



## UN Human Rights Committee (HRCtee): 124<sup>th</sup> Session, 8 Oct - 2 Nov 2018

State reports reviewed: 🇧🇪 Belarus 🇧🇪 Belize 🇧🇪 Bulgaria 🇧🇪 Guinea 🇧🇪 Sudan 🇧🇪

Lists of Issues adopted: 🇪🇶 Equatorial Guinea 🇪🇶 Mauritania 🇪🇶 Nigeria 🇪🇶  
🇹🇯 Tajikistan 🇹🇯 Trinidad and Tobago 🇹🇯

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### RESUME:

- Recommendations on LGBTI issues for **Belarus, Belize, Bulgaria, Guinea** and **Sudan**, including:
  - Decriminalise consensual same-sex relations (Belize, Guinea, Sudan)
  - Anti-discrimination legislation for SOGI (Belarus, Belize, Bulgaria, Sudan)
  - Prosecute SOGI-based hate crimes and hate speech (Belarus, Belize, Bulgaria)
  - Remove ban on immigration for homosexuals, and provide remedies to victims (Belize)
  - Strengthen trust between LGBTI persons and the State (Belize)
  - Legally recognise same-sex couples (Bulgaria)
  - Two trans-specific recommendations on gender recognition (Belarus, Bulgaria)
  - No specific recommendations on LGBTI women or intersex persons.
  - Follow-up recommendations to Belize, Bulgaria and Sudan.
  - First recommendations to Belarus, Belize, Bulgaria and Guinea.
- SOGIESC-inclusive questions to for **Equatorial Guinea, Mauritania, Nigeria, Tajikistan** and **Trinidad and Tobago**, concerning:
  - Discrimination based on sexual orientation and gender identity (all five)
  - Protection against violence (all five), especially by law enforcement (Nigeria, Tajikistan)
  - Criminalisation of same-sex acts (Mauritania, Nigeria, Trinidad and Tobago)
  - Immigration ban for homosexuals (Trinidad and Tobago)
  - Same-sex unions (Nigeria, Trinidad and Tobago)
  - No stand-alone references to LGBTI women, trans or intersex persons.
- A new **General Comment** on the right to life (art. 6), stating:
  - States must enact special measures for vulnerable groups, including LGBTI.
  - States must under no circumstances apply the death penalty to homosexuality.

- Next Session: **4 to 29 March 2019**
  - Countries (main review): Angola, Eritrea, Estonia, Niger, Saint Vincent and the Grenadines, Viet Nam
  - **NGO report deadline**: 4 February 2019 (to [gabtom@ohchr.org](mailto:gabtom@ohchr.org) and [ccpr@ohchr.org](mailto:ccpr@ohchr.org))
  - Countries (for LOI): Cabo Verde, Central African Republic, Dominica, Senegal
  - Countries (for LOIPR): Finland, Lesotho, United States of America
  - **NGO report deadline**: 14 January 2019 (to [gabtom@ohchr.org](mailto:gabtom@ohchr.org) and [ccpr@ohchr.org](mailto:ccpr@ohchr.org))

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# 1. SUMMARY

The UN Human Rights Committee (HRCtee) published five Lists of Issues (LOIs) and five Concluding Observations (COs) as a result of its **124<sup>th</sup> Session**, held on 8 October to 2 November 2018. All ten State parties received SOGIESC<sup>1</sup> questions or recommendations.

The Committee issued a total of eight LGBTI-inclusive **recommendations** and nine SOGIESC-inclusive **questions**, primarily concerning anti-discrimination measures and legislation, hate crimes and hate speech, violence and extortion by law enforcement officials, criminalisation of same-sex relations, immigration bans, and same-sex unions. There were also two trans-specific, though not stand-alone, recommendations, concerning legal gender recognition. No LOIs or COs addressed intersex persons or LGBTI women specifically.

Most of the SOGIESC questions and recommendations addressed several LGBTI issues each. In addition, three of the eight recommendations were listed for follow-up.

In relation to the 124<sup>th</sup> Session, the HRCtee also adopted **General Comment no. 36**, which specifies that the right to life applies without distinction as to sexual orientation and gender identity, among other grounds, and that States are required to enact special measures to protect vulnerable groups, including LGBTI. It also states that the death penalty must under no circumstances be applied to homosexuality or other acts prohibited by the Convention.

Finally, in the Committee's **review** of its follow-up recommendations, it assessed a SOGIESC recommendation made to the Republic of Korea in 2015, calling upon the State to address discrimination, violence, hate speech, conversion therapy, the military ban on homosexuality, sex education and legal gender recognition. HRCtee concluded that the State had not taken any measures to implement the recommendation, and that it had even worked against it.

## 1.1. Concluding Observations

During its **124<sup>th</sup> Session**, the Committee reviewed the periodic reports of Belarus, Belize, Bulgaria, Guinea and Sudan, and issued **SOGIESC recommendations** to all five. Of the eight recommendations adopted, three were listed for follow-up, and three concerned SOGIESC only. These were also the Committee's first LGBTI recommendations to Belarus, Belize, Bulgaria and Guinea.

The most common SOGIESC issues addressed were the criminalisation of same-sex relations, anti-discrimination legislation, access to justice for victims of hate crimes and hate speech, and the need to strengthen the capacity of law enforcement personnel. More specific SOGIESC recommendations concerned data collection and repealing immigration bans for homosexuals (**Belize**), public education and recognition of same-sex couples (**Bulgaria**), and abolishing the death penalty for sodomy (**Sudan**).

Finally, trans-specific recommendations were issued to Belarus and Bulgaria, to facilitate legal gender recognition and ensure privacy. There were no recommendations on intersex persons or LGBTI women, except an intersex question in HRCtee's **dialogue** with Bulgaria.

The three follow-up SOGIESC recommendations concerned the death penalty (Sudan), hate speech and hate crimes (Bulgaria), and decriminalisation and anti-discrimination measures (Belize). The States are requested to report on their implementation by November 2020.

