

The Making of International Human Rights Norms: Contestation, Norm Clusters, and Actor Engagement in SOGI

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Abstract

This paper analyzes international norms concerning sexual orientation and gender identity (SOGI norms) by using insights from norm research in International Relations (NRIR). With analytical concepts in NRIR such as norm contestation, transnational advocacy networks, and norm clusters, it explores how SOGI norms have faced advancement and hostility. It begins by outlining states' obligations regarding SOGI norms under international human rights law, from protecting individuals against violence to repealing discriminatory laws. Next, it explains that SOGI norms are frequently contested over their validity by actors connected through transnational conservative networks. Then, it argues that SOGI norms' embeddedness within international human rights norm clusters has been increased by multiple actors. This deepened embeddedness could enhance the resilience of SOGI norms to the frequent validity contestation. It moves to the analysis of actors' approaches and activities with a particular focus on activities of the Independent Expert on violence and discrimination based on SOGI (IE SOGI). It concludes that despite significant progress, the strength of SOGI norms remains fragile in the face of political backlash and illiberal actors' strategies.

Introduction

The path toward a world free from discrimination and violence based on sexual orientation and gender identity (SOGI) is full of uncertainty. About 15 years ago, optimism for the future did not seem misplaced. The Obama administration promoted LGBT¹ rights as human rights in its foreign policy. Then-US Secretary of State Hillary Clinton claimed, “being LGBT does not make you less human. And that is why gay rights are human rights, and human rights are gay rights”² before the United Nations (UN) in 2011. Despite its imperfections, the US tried to portray itself as a defender of SOGI rights.³ That moment has passed. The new U.S. presidency does not shy away from openly showing hatred toward LGBTI populations for political gain. The new term has begun with a backlash against LGBTI rights and the human rights of other marginalized people writ large.⁴ Discrimination is harsher, especially against transgender and non-binary persons.

The political antagonism toward LGBTI rights in the US and elsewhere, however, does not mean the whole struggle for a world free from discrimination and violence based on SOGI has been in vain. For instance, regarding marriage equality, there are 37 states with full marriage equality and 34 states with other forms of civil partnership.⁵ Despite religious issues, in 2024, Greece became the first Christian Orthodox-majority state to legalize same-sex marriage. And, the tide for equality is moving beyond Europe. Thailand became the first such state in Southeast Asia in 2025.

Seen broadly, SOGI rights, which prohibit direct and indirect discrimination against individuals based on SOGI, have made significant,

¹ This article uses the term ‘LGBTI’ as an umbrella term to refer to sexual and gender minorities, including queer and intersex individuals, as it is widely recognized in international human rights discourse. However, it also uses LGBT, LGBTIQ, LGBTQI, and LGBTQ+ following the reference materials.

² Hillary Clinton, “Secretary of State Clinton Human Rights Day Speech: Free and Equal in Dignity and Rights,” U.S. Mission to International Organizations in Geneva (December 6, 2011). (<https://geneva.usmission.gov/2011/12/06/free-and-equal/#:~:text=Like%20being%20a%20woman%2C%20like%20being%20a%20racial%2C%20religious%2C%20tribal%2C%20or%20ethnic%20minority%2C%20being%20LGBT%20does%20not%20make%20you%20less%20human.%20And%20that%20is%20why%20gay%20rights%20are%20human%20rights%2C%20and%20human%20rights%20are%20gay%20rights>) Accessed on 2025-5-12)

³ See Cynthia Weber, *Queer International Relations* (Oxford University Press, 2016), pp. 104-142.

⁴ Lucy Middleton, “What Does a Donald Trump Presidency Mean for LGBTQ+ Rights?” Context (April 16, 2025). (<https://www.context.news/socioeconomic-inclusion/what-does-a-donald-trump-presidency-mean-for-lgbtq-rights>) Accessed on 2025-5-12)

⁵ ILGA, “Area 1 Legal Frameworks: Same-Sex Marriage and Civil Unions,” ILGA Database. (<https://database.ilga.org/same-sex-marriage-civil-unions>) Accessed on 2025-5-12)

though still partial, progress within the UN human rights system. In 2011, the UN Human Rights Council (UNHRC) adopted a resolution on *Human rights, sexual orientation and gender identity* after successive failures to implement SOGI resolutions for itself and for the General Assembly.⁶ Since then, the UNHRC has adopted seven resolutions concerning SOGI. In 2016, it successfully appointed the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (IE SOGI). In Philip Ayoub and Kristina Stoeckle's words,⁷ "[i]f women's suffrage marked the early starting point of liberal-democratic inclusion, it is the addition of LGBTIQ rights—previously relegated to a handful of small, secular, advanced industrialized democracies—in international human-rights frameworks that symbolizes the achievement of modern egalitarian pluralism." As seen below, international SOGI norms have gradually gained legitimacy, but not satisfactorily.

This paper aims to enhance understanding of SOGI norms by employing insights from norm research in International Relations (NRIR) at a moment when SOGI norms are facing increasing hostility. This paper employs analytical tools in NRIR, including norm contestation, transnational advocacy networks (TANs), and norm clusters. The first section explains the state's obligations under current international human rights law. The second section depicts a contentious landscape surrounding SOGI norms. The third and fourth sections argue that SOGI norms have deepened their embeddedness within existing norm clusters, and that actors seek to contribute by focusing on IE SOGI.

⁶ Works on this progress include Francine D'Amico, "LGBT and (Dis)united Nations: Sexual and Gender Minorities, International Law and UN Politics," in Manuela Lavinias Picq and Markus Thiel, eds., *Sexualities in World Politics: How LGBTQ Claims Shape International Relations* (New York: Routledge, 2015), pp. 54-74; Anthony J. Langlois, "Making LGBT Rights into Human Rights," in Michael J. Bosia, Sandra M. McEvoy, and Momin Rahman, eds., *The Oxford Handbook of Global LGBT and Sexual Diversity Politics* (Oxford Handbooks, 2020), pp. 75-88. From international human rights law perspectives, see Taniguchi Hiroyuki, Kokusaijinkenhou to LGBTQ [International Human Rights Law and LGBTQ] *International Women's Journal* 35 (2021), pp. 99-104.

