



UN Committee on Economic, Social and Cultural Rights (CESCR): 65th Session, 18 Feb - 8 Mar 2019, and 64th Pre-Sessional Working Group, 11-15 Mar 2019

State reports reviewed: Bulgaria,  Cameroon ,  Estonia ,  Kazakhstan ,
 Mauritius 

Lists of Issues adopted: Austria, Benin,  Ecuador , Finland, Israel, Kuwait,  Senegal 

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RESUME:

- First SOGIESC [recommendations](#) to [Cameroon](#), [Estonia](#), [Kazakhstan](#) and [Mauritius](#):
 - Decriminalisation of same-sex relations (Cameroon, Mauritius)
 - Discrimination and equal enjoyment of rights (Cameroon, Estonia, Kazakhstan, Mauritius)
 - Bullying of LGBTI students (Kazakhstan)
 - Registration of LGBTI organisations (Kazakhstan)
 - Recognition of same-sex couples (Mauritius)
 - Three follow-up recommendations (Estonia, Kazakhstan, Mauritius)
- Three [questions](#) on SOGI to Ecuador and Senegal:
 - Violence and discrimination against sexual and gender minorities (Ecuador, Senegal)
 - Stigmatisation and discrimination of HIV+ persons, including MSM (Senegal)

- Next Session: [30 September to 18 October 2019](#)
 - *Countries (main review):* Denmark, Ecuador, Israel, Senegal, Slovakia, Switzerland
 - *NGO report deadline:* 6 September 2019 (to cescr@ohchr.org)
- Next PSWG: [21 to 25 October 2019](#)
 - *Countries (for LOI):* Azerbaijan, Bolivia, Bosnia and Herzegovina
 - *Countries (for LOIPR):* Chile, Italy, Mongolia
 - *NGO report deadline:* 26 August 2019 (to cescr@ohchr.org)

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1. SUMMARY

The UN Committee on Economic, Social and Cultural Rights (CESCR) published its Lists of Issues and Concluding Observations as a result of the [65th Session](#), held on 18 February to 8 March 2019, and the [64th Pre-Sessional Working Group](#), on 11 to 15 March 2019.

Two of seven [Lists of Issues](#) contained SOGIESC¹ questions concerning discrimination and HIV treatment. Additionally, four of five [Concluding Observations](#) gave recommendations on decriminalisation of same-sex relations and discrimination of LGBTI persons. Among them were three follow-up recommendations, two stand-alone LGBTI recommendations, and one stand-alone SOGI question. There were no specific references to LB women or TI persons.

1.1. Concluding Observations (COs)

During its [65th Session](#), CESCR reviewed the periodic reports of five State parties: Bulgaria, Cameroon, Estonia, Kazakhstan and Mauritius. A total of seven [SOGIESC recommendations](#) were issued to Cameroon, Estonia, Kazakhstan and Mauritius, all for the first time.

The recommendations focused on discrimination and equal enjoyment of economic, social and cultural rights, criminalisation of same-sex relations, recognition of same-sex couples, bullying in schools, and registration of NGOs. Among them were three follow-up recommendations on anti-discrimination laws, and two stand-alone LGBTI recommendations.

[Kazakhstan](#) received the most recommendations and civil society submissions on SOGIESC, including two stand-alone reports and a presentation on LBT women from the NGO Feminita.

There were two positive developments during the Session; first, five of the seven recommendations discussed SOGIESC independently, as opposed to listing it alongside other grounds of discrimination. Second, CESCR questioned all five delegations about LGBTI issues during the constructive dialogues.

Country	SOGIESC in previous CO*	SOGIESC in LOI/LOIPR**	SOGIESC in the constructive dialogues***	SOGIESC in CSS****	SOGIESC in current CO*
Bulgaria	Yes	No	Yes	Yes	No
Cameroon	No	Yes	Yes	Yes	Yes
Estonia	No	No	Yes	Yes	Yes
Kazakhstan	No	Yes	Yes	Yes	Yes
Mauritius	No	Yes	Yes	No	Yes

*Concluding Observations

**List of Issues / List of Issues Prior to Reporting

***According to the press releases

****Civil Society Submissions

Text in bold links to the source material.

