

RESEARCH THAT MATTERS

Same-Sex Marriage and Partnership Rights in International Law

UN Treaty Body Concluding Observations

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Executive Summary

United Nations treaty bodies—expert committees that oversee the implementation of international human rights treaties—have played a consequential role in shaping LGBTQ rights. Although their pronouncements are non-binding, domestic courts and other legal actors have cited them as persuasive authority in decisions concerning same-sex marriage and partnership rights.

This study examined 96 Concluding Observations issued between 2016 and 2024 by three treaty bodies: the Human Rights Committee (HRC), the Committee on the Elimination of Discrimination Against Women (CEDAW Committee), and the Committee on Economic, Social and Cultural Rights (CESCR). Concluding Observations are reports assessing individual states parties' implementation of specific treaties. The study analyzed these documents to elucidate the treaty bodies' evolving guidance on same-sex couple rights.

Key Findings

- In 2002, the HRC ruled in *Joslin v. New Zealand* that the International Covenant on Civil and Political Rights did not encompass a right to same-sex marriage. Post-*Joslin* Concluding Observations from both the HRC and the CEDAW Committee have shifted away from that ruling, severely undercutting its persuasiveness.
- The treaty bodies voiced support for same-sex marriage in 44 Concluding Observations. The HRC and CEDAW Committee have used especially strong language, characterizing same-sex marriage as a right encompassed within the treaties they oversee.
- The treaty bodies voiced support for same-sex civil partnerships in 35 Concluding Observations, though without clearly articulating the relationship between civil partnerships and marriage.
- Regardless of marital status, the Concluding Observations indicate that states must support same-sex couples' equality across a range of legal domains—including housing, property, inheritance, taxation, domestic violence protections, health care, social security, adoption, and assisted reproductive technologies.

Recommendations

- Decision-makers engaged in ongoing debates over same-sex couple rights should consider the Concluding Observations analyzed in this study, which reflect the treaty bodies' evolving positions on the human rights dimensions of these issues.
- If and when the HRC receives a new complaint from a same-sex couple seeking to marry, it should explicitly repudiate *Joslin*—a step consistent with post-*Joslin* Concluding Observations that would bring greater coherence to the HRC's pronouncements.
- Domestic courts should cease citing *Joslin* as persuasive authority, given that subsequent Concluding Observations have substantially undermined it.
- The HRC and CEDAW Committee should clarify how civil partnerships relate to marriage—for instance, by articulating that civil partnerships represent a transitional measure for countries not yet able to legalize same-sex marriage, with the expectation that full marriage equality follows.

1. Introduction

There has been a sea change in how the law treats same-sex couples around the world. In 2000, not a single country permitted same-sex couples to marry.¹ By 2025, 39 countries across various continents had legalized same-sex marriage.² Many countries that do not allow same-sex marriage now provide same-sex couples with other forms of legal recognition, such as civil partnerships or civil unions.³

Still, as the legal landscape of same-sex marriage and partnership rights continues to evolve, some countries have resisted reforms. Multiple courts and legislatures have, in recent years, refused to legalize same-sex marriage.⁴ Meanwhile, in places where same-sex marriage is already legal, some lawmakers have sought to repeal same-sex couples' marriage rights.⁵

When rejecting same-sex marriage, decision-makers sometimes invoke the United Nations. In the 2002 case of *Joslin v. New Zealand*, the U.N. Human Rights Committee (HRC) ruled that international human rights law—specifically the treaty known as the International Covenant on Civil and Political Rights (ICCPR)—does not obligate states to legalize same-sex marriage.⁶ *Joslin* continues to hold sway two decades later. For example, in 2022, the Privy Council cited *Joslin* for support when it ruled against legalizing same-sex marriage in Bermuda and the Cayman Islands.⁷ Similarly, Hong Kong's Court of Final Appeal cited *Joslin* when it rejected same-sex marriage in 2023.⁸

Yet a closer look at the Human Rights Committee and other U.N. treaty bodies⁹ reveals that, although *Joslin* has not been formally overruled, treaty bodies have shifted away from *Joslin*, severely undercutting *Joslin*'s persuasive authority.¹⁰ In addition to adjudicating disputes, such as *Joslin v. New Zealand*, treaty

¹ The Netherlands was the first country to legalize same-sex marriage. In 2000, the Dutch Parliament passed legislation legalizing same-sex marriage, and the law went into effect in 2001. See Kees Waaldijk, *Small Change: How the Road to Same-Sex Marriage Got Paved in the Netherlands*, in LEGAL RECOGNITION OF SAME-SEX PARTNERSHIPS: A STUDY OF NATIONAL, EUROPEAN AND INTERNATIONAL LAW 437, 453-62 (Robert Wintemute & Mads Andenæs eds., 2001) (translating Wet Openstelling Huwelijk [Act on the Opening Up of Marriage] Dec. 21, 2000, Stb. 2001, 9 (Neth.)).

² See *Global Landscape of the Freedom to Marry*, FREEDOM TO MARRY GLOBAL, <https://www.freedomtomarryglobal.org/global-overview> [<https://perma.cc/37CV-2MYN>] (last visited Nov. 24, 2025).

³ See *Legal Frameworks: Same-Sex Marriage and Civil Unions*, ILGA WORLD DATABASE, <https://database.ilga.org/same-sex-marriage-civil-unions> (last visited Nov. 24, 2025).

⁴ See, e.g., *Supriyo a.k.a. Supriya Chakraborty v. Union of India*, 2023 INSC 920 (Sup. Ct.) (India 2022); *Sham Tsz Kit v. Secretary for Justice*, [2023] 26 HKCFAR 385 (CFA) (Hong Kong 2023); *Att'y Gen. for Bermuda v. Ferguson*, [2022] UKPC 5 (Privy Council 2022); *Day v. Governor of the Cayman Islands*, [2022] UKPC 6 (Privy Council 2022); Reuters, *Czech Lawmakers Approve More Rights for Same-Sex Couples, Just Not Marriage*, REUTERS (Feb. 28, 2024), <https://www.reuters.com/world/europe/czech-lawmakers-approve-more-rights-same-sex-couples-just-not-marriage-2024-02-28/> (reporting that the Czech Republic's lower house "agreed to give more rights to same-sex couples in a civil partnership, but disappointed campaigners by stopping short of calling their union a marriage or allowing joint adoption.").

⁵ For example, lawmakers in at least nine U.S. states have considered resolutions calling for the U.S. Supreme Court to reverse its decision in *Obergefell v. Hodges*, which held that same-sex marriage bans are unconstitutional. See Jo Yurcaba & Brooke Sopelsa, *Lawmakers in 9 States Propose Measures to Undermine Same-Sex Marriage Rights*, NBC NEWS (Feb. 25, 2025), <https://www.nbcnews.com/nbc-out/out-politics-and-policy/lawmakers-9-states-propose-measures-undermine-sex-marriage-rights-rcna193743>.

⁶ *Joslin and Others v. New Zealand*, HRC, Comm. No. 902/1999, U.N. Doc. CCPR/C/75/D/902/1999 (2002), paras. 8.2-9.

⁷ *Attorney General for Bermuda v. Ferguson* [2022] UKPC 5, para. 146 (Privy Council 2022); *Day v. Governor of the Cayman Islands* [2022] UKPC 6, para. 54 (Privy Council 2022).

⁸ *Sham Tsz Kit v. Secretary for Justice*, [2023] 26 HKCFAR 385, paras. 90-91 (CFA) (Hong Kong 2023).

⁹ Every major international human rights treaty has a corresponding U.N. treaty body, which is a committee of experts that monitors the treaty's implementation. The Human Rights Committee (also known as the Civil and Political Rights Committee) is the treaty body that monitors implementation of the International Covenant on Civil and Political Rights. Further background on treaty bodies will be provided below in Section 2.

¹⁰ As will be explained in Section 2, treaty body pronouncements—including opinions on adjudicated disputes—are non-binding. While the pronouncements often carry considerable persuasive authority, a pronouncement can lose its persuasiveness over time. The HRC's rulings in individual

bodies prepare reports known as Concluding Observations. This study discusses the evolution of treaty bodies' positions on same-sex couples' rights by examining their Concluding Observations.

Each Concluding Observations report addresses a specific state party's implementation of a given human rights treaty. For example, the HRC issues Concluding Observations concerning states parties' implementation of the ICCPR. Concluding Observations reflect the treaty bodies' evolving views on human rights issues. They play an important role in shaping human rights norms,¹¹ and they can render cases like *Joslin* obsolete.¹²

Each Concluding Observations report addresses a wide range of topics related to the treaty at hand.¹³ Discussion of any specific issue—such as same-sex couple rights—is therefore brief by necessity. Due to this brevity, it can be difficult to appreciate the evolution of treaty bodies' views on specific issues when examining individual Concluding Observations in isolation. Over time, however, the treaty bodies have produced a substantial, cumulative body of Concluding Observations that address same-sex couple rights. This report offers the most comprehensive study to date of treaty bodies' treatment of same-sex couple rights in Concluding Observations.

This study compiled and analyzed a dataset of 96 Concluding Observations from 2016 to 2024. These reports came from three treaty bodies: the Human Rights Committee (HRC), the Committee on the Elimination of Discrimination Against Women (CEDAW Committee), and the Committee on Economic, Social and Cultural Rights (CESCR).

Studying these Concluding Observations revealed that treaty bodies have retreated from *Joslin v. New Zealand*. Some of the HRC's and CEDAW Committee's Concluding Observations have stated that their respective treaties encompass a right to same-sex marriage.¹⁴ While the treaty bodies have not

cases sometimes clearly depart from previous rulings. See, e.g., Allison Jernow, *The Ghost of Torkel Opsahl*, JURIST (Dec. 3, 2012), <https://www.jurist.org/commentary/2012/12/allison-jernow-russia-discrimination/> (discussing how, in *Fedotova v. Russian Federation*, the HRC rejected its own case law in *Hertzberg v. Finland*). To the best of my knowledge, however, the Human Rights Committee has not received any individual complaint that directly challenges the ruling in *Joslin*. As a result, the HRC has not had the occasion to reevaluate *Joslin* in an adjudicatory context.

¹¹ Concluding Observations provide guidance to the country that was the focus of the report; additionally, the views that treaty bodies express in Concluding Observations sometimes shape understanding of human rights beyond the country under review. See International Law Association, FINAL REPORT ON THE IMPACT OF FINDINGS OF THE UNITED NATIONS HUMAN RIGHTS TREATY MONITORING BODIES 25-27 (2024); Machiko Kanetake, *Engagement of Domestic Courts with the Findings of United Nations Human Rights Treaty Monitoring Bodies*, in THE ENGAGEMENT OF DOMESTIC COURTS WITH INTERNATIONAL LAW: COMPARATIVE PERSPECTIVES 297 (André Nollkaemper et al. eds. 2024).

¹² There is a growing literature that contends *Joslin* is obsolete, and this report builds on that literature. See Paula Gerber et al., *Marriage: A Human Right for All?*, 36 SYDNEY LAW REVIEW 643, 648 (2014); Oscar I. Roos & Anita Mackay, *The Evolutionary Interpretation of Treaties and the Right to Marry: Why Article 23(2) of the ICCPR Should Be Reinterpreted to Encompass Same-Sex Marriage*, 49 GEORGE WASHINGTON INTERNATIONAL LAW REVIEW 879, 883 (2017); Oscar I. Roos & Anita Mackay, *A Shift in the United Nations Human Rights Committee's Jurisprudence on Marriage Equality? An Analysis of Two Recent Communications from Australia*, 42 UNSW LAW JOURNAL 747, 750 (2019); Kristie A. Bluett, *Marriage Equality Under the ICCPR: How the Human Rights Committee Got It Wrong and Why It's Time to Get It Right*, 35 AMERICAN UNIVERSITY INTERNATIONAL LAW REVIEW 605, 606-07 (2020); Evan Wolfson, Jessica Tueller & Alissa Fromkin, *The Freedom to Marry in Human Rights Law Worldwide: Ending the Exclusion of Same-Sex Couples from Marriage*, 32 INDIANA INTERNATIONAL & COMPARATIVE LAW REVIEW 1, 13-14 (2022); Kelley Loper, *Equality, Dignity, and Same-Sex Marriage: Developments in Hong Kong*, 53 HONG KONG LAW JOURNAL 37, 42-44 (2023); Sarah Joseph, *Latest Case Law Trends: The International Covenant on Civil and Political Rights*, CASTAN CENTRE (Oct. 28, 2013), <https://castancentre.com/2013/10/28/latest-case-law-trends-the-international-covenant-on-civil-and-political-rights> [<https://perma.cc/KPZ7-XG9R>].

¹³ Consider, for example, the HRC's Concluding Observations on Chile from 2024. The topics covered in that report included excessive counter-terrorism measures, statute of limitations for torture claims, use of excessive force against social protesters, mistreatment of prisoners, human trafficking, reproductive rights, rights of indigenous peoples, and other human rights issues. See Appendix, HRC Concluding Observations on Chile (2024).

¹⁴ See *infra* notes 95-97 and accompanying text.

consistently adopted such a strong position in favor of same-sex marriage,¹⁵ they have demonstrably shifted away from *Joslin*, diminishing *Joslin*'s persuasiveness.

Concluding Observations from the HRC, CEDAW Committee, and CESCR also endorsed same-sex civil partnerships. These Concluding Observations were not clear about how to conceptualize the relationship between civil partnerships and marriage. Additionally, the Concluding Observations in this study's dataset suggested that—regardless of whether same-sex couples are married or not—states must support same-sex couples' equality in various legal domains, including but not limited to domestic violence and parenting rights.

The remainder of this study proceeds as follows. Section 2 provides additional background on U.N. treaty bodies and their postures on same-sex couple rights. Section 3 describes this study's research questions. Sections 4, 5, and 6 discuss research findings on same-sex marriage, civil partnerships, and issue-specific same-sex couple rights, respectively. Based on these findings, Section 7 recommends actions to be taken by the U.N. treaty bodies and by domestic legal actors. For example, it suggests that domestic courts and lawmakers should no longer cite *Joslin* as persuasive authority. It also recommends that the treaty bodies take steps to improve the coherence and clarity of their pronouncements by, for example, providing guidance on how to understand the relationship between marriage and civil partnerships.