⁷ Phillip Ayoub and Kristina Stoeckl, "The Global Resistance to LGBTIQ Rights," *Journal of Democracy* 35-1 (2024), p. 60.

SOGI norms and the state's obligations under international human rights law

Norms are “a standard of appropriate behavior for actors with a given identity.”⁸ Norms, as social facts, regulate actors' behavior and constitute actors' identity. In the context of human rights norms, norms hold states accountable when they violate human rights, pressure states to comply, and empower civil society organizations (CSOs).⁹ In Europe, for example, socializing pressure facilitates the adoption of LGBT legislation among newer EU member states.¹⁰ Taiwan achieved marriage equality in 2019, partly to contrast its identity with China by doing what the Chinese Communist Party cannot do regarding human rights protection.¹¹

Fernando G. Nunez-Mietz and Lucrecia García Iommi define LGBT rights norms as “a set of principled proscriptions and prescriptions bound together by the ideal of non-discrimination on the basis of sexual orientation or gender identity,”¹² and this paper uses this definition for SOGI norms. SOGI norms are composed of **prohibitive norms** against discrimination and violence (e.g., elimination of sodomy laws, which were historically used to criminalize same-sex relationships) and **prescriptive norms** that address direct and indirect discrimination (e.g., legal protection for freedom of assembly for LGBTI persons). The realization of SOGI norms requires

⁸ Peter J. Katzenstein, “Introduction: Alternative Perspectives on National Security,” in Peter J. Katzenstein, ed., *The Culture of National Security* (Columbia University Press, 1996), p. 6.

⁹ Thomas Risse and Kathryn Sikkink, “The Socialization of International Human Rights Norms into Domestic Practices: Introduction,” in Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change*, *Cambridge Studies in International Relations* (Cambridge: Cambridge University Press, 1999), pp. 1-38. Also, Emilie M. Hafner-Burton and Kiyoteru Tsutsui, “Human Rights in a Globalizing World: The Paradox of Empty Promises,” *American Journal of Sociology* 110-5 (2005) pp.1373-1411.

¹⁰ Phillip Ayoub, “Contested Norms in New-Adopter States: International Determinants of LGBT Rights Legislation,” *European Journal of International Relations* 21-2 (2015), pp. 293-322.

¹¹ Suzuki Ken, *Taiwandouseikon no Tanjo: ajia LGBTQ+ tohdai heno michi [The Birth of Taiwan's Marriage Equality Law: The Historical Road to the LGBTQ+ Beacon in Asia]* (Nihonhyoronsha, 2022), pp. 319-323. This resonates with Charlotte Epstein's call for analyzing states' identification or Ann Towns' argument of norms as hierarchy creation. See Charlotte Epstein, “Who Speaks? Discourse, the Subject and the Study of Identity in International Politics,” *European Journal of International Relations* 17-2 (2011), pp. 327-350. Ann E. Towns, “Norms and Social Hierarchies: Understanding International Policy Diffusion ‘from Below,’” *International Organization* 66-2 (2012), pp. 179-209.

¹² Fernando G. Nunez-Mietz and Lucrecia García Iommi, “Can Transnational Norm Advocacy Undermine Internalization? Explaining Immunization against LGBT Rights in Uganda,” *International Studies Quarterly* 61-1 (2017), p. 200.

replacing discriminatory and violent **permissive norms** with pro-SOGI norms. However, permissive norms persist in various ways, such as Uganda's Anti-Homosexuality Act, which imposes severe penalties on same-sex relationships and advocacy for LGBTI rights.

The UN documents provide a key to understanding what SOGI norms oblige states to do under current international human rights law. In 2012 the Office of the High Commissioner for Human Rights (OHCHR) published a momentous report, *Born Free and Equal (BFE)*,¹³ and it republished the second edition¹⁴ in 2019. These reports specify core obligations in the normative baggage of SOGI norms with instances of positive practices. According to the report, states have five core obligations as follows.¹⁵

(1) *Protect individuals from violence*

States are obliged to prevent, investigate, and prosecute violence (e.g., target killing, sexual violence, incitement, and hate speech) against individuals based on SOGI. This includes the recognition of prosecution based on SOGI and other related factors as a valid basis for asylum claims. In 2014, for example, Great Britain's College of Policing released a set of guidelines for police officers responding to incidents of hate crime, including how to respond to homophobic and transphobic hate crimes.

(2) *Prevent discrimination*

States must prohibit, investigate, and punish perpetrators of torture and ill-treatment, including in detention, medical, and other settings. In 2015, Malta became the first country to prohibit non-consensual medical interventions on intersex minors driven by social factors, protecting their bodily integrity

(3) *Repeal discriminatory laws*

States are obliged to repeal discriminatory laws, including criminalization of same-sex relations, lesbian and bisexual women, and

¹³ OHCHR, *Born Free and Equal, Sexual Orientation and Gender Identity in International Human Rights Law*, HR/PUB/12/06, OHCHR (2012).

¹⁴ OHCHR, *Born Free and Equal, Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law*. HR/PUB/12/06/Rev.1, OHCHR (2019).

¹⁵ *Ibid.*

transgender persons. Oftentimes, states enact punitive laws against sex work to target LGBT people, which need to be repealed as well. In 2013, Samoa repealed a penal code that criminalized “impersonation of females” by males. The Samoan fa’afafine are predominantly assigned as male at birth and express a range of gender expressions, including feminine ones. They are considered by many as a third gender and constitute an integral part of society and culture.