The recommendations were characterised by covering numerous LGBTI issues each, usually with several bullet points on a variety of topics and measures. The eight recommendations therefore ask for much more than eight topics to be addressed. However, the Concluding Observations for **Guinea** only called for one issue to be addressed, namely criminalisation of same-sex acts.

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

Finally, all the State parties had [civil society submissions](#) addressing SOGIESC, from which several topics were brought up in the recommendations, and the Committee discussed LGBTI rights in all the constructive dialogues and LOIs/LOIPRs prior to adopting the Concluding Observations. Overall, the Committee showed a strong willingness to repeatedly and extensively question each State on its SOGIESC situation.

Country	SOGIESC in previous CO*	SOGIESC in LOI/LOIPR**	SOGIESC in the constructive dialogues***	SOGIESC in CSS****	SOGIESC in current CO*
<b>Belarus</b>	No	Yes	Yes	Yes	Yes
<b>Belize</b>	N/A	Yes	Yes	Yes	Yes
<b>Bulgaria</b>	No	Yes	Yes	Yes	Yes
<b>Guinea</b>	No	Yes	Yes	Yes	Yes
<b>Sudan</b>	Yes	Yes	Yes	Yes	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

#### Belarus

**Belarus** received a stand-alone SOGIESC recommendation, wherein HRCtee expressed its concern about discrimination, hate speech and violence against LGBT persons, as well as trans persons' rights to privacy, due to gendered identity numbers and military documents classifying trans men as having a serious mental disorder. The Committee recommended Belarus to include SOGI in anti-discrimination legislation, to train law enforcement officials, and to prosecute SOGI-based violence and hate crimes. Finally, it recommended revising regulations for gender transition to ensure the right to privacy.

The [LOIPR](#) to Belarus had three SOGIESC questions, partly overlapping with the recommendation issued. The Committee inquired about protection against discrimination, the prevalence of homophobic discourse in public and the media, violence against LGBTI activists, and the denial of registration for LGBTI organisations.

Belarus also received the most SOGIESC-inclusive [civil society submissions](#) for the Session, including two stand-alone reports on LGBT people which focused on freedom of assembly, hate crimes and trans rights.

The [constructive dialogue](#) also questioned Belarus on violence and discrimination against LGBT persons, homophobic statements by the President, trans persons' rights to privacy and surgeries on intersex children, although the latter was not addressed in the LOIPR or Concluding Observations. The State delegation replied that sexual minorities were not intentionally targeted or asked to disclose their orientation. For trans persons, the delegation said that 90% received a positive decision for gender reassignment, and that psychiatric consultations were available.

#### Belize

**Belize** received two SOGIESC recommendations from the Committee. The first, which was a follow-up recommendation, advised the State party to adopt legislation against, and provide remedies for, discrimination based on SOGI and other grounds. The Committee further expressed concern about s. 5(1) of the Immigration Act, which prohibits entry into the country based on, inter alia, sexual orientation. It advised the State to amend the legislation, and to provide remedies to persons who have been denied entry on these grounds.

The second recommendation welcomed the Supreme Court's decision in *Caleb Orozco v. The Attorney General of Belize et al. (2016)*, in which the criminalisation of same-sex relations in s. 53 of the Criminal Code was deemed unconstitutional and discriminatory. HRCtee also expressed its concern about discrimination, hate speech in the media, and police abuse and harassment of LGBTI persons. It issued several requests to Belize: to repeal s. 53; to combat SOGI-based stigma, hate speech, violence and discrimination, including police abuse; to strengthen the trust between LGBTI persons and State authorities; and to ensure hate crimes are registered, investigated and prosecuted.

The [List of Issues](#) had also asked Belize to incorporate SOGI in anti-discrimination legislation, to repeal s. 5(1) of the Immigration Act, to address discrimination in employment, and to respond to reports of hate speech, violence and murder of LGBTI people. It referred to the Caribbean Court of Justice's decision in *Maurice Tomlinson v. The State of Belize*, asking which measures were taken to implement the judgement on s. 5(1). Belize also received one stand-alone [civil society submission](#) on LGBTI rights for the Session.

Finally, the [constructive dialogue](#) questioned Belize extensively on SOGIESC issues, including s. 5 of the Immigration Act, hate speech against LGBTI persons in mass media, harassment by law enforcement officials, police intimidation based on gender identity, and awareness-raising campaigns on human rights. The State delegation responded that the Police Department was very receptive to the LGBTI community's concerns and that s. 5 was under review. The Committee responded with concern at the delegation's implication that LGBTI persons were not mistreated by police.

## **Bulgaria**

**Bulgaria** received its first two recommendations on SOGIESC issues from the Committee. HRCtee advised the State to ensure sexual orientation and gender identity are legally recognised as prohibited grounds of discrimination and hate crimes. It further requested investigating and prosecuting hate speech and hate crime, including online and in the media.

The second recommendation asked Bulgaria to eliminate SOGI-based discrimination in all areas, including marriage and family rights, and to legally recognise same-sex couples. It also called for including gender identity in the anti-discrimination legislation, and ensuring legal gender recognition is accessible and not subject to medical treatment. Finally, it recommended the State combat prejudice against LGBTI persons by educating government officials and students in particular.

The [LOIPR](#) to Bulgaria had asked about measures to combat discrimination on grounds of sexual orientation and to recognise SOGI-based hate crimes in legislation. Bulgaria also had a [civil society report](#) with a section on LGBTI rights including hate crimes, legal gender recognition and same-sex unions. The last two issues, which had not been raised by the Committee previously, were all included in Bulgaria's COs.

During the [constructive dialogue](#), HRCtee also noted the legal discrimination against LGBTI persons, asking for data on investigations into such discrimination, whether gender identity would become a prohibited ground of discrimination, and what the processes were for gender reassignment. It further expressed great concern for hate crimes and violence against LGBTI persons, among others, and discrimination of persons with HIV/AIDS based on stigma against homosexuality. Finally, it criticised the State's denial of same-sex partnerships.

## **Guinea**

**Guinea** received its first SOGIESC recommendation from the Committee during the Session, asking to repeal art. 274 of the Criminal Code, which criminalises same-sex acts. A [civil society submission](#) for Guinea's LOI also brought up the criminalisation of same-sex acts.

