



*Partners for Justice*



# Guide to Shadow Reporting

Using the International  
Covenant  
on Civil and Political Rights  
to Protect the Rights  
of LGBTI Persons

August 2009

Global Rights  
Lesbian, Gay, Bisexual, Transgender and Intersex  
Initiative

This guide is based on Global Rights' publication, *Shadow Reporting Guide: Using the International Convention on the Elimination of All Forms of Racial Discrimination to Fight Racism in the United States* (Washington D.C., October 2007), written and edited by Margaret Huang.

Global Rights is an international human rights capacity-building organization that works side by side with local activists in Africa, Asia, and Latin America to promote and protect the rights of marginalized populations. Through broad-based technical assistance and training, Global Rights strengthens partners to document and expose human rights abuses, conduct community outreach and mobilization, advocate for legal and policy reform, and provide legal and paralegal services. Over our 30-year history, we have worked in scores of countries to help local leaders and organizations to address human rights abuses and to lift their struggles out of isolation and onto the international stage, where regional and global institutions develop and enforce human rights standards.

**Global Rights: Partners for Justice**  
1200 18<sup>th</sup> Street, N.W.  
Suite 602  
Washington, D.C. 20036 USA  
[www.GlobalRights.org](http://www.GlobalRights.org)

#### **Sponsorship**

Funding for the development of this Guide was generously provided by an Anonymous Donor and the Arcus Foundation. This Guide was produced as part of Global Rights' Lesbian, Gay, Bisexual, Transsexual and Intersex Initiative.

#### **Acknowledgements**

A special thanks goes to: Michele Churchley (Pennsylvania State University School of Law) who developed the first draft under the supervision of Prof. Stephanie Fariior; Alejandra Sardà-Chandiramani, Vanja Hamzić and Marcelo Ferreyra who contributed with substantive comments and suggestions; Derek Tripp (Hofstra University School of Law) for the final editing.

The opinions, findings, conclusions and recommendations expressed in this publication are those of Global Rights and do not necessarily reflect the views of our funders.

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## Table of Contents

<b>1. INTRODUCTION</b>	<b>4</b>
1.1 What is Shadow Reporting?	4
1.2 Why Submit a Shadow Report?	5
<b>2. WHAT IS THE INTERNATIONAL CONVENTION ON CIVIL AND POLITICAL RIGHTS?</b>	<b>7</b>
2.1 History and Key Features of the ICCPR	7
2.2. Reservations, Understandings, and Declarations	8
<b>3. THE HUMAN RIGHTS COMMITTEE AND THE REPORTING PROCESS</b>	<b>9</b>
3.1 The Human Rights Committee	9
3.2 Objectives of State Party Reports	10
3.3 Requirements for Country Reports and Procedures of Review	11
3.4 Concluding Observations	12
<b>4. THE SHADOW REPORTING PROCESS</b>	<b>13</b>
4.1 Why LGBTI Activists Should Participate in Shadow Reporting	13
4.2 Preparation for Writing a Shadow Report	14
4.2.1 Gather Documentation and Evidence	14
4.2.2 Obtaining the State Report	15
4.2.3 Read Previous Concluding Observations for the State	15
4.2.4 Timing	15
4.2.5 Submission	16
4.3 Organization of a Shadow Report	16
4.3.1 Introduction	16
4.3.2 Executive Summary	16
4.3.3 Substantive Violations	17
4.3.4 Recommendations	23
4.3.5 List of Proposed Questions for Government Delegation	23
4.3.6 Participating in the Formal Review in the Committee's Session	24
<b>5. BEYOND SHADOW REPORTING: ACCOUNTABILITY AND FOLLOW UP</b>	<b>25</b>
<b>6. IMPORTANT ISSUE ON THE USE OF TERMS</b>	<b>26</b>
<b>7. OTHER SOURCES</b>	<b>27</b>
7.1 Human Rights Committee Individual Petitions Regarding LGBTI Rights	27
7.2 Other International Human Rights References to LGBTI Rights	28



# 1. INTRODUCTION

The purpose of this short guide is to assist civil society groups and activists – also known as “non-governmental organizations” or NGOs – to participate effectively in the shadow reporting process to the U.N. Human Rights Committee (the Committee). The Committee is responsible for monitoring government compliance with the International Covenant on Civil and Political Rights (ICCPR), one of the eight core human rights treaties of the United Nations.

A **shadow report** is information submitted by non-governmental organizations (NGOs) to the treaty monitoring bodies that *address omissions, deficiencies, or inaccuracies in the official government reports*. The shadow reporting process plays a critical role in holding governments accountable to their obligations under the ICCPR. This guide provides information about the reporting process, the role of civil society, and using shadow reports to enhance the rights of lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals and communities.

