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Evidence of Systemic and Unlawful Promotion of Sexual Orientation and Gender Identity by UN Secretariat, Agencies, and other Entities

Recent debates on the use of the terms “sexual orientation” and “gender identity” within the United Nations in reference to individuals who identify as lesbian, gay, bisexual, and transgender (LGBT) are often conducted with the assumption that these notions are clearly defined in science and law. In fact, there is no scientific consensus on how to define sexual orientation, very few countries treat individuals that identify as LGBT as a discrete class of persons, and many proscribe homosexual conduct because of moral and public health concerns.

International law does not recognize the notion of “sexual orientation and gender identity” (SOGI). There is no binding UN treaty that mentions sexual orientation and gender identity, and no UN treaty can be fairly interpreted to include these notions. Nor is there a colorable argument that a customary international norm exists with regard to these notions.¹

Nevertheless, there is a widespread shift within the UN system to promote SOGI as categories of nondiscrimination and the basis for novel “human rights,” independent of the lack of consensus that any such standards should exist.

The General Assembly

Only two General Assembly resolutions mention SOGI. The first in the biennial resolutions on extrajudicial, summary, or arbitrary executions. In 2010, this resolution mentioned sexual orientation², and in 2012, gender identity was added.³ In 2021, the General Assembly also adopted a resolution on UN support for election integrity that includes the phrase.⁴ Neither of these resolutions can be considered to establish a new customary norm establishing homosexuality and transgender issues as human rights since they are not binding. Moreover, over 50 member states objected to the inclusion of language on “sexual orientation and gender identity” in these resolutions.

UN Secretariat Reports Promoting SOGI

The UN Secretariat has been very active in promoting SOGI in recent years. Many reports produced annually by the Secretary General on social issues promote homosexuality and transgender issues. Below are some examples:

Report of the Secretary-General on conflict-related sexual violence (2022 and 2021) – Refers to victims being “targeted on the basis of actual or perceived sexual orientation or gender identity,” and persons with “diverse sexual orientations or gender identities.”⁵

Report of the Secretary-General on women, peace, and security (2020) – While the inclusion of “sexual orientation” exceeds UN consensus, the mention of “gender identity” in a report pertaining specifically to women represents a continued erosion of women-centric policy areas by the replacement of “women” with “gender” or the redefinition of “women” to include biological males by way of “gender identity”: “Moving forward, more attention must be paid to the intersecting forms of discrimination that many women face based on race, ethnicity, ability, economic status, sexual orientation and gender identity and to the removal of structural barriers to increase the participation of a diverse complement of women in preventing and resolving conflict and building peace.”⁶

UN Secretary-General Global Humanitarian Response Plan for COVID-19 (2020) – “Greater harm can also be expected for lesbian, gay, bisexual, transgender, and intersex (LGBTI) people who typically face prejudice, discrimination and barriers to care, due to their sex, sexual orientation, and/or gender identity.”⁷

The Office of the High Commissioner for Human Rights (OHCHR)

The OHCHR has been described as “the public face of LGBTI rights” at the UN.⁸ It has a dedicated webpage to highlight the work of the office to promote homosexuality and transgender issues.⁹ The webpage lists publications, statements, events, and training materials the office prepares to promote LGBT issues. OHCHR’s role is central to the promotion of LGBT issues because acts as the secretariat for the entire UN human rights system, including treaty bodies, special procedures, and the Universal Periodic Review. In addition, UN agencies consult the OHCHR to address LGBT issues.

The OHCHR produced an annual report to track the overall work of the UN system to promote homosexuality and transgender issues:

The Role of the United Nations in Combatting Discrimination and Violence against Lesbian, Gay, Bisexual, Transgender and Intersex People: A Programmatic Overview (2019) — According to the description of the document provided by OHCHR, this document “provides a snapshot of the work of the OHCHR, ILO, IOM, UNAIDS (the Joint UN Programme on HIV/AIDS), UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UNRISD, UN-Women, WHO and the World Bank in ending discrimination and violence based on sexual orientation, gender identity, sex characteristics. It also highlights related work in support of lesbian, gay, bisexual, transgender (LGBT) and intersex communities around the world. This overview also provides key contacts and email addresses from each

UN entity, links, references to documents, reports and other related materials.” The annual report was last prepared in 2019. It is unclear why the OHCHR has not updated it since.¹⁰

Most of the actions of the OHCHR to promote LGBT issues are not pursuant to any specific Beyond its formal mandate of UN member states. They are carried out unilaterally with funding from donor states and private foundations without transparency or oversight.

