities reacted to what happened without due attention. In my opinion, it is important to use every opportunity to give voice to those who are *ready* to talk and seek justice for them-

selves and for the others.

Applying to Treaty Bodies also helps us to raise new legal issues, such as intersecting forms of discrimination. It can help to develop further already existing standards; to create practice that can later be relied on in complaints to national and international bodies; and, to describe in detail and to record the “country context” and features of legal remedies that could be useful to colleagues from other jurisdictions.

My recommendations are: (1) Think creatively and boldly, and be clear on what you want to say and what you plan to achieve; (2) Be persistent and persuasive; look for the broad range of arguments to support your position. Be able to explain why you are right; (3) Ask for help from colleagues. A professional comment on your position, a comparative study or an *amicus* from an organization or a scholar would strengthen your petition significantly; (4) Create opportunities for references. Let your case, or a problem it concerns, appear in the media, in alternative reports and general recommendations of Treaty Bodies; (5) If any important information on your case or your problem appears after the communication has concluded, do not hesitate to inform the secretariat about this development; (6) Explain things; no-one but you can explain both your claims and the (in)effectiveness of legal remedies; (7) Strive for the implementation of decisions on your cases at the national level.”

**Valentina FROLOVA**  
Attorney, Saint Petersburg Bar Association, Russia

“Based on our experience, I can say that it is very important to support people who have decided to fight discrimination or hate-motivated violence against them. In Kazakhstan, and in Central Asia in general, those who faced violence or discrimination based on their sexual orientation or gender identity are usually reluctant to apply to police or courts, and have low awareness of available legal remedies. Many people stigmatize themselves and even find excuses for the offenders. In such cases, support from LGBTIQ human rights defenders, as well as information on how to protect one’s rights, both nationally and internationally, using the UN mechanisms, are very important.

It is also essential that litigation is conducted by sensitive lawyers who are familiar with ethical principles in relation to LGBTIQ people. Therefore, one of the tasks for LGBTIQ organizations who have decided to initiate strategic litigation cases, should be to periodically train local lawyers and attorneys on LGBTIQ legal and ethical issues.

I would also like to stress that the majority of court victories on cases of discrimination and violence against LGBTIQ have a potential to draw the authorities’ attention and to remind them of the need to improve non-discrimination legislation.”

**Alexander KSAN**  
**“Alma-TQ” Initiative Group, Kazakhstan**

# Latin America and the Caribbean

## Relevant cases:

- *E.J.V.M. v. Sweden*, CAT, 2003 (deportation of a bisexual man to Costa Rica, no violation)
- *X. v. Colombia*, HRCtee, 2007 (refusal to grant a pension to a same-sex partner of a deceased man, **violation**)

## Acceptance of individual complaint procedures\*:

- HRCtee – 22 countries
- CESC – 7 country
- CAT – 12 countries
- CEDAW – 17 countries
- CRC – 10 countries
- CRPD – 20 countries
- CERD – 12 countries



## Pending cases:

- No information



## Acceptance of individual complaint procedures\*

COUNTRY	HRCtee	CESCR	CAT	CEDAW	CRC	CRPD	CERD
Antigua and Barbuda	NA	NA	NA	2006	NA	2007	NA
Argentina	1986	2011	1986	2007	2015	2008	2007
Bahamas	NA	NA	NA	NA	NA	NA	NA
Barbados	1973	NA	NA	NA	NA	NA	NA
Belize	NA	NA	NA	2002	NA	NA	NA
Bolivia	1982	2012	2006	2000	2013	2009	2006
Brazil	2009	NA	2006	2002	2017	2008	2002
Chile	1992	2009	2004	1999	2015	2008	1994
Colombia	1969	NA	NA	2007	NA	NA	NA
Costa Rica	1968	2014	2002	2001	2014	2008	1974
Cuba	NA	NA	NA	2000	NA	NA	NA
Dominica	NA	NA	NA	NA	NA	2012	NA
Dominican Republic	1978	NA	NA	2001	NA	2009	NA
Ecuador	1969	2010	1988	2002	2013	2008	1977
El Salvador	1995	2011	NA	2001	2015	2007	2016
Grenada	NA	NA	NA	NA	NA	NA	NA
Guatemala	2000	2009	2003	2002	NA	2009	NA
Guyana	1999	NA	NA	NA	NA	NA	NA
Haiti	NA	NA	NA	NA	NA	2009	NA
Honduras	2005	2018	NA	NA	NA	2010	NA
Jamaica	NA**	NA	NA	NA	NA	2007	NA
Mexico	2002	NA	2002	2002	NA	2007	2002
Nicaragua	1980	NA	NA	NA	NA	2010	NA
Panama	1977	NA	NA	2001	2017	2007	2015
Paraguay	1995	2009	2002	2001	2017	2008	NA
Peru	1980	NA	1988	2001	2016	2008	1984
Saint Kitts and Nevis	NA	NA	NA	2006	NA	NA	NA
Saint Lucia	NA	NA	NA	NA	NA	NA	NA
Saint Vincent and the Grenadines	1981	NA	NA	NA	NA	2010	NA
Suriname	1976	NA	NA	NA	NA	NA	NA
Trinidad and Tobago	NA***	NA	NA	NA	NA	NA	NA
Uruguay	1970	2013	1988	2001	2015	2011	1972
Venezuela	1978	2011	1994	2002	NA	2013	2003