(4) *Prohibit and address discrimination*

States should enact comprehensive legislation that prohibits discrimination based on sexual orientation, gender identity, and sex characteristics in both the public and private sphere, including in health, education, employment, housing, recognition of gender identity, access to justice and remedy, family and community, recognition of relationship, and political participation and consultation. In 2014, the Supreme Court of Mexico issued a protocol to guide judges and legal professionals handling SOGI-related cases. It identifies harmful stereotypes and misconceptions that may hinder access to justice in various sectors.

(5) *Respect freedom of expression, peaceful assembly, and association*

States must guarantee the rights to freedom of opinion and expression, peaceful assembly and association to everyone, regardless of sexual orientation, gender identity or expression, or sex characteristics, including human rights defenders working on these issues, and must ensure that any restrictions on these rights are not discriminatory and comply with all safeguards in international law. The Court of Appeal in Botswana ruled that the government’s refusal to register a CSO, Lesbians, Gays, and Bisexuals of Botswana (LEGABIBO), was unconstitutional, affirming the right of LGBT individuals to freedom of assembly and association.

While these obligations are fundamental prescriptions under international human rights law, they are not necessarily identical to whole sets of SOGI norms. They can differ depending on regions or communities;

for example, socializing pressure varies between Europe and North America.¹⁶

How SOGI norms are contested

NRIR, which initially focused on the influence of these norms and assumed their progressive and linear development, has shifted its attention to the more nuanced and complex dynamics of norms.¹⁷ Scholars emphasize **norm contestation**, where actors dispute the meanings and uses of norms.¹⁸ They assume that no norms provide a clear prescription for every situation. Actors have different interpretations regarding the application of norms (applicatory contestation) or suspect the righteousness of given norms (validity contestation).¹⁹ Contestation occurs whenever application or validity is at stake, whether globally, regionally, or domestically.²⁰

Norm strength (loosely speaking, the extent to which norms affect states' behavior²¹) is central to academic attention in this field.²² While first-move²³ studies show whether norms matter to state behaviors, second-move studies investigate why norms matter differently from state to state. Third-move studies analyze the contentious dynamics of norms and discuss how norm contestation affects norm strength.²⁴ Recent arguments show that contestation is not unusual but in fact generally crucial for maintaining norms' health, whereas doubts on validity seriously affect norms' strength.

¹⁶ Kelly Kollman, "Same-Sex Unions: The Globalization of an idea," *International Studies Quarterly*, 51-2 (2007), pp. 329-357.

¹⁷ Phil Orchard and Antje Wiener, "Introduction: Norm Research in Theory and Practice," in Phil Orchard and Antje Wiener, eds., *Contesting the World: Norm Research in Theory and Practice* (Cambridge: Cambridge University Press, 2024), pp. 1-26.

¹⁸ Antje Wiener, *A Theory of Contestation* (Springer, 2014).

¹⁹ Nicole Deitelhoff and Lisbeth Zimmermann, "Things We Lost in the Fire: How Different Types of Contestation Affect the Validity of International Norms," *International Studies Review*, 22.1 (2020), pp. 51-76.

²⁰ Antje Wiener, *Contestation and Constitution of norms in Global International Relations* (Cambridge University Press, 2018); Amitav Acharya, "How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism," *International Organization* 58-2 (2004), pp. 239-275; Alexander Betts and Phil Orchard, eds., *Implementation and World Politics: How International Norms Change Practice* (OUP Oxford, 2014).

²¹ How to measure norm strength has been hotly debated. For details, see Michal Ben-Josef Hirsch and Jennifer M. Dixon, "Conceptualizing and Assessing Norm Strength in International Relations," *European Journal of International Relations* 27-2 (2021), pp. 521-547.

²² Jeffrey S. Lantis and Carmen Wunderlich, "Resiliency Dynamics of Norm Clusters: Norm Contestation and International Cooperation," *Review of International Studies* 44-3 (2018), pp. 570-593.

²³ For this distinction, see Orchard and Wiener, *op.cit.*

²⁴ This does not mean that all third-move studies focus on norm strength.

Initially, scholars disagreed on the effects of contestation. Some have argued that it leads to delegitimizing norms, resulting in norm death,²⁵ while others have contended that it facilitates dialogue between actors, refining the meaning of norms.²⁶ A comprehensive book by Lisbeth Zimmermann and colleagues argues that widespread validity contestation negatively affects norm robustness, while applicatory contestation is ubiquitous and often clarifies norms' meaning in use.²⁷ In a nutshell, validity contestation is likely to be detrimental to norms in international relations.²⁸

What characterizes SOGI norms in particular is the frequency of validity contestation. Even after the UNHRC resolution in 2011, SOGI norms are contested at international and domestic levels. Major opposition state actors include Russia, Hungary, Saudi Arabia, Iran, and Uganda.²⁹ Russia is a formidable contestant over the validity of SOGI norms. It upholds traditional values and distorts and frames SOGI norms as a threat from the West. In the early 2010s, Russia sponsored a series of UNHRC resolutions concerning traditional values and human rights. States and non-governmental organizations (NGOs) criticized such emphasis on traditional values as having the potential to misleadingly undermine the universality of human rights and to serve as a rhetoric to oppress marginalized groups, including LGBTI individuals.³⁰

Another recent example can be seen in the discussion of the United Nations Security Council (UNSC). In the UNSC, Women, Peace, and Security (WPS) has been on the table of debates since the 2000s. This agenda introduced a gender perspective into security, which had been considered "high politics." This agenda has contributed to the promotion of women's rights, but it often conflates "gender" with "women." Against this tendency, actors extend the agenda and incorporate diverse gender perspectives. In this context, the Russian delegation framed LGBTI persons as a threat to

²⁵ Ryder McKeown, "Norm Regress: US Revisionism and the Slow Death of the Torture Norm," *International Relations* 23-1 (2009), pp. 5-25; Diana Panke and Ulrich Petersohn, "Norm Challenges and Norm Death: The Inexplicable?" *Cooperation and Conflict* 51-1 (2016), pp. 3-19.

²⁶ Wiener, *Contestation and Constitution of Norms*.

