



## UN Committee against Torture (CAT): 65<sup>th</sup> Session, 12 Nov - 7 Dec 2018

**State reports reviewed:** Canada,  **Guatemala** , Maldives,  **Netherlands** ,  
 **Peru**  and Viet Nam

**Lists of Issues adopted:** Benin,  **France** , Israel,  **Philippines** , South Africa  
and Turkey

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### RESUME:

- Recommendations on LGBTI issues to **Guatemala**, the **Netherlands** and **Peru**:
  - Police violence against LGBT persons, especially trans women (Peru)
  - Violence against LGBTI persons in prison, especially trans women (Guatemala)
  - Violence and hate crimes against LGBT persons (Guatemala, Netherlands)
  - Stand-alone recommendation condemning surgery on intersex persons (Netherlands)
  - First SOGIESC recommendations to the Netherlands
- Three SOGIESC questions to **France** and the **Philippines**:
  - Stand-alone question regarding surgery on intersex persons (France)
  - Prevent and prosecute hate crimes against LGBTI people (France, Philippines)

- Next Session: **23 April to 17 May 2019**
  - Countries (main review): Benin, Democratic Republic of the Congo, Germany, Mexico, South Africa, United Kingdom
  - **NGO report deadline**: 22 March 2019 (to [cat@ohchr.org](mailto:cat@ohchr.org))
  - Countries (for LOI/LOIPR): Burkina Faso, Dominican Republic, Honduras, Kuwait, Lesotho, Mongolia, Uzbekistan
  - **NGO report deadline**: 28 January 2019 (to [cat@ohchr.org](mailto:cat@ohchr.org))

## Table of Contents

1. SUMMARY .....	3
1.1. Concluding Observations.....	3
<i>Guatemala</i> .....	4
<i>Netherlands</i> .....	4
<i>Peru</i> .....	4
1.2. Lists of Issues and Lists of Issues Prior to Reporting .....	5
1.3. Individual Complaints.....	5
2. COMPILATION OF CONCLUDING OBSERVATIONS .....	6
<i>Guatemala</i> .....	6
<i>Netherlands</i> .....	6
<i>Peru</i> .....	7
3. COMPILATION OF LISTS OF ISSUES .....	8
<i>France</i> .....	8
<i>Philippines</i> .....	8
4. CIVIL SOCIETY SUBMISSIONS .....	9
<i>Canada</i> .....	9
<i>Guatemala</i> .....	9
<i>Netherlands</i> .....	9
<i>Peru</i> .....	9
<i>South Africa</i> .....	9

## 1. SUMMARY

The UN Committee against Torture (CAT) published its Lists of Issues and Concluding Observations as a result of its [65th Session](#) on 12 November to 7 December 2018. Three questions on LGBTI persons were issued to two (France, Philippines) out of six States, and four SOGIESC<sup>1</sup> recommendations were adopted for three (Guatemala, Netherlands, Peru) out of six States. Two of the questions and all four of the recommendations focused solely on LGBTI persons.

The Committee issued a stand-alone intersex question to France, and a stand-alone intersex recommendation to the Netherlands. The remaining questions and recommendations considered hate crimes, police violence and detention of LGBT(I) people, though CAT also specifically referred to the vulnerability of trans women.

### 1.1. Concluding Observations

During its [65th Session](#), the Committee against Torture reviewed the periodic reports of six States: Canada, Guatemala, the Maldives, the Netherlands, Peru and Viet Nam.

CAT issued stand-alone [SOGIESC recommendations](#) to Guatemala, the Netherlands and Peru, concerning violence in prison, hate crimes and police violence, respectively, as well as an intersex-specific recommendation for the Netherlands. While it did not request any of the recommendations to be followed up, CAT's recommendations and constructive dialogues addressed SOGIESC issues relatively extensively. However, despite the Committee expressing clear concern about the situation of trans women in Guatemala and Peru, the recommendations only referred to LGBT(I) persons in general. They also oscillated between the terms "LGBT" and "LGBTI".