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	Signature

\* as of 26 August 2018

\*\* Jamaica withdrew the right of individual petition to the HRCtee in October 1997

\*\*\* Trinidad and Tobago withdrew the right of individual petition to the HRCtee in June 2000



“*Cattrachas* has worked giving legal advice to LGTTBI people and accompanying them in the defense and enforcement of their rights, from a differentiated approach. At the national level, five oral and public trials of LGBTTI persons have been carried out, and at international level there are three cases before the Inter-American Human Rights System, which are in the status of admissibility, merits and study.

Some of the obstacles that we have historically faced in the defense of rights are conceived in the perception of LGTTBI people and/or the State’s incapacity to ensure judicial guarantees for them, the intrusion of religious fundamentalists, and the prejudice faced when accessing the justice system. Similarly, the non-ratification by the State of some optional protocols, such as that of CEDAW, impede legal action at the Universal Human Rights System.

Despite this, among our achievements are: (1) the admissibility of an unconstitutionality appeal by the Constitutional Chamber of the Supreme Court of Justice, that was presented on March 15 2018, and that seeks to suppress some legislative provisions that prohibit the change of name for same-sex couples; (2) the change of name and the recognition of gender identity and/or expression, as a result of the participation of *Cattrachas* in the hearing of the advisory opinion of the Inter-American Court and the resolution obtained in January of this year (2018); this actually goes back a few years, to 2014, with the filing of an unconstitutionality appeal for the change of name, that was not admitted by the Chamber and that is currently under admissibility consideration by the IACHR.”



**Indyra MENDOZA and Katherin ZERÓN**  
Cattrachas, Honduras



The Universal Human Rights System represents a challenge to developing human rights standards for LGBTI persons applicable in Latin America- a region that has focused its litigation on the existing regional mechanisms, the Court and the Inter-American Commission on Human Rights. This system, although very useful for prosecuting events that were for years protected by impunity- including those related to major armed conflicts in the continent (Peru and Colombia), as well as the dictatorships of the Southern Cone- currently presents a high degree of saturation and slowness, which, obviously prevents cases from quickly progressing, as effective access to justice

requires. Notably, if one considers cases that advance to the Inter-American System, these have already gone through a period of impunity in the country in which the events occurred.

Faced with this regional situation, the Universal Human Rights System offers alternatives that must be considered by those who carry out international litigation. First, the time provided for resolution of a case is brief. Likewise, being a quasi-judicial mechanism, the evidentiary standards are less demanding and the debate on demonstrating the facts is more flexible than in other jurisdictions.

Particularly, for cases that relate to the rights of LGBTI people, the Universal System offers significant advantages that should be explored. First, there are several Optional Protocols and human rights Treaties that protect a wide range of rights, meaning there are many mechanisms to turn to. Not all of them have processed LGBTI cases, so expanding pronouncements in this area would consolidate the international *iuris* body, guaranteeing the best interpretation of the LGBTI population's rights.

We believe that the Convention on the Elimination of All Forms of Discrimination against Women has developed the concept of "Gender Based Violence" as meaning, violence directed at women, because she is a woman, or violence that affects women disproportionately; an element that was extended in General Recommendation No. 35 which it defines the expression "gender-based violence against women" as a more precise term, highlighting the causes and effects related to this type of violence.

Women's sexual orientation and gender identity are elements that are intrinsically linked to the motives that usually cause gender-based violence and that seek to censor, punish and sanction women for failing to fulfil the roles they were traditionally assigned. This concept is fertile ground for delving into the constitutive elements of gender-based violence, as a way to recognize the various types of discrimination that propitiate and justify violence against all women in our societies.

Finally, we consider that the growing rise of anti-rights movements in our region, impose on us the challenge to seek other jurisdictions that are not within their sights, without neglecting our support for the legitimacy of the Inter-American System. We mention this because the latter has been the focus of several attacks. This makes it necessary to remember that the recognition of the rights of LGBTI persons is not only a topic that only applies across Latin America, but one that concerns all other systems and jurisdictions that deal with issues related with human rights.