## ***1.1 What is Shadow Reporting?***

When a country ratifies<sup>1</sup> a U.N. human rights treaty, it becomes bound by its provisions and obligated to submit regular, periodic reports on its compliance with the treaty’s obligations. These reports are submitted to the treaty-monitoring body – or committee – that has been established for each treaty to monitor the compliance of state parties.

**Please note: the signature without ratification is not binding to the country.**

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<sup>1</sup>Ratification is the formal approval within the domestic system (generally with an act of the law-maker) of an international treaty. Once ratified, the international treaty becomes the law of the country.

Under the ICCPR, state reports should provide information about the actions that State Parties have taken, or plan to take, to implement and safeguard the rights contained in the treaties. State Parties sometimes ignore their treaty obligations, and reports often emphasize planned actions that have not yet taken place. The practice of shadow reporting has evolved in response to the need for alternative sources of information concerning state compliance.

Civil society shadow reports provide the treaty-monitoring bodies with accurate and appropriate information documenting a government's human rights record and recommendations for improving the protection of human rights in a particular country. Such information is often vital to assisting U.N. experts in their assessment of a government's compliance with a particular human rights treaty. In fact, the official U.N. guidelines for the reporting process anticipate the involvement and consultation of civil society groups during the drafting of the government's report.

### ***1.2 Why Submit a Shadow Report?***

In addition to providing critical information to the U.N. treaty committees, civil society shadow reports can also enhance the advocacy efforts of NGOs. Shadow reports provide a concrete tool for:

- 1.) Monitoring and assessing a government's track record for fulfilling its obligations under the ICCPR;
- 2.) Building political pressure for reform through the publicity and education activities of the shadow reporting process;
- 3.) Highlighting examples of "best practices" which NGOs can use to advocate for further government action; and
- 4.) Creating the foundation for broader advocacy efforts within the international system (for instance, within the Human Rights Council or other treaty bodies).

Although shadow reports do require time and resources to prepare, the process of shadow reporting is an important step in the broader movement to hold governments accountable under international human rights law. Civil society organizations can pressure a government to be a more effective guarantor of the human rights of all LGBTI peoples by monitoring a government's compliance with its treaty obligations, and by publishing an assessment of the government's successes and failures.

***For more information***

Global Rights is issuing this guide as a resource for organizations interested in participating in the shadow reporting process for the ICCPR, and we can be contacted for further information at:

**Global Rights  
Lesbian, Gay, Bisexual, Transgender and Intersex Initiative  
1200 18<sup>th</sup> Street, NW, Suite 602  
Washington, D.C. 20036  
Tel. (202) 822 4600; Fax. (202) 822 4606  
Email: [stefanof@globalrights.org](mailto:stefanof@globalrights.org)  
[www.globalrights.org](http://www.globalrights.org)**

## 2. WHAT IS THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS?

### *2.1 History and Key Features of the ICCPR*

The International Covenant on Civil and Political Rights (ICCPR or “the Covenant”) was adopted by the General Assembly of the United Nations (UN) on December 16, 1966. Like the other treaties of the UN, the ICCPR is rooted in the Universal Declaration on Human Rights, which was adopted by the UN in 1948 and covers the range of fundamental civil, political, economic, social and cultural human rights. ICCPR provides a framework in which to assess the extent to which a government is upholding the civil and political rights of its citizens.

- Article 2:** State undertakes to respect and ensure the rights without discrimination on the basis of race, sex, religion, color, language, political or other opinion, national or social origin, property, birth or other status
- Article 3:** Equal rights of men and women
- Article 4:** Fundamental rights that states may not restrict even in a state of emergency
- Article 6:** Right to life
- Article 7:** Right to be free from torture or to cruel, inhuman or degrading treatment or punishment
- Article 9:** Right to liberty and security of person
- Article 10:** Rights of the accused to be treated with dignity
- Article 12:** Right to freedom of movement
- Article 13:** Expulsion of aliens
- Article 14:** Right to a fair trial and equality before the courts
- Article 17:** Right to privacy, family, correspondence
- Article 18:** Right to freedom of conscience, thought and religion
- Article 19:** Right to freedom of expressions
- Article 21:** Right to freedom of assembly
- Article 22:** Right to freedom of association
- Article 23:** Family life and right to marry
- Article 24:** Special protection of children
- Article 25:** Right to vote
- Article 26:** Equal protection of the law and non discrimination

## ***2.2 Reservations, Understandings, and Declarations***

When ratifying human rights treaties, governments can make reservations, understandings and declarations (RUDs). When writing a shadow report about a state's violations under a treaty, pay particular attention to the RUDs. In making a **reservation**, a government rejects the obligations under a specific treaty provision. A reservation is invalid if it is expressly prohibited by the treaty or is contrary to the object or purpose of the treaty.<sup>2</sup> With an **understanding**, a government provides its interpretation of a provision within a treaty, stating that it accepts the treaty only with that particular interpretation. Sometimes these end up being the equivalent of a reservation if they limit the meaning of a term in the treaty. A **declaration** states a government's intention as to how it will implement the treaty. Unlike a reservation, a declaration should not alter a government's obligations under the treaty.