Country-specific information:

Bulgaria

Bulgaria did not receive any SOGIESC recommendations, but in the constructive dialogue the Committee [asked](#) about measures to combat negative views of LGBTI students, an issue also raised by [civil society](#). Furthermore, in its [previous review](#) of Bulgaria in 2012, CESCR had recommended that the State recognise same-sex couples.

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

Cameroon

CESCR issued a stand-alone LGBTI recommendation to [Cameroon](#), asking the State to decriminalise homosexuality, to combat discrimination and stigma of LGBTI persons, and to ensure equal enjoyment of economic, social and cultural rights, especially in health care. The [LOI](#) had also raised the issues of discrimination and criminalisation, and a civil society [submission](#) reported on LGBT rights.

During its [dialogue with Cameroon](#), CESCR again brought up the widespread discrimination against LGBTI people and the criminalisation of homosexuality. The delegation responded that criminalisation was the position of society, not the government, and that Cameroon was not ready for “such practices”. It stressed that homosexuals were not surveilled, and that many lived peacefully.

Estonia

To [Estonia](#), the Committee expressed its concern that the country’s Equal Treatment Act, which includes sexual orientation, only applies to the job sector. It adopted a follow-up recommendation, requesting that the Act be extended to all spheres of economic, social and cultural rights. CESCR also asked the State to provide remedies to victims of discrimination and sufficient resources to the Gender Equality and Equal Treatment Commissioner.

Estonia was also asked about extending the scope of anti-discrimination laws on sexual orientation during the [constructive dialogue](#). The Committee furthermore said prohibiting surrogacy could prevent same-sex couples from forming a family, a point that had been raised in the [civil society submissions](#).

Kazakhstan

In its COs to [Kazakhstan](#), CESCR was concerned that LGBTI organisations were prevented from registering, and recommended the State to provide an enabling environment for NGOs. Second, it was concerned at the lack of legal protection of LGBT persons from discrimination, attacks and harassment, and recommended comprehensive anti-discrimination legislation which includes SOGI, and measures to combat LGBT discrimination. Finally, it was concerned about violence in schools, especially against LGBT students, and recommended protecting all students from bullying. The Committee also asked Kazakhstan to follow up the recommendation on anti-discrimination legislation and measures.

The [LOI](#) contained three questions on LGBTI persons, although the topics were slightly different: discrimination and harassment, access to employment, and access to health care.

That Kazakhstan received the most recommendations may be credited to the strong and numerous [civil society contributions](#) on SOGIESC, many focusing on discrimination in health care. Notably, there were two stand-alone reports on LBT women from Feminita Kazakhstan Feminist Initiative. With ILGA’s support, Gulzada Serzhan from Feminita also [met with the Committee](#) in Geneva to speak about the criminalisation and discrimination of LBT women.

During the ensuing dialogues, CESCR encouraged [Kazakhstan](#) to adopt legislation and concrete measures against discrimination of LGBTI persons. It was also concerned at discrimination of seropositive persons, particularly based on sexual orientation and gender identity. The delegation then responded that the constitution prohibited discrimination, including on the grounds of SOGI. Finally, CESCR inquired why NGOs such as Feminita were not allowed to be registered. The State delegation responded that the refusal to register NGOs was not due to discrimination, but rather their non-compliance with the law.

Mauritius

Mauritius received two SOGIESC recommendations. The first, which was a follow-up recommendation, encouraged the State to include gender identity and other characteristics in its anti-discrimination legislation. The second was a stand-alone recommendation on LGBTI persons, urging to decriminalise same-sex relations, to protect against discrimination based on sexual orientation and gender identity, and to legally recognise same-sex couples.

The first recommendation had been raised in the [LOI](#), which asked about anti-discrimination legislation, including on grounds of sexual orientation and gender identity. Sexual orientation was not included in the final recommendation, however.

[During the dialogue](#), CESCR expressed concern at the criminalisation of same-sex relations, the effect it had on LGBTI persons in need of HIV treatment, and the lack of recognition for same-sex couples. The delegation replied that in order to legislate on LGBTI rights the State needed the acceptance of society.

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

During its [64th Pre-Sessional Working Group](#), CESCR [adopted questions](#) for seven States that will be reviewed in the future: LOIs for Benin, Ecuador, Israel, Kuwait and Senegal, and LOIPRs for the simplified reporting procedures of Austria and Finland. Two States, Ecuador and Senegal, were asked SOGIESC questions.