²⁷ Lisbeth Zimmermann et al., *International Norm Disputes: The Link between Contestation and Norm Robustness* (Oxford University Press, 2023).

²⁸ Some argue that it is rare for norms to cease to exist in any form, even if faced with serious violations. See Sarah V. Percy and Wayne Sandholtz, "Why Norms Rarely Die," *European Journal of International Relations* 28.4 (2022), pp. 934-954.

²⁹ Ayoub and Stoeckl, *op.cit.*

³⁰ Cai Wiskinson, "Putting 'Traditional Values' into Practice: The Rise and Contestation of Anti-homopropaganda Laws in Russia," *Journal of Human Rights* 13-3 (2014), pp. 363-365.

women's security by defaming intersex athletes as men in the Olympics in the UNSC's meeting on WPS in 2024.

That absolutely disgusting performance shows how much harm to women's rights and dignity has been caused by the lesbian, gay, bisexual and transgender agenda that is being aggressively imposed on the world by the West. We believe that in many traditional societies, the influence of women, wives and mothers on political and social processes, brought to bear in ways that had been established over many centuries, and their influence in such places may be in fact even more effective than in societies that advocate liberal ideas.³¹

This statement exemplifies Russia's strategy of distorting SOGI norms by framing them as an imposition by the West that undermines traditional values and women's rights. By portraying LGBTI advocacy as a foreign agenda, Russia attempts to delegitimize international efforts to promote gender diversity and equality. The rhetoric not only misinterprets SOGI norms but also reinforces a binary and exclusionary understanding of gender. It uses "tradition" as a justification for sustaining discriminatory policies and marginalizing LGBTI persons on the international stage. These validity contestants frame the promotion of SOGI norms as an existential threat to "Us" from "Them," positing LGBTI persons as threatening "religion," "nation," "family," "women," and "children."³²

Domestically, states enact or maintain discriminatory measures. In 2013, Russia introduced a notorious "gay propaganda" ban law and renewed it in 2022 to prohibit any positive or neutral LGBTQ+-related content.³³ Uganda has passed several anti-LGBT laws, including the infamous Anti-Homosexuality Act in 2023.³⁴ According to the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), for example, 61 states still

³¹ UNSC, *UNSC 9700th meeting record*. S/PV.9700, UNSC (2024), p. 19.

³² Ayoub and Stoeckl, *op.cit.*

³³ Human Rights Watch, "Russia: Expanded 'Gay Propaganda' Ban Progresses Toward Law," *Human Rights Watch* (November 25, 2022). (<https://www.hrw.org/news/2022/11/25/russia-expanded-gay-propaganda-ban-progresses-toward-law> Accessed on 2025-5-12)

³⁴ Human Rights Watch, "Uganda: Court Upholds Anti-homosexuality Act," *Human Rights Watch* (April 4, 2024). (<https://www.hrw.org/news/2024/04/04/uganda-court-upholds-anti-homosexuality-act> Accessed on 2025-5-12)

criminalize consensual same-sex sexual acts in 2025. However, the number steadily decreased from 103 in 1995 to 80 in 2005, and 75 in 2015.³⁵

Scholars on SOGI norms characterize this situation as **norm polarization**. Markus Hadler and Jonathan Symons modify the world society theory and show that attitudes toward homosexuality are divided at the state and civil levels.³⁶ Jonathan Symons and Dennis Altman examine norm polarization toward SOGI, where “two groups of states have adopted conflicting norms and have clashed repeatedly over them.”³⁷ Kristopher Velasco analyzes the effect of polarized SOGI norms on public attitudes, showing that embeddedness within illiberal transnational networks provokes backlash when populations are exposed to SOGI norms.³⁸ Ayoub and Stoeckl elaborate on these arguments and theorize the **rival TANs** between pro- and anti-SOGI rights.³⁹

NRIR has modeled how norms diffuse from state to state and theorized that TAN is composed of international organizations (IOs), CSOs, and states, playing a role to advocate for norms and pressure states (according to the “boomerang model”⁴⁰ or the more complicated “spiral model”⁴¹). TAN connects civil society within norm-violating states with outside global advocacy networks. This connection pressures states to comply with human rights norms. These seminal models assume that a *single* TAN can provide actors with resources for advocating norms. However, according to Ayoub and Stoeckl’s rival TAN model, actors have room to choose normative claims from two competing networks on SOGI (e.g., ILGA joins the pro-network, the World Family Congress joins the anti-network).

In sum, SOGI norms are contested over their validity at the national and international levels. States discursively and behaviorally show their

³⁵ ILGA, “Area 1 Legal Framework: Criminalization of Consensual Same-Sex Sexual Acts,” ILGA database. (<https://database.ilga.org/criminalisation-consensual-same-sex-sexual-acts>) Accessed on 2025-5-12)

³⁶ Markus Hadler and Jonathan Symons, “World Society Divided: Divergent Trends in State Responses to Sexual Minorities and Their Reflection in Public Attitudes,” *Social Forces* 96-4 (2018), pp. 1721-1756.

³⁷ Jonathan Symons and Dennis Altman, “International Norm Polarization: Sexuality as a Subject of Human Rights Protection,” *International Theory* 7-1 (2015), p. 62.

³⁸ Kristopher Velasco, “Transnational Backlash and the Deinstitutionalization of Liberal Norms: LGBT+ Rights in a Contested World,” *American Journal of Sociology* 128-5 (2023), pp. 1381-1429.

³⁹ Phillip M. Ayoub and Kristina Stoeckl, *The Global Fight Against LGBTI Rights: How Transnational Conservative Networks Target Sexual and Gender Minorities* (NYU Press, 2024).

⁴⁰ Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Cornell University Press, 1998).

⁴¹ Risse and Sikkink, *op.cit.*

doubts about the righteousness of SOGI norms. These challenges are reinforced by the transnationally connected networks of state and non-state actors.

