

Using the **ICESCR** to Protect the Economic, Social and Cultural Rights of **LGBTI People**

A Practical Guide



Kaleidoscope
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About Kaleidoscope Human Rights Foundation

Kaleidoscope Human Rights Foundation (**Kaleidoscope**) is a not-for-profit organisation founded in Australia in 2013. It is the sister organisation of Kaleidoscope Trust in the United Kingdom.

Kaleidoscope is committed to protecting the human rights of lesbian, gay, bisexual, transgender and intersex (**LGBTI**) people in the Asia-Pacific region, so as to enable them to live a life of dignity.

Kaleidoscope does this primarily by:

- engaging with various United Nations (**UN**) human rights mechanisms, in partnership with local LGBTI activists;
- building capacity among LGBTI activists, including through training programs, international forums and publications, to enable them to effectively conduct their own human rights advocacy; and
- raising awareness of LGBTI rights violations and amplifying the voices of LGBTI activists in the Asia-Pacific region, including through engagement with traditional and social media.

More information about Kaleidoscope can be found on our website:

www.kaleidoscopeaustralia.com

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Overview of this Guide

This Guide is intended to assist NGOs and activists around the world who wish to use the International Covenant on Economic, Social and Cultural Rights (**ICESCR**) to improve domestic protection of the economic, social and cultural rights of LGBTI people. This Guide may also assist government authorities and policymakers to better understand their obligations under the ICESCR in respect of LGBTI people and to identify domestic law and policy reforms that would better protect the economic, social and cultural rights of LGBTI people.

Section 1 of the Guide provides an introduction to the ICESCR and why it matters to LGBTI people. This section also introduces the various functions of the UN Committee on Economic, Social and Cultural Rights (**ESCR Committee**), the UN body that monitors compliance with the ICESCR and provides guidance on its implementation.

Section 2 provides a detailed overview of each of the substantive rights under the ICESCR and the obligations they impose on States Parties in relation to LGBTI people. This section draws heavily upon the ESCR Committee's interpretation of the ICESCR, as set out in its Concluding Observations and General Comments.

Section 3 explains the different UN mechanisms that activists can use to ensure that States Parties comply with their obligations under the ICESCR. This includes the mechanisms overseen by the ESCR Committee – the periodic review process, the individual communication mechanism and the drafting of General Comments – as well as mechanisms of other UN bodies, such as the Human Rights Council's Universal Periodic Review and Special Procedures, including the Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity.

Section 4 sets out additional resources that may be useful to activists, policymakers and others who are interested in using UN mechanisms to better protect the economic, social and cultural rights of LGBTI people.

At the end of this Guide are a glossary of key terms, an explanation of acronyms and a list of references (endnotes).

1. Introduction

1.1 What is the ICESCR?

The International Covenant on Economic, Social and Cultural Rights (**ICESCR**) is one of the most important international human rights treaties for LGBTI people. Together with its sister covenant, the International Covenant on Civil and Political Rights (**ICCPR**), and the Universal Declaration of Human Rights, it forms the “international bill of human rights”, which is the central pillar for human rights protection globally.

The ICESCR was adopted by the United Nations (**UN**) General Assembly in 1966 and entered into force in 1976. As of November 2018, 169 states have ratified the ICESCR, which means they have committed to upholding the human rights set out in this treaty. States that have ratified the ICESCR are referred to as “**States Parties**”.

The ICESCR is concerned with the group of human rights that are collectively known as economic, social and cultural rights. These are rights that are highly important for day-to-day living, since they are about ensuring that people can live lives of dignity through, for example, having a job or access to social security if they can’t work, having an adequate standard of living (including adequate food, clothing and housing), being able to access education and healthcare, and being able to take part in cultural life.

Economic, social and cultural rights can be distinguished from civil and political rights, which are set out in the ICCPR and include the right to a fair trial, freedom of expression and association, equality before the law and the right to vote.

1.2 Why does the ICESCR matter to LGBTI people?

The ICESCR is arguably the most comprehensive and helpful international human rights treaty in terms of protecting the rights of LGBTI people. The rights set out in the ICESCR are integral to LGBTI people globally, touching on almost all aspects of their lives: employment, education, health, family life, food, housing and cultural life. It is often in these areas that LGBTI people face some of the most significant levels of discrimination and inequality, whether this be in the form of violence and bullying at school, lack of equal employment opportunities, non-consensual medical interventions, inability to access necessary health care or non-recognition of their families.

It is therefore surprising that, until recently, the ICESCR, and economic, social and cultural rights more broadly, have received little attention from LGBTI activists, many of whom have tended to focus their advocacy efforts on civil and political rights. For example, advocacy for the decriminalisation of consensual same-sex sexual conduct is often framed as part of the right to privacy or equality before the law under the ICCPR, rather than the right to work or the right to health under the ICESCR. Similarly, censorship of LGBTI content in the media or bans on pride parades are more often framed as violations of the right to freedom of expression and association under the ICCPR, rather than of the right to take part in cultural life under the ICESCR.

In many parts of the world, the language of civil and political rights may not fully resonate with governments or with civil society and may be met with backlash or inaction. Engaging with and

understanding the economic, social and cultural rights of LGBTI people provides an additional tool for non-government organisations (**NGOs**) and activists to use in addressing discrimination and promoting substantive equality for LGBTI people in key areas of their lives.

1.3 Who monitors compliance with the ICESCR?

Compliance with the ICESCR is overseen by the UN Committee on Economic, Social and Cultural Rights, referred to in this Guide as the “**ESCR Committee**”. The ESCR Committee is made up of eighteen independent experts, elected for four-year terms by the UN Economic and Social Council (a body made up of 54 UN member states elected by the General Assembly).

The ESCR Committee **periodically reviews** each State Party’s efforts to implement the rights in the ICESCR. This review takes place approximately every five years and culminates in the ESCR Committee issuing “**Concluding Observations**” to the relevant State Party. The Concluding Observations set out the ESCR Committee’s areas of concern and include recommendations as to how the State Party can better comply with the ICESCR. The Concluding Observations also provide important insights into how the ESCR Committee believes economic, social and cultural rights should be interpreted and implemented.

Since 2013, individuals in a limited number of States Parties also have the opportunity to make a complaint to the ESCR Committee if they feel that their ICESCR rights have been violated. This is only possible if the relevant State Party has ratified the Optional Protocol to the ICESCR, which 24 states have done as of November 2018. These complaints are known as **individual communications** and are explained in greater depth in section 3.1.4.

Another important function of the ESCR Committee is to periodically issue **General Comments**, which provide authoritative interpretations of the provisions and rights within the ICESCR. 24 General Comments have been published by the ESCR Committee as of November 2018. General Comments are different from Concluding Observations, because they are directed to *all* States Parties and often address a specific theme, such as the right to sexual and reproductive health or the right to just and favourable conditions of work.

NGOs and activists have a range of opportunities to involve themselves in the ESCR Committee’s work, through submitting country-specific parallel reports when a State Party is up for periodic review, commenting on draft General Comments and assisting with individual communications to the ESCR Committee. These opportunities (among others) are explained in section 3 of this Guide.

2. Obligations under the ICESCR relating to LGBTI people

2.1 Introduction

This section 2 sets out the specific obligations that States Parties have under the ICESCR in relation to LGBTI people.

Section 2.2 begins with an overview of the non-discrimination obligation in Article 2(2) of the ICESCR, which shapes the interpretation of all of the substantive rights in the ICESCR.

A separate section is then provided for each of the main rights in the ICESCR, namely:

- the right to work – section 2.3;
- the rights to social security and protection and assistance for the family – section 2.4;
- the right to an adequate standard of living – section 2.5;
- the right to health – section 2.6;
- the right to education – section 2.7; and
- the right to take part in cultural life – section 2.8.

Each of these sections begins with an overview of the relevant Article of the ICESCR and then sets out a list of specific obligations that the Article gives rise to in relation to LGBTI people. These obligations have been developed through a detailed analysis of the ESCR Committee's interpretation of the ICESCR, particularly in the form of Concluding Observations and General Comments (explained in section 1.3 above).

The obligations identified in this section 2 are not intended to be exhaustive, recognising in particular that the interpretation of the ICESCR evolves over time. Instead, they represent Kaleidoscope's view of how the various rights within the ICESCR can be distilled into specific obligations relating to LGBTI people, based on textual references to Concluding Observations or General Comments of the ESCR Committee.

Each time a reference to a Concluding Observation or General Comment is made in this section 2, an endnote number is provided, which corresponds to a citation of the specific source document in the "References" section at the end of this Guide. This is intended to assist activists who wish to refer to specific Concluding Observations or General Comments in their own reporting to the UN or other relevant work.

The shaded boxes throughout this section titled "Potential evidence of violations" provide examples of the information that NGOs and activists could gather or identify in order to establish that there has been a violation of a State Party's obligation under the ICESCR. The specific obligations set out in this section 2 (as well as the examples of potential evidence in the shaded boxes) are designed to assist NGOs and activists in effectively using the ESCR Committee and other UN mechanisms to advocate for the rights of LGBTI people. Practical guidance on how to use these mechanisms is provided in section 3.

Finally, for quick reference, section 2.9 provides a list of the various LGBTI-related obligations that derive from each human right within the ICESCR, obligations that are set out in detail in sections 2.3 to 2.8.

2.2 The obligation of non-discrimination – Article 2(2)

2.2.1 Overview

Article 2(2) of the ICESCR requires State Parties to guarantee that all of the rights set out in the ICESCR “*will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or **other status***”.

In 2009, the ESCR Committee published *General Comment No. 20 on Non-Discrimination in Economic, Social and Cultural Rights (General Comment No. 20)*, which states that the words “*other status*” in Article 2(2) include “**sexual orientation**” and “**gender identity**”.¹ It also notes that the concept of “*other status*” is intended to be flexible and to evolve over time, recognising “*the experience of social groups that are vulnerable and have suffered and continue to suffer marginalization*”.²

Accordingly, while sexual orientation and gender identity are not explicitly mentioned as prohibited non-discrimination grounds in the text of Article 2(2), the ESCR Committee’s interpretation of Article 2(2) in General Comment No. 20 means that States Parties cannot discriminate against lesbian, gay, bisexual and transgender (**LGBT**) people when it comes to respecting, protecting and fulfilling economic, social and cultural rights.

In addition, in 2016, the ESCR Committee issued *General Comment No. 22 on the Right to Sexual and Reproductive Health* and *General Comment No. 23 on the Right to Just and Favourable Conditions of Work*, which repeatedly specified that the non-discrimination obligation in Article 2(2) includes the ground of “**intersex status**”.³

According to General Comment No. 20, the phrase “*other status*” also includes a range of grounds that may be indirectly relevant to LGBTI people. These include marital and family status and health status.

The ESCR Committee has not specifically recognised “*gender expression*” as a ground on which discrimination is prohibited under Article 2(2) of the ICESCR. This term, which refers to a person’s expression of their gender identity (e.g. through behaviour or clothing), is sometimes included as a separate non-discrimination ground in domestic anti-discrimination laws and policies. However, in General Comment No. 20, the ESCR Committee adopts the definition of “*gender identity*” used in the Yogyakarta Principles, which specifically includes “*expressions of gender, including dress, speech and mannerisms*”.⁴ Accordingly, gender expression falls within the scope of “*gender identity*” as understood by the ESCR Committee in General Comment No. 20, and therefore within the scope of the non-discrimination obligation in Article 2(2).

Notes regarding terminology: Other documents, such as the Yogyakarta Principles Plus 10, use the term “*sex characteristics*” rather than “*intersex status*”.⁵ “*Sex characteristics*” is a symmetrical term, protecting all people from discrimination regardless of their sex characteristics, whereas “*intersex status*” refers to a specific group of people – intersex people, whose sex characteristics don’t fit medical or social norms for female or male bodies.⁶ A ground of “*sex characteristics*” is more consistent with the symmetrical way that other non-discrimination grounds, such as race, sex, sexual orientation and gender identity, are framed. However, because the ESCR Committee has recognised “*intersex status*” as a non-discrimination ground, this term will be used throughout this Guide.

2.2.2 Scope of the non-discrimination obligation

The ESCR Committee’s interpretation of Article 2(2) as including sexual orientation, gender identity and intersex status is critical to ensuring that the ICESCR can be used to protect the economic, social and cultural rights of LGBTI people.

The non-discrimination obligation in Article 2(2) is not a right in and of itself. Instead, it informs the scope of all of the substantive rights under the ICESCR, such as the right to education, the right to work and

the right to social security. In other words, Article 2(2) requires States Parties to take steps to ensure that all of the rights guaranteed under the ICESCR can be exercised without discrimination on any of the prohibited grounds (including sexual orientation, gender identity and intersex status).

According to General Comment No. 20, the non-discrimination obligation has several elements, requiring States Parties to:

- ensure that laws do not *directly* discriminate on the prohibited grounds in relation to the ICESCR rights⁷ – for example, laws cannot deny equal social security benefits or the right to education on any of the prohibited grounds;
- ensure that laws do not *indirectly* discriminate on the prohibited grounds in relation to the ICESCR rights⁸ – indirect discrimination occurs where a law, policy or practice is neutral on its face, but has a disproportionate impact on the ability of a group that shares a prohibited non-discrimination characteristic to exercise its ICESCR rights. An example of this is a policy that provides certain benefits to married couples in a jurisdiction where marriage is defined as being between a man and a woman. While such policy does not explicitly discriminate on the basis of sexual orientation, as unmarried different-sex couples are also excluded, it *indirectly* discriminates against same-sex couples, given that they are unable to marry and are therefore disproportionately affected by the policy as compared to different-sex couples;
- take positive measures to address substantive (de facto) discrimination on the prohibited grounds in relation to the ICESCR rights⁹ – for example, by eliminating practical discrimination in access to health care through specific policies, action plans or strategies;
- adopt measures to prohibit private actors, such as employers and businesses, from discriminating on the prohibited grounds in relation to the ICESCR rights¹⁰ – for example, by enacting anti-discrimination laws and action plans in respect of education, employment or housing; and
- provide mechanisms and institutions to address complaints of discrimination in the implementation of the ICESCR rights (whether by the State or by private parties)¹¹ – for example, by ensuring that National Human Rights Institutions, courts, tribunals and/or ombudspersons have jurisdiction to effectively resolve discrimination complaints.

According to General Comment No. 20, a State Party's failure to guarantee that the rights in the ICESCR can be exercised without discrimination is a violation of the ICESCR. The only exception is where the differential treatment is "*reasonable and objective*".¹² To fit within the exception, the differential treatment must be "*solely for the purpose of promoting the general welfare in a democratic society*" and there must be a "*clear and reasonable relationship of proportionality*" between the desired aim, the differential treatment and its effects.¹³

It is highly unlikely that a law or policy discriminating against LGBTI people would fall within this exemption. For example, while countries have often attempted to justify laws criminalising consensual same-sex sexual conduct on the basis of "public health" or "public morality", the differential treatment inherent in such laws would not be "*solely for the purpose of promoting the general welfare in a democratic society*" (particularly given the negative health effects of such laws). It is also difficult to see how criminalisation of same-sex relations could be a proportionate response to any legitimate aim of the State.

Significantly, the ESCR Committee notes that the non-discrimination obligation is immediate and its breach cannot be justified on the basis of a lack of available resources.¹⁴ For example, a State Party cannot justify the non-recognition of same-sex couples under law or the failure of a legal gender recognition mechanism for transgender people on the basis that it lacks financial resources.

Sections 2.3 to 2.8 of this Guide provide more information about how the non-discrimination obligation interacts with specific rights within the ICESCR and the specific obligations that this entails for States Parties in relation to LGBTI people.

2.3 The right to work – Articles 6 and 7

2.3.1 Overview of Articles 6 and 7 of the ICESCR

Article 6 of the ICESCR recognises the right to work, while Article 7 recognises the right to just and favourable conditions of work.

Article 6

1. *The States Parties to the present Covenant recognize **the right to work**, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*
2. *The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.*

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- a. *Remuneration which provides all workers, as a minimum, with:*
 - i. *Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*
 - ii. *A decent living for themselves and their families in accordance with the provisions of the present Covenant;*
- b. *Safe and healthy working conditions;*
- c. *Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*
- d. *Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.*

2.3.2 Specific obligations relating to LGBTI people

States Parties are required to take the following measures in order to protect the rights of LGBTI people under Articles 6 and 7 of the ICESCR.

Enact laws that prohibit discrimination and harassment in employment on the basis of sexual orientation, gender identity and intersex status.

In *General Comment No. 18 on the Right to Work (General Comment No. 18)*, the ESCR Committee notes that Article 6 prohibits “any discrimination in access to and maintenance of employment” on any

of the grounds in Article 2(2), which, as mentioned in section 2.2 above, include sexual orientation, gender identity and intersex status.¹⁵ As part of their duties to take appropriate steps to protect the right to work in Article 6, General Comment No. 18 stipulates that States Parties have an obligation to “*adopt legislation or to take other measures ensuring equal access to work and training*”.¹⁶

In addition, in *General Comment No. 23 on the Right to Just and Favourable Conditions of Work (General Comment No. 23)*, the ESCR Committee specifies that States Parties have a “*core obligation*” under Article 7 to “*guarantee through law the exercise of the right to just and favourable conditions of work without discrimination of any kind as to [...] sexual orientation, gender identity [and] intersex status*”.¹⁷ In order to satisfy the different elements of Article 7, legislation should prohibit discrimination against LGBTI people in hiring, promotion, dismissal, remuneration and working conditions.

General Comment No. 23 also specifies that legislation should prohibit and punish harassment in the workplace, including harassment on the basis of sexual orientation, gender identity and intersex status.¹⁸ According to the ESCR Committee, such legislation must clearly set out the acts that constitute harassment and impose positive duties on employers to prevent and resolve harassment cases and provide compulsory training about harassment to all staff.¹⁹

In its periodic review of State Parties’ compliance with the ICESCR, the ESCR Committee has repeatedly recommended to States Parties that they introduce comprehensive anti-discrimination laws in order to fulfil their obligations under Articles 6 and 7. For example:

- In its Concluding Observations to Denmark (6 June 2013), the ESCR Committee recommended that Denmark take steps to adopt “*comprehensive anti-discrimination legislation*” and ensure that such legislation protects against discrimination on the ground of sexual orientation.²⁰
- In its Concluding Observations to Kyrgyzstan (7 July 2015), the ESCR Committee expressed its concerns about persistent discrimination on the basis of sexual orientation (among other grounds). It recommended that Kyrgyzstan adopt a “*comprehensive anti-discrimination law that provides a definition of direct and indirect discrimination*”.²¹
- In its Concluding Observations to Uganda (8 July 2015), the ESCR Committee expressed concern about the lack of comprehensive anti-discrimination legislation and the prevalence of societal stigma and discrimination on the grounds of sexual orientation and gender identity (among others). It specifically recommended that Uganda take steps to combat and prevent discrimination and societal stigma against LGBTI individuals, including in relation to employment.²²

While many of the ESCR Committee’s concluding observations refer only to “*sexual orientation*” or “*sexual orientation and gender identity*” (thereby excluding intersex status), General Comment No. 23 explicitly mentions intersex status as one of the grounds under which discrimination is prohibited under Article 7.²³

Accordingly, in giving effect to their obligations under Articles 6 and 7, States Parties are required to enact comprehensive employment anti-discrimination laws that:

- prohibit both direct and indirect forms of discrimination;
- specifically refer to sexual orientation, gender identity and intersex status as prohibited grounds of discrimination;
- apply broadly to all areas and dimensions of work, including hiring, promotion, dismissal, remuneration and working conditions, in both the public and private sectors; and
- prohibit harassment on the basis of sexual orientation, gender identity and intersex status in the workplace.