The most visible unilateral initiative of OHCHR to promote homosexual and transgender issues is the “Free and Equal” campaign. Drawing heavily on the work of treaty monitoring bodies and special mandate holders, which operate largely without accountability and frequently exceed their mandates in promoting controversial social agendas in their nonbinding reports and recommendations, which are nevertheless packaged as general guidelines by OHCHR, then echoed by the various UN agencies. The rationale is expressed thusly:

Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law (2012) – This report asserts that it is “neither radical nor complicated” to extend basic human rights to all persons, but that “deeply embedded homophobic attitudes, often combined with a lack of adequate legal protection against discrimination on grounds of sexual orientation and gender identity” expose people who identify as LGBT to violence and discrimination. “Concerns about these and related violations have been expressed repeatedly by United Nations human rights mechanisms since the early 1990s. These mechanisms include the treaty bodies established to monitor States’ compliance with international human rights treaties, and the special rapporteurs and other independent experts appointed by the former Commission on Human Rights and its successor the Human Rights Council to investigate and report on pressing human rights challenges.”¹¹

The second edition of Born Free and Equal, published in 2016, goes further:

Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law – Second Edition (2019) – “States have a positive obligation to provide legal recognition to couples, regardless of sexual orientation, gender identity and sex characteristics, as well as to their children. Legal recognition may take various forms, ranging from civil unions and civil partnerships to marriage.” “States should ensure the right to legal recognition of gender without the requirement of dissolution of marriage or civil partnership. Legislation and procedures regulating marriage and civil unions should not be based on the sex assigned to a person at birth and States should also remove other restrictions on relationship recognition, parenting or adoption on the basis of a person’s sex, gender identity or expression, including for persons who are transgender, intersex and/or non-binary.”¹²

Special procedures operating under OHCHR have also been active in promoting SOGI, as discussed below.

UN Agencies Promoting SOGI

Numerous UN agencies routinely promote SOGI concepts despite the absence of a consensual mandate to do so, and frequently cite each other and the work of human rights experts operating under the Office of the High Commissioner for Human Rights (OHCHR). Many of the publications issued on these topics come from multiple agencies, including UNAIDS, which is itself a collaboration between agencies.

Several UN agencies have integrated the promotion of “sexual orientation and gender identity” in their “Strategic Plans (2022-2025).” Strategic Plans are not required for UN agencies under their mandates or specific governing documents, but recent UN efforts at development reform call on agencies to integrate the Sustainable Development Goals into their strategic plans. This has led UN agencies to develop these new internal normative guidelines that seemingly displace or replace guidance by the UN General Assembly with strategic plans adopted by the Executive Boards of UN agencies. When it comes to the issue of “sexual orientation and gender identity” these strategic plans go beyond what is agreed in General Assembly resolutions.¹³

In addition to the strategic plans, examples of multi-agency publications unilaterally promoting SOGI with the support of donor states and private foundations include:

Inter-Agency Field Manual on Reproductive Health in Humanitarian Settings (2018)

– The manual, which has become the standard UN agency implementing tool for language about “sexual and reproductive health” includes: promoting LGBTQIA “outreach” and “involvement” in policies and programmes (p. 20, 21, 22, 23, 24, 25, 26, 35, 47, 62, and 63) and “Sexual orientation and gender identity” programming (p. 13, 22, 35).¹⁴

Joint UN statement on Ending violence and discrimination against lesbian, gay, bisexual, transgender and intersex people (2015) – Twelve UN entities (ILO, OHCHR, UNAIDS Secretariat, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN Women, WFP and WHO) issued a statement calling for the elimination of laws that “criminalize same-sex conduct between consenting adults,” “criminalize transgender people on the basis of their gender expression,” or are “used to arrest, punish or discriminate against people on the basis of their sexual orientation, gender identity or gender expression.” It also called for the formal prohibition of discrimination on grounds of SOGI and the use of public education and training to combat prejudice.¹⁵

Implementing Comprehensive HIV and STI Programmes with Men Who Have Sex with Men: Practical Guidance for Collaborative Interventions (2015) – This report issued by UNFPA, Global Forum on MSM & HIV, UNDP, WHO, USAID, and the World Bank, uses “MSM,” or “men who have sex with men,” as a term used to distinguish the practice of high-risk behavior from self-identification as gay or bisexual. It notes that MSM “should be understood to include young men, i.e. those in the age range 10–24 years, according to the United Nations definition of young people.” Among its recommendations are a call for “more research on enema usage and rectal fisting,”¹⁶ and it references the Yogyakarta Principles, a document attempting to situate SOGI in the context of international human rights obligations.¹⁷

World Health Organization (WHO)

The World Health Organization was the first UN agency to call for the decriminalization of homosexuality in a note verbale issued by its director-general in 1990.¹⁸ For decades, the WHO has campaigned against discrimination against “key populations” at high risk of HIV/AIDS, including MSM, people engaged in prostitution, and transgender-identified persons. In 2018, WHO announced that its updated diagnostic manual (ICD-11 or International Classification of Diseases, 11th edition) would remove gender dysphoria/transsexualism from being classified as a disorder and move “gender incongruity” into a newly-created chapter on sexual health. This enabled the diagnosis of the condition for purposes of prescribing “gender-affirming” medical treatments such as surgery and hormones, while removing a disorder classification regarded by activists as stigmatizing.¹⁹ It goes into effect in January 2022.