¹⁵ The treaty bodies have sometimes used softer language to endorse same-sex marriage without suggesting that there is a right to same-sex marriage. See, e.g., Appendix, HRC Concluding Observations on Peru (2023), para. 19(c) (suggesting that Peru “consider” legalizing same-sex marriage).

2. Background on Treaty Bodies

Treaty Body Activities and Powers

Treaty bodies are U.N. committees that monitor and promote states' implementation of human rights treaties. Each major international human rights treaty has a corresponding treaty body, consisting of experts who serve independently instead of representing specific countries. The treaty bodies function entirely in an advisory capacity, with their pronouncements having no binding authority. That said, the treaty bodies' work on sexual orientation issues has had a substantial impact on domestic laws.¹⁶ Treaty bodies supervise treaty implementation through a range of activities. These activities—in order from the most generalized to most specific—include 1) the issuing of General Comments, 2) producing Concluding Observations on individual states parties, and 3) issuing non-binding opinions (also known as “views”) after adjudicating complaints.

General Comments, which the CEDAW Committee refers to as “General Recommendations,” provide high-level guidance on how to interpret and implement treaties.¹⁷ These materials are not directed at specific states. For example, the CESCR issued a General Comment to provide guidance on how to interpret the prohibition of discrimination in Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹⁸ The General Comment explained that Article 2's protection against discrimination based on “other status” should be understood to encompass protection against sexual orientation discrimination.¹⁹ While General Comments provide useful guidance, they have contained very little discussion specifically on same-sex couple rights. Accordingly, research for this study did not focus on General Comments.

Unlike General Comments, treaty bodies' Concluding Observations focus on specific states parties.²⁰ Each treaty body completes scheduled periodic reviews of every state party.²¹ During the periodic review, a treaty body considers a wide range of human rights issues that are germane to its respective treaty. The state party usually submits written materials to the treaty body and engages in dialogue with treaty body members during a live session. Other stakeholders, such as civil society organizations and national human rights institutions, may also provide input through written reports and oral briefings. Afterward, the treaty body issues a written report known as Concluding Observations. These reports praise positive developments in the state, and they express concern about ways in which the state has not satisfied its treaty obligations. The Concluding Observations also recommend actions for improving treaty implementation. Further below, this study will examine the ways in which Concluding Observations have addressed same-sex couple rights.

¹⁶ See *infra* notes 27-31 and accompanying text.

¹⁷ See Office of the High Commissioner for Human Rights (OHCHR), *General Comments*, <https://www.ohchr.org/en/treaty-bodies/general-comments> (last visited Nov. 24, 2025).

¹⁸ CESCR, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Art. 2(2))*, U.N. Doc. E/C.12/GC/20 (2009).

¹⁹ *Id.* at para. 32.

²⁰ The 96 Concluding Observations that this study examined each focused on a specific jurisdiction. The appendix to this report includes a list of these Concluding Observations.

²¹ See, e.g., OHCHR, *Reporting Procedure: Human Rights Committee*, <https://www.ohchr.org/en/treaty-bodies/ccpr/reporting-procedure> (describing procedures for the HRC's periodic review process) (last visited Nov. 24, 2025). The HRC, CEDAW Committee, and CESCR are in the process of moving to eight-year cycles for full periodic reviews with follow-up reviews. See *Conclusions of the Chairs of the Treaty Bodies at the 34th Meeting of the Chairs of the Treaty Bodies* (2022), para. 6 (advance unedited version), available at <https://www.ohchr.org/en/events/meetings/2022/34th-meeting-chairpersons-human-rights-treaty-bodies> (last visited Nov. 24, 2025).

Unlike the periodic reviews, which cover a wide range of issues, adjudication centers on a specific complaint. The HRC, CEDAW Committee, and CESCR receive complaints (also known as communications) from individuals alleging that a state has violated their rights.²² A treaty body will only accept individual complaints against a state if the state has consented to the treaty body's jurisdiction for adjudicating individual complaints.²³ For illustrative purposes, consider the United States and New Zealand. While New Zealand has consented to the HRC's jurisdiction for individual complaints, the United States has not.²⁴ The aforementioned case of *Joslin v. New Zealand* arose from a complaint that four individuals—paired in same-sex relationships—lodged against New Zealand. The two couples had sought to marry in New Zealand, but New Zealand refused to extend marriage rights to them.²⁵ After exhausting their domestic legal options for challenging their exclusion from marriage, the couples filed a complaint to the HRC, arguing that their exclusion amounted to a violation of the ICCPR. The HRC ultimately ruled against the couples in the landmark 2002 decision.²⁶

As noted earlier, the treaty bodies' General Comments, Concluding Observations, and rulings on complaints are all non-binding. Still, the treaty bodies' work on sexual orientation issues has proved influential—sometimes supporting law reform and sometimes impeding legal change. For example, when India's Supreme Court invalidated the country's ban on consensual same-sex sodomy, Justice Chandrachud referenced U.N. treaty bodies to support the principle of non-discrimination based on sexual orientation.²⁷ He stated: "In their general comments, concluding observations and views on communications, human rights treaty bodies have affirmed that States are obliged to protect individuals from discrimination on grounds of sexual orientation and/or gender identity."²⁸ Likewise, in domestic court judgments that vindicate sexual orientation rights, courts around the world—from Belize to Botswana, and from Fiji to the Philippines—have cited the HRC's decision in *Toonen v. Australia*,²⁹ which ruled against Tasmania's ban on consensual same-sex sodomy.³⁰ Courts have also invoked the HRC to

²² See OHCHR, *Complaints About Human Rights Violations*, <https://www.ohchr.org/en/treaty-bodies/complaints-about-human-rights-violations> (last visited Nov. 24, 2025). Some treaty bodies are also authorized to hear complaints that a state party brings against another state party, but interstate complaints are extremely rare. See *id.* Additionally, some treaty bodies can initiate inquiries to investigate states parties upon receiving reliable information about serious or systematic violations of their respective treaty. See *id.*

²³ For example, a state party to the ICCPR can consent to the HRC's jurisdiction for adjudicating individual complaints by acceding to the ICCPR's first Optional Protocol. For background on the ICCPR and its Optional Protocols, see OHCHR, *Background to the International Covenant on Civil and Political Rights and Optional Protocols: Human Rights Committee*, <https://www.ohchr.org/en/treaty-bodies/ccpr/background-international-covenant-civil-and-political-rights-and-optional-protocols> (last visited Mar. 12, 2026).

²⁴ New Zealand consented to jurisdiction by acceding to the ICCPR's first Optional Protocol in 1989. See OHCHR, "Acceptance of Individual Complaints Procedures for New Zealand," *United Nations Human Rights Treaty Bodies: UN Treaty Body Database*, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=NZ&Lang=EN (last visited Mar. 12, 2026).

²⁵ *Joslin*, HRC, Comm. No. 902/1999, at paras. 2.3-2.4.

²⁶ *Id.* at paras. 4.3-4.5.

²⁷ *Navej Singh Johar v. Union of India*, (2018) 10 SCC 1, para. 102 (Sup. Ct.) (India 2018) (Chandrachud, J.).

²⁸ *Id.* Justice Chandrachud also noted that treaty bodies have affirmed that sexual orientation and gender identity are factors that "do not limit an individual's entitlement to enjoy the full range of human rights to which they are entitled." *Id.* In the Hong Kong case of *Sham Tsz Kit*, Chief Justice Cheung's dissenting opinion mentioned the U.N. Human Rights Committee's supposed lack of relevant General Comments or Concluding Observations to support his rejection of the appellant's claim for civil partnerships. *Sham Tsz Kit v. Secretary for Justice*, [2023] 26 HKCFAR 385, paras. 30-39 (CFA) (Hong Kong 2023) (Cheung, C.J., dissenting in part).

²⁹ *Toonen v. Australia*, HRC, Comm. No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (1994).

³⁰ *Orozco v. Att'y Gen.*, [2020] 2 LRC 501, paras. 116-117, 241, 258 (Ct. App.) (Belize 2019); *Motshidiemang v. Att'y Gen.*, [2019] 4 LRC 507, para. 161 (High Ct.) (Bots. 2019), affirmed by *Motshidiemang v. Att'y Gen.*, [2022] 1 LRC 665 (Ct. App.) (Bots. 2021); *Nadan v. State*, [2006] 3 LRC 166, 180 (High Ct.) (Fiji 2005); *Ang Ladlad LGBT Party (Ladlad) v. Commission of Elections (COMELEC)*, G.R. No. 190582, nn. 42, 48 (Sup. Ct.) (Phil. 2010).

reject claims brought by same-sex couples—for example, when the Privy Council and Hong Kong’s highest court cited *Joslin* in their cases on same-sex marriage.³¹

Courts and commentators have explained that pronouncements by treaty bodies are persuasive because of the treaty bodies’ mandate and stature.³² The treaty bodies command respect because they received their mandates from the very treaties of which they monitor implementation. The treaty bodies are also respected due to their impartiality and the reputations of their experts.³³

Still, domestic decision-makers sometimes reject, or are indifferent toward, guidance from treaty bodies.³⁴ For example, they might eschew a treaty body’s guidance if the treaty body has provided guidance that is incoherent.³⁵ While treaty bodies do not adhere strictly to a system of *stare decisis*, they do cite their own pronouncements as non-binding precedent, contributing to coherence.³⁶ Experts have argued that treaty bodies lose their persuasiveness when their pronouncements are marred by inconsistencies.³⁷ This report will later examine ways in which treaty bodies’ guidance on same-sex couple rights has become inconsistent.

HRC Jurisprudence

The HRC’s jurisprudence provides a starting point for understanding the treaty bodies’ positions on same-sex couple rights. Among the treaty bodies’ various activities, the HRC’s adjudication of complaints is the area in which there has been the most elaboration on same-sex couple rights.³⁸ Out of the treaty bodies included in this study, only the HRC has adjudicated cases concerning same-sex couple rights.³⁹ This section will provide an overview of that jurisprudence.

³¹ See *supra* notes 6-8 and accompanying text.

³² See International Law Association, *supra* note 11, at 3-4; Kanetake, *supra* note 11, 305-08.

³³ See Kanetake, *supra* note 11, 307-08.

³⁴ See *id.* at 299-301.

³⁵ See Hinako Takata & Shotaro Hamamoto, *Human Rights, Treaty Bodies, General Comments/Recommendations*, para. 26, in MAX PLANCK ENCYCLOPEDIAS OF INTERNATIONAL LAW (2023) (discussing the existence of incoherence in treaty body pronouncements and the importance of consistency). For a discussion on other reasons states do not follow treaty body recommendations, consider Rosanne van Alebeek & André Nollkaemper, *The Legal Status of Decisions by Human Rights Treaty Bodies in National Law*, in UN HUMAN RIGHTS TREATY BODIES: LAW AND LEGITIMACY 356 (Hellen Keller & Geir Ulfstein eds. 2012).

³⁶ See Takata & Hamamoto, *supra* note 35, at para. 26 (discussing treaty bodies citing their own work as a means of furthering consistency).

³⁷ *E.g.*, Kerstin Mechlem, *Treaty Bodies and the Interpretation of Human Rights*, 42 VAND. J. TRANSNAT’L L. 905 (2009). Inconsistency is sometimes justified by the fact that the treaty bodies have adopted an evolutive approach to treaty interpretation, meaning that interpretations can change as circumstances change and new insights emerge. See Gerber et al., *supra* note 12, at 648 (discussing examples of cases in which the HRC approached the ICCPR as a “living instrument”); Birgit Schlütter, *Aspects of Human Rights Interpretation by the UN Treaty Bodies*, in UN HUMAN RIGHTS TREATY BODIES: LAW AND LEGITIMACY 261, 296 (Hellen Keller & Geir Ulfstein eds. 2012).

³⁸ This study focuses on same-sex couples’ rights to have their relationship recognized for legal rights and benefits. It is worth noting the treaty bodies have addressed many other matters concerning sexual orientation beyond same-sex couples’ rights. For example, as of 2021, treaty bodies had adjudicated 43 cases concerning sexual orientation or gender identity rights. These cases addressed a range of topics, including asylum; freedom of expression, association, and assembly; protections against violence and hate speech; criminalization of same-sex sexual activity; and legal gender recognition. See Andreas Ziegler & Raphaël Bagi, *The Role of International Organisations and Courts, as well as International NGOs*, in OXFORD HANDBOOK OF LGBTI LAW (Andreas Ziegler et al. eds. 2024), <https://doi.org/10.1093/oxfordhb/9780198847793.001.0001>. Concluding Observations have likewise addressed a range of LGBTQ rights. See *Treaty Bodies Annual Reports*, ILGA WORLD, <https://ilga.org/treaty-bodies-annual-reports/> (linking to reports on treaty bodies’ pronouncements regarding sexual orientation and gender identity in 2022 and in 2020-2021) (last visited Nov. 24, 2025).

³⁹ The HRC has also decided cases concerning sexual orientation that do not concern the legal recognition of same-sex couples. *E.g.*, Toonen v. Australia, HRC, Comm. No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (1994) (concerning the criminalization of same-sex sodomy); Fedotova v. Russian Federation, HRC, Comm. No. 1932/2010, U.N. Doc. CCPR/C/106/D/1932/2010 (2012) (concerning the restriction of freedom of expression related

Chief among the HRC's cases on same-sex couples is *Joslin v. New Zealand*, which held in 2002 that the ICCPR does not require states parties to legalize same-sex marriage.⁴⁰ Article 23 of the ICCPR explicitly protects a right to marry, but *Joslin* held that Article 23 does not encompass a right to marry someone of the same sex.⁴¹ Because Article 23(2) refers to the "right of men and women"⁴² to marry, instead of using gender-neutral language such as the right of "all persons" to marry, the HRC opined that states parties are obligated to "recognize as marriage only the union between a man and a woman wishing to marry."⁴³ *Joslin* also stated that, because Article 23 does not encompass same-sex marriage, excluding same-sex couples from marriage could not amount to a violation of any other rights in the ICCPR, including the right to non-discrimination in Article 26.⁴⁴

In the concurring opinion in *Joslin*, two Committee members noted that, if a state does not allow same-sex couples to marry, the state might be in violation of Article 26 (prohibition of discrimination) if it does not provide same-sex couples with another avenue for obtaining certain rights and benefits that it gives to married couples.⁴⁵ In *Joslin*, however, the complainants framed their case as being about their lack of access to marriage itself, as opposed to the rights and benefits that flow from marriage.⁴⁶ Accordingly, the concurring opinion stopped short of finding a breach of Article 26.