Potential evidence of violations

- Testimonials or data regarding discrimination against LGBTI people in employment, including in relation to hiring, promotion, dismissal, remuneration and working conditions. For example, testimonials of LGBTI people who have been dismissed from their job due to their sexual orientation, gender identity or intersex status.
- Testimonials or data regarding harassment and bullying of LGBTI people in the workplace, whether by employers, supervisors or other employees. For example, survey data showing the percentage of LGBTI people reporting harassment or bullying in the workplace.
- Evidence of higher unemployment rates or lower wages for LGBTI people (or specific groups within LGBTI communities) compared to the general population. For example, studies showing that transgender people have lower average earnings than cisgender people.
- Evidence of legal restrictions or practical barriers against the hiring of LGBTI people (or specific groups within LGBTI communities) in government employment. For example, policies that prohibit the hiring of lesbian, gay or bisexual people in the civil service, or dress codes that prevent transgender people from expressing their gender identity in the workplace.

Take active steps, including information campaigns and training programs, to combat employment discrimination against LGBTI people.

In addition to requiring States Parties to have anti-discrimination laws, Article 7 of the ICESCR imposes an obligation on States Parties to take broader positive measures to prevent or minimise discrimination in employment against LGBTI people.

In General Comment No. 23, the ESCR Committee notes that, to promote the right to just and favourable conditions of work, States Parties should “*put in place training programmes and information campaigns*” with a view to creating equal opportunities for workers in both the private and public sectors.²⁴

In its Concluding Observations to States Parties, the ESCR Committee has emphasised the need for awareness-raising as an effective means of combating discrimination. For example:

- In its Concluding Observations to Guatemala (9 December 2014), the ESCR Committee regretted the persistence of discrimination in employment on the ground of sexual orientation and recommended that Guatemala take measures, “*in particular awareness-raising measures*”, to ensure that people are not discriminated against on the basis of their sexual orientation or gender identity.²⁵
- In its Concluding Observations to Paraguay (20 March 2015), the ESCR Committee expressed its concern that Paraguay had not adopted effective measures to combat the “*persistent discrimination suffered by [...] lesbian, gay, bisexual and transgender persons*” (among other groups). It recommended that Paraguay take measures to prevent and combat persistent discrimination “*against all disadvantaged or marginalized individuals or groups, including through awareness-raising campaigns*”.²⁶

In addition, in its Concluding Observations to the Netherlands (6 July 2017), the ESCR Committee expressed its concern that LGBTI people faced “*de facto discrimination*” in many areas, including employment. The ESCR Committee recommended that the Netherlands “*continue to assess the root causes of systemic and structural discrimination against minority groups*” and “*develop policies and programmes with specific goals and targets aimed at combating prejudice*”.²⁷

Allow transgender people to determine their own gender in official identity documents.

In many States Parties, one of the key barriers to transgender people effectively exercising their right to work is their inability to change the sex or gender listed on their identity documents to match their gender identity and expression. The resulting mismatch between the sex or gender listed in official documentation and the gender expression of a transgender person can create mistrust among potential employers, as well as focusing attention on the candidate's gender identity rather than their suitability for a job.²⁸

In its Concluding Observations to Costa Rica (20 October 2016), the ESCR Committee explicitly recognised the lack of legal gender recognition as a violation of the right to work. It expressed concern that *“the absence of legal recognition of their gender identity is a barrier to transgender persons having effective access to work”* and recommended that Costa Rica *“take the necessary legislative and administrative measures [...] to ensure that transgender persons have effective access to economic, social and cultural rights”*.²⁹

Potential evidence of violations

Testimonials or other evidence linking the inability to change one's sex/gender on identity documents with negative employment outcomes, including not being hired or being discriminated against at work. For example, testimonials from transgender people who were not offered a job due to their gender identity or expression being different to the sex/gender marker on their identity documents.

Decriminalise consensual sexual conduct between persons of the same sex and expunge the criminal records of persons convicted of such offences.

The actively-enforced criminalisation of consensual same-sex sexual conduct can impair the right to work by leaving persons convicted of such offences with a criminal record. Criminal records make it significantly more difficult for convicted persons to obtain work and to enjoy just and favourable conditions at work, including equal opportunities for promotion. Discrimination may continue even once same-sex sexual conduct is decriminalised, as convicted persons often continue to be burdened with criminal records obtained while the relevant conduct was still a criminal offence.

Accordingly, to ensure that people are not discriminated on the basis of their sexual orientation in respect of the right to work, States Parties should remove criminal laws that target consensual same-sex sexual conduct and should implement schemes to expunge the criminal records of persons who have been historically convicted of such offences.

Potential evidence of violations

Testimonials of persons facing barriers to employment or employment discrimination due to having a criminal record for consensual same-sex sexual conduct.

2.4 The rights to social security and to protection and assistance for the family – Articles 9 and 10

2.4.1 Overview of Articles 9 and 10 of the ICESCR

Article 9 of the ICESCR recognises the right to social security, while Article 10 recognises that the widest possible protection and assistance should be provided to the family.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

- 1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.*
- 2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.*
- 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.*

2.4.2 Specific obligations applying to LGBTI people

States Parties are required to take the following measures in order to protect the rights of LGBTI people under Articles 9 and 10 of the ICESCR.

Provide legal recognition to same-sex couples and families.

The failure to legally recognise same-sex families and provide them with the same rights as different-sex families represents a violation of the right to protection of the family under Article 10 when read together with Article 2(2), which requires the rights in the ICESCR to be protected without discrimination on the basis of sexual orientation.

In its periodic review of State Parties' compliance with the ICESCR, the ESCR Committee has repeatedly stated that the non-recognition of same-sex couples is a violation of the ICESCR:

- In its Concluding Observations to Bulgaria (11 December 2012), the ESCR Committee noted its concern that same-sex couples are not legally recognised and that there is no legal framework for the protection of the rights of such couples. It recommended that Bulgaria undertake a

comprehensive review of its legislation “to legally recognise same-sex couples, to regulate the financial effects of such relationships, and to guarantee the full protection of the rights of children born out of wedlock”.³⁰

- In its Concluding Observations to Mongolia (2 July 2015), the ESCR Committee expressed its concern about the “*lack of recognition of same-sex couples, which impedes their enjoyment of [ICESCR] rights*”. The ESCR Committee recommended that Mongolia recognise that same-sex couples are “*entitled to equal enjoyment of their economic, social and cultural rights*”.³¹
- In its Concluding Observations to Italy (28 October 2015), the ESCR Committee expressed concern about same-sex unions not being recognised under Italian law. Repeating the language used in its recommendations to Mongolia, the ESCR Committee recommended that Italy recognise that “*individuals in same-sex unions are entitled to equal enjoyment of their economic, social and cultural rights*”.³²
- In its Concluding Observations to Macedonia (15 July 2016), the ESCR Committee expressed concern about legal discrimination between “*opposite-sex unions*” and same-sex unions. The ESCR Committee recommended that Macedonia take all measures necessary to ensure that “*same-sex couples have access to advantages now reserved for married couples*”.³³
- In its Concluding Observations to Costa Rica (20 October 2016), the ESCR Committee recommended that Costa Rica “*take the necessary legislative and administrative measures to recognize the rights of same-sex couples*”.³⁴
- In its Concluding Observations to Russia (16 October 2017), the ESCR Committee recommended that Russia “*recognize that individuals in same-sex relationships are entitled to equal enjoyment of [ICESCR] rights, including by extending to them benefits reserved to married couples*”.³⁵

The ESCR Committee has not explicitly provided guidance on the form of recognition for same-sex couples required under Article 10, and whether this requires marriage equality or can be satisfied through alternative structures such as civil unions, registered partnerships or unregistered cohabitation.

Unlike the ICCPR, the ICESCR does not contain an explicit right to marry. Nevertheless, as legal academics Paula Gerber, Kristine Tay and Adiva Sifris note, civil union schemes for same-sex couples may fall short of the non-discrimination obligation in Article 2(2) of the ICESCR, particularly if such schemes do not provide equal legal rights to same-sex couples or create greater uncertainty due to a lack of consistent legal and social recognition.³⁶ Accordingly, the most comprehensive way of satisfying Article 10 is for States Parties to ensure that all forms of relationship recognition available to different-sex couples are also available to same-sex couples, including marriage.

Provide same-sex couples with the same social security rights as different-sex couples.

The non-recognition of same-sex families often denies them a range of substantive social and economic rights, including eligibility for certain social security or tax benefits, which constitutes a violation of Article 9 of the ICESCR.

In *General Comment No. 19 on the Right to Social Security (General Comment No. 19)*, the ESCR Committee states that the right to social security concerns the right to access and maintain benefits without discrimination of any kind in order to secure protection from social risks and contingencies.³⁷ These risks and contingencies include health issues, old age, unemployment, employment injuries, insufficient family and child support, maternity, disability and being a survivor or orphan.³⁸

While the provision of social security is subject to progressive realisation (i.e. according to the State Party’s available resources), any social security benefits that are provided by a State Party must not distinguish on any of the grounds in Article 2(2), including sexual orientation, gender identity and intersex status. This obligation of non-discrimination applies immediately and is not subject to resource constraints.³⁹

For example, States Parties must ensure that survivor pensions and benefits (if provided) are equally open to both same-sex and different-sex surviving partners. Similarly, any child benefits should be provided equally, regardless of the sexual orientation, gender identity or intersex status of the parents.

In its Concluding Observations to South Korea (19 October 2017), the ESCR Committee recommended that South Korea take effective measures to eliminate legal discrimination against LGBTI people, in particular by revising *“legal and regulatory provisions that are discriminatory or have a discriminatory effect, such as those relating to social security”*.⁴⁰

Potential evidence of violations

- Evidence of social security benefits (such as survivor pensions) being restricted to different-sex couples.
- Evidence of higher poverty rates among same-sex couples and their children, as compared to different-sex couples. For example, studies comparing poverty rates among same-sex couples and different-sex couples.

Ensure that same-sex couples have equal parenting rights.

The failure to recognise the equal parenting rights of same-sex couples constitutes a violation of Article 10(3) of the ICESCR, which requires special measures of protection and assistance to be taken on behalf of all children and young persons, *“without any discrimination for reasons of parentage or other conditions”*.

Failing to legally recognise the equal rights of same-sex parents places their children at a disadvantage by sole reason of their parentage. For example, in many States Parties, only one partner within a same-sex couple is allowed to have legal parenting rights over a child raised by both partners. This may be because:

- same-sex couples are not recognised for the purposes of assisted reproduction, meaning that the female partner of a woman giving birth to a child has no parenting rights as a co-mother;
- same-sex step-parent adoption is not recognised, meaning that, where a person raises a child from a previous relationship together with a same-sex partner, the same-sex partner has no parenting rights over the child; or
- joint same-sex adoption is not recognised, meaning that same-sex couples wishing to adopt a child must do so as individuals, with the effect that only one of them will have legal parenting rights over the adopted child.

These situations result in one parent in a same-sex relationship being unable to access child-related social security payments or to make education and health-related decisions on behalf of their child, which is particularly problematic for children in circumstances where the ‘legal’ parent dies or the parents separate.

Accordingly, States Parties should ensure that, where same-sex couples are raising children, both partners are recognised as the legal parents of the children (including on birth certificates) and receive the same rights and entitlements as different-sex parents. In particular, according to legal academics Gerber and Lindner, the ICESCR requires birth certificates to accurately record the family structure of children with same-sex parents. Best practice is to allow parents to choose either gendered (“mother”/“father”) or non-gendered (“parent”) descriptors on the birth certificate, rather than requiring one person to be listed as a “mother” or “father” and the other as a “parent” or “co-parent”.⁴¹

Provide non-binary and third gender persons with the same relationship and family rights as other persons.

Some States Parties legally recognise additional sexes or genders beyond male and female, such as a third gender or “X” (for persons with a non-binary gender identity). However, such States Parties might continue to restrict non-binary persons from obtaining equal relationship and family rights (e.g. by defining marriage as being specifically between a man and a woman).

The ESCR Committee has not provided specific guidance on whether States Parties have an obligation to provide the same rights and legal recognition to couples where one or both parties is non-binary or third gender. Instead, as set out above, the ESCR Committee has so far only used the terminology of “*same-sex*” couples/families when making observations about the application of Articles 9 and 10 to diverse families.

Nevertheless, denying non-binary persons the right to marry or enter into a legally recognised union with a person of their choosing, as well as equal family and parenting rights, is likely to constitute discrimination on the basis of gender identity in respect of the rights to social security and protection and assistance to the family, and therefore a violation of Articles 9 and 10 when read together with Article 2(2).

Establish specific schemes providing social security to LGBTI people, where necessary.

In General Comment No. 19, the ESCR Committee said that States Parties should give “*special attention*” to individuals and groups who “*traditionally face difficulties*” in exercising the right to social security in Article 9, including “*minority groups*”.⁴² Moreover, in General Comment No. 20, the ESCR Committee recognised that, in order to eliminate substantive discrimination, States Parties “*may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination*”.⁴³ Provided that they are “*reasonable, objective and proportionate*”, such measures assist in the achievement of substantive equality, even if they are specifically targeted towards a particular group.⁴⁴

Accordingly, in cases where LGBTI people (or specific groups within LGBTI communities) face particular discrepancies in their social and economic status, States Parties should consider establishing targeted social security schemes for such groups. For example, in India, several states have established Transgender Welfare Boards that provide transgender, third-gender and other gender-diverse people with specific welfare and social protection services, including income support and access to health care and education. Transgender Welfare Boards also facilitate access to existing government social security schemes (which transgender, third-gender and other gender-diverse people would otherwise have difficulty accessing due to discrimination).⁴⁵

It is important that LGBTI-specific social security schemes do not have the effect of segregating LGBTI people or providing an inferior level of social security to LGBTI people compared to the general population. Instead, such schemes should be designed as special measures to address proven structural inequalities faced by LGBTI people.

Potential evidence of violations

- Evidence of structural socio-economic disadvantages faced by LGBTI people (or specific groups within LGBTI communities), such as higher rates of poverty and poorer health or education outcomes. For example, evidence of higher poverty rates among same-sex-attracted youth, lower life expectancy among transgender people or higher school dropout rates among intersex people.
- Evidence of barriers faced by LGBTI people in exercising their right to social security, including barriers to accessing social security schemes designed for the general population.

Ensure that social security application and eligibility processes are inclusive of LGBTI people.

In General Comment No. 19, the ESCR Committee specifically calls on States Parties to combat direct and indirect discrimination in relation to social security in the case of ethnic and linguistic minorities, including through *“the imposition of unreasonable eligibility conditions or lack of adequate access to information”*.⁴⁶

When applied to LGBTI people, this obligation may include training social security agency staff to provide appropriate and respectful services to LGBTI people and ensuring that eligibility and application processes are inclusive of LGBTI people. For example, application forms should allow people to self-identify their gender (including by providing gender options that go beyond “male” and “female”).

Potential evidence of violations

Testimonials or data identifying discrimination faced by LGBTI people in accessing social security services. For example, testimonials of social security agency staff discriminating against LGBTI applicants or clients, or evidence that application forms do not adequately capture gender diversity.

2.5 The right to an adequate standard of living, including food and housing – Article 11

2.5.1 Overview of Article 11 of the ICESCR

Article 11 of the ICESCR recognises the right to an adequate standard of living, including adequate food, clothing and housing.

Article 11

1. *The States Parties to the present Covenant recognize the **right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing**, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*
2. *The States Parties to the present Covenant, recognizing the **fundamental right of everyone to be free from hunger**, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:*
 - a. *To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;*
 - b. *Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.*

2.5.2 Specific obligations in relation to LGBTI people

States Parties are required to take the following measures in order to protect the rights of LGBTI people under Article 11 of the ICESCR.

Enact laws prohibiting discrimination on the basis of sexual orientation, gender identity and intersex status in the field of housing.

Adequate housing is listed as one of the aspects of the right to an adequate standard of living in Article 11(1). In *General Comment No. 4 on the Right to Adequate Housing (General Comment No. 4)*, the ESCR Committee notes that the right to adequate housing “*applies to everyone*”.⁴⁷ General Comment No. 4 also clarifies that, while the right in Article 11 is phrased in a gendered way, as applying to “*himself and his family*”, these should not be interpreted as words of limitation. Instead, the right to adequate housing applies to all individuals and families and is to be enjoyed without discrimination on any of the grounds in Article 2(2), including sexual orientation, gender identity and intersex status.⁴⁸

States Parties therefore have an obligation to ensure that LGBTI people can fully realise their right to adequate housing, including by enacting legislation to prohibit discrimination against LGBTI people in accessing housing.

In its periodic review of State Parties’ compliance with the ICESCR, the ESCR Committee has explicitly referred to LGBTI people’s right to housing and the obligation to enact anti-discrimination laws in this regard:

- In its Concluding Observations to Uganda (8 July 2015), the ESCR Committee recommended that Uganda adopt a comprehensive anti-discrimination law and take steps to combat and prevent discrimination against LGBTI individuals to ensure enjoyment of their ICESCR rights, including access to housing.⁴⁹
- In its Concluding Observations to Peru (30 May 2012), the ESCR Committee expressed its concern that lesbian, gay, bisexual and transgender people face discrimination in respect of housing (among other areas). It recommended that Peru “*expedite the adoption of specific legislation prohibiting discrimination against persons based on sexual orientation*”.⁵⁰

Potential evidence of violations

- Testimonials or data identifying discrimination against LGBTI people in the rental housing market. For example, testimonials of LGBTI people being denied rental housing upon disclosure of their sexual orientation, gender identity or intersex status.
- Testimonials or data regarding evictions of people due to their sexual orientation, gender identity or intersex status.

Ensure that eligibility criteria for public or social housing do not exclude same-sex couples or otherwise discriminate against LGBTI people.

In its Concluding Observations to Mexico (17 April 2018), the ESCR Committee recommended that Mexico review the measures it has undertaken in respect of the right to housing “*with a view to adopting a comprehensive social housing strategy that [...] avoids segregation and social exclusion related to a person’s social or economic situation or any other basis of discrimination prohibited under [the ICESCR]*” (implicitly including sexual orientation, gender identity and intersex status).⁵¹

In States Parties that have public or social housing systems, Article 11, when read together with Article 2(2), requires that access to public or social housing be provided without discrimination on the basis of sexual orientation, gender identity and intersex status. This includes ensuring that, where public or social housing is provided to couples or families, same-sex couples have the same right to access such housing as different-sex couples.

Potential evidence of violations

Laws or policies that discriminate against same-sex couples or families in access to public or social housing (for example, by restricting access to family housing to different-sex couples, or to married couples in jurisdictions where same-sex couples are denied the right to marry).

Provide assistance to LGBTI people facing homelessness, through emergency accommodation and inclusion in homelessness policies and strategies.

In General Comment No. 4, the ESCR Committee recognises that, in fulfilling the right to adequate housing, States Parties must “*give due priority to those social groups living in unfavourable conditions by giving them particular consideration*”.⁵² In many parts of the world, LGBTI people face disproportionate levels of homelessness or live in sub-standard housing, whether because of discrimination in access to housing or (in the case of young people) because they have been kicked out of home by their families due to their sexual orientation, gender identity or intersex status.⁵³

Accordingly, in many States Parties, LGBTI people (or specific groups within LGBTI communities) will constitute a “*social group*” that requires “*due priority*” and “*particular consideration*” in relation to the right to adequate housing. Fulfilling this obligation may require States Parties to provide or fund emergency accommodation and/or homeless shelters for LGBTI people.