Ecuador received a stand-alone SOGIESC question. The Committee asked about measures to combat violence and discrimination based on sexual orientation and gender identity.

Senegal received two SOGIESC-inclusive questions. The first asked about measures to include sexual orientation, gender identity and other characteristics in the anti-discrimination legislation. It further inquired about violence and stigma against sexual and gender minorities and against seropositive persons, particularly homosexuals, sex workers and drug users. The second question noted the high rate of HIV in men who have sex with men (MSM), and asked how their right to health was ensured on an equal basis with the rest of the population.

[Civil society](#) contributed to raising these issues; [Ecuador](#) received a stand-alone report on trans and LGBT rights, and a submission for [Senegal](#) focused on sexual orientation, including HIV in MSM. However, [Finland](#) had two civil society submissions discussing trans and intersex health, but did not receive any SOGIESC questions in its LOIPR.

Ecuador, Israel and Senegal will have their State reports reviewed during the [66th Session](#) on 30 September to 18 October 2019. The Session dates for the remaining States have yet to be determined.

1.3. Individual Complaints

The Committee processed six individual complaints in relation to its 65th Session. The communications did not make reference to SOGIESC.

2. COMPILATION OF CONCLUDING OBSERVATIONS

Cameroon – Concluding Observations – 65th Session, 25 March 2019, 4th review²

Discrimination on the basis of sexual orientation and gender identity

23. The Committee notes with concern that consensual same-sex relationships are criminalized by article 347-1 of the Criminal Code and that lesbian, gay, bisexual, transgender and intersex persons are discriminated against in terms of the enjoyment of their economic, social and cultural rights, particularly in the case of their right to health (art. 2).

24. **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.**

Estonia – Concluding Observations – 65th Session, 27 March 2019, 3rd review³

C. Principal subjects of concern and recommendations

Non-discrimination

10. The Committee is concerned that the Equal Treatment Act only prohibits discrimination on the grounds of religion or views, age, disability and sexual orientation in areas relating to working life and the acquisition of professional qualifications. It regrets the delay in amending the Act to broaden its scope and application to other social sectors. It is also concerned at the insufficient level of financial and human resources allocated to the Gender Equality and Equal Treatment Commissioner to fully carry out the mandate (art. 2 (2)).

11. The Committee recommends that the State party amend without delay the Equal Treatment Act with a view

- (a) to ensuring that it prohibits all direct, indirect and intersectional forms of discrimination, on the grounds set out in article 2 (2) of the Covenant and in all spheres relevant to economic, social and cultural rights, and**
- (b) to providing effective remedies for victims of discrimination, including through judicial and administrative proceedings.**

It also recommends that the State party allocate a sufficient level of financial and human resources to the Gender Equality and Equal Treatment Commissioner for the effective functioning of the mandate. In this context, the Committee draws the attention of the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

D. Other recommendations

[...]

59. In accordance with the procedure on follow-up to concluding observations adopted by the Committee, the State party is requested to provide, within 24 months of the adoption of the present concluding observations, information on the implementation of the recommendations contained in paragraphs 11 (amendments to the Equal Treatment Act), 15 (a) and (b) (removal of barriers to acquisition of Estonian citizenship by stateless persons) and 45 (d) (development of a gender-sensitive drug policy) above.

² [E/C.12/CMR/CO/4](#)

³ [E/C.12/EST/CO/3](#)

C. Principal subjects of concern and recommendations

Civil society

8. The Committee is concerned at information that some non-governmental organizations in the State party working for the protection and promotion of human rights, in particular the rights of lesbian, gay, bisexual and transgender persons, have faced difficulty in registering.

9. The Committee recommends that the State party guarantee an enabling environment for non-governmental organizations engaged in the promotion and protection of economic, social and cultural rights, including a functional and accommodating registration procedure.

Non-discrimination

10. The Committee is concerned that neither the Constitution nor the domestic legislation of the State party explicitly prohibits some of the existing grounds of discrimination, such as gender identity and sexual orientation, which contributes to the persistence of discrimination on those grounds in access to employment, health care and education. It is also concerned by the lack of tailored legal protection of lesbian, gay, bisexual and transgender persons against attacks and harassment. [...]