Subsequently, in two cases concerning pensions, the HRC held that unmarried same-sex couples must have the same rights as unmarried different-sex couples. In the 2003 case of *Young v. Australia*, the HRC affirmed that Article 26 of the ICCPR prohibits sexual orientation discrimination,⁴⁷ and it held that Australia violated Article 26 when it treated unmarried different-sex couples and same-sex couples differently for the purposes of government pensions.⁴⁸ The HRC reaffirmed this position in the 2007 case of *X v. Colombia*, again holding that unmarried same-sex couples and unmarried different-sex couples shall not be treated differently with respect to pensions.⁴⁹

In 2017, the HRC further recognized same-sex couple rights in a pair of cases concerning Australia. When the HRC decided these two cases, Australia had not yet legalized same-sex marriage.⁵⁰ *G. v. Australia* concerned Australia prohibiting a "male-to-female transgender" applicant from changing the gender

to homosexuality). The CEDAW Committee decided a case concerning criminalization of sex between women. *Flamer-Caldera v. Sri Lanka*, CEDAW Comm., Comm. No. 134/2018, U.N. Doc. CEDAW/C/81/D/134/2018 (2022).

⁴⁰ *Joslin and Others v. New Zealand*, HRC, Comm. No. 902/1999, U.N. Doc. CCPR/C/75/D/902/1999 (2002).

⁴¹ *Id.* at paras. 8.3, 9.

⁴² Article 23(2) of the ICCPR states: "The right of men and women of marriageable age to marry and to found a family shall be recognized."

⁴³ The Committee noted that other parts of the ICCPR use gender-neutral language, referring to the rights of "every human being," "everyone," and "all persons." *Joslin*, Comm. No. 902/1999, at para. 8.2.

⁴⁴ *Id.* at para. 8.3. The HRC seemed to have implicitly invoked the *lex specialis* maxim, which dictates that "whenever two or more norms deal with the same subject matter, priority should be given to the norm that is more specific." See Bluett, *supra* note 12, at 620 (quoting International Law Commission, *Report on the Work of Its Fifty-Eighth Session*, U.N. Doc. A/61/10, at 408 (2006)). For criticism that the HRC misapplied *lex specialis*, see *id.* at 620-21.

⁴⁵ *Joslin*, Comm. No. 902/1999, at concurring opinion of Rajsoomer Lallah & Martin Scheinin, p. 15 (noting that, if a state party "does not allow for same-sex marriage or other type of recognized same-sex partnership with consequences similar to or identical with those of marriage . . . a denial of certain rights or benefits to same-sex couples that are available to married couples may amount to discrimination prohibited under article 26.").

⁴⁶ *Id.*

⁴⁷ *Young v. Australia*, HRC, Comm. No. 941/2000, U.N. Doc. CCPR/C/78/D/941/2000 (2003), para. 10.4.

⁴⁸ *Id.* at paras. 10.4-11.

⁴⁹ *X v. Colombia*, HRC, Comm. No. 1361/2005, CCPR/C/89/D/1361/2005 (2007), paras. 7.2, 8.

⁵⁰ In Australia, same-sex marriage became legal through enactment of the Marriage Amendment (Definition and Religious Freedoms) Act 2017, which went into effect in December 2017.

marker on the applicant's birth certificate to female because the applicant was married to a woman, and the marriage would become a marriage between two women.⁵¹ The HRC held that the prohibition violated Article 26 (non-discrimination) as well as Article 17 (right to privacy and family).⁵² In *C v. Australia*, the HRC held that an Australian law violated Article 26 because it prevented a woman, who had married another woman in Canada, from having her same-sex marriage recognized in Australia for the purpose of obtaining a divorce.⁵³

Most recently, in 2023, the HRC decided *V.W.G. and E.H v. Albania*, which concerned a binational same-sex couple who had married in the Netherlands and then returned to Albania.⁵⁴ The couple argued that Albania violated the ICCPR by failing to offer any form of recognition for their relationship that would afford the same legal effects as marriage, such as a civil partnership.⁵⁵ Their claim was about the right to be recognized through an alternative framework, such as civil partnerships, as opposed to the right of same-sex couples to marriage. The HRC decided the case on procedural grounds, holding that the case was inadmissible because the complainants had not satisfied the requirement of exhausting potential domestic remedies in Albania.⁵⁶ In a dissenting opinion, however, several members of the HRC stated that they believed the case was admissible, and they would have found Albania in violation of the ICCPR for failing to offer any recognition framework for same-sex partnerships.⁵⁷

The HRC's jurisprudence provides guidance for understanding same-sex couple rights, but it also leaves many questions unanswered. Treaty bodies' Concluding Observations serve as a helpful counterpart and complement to the HRC's jurisprudence, further illuminating same-sex couples' rights under international human rights law. The following sections of this study will examine how Concluding Observations help to answer questions prompted by the HRC's jurisprudence on same-sex couples' rights.

⁵¹ *C v. Australia*, HRC, Comm. No. 2172/2012, U.N. Doc. CCPR/C/119/D/2172/2012 (2017), paras. 2.1, 2.6, 3.3.

⁵² *Id.* at para. 8.

⁵³ *C v. Australia*, HRC, Comm. No. 2216/2012, U.N. Doc. CCPR/C/119/D/2216/2012 (2017), paras. 8.2-9.

⁵⁴ *V.W.G. and E.H. v. Albania*, HRC, Comm. No. 3031/2017, U.N. Doc. CCPR/C/138/D/3031/2017 (2023).

⁵⁵ *Id.* at paras. 3.1-3.3.

⁵⁶ *Id.* at paras. 8.1-9.

⁵⁷ *Id.* at dissenting opinion of Laurence R. Helfer et al., at para. 3 (stating that, upon finding the complaint admissible, the dissenting committee members would find Albania to have violated the complainants' rights to family life, privacy, and non-discrimination).

3. Research Questions

Compared with research on the HRC's jurisprudence concerning same-sex couples, there has been very little scholarly research on Concluding Observations pertaining to same-sex couples. This study helps to fill that gap. More specifically, this study examines three questions through an analysis of Concluding Observations. The first question is whether *Joslin v. New Zealand* is still persuasive. The HRC has noted that the ICCPR is a living document; as such, interpretations of the ICCPR can change over time as new insights emerge.⁵⁸ Some scholars have argued that, with the passing of time, *Joslin* has lost its persuasiveness.⁵⁹ This study's analysis sought to evaluate whether such contentions are supported by treaty bodies' Concluding Observations.

Some scholars have suggested that the reasoning of *Joslin* was flawed even at the outset. For example, commentators have suggested the HRC erred when it interpreted Article 23 of the ICCPR as encompassing only a right to different-sex marriage because of that provision's use of the gendered phrase "right of men and women."⁶⁰ According to these commentators, the ICCPR's drafters used gendered language to emphasize that women and men are guaranteed equal rights related to marriage—including equal choice to marry and equal dignity in marriage. In this view, the mention of "men and women" reflects a commitment to sex equality and should not be construed to exclude same-sex couples from marriage. Commentators have also argued that the HRC failed to properly account for the ICCPR's overarching object and purpose, and the ICCPR's object and purpose of promoting equality weighs in favor of interpreting Article 23 to encompass same-sex marriage.⁶¹ Relatedly, commentators have contended that the HRC erred in not finding a violation of the right to non-discrimination in Article 26.⁶²

In addition to arguing that *Joslin* was flawed at the outset, commentators have argued that *Joslin* has lost persuasiveness over time due to subsequent developments. For example, Oscar Roos and Anita Mackay have explained that, while the HRC did not recognize a *per se* right to same-sex marriage in the 2017 cases of *G v. Australia* and *C v. Australia*, these cases "undermine the HRC's reasoning in *Joslin v. New Zealand* and its continuing authority."⁶³ These two cases "recognized the actual and juridical significance of same-sex marriage, and equated same- and opposite-sex marriage."⁶⁴ The HRC has cast additional doubt on *Joslin* because, as Kristie Bluett noted, the HRC has issued Concluding Observations explicitly urging countries to legalize same-sex marriage.⁶⁵ This report will build on Bluett's work by drawing on a new dataset of Concluding Observations to examine whether, and to what extent, Concluding Observations render *Joslin* unpersuasive.

This study's second research question concerns alternatives to marriage. Do same-sex couples have a right to be recognized through an alternative framework, such as civil partnerships? Recall that, in

⁵⁸ See Gerber et al., *supra* note 12, at 648 (discussing examples of cases in which the HRC approached the ICCPR as a "living instrument").

⁵⁹ See *supra* note 12.

⁶⁰ E.g., Gerber et al., *supra* note 12, at 646-48; Roos & Mackay, *The Evolutionary Interpretation of Treaties and the Right to Marry*, *supra* note 12, at 900-01.

⁶¹ E.g., Gerber et al., *supra* note 12, at 649-50; Roos & Mackay, *A Shift in the United Nations Human Rights Committee's Jurisprudence on Marriage Equality?*, *supra* note 12, at 771.

⁶² E.g., Bluett, *supra* note 12, at 641.

⁶³ Roos & Mackay, *A Shift in the United Nations Human Rights Committee's Jurisprudence on Marriage Equality?*, *supra* note 12, at 750.

⁶⁴ *Id.* at 766.

⁶⁵ Bluett, *supra* note 12, at 665-68.

V.W.G. & E.H. v. Albania, the HRC sidestepped ruling on the merits of civil partnerships.⁶⁶ The dissenting committee members, however, stated that they would have found that the ICCPR obligates states parties to provide same-sex couples with a framework for legal recognition.⁶⁷ The dissenting opinion cited three HRC Concluding Observations to support its point.⁶⁸ This report will provide a deeper analysis of whether, and to what extent, treaty bodies' Concluding Observations support the notion that same-sex couples have a right to legal recognition through civil partnerships or other alternatives to marriage.

The third question, prompted by the HRC's jurisprudence, concerns issue-specific legal domains. In *Young v. Australia* and *X v. Colombia*, the HRC recognized the right of unmarried same-sex couples to equal treatment with respect to pension benefits.⁶⁹ Beyond pension benefits, what are other specific issue areas in which same-sex couples have a right to equal treatment?

This study sought to investigate the three aforementioned questions by examining Concluding Observations from the HRC and other treaty bodies. The study examined Concluding Observations from the HRC because it was the HRC's jurisprudence that prompted the research questions. Research on the HRC was supplemented by examining Concluding Observations from two other treaty bodies. In preliminary research, the CEDAW Committee and CESCR stood out for having issued a considerable number of Concluding Observations that mentioned same-sex couple rights. Accordingly, this study focused on these two treaty bodies in addition to the HRC. The study's research team compiled a dataset of 96 Concluding Observations from 2016 to 2024 in which these treaty bodies addressed same-sex couple rights.⁷⁰ The following sections will discuss findings from this dataset.

⁶⁶ See *supra* notes 54-56 and accompanying text.

⁶⁷ *V.W.G. and E.H. v. Albania*, HRC, Comm. No. 3031/2017, U.N. Doc. CCPR/C/138/D/3031/2017 (2023), dissenting opinion of Laurence R. Helfer et al.

⁶⁸ *Id.*, at para. 7, nn. 4-5.

⁶⁹ See *supra* notes 47-49 and accompanying text.

⁷⁰ For the purposes of this study, decriminalization of same-sex sexual activity was not included in the scope of same-sex couple rights. Instead, this study focuses on same-sex couples' rights to have their relationships recognized for marriage, civil partnerships, or specific benefits. This study's appendix lists the 96 Concluding Observations and elaborates on this study's methodology.

4. Same-Sex Marriage

Findings

From 2016 to 2024, the three treaty bodies recommended legalizing same-sex marriage in 17 Concluding Observations.⁷¹ The HRC recommended same-sex marriage 7 times,⁷² and the CEDAW Committee did so 9 times.⁷³ The CESCR recommended same-sex marriage once, suggesting to Ecuador that it implement the Ecuadorean Supreme Court's judgment that directed the state to give same-sex couples equal marriage rights.⁷⁴ The fact that the CESCR has not recommended same-sex marriage as often as the two other treaty bodies might be explained by the fact that the ICCPR and CEDAW both have explicit provisions protecting rights to marry, and both treaties encompass civil rights.⁷⁵ In contrast, the ICESCR does not explicitly protect the right to get married,⁷⁶ and it focuses on social, economic, and cultural rights instead of civil rights. This difference in background conditions could help explain why the CESCR has not focused on access to marriage as a civil right.

While the HRC and CEDAW Committee each issued numerous Concluding Observations recommending same-sex marriage, the vast majority of these two treaty bodies' Concluding Observations from the period of study (2016-2024) did not mention same-sex marriage at all. This could be explained by the fact that, even though each Concluding Observations report discusses a range of issues, each report only addresses the issues that are most pertinent to the state party that was reviewed. Treaty bodies tend to prioritize areas of controversy that are brought to their attention by the state or by civil society organizations.⁷⁷ When treaty bodies did discuss same-sex marriage in their Concluding Observations, it

⁷¹ See *infra* notes 72-74.

⁷² In five instances, the HRC recommended same-sex marriage without recommending civil partnerships. See Appendix, HRC Concluding Observations on Australia (2017), para. 30; Bulgaria (2018), para. 12(a); Hungary (2018), para. 20(a); Japan (2022), para. 11(b); Peru (2023), 19(c). In two Concluding Observations, the HRC recommended legalizing same-sex marriage or civil partnerships. See Appendix Concluding Observations on Mauritius (2017), para. 10; Republic of Korea (2023), para. 14(c). With respect to the Republic of Korea, the HRC did not explicitly refer to "same-sex marriage;" however, there was a bill in South Korea to amend the country's Civil Code to legalize same-sex marriage, and the HRC's Concluding Observations recommended "amending the Civil Code or introducing civil union for such [same-sex] couples." See Appendix, HRC Concluding Observations on Republic of Korea (2023), para. 14(c); see also Rainbow Action Against Sexual Minority Discrimination et al., *Joint Civil Society Submission to the Human Rights Committee for State Compliance with the International Covenant on Civil and Political Rights* (Sept. 2023), para. 42 ("There is currently a bill in the 21st National Assembly to amend the Civil Code to allow same-sex marriage.").