In addition, in States Parties that already have homelessness strategies or policies, LGBTI people should be specifically identified as an at-risk group that requires particular consideration.

Potential evidence of violations

Testimonials or data regarding homelessness among LGBTI people (including particularly vulnerable groups, such as young people and transgender people). For example, data showing disproportionate rates of homelessness among LGBTI youth or testimonials of LGBTI people being kicked out of their home and forced into homelessness because of their sexual orientation, gender identity or intersex status.

Include LGBTI people as an at-risk group in national anti-poverty and food security policies.

The right to an adequate standard of living in Article 11(1) not only includes a right to adequate housing, but also a right to adequate food and clothing. Moreover, Article 11(2) recognises a fundamental right to be free from hunger.

In many parts of the world, LGBTI people (or specific groups within LGBTI communities) face higher rates of poverty than the general population due to discrimination in employment and education and lack of family support. This often also leads to higher rates of hunger and food insecurity among LGBTI people. For example, a 2016 study by the Williams Institute found that 27% of lesbian, gay, bisexual and transgender adults in the United States experienced a time when they did not have enough money to feed themselves or their families in the past year, compared to 17% of the general population.⁵⁴

In General Comment No. 20, the ESCR Committee states that, where there are substantive disparities regarding the realisation of an ICESCR right, States Parties “*may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination*”.⁵⁵

Accordingly, where there is evidence of LGBTI people facing particular barriers in realising their right to an adequate standard of living, States Parties need to pay special attention to LGBTI people in any anti-poverty or food security policies or strategies. Such policies should not only seek to provide targeted assistance to LGBTI people, but also combat the underlying causes of LGBTI poverty or food insecurity, including legal or societal discrimination.

Potential evidence of violations

Testimonials or data identifying higher rates of poverty or food insecurity among LGBTI people. For example, studies showing higher rates of absolute or relative poverty among LGBTI people (or specific groups within LGBTI communities) as compared to the general population.

2.6 The right to health – Article 12

2.6.1 Overview of Article 12 of the ICESCR

Article 12 of the ICESCR recognises the right of everyone to the highest attainable standard of physical and mental health.

Article 12

1. *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the **highest attainable standard of physical and mental health**.*
2. *The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:*
 - a. *The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;*
 - b. *The improvement of all aspects of environmental and industrial hygiene;*
 - c. *The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*
 - d. *The creation of conditions which would assure to all medical service and medical attention in the event of sickness.*

2.6.2 Specific obligations in relation to LGBTI people

States Parties are required to take the following measures in order to protect the rights of LGBTI people under Article 12 of the ICESCR.

Enact laws prohibiting discrimination in access to health care on the basis of sexual orientation, gender identity and intersex status.

According to *General Comment No. 14 on the Right to the Highest Attainable Standard of Health (General Comment No. 14)*, the right to health in Article 12 includes, among other things, the right to access “*timely and appropriate health care*” and “*a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health*”.⁵⁶

General Comment No. 14 specifies that States Parties have a core obligation to “*ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalised groups*”.⁵⁷ Health facilities, goods and services must be “*accessible to everyone without discrimination*” on any of the grounds prohibited in Article 2(2), which has been interpreted in General Comment No. 20 to include sexual orientation, gender identity and intersex status.⁵⁸

Accordingly, States Parties must enact laws prohibiting discrimination against LGBTI people in access to health care, including in relation to public and private health services.

The ESCR Committee has specifically recognised the obligation to prohibit discrimination against LGBT people in health care in its periodic review of State Parties’ compliance with the ICESCR. For example, in its Concluding Observations to Kenya (5 April 2016), the ESCR Committee recommended that Kenya ensure that “*no one is discriminated in accessing health care and other social services owing to their sexual orientation or gender identity*”.⁵⁹ Since the ESCR Committee has repeatedly recognised that intersex status is one of the protected non-discrimination grounds under the ICESCR, the obligation to prohibit discrimination in health care also extends to the ground of intersex status.

Potential evidence of violations

- Testimonials or data identifying discrimination against LGBTI people in relation to health care, including refusal of treatment or harassment by medical staff.
- Testimonials or data of LGBTI people not accessing health care due to fear of discrimination.

Prohibit medically unnecessary surgeries and other medical interventions that alter the sex characteristics of intersex children without their full and informed consent.

General Comment No. 14 notes that the right to health in Article 12 comprises a range of freedoms, including *“the right to control one’s health and body”* and *“the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation”*.⁶⁰

In many parts of the world, children and infants born with intersex variations are subject to non-consensual surgery or other medical interventions that seek to alter their sex characteristics. These medical interventions violate their right to be free from non-consensual medical treatment. Moreover, *General Comment No. 22 on the Right to Sexual and Reproductive Health (General Comment No. 22)* specifically states that *“medically unnecessary, irreversible and involuntary surgery and treatment performed on intersex infants or children”* constitutes a violation of the right to sexual and reproductive health, which is one of the elements of the right to health in Article 12.⁶¹

The ESCR Committee has also recognised non-consensual surgeries and medical interventions as a violation of Article 12 in its periodic review of State Parties’ compliance with the ICESCR:

- In its Concluding Observations to the Netherlands (6 July 2017), the ESCR Committee expressed concern at the *“practice of early surgery and medical interventions on intersex children, which are not necessary for physical health and alters their sex characteristics, [and] do not respect their right to free, prior and informed consent”*. The ESCR Committee recommended that the Netherlands *“review the practice of early surgery and medical interventions on intersex children, in order to make sure that they are mature enough to be consulted on their preferred treatments on the basis of their informed choices and consent”*.⁶²
- In its Concluding Observations to Australia (11 July 2017), the ESCR Committee expressed concern that *“children born with intersex variations are subject to early surgeries and medical interventions before they are able to provide full and informed consent”*.⁶³

Accordingly, States Parties should enact legislation that prohibits health care facilities and doctors from carrying out any medically unnecessary surgeries or medical interventions that seek to alter the sex characteristics of intersex children without their full and informed consent.

Potential evidence of violations

- Testimonials or data regarding non-consensual surgeries or medical interventions that seek to alter the sex characteristics of intersex infants or children. For example, data showing the number of such surgeries or medical interventions performed within a given time period, or testimonials from victims of such surgeries or medical interventions about the impact the interventions have had on their lives.
- Laws or policies that require or recommend that surgeries or medical interventions be performed on intersex infants or children. For example, medical protocols that refer to *“normalising”* or *“corrective”* surgery as a routine intervention for certain intersex variations.

Take positive measures to ensure that LGBTI people have effective and non-discriminatory access to health facilities, goods and services.

According to General Comment No. 14, States Parties have an obligation to ensure that health facilities, goods and services are accessible to all, without discrimination “*in law and in fact*”.⁶⁴ This requires States Parties to go beyond anti-discrimination laws and take positive measures to ensure that LGBTI people do not face de facto discrimination in accessing health care, particularly where there is evidence of specific barriers and systemic inequalities faced by LGBTI people in exercising their right to health.

Positive measures may include policies and guidelines for the delivery of LGBTI-inclusive and sensitive health care, the explicit inclusion of LGBTI people in national health policies, and strategies to address specific health disparities faced by LGBTI people, such as higher rates of mental illness due to stigma and minority stress. Such policies and guidelines should pay attention to the distinct needs of various groups within LGBTI communities (e.g. bisexual men, lesbian women, intersex people and transgender women) and the specific barriers and disparities they face with regard to health care.

The ESCR Committee has recognised the importance of positive measures in fulfilling LGBTI people’s right to health in several Concluding Observations to States Parties:

- In its Concluding Observations to Ecuador (13 December 2012), the ESCR Committee expressed concern at shortcomings in the delivery of antiretroviral drugs and health services to LGBT people, and recommended that Ecuador establish “*guidelines for ensuring that lesbian, gay, bisexual and transgender persons have access to health services, including sexual and reproductive health services, on a non-discriminatory basis*”.⁶⁵
- In its Concluding Observations to Kyrgyzstan (7 July 2015), the ESCR Committee noted that discrimination in access to health care persisted against LGBTI people, and recommended that Kyrgyzstan increase “*human, technical and financial resources allocated to the health sector*” and “*monitor discrimination in access to health services and ensure that health professionals who hamper anyone’s access are duly sanctioned*”.⁶⁶

Potential evidence of violations

- Testimonials or data identifying systemic discrimination faced by LGBTI people (or specific groups within LGBTI communities) in accessing health care and exercising their right to health. For example, evidence that intersex people avoid accessing health care due to trauma based on previous medical experiences, fear of discrimination or concerns about receiving inappropriate medical treatment.
- Evidence of health disparities faced by LGBTI people compared to the general population, such as higher rates of mental illness or other diseases. For example, statistics showing that bisexual women have higher rates of cancer or heart disease than non-bisexual women.

Ensure that medical professionals receive training on the specific health needs of LGBTI people and that medical curricula do not discriminate against or negatively stereotype LGBTI people.

A key measure to address de facto discrimination in accessing health facilities, goods and services is training medical professionals to be sensitive to the needs of LGBTI people, whether through curricula in medical schools or through ongoing professional training. Such training should ensure that medical professionals understand the distinctions between sexual orientation, gender identity and intersex status, as well as the distinct health issues and needs of various groups within LGBTI communities, such as bisexual women, gay men, intersex people and transgender men.

States Parties should also ensure that medical textbooks or other curricular materials do not discriminate against LGBTI people, including through labelling same-sex attraction and transgender identity as mental illnesses or categorising intersex variations as disorders. Medical curricula that discriminate against or negatively stereotype LGBTI people can result in medical professionals forming negative attitudes towards LGBTI people, resulting in discriminatory and inappropriate health care that violates the right to health in Article 12.

The ESCR Committee has specifically recognised the importance of LGBTI-specific training and awareness-raising campaigns for health care workers:

- In its Concluding Observations to Sri Lanka (4 August 2017), the ESCR Committee recommended that Sri Lanka “*develop and implement training programmes to educate and sensitize [...] health-care workers [...] on issues affecting lesbian, gay, bisexual, transgender and intersex persons*”.⁶⁷
- In its Concluding Observations to Macedonia (14 July 2016), the ESCR Committee recommended that Macedonia eradicate negative stereotypes about and stigmatisation of LGBTI people, including by “*conducting awareness-raising campaigns for [...] health-care providers*” (among other groups).⁶⁸

Potential evidence of violations

- Testimonials or data identifying discrimination against, or stereotyping of, LGBTI people by medical professionals. For example, evidence of medical professionals providing inappropriate medical treatment to LGBTI people, such as failing to recognise the specific health needs of bisexual people or unduly focusing on sexually transmitted infections in the case of gay men while ignoring more likely causes of medical symptoms.
- Evidence of medical textbooks or other curricular materials that refer to same-sex attraction, transgender identity and/or intersex variations as disorders. For example, medical textbooks or protocols classifying intersex variations as “disorders of sex development”.

Ensure that same-sex attraction, transgender identity and intersex variations are not treated as medical disorders.

General Comment No. 22 states that requiring LGBTI people to be “*cured*’ by so-called ‘*treatment*’” or treating them as “*mental or psychiatric patients*” are a “*clear violation*” of LGBTI people’s right to sexual and reproductive health, which is one of the elements of the right to health.⁶⁹

The ESCR Committee’s inclusive reference to “*lesbian, gay, bisexual, transgender and intersex people*” and to “*cures*” through “*treatment*” (in a general sense) appears broad enough to prohibit the pathologisation of same-sex attraction, transgender identity and intersex variations (including the characterisation of intersex variations as “*disorders of sex development*”). Accordingly, States Parties should ensure that same-sex attraction and transgender identity are not treated as mental illnesses and that intersex variations are not classified as physical disorders that require treatment.

In its Concluding Observations to Germany (12 July 2011), the ESCR Committee expressed concern that “*transsexual*” and intersex persons are “*often assimilated to persons with mental illness*”.⁷⁰ In this observation, the ESCR Committee appears to misunderstand the fact that intersex variations are typically classified as physical disorders rather than mental illnesses, and that it is this classification which should be regarded as violating the right to health. Nevertheless, the ESCR Committee recommended that Germany take steps to ensure that the “*personal integrity and sexual and reproductive health rights*” of intersex people are respected.⁷¹

Potential evidence of violations

- Evidence of same-sex attraction, transgender identity or intersex variations being treated as disorders (under various terms) by national medical associations or in national medical standards and classifications.
- Evidence of doctors or health care providers offering ‘treatment’ or ‘cures’ for same-sex attraction, transgender identity or intersex variations. This may include “conversion therapy” in the case of LGBT people or non-consensual surgery or other medical interventions that seek to alter the sex characteristics of intersex people.

Decriminalise consensual sexual conduct between persons of the same sex and repeal laws criminalising expressions of one’s gender identity.

As mentioned above, General Comment No. 14 refers to the “*right to control one’s health and body*” as one of the freedoms included within the right to health. This freedom specifically includes “*sexual and reproductive freedom*”.⁷² Moreover, General Comment No. 22 provides that the “[c]riminalization of sex between consenting adults of the same gender or the expression of one’s gender identity is a clear violation of human rights”.⁷³

The ESCR Committee has also repeatedly recommended the decriminalisation of consensual same-sex relations in its periodic review of States Parties’ compliance with the ICESCR:

- In its Concluding Observations to Uganda (8 July 2015), the ESCR Committee expressed its concern about the “*criminalization of consensual same-sex conduct*” in Uganda’s Penal Code and recommended that Uganda “*urgently take steps*” to decriminalise consensual same-sex sexual conduct.⁷⁴
- In its Concluding Observations to Iran (10 June 2013), the ESCR Committee broadly recommended that Iran “*repeal or amend all legislation that results or could result in discrimination, prosecution and punishment of people because of their sexual orientation or gender identity*”.⁷⁵
- In its Concluding Observations to Tanzania (13 December 2012) and Ethiopia (31 May 2012), the ESCR Committee recommended that both States Parties take “*urgent steps to amend the Penal Code to decriminalize homosexuality*”.⁷⁶

The ESCR Committee’s reference to the criminalisation of “*the expression of one’s gender identity*” in General Comment No. 22 is broad enough to capture laws in some jurisdictions that prohibit ‘cross-dressing’ or that prohibit ‘males’ from ‘impersonating’ women. In its Concluding Observations to Guyana (27 October 2015), the ESCR Committee specifically expressed its concern that “*cross-gender dressing [is] criminalized*” and recommended that Guyana repeal laws criminalising “*cross-gender dressing*”.⁷⁷ A violation of Article 12 would also occur where laws of general application, such as laws on ‘public indecency’, ‘immorality’ or ‘debauchery’, are used to target transgender or gender-diverse people expressing their gender identity in public.

Criminal laws that discriminate on the basis of sexual orientation or gender identity not only violate the sexual and reproductive freedom inherent in the right to health, but also prevent effective access to health care. This is because such laws often discourage LGBT people from seeking health care for fear of revealing potential criminal conduct.

Potential evidence of violations

- Laws that have the effect of criminalising consensual same-sex sexual conduct or expressions of gender identity. This may include laws that criminalise “sodomy”, “indecent between males” or “unnatural” sexual relations (in the case of same-sex sexual conduct) or laws targeting “cross-dressing” or “impersonation” (in the case of gender identity).
- Evidence that laws of general application, including laws pertaining to public decency or morality, are used to target consensual same-sex sexual conduct or expressions of gender identity. For example, evidence of transgender people being arrested under public morality laws for expressing their gender identity.

Ensure that transgender people are able to change their legal gender on the basis of self-determination, without invasive prerequisites such as surgery or sterilisation.

In many States Parties, transgender people are required to undergo gender affirmation surgery, sterilisation or other forms of medical treatment before they can have their gender identity legally recognised. This represents a violation of the “*right to control one’s health and body*”, which is one of the components of the right to health identified by the ESCR Committee in General Comment No. 14.⁷⁸

The ESCR Committee has specifically recognised the obligation for States Parties to create accessible procedures for legal gender recognition:

- In its Concluding Observations to Lithuania (24 June 2014), the ESCR Committee recommended that Lithuania take effective measures to ensure that legal recognition of gender is not dependent on “*gender reassignment surgery*”.⁷⁹
- In its Concluding Observations to Russia (16 October 2017), the ESCR Committee recommended that Russia “*put in place a quick, transparent and accessible procedure for legal gender recognition, to facilitate the enjoyment of [ICESCR] rights by transgender persons*”.⁸⁰

Potential evidence of violations

Laws, policies or court cases requiring gender affirmation surgery, sterilisation or other forms of medical treatment as a prerequisite to legal gender recognition.

Ensure that LGBTI-inclusive sexual health education is provided in schools.

General Comment No. 14 states that the right to health includes “*access to health-related education and information, including on sexual and reproductive health*” and that States Parties have an obligation to promote “*health education, as well as information campaigns, in particular with respect to HIV/AIDS, sexual and reproductive health*”.⁸¹

More specifically, General Comment No. 22 stipulates that the right to sexual and reproductive health, when read together with the right to education in Article 13 and the right to non-discrimination in Article 2(2), “*entails a right to education on sexuality and reproduction that is comprehensive, non-discriminatory, evidence-based, scientifically accurate and age appropriate*”.⁸² States Parties have a “*core obligation*” to provide such education to all individuals and groups.⁸³

Given that the non-discrimination obligation in Article 2(2) has been interpreted to include sexual orientation, gender identity and intersex status, States Parties must provide sexual health education in a manner that includes LGBTI people and their specific sexual health needs.

Ensure that health indicators and statistics are disaggregated on the basis of sexual orientation, gender identity and intersex status.

According to General Comment No. 14, States Parties must continually monitor fulfilment of their obligations relating to the right to health, including by identifying appropriate indicators and benchmarks pertaining to the right to health. Such indicators must be disaggregated on the prohibited grounds of discrimination under the ICESCR, which include sexual orientation, gender identity and intersex status.⁸⁴

Accordingly, States Parties should ensure that, in national health strategies or reports that measure the realisation of the right to health, health data is disaggregated on the basis of sexual orientation, gender identity and intersex status. This can then be used to identify areas where LGBTI people face specific patterns of disadvantage regarding their right to health.

Remove legal discrimination and take positive steps to reduce all forms of social discrimination against LGBTI people.

General Comment No. 14 provides that the right to health is not confined to the right to health care, but instead *“embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life”* and that a *“wider definition of health also takes into account such socially-related concerns as violence and armed conflict”*.⁸⁵

Significantly, General Comment No. 14 notes that the ICESCR prohibits any discrimination in the *“underlying determinants of health”* on the grounds covered by Article 2(2), including sexual orientation, gender identity and intersex status.⁸⁶

Accordingly, in guaranteeing LGBTI people’s right to health, States Parties have an obligation to take measures against any socio-economic factors that result in stigma, discrimination or violence against LGBTI people and which thereby affect the mental and physical health of LGBTI people. This may include taking measures to remove or reduce:

- legal discrimination (including, for example, denial of marriage equality or lack of an effective and accessible procedure for legal gender recognition);
- discrimination and harassment within education, employment, housing and family and social life; and
- violence and hate crimes against LGBTI people.

Specific actions that States Parties can take to reduce discrimination in areas such as education, employment and housing are addressed in other parts of this Guide.

Potential evidence of violations

Evidence establishing a connection between legal or social discrimination and negative health outcomes for LGBTI people. For example, studies showing the mental health impacts of bullying in schools, discrimination in employment or denying same-sex couples the right to marry.