**Lilibeth CORTÉS MORA**

**Lawyer and Political Sciences Masters Candidate,  
linked with the litigation area of Colombia Diversa**

# North America

## Relevant cases:

- *J.K. v. Canada*, CAT, 2015 (deportation of a gay man and LGBT activist to Uganda, **violation**)

## Acceptance of individual complaint procedures\*:



- HRCtee – 1 country
- CESCRC – none
- CAT – 1 country
- CEDAW – 1 country
- CRC – none
- CRPD – none
- CERD – none

## Pending cases:

- *[...] v. Canada*, HRCtee, 3027/2016, registered in 2017 (removal to Turkey, mental health, political/religious/LGBTQI issues)
- *[...] v. Canada*, HRCtee, 2957/2017, registered in 2017 (deportation to Guinea; fear of persecution based on sexual orientation (bisexuality))
- *[...] v. Canada*, HRCtee, 2962/2017, registered in 2017 (risk of death and inhuman treatment on grounds of sexual orientation in case of deportation to Senegal)

## Acceptance of individual complaint procedures\*

COUNTRY	HRCtee	CESCR	CAT	CEDAW	CRC	CRPD	CERD
Canada	1976	NA	1989	2002	NA	NA	NA
United States	NA	NA	NA	NA	NA	NA	NA

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\* as of 26 August 2018

## Relevant cases:

- *Toonen v. Australia*, HRCtee, 1994 (criminalisation of consensual same-sex relations between adults, **violation**)
- *Joslin et al. v. New Zealand*, HRCtee, 2002 (no access to marriage for two lesbian couples, no violation)
- *Young v. Australia*, HRCtee, 2003 (refusal to grant a pension to a same-sex partner of a deceased man, **violation**)
- *G. v. Australia*, HRCtee, 2017 (divorce requirement for legal gender recognition, **violation**)
- *C. v. Australia*, HRCtee, 2017 (denial of access to divorce proceedings for a lesbian couple married abroad, **violation**)

## Acceptance of individual complaint procedures\*:



- HRCtee – 2 countries
- CESCR – none
- CAT – 2 countries
- CEDAW – 5 countries
- CRC – 1 country
- CRPD – 4 countries
- CERD – 1 country

## Pending cases:

- No information

## Acceptance of individual complaint procedures\*

COUNTRY	HRCtee	CESCR	CAT	CEDAW	CRC	CRPD	CERD
Australia	1991	NA	1993	2008	NA	2009	1993
Cook Islands	NA	NA	NA	2007	NA	2009	NA
Fiji	NA	NA	NA	NA	NA	2010	NA
Kiribati	NA	NA	NA	NA	NA	NA	NA
Marshall Islands	NA	NA	NA	NA	NA	NA	NA
Micronesia	NA	NA	NA	NA	NA	NA	NA
Nauru	2001	NA	NA	NA	NA	NA	NA
New Zealand/Aotearoa	1989	NA	1989	2000	NA	2016	NA
Niue	NA	NA	NA	NA	NA	NA	NA
Palau	NA	NA	NA	NA	NA	2013	NA
Papua New Guinea	NA	NA	NA	NA	NA	NA	NA
Samoa	NA	NA	NA	NA	2016	NA	NA
Solomon Islands	NA	2009	NA	2002	NA	2009	NA
Tonga	NA	NA	NA	NA	NA	NA	NA
Tuvalu	NA	NA	NA	NA	NA	NA	NA
Vanuatu	NA	NA	NA	2007	NA	NA	NA

 Ratification/Acceptance  
 Signature

\* as of 26 August 2018



“At *DLA Piper* we have used UN Treaty Body mechanisms to assist our clients to enforce and protect their rights for many years. In combination with local advocacy and where domestic litigation is not possible or practical, we’ve found that, particularly for LGBTI rights, litigation at the UN level is an important and effective tool in progressing and protecting human rights. We have seen significant changes in Oceania thanks to the use of UN Treaty Body mechanisms. The *Toonen v Australia* case before the UN

Human Rights Committee was the first case to recognise that laws criminalising consensual same-sex sexual conduct were a breach of a person’s human rights. The decision led to the removal of the last laws in Australia criminalising homosexuality, just two years after the decision of the UNHRC.

Until we have a regional human rights mechanism in Asia Pacific, UN mechanisms will remain the only international fora in which individuals can bring attention to human rights violations at home. For countries without legal protection of human rights it may be the only forum anywhere where violations of LGBTI rights can be brought to light and receive a fair hearing.

For LGBTI communities, litigation at home is not always possible. There may be a legitimate fear of violence and recriminations, an inaccessible judicial system, lack of funds and representation or, as is the case in many places, there may simply be no legal protections remedies available at the domestic level. The UN Treaty Body mechanisms can provide a forum to seek recognition of violations and international attention in a way that is safe, confidential, inexpensive and accessible. From a personal perspective, there is a powerful emotional and psychological effect in having one’s experiences and rights recognised and validated by UN mechanisms. For groups who experience daily stigma and discrimination, the importance of such recognition cannot be underestimated.

Unlike non-legal advocacy, strategic litigation at the UN level can lead to clarification on the scope and nature of rights and the obligations of States. In the area of LGBTI rights, which is evolving quickly, this is particularly important. It can and should shape the way domestic human rights laws are interpreted and, in this way, can improve legal protections at the domestic level. Of course paired with local non-legal advocacy it can be an excellent tool in advocating for legal and policy reform, carrying the weight of the UN and human rights experts behind it. It also has the advantage of being a universal decision: UN decisions relating to one country are equally applicable in all countries, progressing the rights of LGBTI persons not just at home, but globally.”