Norm clusters

One key to mitigating the negative effects of contestatory challenges and maintaining the legitimacy of international norms is embeddedness in **norm clusters**. Jeffery S. Lantis and Carmen Wunderlich argue that norms embedded in larger norm clusters are more resilient when challenged by contestation than are isolated norms.⁴² Norm clusters are “similarly aligned, coupled norms or principles.”⁴³ Lantis and Wunderlich argue that embeddedness within resilient norm clusters helps insulate norms against validity contestation. Norm resiliency is high when they have cohesiveness (the discursive link between individual norms and broader norm cluster) and they are institutionalized (e.g., hard law or soft law). Lantis and Wunderlich analyze, for example, that nuclear disarmament norms embedded in the non-proliferation regime are more robust than relatively isolated anti-assassination norms.

SOGI norms have deepened their embeddedness within already established international norm clusters. While there is still no independent international treaty on SOGI, like the “International Convention on the Rights of Sexual and Gender Minorities,”⁴⁴ SOGI norms have been steadily incorporated into existing international human rights norms. The process began when the UN Human Rights Committee declared that signatory states of the International Covenant on Civil and Political Rights (ICCPR) have obligations regarding sexual orientation, and so did four of the UN committees, including the International Covenant on Economic, Social and Cultural Rights, the Convention Against Torture, and the Convention on the Rights of the Child after the case of *Toonen v. Australia*.⁴⁵

A comparison of the two *BFE* reports shows an emphasis on inclusivity and an increase in relevance with human rights norms.⁴⁶ Chart 1 shows how *BFE* describes core obligations, alongside relevant international human rights law documents. Core obligations are described in a more inclusive tone

⁴² Lantis and Wunderlich, *op.cit.*

⁴³ *Ibid.* p. 576.

⁴⁴ D’Amico, *op.cit.*, p. 71.

⁴⁵ Holning Lau, “Sexual Orientation: Testing the Universality of International Human Rights Law,” *University of Chicago Law Review*, 71-4 (2004), pp. 1689-1720.

⁴⁶ *BFE*, (2012), *op.cit.*; *BFE*, (2019), *op.cit.*

in the 2019 report. For instance, the 2012 report illustrates the first obligation as “Protect individuals from homophobic and transphobic violence,” while these adjectives are deleted in the 2019 report. This expression emphasizes that compliance with SOGI norms is not separate but continues from the fundamental principle that individuals must be protected from violence. Also, violence is not necessarily out of homophobia or transphobia, but also, for instance, from prejudice against intersex people. Moreover, SOGI norms are more associated with other international human rights norms. The chart underlines that the report’s number of relevant international human rights laws increased, except for the third obligation.

Chart 1: Linkage of SOGI norms with other international human rights laws in two *BFEs*

Obligation number	Core obligations (2012 version)	Relevant international human rights law in the 2012 version	Core obligations (2019 version)	Relevant international human rights law in the 2019 version
1	Protect individuals from <u>homophobic and transphobic</u> violence	UDHR (Article 3) ICCPR (Article 6, 9) Convention Relating to the Status of Refugees (CRSR) (Article 33(1))	Protect individuals from <u>violence</u>	UDHR (Article 3) ICCPR (Article 6, 9) <u>CRC (Article 33(1))</u> <u>CAT (Article 3(1))</u> CRSR (Article 33(1)) <u>Declaration on the Elimination of Violence against Women (Article 4)</u>
2	Prevent torture and cruel, inhuman, and degrading treatment of <u>LGBT Persons</u>	UDHR (Article 5) ICCPR (Article 7) CAT (Article 1(1), 2(1))	Prevent torture and cruel, inhuman, and degrading	UDHR (Article 5) ICCPR (Article 7) CAT (Article 1(1), 2(1)) <u>CRC (Article 37(a))</u>

Obligation number	Core obligations (2012 version)	Relevant international human rights law in the 2012 version	Core obligations (2019 version)	Relevant international human rights law in the 2019 version
			treatment or punishment	CRPD (Article 15)
3	<u>Decriminalize homosexuality</u>	UDHR (Article 2, 7, 9, 12) ICCPR (Article 2(1), 6(2), 9, 17, 26)	<u>Repeal discriminatory laws</u>	UDHR (Article 2, 7, 9, 12) ICCPR (Article 2(1), 6(2), 9, 17, 26)
4	Prohibit discrimination <u>based on sexual orientation and gender identity</u>	UDHR (Article 2, 7) ICCPR (2(1), 26) ICESCR (Article 2) CRC (Article 2)	Prohibit and address discrimination	UDHR (Article 2, 7) ICCPR (2(1), 26) ICESCR (Article 2) CRC (Article 2) <u>CEDAW (Article 2(f))</u>
5	Respect freedom of expression, peaceful assembly and association	UDHR (Article 19, 20(1)) ICCPR (Article 19(2), 21, 22(1))	Respect freedom of expression, peaceful assembly and association	UDHR (Article 19, 20(1)) ICCPR (Article 19(2), 21, 22(1)) <u>Declaration on Human Rights Defenders (Article 1)</u>

Source: made by author

The increased linkage and embeddedness are reasonable given that international advocacy for SOGI rights chose a human rights approach. This strategy emphasizes that SOGI norms are not about the establishment of new rights but about the application of well-established human rights norms

beyond heteronormative manners.⁴⁷ For example, to grasp the full range of human rights situations in a conflict zone, data collection needs to be based not only on the binary category but also on more diverse sexual and gender identities. The resulting embeddedness may increase the resiliency of SOGI norms against constant validity contestation. The next section investigates who contributes to this embeddedness and argues that IE SOGI plays a significant role.

Actors' engagement

NRIR emphasizes the mutual constitution of structure and agency. Norms, as structures, constrain the actions and shape the identities of actors. At the same time, actors are not merely passive recipients of these structures. Their actions can transform the very structure, thereby exercising agency. In this regard, studies of norm contestation, which analyze actors' disputes over norms and their impact on the strength of norms, are agent-oriented. Similarly, embedding SOGI norms within a broader normative cluster results from actors' actions.