Implement measures to prevent or reduce suicide by LGBTI people.

In many States Parties, LGBTI people face higher suicide rates than the general population, as a result of stigma, discrimination and violence.⁸⁷

The ESCR Committee has specifically recognised that the failure to take steps to prevent the root causes of suicide, including by not addressing discrimination and stigma against LGBTI people, may constitute a violation of the ICESCR. In its Concluding Observations to South Korea (19 October 2017), the ESCR Committee recommended that South Korea *“strengthen efforts to prevent suicide, including by*

addressing its societal root causes, including [...] discrimination and hate speech experienced by certain groups, such as lesbian, gay, bisexual, transgender and intersex persons”⁸⁸

Potential evidence of violations

Evidence of higher suicide rates among LGBTI people (or specific groups within LGBTI communities) when compared to the general population.

2.7 The right to education – Article 13

2.7.1 Overview of Article 13 of the ICESCR

Article 13(1) of the ICESCR recognises the right of everyone to education.

Article 13(1)

*The States Parties to the present Covenant recognize **the right of everyone to education**. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall **strengthen the respect for human rights and fundamental freedoms**. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.*

Article 13(2) provides, among other things, that primary education shall be available to all for free, while secondary and higher education shall be made equally accessible to all.

2.7.2 Specific obligations relating to LGBTI people under Article 13

States Parties are required to take the following measures in order to protect the rights of LGBTI people under Article 13 of the ICESCR.

Enact laws and policies prohibiting discrimination in education on the basis of sexual orientation, gender identity and intersex status.

According to the ESCR Committee's *General Comment No. 13 on the Right to Education (General Comment No. 13)*, Article 13 requires States Parties to ensure that primary, secondary and higher education is accessible to all, especially the “*most vulnerable groups*”, without discrimination.⁸⁹ Discrimination must be prohibited on the basis of all the grounds in Article 2(2) of the ICESCR, which, as outlined in section 2.2 above, has been interpreted to include sexual orientation, gender identity and intersex status. General Comment No. 13 makes it clear that the right to non-discrimination in education applies immediately to all aspects of education and is not subject to the availability of resources.⁹⁰

Potential evidence of violations

- Testimonials or data regarding students being denied admission or expelled from school due to their sexual orientation, gender identity or intersex status (or the sexual orientation, gender identity or intersex status of their parents).
- Testimonials or data regarding students being discriminated against or harassed by school officials (including principals, teachers or counsellors) on the basis of their sexual orientation, gender identity or intersex status, or the sexual orientation, gender identity or intersex status of their parents.

Implement anti-bullying policies that specifically include LGBTI people.

General Comment No. 13 specifies that education must be accessible to all “*in fact*” as well as “*in law*”.⁹¹ This requires States Parties to take positive measures to combat barriers to education on the basis of sexual orientation, gender identity and intersex status. General Comment No. 13 specifically states that “*the failure to take measures which address de facto educational discrimination*” is a violation of Article 13.⁹²

The ESCR Committee has specifically referred to the obligation to implement anti-bullying policies in schools in its periodic reviews of States Parties' compliance with the ICESCR:

- In its Concluding Observations to Russia (16 October 2017), the ESCR Committee recommended that Russia *“implement a zero-tolerance policy against harassment in schools, paying particular attention to lesbian, gay, bisexual or transgender children or children of lesbian, gay, bisexual or transgender families, and ensure effective protection of victims of bullying and their families”*.⁹³
- In its Concluding Observations to Poland (2 December 2009), the ESCR Committee expressed deep concern at reports of homophobia and bullying in schools, and recommended that Poland take measures, including raising awareness, to tackle homophobic behaviours in educational institutions and environments.⁹⁴

The bullying and harassment of LGBTI students, whether by teachers or other students, leads to higher levels of mental distress, increased drop-out rates and decreased educational performance.⁹⁵ LGBTI-inclusive anti-bullying policies are therefore a key measure to address the educational disadvantages faced by LGBTI students and allow them to effectively realise their right to education. To fully meet the requirements of Article 13, anti-bullying policies must not simply prohibit bullying but also provide adequate enforcement mechanisms and be accompanied by training of teachers and school administrators.

Potential evidence of violations

- Testimonials or data identifying bullying, harassment and violence against LGBTI students in schools. For example, data showing the percentage of LGBTI students being bullied (or facing physical violence at school) as compared to the general student population.
- Testimonials or data regarding drop-out rates among LGBTI students (or specific groups of LGBTI students) as compared to the general student population. For example, testimonials of LGBTI students dropping out of school (or being absent from school) due to bullying and discrimination.
- Testimonials or data regarding levels of mental distress among LGBTI students (or specific groups of LGBTI students) as compared to the general student population. For example, data showing a higher proportion of bisexual young people reporting distress or a lack of emotional wellbeing at school when compared to non-bisexual young people.
- Testimonials of the impact of bullying and discrimination on LGBTI students (including impacts on mental health and educational performance).

Allow students to access facilities and wear uniforms in line with their gender identity.

Allowing all students to wear uniforms or to access facilities, including bathrooms and change rooms, in line with their gender identity is a component of States Parties' obligation to ensure that the right to education is realised without discrimination on the basis of gender identity. This is required by Article 13 when read together with the non-discrimination obligation in Article 2(2).

Requiring transgender students to wear uniforms or use facilities that do not align with their gender identity represents a form of different treatment when compared to cisgender students, who are not subject to any such requirements. In addition, such treatment creates a significant amount of discomfort and distress for transgender students.⁹⁶ This tends to increase drop-out rates, which leads to educational disadvantage for such students and prevents them from fully realising their right to education.

Ensure that school curricula teach respect for and awareness of LGBTI people and do not discriminate against or negatively stereotype them.

According to General Comment No. 13, States Parties must ensure that educational curricula are directed to the objectives of Article 13(1). These include the “*full development of the human personality and the sense of its dignity*” and “*respect for human rights and fundamental freedoms*”.⁹⁷ In some States Parties, textbooks describe same-sex attraction, transgender identity or intersex variations as “diseases” or “disorders” or otherwise contain material that is discriminatory towards or negatively stereotypes LGBTI people.⁹⁸ This violates the obligation to ensure that curricula promote human rights and fundamental freedoms, as mentioned in General Comment No. 13.

More generally, curricula that teach respect for LGBTI people are an important measure for redressing “*de facto educational discrimination*”, which is a requirement for States Parties according to General Comment No. 13.⁹⁹

Potential evidence of violations

Textbooks that describe same-sex attraction or transgender identity as “diseases” or intersex variations as “disorders”, or that contain material that negatively stereotypes or is otherwise discriminatory towards LGBTI people. This may include, for example, material that refers to homosexuality as an unnatural or dangerous “lifestyle”, or that describes families exclusively in different-sex terms.

Repeal any laws that prohibit discussion or expression of sexual orientation, gender identity and intersex status in education.

General Comment No. 13 explicitly states that “*the failure to repeal legislation which discriminates against individuals or groups, on any of the prohibited grounds, in the field of education*” constitutes a violation of Article 13 of the ICESCR.¹⁰⁰ In relation to LGBTI people, such legislation may include, for example, laws requiring students to be expelled or denied admission to schools if they express their sexual orientation, gender identity or intersex status, or laws that prohibit discussion of LGBTI issues in education (e.g. laws prohibiting “propaganda of non-traditional sexual relationships among minors” in Russia).¹⁰¹

In its Concluding Observations to Burundi (16 October 2015), the ESCR Committee voiced its concern about a Ministerial Ordinance that listed “*homosexuality*” as one of the reasons for which children could be expelled from or denied admission to school. The ESCR Committee recommended that all provisions that could lead to the discrimination, prosecution or punishment of individuals on the basis of their sexual orientation or gender identity be repealed, and that Burundi take appropriate steps to ensure that lesbian, gay, bisexual and transgender individuals can exercise all of their ICESCR rights.¹⁰²

Potential evidence of violations

- Laws or policies that prohibit students from expressing their sexual orientation, gender identity or intersex status.
- Laws or policies that prohibit “propaganda” or discussion about LGBTI people or their rights, including same-sex relationships and families. This includes laws that indirectly target same-sex relationships, such as by prohibiting information that “promotes” any form of family other than marriage between a man and a woman.

Develop and implement training programs for teachers that improve awareness of LGBTI students and the discrimination facing such students.

Even in States that have anti-discrimination laws or anti-bullying policies, or that recognise sexual and gender diversity in the curriculum, teachers are often ill-equipped to deal with instances of discrimination against LGBTI students or to otherwise promote understanding of sexual and gender diversity. Programs training teachers about LGBTI students and how to tackle discrimination against them in schools represent a key measure to address “*de facto educational discrimination*”, which States Parties have an obligation to address according to General Comment No. 13.¹⁰³

The importance of teacher training programs has been recognised by the ESCR Committee. In its Concluding Observations to Sri Lanka (4 August 2017), the ESCR Committee expressed concern about widespread discrimination against LGBTI persons in education and recommended that Sri Lanka “*develop and implement training programmes to educate and sensitize [...] teachers [...] on issues affecting lesbian, gay, bisexual, transgender and intersex persons*”.¹⁰⁴

Potential evidence of violations

Testimonials or data regarding discriminatory teacher attitudes towards LGBTI students or of teachers not intervening against bullying of LGBTI students by other students.

2.8 The right to take part in cultural life – Article 15(1)(a)

2.8.1 Overview of Article 15(1)(a) of the ICESCR

Article 15(1)(a) of the ICESCR requires States Parties to recognise the right of everyone to take part in cultural life.

Article 15(1)

The States Parties to the present Covenant recognize the right of everyone:

- a. *To take part in cultural life;*
- b. *To enjoy the benefits of scientific progress and its applications;*
- c. *To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.*

Paragraphs (b) and (c) of Article 15(1), regarding the benefits of scientific progress and the protection of the moral and material rights of authors, are not dealt with in this section, as they are areas which the ESCR Committee has not explored in relation to LGBTI people.

2.8.2 Specific obligations in relation to LGBTI people

States Parties are required to take the following measures in order to protect the rights of LGBTI people under Article 15(1)(a) of the ICESCR.

Enact laws prohibiting discrimination in access to cultural goods and services, including sport, on the basis of sexual orientation, gender identity and intersex status.

Like all of the other rights under the ICESCR, Article 15(1)(a) must be read subject to the non-discrimination obligation in Article 2(2), which means that the right to take part in cultural life must be available to all people regardless of their sexual orientation, gender identity and intersex status. In giving effect to this right, States Parties should ensure that LGBTI people cannot be discriminated against when accessing cultural goods and services.

General Comment No. 21 on the Right of Everyone to Take Part in Cultural Life (General Comment No. 21) defines “culture” as a “broad, inclusive concept encompassing all manifestations of human existence”. This specifically includes ways of life, language, literature, music, religion, sport, food, clothing, the arts and customs and traditions.¹⁰⁵

Some of the “cultural goods and services” mentioned in General Comment No. 21 as falling within the scope of the right to take part in cultural life include access to libraries, museums, theatres, cinemas and sports stadiums, alongside intangible cultural goods such as language and history.¹⁰⁶ In addition, *General Comment No. 5 on Persons with Disabilities* refers to access to restaurants in the context of the right to take part in cultural life, which is supported by the reference to “food” as a form of cultural life in General Comment No. 21.¹⁰⁷

Accordingly, laws protecting the rights of LGBTI people under Article 15(1)(a) must broadly prohibit discrimination in relation to all types of cultural goods and services. This should include, among other things, entertainment venues (e.g. cinemas and music venues), food venues and sport (both as a spectator and as a participant).

Potential evidence of violations

Testimonials of discrimination in accessing cultural goods and services, including:

- denials of entry or ejection from venues such as cinemas, museums, music concerts or restaurants, based on a person's sexual orientation, gender identity or intersex status;
- harassment of LGBTI people by operators of such venues; or
- prohibitions on expressions of sexual orientation, gender identity or intersex status when accessing cultural venues.

Enable LGBTI people to effectively participate in sport by actively combating discrimination on the basis of sexual orientation, gender identity and intersex status in this area.

As mentioned above, “*sport*” is identified in General Comment No. 21 as one of the dimensions of cultural life that falls within the scope of Article 15(1)(a).¹⁰⁸ This is very significant, given the high levels of discrimination, harassment and exclusion that LGBTI people tend to face in relation to sport globally.

The right to take part in sport involves not only access to sporting venues as a spectator, but also active participation in sporting activities, including sports clubs. This is evident from the phrase “*to take part in*” cultural life in Article 15(1)(a), which General Comment No. 21 characterises as involving a right to participate in, access and *contribute to* cultural life.¹⁰⁹

States Parties therefore have an obligation to combat discrimination against LGBTI people in the field of sport, including by working with sporting associations to implement policies against harassment and bullying of LGBTI sportspeople.

Potential evidence of violations

Testimonials or data regarding discrimination in the area of sport, including in relation to sporting clubs. For example, testimonials of LGBTI people being bullied while playing sport (including by teammates or coaches at sporting clubs as well as by spectators), or survey data of LGBTI people avoiding organised sport because of a fear of discrimination or exclusion.

Ensure that everyone, including transgender and intersex people, can participate in competitive sport in accordance with their gender identity.

For transgender and intersex people, one of the key barriers to participating in sport is the existence of rules prohibiting them from participating in accordance with their gender identity.

Under many national sporting policies, transgender people are required to participate in sport in accordance with the sex assigned to them at birth rather than their gender identity, or they may have to meet certain invasive prerequisites, such as surgery or hormone-related criteria, before they can compete in accordance with their gender identity.¹¹⁰

Intersex people are often excluded from competing in sport even in accordance with the sex assigned to them at birth (as well as their gender identity) unless they satisfy certain hormonal criteria. For example, intersex women may be required to have testosterone levels that fall within certain limits. These criteria are not based on scientific evidence and represent discrimination on the basis of intersex status.¹¹¹

By imposing discriminatory barriers on the participation of transgender and intersex people in sport, the types of policies described above would violate the right to take part in cultural life in Article 15(1)(a) of the ICESCR, when read together with the non-discrimination obligation in Article 2(2).

Potential evidence of violations

Policies or rules that impose discriminatory criteria on participation in gender-specific sports competitions and are not supported by evidence. For example, hormone limits or minimum hormone requirements for participation in women's sport or criteria that exclude women with certain sex characteristics from participating in women's sport.

Allow and provide effective protection to LGBTI cultural events.

General Comment No. 21 provides that the right to take part in cultural life is not simply an individual right, exercisable alone, but also a right that may be exercised in association with others or within a community or group.¹¹² This means that LGBTI people have the right to access cultural goods and services relevant to them as a community.

One of the aspects of “*culture*” set out in General Comment No. 21 is “*customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence*”.¹¹³ Accordingly, LGBTI-related cultural events, including film screenings, festivals, pride parades, pageants, community fairs, sporting events and artistic or literary exhibitions, clearly fall within the scope of “*cultural life*” in Article 15(1)(a).

According to General Comment No. 21, fulfilling the right to cultural life requires States Parties to both abstain from interfering with access to cultural goods and services, and to take positive action to ensure the necessary preconditions for participating in, facilitating and promoting cultural life.¹¹⁴ In this way, States Parties must not only allow LGBTI cultural events to take place freely, but must also provide protection for such events so that they can take place without violence or interference from others.

Potential evidence of violations

- Bans, raids or refusals to grant permits in relation to cultural events with an LGBTI focus, such as film screenings, festivals, pageants, pride parades, community fairs or exhibitions.
- Inadequate police protection of LGBTI cultural events, which enables such events to be interrupted, including through violence, by non-state actors. For example, evidence of LGBTI-related film screenings being cancelled due to threats of violence and inadequate police protection.

Repeal laws or policies that censor or restrict depictions of LGBTI people or LGBTI-related themes.

Article 15(1)(a) requires States Parties to repeal laws or policies that censor depictions of LGBTI people or LGBTI-related themes in areas such as literature or audiovisual media (film, television, radio, Internet-based content, etc). These include policies prohibiting positive or neutral representations of LGBTI people, same-sex relationships or families.

Restrictions on LGBTI-related forms of cultural expression impose barriers on the ability of LGBTI people to individually and collectively take part in cultural life without discrimination on the basis of their sexual orientation, gender identity and intersex status.

While the ESCR Committee has not specifically opined on LGBTI-related censorship, it has stated that censorship in general may interfere with the right to take part in cultural life pursuant to Article 15(1)(a):

- In General Comment No. 21, the ESCR Committee held that States Parties' obligation to respect the right to take part in cultural life includes an obligation to *"abolish censorship of cultural activities in the arts and other forms of expression"*.¹¹⁵
- In its Concluding Observations to Tunisia (14 May 1999), the ESCR Committee expressed concern at the censorship exercised on cultural productions and recommended that the criteria for censorship be made fully compatible with the right of all persons to take part in cultural life.¹¹⁶

Potential evidence of violations

- Laws or policies that impose an outright ban on depictions of LGBTI people or their relationships in areas of cultural life such as film, television, theatre or radio.
- Laws or policies that prohibit 'promotion', 'normalisation' or positive depictions of LGBTI people or their relationships in areas of cultural life such as film, television, theatre or radio.
- Laws or policies that impose discriminatory conditions on LGBTI-related content (e.g. stricter classification standards or prohibitions on content being shown on television at certain hours of the day).

2.9 Summary of obligations

Box 1 provides a summary of the specific obligations that States Parties have in relation to LGBTI people under the ICESCR, as set out in the sections above. As noted in section 2.1, these obligations have been derived by Kaleidoscope from a close interpretation of the text of the ICESCR as well as the ESCR Committee's Concluding Observations and General Comments. They are not, however, intended to be exhaustive nor do they represent an "official" list of obligations endorsed by the ESCR Committee.

Box 1: Summary of obligations under the ICESCR in respect of LGBTI people

The right to work – Articles 6 and 7

- Enact laws that prohibit discrimination and harassment in employment on the basis of sexual orientation, gender identity and intersex status.
- Take active steps, including information campaigns and training programs, to combat employment discrimination against LGBTI people.
- Allow transgender people to determine their own gender in official identity documents.
- Decriminalise consensual sexual conduct between persons of the same sex and expunge the criminal records of persons convicted of such offences.

The rights to social security and to protection and assistance for the family – Articles 9 and 10

- Provide legal recognition to same-sex couples and families.
- Provide same-sex couples with the same social security rights as different-sex couples.
- Ensure that same-sex couples have equal parenting rights.
- Provide non-binary and third gender persons with the same relationship and family rights as other persons.
- Establish specific schemes providing social security to LGBTI people, where necessary.
- Ensure that social security application and eligibility processes are inclusive of LGBTI people.

The right to an adequate standard of living, including food and housing – Article 11

- Enact laws prohibiting discrimination on the basis of sexual orientation, gender identity and intersex status in the field of housing.
- Ensure that eligibility criteria for public or social housing do not exclude same-sex couples or otherwise discriminate against LGBTI people.
- Provide assistance to LGBTI people facing homelessness, through emergency accommodation and inclusion in homelessness policies and strategies.
- Include LGBTI people as an at-risk group in national anti-poverty and food security policies.