**Emily CHRISTIE**  
**Pro Bono Senior Associate, Human Rights**  
**DLA Piper**

## Treaty Bodies' Jurisprudence on SOGIESC\*

COMMITTEE	CASE TITLE	COMMUNICATION NUMBER	SUBMISSION DATE	VIEWS DATE	RELEVANT ARTICLES	SUBJECT MATTER	DOCUMENTS	RESULT
<b>Criminalisation of Same-Sex Relations</b>								
HRCtee	Toonen v. Australia	488/1992	25 Dec 1991	31 Mar 1994	2(1) ICCPR 17 ICCPR 26 ICCPR	Criminalisation of consensual same-sex relations between adults	Views <a href="#">En</a>	Violation
HRCtee	Dean v. Australia	1512/2006	8 Sep 2006	17 Mar 2009	26 ICCPR Other	Prosecution for same-sex relations with a minor	Views <a href="#">En Fr Es</a> <a href="#">Ar Ru</a>	Violation
<b>Asylum Seekers</b>								
CAT	K.S.Y. v. Netherlands	190/2001	5 Jan 2001	15 May 2003	3 CAT Convention	Deportation of a gay man to Iran	Views <a href="#">En Fr Es</a> <a href="#">Ru</a>	No violation
CAT	E.J.V.M. v. Sweden	213/2002	17 May 2002	14 Nov 2003	3 CAT Convention	Deportation of a bisexual man to Costa Rica	Views <a href="#">En Fr Es</a> <a href="#">Ru</a>	No violation
CAT	Uttam Mondal v. Sweden	338/2008	30 Nov 2007	23 May 2011	3 CAT Convention 16 CAT Convention	Deportation of a gay man to Bangladesh	Views <a href="#">En Fr Es Ar</a> <a href="#">Ru Zh</a>	Violation
HRCtee	X. v. Sweden	1833/2008	26 Nov 2008	1 Nov 2011	6 ICCPR 7 ICCPR	Deportation of a bisexual man to Afghanistan	Views <a href="#">En Fr Es Ar</a> <a href="#">Ru Zh</a>	Violation
HRCtee	M.I. v. Sweden	2149/2012	7 May 2012	25 Jul 2013	7 ICCPR	Deportation of a lesbian woman to Bangladesh	Views <a href="#">En Fr Es Ar</a> <a href="#">Ru Zh</a>	Violation
CAT	J.K. v. Canada	562/2013	29 Sep 2013	23 Nov 2015	3 CAT Convention	Deportation of a gay man and LGBT activist to Uganda	Views <a href="#">En Fr Es Ar</a> <a href="#">Ru Zh</a>	Violation
HRCtee	M.K.H. v. Denmark	2462/2014	26 Sep 2014	12 Jul 2016	7 ICCPR	Deportation of a gay man to Bangladesh	Views <a href="#">En Fr Es Ar</a> <a href="#">Ru Zh</a>	Violation



HRCtee	M.Z.B.M. v. Denmark	2593/2015	31 Mar 2015	20 Mar 2017	7 ICCPR 17(1) ICCPR 18(1) ICCPR 26 ICCPR	Deportation of a trans woman to Malaysia	Views <a href="#">En</a> <a href="#">Es</a> <a href="#">Ar</a> <a href="#">Ru</a> <a href="#">Zh</a>	No violation
CAT	E.A. v. Sweden	690/2015	20 Jul 2015	11 Aug 2017	3 CAT Convention	Deportation of a gay man to Lebanon	Views <a href="#">En</a> <a href="#">Fr</a> <a href="#">Es</a> <a href="#">Ar</a> <a href="#">Ru</a> <a href="#">Zh</a>	No violation
HRCtee	Z.B. v. Hungary	2768/2016	23 May 2016	19 Jul 2018	2(3)(a) ICCPR 7 ICCPR 13 ICCPR	Deportation of a woman, who allegedly suffered from violence based on her sister's sexual orientation in Cameroon, to Serbia, where she had been raped and captured	Decision <a href="#">En</a> <a href="#">Fr</a> <a href="#">Es</a> <a href="#">Ar</a> <a href="#">Ru</a>	Inadmissible
<b>Violence / Hate Crimes / Hate Speech</b>								
HRCtee	Ernazarov v. Kyrgyzstan	2054/2011	11 Mar 2011	25 Mar 2015	2(3) ICCPR 6(1) ICCPR 7 ICCPR	Death of a person convicted of "forced sodomy" in a police station as a result of inter-prisoner violence against gay men and sex-offenders	Views <a href="#">En</a> <a href="#">Fr</a> <a href="#">Es</a> <a href="#">Ru</a>	Violation
CAT	D.C. and D.E. v. Georgia	573/2013	1 Jul 2013	12 May 2017	1 CAT Convention 11 CAT Convention 12 CAT Convention 13 CAT Convention 16 CAT Convention	Vulnerability of a detained person subjected to torture, including attempted rape, by police	Views <a href="#">En</a> <a href="#">Fr</a> <a href="#">Es</a> <a href="#">Ar</a> <a href="#">Ru</a> <a href="#">Zh</a>	Violation
<b>Freedom of Expression / Freedom of Assembly and Association</b>								
HRCtee	Hertzberg et al. v. Finland	061/1979	7 Aug 1979	2 Apr 1982	19 ICCPR	Censuring radio and TV programmes dealing with sexual orientation	Views <a href="#">En</a>	No violation