However, Guinea's [List of Issues](#) had, in addition to asking about decriminalisation, also questioned the State on including sexual and gender identity in its anti-discrimination laws, and to combat discrimination and violence against sexual and gender minorities, among others. The [constructive dialogue](#) briefly mentioned that the country's legislation on SOGI had not changed.

## **Sudan**

**Sudan** received two SOGIESC-inclusive recommendations. The Committee first expressed its concern over discriminatory provisions for sexual orientation and the criminalisation of sodomy in art. 148 of the Criminal Code, with convictions leading to flogging, prison and the death penalty. It recommended enacting anti-discrimination measures that take SOGI into account, to provide victim protection and complaint mechanisms, and to guarantee the equal enjoyment of Covenant rights. It also urged the State to repeal art. 148 and immediately end prosecutions.

In its second recommendation, HRCtee urged the State party to revoke the death penalty for offences "other than the most serious crimes", i.e. intentional killing, including art. 148. It further urged Sudan to consider a moratorium on the death penalty and to ratify the Second Optional Protocol to the ICCPR. This recommendation was also listed for follow-up.

Finally, HRCtee noted one positive development, namely that art. 149 of the Criminal Code no longer conflates rape with adultery and sodomy. Two [civil society submissions](#) had also criticised the death penalty and the conflation of sodomy with rape.

Sudan's [List of Issues](#) and [previous COs](#) had also asked the State to legally and practically protect against discrimination on grounds of SOGI. The LOI also asked about prosecutions under art. 148 and whether there were plans to repeal it.

During the [constructive dialogue](#), Committee experts questioned Sudan whether it intended to decriminalise sodomy. Sudan's State Minister of Justice replied that repealing the crime of sodomy would not be in line with the country's cultural values, but that homosexuality was not systematically targeted or discriminated against when it came to citizenship rights, other than in marriage.

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

During its [124th Session](#), the Committee adopted questions for five States that are to be reviewed in the future: LOIs for Equatorial Guinea, Mauritania, Nigeria and Tajikistan, and an LOIPR for the simplified reporting procedure of Trinidad and Tobago. All five State parties received extensive SOGIESC questions, concerning anti-discrimination legislation, violence against LGBT persons, arbitrary detention and criminalisation of same-sex relations. Trinidad and Tobago was also asked about same-sex unions, immigration policies and consultations with LGBTI persons.

**Equatorial Guinea** was asked whether the State had anti-discrimination legislation covering, *inter alia*, sexual orientation and gender identity, and to describe measures to combat stigmatisation and violence against LGBT persons, among other groups.

**Mauritania** was asked about incorporating sexual orientation and gender identity in its anti-discrimination legislation, whether the State intended to decriminalise same-sex acts, and which measures were in place to guarantee the freedom and privacy of sexual minorities.

**Nigeria** also received a question about whether its anti-discrimination legislation covered sexual orientation and gender identity, and about measures to prevent discrimination and violence against LGBT persons, among others. The Committee further asked whether the State would revise Criminal Code art. 214 and the 2014 Same Sex Marriage (Prohibition) Act. Finally, it asked Nigeria to respond to allegations of increased harassment and mob violence against LGBT persons, including torture and extortion by law enforcement agents.

**Tajikistan** was asked whether the country's Constitution and legislation explicitly prohibits discrimination on the Convention's grounds, including sexual orientation and gender identity. HRCtee further inquired about measures to address discrimination, violence and harassment of LGBT persons, particularly from law officials. Finally, Tajikistan was asked to respond to allegations of a government registry on LGBT persons, and arbitrary arrests and extortion.

Lastly, **Trinidad and Tobago** received several SOGIESC-inclusive questions, most of which had not been asked of the other States: to prohibit discrimination on grounds of sexual orientation and gender identity; to consult with LGBTI persons on relevant policies and laws; to raise awareness in the population; to take migrants' sexual orientation into account; to repeal the immigration ban for homosexuals; to decriminalise same-sex relations; and to provide for same-sex unions.

Of the five State parties, three received [civil society submissions](#) relating to SOGIESC. **Mauritania** and **Nigeria** each had a submission calling for an end to the death penalty for sodomy, and **Tajikistan** received two reports on discrimination and the government's registry of LGBTI persons, with ensuing detentions, abuse and police extortion. All these topics were addressed by the Committee in the Lists of Issues, indicating a clear receptiveness to input from civil society, as well as willingness to consider SOGIESC issues on its own.

The four States that received LOIs will be reviewed during the Committee's **126th Session**, on 1 to 26 July 2019. Equatorial Guinea and Nigeria will be evaluated in the absence of State reports.

### 1.3. General Comments (GCs)

In relation to its 124<sup>th</sup> Session, the Human Rights Committee issued a new general comment: [GC No. 36 on article 6 of the ICCPR](#), the right to life. References to SOGIESC appeared in three sections, concerning protection, discrimination and the death penalty.

Importantly, the Comment stated that the death penalty could "under no circumstances" be applied to conduct protected by the ICCPR, including homosexuality. It further underlined that the right to life applies without distinctions of any kind, including sexual orientation and gender identity. Finally, on the States' duty to protect life, the Committee stressed the need to provide special protective measures to vulnerable persons, including LGBTI people.

### 1.4. Individual Complaints

The Committee published 17 decisions on individual complaints in relation to its 124<sup>th</sup> Session.<sup>2</sup> No communications made reference to SOGIESC.

<sup>2</sup> Communications nos. 2020/2010, 2251/2013, 2257/2013, 2268/2013, 2290/2013, 2296/2013, 2335/2014, 2441/2014, 2668/2015, 2734/2016, 2783/2016, 2826/2016, 2892/2016, 2950/2017, 3064/2017, 3075/2017 and 2296/2013.

## 1.5. Follow-up to Concluding Observations

In relation to its 124<sup>th</sup> Session, the Committee assessed State parties' [implementation of follow-up recommendations](#) based on information provided by the States and other actors. It also issued an [overview](#) of the status of previous follow-up recommendations.