The right to health – Article 12

- Enact laws prohibiting discrimination in access to health care on the basis of sexual orientation, gender identity and intersex status.
- Prohibit medically unnecessary surgeries and other medical interventions that alter the sex characteristics of intersex children without their full and informed consent.
- Take positive measures to ensure that LGBTI people have effective and non-discriminatory access to health facilities, goods and services.
- Ensure that medical professionals receive training on the specific health needs of LGBTI people and that medical curricula do not discriminate against or negatively stereotype LGBTI people.
- Ensure that same-sex attraction, transgender identity and intersex variations are not treated as medical disorders.
- Decriminalise consensual sexual conduct between persons of the same sex and repeal laws criminalising expressions of one's gender identity.
- Ensure that transgender people are able to change their legal gender on the basis of self-determination, without invasive prerequisites such as surgery or sterilisation.
- Ensure that LGBTI-inclusive sexual health education is provided in schools.
- Ensure that health indicators and statistics are disaggregated on the basis of sexual orientation, gender identity and intersex status.
- Remove legal discrimination and take positive steps to reduce all forms of social discrimination against LGBTI people.
- Implement measures to prevent or reduce suicide by LGBTI people.

The right to education – Article 13

- Enact laws and policies prohibiting discrimination in education on the basis of sexual orientation, gender identity and intersex status.
- Implement anti-bullying policies that specifically include LGBTI people.
- Allow students to access facilities and wear uniforms in line with their gender identity.
- Ensure that school curricula teach respect for and awareness of LGBTI people and do not discriminate against or negatively stereotype them.
- Repeal any laws that prohibit discussion or expression of sexual orientation, gender identity and intersex status in education.
- Develop and implement training programs for teachers that improve awareness of LGBTI students and the discrimination facing such students.

The right to take part in cultural life – Article 15(1)(a)

- Enact laws prohibiting discrimination in access to cultural goods and services, including sport, on the basis of sexual orientation, gender identity and intersex status.
- Enable LGBTI people to effectively participate in sport by actively combating discrimination on the basis of sexual orientation, gender identity and intersex status in this area.
- Ensure that everyone, including transgender and intersex people, can participate in competitive sport in accordance with their gender identity.
- Allow and provide effective protection to LGBTI cultural events.
- Repeal laws or policies that censor or restrict depictions of LGBTI people or LGBTI-related themes.

3. Using UN mechanisms to improve the protection of the economic, social and cultural rights of LGBTI people

Section 2 of this Guide provided an overview of how the various human rights within the ICESCR apply to LGBTI people and the specific obligations that States Parties have in this regard. This section 3 provides an overview of the different UN mechanisms that NGOs and activists can use to help ensure that States Parties comply with their obligations under the ICESCR.

Many NGOs and activists working for the rights of LGBTI people have a predominantly domestic focus, engaging with national branches of government, such as the executive, legislature or judiciary, to improve human rights protection for LGBTI people. For example, activists may lobby national parliaments to approve LGBTI-inclusive anti-discrimination legislation or legal gender recognition laws, work with education departments to introduce anti-bullying policies or commence strategic litigation in national courts to decriminalise same-sex sexual conduct or recognise same-sex unions.

While advocacy at the national level is undoubtedly useful, engaging with international mechanisms can provide an additional tool through which activists can achieve domestic law and policy reform. Positive outcomes at the international level can be used to lobby and pressure national governments to better protect the human rights of LGBTI people, as part of an integrated, multi-level strategy. For example, activists campaigning for a ban on non-consensual surgeries and medical interventions on intersex children in a given State Party may engage with the ESCR Committee, obtain a favourable recommendation on this issue as part of that State Party's periodic review, and then use that recommendation (alongside other strategies) to increase pressure on the State Party to ban such surgeries and interventions.

Another benefit of engaging with international mechanisms is that it creates international jurisprudence that can then be used by activists in other countries to bolster their own domestic law reform efforts.

There are a variety of different UN mechanisms that activists can engage with to improve protection of the economic, social and cultural rights of LGBTI people. Section 3.1 sets out different ways of engaging with the ESCR Committee, while section 3.2 considers the various mechanisms that fall under the responsibility of the UN Human Rights Council. Section 3.3 contains a summary of all the mechanisms discussed in sections 3.1 and 3.2, enabling NGOs and activists to readily compare the similarities and differences between each mechanism and determine which one is most suitable in their circumstances.

3.1 Engaging with the ESCR Committee

3.1.1 Introduction

As the monitoring body of the ICESCR, the ESCR Committee has a number of mechanisms through which it oversees the compliance of States Parties with the ICESCR. These mechanisms, which are summarised in section 1.3 above, provide a range of engagement opportunities for NGOs to bring global attention to violations of ICESCR rights.

This section discusses the following mechanisms and the ways in which NGOs can become involved with such mechanisms:

- periodic review of States Parties' compliance with the ICESCR – section 3.1.2;
- General Comments – section 3.1.3; and
- individual communications – section 3.1.4.

3.1.2 Periodic reviews of States Parties

The ESCR Committee conducts a periodic review of each State Party's compliance with the ICESCR every five years (although delays often occur due to States Parties not meeting their reporting obligations on time).

Figure 1 illustrates the different stages of the periodic review process and the different avenues for NGO involvement. **Green** boxes set out steps taken by the State Party under review, **blue** boxes set out steps that can be taken by NGOs, and **red** boxes set out steps taken by the ESCR Committee.

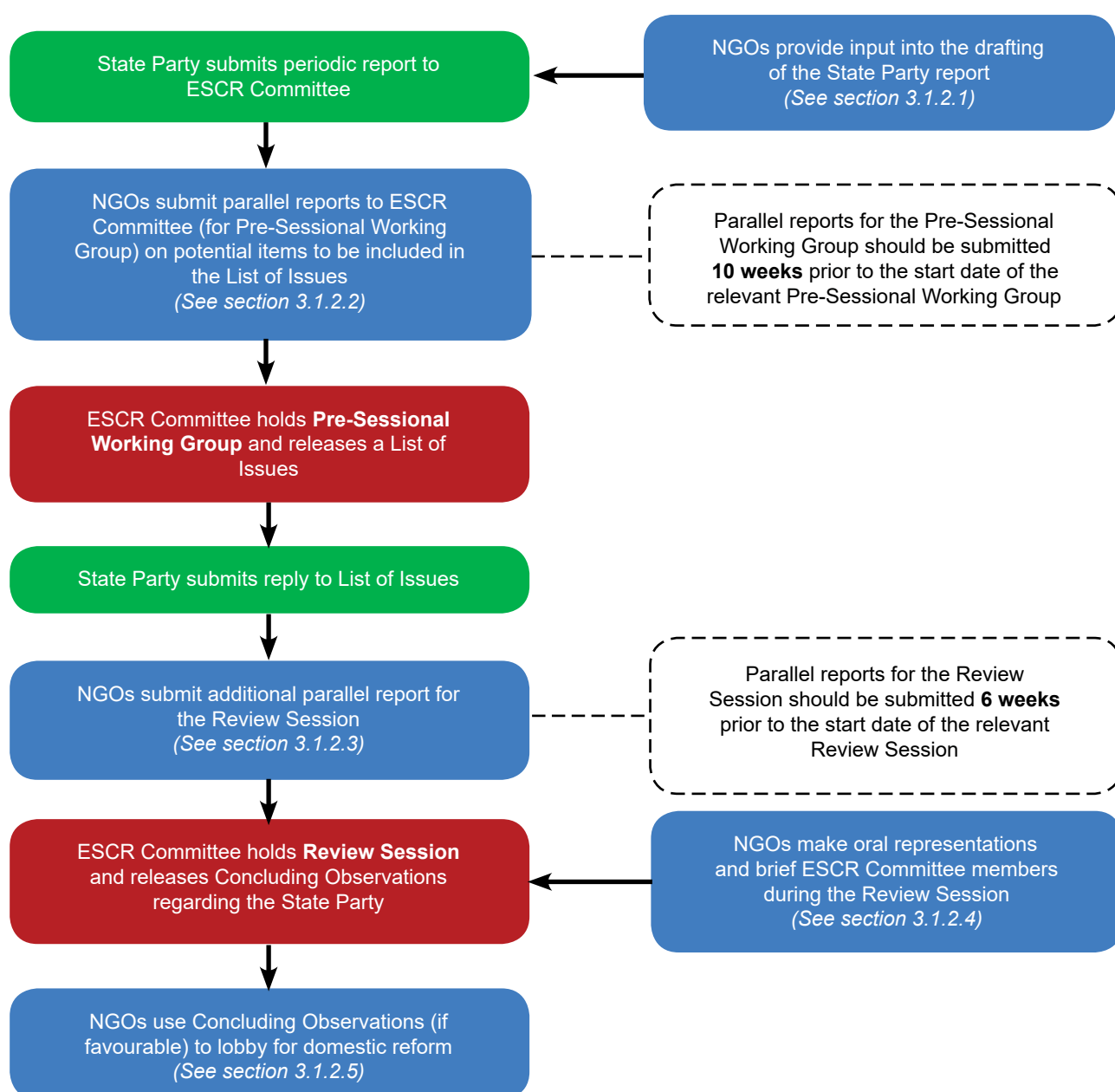


Figure 1: Stages of the periodic review process and opportunities for NGO involvement

3.1.2.1 Input into State Party reports

For each periodic review, States Parties are required to submit a report that sets out the steps they have taken to comply with the ICESCR and the progress they have achieved in respect of economic, social and cultural rights since the previous review by the ESCR Committee.

In some cases, States Parties will consult with civil society when preparing their report. This provides an opportunity for NGOs to ensure that the State Party report is inclusive of LGBTI issues, including any progress made in respect of the economic, social and cultural rights of LGBTI people and any commitments by the State Party to address remaining violations.

States Parties are required to submit a periodic report within two years of ratifying the ICESCR and then every five years after that. However, in practice, States Parties are often late in submitting their reports. The reporting deadlines for each State Party are set out on the ESCR Committee's website. NGOs should monitor these deadlines and:

Note: Links to the websites of relevant UN bodies and mechanisms, including the ESCR Committee, can be found in section 4.1.

- where appropriate, engage with governments in order to determine whether there is an opportunity to provide input into the drafting of the State Party report; or
- if submission of the State Party report has been delayed, lobby governments to submit a report as soon as possible.

3.1.2.2. Parallel reports for the Pre-Sessional Working Group

After a State Party submits its periodic report, the ESCR Committee will allocate the State Party to an upcoming meeting of the Pre-Sessional Working Group. The Pre-Sessional Working Group is the first stage of the periodic review and consists of five members of the ESCR Committee. The Pre-Sessional Working Group typically meets twice a year (for one week) and generally reviews five to ten states per session. The dates of upcoming sessions of the Pre-Sessional Working Group, and which States Parties are being reviewed, can be found on the “Sessions” page of the ESCR Committee's website.

Before the Pre-Sessional Working Group meeting is held, NGOs have the opportunity to submit “**parallel reports**” to the Pre-Sessional Working Group which set out additional information regarding the State Party's compliance with the ICESCR. Parallel reports, also called “shadow reports”, allow NGOs to provide information about violations of ICESCR rights that are not mentioned, or are not accurately reported, in the State Party's report.

Parallel reports represent one of the most significant and powerful ways for NGOs and activists to become involved in better protecting the economic, social and cultural rights of LGBTI people. In particular, parallel reports allow the ESCR Committee to obtain a more balanced and accurate picture of a State Party's compliance with the ICESCR. Given that many State Party reports are completely silent on LGBTI issues (or only outline positive developments), parallel reports are crucial to raising awareness of the economic, social and cultural rights violations faced by LGBTI people, as well as making recommendations on how such violations can be addressed.

Before its meeting, the Pre-Sessional Working Group will review the State Party's report as well as any parallel reports submitted by NGOs. At the meeting, the Pre-Sessional Working Group will adopt a “**List of Issues**”, which contains a series of questions that the State Party is required to answer. The List of Issues is intended to provide greater focus to the next stages of the periodic review process, by narrowing down the critical issues regarding the State Party's compliance with the ICESCR.

Accordingly, parallel reports submitted to the Pre-Sessional Working Group should themselves include a list of recommended questions that the Pre-Sessional Working Group should ask the State Party in respect of the rights of LGBTI people. This increases the likelihood that LGBTI-related questions will be included within the List of Issues. Some examples of LGBTI-related questions previously asked by the ESCR Committee as part of the List of Issues are set out in *Box 4* below. These provide a helpful guide to the nature and scope of the questions that typically form part of the List of Issues.

Box 2 and Box 3 below provide practical guidance to NGOs on drafting and submitting parallel reports to the Pre-Sessional Working Group. In addition:

- examples of parallel reports that Kaleidoscope has previously submitted to the ESCR Committee on LGBTI issues can be found on Kaleidoscope's website (www.kaleidoscopeaustralia.com);
- NGOs should review the ESCR Committee's website for any updates regarding submission requirements or other information relating to parallel reports.

Box 2: Submission requirements and best practice advice for preparing parallel reports to the Pre-Sessional Working Group

- Parallel reports must be submitted at least eight weeks, and preferably **ten weeks**, before the commencement date of the Pre-Sessional Working Group meeting at which the relevant State Party will be reviewed. The commencement date of upcoming sessions can be found on the "Sessions" page of the ESCR Committee's website.
- Parallel reports are to be submitted via e-mail to the ESCR Committee's secretariat, at cescr@ohchr.org. Reports should be in Microsoft Word (.doc or .docx) format. Printed submissions are no longer accepted.
- Parallel reports must be either in English, French or Spanish, although it is preferable for the report (or at least a summary) to be available in English.
- There is no specific limit on the length of parallel reports. However, reports should be as succinct as possible and should not exceed 10 pages for reports by individual NGOs or 15 pages for reports by coalitions of NGOs.
- Parallel reports may be submitted by individual NGOs or coalitions of NGOs. To submit a parallel report, there is **NO** specific requirement that an NGO be incorporated as an association, be registered or accredited with the UN or have consultative status with the UN Economic and Social Council.
- NGOs dealing with LGBTI rights within a particular country should consult with each other and seek to produce a consolidated (coalition) report if possible. Reports submitted by coalitions of NGOs are preferred by the ESCR Committee and tend to have more authority. Moreover, a coalition report reduces the chances of inconsistencies or contradictory information across reports, which undermine the strength of any recommendations made to the ESCR Committee within a parallel report.
- In some cases, LGBTI rights groups may prefer to partner with other (non-LGBTI-specific) human rights NGOs to produce a comprehensive parallel report covering the State Party's overall compliance with the ICESCR, across all areas. These reports tend to be given particular weight by the ESCR Committee. However, the risk of such reports is that LGBTI issues may be "drowned out" by a range of other issues. Accordingly, in many cases, submitting an LGBTI-specific parallel report is preferable.
- Parallel reports should be drafted in a succinct and objective manner, grounded as much as possible in evidence and facts. Emotive or argumentative language should be avoided – the key purpose of the report is to *document* violations and set out *recommended questions* that the ESCR Committee should include in its List of Issues to the State Party. A parallel report is not a newspaper article, press release, court submission or advocacy piece.

Box 3: Preferred structure for parallel reports to the Pre-Sessional Working Group

- **Cover page**, setting out:
 - The name and logo of the organisation(s) submitting the report;
 - The title of the report and the name of the relevant State Party (e.g. “[the State Party’s] Protection of the Economic, Social and Cultural Rights of LGBTI People”);
 - The number of the session to which the report is being submitted (e.g. “Parallel Report for the 62nd Pre-Sessional Working Group – List of Issues”). You can find out the session number where the relevant State Party will be reviewed on the “Sessions” page of the ESCR Committee’s website; and
 - Contact details of the main organisation submitting the report or its representative (e.g. e-mail address).
- **Table of contents** (if the report is over 5 pages);
- **Executive summary** – a summary of the report, approximately a half-page in length, which sets out brief information about the organisation(s) submitting the report, summarises the critical points made in the report and sets out the recommended questions that the ESCR Committee should include in the List of Issues;
- **Positive steps taken by the State Party** – an outline of positive steps (if any) taken by the State Party to protect the economic, social and cultural rights of LGBTI people since the last periodic review by the ESCR Committee (this allows States Parties to be recognised for positive steps, while also ensuring that the report is not perceived as being overly one-sided);
- **Section on each relevant Article of the ICESCR** (e.g. right to health, right to education), setting out:
 - A brief summary of how the relevant Article applies to LGBTI people, supported by statements from the ESCR Committee’s General Comments and Concluding Observations relating to other State Parties (section 2 of this Guide provides a useful resource for this);
 - Evidence of violations of the relevant Article by the State Party (e.g. laws, policies, quantitative data or surveys, testimonies, etc) – the shaded boxes titled “Potential evidence of violations” in section 2 provide a useful list of the types of evidence that can be used to establish specific violations of a given Article of the ICESCR; and
 - A list of questions that the NGO recommends the ESCR Committee include in its List of Issues, based on the violations identified above (e.g. “What steps does [the State Party] intend to take to prohibit medically unnecessary surgeries and other medical interventions that alter the sex characteristics of intersex children without their full and informed consent?”). Recommended questions should be distinguished from the rest of the text (e.g. through formatting or placement in a box) to make them readily identifiable and easily adopted by the ESCR Committee.

Box 4: Examples of List of Issues questions relating to the rights of LGBTI people

Below are some examples of questions relating to the rights of LGBTI people which the ESCR Committee has included in recent Lists of Issues. These questions provide a useful guide for the scope and framing of questions that NGOs and activists might include in their parallel reports to the Pre-Sessional Working Group.

- *“Please say whether the State party intends to take steps to protect lesbian, gay, bisexual and transgender persons from discrimination on the grounds of sexual orientation, including by decriminalizing homosexuality.”* – List of Issues for the periodic review of Cameroon, adopted by the ESCR Committee on 25 April 2018.¹¹⁷
- *“Please [...] provide information on the measures taken, and their impact, to increase employment opportunities among disadvantaged and marginalized groups and individuals, including non-ethnic Kazakh people from lower socioeconomic backgrounds, persons with disabilities and lesbian, gay, bisexual and transgender persons. [...] Please also provide information on the measures taken to remove practical obstacles faced by lesbian, gay, bisexual and transgender persons in access to health-care services, due to stereotyping and prejudices, including among medical personnel.”* – List of Issues for the periodic review of Kazakhstan, adopted by the ESCR Committee on 23 April 2018.¹¹⁸
- *“Please provide information on the impact of the measures taken to combat discrimination on the grounds of gender identity and/or sexual orientation, particularly with respect to the exercise of economic, social and cultural rights.”* – List of Issues for the periodic review of Slovakia, adopted by the ESCR Committee on 19 April 2018.¹¹⁹
- *“Please provide information on the steps taken to review anti-discrimination provisions in the Constitution and the Equal Opportunities Act 2012, with a view to ensuring the prohibition of direct, indirect and multiple forms of discrimination on any ground, including language, religion, property, birth, disability, sexual orientation and gender identity and other status, in line with article 2(2) of the Covenant. Please also provide information on the cases of discrimination brought to the Equal Opportunities Commission and the Equal Opportunities Tribunal, including the main grounds of discrimination identified through complaints, the number of cases reported to and dealt with by the Commission and the Tribunal, and the result of such cases.”* – List of Issues for the periodic review of Mauritius, adopted by the ESCR Committee on 19 April 2018.¹²⁰
- *“Please provide statistical data on the number of surgeries performed on intersex infants and children. Please indicate the measures taken to address the challenges, physical and mental, faced by intersex infants and children. Please indicate the impact of the decision to allow a third gender option on birth certificates in 2013 on the situation of intersex infants and children. Please also provide information on the measures taken to combat and prevent discrimination and violence based on sexual orientation and gender identity and indicate whether the State party has the intention to make explicit reference to homophobia in its hate crime legislation.”* – List of Issues for the periodic review of Germany, adopted by the ESCR Committee on 19 October 2017.¹²¹
- *“Please provide information on discriminatory practices employed against lesbian, gay, bisexual and transgender individuals in access to employment, health-care services and education, detailing any disciplinary or judicial measures undertaken in relation to such practices. Please also provide statistical data covering the years 2013-2016 on investigations launched into reported attacks against lesbian, gay, bisexual and transgender individuals, including rulings of relevant court cases”* – List of Issues for the periodic review of Russia, adopted by the ESCR Committee on 9 March 2017.¹²²

3.1.2.3 Parallel reports for the Review Session

Shortly after the conclusion of the Pre-Sessional Working Group, the List of Issues relating to the State Party will be published on the ESCR Committee's website. You can find a State Party's List of Issues by going to the page for the relevant Pre-Sessional Working Group, linked from the "Sessions" page on the ESCR Committee's website. The State Party will also receive a copy of the List of Issues and will be expected to answer the questions on the list by a particular date.

