



UN Committee on the Rights of the Child: 77 Session and 79 Pre-Sessional Working Group

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RESUME:

- Recommendations on LGBTI children for Guatemala, Palau, Panama, Spain and Sri Lanka (first SOGIESC recommendations from this Committee for all the five countries), including:
 - To decriminalise same-sex relations (Sri Lanka);
 - To explicitly prohibit discrimination based on SOGI in Constitution and other laws (Palau)
 - To combat bullying and harassment, including cyber-bullying (Spain)
 - Specific recommendations on transgender children (Sri Lanka) and intersex children (Spain);
 - No stand-alone recommendations on either LGBTI girls in general, or lesbian and bisexual girls in particular.
- Two questions on discrimination against LGBTI children for El Salvador and Japan.
 - Groups from these countries may submit their shadow reports for the Committee's autumn session by 15 August 2018.

- Next Session: 14 May to 1 June 2018
 - Countries: Angola, Argentina, Lesotho, Montenegro, Norway
 - NGO report deadline: 15 April 2018
- Next Pre-Sessional Working Group: 4 to 8 June 2018
 - Countries: Belgium, Italy, Syrian Arab Republic
 - NGO report deadline: 1 March 2018

1. SUMMARY

The UN Committee on the Rights of the Child published its Lists of Issues and Concluding Observations as a result of the 77th Session (15 January to 2 February 2018) and the 79th Pre-Sessional Working Group (5 to 9 February 2018).

Questions on LGBTI children were sent to 2 out of 5 other countries (El Salvador and Japan), and SOGIESC recommendations were made for 5 out of 8 countries reviewed (Guatemala, Palau, Panama, Spain and Sri Lanka).

LGBTI children, among other groups of children in vulnerable situations, were mentioned in concerns and recommendations related to discrimination and exclusion and participation in decision-making processes. The Committee also addressed criminalisation of same-sex relations in one case (Sri Lanka).

Stand-alone intersex recommendations were made only for one country (Spain), and another country (Sri Lanka) received a specific recommendation to prohibit harassment of transgender children by law enforcement personnel. While the Committee consistently referred to LGBTI children, it mentioned sexual orientation and gender identity only when listing grounds for discrimination and exclusion.

Neither the situation of LGBTI girls nor specific challenges faced by lesbian or bisexual girls have been addressed by the Committee.

1.1. Concluding Observations

During its 77th Session, the Committee reviewed periodic reports of Guatemala, Marshall Islands, Palau, Panama, Seychelles, Solomon Islands, Spain and Sri Lanka.

SOGIESC recommendations were made for five countries. In all the five cases, LGBTI issues were addressed in both civil society submissions and the constructive dialogues of the Committee with the State delegations. For all the five countries, the Committee made SOGIESC recommendations for the first time.

| Country | SOGIESC in previous CO* | SOGIESC in LOI** | SOGIESC in the constructive dialogue*** | SOGIESC in CSS**** | SOGIESC in COs |
|------------------|-------------------------|------------------|---|--------------------|----------------|
| Guatemala | No | Yes | Yes | Yes | Yes |
| Marshall Islands | No | No | No | No | No |
| Palau | No | Yes | Yes | Yes | Yes |
| Panama | No | No | Yes | Yes | Yes |
| Seychelles | No | No | No | No | No |
| Solomon Islands | No | No | No | No | No |
| Spain | No | No | Yes | Yes | Yes |
| Sri Lanka | No | No | Yes | Yes | Yes |

* CO – Concluding Observations

** LOI – List of Issues

*** According to the press releases

**** CSS – Civil Society Submission

Guatemala:

LGBTI issues have been addressed by two civil society [submissions](#) prepared for the Pre-Sessional Working Group on Guatemala, and as a result the Committee [requested](#) the State to provide information on measures to combat multiple discrimination and prejudice against children and adolescents based on, inter alia, sexual orientation and gender identity.

During the [constructive dialogue](#) with Guatemala,¹ the Committee experts again asked what have been done by the State party to protect LGBTI children.