11. The Committee recommends that the State party:

(a) Adopt comprehensive anti-discrimination legislation that addresses direct and indirect discrimination and encompasses all the prohibited grounds of discrimination, including sexual orientation and gender identity, as set out in article 2 (2) of the Covenant, taking also into account the Committee's general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights;

[...]

(c) Take all steps necessary to prevent and combat discrimination against lesbian, gay, bisexual and transgender persons, and ensure their equal enjoyment of the rights under the Covenant, and enact tailored legal protections of these persons against attacks and harassment.

Right to education

48. While recognizing the efforts made by the State party to ensure universal access to education and to improve its quality, the Committee remains concerned about reports that:

[...]

(f) Bullying, violence and discrimination persist in schools, in particular against lesbian, gay, bisexual and transgender students;

[...]

49. The Committee recommends that the State party:

[...]

(e) Protect all children against bullying and violence in schools, and expand efforts to prevent their occurrence;

[...]

D. Other recommendations

[...]

56. In accordance with the procedure on follow-up to concluding observations adopted by the Committee, the State party is requested to provide, within 24 months of the adoption of the present concluding observations, information on the implementation of the recommendations contained in paragraphs on non-discrimination (para. 11 (a) and (b)), maximum available resources (para. 20) and trade union rights (para. 33) above.

C. Principal subjects of concern and recommendations

Non-discrimination

15. The Committee is concerned about the shortcomings of the Equal Opportunities Act 2012. The list of prohibited grounds of discrimination in section 2 does not include gender identity, social origin or property. The term “spouse” is defined narrowly, thus excluding persons in unregistered Muslim marriages and de facto unions from protection from discrimination in the enjoyment of their rights under the Covenant. Moreover, under section 19 (2), the prohibition of discrimination in the private housing market is limited (arts. 2 (2), 10 and 11).

16. The Committee recommends that the State party revise the Equal Opportunities Act, in particular sections 2 and 19 (2), with a view to ensuring that the Act prohibits all direct, indirect and intersectional forms of discrimination, on any ground, including gender identity, social origin, property and other status, in all spheres relevant to the Covenant rights. The Committee also recommends that the State party provide for effective remedies for victims of discrimination, including through judicial and administrative proceedings. It draws the attention of the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

Lesbian, gay, bisexual, transgender and intersex persons

17. The Committee is concerned that same-sex relations are still criminalized under section 250 of the Criminal Code, a legacy of the colonial era. It is also concerned about the limited protection of lesbian, gay, bisexual, transgender and intersex persons provided in anti-discrimination provisions, since gender identity is not included as a prohibited ground. It is further concerned about the absence of any legal recognition of same-sex couples, which may restrict the protection of same-sex partners upon separation, or following the illness or death of a partner (arts. 2 (2) and 10).

18. The Committee urges the State party to make the necessary legislative changes with a view to repealing section 250 of the Criminal Code, fully protecting lesbian, gay, bisexual, transgender and intersex persons from discrimination based on sexual orientation and gender identity, and providing for legal recognition of same-sex unions or partnerships.

D. Other recommendations

[...]

68. In accordance with the procedure on follow-up to concluding observations adopted by the Committee, the State party is requested to provide, within 24 months of the adoption of the present concluding observations, information on the implementation of the recommendations contained in paragraphs 16 (revision of the Equal Opportunities Act), 29 (minimum wage legislation) and 44 (a) and (b) (parental leave and paternity leave) above.

States with no SOGIESC recommendations:

- [Bulgaria](#)

3. COMPILATION OF LISTS OF ISSUES

Ecuador – List of Issues – 64th PSWG, 22 March 2019, 4th review⁶

Non-discrimination (art. 2 (2))

[...]

10. Please provide information on the measures adopted to combat discrimination and violence against persons because of their sexual orientation or gender identity and on the impact of those measures.

Senegal – List of Issues – 64th PSWG, 23 April 2019, 3rd review⁷

II. Issues relating to the general provisions of the Covenant (arts. 1–5)

Non-discrimination (art. 2 (2))

5. Please provide information on steps taken to adopt comprehensive legislation that:

- (a) clearly defines and criminalizes direct and indirect discrimination;
- (b) gives a comprehensive list of prohibited grounds of discrimination, including national extraction and colour, sexual orientation, gender identity, disability and legal status; and
- (c) provides effective remedies for victims.