WHO observance of World Sexual Health Day (2021) – “Enabling all people to achieve sexual health and well-being requires tailoring normative guidance and national programming to meet their specific needs and lived experience: welcoming and inclusive of people with diverse sexual orientations, gender identities and gender expressions, sexual characteristics, people living with HIV, and with disability.”²⁰

WHO Technical Guidance on COVID-19 (2020) – As a component of the maintenance of essential health services during the pandemic, WHO urged countries and other stakeholders to “ensure adequate access to essential commodities for people under long-term treatment” including “hormonal therapy as part of gender-affirming care).²¹

WHO Manual on Sexual health, Human Rights and the Law (2015) – “International and regional human rights bodies increasingly recognize the protection of individuals from discrimination on the basis of sexual orientation and gender identity, to ensure that unmarried same-sex couples are treated in the same way and entitled to the same benefits as unmarried heterosexual couples. An increasing number of countries have instituted legal reforms making domestic partnerships or civil unions more equal to marriage in terms of benefits and social protection. A number of national courts have stated in their decisions that non-discrimination is a fundamental aspect of personhood and that the right to non-discrimination and equality imply that cohabiting same-sex partners should be able to partake of the status, entitlements and responsibilities accorded by law to cohabiting, opposite-sex couples.”²²

UNAIDS

HIV and Transgender and Other Gender-Diverse People: Human Rights Fact Sheet Series (2021) – “Gender-affirming care, including hormone therapy or affirmation surgery, if chosen, can help transgender and gender-diverse persons express themselves and be recognized as their self-identified gender. Where chosen, transgender and gender-diverse people should have access to good quality gender-affirming care and information.”²³

UNAIDS calls on governments to stop arbitrary and discriminatory arrests of LGBTI people and to protect their human rights (2020) – “Ahead of the International Day against Homophobia, Transphobia and Biphobia (IDAHOT), on 17 May, UNAIDS is calling on governments to immediately stop arbitrary and discriminatory arrests of lesbian, gay, bisexual, transgender and intersex (LGBTI) people based on their sexual orientation or gender identity and to enact laws to protect their human rights.”²⁴

UN Women

UN Women Statement for the International Day Against Homophobia, Biphobia, Intersexphobia, and Transphobia (2022). Among other statements the UN Women statement includes the following: “UN Women stands in solidarity with all people of diverse sexual orientations, gender identities, gender expressions and sex characteristics (SOGIESC). We recognize that LGBTIQ+ rights depend on autonomous decision-making over matters of one’s body and health. In many contexts these rights remain out of reach.”²⁵

Twelve small actions with big impact for Generation Equality (2020). “It might not seem like a big deal, but terms such as ‘male or female’ and ‘women or men’ exclude non-binary and intersex people who don’t fall into any of these categories. Diverse gender identities have always existed in every culture, and ensuring the rights of transgender, genderqueer, non-binary individuals and more—who often face horrifying violence and discrimination across the world—is an inherent part of gender equality. (Generation Equality pro tip: Check out the ‘Genderbread Person’ to learn the difference between sex, gender, gender identity and gender expression).”²⁶

UN Women hosts first high-level event on gender diversity and non-binary identities at UN headquarters (2019) – “The UN has a unique voice to support the human rights and fundamental freedoms of all people, especially those who may have their backs against the wall,” said [former UN Women Executive Director] Ms. [Phumzile] Mlambo-Ngcuka. “We speak up against human rights violations everywhere, so it’s natural to us to support the LGBTI agenda... Women and people with nonbinary gender identities must have their own spaces in which to speak, to exercise power, to act, and to own and drive their own movement.”²⁷

UN Women Statement for International Day Against Homophobia, Transphobia and Biphobia (2018) – “Inclusion means not being bound by binary definitions of gender, but recognizing all forms of gender identity and expression. Transgender people, those with non-binary gender identities and gender non-conforming people must be acknowledged and afforded the same consideration and access to rights as anyone else. Inclusivity is fundamental to our work; and strengthens the collective goals of both the women’s rights and LGBTI rights movements.”²⁸

United Nations Population Fund (UNFPA)

State of World Population Report: My Body Is My Own (2021) – “An important part of achieving full equality under the law is the ability of LGBTI individuals to form unions with the same legal standing as that of opposite sex unions: “The United Nations and

regional human rights bodies... have urged States to provide legal recognition of same-sex couples and their children and ensure that same-sex couples are not discriminated against compared to different-sex couples... It is up to the State to determine the form of recognition, but whatever form is chosen, there should be no difference in treatment between same-sex and different-sex couples” (United Nations, 2016). This recognition is far from being achieved throughout the world.”²⁹

Observance of International Day Against Homophobia, Transphobia and Biphobia (2021) – “As violence against transgender people surges and states pass anti-trans legislation – including bans on gender-affirming medical care such as hormone therapy and surgery – marking the day as one that brings attention to the discrimination the LGBTQI (lesbian, gay, bisexual, queer, intersex) community faces is as urgent as ever.[...] UNFPA works to ensure sexual and reproductive rights and choices for all, irrespective of sexual and gender orientation, identity, expression or characteristics. Human dignity is a right that should be denied to no one.”³⁰

United Nations Children’s Fund (UNICEF)

Theory of Change, UNICEF Strategic Plan, 2022–2025 (2021) – “This work recognizes intersections with the needs of girls and women facing social exclusion and marginalization – including those living in poverty, those facing racial discrimination, those on the move, and those with disabilities – and responds to the needs of children and young people regardless of sexual orientation or gender identity.”³¹