⁷³ In five instances, the CEDAW Committee recommended same-sex marriage without recommending civil partnerships. See Appendix, CEDAW Committee Concluding Observations on Chile (2018), para. 51(b); Colombia (2019), para. 44(b); Bolivia (2022), para. 40(a); Honduras (2022), para. 49(a); Panama (2022), para. 50(b). In three instances, the CEDAW Committee recommended legalizing same-sex marriage *and* civil partnerships. See Appendix, CEDAW Committee Concluding Observations on Venezuela (2023), para. 54; Japan (2024), para. 52(d); Albania (2023). In one instance, the CEDAW Committee recommended same-sex marriage *or* civil partnerships. See Appendix, CEDAW Committee Concluding Observations on Monaco (2017), para. 46(b).

⁷⁴ See Appendix, CESCR Concluding Observations on Ecuador (2019), para. 26.

⁷⁵ The ICCPR protects the right to marry in Article 23(2) ("The right of men and women of marriageable age to marry and to found a family shall be recognized."). It is clear from the ICCPR's name and contents that the ICCPR encompasses civil rights. CEDAW's Introduction states that the treaty encompasses civil rights, and CEDAW protects marriage rights in Articles 16(a)-(b) (protecting "on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent").

⁷⁶ The ICESCR's only reference to marriage is in Article 10, which states that "Marriage must be entered into with the free consent of the intending spouses."

⁷⁷ See Michael O'Flaherty, *The Concluding Observations of United Nations Human Rights Treaty Bodies*, 6 HUMAN RIGHTS LAW REVIEW 27, 31-32 (2006); Gemma MacArthur, *Securing Sexual Orientation and Gender Identity Rights within the United Nations Framework and System: Past, Present and Future*, 15 EQUAL RIGHTS REVIEW 25, 39 (2015).

was often because there was a precipitating event—such as the introduction of relevant legislation in the particular state or a court judgment concerning same-sex couple rights.⁷⁸

The HRC and CEDAW Committee have explicitly recommended legalizing same-sex marriage in a range of Concluding Observations. An example was when the HRC told Japan that it should “[e]nsure that same-sex couples can enjoy all rights enshrined in the Covenant, including access to public housing *and same-sex marriage*.”⁷⁹ Likewise, the CEDAW Committee stated that Bolivia should “[r]eview existing laws to ensure that lesbian, bisexual, transgender and intersex women have equal access to the rights under the Convention, *including equal rights in marriage*.”⁸⁰ The treaty bodies’ recommendations were sometimes more specific, responding to particular current events. For example, in 2018, the CEDAW Committee recommended that Chile specifically adopt a same-sex marriage bill that was under consideration in Chile’s legislature.⁸¹ Other examples of specificity include the CEDAW Committee and the CESCR recommending, respectively, that Colombia and Ecuador implement constitutional court judgments that directed their legislatures to legalize same-sex marriage.⁸² On one occasion, the HRC used softer language, urging the state party to “consider”—rather than “ensure”—legalizing same-sex marriage.⁸³

In addition to the 17 times when a treaty body directly recommended legalizing same-sex marriage, treaty bodies sometimes endorsed same-sex marriage without directly calling for legalization. For example, on 5 occasions, the HRC or CEDAW Committee expressed concern about same-sex couples’ lack of access to marriage, but they did not directly call for legalizing same-sex marriage.⁸⁴ On 1 other occasion, the HRC called on a state party to repeal a criminal ban on same-sex weddings as opposed to calling for fully legalizing same-sex marriage.⁸⁵

The HRC and CEDAW Committee also endorsed same-sex marriage by expressing praise for, or otherwise noting positive developments related to, the legalization of same-sex marriage. On 21 occasions, the HRC or CEDAW Committee commended a state party in such fashion.⁸⁶ For example, on numerous occasions,

⁷⁸ See *infra* notes 81-82, 86-90 and accompanying text.

⁷⁹ See Appendix, HRC Concluding Observations on Japan (2022), para. 11(b) (emphasis added).

⁸⁰ See Appendix, CEDAW Committee Concluding Observations on Bolivia (2022), para. 40(a) (emphasis added).

⁸¹ See Appendix, CEDAW Committee Concluding Observations on Chile (2018), para. 51(b).

⁸² See Appendix, CEDAW Committee Concluding Observations on Colombia (2019), para. 44(b); CESCR Concluding Observations on Ecuador (2019), para. 26.

⁸³ See Appendix, HRC Concluding Observations on Peru (2023), para. 19(c).

⁸⁴ See Appendix, HRC Concluding Observations on Liberia (2018), para. 18; Lithuania (2018), para. 9; Panama (2023), para. 13; India (2024), para. 17; CEDAW Committee Concluding Observations on Nicaragua (2024), para. 55(b). These expressions of concern ranged in their scope and intensity. In some instances, the treaty body expressed concern that same-sex marriage was not legal. *E.g.*, Appendix, HRC Concluding Observations on India (2024), para. 17. In other instances, concern was about the lack of legal recognition for foreign same-sex marriages. *E.g.*, Appendix, HRC Concluding Observations on Panama (2023), para. 13. In addition to these 5 instances in which the HRC or CEDAW Committee expressed concern, the CESCR has expressed concern that, “in the absence of the recognition of same-sex marriage,” certain states did not provide same-sex couples with an alternative form of legal recognition such as civil partnerships. See Appendix, CESCR Concluding Observations on Slovakia (2019), para. 14; Czechia (2022), para. 12; Lithuania (2023), para. 12.

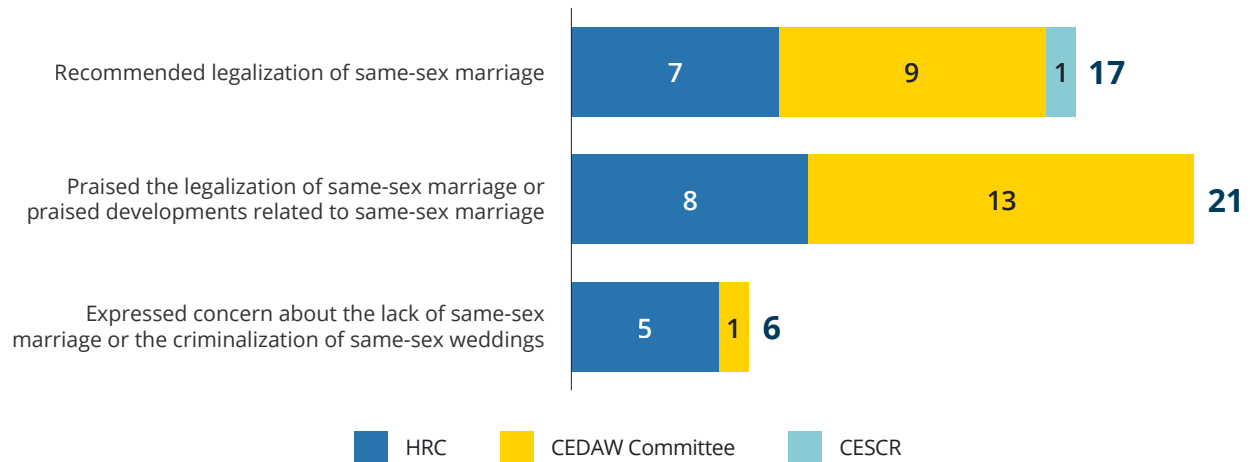
⁸⁵ Appendix, HRC Concluding Observations on Nigeria (2019), para. 19.

⁸⁶ See Appendix, HRC Concluding Observations on Colombia (2016), para. 16; Denmark (2016), para. 3(c); Czechia (2019), para. 11; Vietnam (2019), para. 15; Ireland (2023), para. 3(g); United States of America (2023), para. 3(a); Chile (2024), para. 19(c); Greece (2024), para. 3(a); CEDAW Committee Concluding Observations on Argentina (2016), para. 4(i); France (2016), para. 6; Uruguay (2016), para. 5; Luxembourg (2017), para. 51; Australia (2018), para. 4(a); New Zealand (2018), para. 5(c); Peru (2022), para. 49; Switzerland (2022), para. 4(a); Costa Rica (2023), para. 4(e); Slovenia (2023), para. 51; Chile (2024), para. 55; Estonia (2024), para. 43; Cuba (2024), para. 55.

the HRC and CEDAW Committee said they “welcome[d]” the adoption of same-sex marriage.⁸⁷ In other instances, the praise was for steps towards same-sex marriage, even though same-sex marriage had not been fully realized. For example, in 2016, the HRC praised the Colombian Constitutional Court ruling in favor of same-sex marriage even though the judgment had yet to be implemented;⁸⁸ in 2019, the HRC noted that Czechia’s consideration of a same-sex marriage bill was a positive development;⁸⁹ and in 2019, the HRC praised Vietnam for repealing a prohibition on same-sex weddings, although the repeal did not go so far as to legalize same-sex marriage.⁹⁰

In sum, the research team found a total of 44 Concluding Observations that endorsed same-sex marriage one way or another. In these Concluding Observations, the treaty bodies either directly recommended legalizing same-sex marriage or they endorsed same-sex marriage through their expressions of concern or praise related to same-sex marriage.

Figure 1. Endorsement of Same-Sex Marriage: 44 Concluding Observations (2016-2024)



Discussion

The HRC and CEDAW Committee recommended same-sex marriage on numerous occasions—they were not isolated events. While the HRC has not technically overruled *Joslin*, it has issued Concluding Observations that severely undercut *Joslin*’s persuasive authority. The CEDAW Committee’s Concluding Observations also cast doubt on *Joslin*. Although the CEDAW Committee monitors implementation of CEDAW, whereas the HRC oversees implementation of the ICCPR, the two treaties are substantially

⁸⁷ E.g., Appendix, HRC Concluding Observations on Chile (2024), para. 19(c); CEDAW Committee Concluding Observations on Australia (2018), para. 4(a).

⁸⁸ Appendix, HRC Concluding Observations on Colombia (2016), para. 16.

⁸⁹ Appendix, HRC Concluding Observations on Czechia (2019), para. 11.

⁹⁰ Appendix, HRC Concluding Observations on Vietnam (2019), para. 15.

similar,⁹¹ and the two treaty bodies have drawn inspiration from each other in the past.⁹² In light of this synergy between the two committees, the CEDAW Committee's support of same-sex marriage further undermines *Joslin*.

The findings in Section 4 prompt the questions: Are the treaty bodies' recommendations of same-sex marriage reconcilable with *Joslin's* ruling that states are not obligated to legalize same-sex marriage? Is it plausible that the treaty bodies recommended same-sex marriage as a best practice that goes above and beyond states' human rights obligations? Concluding Observations sometimes do indeed make recommendations that call on states to go beyond their obligations. For example, the HRC has recommended that states accept the HRC's jurisdiction for adjudicating individual complaints; however, states are not obligated to do so.⁹³ Other times, however, Concluding Observations convey that the treaty body's recommendations reflect the committee's view that there has been a breach of treaty obligations.⁹⁴

A close reading of Concluding Observations suggests that treaty bodies' recommendations of legalizing same-sex marriage are difficult to square with *Joslin* for at least two reasons. First, several Concluding Observations use language suggesting that same-sex marriage is an obligation, not a discretionary best practice that exceeds obligations. For example, in its Concluding Observations to Japan, the HRC referred to same-sex marriage as one of the "rights enshrined in the Covenant."⁹⁵ This language echoed earlier HRC Concluding Observations on Australia that referred to same-sex marriage as a matter of "rights under the Covenant."⁹⁶ Likewise, in Concluding Observations to Bolivia, the CEDAW Committee stated that same-sex couples' "equal access to the rights under the Convention ... include[es] equal rights in marriage."⁹⁷ Statements such as these suggest that legalizing same-sex marriage is necessitated by treaty obligations as opposed to being an optional best practice.

However, the HRC and CEDAW Committee's Concluding Observations do not always use language that suggests there is an obligation to legalize same-sex marriage. For example, the HRC used softer language in its Concluding Observations on Peru. Instead of stating that same-sex marriage is a right enshrined in the ICCPR, it simply recommended that Peru "consider" legalizing same-sex marriage.⁹⁸

⁹¹ Both treaties explicitly protect marriage rights. See ICCPR, Art. 23(2); CEDAW Arts. 16(a)-(c). Additionally, the HRC and CEDAW Committee have both interpreted their respective treaties as prohibiting sexual orientation discrimination. See, e.g., *Young v. Australia*, HRC, Comm. No. 941/2000, U.N. Doc. CCPR/C/78/D/941/2000 (2003), paras. 10.4-11 (interpreting Article 26 of the ICCPR as prohibiting sexual orientation discrimination); CEDAW Comm., *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. Doc. CEDAW/C/GC/28 (2010), para. 18 (interpreting Article 2 of CEDAW as requiring elimination of intersectional discrimination based on sex and sexual orientation).

⁹² See, e.g., *Mellet v. Ireland*, HRC, Comm. No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013 (2016), paras. 11, 15 (discussing CEDAW Committee pronouncements as persuasive authority influencing the HRC's views on sex discrimination in reproductive health services); *Flamer-Caldera v. Sri Lanka*, CEDAW Comm., Comm. No. 134/2018, U.N. Doc. CEDAW/C/81/D/134/2018 (2022), para. 9.2 n.22 (citing HRC Concluding Observations to underscore the CEDAW Committee's concern about Sri Lanka's criminalization of same-sex sexual activity between women).

⁹³ See O'Flaherty, *supra* note 77, at 42.

⁹⁴ See *id.* at 35-36.

⁹⁵ Appendix, HRC Concluding Observations on Japan (2022), para. 11(b) (calling on Japan to "[e]nsure that same-sex couples can enjoy all rights enshrined in the Covenant, including access to public housing and same-sex marriage.").

⁹⁶ Appendix, HRC Concluding Observations on Australia (2017), paras. 29-30 (expressing concern that Australia used a public opinion poll on same-sex marriage "to facilitate upholding rights under the Covenant," and calling on Australia to enact marriage equality irrespective of the poll results).

⁹⁷ Appendix, CEDAW Committee Concluding Observations on Bolivia (2022), para. 40(a).

⁹⁸ Appendix, HRC Concluding Observations on Peru (2023), para. 19(c). The HRC's Concluding Observations have sometimes stated that the state party should eliminate sexual orientation-based discrimination with respect to marriage without explicitly referring to same-sex marriage as a right. See Appendix, HRC Concluding Observations on Bulgaria (2018), para. 12(a); Hungary (2018), para. 20(a).