The increased embeddedness in existing international human rights norm clusters depicted above is a deliberate byproduct of agents working for the ideal of SOGI norms. UN agencies and regional human rights systems, including the Inter-American Commission on Human Rights and the African Commission on Human and People's Rights, are actively working to interpret SOGI norms.⁴⁸ Transnational NGOs such as Human Rights Watch, ILGA, and OutRight International gather information and data, reveal states' human rights violations, and advocate for SOGI rights. State actors form the LGBTI Core Group in the UN, an informal and cross-regional group that raises awareness, facilitates cooperation and negotiations, and seeks common ground through open dialogues.

Besides these agents, the UN human rights bodies attained the establishment of IE SOGI in 2016. When analyzing discursive contestation over the establishment of IE SOGI, Joel M. Voss assesses the expert as "adding significantly more legitimacy and power to the movement to protect

⁴⁷ Langlois, *op.cit.*

⁴⁸ BFE, (2019), *op.cit.*, p. 3. For the regional-level developments, see *Ending Violence and Other Human Rights Violations Based on Sexual Orientation and Gender Identity: A Joint Dialogue of the African Commission on Human and Peoples' Rights, Inter-American Commission on Human Rights and United Nations* (Pretoria University Law Press, 2016). (http://www.ohchr.org/Documents/Issues/Discrimination/Endingviolence_ACHPR_IACHR_UN_SOGI_dialogue_EN.pdf Accessed on 2025-5-12)

LGBTQI individuals from non-discrimination and violence.”⁴⁹ The mandate of IE SOGI includes (a) assessing the implementation of existing international human rights instruments, (b) raising awareness, (c) engaging in dialogue with relevant stakeholders, (d) working with states, (e) addressing the multiple, intersecting, and aggravated forms of violence and discrimination, (f) conducting, facilitating, and supporting the provision of advisory services, technical assistance, capacity-building, and international cooperation.⁵⁰ The term for the position of IE SOGI is three years, and so far, three experts have been appointed: Vivit Muntarbhorn (2016–2017), Victor Madrigal-Borloz (2018–2023), and Graeme Reid (2023–2026). Notably, they are all from Global South countries: Thailand, Costa Rica, and South Africa, respectively.

IE SOGI issues annual reports on relevant topics to the UN General Assembly and UNHRC. In 2020, for instance, the expert examined the practice of “conversion therapy.” IE SOGI concluded that, due to its severe psychological and physical harm to individuals, this practice violates the principles of non-discrimination, the right to health, the prohibition of torture and ill-treatment, the right to freedom of conscience and religion, the right to freedom of expression, and children’s rights.⁵¹

IE SOGI also visits countries based on invitations to gather data and information, including best practices, and recommends necessary implementation. IE SOGI has conducted official country visits to eight states thus far: Argentina (2017), Georgia (2018), Mozambique (2018), Ukraine (2019), Tunisia (2021), the US (2022), Cambodia (2023), and the UK (2023).⁵² Based on submissions and hearings from multiple relevant stakeholders, the expert investigates social and legal situations LGBTI people face in recipient states and recommends context-based necessary implementation.

IE SOGI’s work attempts to clarify SOGI norms in international human rights law contexts, possibly contributing to their increased embeddedness in the existing human rights norm cluster. The work program from 2021 to

⁴⁹ M. Joel Voss, “Contesting Sexual Orientation and Gender Identity at the UN Human Rights Council,” *Human Rights Review* 19 (2018), p. 3.

⁵⁰ UNHRC, *Resolution Adopted by the Human Rights Council: 32/2. Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity*, A/HRC/RES/32/2, UNHRC (2016).

⁵¹ UNHRC, *Report of the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity*, A/HRC/44/53, UNHRC (2020).

⁵² OHCHR, “Country Visit: Independent Expert on Sexual Orientation and Gender Identity,” OHCHR. (<https://www.ohchr.org/en/special-procedures/ie-sexual-orientation-and-gender-identity/country-visits> Accessed on 2025-5-12)

2023 offers valuable insights into the expert's activities. This program outlines the content and details of their activities and explicitly highlights two fundamental approaches underpinning these efforts: *dialogue* and *intersectionality*.⁵³

IE SOGI argues that analyzing intersectionality, the first approach, is essential to uncovering the root causes of discrimination and violence based on SOGI. The expert argues that the analysis requires the following:

multidimensional assessment of all factors, including historical, socio-cultural, political and anthropological, that concur to create an understanding of what is perceived as a norm in relation to gender, sex and sexual desire in a given place and at a given time, and as a result, particular experiences of privilege or violence and discrimination. The fabric of a lived experience gets woven, among other[sic], by the threads of race, ethnicity, religion or belief, health, socioeconomic, migration or other status, age, class and caste, and experience of disability.⁵⁴

To investigate *intersectionality*, IE SOGI jointly works with other UN human rights experts. Instances of such joint work include with UNHCR's Assistant High Commissioner for Protection to highlight the unique vulnerability of LGBTQ+ asylum-seekers and refugees,⁵⁵ with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context, to state the concerns about LGBTQ+ young homeless people,⁵⁶ and with the United Nations Special Rapporteur on the Rights of Persons with Disabilities, to address the difficulties faced by LGBTQ+ people with disabilities.⁵⁷

⁵³ Victor Madrigal-Borloz. "Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, Work Programme 1 January 2021 – 31 December 2023," United Nations Human Rights Special Procedures.

⁵⁴ *Ibid.*, p. 3.