Gender Dimensions of Violence Against Children and Adolescents (2020) – “Restrictive social norms about gender identity and sexual orientation also contribute to violence and discrimination against LGBTQI+ children, adolescents and adults. [...] Researchers and the UN High Commissioner for Human Rights have documented high levels of violence and discrimination against LGBTQI+ individuals on the basis of sexual orientation and gender identity worldwide. In many countries, the situation is exacerbated by legal frameworks that fail to protect LGBTQI+ children and adolescents from violence or increase the risk of harassment and violence by criminalizing same-sex relationships. A UNICEF report noted evidence that LGBTQI+ individuals are often rejected by their families and forced into homelessness, placing them at even greater risk of various types of violence, including sexual exploitation.”³²

UN Agency-Led Review Conferences Promoting SOGI

In recent years, conferences reviewing the outcomes of major consensus agreements such as the ICPD in 1994 and the Beijing women’s conference in 1995 have shifted away from being held under the auspices of the General Assembly at its headquarters and producing a consensus outcome. This format had largely prevented normative shifts on controversial issues away from the original agreements. Instead, the twenty-fifth anniversary observances of Cairo and Beijing were coordinated by UNFPA and UN Women respectively, were held outside UN headquarters, and produced no consensus document, but rather a collection of pledges from countries and other stakeholders, many of which pertained to issues like SOGI which would never have enjoyed

consensus. The 2019 Nairobi Summit commemorating ICPD issued a statement including a reference to “sexual and reproductive health and rights” (SRHR), which have never been agreed in any global context, with a footnote suggesting “this could be further guided by the expanded definition of SRHR interventions, as proposed in the Report of the Guttmacher/Lancet Commission on sexual and reproductive health and rights.”³³

The same 2018 Report of a Guttmacher/Lancet Commission on SRHR observed how regional reviews of ICPD and Beijing progressed further than the 2030 Agenda in explicitly calling for abortion and LGBT rights and included non-internationally agreed language on sexual orientation, gender identity, comprehensive sexuality education, and other controversial subjects, without adequate caveats or qualification with regard to sovereignty, parental rights, culture, religion, and tradition, as in the ICPD.³⁴

In 2021, the 1995 Beijing conference was commemorated by two events held in Mexico and France called the “Generation Equality Forum.” As with Nairobi, the events were tightly curated and described as a “champions-only space” by activists hoping to see further promotion of SRHR.³⁵ One of its official “action coalitions” focused on bodily autonomy and SRHR, and it defined its target as: “Girls, adolescents, women, transgender and gender non-binary people can freely access comprehensive SRHR information, education, services and commodities and are supported by their peers, families and societies to take decisions about their bodies, sexuality and reproduction free from coercion, violence, and discrimination.”³⁶

UN Treaty Body Promotion of SOGI in National Recommendations

In their concluding observations to States party to human rights conventions, the treaty monitoring bodies have assembled a consistent, and expanding, record of promoting SOGI, despite the fact that none of the treaties mentioned these concepts in their text, and any attempt to include such a reference would have been strongly rejected by the UN Member States who negotiated the treaty texts in the first place. However, UN agencies and experts frequently cite the work of treaty bodies to justify their promotion of SOGI, and quote their concluding observations while doing so. In particular, the OHCHR relies heavily on the treaty bodies’ output to justify SOGI as human rights categories.

Examples of SOGI promotion by treaty bodies include the following:

Human Rights Committee (monitoring ICCPR):

- » Review of Dominica, 2020: “The State party should take appropriate steps to: (a) Address discriminatory attitudes and stigma towards lesbian, gay, bisexual and transgender persons, including through comprehensive awareness-raising and sensitization activities; (b) Enact comprehensive legislation providing full and effective protection against discrimination in all spheres and containing an exhaustive list of prohibited grounds of discrimination, including sexual orientation and gender identity; (c) Amend all relevant laws, including sections 14 and 16 of the 1998 Sexual Offences Act, in order to decriminalize consensual sexual relations between adults of the same sex; (d) Consider restricting any use of legal defences that are based solely upon a victim’s sexuality or gender identity.”³⁷

- » Review of Tunisia, 2020: “The State party should repeal article 230 of the Criminal Code and provide law enforcement officials with training on respect for diverse sexual orientations and gender identities. In addition, it should recognize associations for the protection of the rights of lesbian, gay, bisexual, transgender and intersex persons, combat discrimination and harassment of sexual minorities and prohibit intrusive medical examinations that have no medical justification.”³⁸
- » Review of Czechia, 2019: “The State party should: (a) review relevant legislation to fully ensure the equal treatment of same-sex couples, including by considering recognizing their right to joint adoption of children; and (b) eliminate abusive requirements for legal gender recognition, including mandatory sterilization and psychiatric diagnosis, and provide for and implement effectively a quick, transparent and accessible gender recognition procedure on the basis of self-identification by the applicant.”³⁹

Committee on Economic, Social, and Cultural Rights (monitoring CESCR):