Such inconsistency notwithstanding, the treaty bodies have undermined *Joslin* by describing same-sex marriage as a right in several Concluding Observations.⁹⁹

Second, the Concluding Observations undermine *Joslin* because of the reasoning in the Concluding Observations. *Joslin* had stated that barring same-sex couples from marriage did not violate the ICCPR's prohibitions against discrimination.¹⁰⁰ The HRC's Concluding Observations now contradict that conclusion. Several of the HRC's Concluding Observations have framed the exclusion of same-sex couples from marriage as impermissible discrimination. For example, in its Concluding Observations on Bulgaria and Hungary, the HRC called for eliminating discrimination on the basis of sexual orientation, and it included discrimination with respect to marriage in those calls to action.¹⁰¹ In the same vein, the HRC stated in its Concluding Observations to Australia that barring same-sex couples from marriage amounts to discriminatory treatment.¹⁰² While the HRC has not always explicitly referred to anti-discrimination when it recommends same-sex marriage, the fact that some Concluding Observations do explicitly adopt an anti-discrimination rationale undercuts *Joslin's* persuasiveness.

⁹⁹ See *supra* notes 95-97 and accompanying text.

¹⁰⁰ *Joslin and Others v. New Zealand*, HRC, Comm. No. 902/1999, U.N. Doc. CCPR/C/75/D/902/1999 (2002), para. 8.3.

¹⁰¹ Appendix, HRC Concluding Observations on Bulgaria (2018), para. 12(a); Hungary (2018), para. 20(a).

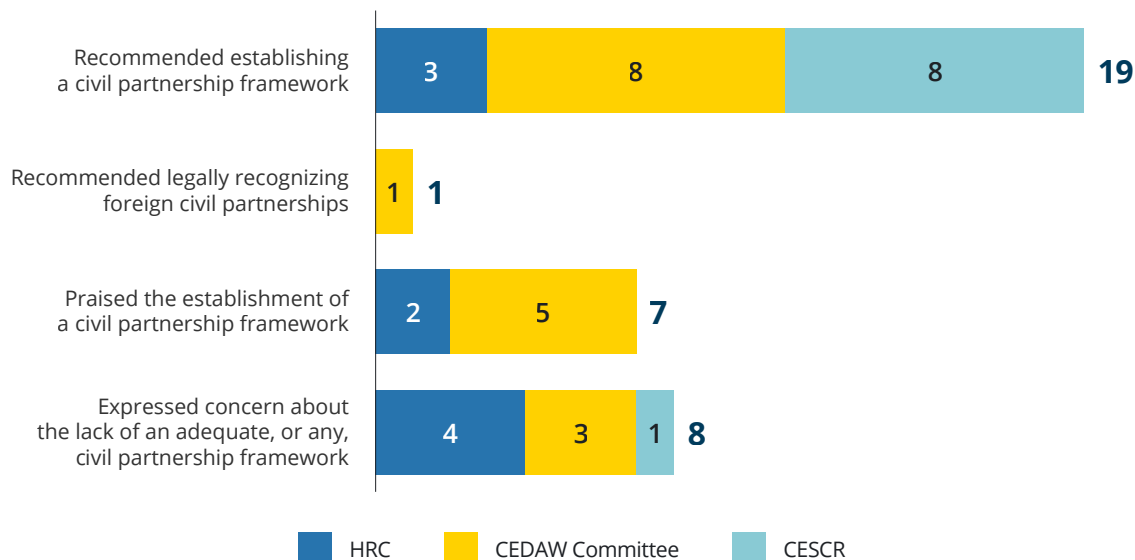
¹⁰² Appendix, HRC Concluding Observations on Australia (2017), paras. 29-30. To be sure, treaty bodies sometimes recommend equality-promoting measures that are not obligatory. For example, the CEDAW Committee has recommended temporary affirmative action quotas to advance sex equality. *E.g.*, Appendix, CEDAW Committee Concluding Observations on Luxembourg (2018), para. 24(b). However, states are not obligated to adopt gender quotas, as they may pursue alternative measures for advancing sex equality. See Mpoki Mwakagali, *International Human Rights Law and Discrimination Protections*, 1 BRILL RESEARCH PERSPECTIVES IN COMPARATIVE DISCRIMINATION LAW 1, 18-19 (2017). In other words, a lack of gender quotas is not necessarily a rights violation. In contrast, treaty bodies have issued Concluding Observations that frame the exclusion of same-sex couples from marriage as a rights violation in and of itself. See *supra* notes 95-97 and accompanying text.

5. Civil Partnerships

Findings

In 35 Concluding Observations, the treaty bodies endorsed the legal recognition of same-sex couples through alternatives to marriage, such as civil partnerships, civil unions, or recognition of de facto partnerships. For economy of language, this report refers to these alternative frameworks collectively as “civil partnerships.” These 35 Concluding Observations can be broken down into four categories: 1) In 19 Concluding Observations, a treaty body recommended that the state party recognize same-sex couples through a civil partnership framework.¹⁰³ 2) In 1 Concluding Observations, a treaty body specifically recommended legally recognizing civil partnerships from abroad.¹⁰⁴ 3) There were 7 Concluding Observations that commended states for having established a civil partnership system.¹⁰⁵ (4) In addition, 8 Concluding Observations did not explicitly recommend civil partnerships, but they expressed concern that the state party either had not developed a civil partnership system or had an inadequate civil partnership system.¹⁰⁶

Figure 2. Endorsement of civil partnerships: 35 Concluding Observations (2016-2024)



¹⁰³ The following 19 Concluding Observations recommended recognizing same-sex “civil partnerships,” “civil unions, or “de facto partnerships,” or they used other language to recommend legal recognition of same-sex unions. Appendix, HRC Concluding Observations on Mauritius (2017), para. 10; Republic of Korea (2023), para. 14(c); India (2024), para. 18(b); CEDAW Committee Concluding Observations on Honduras (2016), para. 49(d); Monaco (2017), para. 46(b); Lithuania (2019), para. 45(a); Venezuela (2023), para. 54; Jamaica (2023), para. 43(d); Albania (2023), para. 48(a); Nicaragua (2024), para. 56(b); Japan (2024), para. 52(d); CESC Concluding Observations on Northern Macedonia (2016), para. 26; Cape Verde (2018), para. 21; Mauritius (2019), para. 18; Slovakia (2019), para. 15; Czechia (2022), para. 13(e); Lithuania (2023), para. 13(d); Poland (2024), para. 23(b); Albania (2024), para. 23(c).

¹⁰⁴ The CEDAW Committee was responding to a law that amended Honduras’s constitution to ban the recognition of same-sex marriages and de facto unions, including registered unions from abroad. See Appendix, CEDAW Committee Concluding Observations on Honduras (2022), para. 49(a).

¹⁰⁵ Appendix, HRC Committee Concluding Observations on Italy (2017), para. 3(a); Lichtenstein (2017), para. 3(c); CEDAW Committee Concluding Observations on Estonia (2016), para. 4(9); Italy (2017), para. 5; Chile (2018), para. 4(f); Cyprus (2018), para. 4(d); Cuba (2024), para. 55.

¹⁰⁶ Appendix, HRC Concluding Observations on Bulgaria (2018), para. 11; Czechia (2019), para. 11; Bolivia (2022), para. 12; Panama (2023), para. 13; CEDAW Committee Concluding Observations on Liechtenstein (2018), para. 42(b); Andorra (2019), para. 44(b); Bolivia (2022), para. 39(b); CESC Concluding Observations on Bolivia (2021), para. 20.

The three treaty bodies are worth examining individually, starting with the CESCR. While the CESCR's Concluding Observations focused very little on same-sex marriage, they focused considerably more attention on civil partnerships.¹⁰⁷ As discussed earlier, this pattern might be explained by the fact that the ICESCR does not include any provisions specifically on the right to marry, and the ICESCR focuses on economic, social, and cultural rights—as opposed to civil rights.¹⁰⁸ These background factors could explain why the CESCR has mainly been interested in seeing states parties provide same-sex couples with access to the social and economic rights conferred by civil partnerships—as opposed to the right to marriage. In total, the CESCR issued 8 Concluding Observations recommending that, in the absence of same-sex marriage, the state party establish a framework for legally recognizing same-sex partnerships.¹⁰⁹ In several of those reports, the CESCR clarified that such legal recognition ought to provide equivalent rights and protections as different-sex marriage.¹¹⁰ In one additional Concluding Observations, the CESCR expressed concern that, while a Bolivian court had allowed a same-sex couple to register their partnership, other same-sex couples in Bolivia had been denied registration.¹¹¹

As for the CEDAW Committee, its framing of civil partnerships has been inconsistent. The reason for the inconsistency is not clear; however, the inconsistency perhaps resulted in part from the fact that civil society organizations have used various frames when advocating for civil partnerships in their submissions to the CEDAW Committee.¹¹² Early on, the CEDAW Committee framed civil partnerships as an acceptable substitute for same-sex marriage, and the Committee was silent about the legal rights and benefits that should attach to civil partnerships. For example, in 2016, the Committee recommended that Honduras “[c]onsider practices from countries in the region that allow the registration of same-sex partnerships.”¹¹³ The Committee did not mention legalization of same-sex marriage at all, implying that registering civil partnerships would be a satisfactory substitute for same-sex marriage. Additionally, the Committee did not specify what the legal consequences of civil registration should be. In 2017, the CEDAW Committee recommended to Monaco that it “ensure that lesbian couples have access to marriage or, as a minimum, to an officially registered union.”¹¹⁴ That statement could arguably be read to suggest that civil partnerships are an acceptable alternative to same-sex marriage.

The CEDAW Committee would later clarify that, in countries where same-sex couples are unable to marry, same-sex couples in civil partnerships should be treated equally to married couples. In 2018 and 2019, respectively, it issued Concluding Observations to Lichtenstein and Andorra, recommending that they

¹⁰⁷ See *supra* notes 72-74 and accompanying text.

¹⁰⁸ See *supra* notes 75-76 and accompanying text.

¹⁰⁹ Appendix, CESCR Concluding Observations on Northern Macedonia (2016), para. 26; Cape Verde (2018), para. 21; Mauritius (2019), para. 18; Slovakia (2019), para. 15; Czechia (2022), para. 13(e); Lithuania (2023), para. 13(d); Poland (2024), para. 23(b); Albania (2024), para. 23(c).

¹¹⁰ Appendix, CESCR Concluding Observations on Northern Macedonia (2016), para. 26; Cape Verde (2018), para. 21 (“same rights and protections as heterosexual couples”); Slovakia (2019), para. 15 (“protections equivalent to marriage”); Czechia (2022), para. 13(e) (“equivalent to marriage of people in heterosexual relationships”); Lithuania (2023), para. 13(d) (“equivalent to marriage”); Poland (2024), para. 23(b) (“the same rights as heterosexual couple”).

¹¹¹ Appendix, CESCR Concluding Observations on Bolivia (2021), para. 20.

¹¹² Further research is needed to evaluate this potential explanation. Cf. MacArthur, *supra* note 77, at 39 (“the [treaty bodies’ review] process has proven itself highly dependent on shadow reports [from civil society organizations] in order to pay attention to even the most obvious encroachments.”).

¹¹³ Appendix, CEDAW Committee Concluding Observations on Honduras (2016), para. 49(d).

¹¹⁴ Appendix, CEDAW Committee Concluding Observations on Monaco (2017), para. 46(b).

ensure that their civil partnership systems provide same-sex couples with the same rights that marriage confers upon different-sex couples.¹¹⁵

More recently, starting in 2023, the CEDAW Committee has recommended that States legalize same-sex marriage *and* civil partnerships—thus giving couples a choice between the two statuses. The Committee adopted this conjunctive framing in its Concluding Observations for Venezuela (2023) and Japan (2024).¹¹⁶ This framing seemed to be a shift from earlier Concluding Observations, which had suggested that states could offer civil partnerships *in lieu of* legalizing same-sex marriage—for example, when the CEDAW Committee told Monaco that, “at a minimum,” it should provide civil partnerships.¹¹⁷ The Committee has not, however, consistently applied a conjunctive frame. For example, in 2023, the CEDAW Committee recommended to Jamaica that it “[r]ecognize same-sex unions under the law,” without specifying that both marriage and civil partnerships ought to be recognized.¹¹⁸ Regrettably, the texts of the Concluding Observations themselves do not explain the inconsistency in framing.¹¹⁹

The HRC recommended the development of civil partnerships in only two Concluding Observations: those concerning Mauritius in 2017 and South Korea in 2023.¹²⁰ In both these instances, the HRC recommended legally recognizing civil partnerships “or” same-sex marriage. From the texts of the Concluding Observations, it is unclear why the HRC recommended civil partnerships to these two countries whereas, for other countries, it only recommended same-sex marriage.¹²¹ Current events in the state may have influenced the HRC’s recommendations. For example, in the same year as South Korea’s periodic review, some lawmakers and a presidential committee in South Korea proposed developing a civil partnership system for different-sex couples—but not same-sex couples.¹²² This legislative proposal may have influenced South Korea’s periodic review, prompting the HRC to recommend that South Korea consider enacting civil partnerships as an alternative to same-sex marriage.¹²³ However, further research is needed to evaluate this potential explanation.

¹¹⁵ Appendix, CEDAW Committee Concluding Observations on Liechtenstein (2018), para. 42(b); Andora (2019), para. 44(b).

¹¹⁶ Appendix, CEDAW Committee Concluding Observations on Venezuela (2023), para. 54; Japan (2024), para. 52(d).

¹¹⁷ See *supra* note 114 and accompanying text.

¹¹⁸ Appendix, CEDAW Committee Concluding Observations on Jamaica (2023), para. 43(d).

¹¹⁹ Future research could investigate potential reasons for the shift. For example, researchers could review the written materials that states parties and civil society organizations submitted to the CEDAW Committee to examine whether those materials prompted the shift. See *supra* note 112 and accompanying text. Researchers could also investigate whether changes in the treaty bodies’ membership compositions contributed to the inconsistent framing.

¹²⁰ Appendix, HRC Concluding Observations for Mauritius (2017), para. 10; Republic of Korea (South Korea) (2023), para. 14 (c). In other instances, the HRC indirectly supported civil partnerships by praising states for establishing civil partnerships or expressing concern that there was not an acceptable civil partnership system in place. See *supra* notes 105-106 and accompanying text.

¹²¹ See *supra* note 72 and accompanying text.