Canada, the Maldives and Viet Nam did not receive SOGIESC recommendations, though during the constructive dialogues [Viet Nam](#) was asked how it identifies LGBTI prisoners. Canada had been questioned about violence against LGBT and other groups in its [LOIPR](#). Yet despite Canadian [civil society submissions](#) considering LGBTI rights, including a stand-alone report on intersex genital mutilation by Egale, SOGIESC was not mentioned in the Concluding Observations.

Country	SOGIESC in previous CO*	SOGIESC in LOIPR**	SOGIESC in the constructive dialogues***	SOGIESC in CSS****	SOGIESC in current CO*
Canada	No	Yes	No	Yes	No
Guatemala	Yes	Yes	Yes	Yes	Yes
Maldives	N/A	N/A	No	No	No
Netherlands	No	Yes	Yes	Yes	Yes
Peru	Yes	Yes	Yes	Yes	Yes
Viet Nam	N/A	N/A	Yes	No	No

\*Concluding Observations

\*\*List of Issues Prior to Reporting

\*\*\*According to the press releases

\*\*\*\*Civil Society Submissions

**Text in colour links to the source material.**

<sup>1</sup> SOGIESC: Sexual orientation, gender identity and expression, and sex characteristics.

## Country-specific information:

### Guatemala

**Guatemala** received an extensive recommendation on violence based on sexual orientation and gender identity. CAT first stated its concerns regarding the high level of violence against LGBTI persons and murders of trans women; that laws perpetuating discrimination, such as Bill 5272, could exacerbate this violence; and the vulnerability of LGBTI persons in prison, in particular trans women in male prisons. The harmful effects of Bill 5272 ("Ley de Protección de la Vida y la Familia") on LGBTI people had been discussed in four [civil society reports](#).

However, the concern for trans women was not expressed in the recommendation itself, as the Committee opted for broader terms. CAT advised Guatemala to guarantee LGBTI persons' physical integrity, to collect data on and prosecute SOGI-based hate crimes, to adopt protocols in prison for the needs of LGBTI persons, and to ensure that a person's gender identity and dignity is respected in prison, without unnecessary segregation.

The recommendation was much wider in scope than the [LOIPR](#), which only asked about preventing homo- and transphobic violence. Furthermore, in the [constructive dialogue](#) with Guatemala, CAT repeatedly expressed concern about LGBTI persons. It asked if public servants received training on torture of LGBTI persons in the context of migration, prison and juvenile centres, about SOGIESC hate crimes and systemic impunity, and about the murders of trans women and their condition in prisons. On the final topic, the State delegation said that solitary confinement was not used as a disciplinary sanction against LGBTI persons.

### Netherlands

The concluding observations for the **Netherlands** had a section on LGBT persons, with a recommendation to protect against and punish hate crimes, and another section on intersex persons, calling for an end to unnecessary surgeries, to ensure free and informed consent, to give impartial counselling to families, and to provide victims with redress and compensation. This was the first time CAT made SOGIESC recommendations to the Netherlands.

Netherlands' LOIPR had also addressed intersex surgeries, and [civil society](#) submitted a stand-alone report on intersex persons, trans rights and LGBTI hate crimes. Other issues did not result in recommendations; the LOIPR and [constructive dialogue](#) asked about violence in prison against sexual minorities and intersex persons, respectively, and the LOIPR also questioned the safety of persons seeking asylum on grounds of sexual orientation.

### Peru

In its concluding observations to **Peru**, CAT expressed concern about arbitrary detentions and sexual violence committed against trans women by the police. The Committee recommended investigating and prosecuting police abuse on grounds of sexual orientation and gender identity, and to protect the physical integrity of LGBT persons, particularly in detention. As with Guatemala, although CAT presented the issue as violence against trans women, the recommendation referred to LGBT persons.

The [LOIPR](#) contained a stand-alone question on violence against LGBT persons, especially by the police and armed forces. The [constructive dialogue](#) frequently raised LGBTI issues, including discrimination and violence by police and public officials, abuses in prison, and the need for protective and legislative measures.