### **TIP**

**Before compiling a shadow report, you may want to be sure that your country ratified the ICCPR and find out if there are relevant RUDs you need to know. This information may be found at:**

**[http://www2.ohchr.org/english/bodies/ratification/4\\_1.htm](http://www2.ohchr.org/english/bodies/ratification/4_1.htm)**

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<sup>2</sup> There are cases in which reservations in fact affected the object of the treaty according to treaty bodies.

### 3. THE HUMAN RIGHTS COMMITTEE AND THE REPORTING PROCESS

One of the obligations of state parties to a human rights treaty is to submit periodic reports, called *state reports*, indicating a state's compliance with the treaty, as well as to send representatives who will answer questions during the treaty body's review of the state report. The treaty body for the International Covenant on Civil and Political Rights (ICCPR) is the Human Rights Committee (the Committee). States are obligated to submit a report *within one year after ratification* of the Convention, and then follow up reports as requested by the Committee, usually *about every four years*. If a state party has failed to submit a report in a timely manner, the Committee has the discretion to review the state party's compliance with the treaty in the absence of a state party report and without the presence of government representatives

#### *3.1 The Human Rights Committee*

The Human Rights Committee comprises 18 independent experts who are nominated by state parties and serve four-year terms. The experts serve voluntarily in their personal capacities (they are not compensated, they do not work full-time, and they do not officially represent the nations that nominated them). The full list of the current expert members of ICCPR can be found at:

<http://www2.ohchr.org/english/bodies/hrc/members.htm>.

### *3.2 Objectives of State Party Reports*

#### **Some of the objectives of reporting are:**

- To conduct a comprehensive review of local and national legislation, administrative rules, procedures, and practices.
- To ensure that governments regularly monitor the actual situation with respect to each provision of the Convention, so that they are aware of the extent to which all citizens and residents enjoy the rights guaranteed by the treaties.
- To identify key problems and patterns of rights violations in order to develop appropriate responses through clearly stated and targeted policies.
- To highlight the “best practices” of various jurisdictions, so that the global community can learn about and implement similar effective programs.
- To provide a benchmark for governments and the treaty bodies to assess progress towards the realization of the obligations established under the treaties.
- To enable the treaty bodies and governments to develop a better understanding of the common problems faced by states, and the types of measures which might be taken to promote effective realization of the treaties’ obligations. This enables the Committee to identify the most appropriate means by which the international community might assist state parties.

### ***3.3 Requirements for Country Reports and Procedures for Review***

The state report to the Human Rights Committee should indicate the steps the government has taken, and proposes to take, to comply with the obligations in the ICCPR. The state should also identify the specific obstacles encountered in implementation of rights protected under the ICCPR.

Once a state party has submitted its report, the report will be translated into all of the official UN languages and placed on the agenda of the next treaty body meeting for the scheduling of its review. Normally, reports are reviewed as soon as possible after they are received. The Committee normally meets three times a year (in March, July and October), generally twice at the UN in Geneva, Switzerland (July and October sessions), and once at UN Headquarters in New York City, United States (March session). The list of states to be reviewed at upcoming sessions is posted at <http://www2.ohchr.org/english/bodies/hrc/sessions.htm>

The Human Rights Committee has established a **Country Report Task Force** to identify in advance the questions and issues that will be the principle focus of the dialogue with the representatives of the reporting state. The Country Report Task Force consists of four to six members—including the country rapporteur—who are *responsible for drafting the list of issues* for each state party being reviewed.

Once a government's state report has been received, the task force will usually prepare a **list of issues** based on the report for the government to address at its session. **The drafting of these questions creates an important opportunity for NGO input**, as groups can provide information to the Committee, as well as draft sample questions focusing on issues of particular concern. Once the task force adopts a list of questions, it is transmitted to the state party. At the opening of each Human Rights Committee session, the Committee meets with members of civil society in an informal, confidential setting to discuss the state parties' compliance with the treaty. This is another important opportunity for NGO input.