One of the follow-up recommendations assessed concerned discrimination on the grounds of SOGI, issued to the Republic of Korea at HRCtee's 115<sup>th</sup> Session in 2015. The Committee had requested the State to issue an official statement against discrimination based on SOGI, "conversion therapies", hate speech and violence. It also called for legal protection of LGBTI persons, legal gender recognition, awareness-raising campaigns and comprehensive sex education on SOGI. Lastly, it called upon the State to repeal art. 92(6) of the Military Criminal Act outlawing homosexual acts.

The Republic of Korea replied that discrimination and hate speech were prohibited, but that it had no intention of repealing art. 92(6), due to "the distinct nature of the military". Secondly, it did not plan to teach about diverse sexualities to minors "who are yet to determine their sexual orientation", as public education had to reflect social and cultural values. Legal gender recognition would also be reviewed if "socially accepted notions" of gender were to change.

The South Korean Human Rights Organizations Network also submitted information, stating that LGBTI associations are denied registration, that churches, schools and universities are preventing LGBTI events, and that the country's sex education contains "blatant sexist and discriminatory remarks".

Based on this information, HRCtee assessed the implementation as category **E**: "Information or measures taken are contrary to or reflect rejection of the recommendation", saying it regretted the State party's reply and lack of action. The Committee therefore reiterated the recommendation.

## 2. COMPILATION OF CONCLUDING OBSERVATIONS

### Belarus – Concluding Observations – 124<sup>th</sup> Session, 22 November 2018, 5<sup>th</sup> review<sup>3</sup>

#### C. Principal matters of concern and recommendations

##### Discrimination on the grounds of sexual orientation and gender identity

19. While noting the information provided by the State party in this regard, the Committee remains concerned about reports of discrimination based on sexual orientation and gender identity, including harassment, homophobic discourse, hate speech and violence against lesbian, gay, bisexual and transgender individuals, and about the lack of adequate protection against such discrimination, both in law and in practice. The Committee is also concerned about reported violations of privacy and other rights of transgender persons, inter alia through gendered identity numbers in passports making gender reassignment information available to a broad range of government officials and through military identification documents for transgender men indicating that they are unfit for service under category 19a (serious mental disorder) of the Disease Schedule approved by the Ministries of Health and Defence (arts. 2, 7, 17 and 26).

**20. The State party should take vigorous steps to eradicate effectively all forms of discrimination and violence on the basis of sexual orientation and gender identity, inter alia by:**

- (a) explicitly listing sexual orientation and gender identity among the prohibited grounds for discrimination in comprehensive anti-discrimination legislation;**
- (b) providing appropriate training on combating discriminatory attitudes towards lesbian, gay, bisexual and transgender persons to law enforcement and other officials; and**
- (c) sanctioning such conduct properly, including by promptly and effectively investigating any reports of violence or hatred motivated by sexual orientation and gender identity and by bringing perpetrators to justice.**

**The State party should amend relevant regulations and procedures governing gender transition with a view to ensuring their compatibility with the Covenant, including with the right to privacy.**

### Belize – Concluding Observations – 124<sup>th</sup> Session, 11 December 2018, initial review<sup>4</sup>

#### C. Principal matters of concern and recommendations

##### Non-discrimination framework

11. The Committee notes that the principle of non-discrimination is enshrined in the Constitution and that a process to address non-discrimination comprehensively through an anti-discrimination bill has been initiated. It regrets, however, that the current frameworks:

- (a) do not fully cover all the prohibited grounds contained in articles 2 and 26 of the Covenant, particularly language, religion, opinion, social origin, property, birth, sexual orientation and gender identity and other status; and
- (b) do not provide victims with effective civil and administrative remedies (arts. 2 and 26).

12. The Committee is also concerned about section 5 (1) of the Immigration Act (2000), which prohibits entry into the State party to certain categories of foreigners on the basis of their health status, disability, sexual orientation or other status, including persons with physical or psychosocial disability, persons identified by immigration authorities as “homosexuals” or prostitutes (arts. 2 and 26).

<sup>3</sup> CCPR/C/BLR/CO/5

<sup>4</sup> CCPR/C/BLZ/CO/1/Add.1

**13. The State party should:**

- (a) adopt comprehensive civil and administrative legislation against discrimination that includes a definition of discrimination, both direct and indirect, including in the private sphere, and contains a non-exhaustive list of grounds of discrimination, including, inter alia, language, religious belief, sexual orientation and gender identity;**
- (b) provide access to effective and appropriate remedies for all victims of discrimination; and**
- (c) review section 5 (1) of the Immigration Act (2000) and ensure that any person who has been denied entry on such discriminatory grounds has access to effective remedies.**

**Discrimination based on sexual orientation and gender identity**

14. The Committee welcomes the Supreme Court's decision in *Caleb Orozco v. The Attorney General of Belize et al.* (2016), in which the Court recognized the unconstitutionality and discriminatory character of section 53 of the Criminal Code with regard to its criminalization of same-sex sexual conduct between consenting adults. It remains concerned, however, at credible allegations that lesbian, gay, bisexual, transgender and intersex individuals are stigmatized and are subject to de facto discrimination in the enjoyment of a range of rights on the basis of their sexual orientation and/or gender identity. The Committee is specifically concerned at reports of:

- (a) hate speech in media targeting lesbian, gay, bisexual, transgender and intersex individuals, with total impunity; and**
- (b) violence, harassment and police abuse of authority experienced by lesbian, gay, bisexual, transgender and intersex individuals, a state of affairs that is exacerbated by the lack of effective investigations into such allegations and their lack of documentation in relevant databases (arts. 2, 7, 9, 20 and 26).**

**15. The State party should:**

- (a) repeal section 53 of the Criminal Code and decriminalize same-sex sexual conduct between consenting adults;**
- (b) explicitly reject any form of social stigmatization, discrimination and violence against persons based on their sexual orientation or gender identity and undertake to combat hate speech by public or private persons targeting lesbian, gay, bisexual, transgender and intersex individuals;**
- (c) remove any barriers to the enjoyment of rights by lesbian, gay, bisexual, transgender and intersex individuals;**
- (d) facilitate access to justice by victims of harassment, violence and police abuses, including by strengthening trust between lesbian, gay, bisexual, transgender and intersex individuals and State authorities and increasing the financial and human resources of complaint-receiving bodies such as the Professional Standards Branch; and**
- (e) ensure the investigation, prosecution and punishment of any act of violence motivated by the victim's sexual orientation or gender identity and ensure the systematic collection of data about such acts.**

**D. Dissemination and follow-up**

[...]

48. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, by 2 November 2020, information on the implementation of the recommendations made by the Committee in paragraphs 15 (discrimination based on sexual orientation and gender identity), 25 (duty to protect the right to life) and 42 (refugees, asylum seekers and migrants) above.

### **C. Principal matters of concern and recommendations**

#### **Hate speech and hate crimes**

9. The Committee is concerned about reports of increased acts of hate speech and hate crimes, particularly against the Roma community, members of religious minorities, lesbian, gay, bisexual, transgender and intersex persons, migrants and asylum seekers, including racist, xenophobic and intolerant speech on television, the media and on the Internet, from persons at the highest levels of government and in election campaigns. While noting the legislative reforms aimed at expanding the scope of hate crimes, the Committee remains concerned that sexual orientation and gender identity are not recognized as hate motives or grounds of discrimination in either the Criminal Code or the Radio and Television Act. It is also concerned at the lack of data regarding criminal hate speech and hate crimes and that these crimes are not adequately investigated and prosecuted, since the hate motive is often not taken into account, and the number of convictions is extremely low (arts. 2–3, 18–20 and 26–27).

#### **10. The State party should:**

- (a) Amend the Criminal Code and the Radio and Television Act to explicitly include sexual orientation and gender identity as hate motives and grounds of discrimination, respectively; [...]**
- (c) Effectively enforce criminal provisions against hate crimes and hate speech by ensuring that such crimes are reported, investigated, prosecuted and punished with appropriate sanctions, and that victims receive full reparation;**
- (d) Strengthen the investigative capacity of law enforcement officials for hate crimes and criminal hate speech, including on the Internet and strengthen the mandate and capacity of the Council for Electronic Media to prevent and sanction hate speech in the media.**

#### **Discrimination on the grounds of sexual orientation and gender identity**

11. The Committee is concerned that the Protection against Discrimination Act does not include gender identity as a ground of discrimination. It also notes with concern that same-sex couples cannot enter into any form of legally recognized union or adopt children, and that those married overseas and their children are denied access to civil registration. It is further concerned at the obstacles to changing legal recognition of gender, including reports that courts condition such changes on undergoing hormonal therapy. The Committee is concerned at the persistence of stereotypical attitudes, prejudice, hostility and discrimination against lesbian, gay, bisexual, transgender and intersex persons, including as reflected in the Constitutional Court's decision No. 13/2018 of 27 July 2018 (arts. 2–3, 16–17, 19–20, 23 and 26).

#### **12. The State party should:**

- (a) Eliminate discrimination against persons on the basis of their sexual orientation or gender identity in law and in practice in all spheres, including employment, marriage and family arrangements, and ensure access to effective remedies for any act of discrimination;**
- (b) Amend the Protection against Discrimination Act to explicitly include gender identity as a ground of discrimination and fully recognize the equality of same-sex couples;**
- (c) Establish a simple and accessible administrative procedure for change of civil status with respect to gender identity that is in accordance with the Covenant;**
- (d) Intensify efforts to combat negative stereotypes and prejudice against lesbian, gay, bisexual, transgender and intersex persons and to promote tolerance through training and awareness-raising campaigns for government officials and the general public, including through public schools.**

## **D. Dissemination and follow-up**

[...]

46. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, by 2 November 2020, information on the implementation of the recommendations made by the Committee in paragraphs 10 (hate speech and hate crimes), 36 (national, ethnic and religious minorities) and 38 (freedom of expression) above.

## **Guinea – Concluding Observations – 124<sup>th</sup> Session, 7 December 2018, 3<sup>rd</sup> review<sup>6</sup>**

### **C. Principal subjects of concern and recommendations**

#### **Combating discrimination**

17. The Committee [...] regrets in particular that article 274 of the Criminal Code, which criminalizes individuals' conduct on account of their sexual orientation, has been retained, and underscores the discriminatory nature of provisions of this kind. [...]

#### **18. The State party should take all necessary measures to:**

[...]

**(b) begin a process aimed at the repeal of article 274 of the Criminal Code;**

[...]

## **Sudan – Concluding Observations – 124<sup>th</sup> Session, 19 November 2018, 5<sup>th</sup> review<sup>7</sup>**

### **C. Principal subjects of concern and recommendations**

#### **Non-discrimination**

14. The Committee remains concerned about the persistence of entrenched discriminatory provisions in legislation, in particular in the area of family law and personal status, and concerning sexual orientation. The Committee notes that article 31 of the Interim Constitution does not define discrimination, nor does it provide for a list of prohibited grounds of discrimination, in accordance with articles 2 (1) and 26 of the Covenant. The Committee is further concerned about the absence of comprehensive anti-discrimination legislation (arts. 2 and 26).

15. The Committee is troubled by article 148 of the Criminal Code of 1991, which criminalizes sodomy, an offence punishable by flogging and a prison sentence, and which incurs the death penalty after a third conviction (arts. 2, 6–7, 17 and 26).

#### **16. The State party should**

**(a) enact comprehensive legislation providing full and effective protection against discrimination in all spheres and containing a non-exhaustive list of prohibited grounds of discrimination, including sexual orientation and gender identity;**

**(b) take effective measures to prevent discrimination and ensure that effective complaint mechanisms are available to victims;**

**(c) guarantee the protection and enjoyment, on an equal footing, of Covenant rights for all persons including adults engaged in same-sex consensual activities; and**

**(d) repeal article 148 of the Criminal Code and, in the meantime, ensure that no one is prosecuted by reason of sexual orientation or gender identity.**

<sup>6</sup> CCPR/C/GIN/CO/3

<sup>7</sup> CCPR/C/SDN/CO/5

## **Violence against women**

19. While noting the national policy to combat violence against women (2016–2031) and welcoming the amendment of article 149 of the Criminal Code, which no longer conflates rape with adultery and sodomy [...]