¹²² See Lee Hae-rin, *Proposed Bill Aims to Embrace More Diverse Types of Families*, KOREA TIMES (May 8, 2023, 4:28pm), <https://www.koreatimes.co.kr/southkorea/society/20230507/proposed-bill-aims-to-embrace-more-diverse-types-of-families>; Lee Soo-Jung, *Korea May Adopt Common-Law Marriages, Civil Unions as Perceptions Shift*, KOREA JOONANG DAILY (Nov. 30, 2023, 6:44pm), <https://koreajoongangdaily.joins.com/news/2023-11-30/national/socialAffairs/Korea-may-adopt-commonlaw-marriages-civil-unions-as-perceptions-shift/1922972>.

¹²³ That same year, a group of lawmakers proposed amending South Korea’s Civil Code to allow for same-sex marriage. The bill was widely viewed as symbolic and unlikely to pass. See Raphael Rashid, *South Korea’s First Ever Same-Sex Marriage Bill Goes to Parliament*, GUARDIAN (May 31, 2023, 12:40am), <https://www.theguardian.com/world/2023/may/31/south-koreas-first-ever-same-sex-marriage-bill-goes-to-parliament>. The HRC’s Concluding Observations on South Korea recommended “amending the Civil Code or introducing civil unions” for same-sex couples. Appendix, HRC Concluding Observations on Republic of Korea (2023), para. 14(c).

Discussion

All three treaty bodies have promoted civil partnerships. The Concluding Observations, however, have been unclear about the relationship between civil partnerships and same-sex marriage. This section will evaluate the extent to which the Concluding Observations support three different approaches to conceptualizing that relationship. None of these three approaches has been clearly adopted by any of the treaty bodies. The three conceptualizations are offered here as possible frameworks for making sense of the treaty bodies' pronouncements.

The first and most logical approach would build on the reasoning discussed above in Section 4. This approach would account for the fact that, in at least several recent Concluding Observations, the HRC and CEDAW Committee have suggested that states are obligated to legalize same-sex marriage.¹²⁴ Accordingly, civil partnerships might be understood as a transitional¹²⁵ measure that states should adopt if immediate legalization of same-sex marriage is politically infeasible; importantly, civil partnerships are not a satisfactory long-term substitute for same-sex marriage. This approach would align with that of the Inter-American Court of Human Rights, which held in an advisory opinion that states have an obligation to legalize same-sex marriage. According to that advisory opinion, if states are unable to implement same-sex marriage right away, they must offer same-sex couples an alternative institution that offers the same legal effects as marriage "in the understanding that this is a transitional situation."¹²⁶

Consider the HRC, for example. It told Japan in 2022 that same-sex marriage is a "right[] under the Covenant."¹²⁷ The following year, it recommended that South Korea amend its Civil Code to legalize same-sex marriage "or introduce[e] civil unions."¹²⁸ One could reconcile the HRC's statements to Japan and South Korea by understanding the introduction of civil unions as a possible transitional measure for South Korea. South Korea would still have a duty to eventually protect every "right[] under the Covenant,"¹²⁹ including the right to same-sex marriage.

The second approach would be to consider civil partnerships a full substitute for same-sex marriage rather than a transitional measure. Assuming *arguendo* that international law still does not require legalizing same-sex marriage, the Concluding Observations suggest that, "at a minimum,"¹³⁰ states parties to international human rights treaties must develop an alternative recognition system for same-sex

¹²⁴ See *supra* notes 91-102 and accompanying text. Recall, however, that the treaty bodies have not consistently used language that suggests legalizing same-sex marriage is obligatory. See *supra* notes 98-99 and accompanying text.

¹²⁵ In using the term "transitional," this report does not suggest that civil partnership systems need to, or should be, abolished upon the legalization of same-sex marriage. Indeed, it is possible for states to offer both marriage and civil partnerships as options to same-sex couples. See *infra* notes 134-137 and accompanying text.

¹²⁶ *State Obligations in Relation to Change of Name, Gender Identity, and Rights Deriving from a Relationship between Same-Sex Couples*, Advisory Opinion OC-24/17, Inter-Am. Ct. H.R. (ser. A) No. 24, paras. 224-27 (Nov. 24, 2017).

¹²⁷ Appendix, HRC Concluding Observations on Japan (2022), para. 11(b).

¹²⁸ Appendix, HRC Concluding Observations on Republic of Korea (2023), para. 14(c). These Concluding Observations did not explicitly refer to "same-sex marriage;" however, there was a bill in South Korea to amend the country's Civil Code to legalize same-sex marriage, and the Concluding Observations recommended "amending the Civil Code or introducing civil union for such [same-sex] couples." See Appendix, Concluding Observations on Republic of Korea (2023), para. 14(c); see also Rainbow Action against Sexual Minority Discrimination, *Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and HIV Status in the Republic of Korea: Joint Civil Society Submission to the Human Rights Committee for State Compliance with the International Covenant on Civil and Political Rights* (Sept. 2023), para. 42 ("There is currently a bill in the 21st National Assembly to amend the Civil Code to allow same-sex marriage.").

¹²⁹ This was the language that the HRC used in its Concluding Observations on Japan. See *supra* note 127 and accompanying text.

¹³⁰ Appendix, CEDAW Committee Concluding Observations on Monaco (2017), para. 46(b).

couples, such as civil partnerships.¹³¹ In this view, offering civil partnerships sufficiently satisfies treaty obligations, and same-sex marriage is a best practice that exceeds a state's obligations.

Viewing civil partnerships as a sufficient substitute would comport with the CESCR's Concluding Observations. As discussed above, the CESCR has focused much more on civil partnerships than same-sex marriage, and it has not used language in Concluding Observations that would suggest same-sex marriage is a legal right under the ICESCR.¹³² In contrast, the second approach—i.e., considering civil partnerships as sufficient—is difficult to reconcile with the HRC's and CEDAW Committee's Concluding Observations that have suggested that same-sex marriage is a right encompassed in those committee's respective treaties.¹³³

The third approach would view same-sex marriage as a treaty obligation and would construe Concluding Observations as recommending that states offer civil partnerships in addition to same-sex marriage. Some of the CEDAW Committee's Concluding Observations arguably reflect this approach.¹³⁴ Recall that the CEDAW Committee has shifted its framing of civil partnerships. Whereas its earlier Concluding Observations called on states to legalize same-sex marriage *or* civil partnerships, some of its more recent Concluding Observations have called for legalizing same-sex marriage *and* civil partnerships.¹³⁵ Because this shift is recent and inconsistent, one must be careful not to read too much into the shift. It is unclear whether the different framing was prompted by circumstances specific to the states under review, or whether these recent Concluding Observations indicate a more generalized shift in the CEDAW Committee's approach to civil partnerships.

Around two dozen countries presently offer both same-sex marriage *and* civil partnerships.¹³⁶ Some academic commentators have argued in favor of making both marriage and civil partnerships available to couples regardless of sexual orientation; however, commentators often suggest that, when both marriage and civil partnerships are available as options, there should be a substantial difference between the two options.¹³⁷ With a substantial difference, offering both options could present couples with a meaningful choice. Commentators have also noted that expanding the number of legal frameworks for recognizing couple relationships could create complications and confusion.¹³⁸ The CEDAW Committee could provide helpful guidance by clarifying whether it indeed recommends that states offer both same-sex marriage

¹³¹ This approach would be similar to that of the European Court of Human Rights (ECtHR). The ECtHR has held that the European Convention on Human Rights does not obligate states to legalize same-sex marriage; however, states are obligated to provide same-sex couples with an alternative "legal framework" for recognition. See *Fedotova and Others v. Russia*, ECtHR, Grand Chamber (Jan. 17, 2023), App. Nos. 40792/10, 30538/14 & 43439/14. While U.N. treaty bodies have stated that civil partnerships should confer all the same legal rights as marriage, the ECtHR has not required that of states. The ECtHR's jurisprudence has not clearly delineated the scope of rights that should attach to alternative frameworks for legal recognition. See Nausica Palazzo, *Fedotova and Others v. Russia: Dawn of a New Era for European LGBTQ Families?*, 30 MAASTRICHT JOURNAL OF EUROPEAN AND COMPARATIVE LAW 216, 223-24 (2023).

¹³² See *supra* notes 75-76 and accompanying text.

¹³³ See *supra* notes 91-102 and accompanying text.

¹³⁴ See *supra* note 116 and accompanying text.

¹³⁵ See *supra* notes 113-114, 116-117 and accompanying text.

¹³⁶ According to a search in the ILGA World Database on June 1, 2025, a total of 23 countries allow same-sex couples to choose between marriage and some form of civil partnership.

¹³⁷ See, e.g., Nausica Palazzo, *Marriage Apostates: Why Heterosexuals Seek Same-Sex Registered Partnerships*, 42 COLUMBIA JOURNAL OF GENDER AND LAW 186, 189-92, 252-56 (2022); Holning Lau & Suzanne A. Kim, *Nonmarriage and Choice in South Africa and the United States*, 99 WASHINGTON UNIVERSITY LAW REVIEW 1983, 2010-12 (2022); Erez Aloni, *Registering Relationships*, 87 TULANE LAW REVIEW 573, 576-77 (2013).

¹³⁸ See, e.g., Mary Anne Case, *Marriage Licenses*, 89 MINNESOTA LAW REVIEW 1758, 1775-76 (2005).

and civil partnerships as options to couples. If so, the Committee should further clarify whether offering civil partnerships as an alternative to marriage is a treaty obligation or a non-obligatory best practice.

When comparing the three approaches, the first approach—treating civil partnerships as a transitional measure—stands out as particularly strong because it fits most logically with the treaty bodies' corpus of Concluding Observations. The first approach can be squared with the HRC's and CEDAW Committee's Concluding Observations that have contained language describing same-sex marriage as a right.¹³⁹ In contrast, the second approach is difficult to reconcile with those Concluding Observations. The second approach is, however, compatible with the CESCR's Concluding Observations. Finally, there are very few Concluding Observations that support the third approach.¹⁴⁰

Another noteworthy point is that the Concluding Observations serve as a lens through which to view *V.W.G. and E.H. v. Albania*.¹⁴¹ The HRC's majority opinion in *V.W.G. and E.H.* did not reach the question of whether the ICCPR requires states to provide civil partnerships because the majority dismissed the case on procedural grounds.¹⁴² However, the dissenting HRC members stated that they would have found Albania in violation of the ICCPR because it failed to offer same-sex couples any legal framework for recognizing their relationships.¹⁴³ The dissenting opinion cited a few Concluding Observations to support its position.¹⁴⁴ This study's findings demonstrate that there is a considerable body of Concluding Observations—beyond those that the dissenting opinion cited—that suggests states have a treaty obligation to offer civil partnerships if they do not offer same-sex marriage.¹⁴⁵ The question would remain, however, whether civil partnerships are a transitional solution or a full substitute for marriage. This question did not arise in *V.W.H. and E.H.*¹⁴⁶

¹³⁹ See *supra* notes 91-102, 133 and accompanying text.

¹⁴⁰ See *supra* notes 116-119, 134-135 and accompanying text.

¹⁴¹ *V.W.G. and E.H. v. Albania*, HRC, Comm. No. 3031/2017, U.N. Doc. CCPR/C/138/D/3031/2017 (2023).

¹⁴² See *supra* notes 54-56 and accompanying text.

¹⁴³ The dissent stated that Albania's failure to provide any framework of legal recognition to same-sex couples amounted to a violation of ICCPR Article 26 (non-discrimination), as well as Articles 17 and 23(1) (family life and privacy) read alone and in conjunction with Article 2(3) (non-discrimination). *V.W.G. and E.H.*, HRC, Comm. No. 3031/2017, at dissenting opinion of Laurence R. Helfer et al., paras. 8-10.

¹⁴⁴ *Id.* at para. 7.

¹⁴⁵ The dissenting opinion in *V.W.G. and E.H.* cited Concluding Observations on Mauritius as an example of the HRC's recommendation of offering civil partnerships. *Id.* The opinion also cited other Concluding Observations to support same-sex couples' right to equality more generally. *Id.*

¹⁴⁶ The complainants explicitly avoided making any claims to marriage pursuant to ICCPR Article 23(2). See *id.* at para. 3(1).

6. Issue-Specific Rights

Findings

The Concluding Observations sometimes addressed same-sex couple rights in specific domains—for example, housing,¹⁴⁷ property,¹⁴⁸ inheritance,¹⁴⁹ taxes,¹⁵⁰ domestic violence protections,¹⁵¹ health care benefits,¹⁵² social security,¹⁵³ the adoption of children,¹⁵⁴ and access to assisted reproductive technologies.¹⁵⁵ As it is not feasible to address all of these issues in a single study, this section will focus instead on two key topics: domestic violence protections and parenting rights. Out of the various issue-specific areas, these two issues appeared the most frequently in the dataset of Concluding Observations.

Six Concluding Observations recommended extending domestic violence protections to same-sex couples.¹⁵⁶ Each of the treaty bodies made this recommendation at least once.¹⁵⁷ The treaty bodies connected their domestic violence recommendations to treaty obligations concerning non-discrimination and family life.¹⁵⁸

In terms of parenting rights, the treaty bodies made three types of recommendations: Concluding Observations concerning 1) adoption, 2) access to assisted reproductive treatments or reproductive health services, and 3) miscellaneous parenting rights. A total of 17 Concluding Observations endorsed extending adoption rights to same-sex couples.¹⁵⁹ There were 4 Concluding Observations that recommended giving same-sex couples rights to access assisted reproductive treatments or reproductive

¹⁴⁷ *E.g.*, Appendix, HRC Concluding Observations on Japan (2022), para. 11(b); CESCR Concluding Observations on Republic of Korea (2017), para. 25(b).

¹⁴⁸ *E.g.*, Appendix, HRC Concluding Observations on Serbia (2024), para. 16; CEDAW Committee Concluding Observations on Luxembourg (2017), para. 52(a).

¹⁴⁹ *E.g.*, Appendix, HRC Concluding Observations on Slovenia (2017), para. 9; CEDAW Committee Concluding Observations on Albania (2023), para. 47(a).

¹⁵⁰ *E.g.*, Appendix, CEDAW Committee Concluding Observations on Albania (2023), para. 47(a).

¹⁵¹ See *infra* note 156.

¹⁵² *E.g.*, Appendix, HRC Concluding Observations on Republic of Korea (2023), paras. 13; CESCR Concluding Observations on Bolivia (2021), para. 21(c).