### ***3.4 Concluding Observations***

The next step is the formal review of the state report. The state party sends representatives to the meetings where the Committee receives the government's response to the initial list of questions, asks further questions, and makes comments about the sufficiency of the steps the government has taken to implement the treaty. The Committee will also make recommendations regarding the issues on which the government should focus its efforts and how to make improvements. The review usually takes place over a two-day period. A summary of the "constructive dialogue" between the treaty body and the State Party is published by the UN. This summary, including the Committee's specific concerns and recommendations, is known as the "**Concluding Observations**" and is available on the website of the UN Office of the High Commissioner for Human Rights: [www2.ohchr.org/english/bodies/hrc/sessions.htm](http://www2.ohchr.org/english/bodies/hrc/sessions.htm)

If countries fail to submit a report, the Committee is likely to proceed with the review based on the available information; in this case, however, the Committee adopts confidential **Provisional Concluding Observations**.

## 4. THE SHADOW REPORTING PROCESS

Although the treaties themselves make no explicit provision for NGO input, treaty bodies need independent information in order to identify the areas where state parties are not fully complying with their obligations. Despite the limited number of formal opportunities for NGO participation in the process, the treaty bodies are generally eager to receive civil society information and *encourage NGO participation* in the preparation of the official national government reports. The treaty bodies emphasize that NGO participation offers an opportunity for exchange between government and civil society.

### *4.1 Why LGBTI Activists Should Participate in Shadow Reporting*

The shadow reporting process offers the opportunity to educate policy-makers, the media, and the general public about these obligations and the necessary actions to make the government fully uphold its commitments. It is important to keep in mind that a shadow report should be **intended for two audiences**: the members of the **treaty monitoring body** as well as a **domestic audience**. While a shadow report is drafted to provide information to the UN Committee about a government's record of compliance with a particular treaty, it is also an important education effort that highlights what the government ought to be doing under its international legal obligations. Shadow reports are especially beneficial because LGBTI issues are often not mentioned in the state report. By submitting a factual report of the domestic laws or country conditions, LGBTI persons are more likely to have the involvement of the Committee in ensuring their rights. Activists should keep a record and document violations of human rights abuses of LGBTI persons, and then include this information in the shadow reports.

#### TIP

Even if the state has failed to submit a state report, shadow reports are still very useful: in this case, shadow reports might be the only information the Committee has available to monitor state compliance.

## ***4.2 Preparation for Writing a Shadow Report***

### **4.2.1 Gather Documentation and Evidence**

It is important for your shadow report to have **concrete** and **reliable** examples to illustrate the issue or concern. Documentation may include:

- legal cases
- provisions of national and local laws and regulations
- statements by officials or citizens
- testimony of affected individuals
- news articles
- academics research
- NGOs reports
- Statistics

***Always make sure that your sources are reliable and remember to keep records.***

If, for example, your country criminalizes same-sex sexual acts between consenting adults, both the text of the law and, when available, examples of specific cases and circumstances of the enforcement of these laws will be important to your shadow report.

#### **TIP**

**Review by the Human Rights Committee is periodic and it may take several years for the state to come before the Committee again. Thus documentation of human rights abuses should be gathered and organized *throughout the years between reviews*, so it is ready when the state is again reviewed.**

#### 4.2.2 Obtaining the State Report

Read the report the state has submitted to the Human Rights Committee and locate areas of concern, about which you may want to provide **different or additional information to the Committee**. State reports may be found at:  
<http://www2.ohchr.org/english/bodies/hrc/sessions.htm>

#### 4.2.3 Read Previous Concluding Observations for the State

If the State has previously been reviewed by the Committee, activists should read the past “**Concluding Observations**.” If the state has failed to comply with the Committee’s previous recommendations, this should be noted in your shadow report and used as a point of pressure for change. Concluding Observations may be found at: <http://www2.ohchr.org/english/bodies/hrc/sessions.htm>

#### 4.2.4 Timing

The Country Report Task Force meets one session prior to the session where the meeting between state representatives and Committee members takes place. This gives the state parties a period of months to prepare for dialogue at the meeting. **For NGOs and civil society to be most effective, shadow reports should ideally be submitted to the Committee before the task force meets.** This gives the task force the opportunity to consider the alternative reports, and to insert questions and concerns into the final list of issues. Due to various constraints, however, it may not be possible for a group to finish and submit the shadow report at this early date. Thus the shadow report should be submitted as soon as possible and **preferably at least one month before the opening of the session scheduling the review of the state party** to give the members of the Committee the time to examine the report.

#### **4.2.5 Submission**

You should submit your report both electronically to the Secretary of the Human Rights Committee, and by mailing 25-30 hard copies that will be distributed to the members of the Committee.

Copies should be sent to:

**Secretary of the Human Rights Committee  
Human Rights Treaties Branch  
Office of the High Commissioner for Human Rights  
Palais Wilson  
52 rue des Pâquis  
CH-1201 Geneva, Switzerland**

### ***4.3 Organization of a Shadow Report***

#### **4.3.1 Introduction**

Begin with a short introduction to your organization, and the partner organizations or individuals you worked with in preparation of the shadow report. If an individual wishes to remain anonymous, they may join with a recognized NGO to ensure the protection of their name, while still bringing the information to the Committee.