## **Death penalty**

29. The Committee remains concerned that, despite its previous recommendations (CCPR/C/SDN/CO/4, para. 14), the death penalty remains imposed for crimes other than the most serious crimes within the meaning of article 6 (2) of the Covenant, meaning crimes involving intentional killing. The Committee notes, in particular, within the Criminal Code, that the offences of “undermining the constitutional order” (art. 50), espionage (art. 53), apostasy (art. 126), adultery (art. 146) and sodomy (art. 148) do not meet this requirement. [...]

**30. The Committee urges the State party to amend article 27 of the Criminal Code, so as to revoke stoning and crucifixion as an officially sanctioned punishment under the national law of the State. The Committee also urges the State party to consider imposing a moratorium on the death penalty and ratifying the Second Optional Protocol to the Covenant. In the meantime, the State party should revise the Criminal Code and the Prevention of Human Trafficking Act, so as to make them strictly compliant with article 6 (2) of the Covenant, and restrict the crimes for which the death penalty may be imposed to the most serious ones, understood to be crimes involving intentional killing.**

## **D. Dissemination and follow-up**

[...]

**56. In accordance with rule 71, paragraph 5, of the Committee’s rules of procedure, the State party is requested to provide, by 2 November 2020, information on the implementation of the recommendations made by the Committee in paragraphs 13 (impunity, effective remedies and reparations), 30 (death penalty) and 46 (freedom of expression, peaceful assembly and association) above.**

### 3. COMPILATION OF LISTS OF ISSUES

#### **Equatorial Guinea** – List of Issues – 124<sup>th</sup> Session, 5 February 2019, initial review<sup>8</sup>

##### **Non-discrimination (arts. 2, 7, 13, 26 and 27)**

6. In the light of article 15 (1) of the Constitution, please clarify if there is comprehensive legislation that

- (a) provides a clear definition of and that criminalizes direct and indirect discrimination;
- (b) contains a comprehensive list of prohibited grounds of discrimination, including sexual orientation, gender identity and disability; and
- (c) provides effective remedies for victims..

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

- (a) persons with disabilities;
- (b) foreign persons;
- (c) lesbian, gay, bisexual and transgender persons;
- (d) persons with HIV; and
- (e) persons belonging to ethnic minorities.

[...]

#### **Mauritania** – List of Issues – 124<sup>th</sup> Session, 5 February 2019, 2<sup>nd</sup> review<sup>9</sup>

##### **Non-discrimination (arts. 2, 25 and 26)**

4. Please provide information on steps taken to review Act No. 2018-023 of 18 January 2018 criminalizing discrimination, which has drawn criticism from a number of special rapporteurs of the Human Rights Council, and to ensure that it:

- (a) clearly defines and criminalizes direct and indirect discrimination;
- (b) covers all grounds for discrimination set out in the Covenant, including race, social origin, sexual orientation and gender identity; and
- (c) provides effective remedies for victims.

Please provide information on the effective implementation of the provisions of the legislative texts referred to in paragraphs 87 to 89 of the State party's report. In this respect, please provide data on the number of complaints of discrimination filed and registered and the number of prosecutions conducted and convictions and sentences handed down in that connection.

[...]

6. Please indicate whether the State party intends to decriminalize the sexual practices punishable under section 308 of the Criminal Code. Please provide information on measures taken to protect the privacy and freedom of persons belonging to sexual minorities.

<sup>8</sup> CCPR/C/GNQ/Q/1

<sup>9</sup> CCPR/C/MRT/Q/2

## **Nigeria** – List of Issues – 124<sup>th</sup> Session, 8 November 2018, 2<sup>nd</sup> review<sup>10</sup>

### **Non-discrimination (arts. 2, 3, 7, 9, 17 and 26)**

5. Please provide information on the national legal framework regarding discrimination. In addition to the Constitutional provisions on discrimination, please indicate whether specific laws or other measures that deal with discrimination exist in the domestic system and if so please provide details.

Please clarify whether domestic law:

- (a) provides a definition of discrimination that includes a comprehensive list of prohibited grounds of discrimination including race, colour, property, birth, sexual orientation, gender identity, language, health, social and other status;
- (b) covers direct, indirect and intersecting forms of discrimination; and
- (c) provides for effective judicial and administrative remedies.

Describe the measures taken to combat and prevent acts of discrimination, stigmatization and violence specifically against:

- (a) persons with albinism;
- (b) persons affected by leprosy;
- (c) single mothers and children born out of wedlock;
- (d) persons belonging to minorities, in particular Hausa, Igbo and Yoruba;
- (e) persons with disabilities, in particular women with disabilities; and
- (f) LGBT persons.

With regard to the last issue, indicate whether the State party intends to revise:

- (a) article 214 of its Criminal Code, which criminalizes sexual acts between persons of the same sex and provide for up to 14 years of imprisonment and assimilates such acts with bestiality; and
- (b) the 2014 Same Sex Marriage (Prohibition) Act that prohibits a marriage contract or civil union between persons of the same sex.

Comment on allegations that since the adoption of the Same Sex Marriage (Prohibition) Act, LGBT persons have been subject to increased harassment, threats and mob violence. Comment on allegations on torture, sexual violence, arbitrary detention and extortion committed by law enforcement agents on LGBT persons, based on their perceived sexual orientation or gender identity.

## **Tajikistan** – List of Issues – 124<sup>th</sup> Session, 29 November 2018, 3<sup>rd</sup> review<sup>11</sup>

### **Non-discrimination (arts. 2 and 26)**

6. Please clarify whether national legislation, including the Constitution, explicitly prohibits discrimination on all the grounds prohibited under the Covenant, including colour, opinion, birth, sexual orientation, gender identity and other status, and report on any plans to adopt comprehensive anti-discrimination legislation that, inter alia, addresses discrimination in the private sphere; prohibits all direct, indirect and multiple forms of discrimination; contains a comprehensive list of prohibited grounds for discrimination, in accordance with the Covenant; and provides for access to effective remedies in judicial and administrative proceedings for victims of discrimination.