- » Review of Cameroon, 2019: “The Committee recommends that the State party decriminalize consensual homosexual relations and repeal article 347-1 of the Criminal Code, along with all other legal provisions that are discriminatory with regard to sexual orientation or gender identity. It also recommends that the State party combat discrimination and stigmatization of lesbian, gay, bisexual, transgender and intersex persons by, inter alia, conducting awareness-raising campaigns and that it ensure that no one is discriminated against in terms of the enjoyment of economic, social and cultural rights, in particular with regard to access to health services, on the basis of sexual orientation or gender identity.”⁴⁰
- » Review of Cabo Verde, 2018: “The Committee recommends that the State party take steps towards the legal formalization of same-sex unions, with a view to offering same-sex couples the same rights and protection as heterosexual couples.”⁴¹
- » Review of Republic of Korea, 2017: “The Committee recommends that the State party take effective measures to eliminate de jure and de facto discrimination against lesbian, gay, bisexual, transgender and intersex persons. In particular, it recommends that the State party: (a) Abrogate the provision of the military criminal act, which criminalizes same-sex acts; (b) Revise legal and regulatory provisions that are discriminatory or have a discriminatory effect, such as those relating to social security, reproductive health and housing; (c) Ensure that the comprehensive anti-discriminatory law to be adopted also prohibits discrimination on the grounds of sexual orientation and gender identity; (d) Conduct awareness-raising campaigns to counter prejudices regarding lesbian, gay, bisexual, transgender and intersex persons.”⁴²

Committee on the Elimination of Discrimination against Women (monitoring CEDAW):

- » Review of Zimbabwe, 2020: “The Committee recommends that the State party [...] eliminate intersecting forms of discrimination against women and girls with disabilities, as well as against lesbian, bisexual and transgender women and intersex persons, raise public awareness about their human rights and prosecute and adequately punish the perpetrators of violence against them.”⁴³

- » Review of Antigua & Barbuda, 2019: “The Committee recommends that the State party enact comprehensive anti-discrimination legislation that prohibits all forms of discrimination and ensure equal rights and opportunities for lesbian, bisexual and transgender women, including through the decriminalization of same-sex relations between consenting adults. The Committee also recommends that the State party ensure access for lesbian, bisexual and transgender women to, inter alia, employment, health care and social services without discrimination or stigma.”⁴⁴
- » Review of Honduras, 2016: “The Committee recommends that the State party adopt coordinated and adequately funded measures to eliminate patriarchal attitudes and discriminatory stereotypes regarding the roles and responsibilities of women and men in society and in the family. It also recommends that the State party address intersecting forms of discrimination against women, based on their age, ethnic origin, socioeconomic status, rural or urban location, or being lesbian, bisexual, transgender or intersex.”⁴⁵

Committee Against Torture (monitoring CAT):

- » Review of Bangladesh, 2019: “Repeal Section 377 of the Penal Code of Bangladesh that criminalizes “unnatural behaviour” which the State party uses to prohibit consensual same-sex sexual conduct.”⁴⁶
- » Review of the Uzbekistan, 2019: “The State party should undertake prompt, effective and impartial investigations of all allegations of torture and ill-treatment perpetrated against lesbian, gay, bisexual or transgender persons by or with the consent or acquiescence of public officials. The State party also should take measures to prevent violence and discrimination against lesbian, gay, bisexual or transgender persons on the basis of their sexual orientation and gender identity, including by repealing article 120 of the criminal code and ensuring that its complaints mechanisms are accessible to and capable of facilitating effective protection for lesbian, gay, bisexual or transgender persons who are victims of or at risk of violence.”⁴⁷
- » Review of the Russian Federation 2018: “The State party should: (a) Ensure that those responsible for violent attacks and hate crimes against persons on the basis of their sexual orientation or gender identity, in particular with respect to the violent incident in Chechnya in March 2017, are charged, investigated, prosecuted and, if found responsible, punished; (b) Repeal the law prohibiting “propaganda of non-traditional sexual relations” which promotes stigma and prejudice against lesbian, gay, bisexual, transgender and intersex persons; (c) Provide training to law enforcement officials and the judiciary on detecting and combating hate-motivated crimes, including those motivated by sexual orientation or gender identity.”⁴⁸

Committee on the Rights of the Child (monitoring CRC):

- » Review of Costa Rica, 2020: “Strengthen its efforts to combat cyberbullying and harassment against lesbian, gay, bisexual, transgender and intersex children and ensure child-friendly accessible complaint mechanisms in schools, or through electronic platforms safeguarding the privacy of child victims; Ensure unified data collection

concerning violence against children, disaggregated by age, sex, disability, geographical location, sexual orientation and gender identity, ethnic and national origin, and socioeconomic background, and use such data as the basis of public policies.”⁴⁹

- » Review of Iran, 2016: “Furthermore, the Committee recommends that the State party decriminalize same-sex relations and take measures to eliminate discrimination against LGBTI children.”⁵⁰
- » Review of the Gambia, 2015: “Ensure that children who belong to LGBTI groups and children from LGBTI families are not subjected to any form of discrimination, and repeal the legal provisions criminalizing homosexuality.”⁵¹

Committee on the Rights of Persons with Disabilities (monitoring CRPD):