Consequently, in its [Concluding Observations](#), the Committee expressed concerns on the discrimination against and exclusion of LGBTI children, among children from other vulnerable groups. The State was recommended to adopt a comprehensive policy to address structural and multiple discrimination against, inter alia, LGBTI children, in areas such as health, education, social protection and standard of living.

Palau:

In case of Palau, a stand-alone [report](#) on the situation of LGBTI children in the country has been submitted for the Pre-Sessional Working Group. In the [List of Issues](#) on Palau, the Committee asked the State party about the measures, including legislative ones, taken to protect children against discrimination on the basis of sexual orientation and gender identity.

During the [constructive dialogue](#) with Palau,² the Committee experts reiterated their question on any process to introduce legislative measures to protect children from discrimination based on gender identity and sexual orientation.

In the [Concluding Observations](#), the Committee noted exclusion of and discrimination against children based on their sexual orientation and gender identity, as well as the lack of explicit prohibition of such discrimination. The Committee recommended the State to revise the Constitution and other laws to explicitly prohibit discrimination on the basis of sexual orientation and gender identity.

Panama:

While there was only one civil society [report](#) mentioning right-wing rhetoric on “homosexual propaganda”, and no LGBTI questions were included into the Committee’s List of Issues for Panama, the Committee repeatedly inquired the State delegation about discrimination against LGBTI children during the [constructive dialogue](#).³

As a result of the review, the Committee [recommended](#) Panama to conduct awareness-raising campaigns with a specific focus on children in marginalized situations, including LGBTI children, and to ensure that these children are able to fully participate in decision-making processes, particularly, through the Children’s Parliament, and within the family, community and schools.

¹ Full video records are available online: the [1st part](#) (16 January 2018) and the [2nd part](#) (17 January 2018) of the dialogue on Guatemala.

² Full video records are available online: the [dialogue](#) on Palau (25 January 2018).

³ Full video records are available online: the [1st part](#) (17 January 2018) and the [2nd part](#) (18 January 2018) of the dialogue on Panama.

Spain:

Among seven alternative [reports](#) prepared for the Committee's Pre-Sessional Working Group and the Session on Spain, there were several submissions from civil society coalitions, ombudspersons and intersex defenders.

While LGBTI issues have not been included into the List of Issues on Spain, during the [constructive dialogue](#) with the delegation,⁴ one Committee member expressed concerns about the still existing practice of non-consensual intersex genital mutilation and asked about any plans to stop such surgeries during infancy and postpone them until a later time when adolescents could make their own decisions.

As a result, the Committee addressed the specific situation of intersex children in its [Concluding Observations](#) and recommended the State party to prohibit unnecessary medical or surgical treatment from being performed on intersex children, when those procedures entail a risk of harm and can be safely deferred until the child can actively participate in decision-making. It also recommended the State to ensure adequate counselling and support for intersex children and their families.

The Committee also expressed its concerns regarding bullying and harassment in schools and on social media based on sexual orientation and gender identity, and recommended the State to establish a strategy to combat bullying and harassment, including cyber-bullying, which would address prevention, early detection mechanisms, the empowerment of children and professionals, intervention protocols, and harmonized guidelines for data collection of cases.

Sri Lanka:

LGBTI issues have been addressed by two civil society [submissions](#), including a stand-alone report on the situation of children of diverse sexual orientations and gender identities prepared for the Pre-Sessional Working Group.

Even though the List of Issues on Sri Lanka did not have any references to SOGIESC, the State delegation was asked about discrimination and violence against LGBTI children during the [constructive dialogue](#).⁵

As a result of the review, the Committee [recommended](#) Sri Lanka to adopt a proactive and comprehensive strategy to eliminate discrimination against children in marginalized situations, including LGBTI children, and to combat specifically discrimination against LGBTI children, including by decriminalizing consensual same-sex acts, to prohibit harassment of transgender children by law enforcement personnel, and to bring perpetrators of violence, including of sexual abuse of LGBTI children, to justice. Apart from that, the Committee mentioned "criminalisation of homosexuality" among factors contributing to under-reporting of sexual abuse of boys.