¹⁵³ *E.g.*, Appendix, HRC Concluding Observations on Suriname (2024), para. 16(c); CESCR Concluding Observations on Bolivia (2021), para. 21(c).

¹⁵⁴ *E.g.*, Appendix, CEDAW Committee Concluding Observations on Monaco (2017), para. 46(b).

¹⁵⁵ See *infra* note 160 and accompanying text.

¹⁵⁶ Five Concluding Observations recommended domestic violence protections for same-sex “couples” or “partners.” See Appendix, HRC Concluding Observations on Namibia (2016), para. 10(c); China (2022), para. 13 (regarding Macao); Trinidad & Tobago (2023), para. 22(e); CEDAW Committee Concluding Observations on Republic of Korea (2018), para. 23(b); CESCR Concluding Observations on China (2023), para. 143 (regarding Macao). One additional Concluding Observations used broader language, stating that domestic violence protections should be expanded to protect “lesbian, gay, bisexual and transgender persons.” See Appendix, HRC Concluding Observations on Namibia (2024), para. 9(d).

¹⁵⁷ See *supra* note 156.

¹⁵⁸ See, e.g., Appendix, HRC Concluding Observations on Namibia (2016), para. 9 (listing the exclusion of same-sex couples from domestic violence protections as an example of how Namibia’s “protection against discrimination is insufficient”); CEDAW Committee Concluding Observations on Republic of Korea (2018), para. 23 (referring to the CEDAW Committee’s General Recommendation No. 35, which recognized that domestic violence against women is a form of prohibited discrimination against women); CESCR Concluding Observations on China (2023), paras. 142-43 (calling for the including of same-sex couples in Macao’s domestic violence law and supporting its recommendation by citing the ICESCR’s protection of family life in Article 10).

¹⁵⁹ These Concluding Observations praised states for extending adoption rights to same-sex couples, expressed concern about same-sex couples not having the right to adopt children, and/or recommended extending adoption rights to same-sex couples. See Appendix, HRC Concluding Observations on Slovenia (2016), para. 9; Colombia (2016), para. 16; Italy (2017), paras. 10-11; Bulgaria (2018), para. 11; Czechia (2019), paras. 11, 13(a); Panama (2023), paras. 13, 14(c); CEDAW Committee Concluding Observations on Uruguay (2016), para. 4(j); Luxembourg (2017), paras. 51(a), 52(a); Monaco (2017), para. 46(b); Chile (2018), paras. 50(b), 51(b); Andorra (2019), para. 43; Honduras (2022), paras. 48(b), 49(b); Portugal (2022), para. 4(o); Hungary (2023) para. 41(b), 42(b); Albania (2023), para. 48(a); Japan (2024), paras. 51(d), 52(d); CESCR Concluding Observations on Cyprus (2024), paras. 21-22.

health services.¹⁶⁰ Finally, at least 6 Concluding Observations supported same-sex couples' parenting of children in miscellaneous ways—for example, calling broadly for recognition of same-sex couples' "parental rights" or for the "recognition of paternity" in cases involving lesbian couples.¹⁶¹

In some instances, the Concluding Observations voiced specific concern that, although the state had established civil partnerships, same-sex couples in civil partnerships had been denied parenting rights.¹⁶² Other times, treaty bodies expressed concern about same-sex couples' lack of parenting rights in states where neither same-sex marriage nor civil partnerships were legal options.¹⁶³ All three treaty bodies invoked equality and non-discrimination in calls for recognizing same-sex couples' parenting rights.¹⁶⁴ Additionally, some Concluding Observations illuminated the fact that same-sex couples were already raising children together, and those children would benefit from having the state legally recognize and protect their families.¹⁶⁵

Discussion

The Concluding Observations on domestic violence and parenting reflect two principles found in the HRC's jurisprudence on unmarried same-sex couples. The first principle is that states should not discriminate between unmarried couples on the basis of sexual orientation. Recall that, in *Young v. Australia* and *X v. Colombia*, the HRC ruled that unmarried same-sex couples must be treated the same as unmarried different-sex couples for the purposes of pensions. Likewise, to the extent that a domestic violence law covers unmarried different-sex couples, it should also apply to unmarried same-sex couples. For example, Macao's Law on Preventing and Combating Domestic Violence (Law No. 2/2016) covers "persons who live in an analogous situation to that of spouses."¹⁶⁶ Macao had only applied this provision

¹⁶⁰ Appendix, HRC Concluding Observations on Slovenia (2016), para. 9; Italy (2017), para. 11; CEDAW Committee Concluding Observations on Singapore (2024), para. 60(e); CESCR Concluding Observations on Republic of Korea (2017), para. 25(b).

¹⁶¹ Appendix, CEDAW Committee Concluding Observations on Luxembourg (2017), para. 52(a) ("recognition of paternity"); Cyprus (2018), paras. 50(a), 51(a) ("protection for children born to or adopted in the context of de facto and other civil unions"); Panama (2022), paras. 49(b), 50(b) ("family relations, including parental responsibilities"); Uruguay (2023), para. 46(b) ("recognition of maternity"); CESCR Concluding Observations on Luxembourg (2022), para. 31(a) ("filiation"); Poland (2024), para. 23(b) ("parental rights and legal recognition of their children").

¹⁶² *E.g.*, Appendix, HRC Concluding Observations on Czechia (2019), para. 11 ("significant differences persist in the treatment of couples in same-sex registered partnerships, and [the HRC] is concerned that the law does still not recognize their right to joint adoption of children"); CEDAW Committee Concluding Observations on Hungary (2023), para. 41(b) ("notes with concern . . . [that] registered partnerships are not recognized under the joint and second parent adoption scheme").

¹⁶³ *E.g.*, Appendix, HRC Concluding Observations on Panama (2023), paras. 13, 14(c); CEDAW Committee Concluding Observations on Singapore (2024), paras. 59(e), 60(e); CESCR Concluding Observations on Poland (2024), paras. 22, 23(b).

¹⁶⁴ The Concluding Observations did not always clearly identify the principles that animated their calls for parenting rights; however, equality and non-discrimination principles were often invoked. See *e.g.*, Appendix, HRC Concluding Observations on Bulgaria (2018), para. 11) (including same-sex couples' inability to adopt children under the heading "Discrimination on the grounds of sexual orientation and gender identity"); CEDAW Committee Concluding Observations on Singapore (2024), para. 60(e) ("Recognize the equal right of all women, including those in same-sex relationships and non-married women, to parenthood through assisted reproductive technology"); CESCR Concluding Observations on Poland (2024), para. 23(b) ("Enact legislation on civil-law partnerships with a view to ensuring that same-sex couples enjoy the same rights as heterosexual couples, including parental rights and legal recognition of their children").

¹⁶⁵ See Appendix, HRC Concluding Observations on Italy (2017), para. 11 (telling the state to consider "ensuring the same legal protection for children living in same-sex families as for those living in heterosexual families"); CEDAW Committee Concluding Observations on Hungary (2023), para. 41(b) (expressing concern about "legal, administrative and practical barriers for children living with same-sex parents").

¹⁶⁶ Law on Preventing and Combating Domestic Violence (Law No. 2/2016), art. 4(2.3). The law also covers married couples (art. 4(2.1)); however, Macao has not legalized same-sex marriage.

to unmarried different-sex couples, prompting the HRC and CESCR to call on Macao to extend the law's coverage to same-sex intimate partners as well.¹⁶⁷

The second principle concerns rights and benefits that the state only gives to married couples. The HRC has stated that certain benefits can indeed be reasonably limited to married couples.¹⁶⁸ However, in concurring and dissenting opinions, HRC members have articulated a related principle: if same-sex couples do not have the option to marry, they must be given an alternative pathway for obtaining the benefits that are otherwise limited to married couples.¹⁶⁹ Treating such alternative pathways as transitional measures would make sense given that a growing number of Concluding Observations from the CEDAW Committee and the HRC have called for extending full marriage rights to same-sex couples.¹⁷⁰

This principle—that states must give same-sex couples an alternative pathway to marriage-based benefits if they are not given the opportunity to marry—is reflected in Concluding Observations about parenting. Some states restrict parenting rights, such as the right to joint adoption, to married couples. For example, only married couples may jointly adopt children in Hungary. Although Hungary has a civil partnership system for same-sex couples, civil partnership status does not confer joint adoption rights. The CEDAW Committee thus called on Hungary to give joint adoption rights to registered civil partners, thereby providing same-sex couples with a pathway to adoption other than marriage.¹⁷¹

Finally, it is worth underscoring that treaty bodies have repeatedly called for recognizing same-sex couples' parenting rights. Given that opposition to same-sex parenting has been especially acute, the treaty bodies' endorsement of same-sex parenting rights is particularly noteworthy. Even jurisdictions with same-sex marriage have sometimes deprived married same-sex couples of parenting rights. Ecuador has legalized same-sex marriage, but it excludes married same-sex couples from joint adoption while allowing different-sex married couples to jointly adopt.¹⁷² Taiwan had similarly excluded married same-sex couples from joint adoption, but it has since eliminated that restriction.¹⁷³ The Concluding Observations' comments on parenting convey that denying same-sex couples the ability to jointly adopt children contravenes the equality and non-discrimination principles in international human rights treaties.¹⁷⁴

¹⁶⁷ Appendix, HRC Concluding Observations on China (2022), paras. 12-13. (regarding Macao); CESCR Concluding Observations on China (2023), paras. 142-43 (regarding Macao).

¹⁶⁸ L. G. Danning v. Netherlands, HRC, Comm. No. 180/1984, U.N. Doc. CCPR/C/OP/2 (1987), para. 14.

¹⁶⁹ *Joslin and Others v. New Zealand*, HRC, Comm. No. 902/1999, U.N. Doc. CCPR/C/75/D/902/1999 (2002), at concurring opinion of Rajssoomer Lallah & Martin Scheinin, p. 15; *V.W.G. and E.H. v. Albania*, HRC, Comm. No. 3031/2017, U.N. Doc. CCPR/C/138/D/3031/2017 (2023), at dissenting opinion of Laurence R. Helfer et al., at para. 9.

¹⁷⁰ See *supra* Section 5.

¹⁷¹ Appendix, CEDAW Committee Concluding Observations on Hungary (2023), paras. 41(b), 42(b).

¹⁷² Article 68 of Ecuador's constitution limits joint adoption to different-sex couples. The Constitutional Court of Ecuador legalized same-sex marriage through two rulings that did not affect the constitutional ban on same-sex couples adopting children. See Corte Constitucional (Const. Ct.), junio 12, 2019, Sentencia No. 10-18-CN/19 (Ecuador); Corte Constitucional (Const. Ct.), junio 12, 2019, Sentencia No. 11-18-CN/19 (Ecuador).

¹⁷³ See Chen Chieh-ling et al., *Legislature Approves Adoption Rights for Same-Sex Couples*, FOCUS TAIWAN (May 16, 2023, 4:36pm), <https://focustaiwan.tw/politics/202305160009>; Holning Lau, *Barring Married Same-Sex Couples from Joint Adoption: Comparative Perspectives and the Case of Taiwan*, 15 NATIONAL TAIWAN UNIVERSITY LAW REVIEW 177, 180-83 (2020).

¹⁷⁴ See *supra* notes 159, 164 and accompanying text.

7. Recommendations & Conclusion

This study examined how treaty bodies—the HRC, CEDAW Committee, and CESCR—have addressed same-sex couple rights in Concluding Observations. Upon analyzing 96 Concluding Observations, several key takeaways emerged. First, several Concluding Observations from the HRC and CEDAW Committee suggest that their respective treaties obligate states to legalize same-sex marriage. These treaty bodies have not, however, consistently used language that suggests legalizing same-sex marriage is an obligation. Second, Concluding Observations from all three treaty bodies have recommended that states establish civil partnerships for same-sex couples. The Concluding Observations have been unclear regarding the relationship between civil partnerships and same-sex marriage. Third, the Concluding Observations suggest that all three treaty bodies understand their treaties to require states to support unmarried same-sex couples' equality in various legal domains, including but not limited to domestic violence and parenting rights.

In closing, this study offers the following recommendations based on its analysis of Concluding Observations.

- As countries around the world continue to debate law reforms concerning same-sex couple rights, U.N. treaty bodies play an important part in illuminating the issues' human rights dimensions. To fully understand and appreciate the treaty bodies' evolving positions, it is imperative that decision-makers consider the Concluding Observations analyzed in this study.
- If and when the HRC receives a new complaint from a same-sex couple seeking to marry, the HRC should seize the opportunity to explicitly repudiate *Joslin*.¹⁷⁵ Doing so would be consistent with post-*Joslin* Concluding Observations and would bring coherence to the HRC's pronouncements on same-sex marriage, providing clearer guidance to states. Citing several Concluding Observations, Bluett wrote in 2024 that the HRC "cannot, without losing all legitimacy, stand with its 2002 ruling" in *Joslin*.¹⁷⁶ Having examined additional Concluding Observations, this study found ample support for Bluett's contention.
- Beyond the United Nations, courts should stop citing *Joslin* as persuasive authority.¹⁷⁷ As noted earlier, some courts have recently cited *Joslin* approvingly when ruling against same-sex marriage.¹⁷⁸ However, when these courts cited *Joslin*, the HRC had already shifted away from *Joslin* in its Concluding Observations, and that shift is supported by the CEDAW Committee's Concluding Observations. Indeed, if a court rules against legalizing same-sex marriage, it should not give the impression that *Joslin* lends support for the ruling. To the contrary, a court could instead cite Concluding Observations to support a ruling in favor of legalizing same-sex marriage.
- Since the HRC and CEDAW Committee have, in Concluding Observations, recommended legalizing same-sex marriage as well as the development of civil partnerships, they should clarify how

¹⁷⁵ The complaint might be especially compelling if it is brought against a state that already offers same-sex civil partnerships; in that situation, it would not be a big leap for the state to legalize same-sex marriage. See *supra* notes 125-126 and accompanying text for discussion on civil partnerships as a transitional measure prior to legalizing same-sex marriage.

¹⁷⁶ Bluett, *supra* note 12, at 668.

¹⁷⁷ It is worth noting the Constitutional Court of Slovenia's ruling in favor of same-sex marriage in 2022. The Court's opinion acknowledged *Joslin*, but the Court nonetheless ruled that excluding same-sex couples from marriage was unconstitutional. See Constitutional Court of the Republic of Slovenia, U-I-486/20-14, Up-572/18-36, June 16, 2022, paras. 7, 32 n.13, 52.