7. Please respond to the following allegations, and report on the measures taken to address the reported violations effectively:

- (a) lesbian, gay, bisexual and transgender individuals face discrimination, violence and harassment, are targeted by law enforcement officials for amoral behaviour and crimes against morality, are forcibly registered on lists of lesbian, gay, bisexual and transgender persons and are subjected to arbitrary arrest, detention and extortion; and
- (b) the Ministry of Internal Affairs and the Office of the Prosecutor General created, in October 2017, a register of 367 individuals suspected of being lesbian, gay, bisexual or transgender following investigative operations reportedly aimed at protecting them and at preventing the transmission of sexually transmitted infections, including HIV/AIDS.

<sup>10</sup> [CCPR/C/NGA/Q/2](#)

<sup>11</sup> [CCPR/C/TJK/Q/3](#)

**Non-discrimination (arts. 2, 3, 20 and 26)**

8. Please provide information on the national legal framework regarding discrimination and indicate whether it:

- (a) provides a definition that includes a comprehensive list of prohibited grounds of discrimination, including race, colour, sexual orientation, gender identity, religion, health, and social or other status;
- (b) includes direct, indirect and intersecting forms of discrimination; and
- (c) provides for effective judicial and administrative remedies.

Please also provide information on the implementation of existing anti-discrimination laws, and statistical information on complaints received by the Police Complaints Authority and other competent State agencies in relation to discrimination.

[...]

10. Please provide information on measures taken to combat discrimination against lesbian, gay, bisexual, transgender and intersex persons, and to include different representatives from civil society in the development and implementation of policies and the drafting of legislation in this regard. In the light of the ruling of the High Court of Justice on 12 April 2018, please indicate whether the State party intends to:

- (a) ensure that same-sex relations between consenting adults are not subject to criminal sanctions;
- (b) repeal the law barring homosexuals from immigrating to the State party;
- (c) include provisions on same-sex unions, homosexuality and sexual orientation in its national gender policy;
- (d) incorporate sexual orientation into legislation as a prohibited ground of discrimination, as suggested by the Equal Opportunity Commission; and
- (e) raise awareness among the general population of the importance of non-discrimination against lesbian, gay, bisexual, transgender and intersex persons.

**Treatment of aliens, including refugees and asylum seekers (arts. 7, 9, 10, 13 and 17)**

22. [...] Please respond to allegations of the arbitrary detention of migrants and comment on reports indicating that decisions made to detain individuals on the grounds of immigration appear to depend solely on their irregular immigration status, including irregular entry, and do not take into account their vulnerabilities, such as their health, age or sexual orientation. Please also provide information on relevant training activities provided for immigration officers.

## 4. CIVIL SOCIETY SUBMISSIONS

### Belarus

- Submission by [Identity and Law](#) for the 124<sup>th</sup> Session (*stand-alone report on LGBT, including discrimination and hate crimes, restrictions on freedom of assembly, and trans persons' privacy*).
- Submission by [Amnesty International](#) for the 124<sup>th</sup> Session (*refers to sentencing of LGBTI activist Viktoria Biran for "mass protest" following activist photographs*).
- Joint submission by [National Human Rights Coalition](#) for the 124<sup>th</sup> Session (*discusses disclosure of "sex change" in identification documents, and barriers to reporting LGBT hate crimes*).
- Submission by [Belarussian Helsinki Committee & Others](#) for the 114<sup>th</sup> Session (*mentions LGBT among vulnerable groups*).
- Submission by [Human Rights Project – Gay Belarus](#) for the 114<sup>th</sup> Session (*stand-alone report on LGBT persons, including restrictions on freedom of association, assembly and expression, police repression, hate crimes, hate speech and discrimination of trans persons*).

### Belize

- Joint submission by [United Belize Advocacy Movement, Empower Yourself Belize Movement, Synergia - Initiatives for Human Rights, and Akahatá - Equipo de Trabajo en Sexualidades y Géneros](#) for the 124<sup>th</sup> Session (*stand-alone report on LGBTI, including cases of hate crimes and discrimination, lack of protection by the State, and rights of same-sex couples and their children*).

### Bulgaria

- Submission by [The Bulgarian Helsinki Committee](#) for the 124<sup>th</sup> Session (*section on LGBTI rights, including hate speech and hate crimes, recognition of gender identity and same-sex unions*).

### Guinea

- Submission by [Amnesty International](#) for the 122<sup>nd</sup> Session (*section on discrimination, refers to criminalisation of same-sex acts*).

### Mauritania

- Submission by [Freedom now](#) for the 124<sup>th</sup> Session (*calls for data on and reform of capital punishment provisions in Mauritania's Penal Code, including for homosexuality*).

### Nigeria

- Joint submission by [Advocates for Human Rights and World Coalition Against the Death Penalty](#) for the 124<sup>th</sup> Session (*refers to mandatory death penalty under Sharia law, including for sodomy*).

### Tajikistan

- Joint submission by [Bureau for Human Rights and Rule of Law, Human Rights Center, INIS, Khoma, Independent Human Rights Center, and Civil Freedoms Office](#) for the 124<sup>th</sup> Session (*mentions lack of anti-discrimination legislation, including on grounds of sexual orientation*).
- Submission by [Human Rights Watch](#) for the 124<sup>th</sup> Session (*criticises the government's registry of "proven" LGBTI persons and its ensuing abuse and extortion of the community, and calls for anti-discrimination legislation*).

### Sudan

- Submission by [Alkarama](#) for the 124<sup>th</sup> Session (*criticises the death penalty and its applicability to acts "undermining the constitutional order", including sodomy*).
- Submission by [Equality Now](#) for the 124<sup>th</sup> Session (*mentions conflation of rape with "sodomy" in criminal legislation*).

## 5. GENERAL COMMENTS

### **General Comment No. 36 (2018)** on article 6 of the International Covenant on Civil and Political Rights, on the right to life<sup>13</sup>

#### **I. General Remarks**

1. This general comment replaces earlier general comments No. 6 (16th session) and 14 (23rd session) adopted by the Committee in 1982 and 1984, respectively.