The inclusion of these issues appears to have been influenced by three [civil society reports](#) which gave considerable information on LGBTI issues, including police violence, prisons and the vulnerability of trans women sex workers.

## 1.2. Lists of Issues (LOIs) and Lists of Issues Prior to Reporting (LOIPRs)

During its **65th Session**, CAT adopted questions for six States that are to be reviewed in the future: LOIs for Benin and South Africa, and LOIPRs for the simplified reporting procedures of France, Israel, the Philippines and Turkey. It issued SOGIESC questions only to France and the Philippines.

**France** received a stand-alone question on intersex rights, requesting an end to unnecessary surgeries on intersex children, to prohibit and investigate non-consensual medical treatment, and to offer counselling to and provide reparations for victims. A second question inquired about measures to prevent hate crimes against LGBTI and other vulnerable groups, and for data on complaints and prosecutions. The **Philippines** received a similar, but stand-alone question about measures to combat violence against LGBTI persons and data on the number of investigations and convictions for such offences.

**South Africa** was the only State with a SOGIESC-inclusive civil society submission, which addressed LGBTI persons in custody.

The Committee will consider the reports of Benin and South Africa during its **66th Session**, on 23 April to 17 May 2019. The Session dates for the remaining States have yet to be determined.

## 1.3. Individual Complaints

The Committee considered sixteen individual complaints in relation to its **65th Session**, of which it discontinued five. None of the communications made reference to SOGIESC.

## 2. COMPILATION OF CONCLUDING OBSERVATIONS

### Guatemala – Concluding Observations – 65<sup>th</sup> Session, 26 December 2018, 7<sup>th</sup> review<sup>2</sup>

#### Violence motivated by sexual orientation or gender identity

40. While appreciating the State party's efforts to guarantee the rights of lesbian, gay, bisexual, transgender and intersex persons, the Committee remains concerned at the high rate of violence they face, and is particularly concerned at the killings of transgender women, often linked to organized crime. The Committee is also concerned that the passage of draft legislation that would perpetuate discrimination based on sexual orientation, such as Bill No. 5272, may exacerbate this violence. The Committee is further concerned at the vulnerable situation of lesbian, gay, bisexual, transgender and intersex persons in detention, including transgender women incarcerated in men's prisons, who are exposed to a high rates of sexual violence, lengthy periods of segregation for their own safety and invasive and humiliating body searches (arts. 2, 12 and 16).

#### 41. The State party should:

- (a) Ensure the physical integrity of lesbian, gay, bisexual, transgender and intersex persons in all settings and uphold the principle of non-discrimination on the grounds of sexual orientation or gender identity;
- (b) Ensure that assaults motivated by a person's sexual orientation or gender identity are investigated, that the persons responsible are tried and punished and that the victims obtain redress, and that data on such crimes are systematically collected;
- (c) Expedite the adoption and implementation of protocols to address the special needs of lesbian, gay, bisexual, transgender and intersex persons in the prison system;
- (d) Exercise strict supervision of body search procedures and ensure that they are not degrading, that invasive searches are conducted only in exceptional cases and are as unintrusive as possible, and that they are conducted by trained staff of the same sex, and with full respect for the dignity and gender identity of the individual concerned (rules 50 to 53 and 60 of the Nelson Mandela Rules);
- (e) Ensure that segregation for safety reasons conforms to the provisions of the Nelson Mandela Rules.

### Netherlands – Concluding Observations – 65<sup>th</sup> Session, 18 December 2018, 7<sup>th</sup> review<sup>3</sup>

#### Lesbian, gay, bisexual and transgender persons

50. The Committee is concerned at reports that many lesbian, gay, bisexual and transgender persons are subjected to hate crimes because of their sexual orientation or gender identity, and that the alleged perpetrators are not always brought to justice (arts. 2, 12, 14 and 16).