¹⁷⁸ See *supra* notes 6-8 and accompanying text.

civil partnerships relate to marriage. Such clarification could be provided in future Concluding Observations, jurisprudence, or a General Comment. The HRC and CEDAW Committee could adopt the position that, if a country is currently unable to legalize same-sex marriage, it should provide same-sex couples with civil partnerships, with the understanding that this is a transitional measure, and the country should eventually legalize same-sex marriage. The HRC and CEDAW Committee have not, thus far, articulated this approach in their pronouncements. However, this approach would be largely compatible with their corpus of Concluding Observations.

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RESEARCH THAT MATTERS



Appendix

Data Collection Methodology

The author worked with two research assistants to compile a dataset of Concluding Observations in which the three treaty bodies addressed same-sex couple rights. Under his supervision, each research assistant worked independently on collecting Concluding Observations. They conducted the same searches and then compared their search results to ensure accuracy. Both research assistants started with the ILGA-World database.¹⁷⁹ They searched for Concluding Observations using filters for “marriage,” “civil union,” and “same sex couple,” and they searched the entire timeframe of the ILGA-World database, which included years 2016 to 2024.

Afterwards, the research assistants searched the U.N. Treaty Body Database for Concluding Observations.¹⁸⁰ They cast a wide net by searching for the following terms: “marriage,” “union,” “same,” “LGBT,” “LBT,” “gay,” and “lesbian.”¹⁸¹ The results from the U.N. database largely overlapped with the results from ILGA-World; however, searching the U.N. database yielded additional items for the dataset.

The research team screened out Concluding Observations that did not address same-sex couple issues specifically—for example, Concluding Observations that addressed non-discrimination in contexts unrelated to couple relationships. For the purposes of this study, decriminalization of same-sex sexual activity was not included in the scope of same-sex couple rights. Instead, this study focused on same-sex couples’ rights to have their relationships recognized for marriage, civil partnerships, or miscellaneous benefits.

In total, the research team compiled a dataset of 96 Concluding Observations. Out of these Concluding Observations, 38 were from the HRC, 41 were from the CEDAW Committee, and 17 were from the CESCR. These Concluding Observations are listed in the table below. The table classifies Concluding Observations by indicating whether they addressed the following three areas: 1) same-sex marriage, 2) civil partnerships or other alternatives to marriage,¹⁸² and 3) miscellaneous same-sex couple rights.¹⁸³

¹⁷⁹ ILGA WORLD DATABASE, <https://database.ilga.org/en>.

¹⁸⁰ UN TREATY BODY DATABASE, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Home.aspx.

¹⁸¹ Because the U.N. Treaty Body Database did not offer keyword filters, the research assistants opened every Concluding Observations file to search for the terms listed above.

¹⁸² The category “civil partnerships and other alternatives to marriage” encompasses civil unions, de facto partnership schemes, and other frameworks for legally recognizing same-sex partnerships. Concluding Observations were included in this category if they recommended the legal recognition of same-sex couples as a general matter (as opposed to recommending issue-specific rights).

¹⁸³ If Concluding Observations addressed specific benefits (e.g., inheritance rights) solely within the context of civil partnerships, the research team counted the report as addressing civil partnerships as opposed to miscellaneous rights. See CEDAW Committee Concluding Observations on Lichtenstein (2018) paras. 4(e)-(f) (praising developments regarding the protection of same-sex civil partners’ rights to inheritance and protections against sexual offenses).

Table A1. Concluding Observations that Address Same-sex Couple Rights (2016-2024)

Treaty Body	UN Document #	Jurisdiction	Year	Concluding Observations that Address		
				Same-Sex Marriage	Civil Partnership or Other Alternative to Marriage	Miscellaneous Same-Sex Couple Rights
HRC	CCPR/C/CRI/CO/6	Costa Rica	2016		x ¹⁸⁴	
HRC	CCPR/C/DNK/CO/6	Denmark	2016	x		
HRC	CCPR/C/NAM/CO/2	Namibia	2016			x
HRC	CCPR/C/POL/CO/7	Poland	2016			x
HRC	CCPR/C/SVN/CO/3	Slovenia	2016			x
HRC	CCPR/C/COL/CO/7	Colombia	2016	x		x
HRC	CCPR/C/AUS/CO/6	Australia	2017	x		x
HRC	CCPR/C/DOM/CO/6	Dominican Republic	2017			x
HRC	CCPR/C/HND/CO/2	Honduras	2017			x
HRC	CCPR/C/ITA/CO/6	Italy	2017		x	x
HRC	CCPR/C/LIE/CO/2	Liechtenstein	2017		x	
HRC	CCPR/C/MUS/CO/5	Mauritius	2017	x	x	
HRC	CCPR/C/MNG/CO/6	Mongolia	2017			x
HRC	CCPR/C/CHE/CO/4	Switzerland	2017			x
HRC	CCPR/C/BGR/CO/4	Bulgaria	2018	x	x	x
HRC	CCPR/C/HUN/CO/6	Hungary	2018	x		x
HRC	CCPR/C/LBR/CO/1	Liberia	2018	x		
HRC	CCPR/C/LTU/CO/4	Lithuania	2018	x		x
HRC	CCPR/C/SDN/CO/5	Sudan	2018			x
HRC	CCPR/C/CZE/CO/4	Czechia	2019	x	x	x

¹⁸⁴ The HRC's Concluding Observations on Costa Rica (2016) addressed civil partnerships only in passing; they did not clearly endorse civil partnerships. Para. 31 of the Concluding Observations expressed concern "about the disciplinary proceedings initiated against a family court judge for having recognized a de facto union between two young people of the same sex, inasmuch as that represents a serious concern with regard to judicial independence." This expression of concern focused on judicial independence as opposed to same-sex partnership rights. Accordingly, Section 5 of this report omitted the Concluding Observations on Costa Rica from its discussion regarding Concluding Observations that endorsed civil partnerships.

Treaty Body	UN Document #	Jurisdiction	Year	Concluding Observations that Address		
				Same-Sex Marriage	Civil Partnership or Other Alternative to Marriage	Miscellaneous Same-Sex Couple Rights
HRC	CCPR/C/NGA/CO/2	Nigeria	2019	x		
HRC	CCPR/C/VNM/CO/3	Vietnam	2019	x		x
HRC	CCPR/C/BOL/CO/4	Bolivia (Plurinational State of)	2022		x	x
HRC	CCPR/C/CHN-MAC/CO/2	China (Macao)	2022			x
HRC	CCPR/C/JPN/CO/7	Japan	2022	x		x
HRC	CCPR/C/IRL/CO/5	Ireland	2023	x		x
HRC	CCPR/C/KOR/CO/5	Republic of Korea	2023	x ¹⁸⁵	x	x
HRC	CCPR/C/PAN/CO/4	Panama	2023	x	x	x
HRC	CCPR/C/PER/CO/6	Peru	2023	x		x
HRC	CCPR/C/TTO/CO/5	Trinidad and Tobago	2023			x
HRC	CCPR/C/USA/CO/5	United States of America	2023	x		
HRC	CCPR/C/VEN/CO/5	Venezuela	2023			x
HRC	CCPR/C/CHL/CO/7	Chile	2024	x		
HRC	CCPR/C/ECU/CO/7	Ecuador	2024			x
HRC	CCPR/C/GRC/CO/3	Greece	2024	x		
HRC	CCPR/C/HND/CO/3	Honduras	2024			x
HRC	CCPR/C/IND/CO/4	India	2024	x	x	
HRC	CCPR/C/NAM/CO/3	Namibia	2024			x
HRC	CCPR/C/SRB/CO/4	Serbia	2024			x
HRC	CCPR/C/SOM/CO/1	Somalia	2024			x
HRC	CCPR/C/SUR/CO/4	Suriname	2024			x

¹⁸⁵ These Concluding Observations did not explicitly refer to “same-sex marriage.” However, there was a bill in South Korea that would amend the country’s Civil Code to legalize same-sex marriage, and the Concluding Observations appeared to reference that bill by recommending “amending the Civil Code or introducing civil union for such [same-sex] couples” (para. 14(c)).

Treaty Body	UN Document #	Jurisdiction	Year	Concluding Observations that Address		
				Same-Sex Marriage	Civil Partnership or Other Alternative to Marriage	Miscellaneous Same-Sex Couple Rights
CEDAW	CEDAW/C/ARG/CO/7	Argentina	2016	x		
CEDAW	CEDAW/C/EST/CO/5-6	Estonia	2016		x	
CEDAW	CEDAW/C/FRA/CO/7-8	France	2016	x		
CEDAW	CEDAW/C/HND/CO/7-8	Honduras	2016		x	
CEDAW	CEDAW/C/URY/CO/8-9	Uruguay	2016	x		x
CEDAW	CEDAW/C/GTM/CO/8-9	Guatemala	2017			x
CEDAW	CEDAW/C/ITA/CO/7	Italy	2017		x	
CEDAW	CEDAW/C/MCO/CO/1-3	Monaco	2017	x	x	x
CEDAW	CEDAW/C/PRY/CO/7	Paraguay	2017			x
CEDAW	CEDAW/C/AUS/CO/8	Australia	2018	x		
CEDAW	CEDAW/C/CHL/CO/7	Chile	2018	x	x	x
CEDAW	CEDAW/C/CYP/CO/8	Cyprus	2018		x	x
CEDAW	CEDAW/C/KOR/CO/8	Republic of Korea	2018			x
CEDAW	CEDAW/C/LIE/CO/5/Rev.1	Liechtenstein	2018		x	
CEDAW	CEDAW/C/LUX/CO/6-7	Luxembourg	2018	x		x
CEDAW	CEDAW/C/NZL/CO/8	New Zealand	2018	x		
CEDAW	CEDAW/C/AND/CO/4	Andorra	2019		x	x
CEDAW	CEDAW/C/COL/CO/9	Colombia	2019	x		
CEDAW	CEDAW/C/LTU/CO/6	Lithuania	2019		x	
CEDAW	CEDAW/C/BOL/CO/7	Bolivia	2022	x	x	
CEDAW	CEDAW/C/HND/CO/9	Honduras	2022	x	x	x
CEDAW	CEDAW/C/PAN/CO/8	Panama	2022	x		x
CEDAW	CEDAW/C/PER/CO/9	Peru	2022	x		
CEDAW	CDAW/C/PRT/CO/10	Portugal	2022			x
CEDAW	CEDAW/C/CHE/CO/6	Switzerland	2022	x		

Treaty Body	UN Document #	Jurisdiction	Year	Concluding Observations that Address		
				Same-Sex Marriage	Civil Partnership or Other Alternative to Marriage	Miscellaneous Same-Sex Couple Rights
CEDAW	CEDAW/C/ALB/CO/5	Albania	2023	x	x	x
CEDAW	CEDAW/C/CRI/CO/8	Costa Rica	2023	x		x
CEDAW	CEDAW/C/HUN/CO/9	Hungary	2023			x
CEDAW	CEDAW/C/JAM/CO/8	Jamaica	2023		x	x
CEDAW	CEDAW/C/SVN/CO/7	Slovenia	2023	x		x
CEDAW	CEDAW/C/URY/CO/10	Uruguay	2023			x
CEDAW	CEDAW/C/VEN/CO/9	Venezuela	2023	x	x	
CEDAW	CEDAW/C/CHL/CO/8	Chile	2024	x		
CEDAW	CEDAW/C/CUB/CO/9	Cuba	2024	x	x	
CEDAW	CEDAW/C/EST/CO/7	Estonia	2024	x		
CEDAW	CEDAW/C/JPN/CO/9	Japan	2024	x	x	x
CEDAW	CEDAW/C/NIC/CO/7-10	Nicaragua	2024	x	x	
CEDAW	CEDAW/C/SGP/CO/6	Singapore	2024			x
CESCR	E/C.12/CRI/CO/5	Costa Rica	2016			x
CESCR	E/C.12/MKD/CO/2-4	North Macedonia	2016		x	
CESCR	E/C.12/KOR/CO/4	Republic of Korea	2017			x
CESCR	E/C.12/RUS/CO/6	Russia	2017			x
CESCR	E/C.12/CPV/CO/1	Cape Verde	2018		x	
CESCR	E/C.12/ECU/CO/4	Ecuador	2019	x		
CESCR	E/C.12/MUS/CO/5	Mauritius	2019		x	x
CESCR	E/C.12/SVK/CO/3	Slovakia	2019	x ¹⁸⁶	x	

¹⁸⁶ The CESCR's Concluding Observations on Slovakia (2019), Czechia (2022), and Lithuania (2023) only addressed same-sex marriage in passing. For example, in the CESCR's Concluding Observations on Slovakia (2019), para. 14, the Committee stated that it "regrets that, in the absence of the recognition of same-sex marriage, there exists no legal institution, such as registered partnerships or civil unions, that provides protection equivalent to marriage to those in same-sex relationships." The CESCR used similar language in its Concluding Observations on Czechia (2022) and Lithuania (2023). The research team did not consider such statements to be endorsements of same-sex marriage; instead, the statements were treated as endorsements of civil partnerships. Accordingly, this report omitted the CESCR's Concluding Observations on Slovakia (2019), Czechia (2022), and Lithuania (2023) from the discussion in Section 4 of this report concerning endorsements of same-sex marriage.

Treaty Body	UN Document #	Jurisdiction	Year	Concluding Observations that Address		
				Same-Sex Marriage	Civil Partnership or Other Alternative to Marriage	Miscellaneous Same-Sex Couple Rights
CESCR	E/C.12/BOL/CO/3	Bolivia	2021		x	x
CESCR	E/C.12/CZE/CO/3	Czechia	2022	x ¹⁸⁷	x	
CESCR	E/C.12/LUX/CO/4	Luxembourg	2022			x
CESCR	E/C.12/CHN/CO/3	China (Macao)	2023			x
CESCR	E/C.12/LTU/CO/3	Lithuania	2023	x ¹⁸⁸	x	
CESCR	E/C.12/ALB/CO/4	Albania	2024		x	x
CESCR	E/C.12/CYP/CO/7	Cyprus	2024			x
CESCR	E/C.12/HND/CO/3	Honduras	2024			x
CESCR	E/C.12/POL/CO/7	Poland	2024		x	x

¹⁸⁷ See *supra* note 186.

¹⁸⁸ See *supra* note 186.