#### **4.3.2 Executive Summary**

If it is a longer report, begin with a short summary of your report. It should include the government's principle violations of the ICCPR. This summary is important because the Committee members are busy and might only have time to read a short summary.

### 4.3.3 Substantive Violations

Outline the government's substantive violations of relevant ICCPR articles. As indicated above, try to be as concrete as possible in your exposition, highlighting specific examples of human rights violations that occurred in your country. It is helpful to organize these violations by article number, rather than by issue. If an issue concerns more than one article of the ICCPR, it is best to choose the most relevant article. Also, remember that under the ICCPR **only state actors are held accountable** for violations of civil and political rights: always try to highlight and explain the connection between the violation and the state responsibility if it is not self-evident.

#### **Examples of human rights violations targeting LGBTI people under the ICCPR include:**

- Extrajudicial killings
- Torture and ill-treatment
- Rape and sexual abuse
- Forced or non-consensual "medical treatment"
- Denial of asylum due to perceived or actual sexual orientation, gender identity or gender expression
- Laws criminalizing same-sex sexual conducts
- Laws criminalizing cross dressing
- Prisoners detained for advocacy on LGBTI rights
- Prisoners detained for their real or perceived sexual orientation, gender identity or gender expression
- Other criminal legislation used to imprison LGBTI persons
- Denial of registration for LGBTI groups
- Prohibition of peaceful gatherings for meetings, parades, rallies
- Discrimination in change in civil status policies for transgender people
- Unfair trials, whether involving the death penalty or not
- Abuses based on real or perceived HIV status
- Discrimination in HIV/AIDS treatment and access to treatment for LGBTI people

When preparing a shadow report the following list of concrete questions may be useful to help you identify violations under the ICCPR. Although this list is not exhaustive, you may use it as a template in compiling your shadow report.



#### **ARTICLE 2 AND ARTICLE 26 – NON DISCRIMINATION**

- ✓ **D**oes your country criminalize same-sex sexual behaviors between consenting adults?
- ✓ **A**re you aware of any case of discrimination in any public facility or by any public officer (healthcare, law enforcement, justice, education system, public administration, etc.) motivated by the real or perceived sexual orientation, gender identity or gender expression of the individual?
- ✓ **A**ny difference in treatment, as far as rights and benefits granted by the state are concerned, between de facto same-sex and opposite-sex couples (e.g. tenancy rights, healthcare or social security benefits)?
- ✓ **A**ny case of discrimination at the workplace or in the public sector motivated by the real or perceived sexual orientation, gender identity or gender expression of the employee?
- ✓ **A**ny situation of widespread documented discrimination motivated by the real or perceived sexual orientation, gender identity or gender expression of the individuals as a consequence of the failure of the state to implement anti-discrimination legislation?

#### **ARTICLE 3 – EQUAL RIGHTS OF MEN AND WOMEN**

- ✓ **A**re you aware of any case in which lesbian or bisexual women or trans persons have been particularly exposed to violations of rights because of their gender *and* sexual orientation, or because of their gender identity?
- ✓ **A**ny case in which such violations occurred because of the gender expression of the individual?



#### ARTICLE 6 – RIGHT TO LIFE

- ✓ Are you aware of any killings by police or another law enforcement officer perpetrated against an individual because of her/his perceived or real sexual orientation, gender identity or gender expression?
- ✓ Where there any deaths of a person under arrest or in detention?
- ✓ Are you aware of any deaths caused by a non-state actor's hate crime that the state failed to intervene in or prevent?
- ✓ Any deaths that occurred in public schools, hospitals or healthcare facilities due to discrimination based on sexual orientation, gender identity or gender expression?

#### ARTICLE 7 – RIGHT TO FREEDOM FROM TORTURE AND OTHER CRUEL, INHUMAN, DEGRADING PUNISHMENT OR TREATMENT

- ✓ Are you aware of any individual being tortured, beaten or raped by police officers or other state authorities on the basis of his or her real or perceived sexual orientation, gender identity or gender expression?
- ✓ Are you aware of any person being subjected to corporal punishment?
- ✓ Any person being subjected to harmful physical or psychological treatment?
- ✓ Any intersex person subjected to non consensual genital surgery?
- ✓ Any person convicted on the basis of laws criminalizing same-sex sexual conducts between consensual adults, indecency laws, dressing codes, idleness laws, and so forth?