The next stage of the periodic review is a set of meetings where the full ESCR Committee considers the State Party's compliance with the ICESCR based on all the information it has received and then adopts its Concluding Observations. This session is referred to in this Guide as the "**Review Session**" (although the ESCR Committee typically refers to it simply as "the Session", as distinguished from the Pre-Sessional Working Group).

Review Sessions are typically conducted three times a year, running for three to four weeks and involving the review of several States Parties in each session. A State Party's Review Session is generally scheduled to take place approximately six months after its Pre-Sessional Working Group meeting. The dates of upcoming Review Sessions, and a list of States Parties being reviewed in each session, can be found on the "Sessions" page of the ESCR Committee's website.

NGOs have an opportunity to submit a parallel report before the Review Session, regardless of whether they have already submitted a parallel report for the Pre-Sessional Working Group. The information provided in section 3.1.2.2 in relation to parallel reports for the Pre-Sessional Working Group also applies generally to parallel reports for the Review Session. This includes the submission requirements in *Box 2* above.

However, the following points apply specifically to parallel reports for the Review Session:

- Parallel reports for the Review Session are due at least three weeks, and preferably **six weeks**, before the commencement date of the Review Session, which is listed on the ESCR Committee's web page for that particular session (linked from the "Sessions" page of the ESCR Committee's website).
- Parallel reports should make reference to the specific Review Session for which they are being submitted (e.g. "*Parallel Report for the 62nd Session of the UN Committee on Economic, Social and Cultural Rights*"). You can find out the session number where the relevant State Party will be reviewed on the "Sessions" page of the ESCR Committee's website.
- If your NGO has already submitted a parallel report for the Pre-Sessional Working Group, the parallel report for the Review Session should not simply duplicate the first report. Instead, the report for the Review Session should focus on:
 - Responding to relevant questions set out in the List of Issues – although the ESCR Committee may not have included any LGBTI-specific questions in the List of Issues, LGBTI-related issues may still be relevant to many of the questions asked.

Example: If a question within the List of Issues asks about the measures taken to address high dropout rates in education generally, the parallel report for the Review Session could provide information on disproportionate dropout rates among LGBTI students and make recommendations about how the State Party could address such dropout rates.

- Providing any additional or updated information on the State Party's compliance with the ICESCR that is not contained in the parallel report for the Pre-Sessional Working Group.

Example: In the months following the submission of the parallel report for the Pre-Sessional Working Group, a significant new study may have been released showing barriers to health care faced by transgender people in the relevant State Party, and the State Party may have enacted laws allowing legal gender recognition for transgender people. Both of these developments should be noted in the parallel report for the Review Session, to ensure that the ESCR Committee has access to the most accurate and up-to-date information.

- If your NGO has **not** submitted a parallel report for the Pre-Sessional Working Group, the parallel report for the Review Session can be more comprehensive and should largely follow the structure in *Box 3* above. However, NGOs should make the following departures from the structure in *Box 3*:
 - After the section on “Positive steps taken by the State Party”, the report should contain a separate section responding specifically to the questions set out in the List of Issues that are relevant to the rights of LGBTI people. If there is additional information to add, which does not relate to the List of Issues, the section responding to the List of Issues should be followed by separate sections for each relevant Article of the ICESCR, as set out in *Box 3*.
 - Instead of including recommended questions for the List of Issues, the report should set out a **list of recommendations** that the ESCR Committee should make to the State Party in its Concluding Observations. Recommendations should be phrased in a succinct manner (preferably a single sentence) and should follow logically from the evidence of violations of the ICESCR set out in the parallel report. For greater precision, recommendations should also make reference to specific laws and policies that violate the ICESCR.

Examples of potential recommendations:

- “[The State Party] should enact laws prohibiting medically unnecessary surgeries and other medical interventions that alter the sex characteristics of intersex children without their full and informed consent.”
- “[The State Party] should take active steps, including information campaigns and training programs, to combat employment discrimination against LGBTI people.”
- “[The State Party] should develop and implement training programmes, including as part of medical school curricula, to educate medical professionals on the health disparities and barriers to access experienced by bisexual and lesbian women.”
- “[The State Party] should repeal section [X] of Law [Y] that prohibits positive depictions of LGBTI people or LGBTI-related themes on free-to-air television.”

3.1.2.4 Appearing before the ESCR Committee in periodic reviews

Aside from the submission of written parallel reports, NGOs also have the opportunity to make oral presentations to the ESCR Committee during the Review Session. The ESCR Committee typically offers two different opportunities for oral presentations, which are only open to NGOs that have submitted a parallel report:

- **Public briefings**, which typically take place during the Monday of the week when the State Party’s review will be held – during this meeting, individual NGOs have the opportunity to make an oral statement of two to four minutes; and
- **Informal lunchtime briefings**, which allow NGOs to obtain a longer engagement with the ESCR Committee (up to 1 hour) – a lunchtime briefing must be specifically requested and depends on the availability of the ESCR Committee members.

The ESCR Committee sits in Geneva, Switzerland. For NGOs located in different parts of the world, organising a representative to attend the Review Session may involve significant cost. Accordingly, the ESCR Committee also provides the opportunity for NGO representatives to participate in a **teleconference or videoconference with the members of the ESCR Committee**.

Oral presentations are a highly effective tool for raising the profile of your NGO's parallel report and the issues and recommendations within it. The ESCR Committee sometimes receives a large number of parallel reports, written in different styles and containing a mix of complex information and recommendations. Appearing before the ESCR Committee in person or via teleconference or videoconference therefore provides additional visibility and weight to the issues raised in your NGO's parallel report. It is also an opportunity for the ESCR Committee to clarify any issues or questions that it may have in relation to your parallel report. This is particularly important in the LGBTI context, given that certain ESCR Committee members may not fully understand LGBTI-related terminology or the nuances of how the ICESCR applies to LGBTI people.

NGOs wishing to make an oral presentation to the ESCR Committee should indicate this to the secretariat of the ESCR Committee when submitting their parallel report for the Review Session (via e-mail: cescr@ohchr.org).

When contacting the secretariat of the ESCR Committee, the NGO should:

- make it clear whether it wishes to participate in a public briefing, informal lunchtime briefing, teleconference or videoconference;
- for in-person meetings in Geneva, ask the secretariat of the ESCR Committee about accreditation requirements for attending the meeting, as accreditation for access to UN buildings typically needs to be organised several days before the commencement of the session; and
- for teleconferences or videoconferences, ask the secretariat of the ESCR Committee about the technical requirements and arrangements for such meetings.

The options and processes for NGOs to make oral submissions to the ESCR Committee may change from time to time. Accordingly, NGOs should check the "Information Note for Civil Society" that the ESCR Committee publishes several months prior to each Review Session. This information note is linked from the web page of the relevant session, accessible from the "Sessions" page on the ESCR Committee's website.

3.1.2.5 Advocacy after the Concluding Observations have been issued

At the end of the Review Session, the ESCR Committee will issue written "**Concluding Observations**" to the State Party, which include a list of the main areas of concern as well as a series of recommendations for the State Party to improve its compliance with the ICESCR. The Concluding Observations are made publicly available on the ESCR Committee's web page for the particular Review Session (linked from "Sessions" page of the ESCR Committee's website).

NGOs should review the Concluding Observations to determine if the ESCR Committee has made any recommendations relating to issues raised in the NGO's parallel reports or oral presentations. If the Concluding Observations contain LGBTI-related recommendations, these can act as a useful lobbying tool in future domestic advocacy. Accordingly, NGOs may wish to promote the recommendations through their media outreach activities, while also referring to the recommendations in their lobbying and interactions with the government as part of the domestic law and policy reform process.

Box 5: Case study – Engaging with the ESCR Committee during the periodic review of Mongolia

One example of highly effective NGO engagement to further the economic, social and cultural rights of LGBTI people took place in relation to Mongolia's fourth periodic review before the ESCR Committee (June 2015).

Kaleidoscope submitted a parallel report for Mongolia's Review Session, in partnership with two Mongolian LGBTI rights NGOs: the LGBT Centre and the Youth for Health Centre.¹²³ Due to capacity constraints, a parallel report was not submitted to the Pre-Sessional Working Group. Accordingly, the 17-page report for the Review Session comprehensively set out information about violations of a range of rights under the ICESCR as they applied to LGBTI people, including the rights to work, protection and assistance to the family, social security, housing, health and education.

The parallel report also made seven recommendations, including the enactment of anti-discrimination legislation in all areas of public life, the recognition of same-sex couples (including parenting rights), training of health professionals to increase their understanding of LGBTI people's needs, coverage of transgender-related health services by Mongolia's public health system and the development of anti-bullying policies in schools. The parallel report was one of only five NGO reports submitted for Mongolia's periodic review, resulting in high visibility being given to LGBTI issues during the review.

Moreover, COC Nederland supported Anaraa Nyamdorj, the Executive Director of the LGBT Centre, to travel to Geneva and appear before the ESCR Committee during the Review Session. Anaraa's oral presentation provided further visibility and depth to the information and recommendations contained in the report.

As a result, the ESCR Committee's Concluding Observations to Mongolia included several recommendations relating to the rights of LGBTI people, namely:

- *"that the State party take steps to adopt a comprehensive anti-discrimination law guaranteeing protection for all against discrimination and for the enjoyment of economic, social and cultural rights, and encompassing all prohibited grounds of discrimination, including sexual orientation, gender identity and disability";*¹²⁴
- *"that the State party [...] [t]ake all measures necessary, in particular awareness-raising, to ensure that lesbian, gay, bisexual, transgender and intersex persons are not discriminated against on the basis of their sexual orientation and gender identity";*¹²⁵ and
- *"that the State Party [...] [r]ecognize that same-sex couples are entitled to equal enjoyment of their economic, social and cultural rights".*¹²⁶

Mongolia's periodic review was one of the first times that the ESCR Committee made a recommendation regarding the recognition of same-sex couples (a recommendation made in Kaleidoscope's parallel report). This demonstrates the influence that parallel reports can have on the ESCR Committee's Concluding Observations.

After the periodic review was finalised, Kaleidoscope and the LGBT Centre raised awareness of the Concluding Observations through social media channels and other forms of communication. The ESCR Committee's recommendations were also used in the LGBT Centre's domestic lobbying and law reform efforts.

Significantly, in December 2015, the Parliament of Mongolia enacted a Criminal Code that included new *"crimes of discrimination"* that specifically enumerated sexual orientation and gender identity as protected grounds.

3.1.3 Submissions relating to future General Comments by the ESCR Committee

The ESCR Committee periodically publishes General Comments which provide authoritative guidance about the interpretation and implementation of the provisions of the ICESCR. As of November 2018, 24 General Comments have been issued by the ESCR Committee.

The General Comments are very useful for ensuring that LGBTI people and their rights are recognised within the scope of the ICESCR. Indeed, as mentioned in section 2.2.1 above, it is because of the General Comments that sexual orientation, gender identity and intersex status are now regarded as non-discrimination grounds under the ICESCR. As illustrated throughout section 2, General Comments have also sometimes explicitly considered how the specific rights within the ICESCR apply to LGBTI people and what obligations States Parties have in relation to LGBTI people.

NGOs have the opportunity to make submissions to the ESCR Committee to inform its drafting of new General Comments. Before issuing a new General Comment, the ESCR Committee will typically release a draft of the General Comment on its website and invite written submissions from interested parties. Written submissions are taken into account when the ESCR Committee prepares the final version of the General Comment.

NGOs should monitor the ESCR Committee's website for news regarding the drafting of new General Comments, as well as deadlines and requirements for submissions.

Submissions should address any shortcomings in the draft General Comment as they relate to LGBTI people and propose drafting amendments. For example, submissions should ensure that the General Comment:

- uses the correct terminology in relation to LGBTI people and comprehensively includes sexual orientation, gender identity and intersex status; and
- specifically mentions how the relevant ICESCR provision or theme of the General Comment applies to LGBTI people (including by identifying examples of LGBTI-related violations of the relevant ICESCR provision or of measures that States Parties need to take in respect of LGBTI people).

3.1.4 Individual communications under the Optional Protocol

3.1.4.1 Introduction

The ESCR Committee has the power to consider complaints from individuals or groups of individuals alleging specific violations of their ICESCR rights. Such complaints are known as **individual communications**.

The ESCR Committee only has the ability to consider communications relating to conduct (including omissions) by States that have ratified the Optional Protocol to the ICESCR. Of the 169 States Parties to the ICESCR, only **24 States** (listed in *Table 1* below) have ratified the Optional Protocol as of November 2018.

However, the number of States ratifying the Optional Protocol is gradually increasing. An up-to-date list of States Parties to the Optional Protocol is available at <http://indicators.ohchr.org/>.

The International NGO Coalition for the OP-ICESCR is leading an international campaign for more states to ratify the Optional Protocol. Its website can be found at www.escr-net.org/op-icescr. NGOs working for LGBTI rights may consider joining the International NGO Coalition or advocating for their government to ratify the Optional Protocol if it has not done so.¹²⁷ The International NGO Coalition has released a toolkit that activists can use to lobby states to ratify and implement the Optional Protocol.¹²⁸

Africa (4)	Americas (8)	Asia (1)	Europe (11)
Cabo Verde Central African Republic Gabon Niger	Argentina Bolivia Costa Rica Ecuador El Salvador Honduras Uruguay Venezuela	Mongolia	Belgium Bosnia-Herzegovina Finland France Italy Luxembourg Montenegro Portugal San Marino Slovakia Spain

Table 1: States Parties to the Optional Protocol to the ICESCR (as of November 2018)

3.1.4.2 Process and requirements for submitting individual communications

The individual communication procedure begins with an individual, group of individuals or third party acting on behalf of individuals submitting a communication, in line with the requirements set out in *Box 6*. After an individual communication has been submitted, the ESCR Committee will:

- provide an opportunity for the relevant State Party to make observations on whether the communication should be admissible and on the merits of the communication;
- provide an opportunity for the complainant(s) to respond to the State Party's observations;
- provide an opportunity for third parties to make submissions (and for the complainant and the relevant State Party to respond to these submissions); and
- issue a publicly available opinion setting out:
 - whether the communication is admissible (based on the criteria set out in *Box 6*);
 - *if the communication is admissible*, whether the ESCR Committee considers that a violation of the ICESCR has occurred (including reasons); and
 - *if the communication is admissible*, a set of recommendations to the State Party, both to provide redress to the specific complainant(s) as well as to prevent similar violations from occurring in the future.

Based on previous individual communications, the ESCR Committee typically takes 2 to 3 years to make a decision from the time that the communication is submitted.

Following the publication of the ESCR Committee's opinion, the relevant State Party is obliged to submit a response within six months regarding any action taken in relation to the views and recommendations of the ESCR Committee. If the State Party fails to take appropriate action, the ESCR Committee pursues a dialogue with the State Party and the matter remains open until satisfactory measures are taken. There is no appeal against the ESCR Committee's views or recommendations in respect of an individual communication.

More information on the individual communication procedure can be found on the ESCR Committee's website.¹²⁹

Box 6: Requirements for the submission of individual communications

Who may submit an individual communication?

- Communications to the ESCR Committee may be submitted by individuals or groups of individuals who consider that their ICESCR rights have been directly and personally violated by a law, policy, practice, act or omission of a State that has ratified the Optional Protocol to the ICESCR. Communications may also be submitted by third parties (including NGOs) on behalf of such individuals or groups of individuals.
- If a complaint is submitted *on behalf of* individuals or groups of individuals, the author of the complaint must either show written proof of consent from the individual(s) or a justification as to why consent could not be obtained (e.g. where the individuals are in prison without access to the outside world or are victims of an enforced disappearance). Accordingly, NGOs cannot simply make complaints about violations of the ICESCR in the abstract – they first need to identify and collaborate with an individual or group of individuals whose ICESCR rights have been directly violated.

What are the pre-requisites for submitting an individual communication?

Before an individual communication is submitted, the complainant must ensure that the communication is **admissible**. A communication is admissible if it meets the following criteria (adapted from Article 3 of the Optional Protocol to the ICESCR):

1. The communication concerns alleged violations of the ICESCR by a State Party that has ratified the Optional Protocol (see *Table 1* above);
2. The facts that are the subject of the communication occurred after the Optional Protocol entered into force in respect of the relevant State Party (i.e. three months after the State Party ratified the Optional Protocol). The ratification date for each State Party can be found at <http://indicators.ohchr.org/>;
3. All domestic remedies have been exhausted in relation to the matter, up to the highest available level – that is, the matter must have been pursued through the domestic court system up to the highest court, without a satisfactory outcome being achieved **OR** the matter must be one for which a remedy cannot be provided by the domestic courts;
4. The communication is submitted **within one year** of the exhaustion of domestic remedies (unless it can be demonstrated that it was not possible to submit the communication within this time limit);
5. The same matter has not already been examined by the ESCR Committee or by another international investigation or settlement procedure (e.g. another UN treaty body or a regional human rights body such as the European Court of Human Rights);
6. The communication is not “*manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by the mass media*”, or otherwise an abuse of the right to submit an individual communication or incompatible with the provisions of the ICESCR; and

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7. The communication is in writing and mentions the name of the complainant(s) – i.e. complaints cannot be anonymous, although the complainant can make a request that their identity not be disclosed in the ESCR Committee's published opinion.

What form must the individual communication take?

An individual communication is not required to follow a particular form or structure. However, the complaint should:

- be in writing (preferably typed) and signed by the complainant;
- be written in one of the UN languages (Arabic, Chinese, English, French, Russian or Spanish);
- provide basic information about the alleged victim: name, nationality, postal address, date of birth and e-mail address;
- specify the State Party against which the complaint is directed;
- specify if the complainant wishes their identity to not be disclosed when the ESCR Committee's opinion is published;
- ensure that all the facts relevant to the complaint are set out in chronological order;
- explain why the facts constitute a violation of the ICESCR (by reference to the specific Articles of the ICESCR and the interpretation of these articles by the ESCR Committee, as evidenced in its General Comments and/or Concluding Observations);
- set out the remedy that the complainant seeks from the State Party, as well as any interim measures that should be taken by the State Party;
- include what steps have been taken to exhaust available domestic remedies;
- supply copies of all relevant documents, including any administrative and/or judicial decisions issued by national authorities in relation to the matter, which should be listed in chronological order, numbered consecutively and translated or summarised in an official UN language; and
- ensure the complaint does not exceed 50 pages (excluding annexes) and provide a short summary (up to 5 pages) if the complaint exceeds 20 pages.

Where are individual communications submitted?