⁵⁵ OHCHR, "UN Rights Experts Urge More Protection for LGBTI Refugees," OHCHR (July 1, 2019). (<https://www.ohchr.org/en/press-releases/2019/07/un-rights-experts-urge-more-protection-lgbti-refugees?LangID=E&NewsID=24764> Accessed on 2025-5-12)

⁵⁶ OHCHR, "The Right to Housing of LGBT youth: An Urgent Task in the SDG Agenda Setting," OHCHR (August 9, 2019). (<https://www.ohchr.org/en/statements-and-speeches/2019/08/right-housing-lgbt-youth-urgent-task-sdg-agenda-setting?LangID=E&NewsID=24877> Accessed on 2025-5-12)

⁵⁷ OHCHR, "LGBT Persons with Disabilities," OHCHR (October 27, 2023). (<https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/statements/2023-10-24-joint-stm-SOGI-disabilities.pdf> Accessed on 2025-5-12)

The activities extend to security agendas. In the 2022 report, IE SOGI examined SOGI and security issues, arguing that the existing security framework often conflates gender with women, overlooking diverse aspects of SOGI. This leads to the penetration of state and non-state actors toward LGBT individuals and a lack of access for LGBTQ+ persons to evacuation spaces during conflicts.⁵⁸ In 2023, IE SOGI underscored the necessity of incorporating SOGI into Women, Peace, and Security (WPS) by adopting intersectional approaches at the Security Council.⁵⁹

The second fundamental approach is *dialogue*. The dialogue is open to state actors but extends to regional organizations and civil society actors. In 2019, for example, IE SOGI held a joint consultation with the Organization of American States authorized rapporteur on LGBTI people to discuss discrimination based on SOGI in the Caribbean region.⁶⁰ The reports to the UNGA, UNHRC, and other activities are based on submissions from NGOs, academic institutions, and individuals. IE SOGI has also created opportunities for dialogue with religious authorities, such as the Patriarchate of the Georgian Orthodox Church, the Mufti of all Muslims, the Chair of the Jewish Council, the Mufti of Nampula, the Catholic Archbishop, and the Chief Rabbi, as well as faith-based leaders in Ukraine, the United States, and the United Kingdom.⁶¹

There is also the possibility of dialogue with some member states in the UN that have shown reluctance or even hostile intentions toward SOGI. IE SOGI claims that “through open dialogue, views, and ideas are shared with States that did not support the creation and renewal of the mandate – and that might continue to have that position.”⁶² Still, dialogue is not baseless. The expert says, “[i]n the quest for amicable discourse, there is the understanding that there can be no justification for crimes, such as killings,

⁵⁸ UNHRC, *Resolution Adopted by the Human Rights Council: 50/10. Mandate of the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity*, A/HRC/RES/50/10, UNHRC (2022).

⁵⁹ Statement by Victor Madrigal-Borloz, *Integrating the Human Rights of LGBT Persons into the Security Council’s Mandate for Maintaining International Peace and Security*, United Nations Human Rights Special Procedures, March 2023.

⁶⁰ OHCHR, “first Joint Consultation Discussing the Inclusion of LGBTI Persons in the Economic, Social and Cultural Sphere,” OHCHR (October 1, 2019). (<https://www.ohchr.org/en/press-releases/2019/10/first-joint-consultation-discussing-inclusion-lgbti-persons-economic-social>) Accessed on 2025-5-12)

⁶¹ UNHRC, *Report of the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity*, A/HRC/53/37, UNHRC (2023), para.3.

⁶² Victor Madrigal-Borloz, *op.cit.*, para. 5(a).

rapes, and torture, nor discrimination.”⁶³ IE SOGI consistently criticizes discriminatory laws and regulations, including criminalizing acts and death penalties for LGBTQ+ people.

IE SOGI is sensitive to opponents’ contestation and tries to counter their framing. Opponents often frame SOGI norms as an external threat from the West and contest their validity. The resolution that appoints IE SOGI states:

*Deploing the use of external pressure and coercive measures against States, particularly developing countries, including through the use and threat of use of economic sanctions and/or the application of conditionality to official development assistance, with the aim of influencing the relevant domestic debates and decision-making processes at the national level.*⁶⁴

In the 2023 report, IE SOGI addresses colonialism and SOGI. After introducing diverse traditions and cultures on gender and sexuality before colonialism, the expert argues that colonial powers enacted laws and established institutions that imposed restrictions on diverse sexual acts and gender diversity, thereby enforcing heteronormativity. These measures are part of colonial projects aimed at civilizing “the uncivilized.”⁶⁵ Colonial institutions, such as sodomy laws that criminalize same-sex conduct, remain in states. While IE SOGI recognizes that the origins of such institutions lie in colonialism, the expert further highlights the instrumentalization of these colonial legacies as “traditions” to exclude LGBTQ+ individuals.⁶⁶

Following the two approaches – intersectionality and dialogue – and in consideration of historical and local contexts, IE SOGI emphasizes a human rights perspective rooted in its mandate and discursively clarifies the legal linkage between SOGI and other international human rights norms. For example, IE SOGI addresses politicians’ deployment of political homophobia

⁶³ UNHRC, *Report of the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity*, A/HRC/35/36, UNHRC (2017), para. 38.

⁶⁴ UNHRC, *Resolution Adopted by the Human Rights Council: 32/2. Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity*, A/HRC/RES/32/2, UNHRC (2016), preamble.

⁶⁵ UNHRC, *Report of the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity*, A/HRC/53/37, UNHRC (2023).