**51. The State party should take all necessary measures to protect lesbian, gay, bisexual and transgender persons from threats and any form of violence, including hate crimes. It should also ensure that violence against lesbian, gay, bisexual and transgender persons is promptly, impartially and thoroughly investigated and the perpetrators prosecuted and punished.**

#### Intersex persons

52. The State party is concerned at reports that unnecessary and irreversible surgery and other medical treatments are performed on intersex children without their informed consent and impartial counselling. It is concerned that such procedures, which cause long-term physical and psychological suffering, have not been the object of any inquiry, sanction or reparation and that there are no specific legal provisions providing redress and rehabilitation to the victims.

<sup>2</sup> CAT/C/GTM/CO/7

<sup>3</sup> CAT/C/NLD/CO/7

**53. The State party should:**

(a) Take the legislative, administrative and other measures necessary to guarantee respect for the physical integrity and autonomy of intersex persons and to ensure that no one is subjected during infancy or childhood to non-urgent medical or surgical procedures intended to decide the sex of the child without his or her informed consent;

(b) Guarantee impartial counselling services and psychological and social support for all intersex children and their parents, so as to inform them of the consequences of unnecessary and non-urgent surgery and other medical treatment to decide on the sex of the child and the possibility of postponing any decision on such treatment or surgery until the persons concerned can decide by themselves;

(c) Guarantee that full, free and informed consent is ensured in connection with medical and surgical treatments for intersex persons and that non-urgent, irreversible medical interventions are postponed until a child is sufficiently mature to participate in decision-making and give effective consent;

(d) Undertake investigation of instances of surgical interventions or other medical procedures performed on intersex persons without effective consent and prosecute and, if found responsible, punish perpetrators. It should also ensure that the victims are provided with redress including adequate compensation.

**Peru – Concluding Observations – 65<sup>th</sup> Session, 18 December 2018, 7<sup>th</sup> review<sup>4</sup>**

**Police violence and arbitrary detention motivated by sexual orientation or gender identity**

22. The Committee is concerned by reports of transgender women being subjected to arbitrary detention and sexual violence by members of the National Police. With regard to this type of situation, the Committee takes note of the applicable provisions of the human rights handbook prepared for police staff, adopted by Ministerial Decision No. 952-2018-IN, and of the inclusion of modules on gender-based violence in the curricula of police training centres. While also taking note of the information provided by the delegation concerning the Azul Rojas Marín and Yefri Edgar Peña Tuanama cases, the Committee regrets that the State party has not provided the requested data on the complaints concerning this type of abuse that were filed during the period under review (arts. 2, 12, 13 and 16).

23. The State party should also ensure that assaults motivated by a person's sexual orientation or gender identity are investigated and that the persons responsible are brought to justice. The State party should take all necessary measures to ensure the personal safety of lesbian, gay, bisexual and transgender persons in all spheres, including in places of detention.

**States with no SOGIESC recommendations:**

- Canada
- Maldives
- Viet Nam

<sup>4</sup> CAT/C/PER/CO/7

### 3. COMPILATION OF LISTS OF ISSUES

#### France – List of Issues Prior to Reporting – 65<sup>th</sup> Session, 2 January 2019, 8<sup>th</sup> review<sup>5</sup>

##### Article 16

21. In the light of the Committee's previous concluding observations (para. 35) regarding intersex persons, please indicate:

- (a) The measures taken by the State party to ensure that no one is subjected during childhood to non-urgent medical or surgical treatment in order to establish a gender for that person;
- (b) The measures taken to ensure that the persons concerned and their parents receive impartial counselling services and psychological and social support free of charge;
- (c) The measures taken to ensure that no medical treatment is carried out without a person's full, free and informed consent, and that the person or the parents concerned are informed of the available options, including the possibility of deferring any decision on unnecessary treatment until the person can decide for himself or herself;
- (d) The investigations conducted by the State party into cases of surgical or other medical treatment carried out on intersex persons without their free and informed consent; and, where applicable, the steps taken by the State party to provide redress, including adequate compensation, to victims.