1.2. Lists of Issues

As a result of its 79th Pre-Sessional Working Group, the Committee produced a set of questions for the States that will be reviewed in the future. While for Laos, Mauritania and Niger there

⁴ Full video records are available online: the [1st part](#) and the [2nd part](#) (22 January 2018) of the dialogue on Spain.

⁵ Full video records are available online: the [1st part](#) (15 January 2018) and the [2nd part](#) (16 January 2018) of the dialogue on Sri Lanka.

were no specific questions on SOGIESC, the Committee did ask El Salvador and Japan about the situation of LGBTI children in these countries.

The Committee requested [El Salvador](#) to provide information about measures of the Social Inclusion Secretariat to combat discrimination against adolescents, including LGBTI adolescents and other groups of children in vulnerable situations.

In case of [Japan](#), the Committee requested information on the targeted measures taken to eliminate discrimination and hate speech against, inter alia, LGBTI children, and also information on any plans to adopt a comprehensive anti-discrimination law.

Both countries will be reviewed by the Committee during its 79th Session that will take place in Geneva from 17 September to 5 October 2018. Civil society groups are invited to submit their shadow reports to the Committee by 15 August 2018.

2. COMPILATION OF CONCLUDING OBSERVATIONS

Guatemala – Concluding Observations – 77th session, 2 February 2018, 5th–6th review

Allocation of resources

8. With reference to its general comment No. 19 (2016) on public budgeting for the realization of children's rights, the Committee recommends that the State party: [...]

(b) Address inequality and define budgetary lines for indigenous and Afro-descendant children, children living in poverty both in rural and urban areas, migrant and refugee children, children with disabilities, and LGBTI children; [...]

Non-discrimination

13. Noting the structural discrimination of children based on their age and the persistent discrimination and exclusion of girls, indigenous and Afro-descendant children, children with disabilities, migrant, asylum seeking and refugee children, and LGBTI children, and taking into consideration measures to recognise discrimination as a criminal offence, the Committee urges the State party to:

(a) Develop and implement awareness-raising strategies at the community level and in schools, to ensure an attitude of respect for children and their recognition as right-holders, irrespective of their age;

(b) Ensure adequate budget allocation for the implementation of the Public Policy for Coexistence and the Elimination of Racism and Racial Discrimination;

(c) Adopt a national strategy with clear benchmarks, indicators and monitoring mechanisms aimed at addressing structural and multiple discrimination against children belonging to the above mentioned groups, in areas such as health, education, social protection and standard of living; and

(d) Strengthen measures to tackle poverty and extreme multi-dimensional poverty among indigenous and Afro-descendant children, prioritizing actions at the municipal level.

Palau – Concluding Observations – 77th session, 2 February 2018, 2nd review

Non-discrimination

20. The Committee is concerned that the Constitution does not explicitly prohibit discrimination based on sexual orientation and gender identity and that girls, children with disabilities and children of non-Palauan descent are subject to discrimination and are more exposed to exclusion.

21. **The Committee recalls its previous concluding observations (CRC/C/15/ Add.149, para. 33) and recommends that the State party:**

(a) Ensure that children with disabilities and girls have equal access to education, health care, employment and a decent standard of living;

(b) Revise the Constitution to explicitly prohibit discrimination on the basis of sexual orientation and gender identity and align other laws to ensure that discrimination on these grounds is prohibited;

(c) Take legislative measures to ensure that children of non-Palauan parentage, including children of immigrant families and children adopted through inter-country adoptions, are afforded the same rights and access to health, education and social services as Palauan children.

Panama – Concluding Observations – 77th session, 2 February 2018, 5th–6th review

Non-discrimination

16. The Committee recalls its previous concluding observations (CRC/C/PAN/CO/3- 4, para. 34) and recommends, in line with its general comment No. 20 (2016) on the implementation of the rights of the child during adolescence, that the State party allocate adequate human, technical and financial resources to the implementation of the Inter-Agency Strategic Plan for Young People 2015 – 2019, disseminate this plan and reinforce measures to: [...]