- » Review of France, 2021: “Prohibit multiple and intersectional discrimination on the grounds of disability and its intersection with other grounds, such as age, sex, race, ethnicity, gender identity, sexual orientation, or any other status, and adopt strategies to eliminate multiple and intersectional discrimination.”⁵²
- » Review of Australia, 2019: “Ensure that women with disabilities and lesbian, gay, bisexual, transgender, intersex and queer persons with disabilities have equal access to assisted reproductive technologies.”⁵³
- » Review of India, 2019: “The State party should promote the human rights model of disability, and address prejudices and the use of derogatory language against persons with disabilities in society and multiple and intersecting discrimination against intersex persons and on the grounds, inter alia, of sexual orientation and gender identity.”⁵⁴

Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (monitoring CMW):

- » Review of Guatemala, 2019: “Focus on combating social stigmatization and sanction all forms of aggression and violence against migrants, with particular emphasis on protecting women, lesbian, gay, bisexual, transgender and intersex persons, and children victims of assault, and develop campaigns against machismo and homophobia and promote social inclusion and respect for diversity.”⁵⁵

Committee on the Elimination of Racial Discrimination (monitoring CERD):

- » Review of Argentina, 2016: “The Committee recommends that the State party take into account its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and that it mainstream a gender perspective in all its policies and strategies for combating racial discrimination in order to address the multiple forms of discrimination faced by, in particular, indigenous, Afro-descendent and migrant women, including lesbian, gay, bisexual, transgender and intersex persons and women belonging to other minorities. It also recommends that the State party compile disaggregated statistics on this subject.”⁵⁶

As is evident from the examples above, UN human rights treaty bodies have frequently and explicitly issued directives to sovereign Member States to decriminalize same-sex sexual behavior, include SOGI as categories of nondiscrimination in law, conduct public awareness campaigns to promote tolerance on the basis of SOGI, and recognize in law transgender status, same-sex marriage, and the formation of families via adoption or assisted reproductive technologies for same-sex couples. UN treaty bodies claim to do these things with the authority of enforcing a binding agreement, referring to their concluding observations as “jurisprudence.”

As noted above, all but one of the nine committees monitoring the core UN human rights treaty bodies have exceeded their mandates with regard to SOGI. The extent to which certain treaty bodies have done so, both in scope and in frequency of repetition, as shown in the table below:

TREATY	YEARS REVIEWED	CUMULATIVE INSTANCES OF SOGI LOBBYING (AS OF AUG 2022)	PERCENTAGE OF CONCLUDING OBSERVATIONS SINCE 2015 INCLUDING SOGI LOBBYING
ICCPR	1977-present	195	88% (97 of 110)
ICESCR	1980-present	90	60% (51 of 85)
CEDAW	1983-present	123	58% (90 of 156)
CAT	1989-present	53	34% (31 of 90)
CRC	1993-present	85	58% (71 of 122)
CRPD	2010-present	20	24% (20 of 82)

As Albert Trithart notes in a recent publication by the American Peace Institute, since 1994, “all nine treaty bodies have made references and recommendations related to SOGIESC [sexual orientation, gender identity, expression, and sexual characteristics]. Over time, these have increased in number and become more specific, culturally aware, geographically comprehensive, and inclusive of transgender and intersex people. These have helped entrench rights related to SOGIESC in international human rights law.”⁵⁷

UN Special Procedures’ Promotion of SOGI

The special mandate holders who operate under the umbrella of the Office of the High Commissioner for Human Rights (OHCHR) are, like the treaty body members, independent experts who are not compensated for their work, but do receive support and staff to assist in carrying out their mandates. Like the treaty bodies, these experts have increasingly exceeded those mandates with impunity with regard to promoting SOGI.

Special rapporteurs have been described as “an extremely helpful tool in the beginnings of SOGI advocacy at the UN in the early 2000s, when no other mechanism was ready to take up these issues.”⁵⁸

In addition to using their positions as UN experts to influence the national and state legislative process with regard to SOGI in individual countries, UN mandate holders have also used their

annual reports to promote SOGI in the context of international human rights. These, like treaty body concluding observations, are frequently cited in the reports of various UN agencies. Some examples include:

Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (2021) – “The Independent Expert wishes to reiterate the recommendation that States provide access to legal recognition of gender identity in a manner consistent with the rights to freedom from discrimination, equal protection of the law, privacy, identity and freedom of expression, and adopt all necessary measures so that such recognition: (a) Is based on self-determination by the applicant; (b) Is a simple administrative process; (c) Is not connected with abusive requirements, such as medical certification, surgery, treatment, sterilization or divorce; (d) Includes the acknowledgement and recognition of non-binary identities in their full diversity and specificity; (e) Ensures that minors have access to recognition of their gender identity.”⁵⁹

Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2021) – “The Special Rapporteur emphasizes the importance of access to dignified gender affirming treatment for trans and gender-diverse children and adolescents” “The Special Rapporteur observes a global patriarchal culture, a regressive climate and pushback in the area of sexual and reproductive health rights and opposition to gender equality. Gains made in the past decades in these areas are at risk of being rolled back, with the rights and perspectives of women, girls and LGBTIQ+ persons sidelined.”⁶⁰