22. In the light of the Committee's previous concluding observations (para. 15), please provide information on the measures taken to prevent and to combat criminal acts motivated by hatred or intolerance targeting specific populations, including members of the Jewish and Muslim communities, as well as acts of violence against the Roma, migrants and lesbian, gay, bisexual, transgender and intersex persons. Please also provide data on cases of hate crimes identified since 2016, disaggregated by type of crime, and specify whether the perpetrator is an agent of the State. Please also provide data on prosecutions for hate crimes and the outcomes.

#### Philippines – List of Issues Prior to Reporting – 65<sup>th</sup> Session, 16 January 2019, 4<sup>th</sup> review<sup>6</sup>

##### Article 16

32. Please provide information on the measures adopted to combat violence, harassment and intimidation against lesbian, gay, bisexual, transgender and intersex persons and on the number of complaints and police reports, investigations, prosecutions, convictions and punishments handed down in cases of offences committed against these persons.

#### States with no SOGIESC questions:

- Benin
- South Africa
- Israel
- Turkey

<sup>5</sup> CAT/C/FRA/QPR/8

<sup>6</sup> CAT/C/PHL/QPR/4

## 4. CIVIL SOCIETY SUBMISSIONS

### Canada

- Submission by [Action Canada for Sexual Health and Rights & Sexual Rights Initiative](#) for the 65<sup>th</sup> Session (*mentions lack of appropriate sexual health education for transgender students*).
- Submission by [Canadian Centre for Victims of Torture](#) for the 65<sup>th</sup> Session (*mentions the death of a transgender woman in prison*).
- Submission by [Egale Canada Human Rights Trust](#) for the 65<sup>th</sup> Session (*stand-alone report on intersex rights and IGM in the Criminal Code*).
- Submission by [FIACAT & ACAT](#) for the 65<sup>th</sup> Session (*section on the status of LGBTQ rights and refugees, concern about restrictions on countries of origin*).

### Guatemala

- Submission by [Asociación Lambda and 16 other CSOs](#) for the 65<sup>th</sup> Session (*several stand-alone sections on LGBTI rights, topics include conversion therapy, Bill 5272, prisons and youth*).
- Submission by [IPAS Centroamérica](#) for the 65<sup>th</sup> Session (*discusses the negative impact of Bill 5272 (“Ley para la Protección de la Vida y la Familia”) on LGBTI persons*).
- Submission by [Red de Jóvenes para la Incidencia Política \(INCIDEJOVEN\) and Red Latinoamericana de Jóvenes por los Derechos Sexuales \(RedLAC\)](#) for the 65<sup>th</sup> Session (*stand-alone section on Bill 5272 and its effects on women and LGBTI persons*).
- Submission by [Unidad de Protección a Defensoras y Defensores de Derechos Humanos Guatemala](#) for the 65<sup>th</sup> Session (*mentions that curbing sexual and reproductive rights has a detrimental effect on the LGBTI population, e.g. through Bill 5272*).

### Netherlands

- Submission by [COC Nederland, Nederlandse organisatie voor seksediversiteit \(NNID\) & Transgender Netwerk Nederland \(TNN\)](#) for the 65<sup>th</sup> Session (*stand-alone report on the health and rights of intersex and transgender persons, and hate crimes based on SOGIESC*).

### Peru

- Submission by [Centro de Promoción y Defensa de los Derechos Sexuales PROMSEX](#) for the 65<sup>th</sup> Session (*stand-alone report on LGBTI and abortion rights, with data on homicides, police violence, hate speech, bullying, lack of access to justice and eradication from public spaces*).
- Submission by [Coordinadora Nacional de Derechos Humanos – Grupo de Trabajo sobre la Tortura](#) for the 65<sup>th</sup> Session (*data on police violence against trans women sex workers, refusal by the police to register complaints from LGBTI persons, and lack of protective measures in prison*).
- Submission by [Oficina para la Defensa de los Derechos Interseccionales](#) for the 65<sup>th</sup> Session (*section on LGBTI persons in detention, trans women especially, being abused by public officials and denied access to health services, and cases of violence against trans sex workers*).

### South Africa

- Submission by [African Policing Civilian Oversight Forum](#) for the 65<sup>th</sup> Session (*subsection on the safety and rights of LGBTI persons in custody*).