#### **III. The Duty to Protect Life**

[...]

23. The duty to protect the right to life requires States parties to take special measures of protection towards persons in situation of vulnerability whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence. These include human rights defenders, officials fighting corruption and organized crime, humanitarian workers, journalists, prominent public figures, witnesses to crime, and victims of domestic and gender-based violence and human trafficking. They may also include children, especially children in street situations, unaccompanied migrant children and children in situations of armed conflict, members of ethnic and religious minorities and indigenous peoples, lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, persons with albinism, alleged witches, displaced persons, asylum seekers, refugees and stateless persons. States parties must respond urgently and effectively in order to protect individuals who find themselves under a specific threat, by adopting special measures such as the assignment of around-the-clock police protection, the issuance of protection and restraining orders against potential aggressors and, in exceptional cases, and only with the free and informed consent of the threatened individual, protective custody.

#### **IV. Imposition of the Death Penalty**

[...]

36. Under no circumstances can the death penalty ever be applied as a sanction against conduct whose very criminalization violates the Covenant, including adultery, homosexuality, apostasy, establishing political opposition groups, or offending a head of state. States parties that retain the death penalty for such offences commit a violation of their obligations under article 6 read alone and in conjunction with article 2, paragraph 2 of the Covenant, as well as of other provisions of the Covenant.

#### **V. Relationship of article 6 with other articles of the Covenant and other legal regimes**

[...]

61. The right to life must be respected and ensured without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or any other status, including caste, ethnicity, membership of an indigenous group, sexual orientation or gender identity, disability, socioeconomic status, albinism and age. Legal protections for the right to life must apply equally to all individuals and provide them with effective guarantees against all forms of discrimination, including multiple and intersectional forms of discrimination. Any deprivation of life based on discrimination in law or fact is ipso facto arbitrary in nature. Femicide, which constitutes an extreme form of gender-based violence that is directed against girls and women, is a particularly grave form of assault on the right to life.

<sup>13</sup> [CCPR/C/GC/36](#) (30 Oct 2018)

## 6. FOLLOW-UP EVALUATIONS

### Republic of Korea – Follow-up to Concluding Observations – 124<sup>th</sup> Session, 6 December 2018<sup>14</sup>

*Concluding Observations:* CCPR/C/KOR/CO/4, 3 November 2015

*Follow-up reply:* CCPR/C/KOR/CO/4/Add.1, 23 July 2017

*Committee's evaluation:* Additional information required on paragraphs 15 [E]<sup>15</sup>, 45 [C]<sup>16</sup> and 53 [C]

*Information from NGOs:* South Korean Human Rights Organizations Network (84 NGOs), 3 November 2016

#### Paragraph 15: Discrimination on the grounds of sexual orientation and gender identity

**The State party should clearly and officially state that it does not tolerate any form of social stigmatization of, or discrimination against, persons based on their sexual orientation or gender identity, including the propagation of so-called conversion therapies”, hate speech and violence. It should strengthen the legal framework to protect lesbian, gay, bisexual, transgender and intersex individuals accordingly, repeal article 92-6 of the Military Criminal Act, avoid the use of State-owned buildings by private organizations for so-called “conversion therapies”, develop sex education programmes that provide students with comprehensive, accurate and age-appropriate information regarding sexuality and diverse gender identities, and facilitate access to the legal recognition of gender reassignment. It should also develop and carry out public campaigns and provide training for public officials to promote awareness and respect for diversity in respect of sexual orientation and gender identity.**

#### Summary of State party's reply

Notwithstanding the lack of separate legislation prohibiting hate speech against a particular group of people, the State party notes that article 11 of the Constitution and the National Human Rights Commission Act explicitly prohibit sexual orientation and gender identity as grounds for discrimination.

The State party notes that discriminatory measures on grounds of sexuality are strictly forbidden in the military under the Unit Management Directive, but there are no plans to repeal article 92-6 of the Military Criminal Act. This decision is based on the judgment rendered by the Constitutional Court on 28 July 2016, which stated that the provision was not unconstitutional and, therefore, could not be regarded as a provision punishing homosexuals. In the Court's view, the restrictions are legitimate in order to preserve the distinct nature of the military, despite their discriminatory nature against homosexual servicemen.

Following consultation with experts, school and education offices, sex education materials for kindergarten, primary and secondary school have been standardized and supplemented. However, parents opposed the inclusion of diverse sexuality in sex education at schools for minors, who are yet to determine their sexual orientation. As a result, the Government decided to exclude diverse forms of sexual orientation and gender identity from sex education until the end of secondary school as it holds that public education should reflect social and culturally agreed values.

The Supreme Court's judgment of 2006 introduced the guidelines on handling applications for gender reassignment. The State party reiterates that the guidelines are subject to review if the socially accepted notions of a person's gender change.

<sup>14</sup> CCPR/C/124/2

<sup>15</sup> E: Information or measures taken are contrary to or reflect rejection of the recommendation

<sup>16</sup> C: Reply/action not satisfactory

## **Committee's evaluation**

**[E]:** The Committee regrets the State party's position that it has no plans to repeal article 92-6 of the Military Criminal Act and that the Constitutional Court on 28 July 2016 found that article constitutional, despite its discriminatory nature against homosexual servicemen.

The Committee regrets that, contrary to the Committee's recommendation, the State party decided to exclude diverse forms of sexual orientation and gender identity from sex education until the end of secondary school, on the grounds of reflecting social and culturally agreed values.

The Committee also regrets the State party's position that it will review the guidelines on gender reassignment in case of a change in the socially accepted notions of a person's gender.

The Committee further regrets that no measures have been taken to implement its recommendations regarding:

- (a) clearly and officially stating that it does not tolerate any discrimination, hate speech, violence against lesbian, gay, bisexual, transgender and intersex persons or propagation of "conversion therapies";
- (b) strengthening the legal framework to protect lesbian, gay, bisexual, transgender and intersex persons; and
- (c) conducting campaigns and training to promote tolerance and awareness of lesbian, gay, bisexual, transgender and intersex persons.

The Committee reiterates its recommendation.