Report of the Special Rapporteur on freedom of religion or belief (2020) – “The Special Rapporteur recommends that States: [...] Repeal discriminatory laws, including those enacted with reference to religious considerations, that criminalize adultery, that criminalize persons on the basis of their actual or perceived sexual orientation or gender identity or expression, that criminalize abortion in all cases, or that facilitate religious practices that violate human rights; [...] The Special Rapporteur also recommends that: Faith leaders publicly oppose expressions of hostility against, and negative stereotypes of, women, girls, LGBT+ persons and human rights defenders promoting gender equality, including by faith leaders, and express solidarity with and support for women, girls and LGBT+ persons.”⁶¹

Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (2020) – “Adopt and facilitate health-care and other services related to the exploration, free development and/or affirmation of sexual orientation and/or gender identity, with a focus on addressing the conflicts that may arise between a patient’s orientation, identity and religious, social, or internalized norms and prejudices, with a focus on identity exploration and development, reducing distress and the need to address “minority stress”, as well as focusing on active coping and social support and the concept of affirmation.”⁶²

Special mandate holders often release joint statements promoting SOGI including:

UN experts urge religious leaders to show respect and compassion for LGBT persons (2021) – “These principles are at the core of the defense of human rights of LGBT persons, and LGBT rights defenders should be free to defend and promote the rights and freedoms of their community in a safe and enabling environment, particularly when relating to persons, communities and populations that live in the intersection of identities that create particular risk of violence and discrimination. For example, the right to freedom of religion or belief and the right to live free from violence and discrimination based on sexual orientation and gender identity should also be ensured by States in all places in which persons are under the custody of the State, such as places of deprivation of liberty, and in places where the State maintains regulatory attributions, such as education and health-care settings.”⁶³

COVID-19: The suffering and resilience of LGBT persons must be visible and inform the actions of States (2020) – This statement by 96 UN human rights experts was issued on the International Day against Homophobia, Transphobia and Biphobia: “We call on States to pursue all means necessary - including conducting research, adopting legislation, public policy, and ensuring access to justice mechanisms - to ensure that this public health emergency will neither exacerbate existing misconceptions, prejudices, inequalities or structural barriers, nor lead to increased violence and discrimination against persons with diverse sexual orientations and gender identities.”⁶⁴

Endnotes

- 1 The Vienna Convention on the Law of Treaties (VLCT) provides a canon to interpret international treaties. According to the VLCT, interpretations must be made in “good faith” and on the basis of the “ordinary” meaning of the terms of the treaty and the overall “object and purpose” of the treaty at the time of its negotiation. No UN human rights treaty includes the terms “sexual orientation” or “gender identity” in any form, nor, as a discussion of the context and drafting histories for the respective treaties will show, could it be interpreted in good faith to convey or imply such a right. Furthermore, during the negotiation of human rights treaties, many states had laws restricting or outlawing sodomy. None had laws recognizing same-sex legal arrangements or recognizing “gender identity” other than biologically determined sex. In light of this, and the fact that multiple countries proscribe homosexual conduct, also no customary international law could exist supporting the notion that consensual sex between adults of the same sex is a protected right or freedom, or that states should promote social acceptance for homosexuality, nor that a person would be able to change their anatomy and legal identity to suit their subjective perception of “gender identity” or compel its recognition by others.
- 2 Available at: <https://undocs.org/A/RES/65/208>
- 3 Available at: <https://undocs.org/A/RES/67/168>
- 4 Available at: <https://undocs.org/A/RES/76/176> Available at: <https://daccess-ods.un.org/tmp/5688386.55948639.html>.
- 5 Available at: <https://undocs.org/S/2021/312>
- 6 Available at: <https://undocs.org/en/S/2020/946>
- 7 UN Secretary-General Global Humanitarian Response Plan for COVID, See p. 27 of the Plan, available at: <https://www.unocha.org/sites/unocha/files/Global-Humanitarian-Response-Plan-COVID-19.pdf>
- 8 Trithart, Albert. “A UN for All? UN Policy and Programming on Sexual Orientation, Gender Identity and Expression, and Sex Characteristics. International Peace Institute, 2021. Available at: <https://www.ipinst.org/wp-content/uploads/2021/02/A-UN-for-All.pdf>
- 9 Available at: <https://www.ohchr.org/en/sexual-orientation-and-gender-identity>
- 10 Available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Discrimination/LGBT/UN_LGBTI_summary_2019.pdf