HRCtee	Fedotova v. Russian Federation	1932/2010	10 Feb 2010	31 Oct 2012	19 ICCPR 26 ICCPR	Administrative fine for "gay propaganda among minors" for displaying LGBT posters	Views <a href="#">En</a> <a href="#">Fr</a> <a href="#">Es</a> <a href="#">Ar</a> <a href="#">Ru</a> <a href="#">Zh</a>	Violation
HRCtee	Alekseev v. Russian Federation	1873/2009	25 Mar 2009	25 Oct 2013	21 ICCPR	Refusal to authorise a picket against execution of gay people in Iran	Views <a href="#">En</a> <a href="#">Fr</a> <a href="#">Es</a> <a href="#">Ar</a> <a href="#">Ru</a> <a href="#">Zh</a>	Violation
HRCtee	Praded v. Belarus	2092/2011	20 Jun 2010	10 Oct 2014	19(2) ICCPR 21 ICCPR	Arrest and imposition of a fine for holding of a peaceful assembly against killings of gay people in Iran without prior authorisation	Views <a href="#">En</a> <a href="#">Fr</a> <a href="#">Es</a> <a href="#">Ar</a> <a href="#">Ru</a> <a href="#">Zh</a>	Violation
HRCtee	Androsenko v. Belarus	2092/2011	20 Jun 2010	30 Mar 2016	19(2) ICCPR 21 ICCPR		Views <a href="#">En</a> <a href="#">Fr</a> <a href="#">Es</a> <a href="#">Ar</a> <a href="#">Ru</a>	Violation
HRCtee	Nepomnyaschiy v. Russian Federation	2318/2013	5 Oct 2013	17 Jul 2018	19 ICCPR 26 ICCPR	Administrative fine for "gay propaganda among minors" for displaying LGBT posters	Views <a href="#">En</a> <a href="#">Es</a> <a href="#">Ru</a>	Violation
<b>LGBTI Families</b>								
HRCtee	Joslin et al. v. New Zealand	902/1999	30 Nov 1998	17 Jul 2002	2(1) ICCPR 16 ICCPR 17 ICCPR 23(1) ICCPR 23(2) ICCPR 26 ICCPR	No access to marriage for two lesbian couples	Views <a href="#">En</a> <a href="#">Fr</a> <a href="#">Es</a>	No violation
HRCtee	Young v. Australia	941/2000	29 Jun 1999	6 Aug 2003	26 ICCPR	Refusal to grant a pension to a same-sex partner of a deceased man	Views <a href="#">En</a> <a href="#">Fr</a> <a href="#">Es</a>	Violation
HRCtee	X. v. Colombia	1361/2005	13 Jan 2001	30 Mar 2007	2(1) ICCPR 3 ICCPR 5 ICCPR 14(1) ICCPR 17 ICCPR 26 ICCPR	Refusal to grant a pension to a same-sex partner of a deceased man	Views <a href="#">En</a> <a href="#">Fr</a> <a href="#">Es</a>	Violation

HRCtee	C. v. Australia	2216/2012	27 Apr 2012	28 Mar 2017	2(1) ICCPR 14(1) ICCPR 26 ICCPR	Denial of access to divorce proceedings for a lesbian couple married abroad	Views <a href="#">En</a> <a href="#">Fr</a> <a href="#">Es</a> <a href="#">Ar</a> <a href="#">Ru</a>	Violation
<b>Legal Gender Recognition</b>								
HRCtee	G. v. Australia	2172/2012	2 Dec 2011	17 Mar 2017	2(1) ICCPR 2(3) ICCPR 17 ICCPR 26 ICCPR	Divorce requirement for legal gender recognition	Views <a href="#">En</a> <a href="#">Fr</a> <a href="#">Es</a> <a href="#">Ar</a> <a href="#">Ru</a> <a href="#">Zh</a>	Violation

\* So far Treaty Bodies have reviewed cases related to LGBT persons only. Cases are grouped in the table by topics and in chronological order within each topic.