(e) Raise awareness on the fact that adolescents are right holders, including through campaigns designed with the full participation of adolescents and disseminated through mass media. Focus especially on children and adolescents from afro- Panamanian and indigenous communities, pregnant girls, children with disabilities, children with HIV/AIDS, LGBTI children, refugee and asylum-seeking children and other groups of children in marginalized situations through such campaigns.

Respect for the views of the child

17. The Committee takes note of the establishment of two councils of children and adolescents in municipalities and recommends that the State party strengthen efforts to give due consideration to children's and adolescents' views in decisions that concern them, in accordance with its general comment No. 12 (2009) on the right of the child to be heard, and that it: [...]

(b) Institutionalize the Children's Parliament as a regular event, combining its action with the Youth Assemblies Programme (Programa Asambleas Juveniles). Ensure that these mechanisms are provided with a meaningful mandate and adequate human, technical and financial resources, and that eligible children from afro- Panamanian and indigenous communities, pregnant girls, children with disabilities, children with HIV/AIDS, LGBTI children, refugee and asylum-seeking children and other groups of children in situations of vulnerability are able to fully participate and that their views are taken into account when defining the legislative agenda and national policies; [...]

(f) Conduct programmes and awareness-raising activities to promote the meaningful and empowered participation of all children within the family, community and schools, including within student council bodies, with particular attention to children in vulnerable situations.

Spain – Concluding Observations – 77th session, 2 February 2018, 5th–6th review

Harmful practices

24. The Committee recommends that the State party prohibit unnecessary medical or surgical treatment from being performed on intersex children, when those procedures entail a risk of harm and can be safely deferred until the child can actively participate in decision-making. It also recommends that the State party ensure that intersex children and their families receive adequate counselling and support.

Education, including vocational training and guidance

39. [...] The Committee is also concerned about: [...]

(d) The incidence of bullying and harassment, including on the basis of disability, sexual orientation and gender identity, in schools and on social media, and the inadequate implementation of policies and strategies to address their occurrence;

(e) Remaining gender stereotypes in the education system, including school curricula and textbooks; [...]

40. With reference to its general comment No. 1 (2001) on the aims of education and taking note of target 4.1 of the Sustainable Development Goals on ensuring that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes, the Committee urges the State party to foster a national dialogue on the basic and structural characteristics of the education system and to protect resources dedicated to education and training for children. The Committee also recommends that the State party provide reinforcement, orientation and support programmes to prevent early school leaving and: [...]

(d) Establish a strategy to combat bullying and harassment, including cyber- bullying, which addresses prevention, early detection mechanisms, the empowerment of children and professionals, intervention protocols, and harmonized guidelines for data collection of cases;

(e) Eliminate gender stereotypes relating to education, including in textbooks and curricula; [...]

Sri Lanka – Concluding Observations – 77th session, 2 February 2018, 5th–6th review

Non-discrimination

16. The Committee urges the State party to take awareness-raising measures targeted at adults and children to overcome the prevalent perception about children as inferior to adults, and to treat children as rights-holders. Furthermore, the Committee recommends that the State party:

(a) Ensure compliance with article 2 of the Convention by incorporating the principle of non-discrimination in its domestic legislation and conduct an in-depth revision of its legislation in order to fully guarantee non-discrimination in law and practice;

(b) Adopt a proactive and comprehensive strategy containing specific and well-targeted actions, including affirmative social actions to eliminate discrimination against children in marginalized or vulnerable situations, including girls, children belonging to ethnic or ethno-religious or indigenous minority groups, children subjected to caste-based discrimination, children living in rural areas, refugee and internally displaced children, children in street situations, children of migrant workers abroad, children in institutional care, children with disabilities, and LGBTI children;

(c) Combat discrimination against LGBTI children, including by decriminalizing consensual same sex acts, prohibit harassment of transgender children by law enforcement personnel, and bring perpetrators of violence, including of sexual abuse of LGBTI children, to justice;

(d) Ensure that girls, to whom the Muslim Law is applicable, are provided with the rights on equal terms with boys, including the right to inheritance;

(e) Mobilize communities and the public at large by taking systematic efforts, in collaboration with the mass media and social networks, as well as community and religious leaders, to combat and change discriminatory attitudes and practices towards children in general as well as children in disadvantaged and marginalized situations;

(f) Include segments on non-discrimination and equality into the mandatory school curriculum for children of all ages, adapt teaching materials and regularly train teachers accordingly.