#### ARTICLE 9 – RIGHT TO LIBERTY AND SECURITY OF THE PERSON

- ✓ Are you aware of any individual being arrested or detained on the basis of her/his perceived or real sexual orientation, gender identity or gender expression?
- ✓ Any person being arbitrarily or unlawfully kept under arrest or restrained?
- ✓ Any person harassed by state authority officers?
- ✓ Any case of “police profiling” (when, for instance, police officers target an individual because he/she “deviates” from gender norms)?



#### ARTICLE 10 – RIGHTS OF PRISONERS

- ✓ Are you aware of any individual being subject to ill treatment, physical or psychological violence, rape or torture while in prison, either by detention facility officers or inmates, because of her/his sexual orientation, gender identity or gender expression?
- ✓ Any trans person placed with inmates of the opposite gender (according to the birth sex)?
- ✓ Any trans person to whom hormone therapy or other treatment has been denied while in detention?
- ✓ Any person whose sexual orientation or gender identity has been disclosed to the general population to expose her/him to abuses?
- ✓ Any individual who has experienced any form of discrimination while in prison (e.g. access to healthcare, food, visit permits, etc.) because of her/his real or perceived sexual orientation, gender identity or gender expression?

#### ARTICLE 12 – RIGHT TO LIBERTY OF MOVEMENT

- ✓ Are you aware of any individual having been restricted in her/his freedom of movement because of her/his sexual orientation, gender identity, gender expression?
- ✓ Any trans person whom has not been able to leave/enter a country because of the name or sex of birth on her/his documents?

#### ARTICLE 13 – EXPULSION OF ALIENS

- ✓ Are you aware of any individual who has been denied asylum, expelled or deported to the country of origin regardless of the risk of being persecuted, convicted, subjects to treatments and punishments contrary to the ICCPR, discriminated against, because of her/his real or perceived sexual orientation, gender identity or gender expression?



#### ARTICLE 14 – RIGHT TO FAIR TRIAL

- ✓ Are you aware of judicial cases in which an individual's sexual orientation, gender identity or gender expression has been the reason of violation of due process, such as, for instance, the right to information, the right to legal representation, the right to a speedy trial (or inobservance of deadlines), jurisdiction regulations and, more in general, all the guarantees established by procedural law?
- ✓ Any case in which the judge or the prosecutor manifested explicit or implicit bias toward the sexual orientation, gender identity or gender expression of the individual during a hearing?
- ✓ Any case in which a conviction has been more severe than it would be in a similar case not involving LGBTI individuals or groups?

#### ARTICLE 17 – RIGHT TO PRIVACY

- ✓ Does your country criminalize same-sex sexual behaviors between consenting adults?
- ✓ Are you aware of situations in which the individual's privacy, which includes the sexual life of the individual, has been violated in the course of a criminal prosecution for consensual same-sex activities among adults, as well as to enforce other criminal laws punishing obscenity, indecency, prostitution, idleness?
- ✓ Any case of solicitation to force somebody to disclose her/his sexual orientation?
- ✓ Any case in which the trans person's privacy has been violated by having to disclose the person's gender identity, and in particular the sex of birth or the legal name (for instance in healthcare facilities, in schools, to exercise the right to vote and, more in general, in any situation in which the person has to show an ID card)?

#### ARTICLE 19 – RIGHT TO FREEDOM OF EXPRESSION

- ✓ Are you aware of any case in which LGBTI individuals or groups have been prevented from openly expressing their sexuality, their opinion, in public or in specific contexts (e.g. the military, working place, schools)?
- ✓ Any case of threats by public authority against individuals or groups on these grounds?



#### ARTICLE 21 – RIGHT TO FREEDOM OF ASSEMBLY

- ✓ Are you aware of any case in which an event (such as a meeting, a conference, a parade, a rally) on LGBTI-related issues was either banned by public authorities, hindered by police authorities, or purposely left unprotected from attacks of an antagonistic crowd?
- ✓ Any case in which a public space (such as a square, a conference room in a public building, a park) was denied for an event on LGBTI-related issues?

#### ARTICLE 22 – RIGHT TO FREEDOM OF ASSOCIATION

- ✓ Are you aware of any situation in which LGBTI groups have been refused registration because of the scope of the organization itself?
- ✓ Any case in which an LGBTI organization has been dissolved?
- ✓ Any case of police raids or other authority intimidation or threat against an organization or its members?
- ✓ Any case of prohibition for LGBTI students to get associated in schools?