# SOGIESC Cases Pending before Treaty Bodies

COMMITTEE	CASE TITLE	COMMUNICATION NUMBER	SUBMISSION DATE	STAGE	RELEVANT ARTICLES	SUBJECT MATTER	SOURCE OF DATA
<b>Criminalisation of Same-Sex Relations</b>							
CEDAW	[...] v. Sri Lanka	134/2018	23 August 2018 (submitted)	Registered (12 October 2018)	2 CEDAW 5 CEDAW 16 CEDAW	Criminalisation of lesbian and bisexual women in Sri Lanka	Human Dignity Trust
<b>Asylum Seekers</b>							
HRCtee	[...] v. Canada	2957/2017	No information available	No information available	7 ICCPR 23 ICCPR 24 ICCPR 27 ICCPR	Deportation to Guinea; fear of persecution based on sexual orientation (bisexuality)	HRCtee, <a href="#">Table of registered cases 2017</a>
HRCtee	[...] v. Canada	2962/2017	No information available	No information available	6(1) ICCPR 7 ICCPR 9 ICCPR 13 ICCPR 14 ICCPR 17 ICCPR 26 ICCPR	Risk of death and inhuman treatment on grounds of sexual orientation in case of deportation to Senegal	HRCtee, <a href="#">Table of registered cases 2017</a>
HRCtee	[...] v. Canada	3027/2016	No information available	No information available	6 ICCPR 7 ICCPR 9 ICCPR	Removal to Turkey, mental health, political/religious/LGBTQI issues	<a href="#">Table of registered cases 2017</a>
CRC	A.B. v. Finland	51/2018	27 June 2018 (submitted)	Communications	3 CRC 22 CRC	Deportation of a Russian female same-sex couple and their 7-year-old child to Russia	Finnish Rainbow Families Association

Violence / Hate Crimes / Hate Speech							
HRCtee	Krikerik v. Russian Federation	2992/2017	24 May 2016 (submitted) 14 Jun 2017 (registered)	Communications	2 ICCPR 7 ICCPR 17 ICCPR 26 ICCPR	Hate crime, lack of effective investigation	"Coming Out" LGBT Group ISHR, <a href="#">Third-party intervention</a>
HRCtee	[...] v. Kyrgyzstan	2998/2017	No information available	No information available	2(3)(a) ICCPR 7 ICCPR 9(1) ICCPR 14(3)(g) ICCPR 26 ICCPR	Ill-treatment in detention, forced confession, undocumented detention, discrimination based on sexual orientation	<a href="#">Table of registered cases 2017</a>
CEDAW	Kirichenko v. Russian Federation	98/2016	No information available	Case ready	2 CEDAW Convention 5(a) CEDAW Convention 7(c) CEDAW Convention	Discrimination, hate speech	"Coming Out" LGBT Group CEDAW, <a href="#">Table of pending cases</a>
CEDAW	[...] v. Russian Federation	119/2017	11 Apr 2017 (submitted)	Communications	1 CEDAW Convention 2 CEDAW Convention 5 CEDAW Convention	Hate crime, lack of effective investigation, sexual orientation, gender-based discrimination	"Coming Out" LGBT Group CEDAW, <a href="#">Table of pending cases</a>
Freedom of Expression / Freedom of Assembly and Association							
HRCtee	Savolainen v. Russian Federation	2830/2016	December 2014 (submitted)	Communications	19 ICCPR 21 ICCPR 26 ICCPR	Denial of permission to hold a trans rally to LGBT activists	"Coming Out" LGBT Group
HRCtee	[...] v. Russian Federation	2943/2017	No information available	No information available	21 ICCPR 26 ICCPR	Denial of permission to hold rallies on LGBT issues to LGBT activists	HRCtee, <a href="#">Table of registered cases 2017</a>
HRCtee	[...] v. Russian Federation	2953/2017	No information available	No information available	21 ICCPR 26 ICCPR	LGBT activists refused authorisation to hold rallies	HRCtee, <a href="#">Table of registered cases 2017</a>
HRCtee	[...] v. Russian Federation	2954/2017	No information available	No information available	21 ICCPR 26 ICCPR	LGBT activists refused authorisation to hold rallies	HRCtee, <a href="#">Table of registered cases 2017</a>

LGBTI Families							
HRCtee	[...] v. Albania	3031/2017	No information available	No information available	17 ICCPR 23 ICCPR 26 ICCPR	Recognition of same-sex partnership	<a href="#">Table of registered cases 2017</a>

\* According to the available information, no complaints on intersex issues have been submitted to the Treaty Bodies so far. Cases are grouped in the table by topics and in chronological order within the topics.

## Useful resources

### Background UN Information

- [General information](#) about Treaty Bodies
- Human Rights Bodies – [Complaints Procedures](#)
- Human Rights Treaties – [Status of ratification, reservations and declarations](#)
- [Country-specific information](#) on the ratification of human rights Treaties, periodic review documentation and individual complaints

### Model Treaty Body Complaint Forms

There is no particular format for individual complaints to UN Treaty Bodies. However, it is strongly recommended to follow these sources when drafting a complaint:

- For **HRCtee**, **CAT** and **CERD** – a model complaint form available in [English](#), [French](#), [Russian](#) and [Chinese](#)
- For **CEDAW** – a factsheet and a model form of submission available in [English](#), [French](#), [Spanish](#), [Russian](#) and [Chinese](#)
- For **CRPD** – a [factsheet](#) and [guidelines](#) available in English, French, Spanish, Russian, Arabic and Chinese
- For **CRC** – a model complaints form available in [English](#)
- For **CED** – a [guidance and a model form](#) for submission available in English, French, Spanish, Russian, Arabic and Chinese