- 11 OHCHR. Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law, 2012. Available at: <https://www.ohchr.org/documents/publications/bornfreeandequalallowres.pdf>
- 12 OHCHR. Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law – Second Edition, 2019. Available at: https://www.ohchr.org/Documents/Publications/Born_Free_and_Equal_WEB.pdf
- 13 Available at: https://c-fam.org/friday_fax/unicef-endorses-sexual-autonomy-for-kids-biden-approves/
- 14 Available at: <https://iawgfieldmanual.com/manual>
- 15 Available at: <https://www.ohchr.org/en/issues/discrimination/pages/jointlgbtstatement.aspx>
- 16 Available at: <https://www.unfpa.org/publications/implementing-comprehensive-hiv-and-sti-programmes-men-who-have-sex-men>
- 17 Available at: http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf
- 18 Trithart, Albert, *ibid.*
- 19 Available at: <https://icd.who.int/en>
- 20 Available at: <https://www.who.int/news-room/events/detail/2021/09/04/default-calendar/world-sexual-health-day>
- 21 WHO. Maintaining essential health services: operational guidance for the COVID-19 context: interim guidance (1 June 2020). Available at: https://apps.who.int/iris/bitstream/handle/10665/332240/WHO-2019-nCoV-essential_health_services-2020.2-eng.pdf
- 22 WHO, Sexual health, Human Rights and the Law, available at: https://apps.who.int/iris/bitstream/handle/10665/175556/9789241564984_eng.pdf;jsessionid=2A8148DADC43D8E93D31E9239F18F8BB?sequence=1
- 23 Available at: https://www.unaids.org/sites/default/files/media_asset/04-hiv-human-rights-factsheet-transgender-gender-diverse_en.pdf
- 24 Available at: https://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2020/may/20200517_IDAHOT
- 25 Available at: <https://www.unwomen.org/en/news-stories/statement/2022/05/un-women-statement-for-the-international-day-against-homophobia-biphobia-intersexphobia-and-transphobia>
- 26 Available at: <https://www.unwomen.org/en/news/stories/2020/2/compilation-small-actions-big-impact-for-generation-equality>
- 27 Available at: <https://www.unwomen.org/en/news/stories/2019/7/news-event-gender-diversity-and-non-binary-identities>
- 28 Available at: <https://www.unwomen.org/en/news/stories/2018/5/statement-un-women-international-day-against-homophobia-transphobia-and-biphobia>
- 29 Available at: https://www.unfpa.org/sites/default/files/pub-pdf/SoWP2021_Report_-_EN_web.3.21_0.pdf
- 30 Available at: <https://www.unfpa.org/events/international-day-against-homophobia-transphobia-and-biphobia>
- 31 Available at: https://www.unicef.org/executiveboard/media/6671/file/2021-EB10-Strategic_Plan_2022-2025-Theory_of_Change-EN-2021.08.04.pdf
- 32 Available at: <https://www.unicef.org/media/92376/file/Child-Protection-Gender-Dimensions-of-VACAG-2021.pdf>
- 33 Available at: <https://www.nairobisummiticpd.org/content/icpd25-commitments>
- 34 See Starrs, A. M. et al. Accelerate progress—sexual and reproductive health and rights for all: report of the Guttmacher–Lancet Commission. *The Lancet*. Available at: [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(18\)30293-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)30293-9/fulltext)
- 35 See <https://www.reprosfightback.com/episodes-blog/will-the-us-adopt-a-feminist-foreign-policy>
- 36 Available at: <https://forum.generationequality.org/sites/default/files/2021-06/UNW%20-%20GAP%20Report%20-%20EN.pdf>
- 37 Available at: <https://undocs.org/CCPR/C/DMA/COAR/1>
- 38 Available at: <https://undocs.org/CCPR/C/TUN/CO/6>
- 39 Available at: <https://undocs.org/CCPR/C/CZE/CO/4>
- 40 Available at: <https://undocs.org/E/C.12/CMR/CO/4>
- 41 Available at: <https://undocs.org/E/C.12/CPV/CO/1>

- 42 Available at: <https://undocs.org/E/C.12/KOR/CO/4>
- 43 Available at: <https://undocs.org/CEDAW/C/ZWE/CO/6>
- 44 Available at: <https://undocs.org/CEDAW/C/ATG/CO/4-7>
- 45 Available at: <https://undocs.org/CEDAW/C/HND/CO/7-8>
- 46 Available at: <https://undocs.org/CAT/C/BGD/CO/1>
- 47 Available at: <https://undocs.org/en/CAT/C/UZB/CO/5>
- 48 Available at: <https://undocs.org/en/CAT/C/RUS/CO/6>
- 49 Available at: <https://undocs.org/en/CRC/C/CRI/CO/5-6>
- 50 Available at: <https://undocs.org/en/CRC/C/IRN/CO/3-4>
- 51 Available at: <https://undocs.org/en/CRC/C/GMB/CO/2-3>
- 52 Available at: <https://undocs.org/en/CRPD/C/FRA/CO/1>
- 53 Available at: <https://undocs.org/en/CRPD/C/AUS/CO/2-3>
- 54 Available at: <https://undocs.org/en/CRPD/C/IND/CO/1>
- 55 Available at: <https://undocs.org/en/CMW/C/GTM/CO/2>
- 56 Available at: <https://undocs.org/en/CERD/C/ARG/CO/21-23>
- 57 Trithart, Albert, *ibid.*
- 58 Karsay, Dodo. “How far has SOGII advocacy come at the UN and where is it heading?” Commissioned by ARC International. Available at: https://arc-international.net/how_far_has_sogii/
- 59 Available at: <https://undocs.org/A/HRC/47/27>
- 60 Available at: <https://undocs.org/A/76/172>
- 61 Available at: <https://undocs.org/A/HRC/43/48>
- 62 Available at: <https://undocs.org/A/HRC/44/53>
- 63 Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27092&LangID=E>
- 64 Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25884&LangID=E>



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