#### ARTICLE 23 – FAMILY LIFE

- ✓ Are you aware of discriminatory effects of institution-led debate about the legal recognition of same-sex couples within your country?
- ✓ Are you aware of benefits granted from the state to married or de facto opposite-sex couples that are denied respectively to registered or de facto same-sex couples?
- ✓ What is the impact of state immigration policies regarding family reunification on same-sex couples ?
- ✓ Are you aware of cases of transgender, or post-operative transsexual individuals whose right to marry a person of the opposite sex/gender has been denied because of the failure of the state to legally recognize gender reassignment or, more generally, the chosen gender or name?
- ✓ Does domestic violence or rape legislation in your country cover same-sex couples?



#### ARTICLE 24 – SPECIAL PROTECTION OF CHILDREN

- ✓ Are you aware of surgery performed on intersex new-born babies or children?
- ✓ Are you aware of discrimination, violence and abuses against students in public schools or other public facilities on grounds of their real or perceived sexual orientation, gender identity or gender expression?
- ✓ Any case in which public authorities failed to protect a child from domestic abuse on grounds of her/his real or perceived sexual orientation, gender identity or gender expression?
- ✓ Any case of hate crime or killing perpetrated against an underage individual?
- ✓ Are you aware of the impact that the lack of legal recognition of same-sex couples may have on the rights of children raised in families with same-sex parents?

#### ARTICLE 25 – RIGHT TO VOTE

- ✓ Are you aware of cases in which trans individuals have not been able to exercise their right to vote because their gender does not correspond to their legal sex?

#### 4.3.4 Recommendations

Identify the major concerns and a list of practical and reasonable recommendations to the state party, urging them to comply with their treaty obligations. Recommendations should not be broad and general, but specifically tailored, with examples for effective implementation of the proposed recommendation.

**Recommendations are a core element of the report, as they highlight the concrete claims to the Committee, and may be used by the Committee in elaborating their concluding observations.**

#### 4.3.5 List of Proposed Questions for Government Delegation

It is helpful to include a limited number of questions at the end of your report as recommendations for the Committee experts to ask the government delegation when they meet to review the state report. These questions may be asked to the government delegation during the Committee's review session about the LGBTI concerns and violations substantiated in your shadow report.

#### *4.4 Participating in the Formal Review in the Committee's Sessions*

Representatives of civil society may attend the sessions of the Human Rights Committee: this gives the opportunity to observe the works of the Committee, and in particular to monitor presentation and responses of government representatives. In this phase advocates **are not allowed** to make interventions; however, at the opening of each session of the Committee, there is generally a space for civil society representatives to make statements and to brief the members of the Committee through what is called an **informal confidential briefing**.

It is important to note that civil society representatives are required to be accredited to have access to UN buildings. ECOSOC status (consultative status for civil society at the UN) is not required to obtain accreditation: however, it is necessary to request accreditation to the Secretariat of the Human Rights Committee.

## 5. BEYOND SHADOW REPORTING: ACCOUNTABILITY AND FOLLOW-UP

Once the **concluding observations** for a particular state are issued, you should **publicize the conclusions and recommendations of the Committee** regarding the state's performance in implementing the ICCPR. Use the **recommendations** of the Committee to **press the state to change its policies and its legislation**, and hold the state to its obligations under the Treaty. The concluding observations may be used to pressure change from **both local and national governments**. They may also be used as benchmarks by courts or administrative bodies.

### To help increase public awareness and pressure you may:

- Contact the local or national news media
- Create a press release for local or national news
- Write an opinion article to publish in a local or national newspaper
- Hold public meetings or discussions
- Meet with policy-makers/law-makers to raise awareness on state obligations under the ICCPR and on the conclusions of the Committee
- Advocate with policy-makers/law-makers for policies and legislative changes
- Start a campaign to expose human rights abuses and claim for the implementation of the ICCPR

You should be aware that the Committee will not always include your recommendations in their concluding observations. Even so, the shadow report can be used as a tool for **advocacy, accountability and visibility**.

## 6. IMPORTANT ISSUE ON THE USE OF TERMS

Although in this short guide we refer to the acronym “LGBTI” to make reference to the “galaxy” of gender expressions, gender identities, sexual orientations and behaviors, **you will want to be extremely careful in the choice of language** in your report. For example:

- An identity-based language (such as the use of the acronym LGBTI) may not be the right choice if you are reporting on human rights violations of individuals on the basis of their alleged sexual orientation or sexual behaviors;
- The reference to LGBTI individuals and communities may not be appropriate in regions and countries where individuals and communities identify differently: using the “LGBTI language” could be perceived in these cases either as “Western” or inappropriate from a cultural or social point of view;
- The acronym “LGBTI” may not be appropriate if you are not reporting on human rights violations regarding a specific group of individuals or communities that the acronym includes. While visibility for LGBTI individuals is important, “including without reporting” may create confusion and, in the long term, a hierarchy of visibility in which some groups, particularly transgender, bisexual and intersex communities and individuals will only appear in the title;
- In writing your report you will want to be careful in the choice of the words: for instance, it is best **not** to refer to “heterosexual/homosexual union” but to instead refer to “opposite-sex/same-sex union.” It is also best to avoid using the acronym LGBTI when talking about marriage or family rights, (unless there are specific circumstances that are common to all groups) or when speaking about issues regarding gender reassignment, legal name, etc.;
- If you refer to legal categories, an identity-based language might not be appropriate. In these cases, it is better to make reference to sexual orientation, gender expression, and gender identity as categories.