### UN Treaty Bodies' Jurisprudence

- OHCHR Database: <http://juris.ohchr.org>

## Treaty Body Guides:

- OHCHR: *Factsheet #30 – The United Nations Human Rights Treaty System*, in [English](#), [Spanish](#), [French](#), [Russian](#), [Arabic](#) and [Chinese](#)
- OHCHR: *Factsheet #7 – Individual Complaint Procedures under the United Nations Human Rights Treaties*, in [English](#), [Spanish](#), [French](#), [Russian](#), [Arabic](#) and [Chinese](#)
- OHCHR: [23 FAQ about Treaty Body Complaints Procedures](#)
- International Justice Resource Center (IJRC): [Exhaustion of Domestic Remedies in the United Nations System](#)
- International Service for Human Rights (ISHR): *The Simple Guide to Treaty Bodies*, in [English](#), [Spanish](#), [French](#), [Arabic](#) and [Chinese](#)
- Open Society Justice Initiative (OSJI): [Drafting Complaints to the United Nations Human Rights Committee and Committee against Torture: Torture, Deaths in Custody, and Related Violations](#)
- World Organisation against Torture (OMCT): [A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies: Seeking Remedies for Torture Victims](#)

## ILGA World's Publications on Treaty Bodies:

- [Annual SOGIESC Treaty Body Reports](#) (published since 2014)
- [TB SOGIESC Session Reports](#) (published since 2018)
- Guide for Trans defenders on CESC, in [English](#) and [Russian](#)

## Strategic Litigation Guides:

- A4ID: [Short Guide - Strategic Litigation and Its Role in Promoting and Protecting Human Rights](#)
- Child Rights Information Network (CRIN): [Children's Rights: A Guide to Strategic Litigation](#) (2009)
- Coming Out: [Strategic Litigation as a Method for Defending and Advancing Rights of LGBT People: the experience of "Coming Out" LGBT Group \(2012-2015\)](#)
- International Human Rights Law Group: [Promoting Justice: A Practical Guide to Strategic Human Rights Lawyering](#) (2001)
- Open Society Foundations: [Advancing Public Health through Strategic Litigation](#) (June 2016)
- Open Society Justice Initiative (OSJI): [From Rights to Remedies: Structures and Strategies for Implementing International Human Rights Decisions](#) (June 2013)
- OSJI: [Global Human Rights Litigation Report](#)
- OSJI: [Strategic Litigation Impacts: Equal Access to Quality Education](#) (March 2017)
- OSJI: [Strategic Litigation Impacts: Indigenous Peoples' Land Rights](#) (April 2017)
- OSJI: [Strategic Litigation Impacts: Roma School Desegregation](#) (March 2016)
- OSJI: [Strategic Litigation Impacts: Torture in Custody](#) (November 2017)



## Useful contacts

### International Lesbian, Gay, Bisexual, Trans and Intersex Association – ILGA World

ILGA World is the world federation of national and local organisations dedicated to achieving equal rights for lesbian, gay, bisexual, trans and intersex (LGBTI) people. ILGA World is an umbrella organisation of more than 1'300 member organisations presented in six different regions: Pan Africa ILGA, ILGA-Asia, ILGA-Europe and Central Asia, ILGA-LAC (Latin America and the Caribbean), ILGA North-America and ILGA-Oceania (Aotearoa/New Zealand, Australia and Pacific Islands).

Established in 1978, ILGA World enjoys consultative status at the UN ECOSOC. As the only global federation of LGBTI organisations, ILGA World voices its agenda in various United Nations fora. ILGA World gives visibility to the struggles of its members lobbying at the Human Rights Council, helping them questioning their government's record on LGBTI rights in the frame of the Universal Periodic Review, and provides support and guidance to member organizations in their engagement with Special Procedures and Treaty Bodies.

We are providing consultations on strategies for litigation before Treaty Bodies and are open to discuss amicus submissions to the Committees for SOGIESC cases.

ILGA World's website: [ilga.org](http://ilga.org)

ILGA World's general email: [info@ilga.org](mailto:info@ilga.org)

Kseniya KIRICHENKO, Senior Officer, Women and UN Advocacy (for consultations on Treaty Bodies and strategic litigation): [kseniya@ilga.org](mailto:kseniya@ilga.org)

### Pan Africa ILGA (PAI)

The Pan Africa International Lesbian, Gay, Bisexual, Trans and Intersex Association also known as Pan Africa ILGA (PAI) is a network of organizations in Africa working to improve human rights of individuals on all grounds including sexual orientation, gender identity, expression and sexual characteristics. The unique strength of this network is that it is connected to a global movement through ILGA World. ILGA World is the International Lesbian, Gay, Bisexual, Trans and Intersex Association. ILGA serves more than 1,600 LGBTI groups from around the world.

Contact Pan Africa ILGA on [admin@panafricailga.org](mailto:admin@panafricailga.org) or +27 11 339 1139 or visit the website at [www.panafricailga.org](http://www.panafricailga.org).