Individual communications should be submitted either by post or via e-mail to:

Petitions and Inquiries Section
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
1211 Geneva 10, Switzerland

E-mail address: petitions@ohchr.org

3.1.4.3 The role of individual communications in LGBTI rights advocacy

While the ESCR Committee is not a court and its recommendations are not generally recognised as legally enforceable, the individual communication mechanism provides a way for LGBTI people to obtain redress for violations of their ICESCR rights through a high-profile international forum. Individual communications can also be used by activists in a strategic manner, to raise awareness of violations of LGBTI rights and to put pressure on the violating State to reform its laws or to take necessary measures to protect the rights of LGBTI people. Given the relative complexity of the procedure, as well as the long lead times, the individual communication mechanism is a tool for achieving long-term change rather than obtaining urgent action.

As of November 2018, the ESCR Committee has not yet considered any individual communications in respect of LGBTI issues. However, LGBTI-related individual communications have been submitted to other UN treaty bodies for breaches of international human rights law and have had an important impact in bringing about domestic law reform. For example:

- In *Toonen v Australia* (1994), the UN Human Rights Committee found that a law in the State of Tasmania that criminalised consensual same-sex relations violated the right to privacy under the ICCPR.¹³⁰ The *Toonen* decision was instrumental to the decriminalisation of consensual same-sex sexual conduct in Tasmania in 1997.
- In *Young v Australia* (2003), the UN Human Rights Committee found that the denial of a pension benefit to the same-sex partner of a veteran breached the ICCPR.¹³¹ The UN Human Rights Committee held that the complainant's right to equal protection of the law was violated on the basis of his sexual orientation. The *Young* decision was used by Australian LGBTI activists to lobby for equal rights for same-sex couples in respect of social security, which was achieved in 2008.
- In *G v Australia* (2017), the UN Human Rights Committee found that a law of the State of New South Wales requiring a transgender person to be unmarried before changing the gender marker on their birth certificate breached the ICCPR.¹³² The UN Human Rights Committee held that the relevant law violated the complainant's rights to privacy and equal protection of the law. The *G* decision received significant media coverage, particularly in the context of Australia's broader public debate about marriage equality (which was subsequently enacted in December 2017). In June 2018, New South Wales passed legislation removing the requirement that a person be unmarried in order to change the gender on their birth certificate.

3.2 ICESCR and the UN Human Rights Council

3.2.1 Introduction

The UN Human Rights Council (**UNHRC**) is an intergovernmental body set up in 2006 to promote and protect human rights across the 193 member states of the UN. Unlike the ESCR Committee, the UNHRC does not consist of appointed human rights experts. Instead, the UNHRC is made up of representatives of 47 UN member states, elected by the General Assembly for three-year terms. It is therefore subject to a greater level of politicisation than the ESCR Committee.

The UNHRC deals with human rights broadly, including the economic, social and cultural rights set out in the ICESCR. It has a range of different mechanisms and procedures that NGOs can engage with to advance the economic, social and cultural rights of LGBTI people.

This section discusses four specific mechanisms:

- the Universal Periodic Review (**UPR**) – section 3.2.2;
- the Special Procedures, including the Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity – section 3.2.3;
- the UNHRC complaint mechanism – section 3.2.4; and
- Commissions of Inquiry and other investigations – section 3.2.5.

3.2.2 Universal Periodic Review

The UPR is a process overseen by the UNHRC that involves every UN member state being reviewed for its compliance with international human rights law every four and a half years.

There are three key differences between the UPR and the periodic review conducted by the ESCR Committee (outlined in section 3.1.2):

- the UPR is a peer review process, where other UN member states (rather than human rights experts) make recommendations to the reviewed state on how it can improve its human rights record;
- the UPR holistically examines compliance with international human rights law, including all human rights treaties that the reviewed state has ratified, rather than only looking at compliance with the ICESCR (accordingly, the review is less in-depth); and
- the UPR applies to all 193 UN member states, not just those that have ratified the ICESCR, thereby providing an avenue to address the economic, social and cultural rights of LGBTI people in a broader range of countries.

The UPR process is structured around “**UPR sessions**”, which take place three times per year and at which 14 member states are reviewed over a two-week period. Within each session, each reviewed state has an “**interactive dialogue**”, where it provides an overview of its human rights record. Other UN member states have the opportunity to ask questions and make recommendations during the interactive dialogue. The reviewed state then has several months to respond to each recommendation – it can either accept the recommendation, reject it or “note” it.

The peer-reviewed nature of the UPR can produce outcomes that are rather different from the ESCR Committee’s periodic review. On the one hand, recommendations made by other states (particularly those with close political or cultural ties to the reviewed state) can have greater impact and produce less resistance than the ESCR Committee’s recommendations as expressed in its Concluding Observations. On the other hand, because the UPR is more politicised than the ESCR Committee’s periodic review, member states will typically only make recommendations that align with their political and foreign policy interests and in respect of issues that they already comply with. For example, a member state will

rarely make a recommendation that another state enact LGBTI-inclusive anti-discrimination laws if the recommending state does not itself have such laws in place.

NGOs can participate in the UPR process by submitting a **stakeholder submission** (also referred to as a “shadow report” or “parallel report”) to the Office of the High Commissioner for Human Rights (OHCHR). Stakeholder submissions for the UPR are similar to parallel reports for the ESCR Committee’s periodic review, although they are shorter and therefore tend to have a different style and emphasis. The stakeholder submissions play a key role in informing UN member states about human rights violations in the reviewed state and can help to ensure that member states make appropriate recommendations to the reviewed state.

Box 7 sets out the key submission requirements and some advice for preparing stakeholder submissions for the UPR, while *Box 8* sets out a proposed structure for stakeholder submissions. Finally, *Box 9* provides a case study of how Kaleidoscope’s stakeholder submission on LGBTI rights in Palau impacted on the visibility of LGBTI issues within Palau’s UPR in January 2016.

Examples of previous stakeholder submissions that Kaleidoscope has submitted to the UPR are available at Kaleidoscope’s website (www.kaleidoscopeaustralia.com). NGOs planning to participate in the UPR should also check the OHCHR’s UPR website for any updates to submission requirements.

Note: Links to the websites of relevant UN bodies and mechanisms, including the UPR mechanism, can be found in section 4.1.

In addition to stakeholder submissions, NGOs can also participate in the UPR process by attending the UPR sessions and briefing representatives of other states on human rights violations affecting LGBTI people in the reviewed state, with a view to encouraging them to make relevant recommendations to the reviewed state.

More information about the different ways that NGOs can participate in the UPR process can be found in the “Civil Society Engagement” section of the OHCHR’s UPR website and the OHCHR’s online publication titled *Universal Periodic Review: A Practical Guide for Civil Society*.¹³³



Box 7: Requirements and best practice advice for UPR stakeholder submissions

- Stakeholder submissions must be submitted at least **12 weeks** before the commencement date of the reviewed state's UPR session. A calendar of upcoming review sessions, including the states to be reviewed at each session and submission reporting deadlines, can be found on the OHCHR's UPR website or at the independently-run *UPR Info* website (www.upr-info.org).
- Stakeholder submissions must be submitted online in Microsoft Word format, using the Online UPR Submission System (<https://uprdoc.ohchr.org>).
- In order to make a stakeholder submission, there are **NO** requirements that an NGO be incorporated as an association, be registered or accredited with the UN or have consultative status with the UN Economic and Social Council. As with parallel reports for the ESCR Committee's periodic review, NGOs working on LGBTI rights in a particular UN member state may wish to make a joint submission, in order to minimise workload and potential inconsistencies, and increase the persuasive power of the submission.
- Stakeholder submissions prepared by an individual NGO must not exceed **2,815 words**. Stakeholder submissions prepared by a coalition of NGOs must not exceed **5,630 words**. Word limits exclude any text on the cover page, footnotes and endnotes (but this text will not be taken into account for the purposes of the UPR).
- Stakeholder submissions should be either in English, French or Spanish.
- Stakeholder submissions for the UPR may deal with the rights of LGBTI people in a broader, holistic way, rather than focusing only on economic, social and cultural rights. While the focus of this Guide is specifically on the ICESCR, NGOs may also wish to cover other themes in their submission, such as the civil and political rights in the ICCPR.
- The key purpose of the stakeholder submission is to document *violations* and set out *recommendations* that other UN member states can make to the reviewed state. Stakeholder submissions should be drafted in a succinct and objective manner, grounded as much as possible in evidence and facts. Emotive or argumentative language should be avoided.
- All stakeholder submissions made in relation to the UPR of a particular UN member state are summarised by the OHCHR into a "summary of stakeholders' information" or "**stakeholder summary**" which is no more than 10 pages. This stakeholder summary is made available to all UN member states. Many UN member states use the stakeholder summary to inform the recommendations they will make to the reviewed state. A stakeholder submission that is clearly written, well-documented and makes clear recommendations is more likely to feature prominently within the stakeholder summary. This increases the chances that the recommendations in the stakeholder submission will be reflected in the recommendations made to the reviewed state during the UPR interactive dialogue.

Box 8: Preferred structure for UPR stakeholder submissions

- **Cover page**, setting out:
 - The name and logo of the organisation(s) submitting the report;
 - The title of the report, name of the reviewed state and the UPR session to which the report is being submitted (e.g. *“Stakeholder Submission regarding the human rights of LGBTI people in [State X] – 25th session of the Universal Periodic Review (April–May 2016)”*). You can find out the session number and date of the session on the “Sessions” page of the OHCHR’s UPR website; and
 - Contact details of the main organisation submitting the report or its representative (e.g. e-mail address, web page, telephone number).
- **Executive summary** – a summary of the critical points in the submission, no longer than 1 or 2 paragraphs. Given the tight word limit, brief information about the organisation(s) making the submission should be set out in footnotes linked from the executive summary, as footnotes do not count towards the word limit;
- **Positive steps taken by the reviewed state** – an outline of positive steps taken by the reviewed state to protect the economic, social and cultural rights (or, more broadly, human rights) of LGBTI people since its last UPR. This allows the reviewed state to be recognised for positive steps, while also ensuring that the submission is not perceived as being overly one-sided. In this section, it may also be useful to note whether the reviewed state accepted any LGBTI-related recommendations in its previous UPR and, if so, whether any progress has been made in implementing such recommendations. A lack of progress in implementing recommendations should also be noted – it is unfortunately quite common for states to accept recommendations yet not take any meaningful steps to implement them before their next UPR. A list of recommendations accepted in a state’s previous UPR can be accessed from the “Documentation by country” section of the OHCHR’s UPR website (select the relevant country from the “Documentation by country” page and then click on the “Report of the Working Group” and “Addendum” documents in the “Outcome of the review” section);
- **Sections organised thematically by each right or group of rights** (e.g. right to health, right to education), setting out:
 - Evidence of violations of the relevant right by the reviewed state (e.g. laws, policies, quantitative data or surveys, testimonies, etc) – the coloured boxes titled *“Potential evidence of violations”* in section 2 provide a useful list of the types of evidence that can be used to establish specific violations of the rights within the ICESCR; and
 - A list of recommendations (e.g. *“[The reviewed state] should enact comprehensive anti-discrimination laws that prohibit discrimination on the basis of sexual orientation, gender identity and intersex status in employment, education, health care and other areas of public life”*). Recommendations should be distinguished from the rest of the text (e.g. through formatting or placement in a box) to make them easily identifiable by the OHCHR when preparing the stakeholder summary.

Note that, if the reviewed state has not ratified the ICESCR (or other international human rights treaties), it is useful to mention this in a separate section, and make a recommendation that the reviewed state ratify the ICESCR (and other relevant treaties).

In order to give the stakeholder submission greater clarity and focus, only five or six recommendations should be included in the submission, representing the highest priorities for LGBTI rights activists in the reviewed state.

Box 9: Case study – Kaleidoscope’s stakeholder submission to the UPR of Palau

Kaleidoscope submitted a stakeholder submission for the second UPR of Palau,¹³⁴ which took place in January 2016. The submission was prepared in consultation with Palauan LGBTI activists. The submission:

- set out recent positive steps that had been taken by Palau in relation to the rights of LGBTI people, including the decriminalisation of consensual same-sex sexual activity;
- identified several legal shortcomings in relation to LGBTI rights, including laws that discriminated against LGBTI people;
- noted that Palau had not ratified many international human rights treaties, including the ICESCR; and
- made five recommendations:
 - *“Palau should ensure that proposed legislation punishing hate crimes on the basis of sexual orientation and gender identity is enacted as soon as possible”;*
 - *“Palau should implement a framework of legislative reform that actively prevents and prohibits discrimination of LGBTI persons in all facets of life and society, including but not limited to employment, the provision of goods and services, education and health care”;*
 - *“Palau should take steps to amend Section 5 of Article IV of the Constitution to include sexual orientation and gender identity as non-discrimination grounds”;*
 - *“Palau should extend the same legal rights to same-sex couples as to opposite-sex married couples”;* and
 - *“Palau should ratify all significant international human rights treaties (and their Optional Protocols) to reinforce its implementation of, and compliance with, international human rights law”.*

The stakeholder summary produced by the OHCHR made a significant number of references to Kaleidoscope’s submission, including the recommendations above.¹³⁵ ARC International also made a submission focused on LGBTI rights, which was reflected in the stakeholder summary.¹³⁶

Due to the prominence of LGBTI issues within the stakeholder summary, Palau received six recommendations relating to the rights of LGBTI people at its interactive dialogue. Many of these recommendations were based significantly on the recommendations in Kaleidoscope’s submission. In particular:

- the Netherlands recommended that Palau *“introduce comprehensive anti-discrimination legislation, including discrimination based on sexual orientation or gender identity”*;¹³⁷
- Spain recommended that Palau *“legislate in order to permit marriage between persons of the same sex”*;¹³⁸
- the United Kingdom recommended that Palau *“extend existing legislation to protect the rights of the lesbian, gay, bisexual, transgender and intersex community, including the recognition of same sex couples and anti-discrimination employment laws”*;¹³⁹

- France recommended that Palau “*adopt measures to ensure that lesbian, gay, bisexual, transgender and intersex persons are no longer victims of discriminatory provisions*”,¹⁴⁰
- Israel recommended that Palau “*consider establishing explicit legislation or policies that prohibit discrimination based on sexual orientation or gender identity*”,¹⁴¹ and
- Mexico recommended that Palau “*take all the necessary measures to eliminate discrimination based on sexual orientation and gender identity*”.¹⁴²

At the 32nd session of the UNHRC, in June 2016, Palau responded to the recommendations. It stated that it would “*take note*” of the above recommendations and that “*[f]urther work and consultations need to be taken to further progress in this area in [Palau]*”.¹⁴³

The fact that Palau received a large number of LGBTI-related recommendations at its UPR has brought the rights of LGBTI people to the attention of the Palauan government as an area of significant international concern. These recommendations can now be used by domestic activists as part of their efforts to advance the rights of LGBTI people in Palau.

3.2.3 Special Procedures

The UNHRC has the power to appoint “Special Procedures”, independent human rights experts who are tasked with monitoring, reporting and advising on the human rights situation in respect of a particular theme or country.

Special Procedures are usually titled “special rapporteurs” or “independent experts” and are generally an individual person, although some Special Procedures are “working groups” that are made up of a panel of experts.

3.2.3.1 The Independent Expert on SOGI

In September 2016, the UNHRC established a new Special Procedure: the Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity (**Independent Expert on SOGI**). The mandate of the Independent Expert on SOGI is set out in UNHRC Resolution A/HRC/RES/32/2 and is extracted in *Box 10* below.

Box 10: Mandate of the Independent Expert on SOGI

- 
- (a) To assess the implementation of existing international human rights instruments with regard to ways to overcome violence and discrimination against persons on the basis of their sexual orientation or gender identity, while identifying both best practices and gaps;
 - (b) To raise awareness of violence and discrimination against persons on the basis of their sexual orientation or gender identity, and to identify and address the root causes of violence and discrimination;
 - (c) To engage in dialogue and to consult with States and other relevant stakeholders, including United Nations agencies, programmes and funds, regional human rights mechanisms, national human rights institutions, civil society organizations and academic institutions;
 - (d) To work in cooperation with States in order to foster the implementation of measures that contribute to the protection of all persons against violence and discrimination based on sexual orientation and gender identity;
 - (e) To address the multiple, intersecting and aggravated forms of violence and discrimination faced by persons on the basis of their sexual orientation and gender identity;
 - (f) To conduct, facilitate and support the provision of advisory services, technical assistance, capacity-building and international cooperation in support of national efforts to combat violence and discrimination against persons on the basis of their sexual orientation or gender identity.

Source: UNHRC Resolution A/HRC/RES/32/2, clause 3.

Unfortunately, the mandate of the Independent Expert on SOGI does not explicitly refer to discrimination on the basis of intersex status or sex characteristics. The Independent Expert’s 2017 report to the UNHRC mentions that the mandate will cover intersex people *“where there is a link with sexual orientation and gender identity, while recognizing that this group has special features not necessarily related to sexual orientation and gender identity”*.¹⁴⁴

The Independent Expert on SOGI carries out three main activities:

1. Dealing with **submissions and individual complaints** about violence and discrimination on the basis of sexual orientation and gender identity in UN member states. This includes discrimination in respect of economic, social and cultural rights. In response to such submissions, the Independent Expert on SOGI has the power to communicate directly with the authorities of the relevant state, setting out the nature of the complaint, asking questions and requesting follow-up action.

Opportunities for NGO involvement: At any time, NGOs and individuals can make online submissions to the Independent Expert on SOGI to bring violations of human rights to the expert's attention (including violations of economic, social and cultural rights on the basis of sexual orientation and gender identity). These submissions can then be used as the basis for a communication by the Independent Expert on SOGI to the relevant state, which brings international attention to a particular violation and may increase pressure on the relevant state to take steps to address the violation.

Box 11 below provides more information about the process of making online submissions to Special Procedures, including the Independent Expert on SOGI.

2. Carrying out **country visits**, which involve the Independent Expert on SOGI meeting directly with government representatives and members of civil society to gather facts about violations of human rights relating to sexual orientation or gender identity in a particular UN member state. The Independent Expert will then produce a report about the state of human rights relating to sexual orientation and gender identity in the relevant country.

Opportunities for NGO involvement: The Independent Expert on SOGI will generally meet with local NGOs during the course of a country visit. In addition, NGOs and individuals have the opportunity to provide written submissions to the Independent Expert prior to a country visit. This can include information about laws and policies affecting human rights on the basis of sexual orientation and gender identity, key priorities and concerns as well as suggestions regarding the issues that the Independent Expert should consider during their visit.

Box 12 below provides more information about how NGOs can determine when a country visit is occurring and arrange a meeting or otherwise engage with Special Procedures, including the Independent Expert on SOGI.

3. Submitting **annual reports** to the UNHRC and General Assembly on the Independent Expert's activities. These provide regular visibility to human rights issues relating to sexual orientation and gender identity at the international level.

The OHCHR's website for the Independent Expert on SOGI provides more information and updates about the activities of this Special Procedure. NGOs and activists can also contact the Independent Expert on SOGI via e-mail at ie-sogi@ohchr.org.

Note: Links to the websites of relevant UN bodies and mechanisms, including the Independent Expert on SOGI and the other Special Procedures, can be found in section 4.1.

3.2.3.2 Other Special Procedures

Aside from the Independent Expert on SOGI, NGOs can engage with a number of other Special Procedures that have the potential to play a useful role in improving a state's protection of the economic, social and cultural rights of LGBTI people.