Please state the number of complaints of discrimination recorded and prosecutions brought in the State party. Please indicate the measures taken to combat and prevent acts of discrimination, stigmatization and violence against:

- (a) persons with albinism;
- (b) persons living with HIV/AIDS, especially sex workers, drug users and homosexuals; and
- (c) persons belonging to sexual or gender minorities.

[...]

III. Issues relating to the specific provisions of the Covenant (arts. 6–15)

Right to physical and mental health (art. 12)

[...]

23. In relation to the measures described in paragraphs 176 to 179 of the State party's report, please clarify the measures taken relating to HIV/AIDS prevention and testing and treatment for persons with a prevalence rate significantly higher than the national average, including sex workers, men who have sexual relations with men, drug users and persons in detention. Please describe the strategy adopted to combat stigma that prevent these categories of the population from enjoying their right to health on an equal basis with the rest of the population (persons in conflict with the law). [...]

States with no SOGIESC questions:

- Austria
- Benin
- Finland
- Israel
- Kuwait

⁶ E/C.12/ECU/Q/4

⁷ E/C.12/SEN/Q/3

4. CIVIL SOCIETY SUBMISSIONS

Bulgaria

- Submission by [Bulgarian Helsinki Committee](#) for the 65th Session (*mentions trans and intersex health, LGBTI education in schools and bullying*).
- Submission by [Harm Reduction International & Center for Humane Policy](#) for the 65th Session (*refers to study with MSM participants*).

Cameroon

- Submission by [Human Rights Watch](#) for the 65th Session (*stand-alone section on the physical and mental health of LGBT people*).

Ecuador

- Submission by [ALFIL – REDLACTRANS, Synergia, Akahatá and SRI](#) for the 64th PSWG (*stand-alone report on trans and LGBT persons and their rights to work, health and education*).

Estonia

- Submission by [International Human Rights Clinic & Associazione Luca Coscioni](#) for the 65th Session (*mentions homosexual couples with regards to surrogacy*).
- Submission by [International Human Rights Clinic & Associazione Luca Coscioni](#) for the 62nd PSWG (*mentions discrimination of homosexual couples in lack of access to surrogacy*).

Finland

- Submission by [SETA LGBTI Rights and other NGOs](#) for the 64th PSWG (*two sections on trans and intersex health*).
- NHRI submission by the [Finnish Human Rights Centre](#) for the 64th PSWG (*recommendations on trans and intersex health, including LGBT and non-binary children*).

Kazakhstan

- Submission by [10 human rights NGOs](#) for the 65th Session (*section on forced sterilisation of trans people and discrimination against LGBT persons*).
- Submission by [Equal Rights Trust](#) for the 65th Session (*mentions discrimination against LGBTI people, particularly in health care*).
- Submission by [Feminita - Kazakhstan Feminist Initiative](#) for the 65th Session (*stand-alone report on lesbian, bisexual and transgender women, including criminalisation, health and employment*).
- Submission by [Human Rights Watch](#) for the 65th Session (*stand-alone section on LGBT discrimination and health care*).
- Submission by [International Human Rights Clinic & Associazione Luca Coscioni](#) for the 65th Session (*mentions lack of access to IVF and surrogacy for homosexual couples*).
- Submission by [Equal Rights Trust](#) for the 62nd PSWG (*stand-alone sections on access to employment and healthcare for LGBTI persons*).
- Submission by [Equal Rights Trust and Kazakhstan International Bureau for Human Rights](#) for the 62nd PSWG (*stand-alone chapter on discrimination and violence against LGBT persons*).
- Submission by [Feminita - Kazakhstan Feminist Initiative](#) for the 62nd PSWG (*stand-alone report on lesbian, bisexual and transgender women, including discrimination and hate crimes*).
- Submission by [International Human Rights Clinic & Associazione Luca Coscioni](#) for the 62nd PSWG (*recommends granting homosexual couples access to artificial reproduction*).

Senegal

- Submission by [Human Rights Watch](#) for the 64th PSWG (*stand-alone section on sexual orientation and gender identity, including criminalisation, police abuse and HIV*).