## ILGA-Europe

The European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe, <https://www.ilga-europe.org>) was established as a region of ILGA World – the International Lesbian, Gay, Bisexual, Trans and Intersex Association – in 1996 and is based in Brussels. ILGA-Europe brings together 600+ full member organisations of ILGA in 54 countries from Europe and Central Asia. It seeks to defend the human rights of those who face discrimination on grounds of sexual orientation, gender identity or gender expression and sex characteristics, through advocacy and litigation at the European level; and by strengthening the LGBTI movement in Europe and Central Asia through provision of training and support to its member organisations and other lesbian, gay, bisexual, trans & intersex (LGBTI) groups on advocacy, fundraising, organisational development and strategic communications and much more. ILGA-Europe was granted consultative status with the Council of Europe in 1998 and with the United Nations Economic and Social Council in 2006.

As part of its litigation work ILGA-Europe contributes to the development of legal standards protecting rights of LGBTI people at the European level through third party intervention submissions before the European Court of Human Rights (ECtHR) and using the collective complaint procedure by the European Social Charter. In the aftermath of the judgments it supports members' efforts in the implementation of ECtHR rulings at the national level through Rule 9 submissions to the Council of Europe's Committee of Ministers. As a membership led organisation ILGA-Europe enables LGBTI activists and groups to engage in strategic litigation, through workshops and coaching for organisations interested in getting involved in strategic litigation at national, regional and international levels.

Contact ILGA-Europe at [info@ilga-europe.org](mailto:info@ilga-europe.org), or visit: <https://www.ilga-europe.org/>.

## DLA Piper

DLA Piper is an international law firm with offices in over 40 countries. As part of our pro bono practice we work to progress LGBTI rights across the globe. Our lawyers have experience assisting individuals and civil society with shadow/alternative reports and individual complaints to UN human rights Treaty Bodies, UPR reporting and utilising the human rights special mechanisms. We develop and deliver training to advocates, lawyers and governments on human rights and the UN human rights mechanisms and can create 'know your rights' educational materials on sexual orientation and gender identity. We can also help with strategic litigation and law reform work or undertake multi-jurisdictional research to help protect and enforce LGBTI rights. In a number of countries, we also provide assistance with operational issues such as registration of non-governmental organisations, tax law, fundraising laws, data and privacy and contracts.

We work with organisations and individuals in many countries, not merely those where we have an office. You can find out more about us at [www.dlapiper.com](http://www.dlapiper.com). If you'd like to talk to us about receiving pro bono legal assistance, please contact either our pro bono practice or Iris: our global LGBT+ Network.

### International Pro Bono Practice

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## Human Dignity Trust

The *Human Dignity Trust* is an organisation of international lawyers providing free technical legal assistance to local human rights defenders who want to use domestic, regional or international courts or tribunals to challenge laws that criminalise consensual same-sex sexual conduct between adults or related governmental actions that are justified on the basis of the criminal law, such as restrictions on freedom of association, the use of forced medical procedures or failures to protect LGBT people from violence. The Trust works globally in criminalising jurisdictions, with a particular focus on Commonwealth jurisdictions. It provides extensive support on legal strategy, legal drafting, submission of legal cases and hearing preparation for counsel, as well as with local media and communications strategies around the litigation.

Contact the Trust on [info@humandignitytrust.org](mailto:info@humandignitytrust.org) or +44 207 419 3770 or visit the website at [www.humandignitytrust.org](http://www.humandignitytrust.org).

### **International Service for Human Rights (ISHR)**

The International Service for Human Rights (ISHR) is an independent, non-governmental organisation dedicated to promoting and protecting human rights. It achieves this by supporting human rights defenders, strengthening human rights laws and systems, and leading and participating in coalitions for human rights change. ISHR's theory of change is founded on the principal that human rights defenders - as the essential agents - engaging at the International and regional human rights laws and systems will create national-level human rights progress and change. ISHR focuses on human rights defenders who are most at risk, including women human rights defenders and defenders of lesbian, gay, bisexual, trans and intersex rights.

As part of its work to strengthen human rights laws and systems, ISHR participates in strategic litigation at international, regional and national levels in an effort to ensure that human rights defenders have the freedom to effectively and safely protect and promote human rights. Through strategic advocacy and interventions, ISHR seek to strengthen the recognition of the UN Declaration on human rights defenders and other international instruments, such as the Yogyakarta Principles and the Yogyakarta Principles plus 10, as a binding source of international law; to ensure national and regional instruments are interpreted, applied and developed, in conformity with those instruments; and that those instruments are judicially incorporated into regional and national law.

Contact ISHR on [information@ishr.ch](mailto:information@ishr.ch); +41 22 919 71 00 [www.ishr.ch](http://www.ishr.ch).

### **SOGIE Unit – Centre for Human Rights, University of Pretoria**

Established in May 2016, the SOGIE Unit's mandate is to advocate for and work towards equality inclusion non-discrimination, non-violence, and non-heterosexism for lesbian, gay, bisexual, transgender, intersex, queer, questioning, and asexual persons (LGBTIQ+ persons). This is done through hate-crime prevention and diligence in hate-crime prosecution; legal aid for LGBTIQ+ victims of discrimination and violence; LGBTIQ+ empowerment through human rights education and affirmative Masters and Doctorate scholarships; and country-based, regional and international advocacy actions.

William Aseka, [william.aseka@up.ac.za](mailto:william.aseka@up.ac.za)