As of November 2018, there are 44 thematic and 11 country-specific Special Procedures. An up-to-date list of all the Special Procedures can be found at the OHCHR's Special Procedures website.

Thematic Special Procedures deal with a specific issue or area of human rights law on a global level. Several of the thematic mandates deal specifically with rights under the ICESCR, including:

- the Special Rapporteur in the field of cultural rights;
- the Special Rapporteur on the right to education;
- the Special Rapporteur on the right to food;
- the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and
- the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context.

The Independent Expert on SOGI, discussed in section 3.2.3.1 above, is one of the thematic Special Procedures.

Country-specific Special Procedures deal with the human rights situation in a particular UN member state. Unlike the thematic procedures, they focus holistically on the overall human rights situation in the relevant state (including, implicitly, the economic, social and cultural rights of LGBTI people). As of November 2018, country-specific Special Procedures exist in relation to Belarus, Cambodia, Central African Republic, Eritrea, Iran, Mali, Myanmar, North Korea, the Palestinian Territories, Sudan and Syria. An updated list of all country-specific special procedures can be found on the OHCHR's Special Procedures website.

Box 11 and *Box 12* provide an illustration of two different ways that NGOs can engage with the thematic and country-specific special procedures: online submissions and participation in country visits.

Box 11: Online submissions to the Special Procedures

Individuals and NGOs have the opportunity to make **submissions** to one or more Special Procedures alleging a violation of human rights within an area that falls within the mandate of the Special Procedure. This includes allegations that a particular law, policy, practice or legislative proposal is not in compliance with international human rights law. For example, NGOs could make a submission to the Special Rapporteur on the right to education relating to the failure of a state to recognise transgender students in accordance with their gender identity and the impact this has on their right to education under Article 13 of the ICESCR.

Submissions must be made using the online submission form at the following address: <https://spsubmission.ohchr.org>.

Submissions should set out a factual description of the alleged violation of human rights and should rely on credible, direct testimonials or evidence of laws, policies or practices (rather than simply on media reports). The online submission form will provide more specific details about the requirements of each submission.

Unlike the individual communication procedure overseen by the ESCR Committee (see section 3.1.4), submissions to Special Procedures can be made even in relation to states that have not ratified the ICESCR or the Optional Protocol to the ICESCR. This makes the submission mechanism particularly useful for protecting the economic, social and cultural rights of LGBTI people in states that have not ratified the ICESCR. There is also no requirement to have exhausted domestic remedies before making a submission to a Special Procedure.

Once a submission has been made, it will be up to the Special Procedure to determine what action to take in relation to the submission. In response to a submission, Special Procedures have the power to send “**communications**” to the relevant national government. Communications are letters that:

- set out allegations of violations of human rights (including allegations made by an NGO through an online submission);
- request clarification from the relevant national government in respect of the allegations; and
- in some cases, request that a national government take action to stop or investigate the alleged violation.

Communications do not have any binding legal effect and, in many cases, the relevant national government will not respond to the communication. Nevertheless, online submissions to Special Procedures, and the communications to national governments that may result from them, provide a useful pathway to raise awareness of violations of the economic, social and cultural rights of LGBTI people and place pressure on states to reform their laws, policies and practices.



Box 12: NGO participation in country visits by Special Procedures

Special Procedures will often conduct **country visits** in order to assess the human rights situation in a particular country. Following a country visit, the Special Procedure prepares a **report** to the UNHRC which sets out their findings, as well as a list of conclusions and recommendations to the relevant national government.

As part of a country visit, the Special Procedure will often meet with NGOs and other representatives of civil society, in order to obtain more information about the human rights situation relevant to their mandate.

For NGOs working on LGBTI rights, meeting with the Special Procedures can provide visibility to the human rights issues facing LGBTI people and make it more likely that LGBTI issues will feature within the Special Procedure's report to the UNHRC (including the recommendations that are part of the report).

NGOs interested in meeting with Special Procedures as part of a country visit should take the following steps:

1. Check the "Forthcoming country visits" page on OHCHR's Special Procedures website to see if a country your organisation works in will be visited by a relevant Special Procedure in the near future.
2. If a relevant Special Procedure is visiting a country your organisation works in, **contact the Special Procedure by e-mail**, requesting a meeting and setting out how your organisation's work relates to the Special Procedure's mandate.

For example, if your organisation is seeking to meet with the Special Rapporteur on the right to health, you could describe how your organisation works in the area of LGBTI health (among other issues) and provide a brief overview of how the right to health under Article 12 of the ICESCR applies to LGBTI people within your country, including potential violations of this right. Section 2 of this Guide is useful in identifying how the rights in the ICESCR (and therefore the mandates of certain thematic Special Procedures) apply specifically to LGBTI people.

The e-mail addresses of all the Special Procedures can be found on the OHCHR's Special Procedures website (click on the "Country mandates" and "Thematic mandates" links from the main page).

3.2.4 UNHRC complaint mechanism

In a similar manner to the ESCR Committee's individual communication procedure (discussed in section 3.1.4 above), the UNHRC provides a mechanism for dealing with complaints about violations of human rights. The basis for this mechanism is UNHRC Resolution 5/1 of 18 July 2007, titled "Institution Building of the UN Human Rights Council". Complaints made under this mechanism are dealt with by various working groups within the UNHRC. The people that sit within these working groups are representatives of UN member states, rather than independent experts as in the case of the ESCR Committee.

An advantage of the UNHRC complaint mechanism (relative to the ESCR Committee's individual communication procedure) is that it can be used for violations of economic, social and cultural rights in any UN member state, not only the limited number of states that have ratified the Optional Protocol to the ICESCR.

However, the UNHRC complaint mechanism is designed to address complaints regarding "*a consistent pattern of gross and reliably attested violations of human rights*". This sets a much higher threshold for making a complaint to the UNHRC as compared to making an individual communication to the ESCR Committee or making an online submission to a Special Procedure (see section 3.2.3 above). Furthermore, a complaint cannot be made to the UNHRC if a complaint regarding the same facts or subject matter has already been made to a Special Procedure, the ESCR Committee (under the individual communication procedure), another UN treaty body or a regional human rights mechanism.

Accordingly, the UNHRC complaint mechanism is unlikely to be as relevant to the protection of the economic, social and cultural rights of LGBTI people as the other mechanisms set out in this Guide. Nevertheless, more information on how to make a complaint under this mechanism, including procedural requirements, can be found on the UNHRC's web page relating to the complaint procedure.

Note: Links to the websites of relevant UN bodies and mechanisms, including the UNHRC complaint procedure, can be found in section 4.1.

3.2.5 Commissions of Inquiry and other investigations

In addition to the UPR, Special Procedures and the UNHRC complaint mechanism, the UNHRC regularly establishes Commissions of Inquiry (**COIs**) and other investigative bodies to deal with serious violations of human rights law that require specific international attention. COIs may also be known as "commissions on human rights" or "fact-finding missions".

In the 2010s, COIs have been set up to examine violations of human rights in Burundi, the Democratic People's Republic of Korea (North Korea), the Democratic Republic of the Congo, Eritrea, Myanmar, South Sudan, Syria and Yemen, as well as in relation to the 2014 Gaza conflict. COIs typically gather information from a range of sources, including testimonies from victims and witnesses of human rights violations, academics and NGOs. They then produce a report which is tabled before the UNHRC and the General Assembly and typically receives significant media attention.

Given the themes of past and present COIs, it may not initially appear that the COI mechanism is directly relevant to protecting the economic, social and cultural rights of LGBTI people. However, the majority of COIs established so far have had a broad mandate to examine human rights violations in a particular country, which gives them scope to deal with violations of the rights of LGBTI people.

For example, the Independent International Commission of Inquiry on the Syrian Arab Republic was established in 2011 to investigate "*all alleged violations of international human rights law [in Syria] since March 2011*".¹⁴⁵ In its 7th Report (published in February 2014), the COI set out its findings on sexual- and gender-based violence, mentioning that men had been tortured and raped on the grounds of their sexual orientation.¹⁴⁶ Further, in its 10th Report (published in August 2015), the COI noted that "*sexual minorities*" had been targeted for execution by ISIS and Jabhat al-Nusra.¹⁴⁷ Arvind Narrain of ARC International has written an insightful article exploring this COI's role in documenting and providing new frameworks for understanding mass disappearances, genocide and sexual violence, including against LGBTI people.¹⁴⁸

In addition, the mandate of the COI on Human Rights in the Democratic People's Republic of Korea (2013–14) specifically included “*discrimination*”.¹⁴⁹ The COI's final report included detailed sections dealing with discrimination on the basis of social class, gender and disability.¹⁵⁰ Had there been more engagement from civil society on discrimination against LGBTI people, it is possible that the COI's report might have dealt with discrimination on the basis of sexual orientation, gender identity and intersex status in North Korea.

NGOs dealing with LGBTI rights should monitor the OHCHR's web page on COIs to determine whether any new COIs are being appointed in relation to a country in which they work or a theme that is relevant to LGBTI people. The OHCHR's web page on COIs includes information about how individuals or NGOs can make oral or written submissions to a relevant COI.

Note: Links to the websites of relevant UN bodies and mechanisms, including the COIs, can be found in section 4.1.

3.3 Summary of relevant UN mechanisms

Table 2 provides a summary of the key features of each UN mechanism discussed in the sections above. This is intended to assist NGOs and activists in determining which mechanism is most suitable in any given circumstances.

Mechanism	States to which mechanism applies	Focus of mechanism	Options for NGO involvement
ESCR Committee's periodic review	States Parties to the ICESCR	Review of a State Party's systemic compliance with all ICESCR rights	- Input into State Party reports - Submission of parallel reports - Oral representations and briefings
ESCR Committee's General Comments	States Parties to the ICESCR	Guidance to all States Parties on the interpretation and implementation of the ICESCR in relation to a particular theme	Submissions regarding draft General Comments
ESCR Committee's individual communication mechanism	States Parties to the Optional Protocol to the ICESCR	Consideration of complaints regarding specific violations of ICESCR rights against one or more individuals	Submission of individual communications (complaints) on behalf of victims or assisting victims with their own communications
UPR	All UN member states	Review of a UN member state's systemic compliance with all human rights (including economic, social and cultural rights)	- Stakeholder submissions - Oral representations and briefings
Special Procedures	All UN member states in the case of thematic Special Procedures Specific UN member states in the case of country-specific Special Procedures	- Consideration of complaints regarding specific violations of any human right within the scope of the mandate (including, where relevant, economic, social and cultural rights) - Review of UN member states' systemic compliance with human rights within the scope of the mandate (through country visits, reporting to UNHRC and UN General Assembly, etc.)	- Submissions regarding potential violations - Oral briefings, meetings and submissions as part of a Special Procedure's country visit
UNHRC complaint mechanism	All UN member states	Consideration of complaints regarding a consistent pattern of gross and reliably attested violations of any human right (including economic, social and cultural rights)	Submission of complaint on NGO's own behalf or on behalf of victims
COIs and other investigations	Varies – typically, COI mandates are country-specific	Varies – typically, review and investigation of a UN member state's systemic compliance with all human rights within a given timeframe, although can be subject to thematic restrictions (e.g. specific events)	Typically, written and/or oral submissions

Table 2: Summary of UN mechanisms relevant to protecting the economic, social and cultural rights of LGBTI people

4. Additional resources

4.1 Websites of UN bodies and mechanisms

The official websites of various UN bodies and mechanisms, such as the ESCR Committee, the UPR or the Special Procedures, provide a wide range of useful materials for activists seeking to engage with these mechanisms to protect the economic, social and cultural rights of LGBTI people. These websites are widely referred to in section 3.

The links below are accurate as of November 2018, but the addresses of UN websites may change over time. Accordingly, if the links below do not work, the easiest way to find the websites of a UN body or mechanism is to type the name of the body or mechanism into a search engine.

- **ESCR Committee:**
<https://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx>
- **UNHRC Universal Periodic Review (UPR):**
<https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>
- **UNHRC Special Procedures:**
<https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>
- **UNHRC Independent Expert on SOGI:**
<https://www.ohchr.org/EN/Issues/SexualOrientationGender/Pages/Index.aspx>
- **UNHRC Complaint Procedure:**
<https://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx>
- **UNHRC Commissions of Inquiry:**
<https://www.ohchr.org/EN/HRBodies/HRC/Pages/COIs.aspx>

4.2 Other useful materials

The resources below provide additional information and insights for activists, policymakers and others seeking to understand the obligations of State Parties under the ICESCR as they relate to LGBTI people or to use the ICESCR or UN mechanisms to better protect the rights of LGBTI people:

- **Yogyakarta Principles Plus 10 (2017)** [www.yogyakartaprinciples.org] – The Yogyakarta Principles were published in 2007 by a group of experts in international human rights law and were further updated in November 2017, on the tenth anniversary of the publication of the original principles. The updated Yogyakarta Principles Plus 10 provide a comprehensive set of principles on how international human rights law (including the ICESCR) applies to LGBTI people. While the Yogyakarta Principles do not represent binding international law, they have often been used by LGBTI rights activists in their submissions to international human rights bodies, including the ESCR Committee. The principles are well-respected and have been

previously cited by the ESCR Committee in its General Comments, as well as by national courts in LGBTI rights cases.

- **UN Office of the High Commissioner for Human Rights, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* (2012)** – This guide sets out the core obligations of states in relation to LGBTI people under international human rights law (including the ICESCR). While the guide is a useful resource for LGBTI rights activists seeking to engage with UN mechanisms, the jurisprudence of the UN bodies, including the ESCR Committee, has evolved considerably since the guide's publication in 2012. Even though the guide refers only to “*sexual orientation and gender identity*” in its heading, the human rights of intersex people are referred to in several parts.
- **International Commission of Jurists, *SOGI UN Database*** [www.icj.org/sogi-un-database] – This comprehensive database catalogues all references to sexual orientation and gender identity in the materials of the UN treaty bodies (including General Comments and Concluding Observations of the ESCR Committee) and the Special Procedures.
- **UPR Info** [www.upr-info.org] – This website provides a comprehensive and easy-to-use database of documents relating to the UNHRC's Universal Periodic Review process, including recommendations received by each UN member state at previous UPRs and links to national reports, stakeholder submissions and stakeholder summaries. It is a useful resource for NGOs and activists seeking to engage with the UPR process to further the economic, social and cultural rights of LGBTI people.
- **ILGA, *Advocating on Gender Identity and Gender Expression – The Committee on Economic, Social and Cultural Rights* (2016)** [<https://ilga.org/advocating-gender-identity-expression-cescr>] – This is a practical and succinct guide designed to assist activists engaging with the ESCR Committee to further the protection of rights on the basis of gender identity and gender expression. The guide covers the various mechanisms of the ESCR Committee, including periodic reviews and individual communications, as well as gaps and opportunities for furthering the rights of transgender and gender-diverse persons through the ESCR Committee.
- **Malta Declaration, adopted at the Third International Intersex Forum (2013)** [www.oii-europe.org/malta-declaration] – This declaration sets out a comprehensive range of demands and priorities for furthering the rights of intersex people, as agreed upon by intersex rights activists from around the world. While the declaration does not have a specific focus on economic, social and cultural rights, many of the demands within the declaration can be grounded in such rights (e.g. the right to health and the right to take part in cultural life). For LGBTI rights activists seeking to engage with UN mechanisms, the declaration is particularly useful in ensuring that the legal and policy needs of intersex people are appropriately and comprehensively captured.
- **Darlington Statement, adopted at the Intersex Community Retreat in Darlington, Australia (2017)** [www.darlington.org.au/statement] – This joint statement, adopted by numerous intersex community organisations and activists based in Australia and New Zealand, sets out the key priorities of the intersex rights movement in that region. The statement is useful in understanding the specific legal and policy priorities of intersex people, many of which can be grounded in the economic, social and cultural rights set out in the ICESCR.
- **United Nations Development Programme, *Leave No One Behind: Advancing Social, Economic, Cultural and Political Inclusion of LGBTI People in Asia and the Pacific – Summary* (2015)** – This report examines the obligations of states to further the rights of LGBTI people in Asia-Pacific in the context of the Sustainable Development Goals (SDGs). The SDGs are a set of development goals agreed upon by UN member states in 2015. They cover a number of socio-economic development issues, such as eliminating poverty and hunger, improving health and education and promoting full and productive employment for all. While separate to the ICESCR, the SDGs provide an innovative way for LGBTI activists to further the economic, social and cultural rights of LGBTI people within a human development framework.

- **Asia Pacific Forum, *Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender Identity and Sex Characteristics* (2016)** – This manual, designed for national human rights institutions (NHRIs), sets out how international human rights law applies to LGBTI people and what action NHRIs can take to further the rights of LGBTI people. While not specifically focusing on the ICESCR, the manual summarises the extent to which the human rights of LGBTI people have been referred to and included in the work of UN treaty bodies, including the ESCR Committee.

Glossary

Bisexual: A person who is sexually and/or romantically attracted to both men and women. Bisexuality is sometimes also used more broadly, to include persons who are attracted to men, women and other genders (e.g. non-binary or third gender persons), although persons with this sexual orientation are also called “pansexuals”.

Cisgender: A person whose gender identity corresponds with the sex assigned to them at birth.

Gay: A person who is sexually and/or romantically attracted solely to persons of the same gender.

Gender expression: A person’s external presentation of their gender identity, in the form of mannerisms, ways of speaking and behaving, clothing, use of accessories, etc.

Gender identity: A person’s innate and deeply felt sense of being male, female or another gender, such as non-binary, third gender, genderqueer, etc. Gender identity may or may not correspond to a person’s sex assigned at birth (i.e. the sex recorded in birth registration records). See *transgender* and *cisgender*. The concept of gender identity also includes a person’s gender expression, although gender expression does not always neatly align with one’s gender identity. See also *gender expression*.

Intersex person: A person born with sex characteristics, including genitals or chromosome patterns, that do not fit medical and social norms for male or female bodies. Like everyone else, intersex people have a gender identity (which may be male, female, non-binary, etc.), as well as a sexual orientation. However, intersex variations relate to physical sex characteristics, not to gender identity. See also *sex characteristics*.

Intersex status: The status of being an intersex person. See *intersex person*.

Lesbian: A woman who is sexually and/or romantically attracted solely to other women.

Non-binary person: A person whose gender identity is neither exclusively male nor female, although it may or may not include a combination of male and female identities. Non-binary identities include culturally-specific gender identities such as *hijra* in South Asia or *two-spirit* in North America. Some non-binary people may also identify as “third gender”. Non-binary refers to a person’s gender identity, not to their sex characteristics – a non-binary person may or may not be intersex.

Sex characteristics: A person’s physical features relating to sex, including genitalia, chromosomes, hormones and secondary physical characteristics appearing during puberty.

Sexual orientation: A person’s capacity for deeply felt sexual and/or romantic attraction to other people, which may include persons of the same gender, a different gender or more than one gender. See also *lesbian*, *gay* and *bisexual*.

Transgender: A person whose gender identity does not correspond with the sex assigned to them at birth.

Acronyms used in this guide

COI	Commission of Inquiry
ESCR Committee	United Nations Committee on Economic, Social and Cultural Rights (UN body that monitors compliance with the ICESCR)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBT	lesbian, gay, bisexual and transgender
LGBTI	lesbian, gay, bisexual, transgender and intersex
NGO	non-government organisation
OHCHR	United Nations Office of the High Commissioner for Human Rights
SOGI	sexual orientation and gender identity
UN	United Nations
UNHRC	United Nations Human Rights Council
UPR	Universal Periodic Review

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