⁶⁶ *Ibid.*

in election campaigns and emphasizes the importance of the right for all, including LGBTQ+ individuals, to participate fully and equally in electoral processes.⁶⁷

In the 2024 report,⁶⁸ IE SOGI identifies discriminatory laws and policies in 64 states, including bans and restrictions on CSOs, media, social media activities, pride parades, education, expressions of individual identity, and foreign funding. The expert emphasizes that these laws violate fundamental human rights, such as freedom of expression, peaceful assembly, and association.⁶⁹ The rights to freedom of expression, peaceful assembly, and association are fundamental human rights codified in UDHR, ICCPR, and CEDAW⁷⁰ and are crucial for all, including LGBT persons. For example, freedom of expression in the digital sphere is of special importance for LGBT persons as digital tools provide them a way to stay connected and advocate for themselves easily.⁷¹ However, violating these rights has become “part of the routine playbook of authoritarian populists.”⁷² The expert introduces Turkey’s case, where regulatory authorities regarding digital platforms and broadcast organizations have imposed fines for discussions on LGBT issues and recommended anti-LGBT content.⁷³

Also, IE SOGI associates states’ bans on expression relating to SOGI, like pride parades, with cultural rights, which are “subject only to limitations that are provided by law and necessary for respect of the rights or reputations of others, for the protection of national security, public order, or public health and morals under strict tests of necessity and proportionality.”⁷⁴

When considering health and SOGI, IE SOGI affirms the right to health enshrined in international human rights law and the Sustainable Development Goals, which are essential and applicable for LGBTQ+ people. The expert also considers freedom of thought, conscience, religion, or belief

⁶⁷ UNGA, *Report of the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity*, A/79/151, UNGA (2024).

⁶⁸ UNHRC, *Report of the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity*, A/HRC/56/49, UNHRC (2024).

⁶⁹ *Ibid.*, para. 76.

⁷⁰ *Ibid.*, para. 12-16.

⁷¹ *Ibid.*, para. 7.

⁷² *Ibid.*, para. 76.

⁷³ *Ibid.*, para. 39.

⁷⁴ Policy Position, United Nations Special Rapporteur in the Field of Cultural Rights and the United Nations Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity. *Cultural Life and SOGI*. United Nations Human Rights Special Procedures (October 2023).

and finds that under the guise of religious belief and traditional values, state and non-state actors perpetuate violence, hate speech, and incitement, and directly and indirectly discriminate against LGBTQ+ people. IE SOGI advocates for inclusive approaches for diverse SOGI and argues that freedom of religion should be accessible to LGBTQ+ people.⁷⁵

IE SOGI is an independent authority in global governance and has continued to be approved since its establishment. Its active engagement is likely to increase the embeddedness of SOGI norms within international human rights norms. Using well-considered approaches, IE SOGI discursively connects SOGI norms with international human rights norm clusters. Over time these actions may tacitly amplify the resilience of SOGI norms. Also, the increased embeddedness may help the validity or taken-for-granted status of SOGI norms, even if their application is contested, as has been the case with other human rights norms.

Conclusion

This paper examined SOGI norms and argued that, while frequently contested, SOGI norms have gradually become embedded in international human rights norm clusters, thanks to the active engagement of multiple agents. SOGI norms regulate states by their prescriptions and proscriptions for the ideal of a world free from discrimination and violence based on SOGI. However, SOGI norms face frequent validity contestation at the international and national levels. Amidst the norm polarization, promoters and opponents constitute rival TANs. Despite such a severe environment, SOGI norms have increased their embeddedness in existing human rights norm clusters, which might make them resilient to validity contestation. While transnational CSOs, states, IOs, and the UN organizations have been working for this development, IE SOGI, established in 2016, actively engages in this endeavor by employing deliberate approaches.

Nonetheless, the strength of SOGI norms remains subject to significant uncertainty. Although progress has been remarkable, many states do not address the discrimination and violence faced by LGBTI people, and others are even complicit in such discrimination and violence. While the work of IE SOGI provides a blueprint for the advancement of SOGI norms, offering guidance to states on how to align domestic laws with international human

⁷⁵ UNHRC, *Report of the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity*, A/HRC/53/37, UNHRC (2023).

rights obligations, they do not coerce states to shape domestic legal and policy frameworks directly. Actors can reverse this progress and penetrate the human rights of LGBTI persons for political gains.

A stark example of this occurred in Georgia. Despite an IE SOGI visit in 2018 that aimed to assess and improve domestic practices, the Georgian Parliament in 2024 passed a bill restricting pride events, banning public displays of the LGBT rainbow flag, and censoring films and books with LGBTQ+ content.⁷⁶ This legislation is part of Georgia's broader democratic backsliding and reflects the persistence of illiberal governance strategies. The case of Georgia underscores the ongoing vulnerability of SOGI norms, which have often been manipulated as a part of an "authoritarian playbook." As IE SOGI notes, "[p]aradoxically, this [increase in restrictions on rights of LGBT persons] makes LGBT persons highly visible as political tools not on their own terms, but rather to advance erroneous ideas about them in service of political goals."⁷⁷

Furthermore, rights promotion sometimes brings outcomes opposite to expectations, and mainstreaming SOGI issues often results in harm to LGBTI persons.⁷⁸ For example, successful efforts elsewhere (not in Uganda) for LGBT rights promotion provoked Uganda's fear of SOGI norms and led to the Anti-Homosexuality Act.⁷⁹

While SOGI norms are gaining embeddedness in norm clusters, they are still relatively "weak."⁸⁰ The path to a world free from discrimination and violence on the grounds of SOGI remains fraught with challenges. Nevertheless, in IE SOGI's words, the task is not to retreat in the face of adversity but to "weave industriously"⁸¹ with measured knowledge and sober analysis toward a world where everyone lives with dignity regardless of their SOGI.

⁷⁶ Felix Light, "Georgian Parliament Approves Law Curbing LGBT Rights," Reuters (September 18, 2024). (<https://www.reuters.com/world/europe/georgian-parliament-approves-law-curbing-lgbt-rights-2024-09-17/> Accessed on 2025-5-12)

⁷⁷ *Report of the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity*, A/HRC/56/49, UNHRC, 2024, para.1.

⁷⁸ Queer studies have revealed the problematic nature of rights promotion.

⁷⁹ Nunez-Lucrecia and Iommi, *op.cit.*

⁸⁰ Ben-Josef Hirsch and Dixon, *op.cit.*

⁸¹ Address by Victor Madrigal-Borloz, United Nations Independent Expert Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, *Weave Industiously. Listen Deeply. Speak Kindly*. Sydney World Pride Human Rights Conference (March 2023).

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Profile

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