## 7. OTHER SOURCES

### *7.1 Human Rights Committee Individual Petitions Regarding LGBTI Rights<sup>3</sup>*

#### Toonen v. Australia<sup>4</sup>

The Human Rights Committee examined the Tasmanian law criminalizing same-sex acts between consenting adults, and found these laws in violation of Article 2(1) [non-discrimination] and Article 17 [right to privacy] of the ICCPR. Although not subjected to prosecution, Toonen's private life and his liberty were threatened by the continued existence of the Tasmanian criminal provision. The Human Rights Committee concluded that "the reference to "sex" in (the Covenant) article 2 (1), and article 26 is to be taken as including sexual orientation."

#### Young v. Australia<sup>5</sup>

An Australian law, pertaining to dependents of war veterans, required a couple, whether married or not, to be members "of the opposite sex" for purposes of obtaining pension benefits. The Human Rights Committee found that Australia had denied Mr. Young his right to equality before the law and equal treatment of the law, in violation of Article 26 of the ICCPR.

#### X v. Colombia<sup>6</sup>

The Human Rights Committee concluded that Colombia was violating Article 26 of the ICCPR by denying to unmarried same-sex partners pension benefits that were granted to unmarried opposite-sex partners. Colombia had violated the right to equality and non-discrimination as protected by the treaty.

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<sup>3</sup> The Human Rights Committee also accepts complaints from individual applicants. More information may be found on the Human Rights Committee website at: <http://www.unhchr.ch/html/menu2/8/oppro.htm>

<sup>4</sup> Toonen v. Australia, Communication no. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

<sup>5</sup> Young v. Australia, Communication no. 941/2000, UN Doc CCPR/C/78/D/941/2000 (2003).

<sup>6</sup> X v. Colombia, Communication no. 1361/2005, U.N. doc. CCPR/C/89/D/1361/2005 (2007).

## ***7.2 Other International Human Rights References to LGBTI Rights***

Other U.N. treaty bodies and Special Procedures have largely considered the issue of LGBTI human rights in their decisions and reports. Also, regional human rights jurisprudence, and in particular the European Court on Human Rights, have been proactive on the issue. References to the U.N. jurisprudence and doctrine can be found at:

[www.icj.org/IMG/UN\\_References.pdf](http://www.icj.org/IMG/UN_References.pdf)

References to the European and Inter-American systems can be found respectively at:

[www.icj.org/IMG/European\\_Compilation-web.pdf](http://www.icj.org/IMG/European_Compilation-web.pdf) and

[www.icj.org/IMG/Inter-American\\_References.pdf](http://www.icj.org/IMG/Inter-American_References.pdf)

To read shadow reports submitted by Global Rights and our partners, please, visit:

[www.globalrights.org/site/PageServer?pagename=wwd\\_shadowrpts](http://www.globalrights.org/site/PageServer?pagename=wwd_shadowrpts)

An exhaustive analysis of the application of International Human Rights Law (including civil and political rights) with regard to sexual orientation and gender identity is contained in the **Yogyakarta Principles** and can be found at: [www.yogyakartaprinciples.org](http://www.yogyakartaprinciples.org)

For more references to resources, regional networks and organizations, terms, cultural specific issues, make reference to Global Rights' *Demanding Credibility and Sustaining Activism: a Guide to Sexuality-based Advocacy* at:

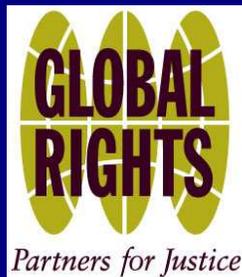
[www.globalrights.org/site/DocServer/Guide\\_sexuality\\_based\\_initiative.pdf?docID=10083](http://www.globalrights.org/site/DocServer/Guide_sexuality_based_initiative.pdf?docID=10083)

More references to the participation of civil society in the implementation of the ICCPR and more resources on the ICCPR, the Human Rights Committee and the review process can be found at:

[www.cccprcentre.org](http://www.cccprcentre.org) (Centre for Civil and Political Rights)







1200 18th Street  
Suite 602  
Washington, DC 20036  
Tel. +1 (202) 822-4600 Fax. +1 (202) 822-4606  
[www.globalrights.org](http://www.globalrights.org)