Sexual exploitation and abuse

23. The Committee, despite noting the efforts to combat sexual exploitation and abuse of children, is gravely concerned about: [...]

(b) The lack of legal recognition of male rape and under-reporting of sexual abuse of boys because of stigmatisation, criminalisation of homosexuality, and feeling ashamed of so-called “emasculatation”; [...]

24. The Committee urges the State party to develop an effective and comprehensive policy for preventing the sexual abuse and exploitation of children, including through child pornography, and for promoting the recovery and social reintegration of child victims, taking into consideration the root causes that place children at risk. It further urges the State party to: [...]

(b) Take prompt measures to revise article 363 of the Penal Code to criminalize statutory rape of boys, and take large-scale awareness raising measures to encourage the reporting of rape of boys, to eliminate stigma associated with it, and to ensure accessible, confidential, child-friendly and effective reporting channels for such violations; [...].

3. COMPILATION OF LISTS OF ISSUES

El Salvador – List of Issues – 79th PSWG, 23 February 2018, 5th–6th review

4. Sírvanse informar al Comité sobre medidas de la Secretaria de Inclusión Social para combatir la discriminación de los/las adolescentes, incluso los adolescentes LGBTI, las niñas y niños que viven en zonas rurales y remotas, los niños y niñas indígenas y las niñas y niños de familias económicamente excluidas. Sírvanse proporcionar información sobre las medidas desarrolladas para el acceso a una efectiva educación inclusiva de calidad de los niños y niñas con discapacidad.

Japan – List of Issues – 79th PSWG, 22 February 2018, 4th–5th review

3. Please provide information on the targeted measures taken to eliminate discrimination and hate speech against girls, LGBTI children, children of unmarried parents, children belonging to ethnic minorities and children of non-Japanese origin. Please also provide information on any plans to adopt a comprehensive anti-discrimination law.

4. CIVIL SOCIETY SUBMISSIONS

Guatemala

- Submission by [civil society coalition](#) for the PSWG (*LGBTI adolescents and access to health services; violence against and stigmatization of LGBTI adolescents; problems in LGR; recommendation to adopt gender identity law*)
- Submission by [Child Soldiers International](#) for the PSWG (*a brief reference to punishment for “homosexuality” in military schools*)

Palau

- Submission by [Kaleidoscope Human Rights Foundation](#) for the PSWG (*a stand-alone LGBTI report*)

Panama

- Submission by [Observatorio de los Derechos de la Niñez y Adolescencia Panamá \(ODENA\) y la Defensoría del Pueblo en su calidad de Secretaría Técnica del Observatorio](#) for the PSWG (*a brief reference to right-wing activists’ arguments on “homosexual propaganda”*)

Spain

- Submission by [Zwischengeschlecht](#) for the PSWG (*a stand-alone intersex report*)
- Submission by [Ararteko, Ombudsman of the Basque Country](#) for the PSWG (*a brief reference to progress made with regard to SOGI*)
- Submission by [Síndic de Greuges de Catalunya \(Catalan Ombudsman\)](#) for the PSWG (*brief references to legislation and positive trends in combating SOGIE-related bullying*)
- Submission by [Ombudsman Institution](#) for the PSWG (*some references to school bullying/sexual orientation*)
- Submission by [Plataforma de Infancia](#) for the PSWG (*brief references to “right to be homosexual” and “sexual diversity”*)
- Submission by [Coordinadora de Profesionales por la Prevención de Abusos \(CoPPA\)](#) for the Session (*two-pager on IGM*)
- Submission by [Plataforma de Infancia](#) for the Session (*a section on anti-LGBT bullying and some other relevant references*)

Sri Lanka

- Submission by [All Survivors Project](#) (*references to linking “homosexuality” with pedophilia, as well as discrimination and violence faced by LGBTI people*)
- Submission by [Equal Ground](#) for the PSWG (*a stand-alone report on the rights of children with diverse SOGI*)