



**Submission to the Human Rights Committee,
105th session, on the rights of same-sex couples in Armenia**

1. Article 26 requires that states parties to the Covenant end discrimination by sex, gender and sexual orientation. Lesbian, gay, bisexual, trans and queer (LGBTQ) minorities are persecuted across the world: socially, often legally, and frequently economically. According to a comprehensive report by ILGA-Europe and COC Netherlands, LGBTQ Armenians can face violence, open ridicule, prejudice, social exclusion, and institutional discrimination.¹ Human Rights Watch has highlighted the “sexual assault, sexual harassment ... physical violence, verbal violence, family violence” described by Armenian LGBTQ groups.² The US State Department Human Rights Reports explained in 2010 how “discrimination based on sexual orientation continued to be a problem with respect to employment, family relations, and access to education and health care for sexual minorities”, giving exceptional mention to claims of some of “the most humiliating discrimination in prisons”,³ corroborated by the ILGA-Europe report (pages 38 and 47). The Council of Europe raised concerns in late 2011 about social attitudes towards sexual and gender minorities and the absence of penalties for hate crimes,⁴ and the Danish Institute of Human Rights noted how “the majority of LGBT persons risk exclusion from the family by their parents and not”, under Armenian law, “being able to establish [one of their own]”.⁵
2. We encourage the Committee to make recommendations to Armenia on all of these issues, and to seek submissions from human rights organisations and adequate answers from the Armenian government. We find it disappointing and disturbing that none of the issues facing minorities of sexual orientation and gender identity are raised in Armenia’s report to the Committee.
3. The denial of equal marriage to same-sex couples is not, according to *Joslin v New Zealand*, prohibited by default by the Covenant. In the stated view of the Committee, article 23 is clear in whom it automatically confers rights to, and discrimination in the right to marry cannot be considered directly under article 26 when the treaty contains a provision that specifically deals with sex and gender. As such, the Committee found that there was no need to consider whether the differential treatment of same-sex couples then had a reasonable and objective purpose.
4. In most nations, secondary social, legal and economic rights are offered to married couples, but not to unmarried partners. In Armenian civil law, the areas in which special grants are made include inheritance, naturalization, care for dependents and dispositive capacity.⁶ According to ILGA-Europe and COC Netherlands, unmarriageable same-sex couples are also denied visitation rights, the opportunity to adopt, and facilities for assisted procreation, all of which are made available by law or practice to married opposite-sex partners (pages 55, 57 and 61).
5. In Armenia, as elsewhere where all basic protections are denied, same-sex couples are heavily disadvantaged and materially harmed by the law. Legal privileges and social security are attached to marriage so that partners can afford to stay together in times of hardship, can cope with separation and ill health, and can personally survive through divorce or one partner’s death or debilitation. These reasonable state actions preserve the dignity, quality of life, and legal and economic operability of stable, loving relationships, but only if the partners are of the opposite sex or gender to one another. Same-sex couples are deprived of safeguards and domestic rights

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to the same extent that opposite-sex couples, through marriage, are provided amply and adequately with them.

6. These protections are not needed solely by opposite-sex couples, and not uniquely by them to the exclusion of all others. Moreover, they are not integral to the right and idea of opposite-sex marriage. A civil marriage would not stop being a marriage if the benefits and social security attached to it were arbitrarily taken away. Laws and policies change, and add and subtract entitlements and protections, but none of these amendments redefine the institution that paragraph 2 of article 23 was drafted to protect.
7. In many nations, opposite-sex couples are not accorded by civil marriage the same extent of legal and economic advantages that states with high-income economies offer. Not all societies are equal in financial resources or public institutions, and not all nations have the same complexity of laws regarding inheritance, naturalization, or social care. It would be wrong to imply that marriages in some societies are less fully examples of that institution because they are not attached to the same rights and privileges in the culture in which they were celebrated. Article 23 protects the right to marry whether or not a couple will receive visitation rights, property protections, or safeguards in case of intestacy. State benefits and social security are not integral to the protected institution of marriage, which is upheld universally by the Covenant even though the grants states choose to attach to its recognition vary across nations, and within those nations across time.
8. If protections and privileges are not a unique and consistent component of marriage, then extending them to other couples cannot conceivably redefine marriage or redefine its traditional boundaries. Moreover, in this case, the refusal by a state to provide much-needed safeguards to same-sex couples with comparable needs cannot have as its basis the appearance of a defined right to marry in the Covenant. The institution defended by article 23 is a broad, consensual and socially valuable bond between “men and women”, and what matters in that definition is the participants whose relationship the civil benefits are attached to, and not, we argue, whether those grants are offered to the exclusion of all minorities with equivalent and similar needs.
9. Same-sex partners are equally capable of love and commitment, and of the sharing of lives and mutual responsibilities that opposite-sex marriage is intended to entail. They form lasting and reciprocal ties identical in all but sex or gender to those hoped of “men and women” who marry, and are not immune as a result of their sex or gender to the challenges and pressures that life in a relationship can present. It is in this context that Armenia denies the protections and privileges attached uniquely to opposite-sex marriage to defenceless same-sex couples.
10. In *Joslin v New Zealand*, the Committee acknowledged that article 23 does not inherently prevent states refusing to marry same-sex couples. There is, however, no further article a state can call on to deny minority partners the opportunity of the benefits and rights available to others who have similar everyday and long-term needs, with the effect of the direct and certain exclusion of a protected class.
11. Further, we argue that Armenia overtly violates article 26. It has no reasonable and objective purpose for denying same-sex couples the chance to qualify for protections and privileges equivalent to those conferred by a civil procedure on equivalent opposite-sex partners.
12. Rather than elevating the quality or quantity of opposite-sex marriages, discrimination debases the values of fidelity and commitment that any relationship can exemplify, regardless of the sexuality of its participants. It violates the “inherent dignity” of LGBTQ persons, whose love is declared not simply unequal but entirely unworthy of any safeguards and social care. Excluding same-sex couples from state protection cannot and does not encourage more marriage, either by homosexual or heterosexual individuals, and any effect discrimination has to destabilise same-sex couples, comparative to opposite-sex couples who are granted state support, serves no justifiable state purpose. If the objective for attaching grants to marriage is the encouragement of

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monogamy, sexual moderation, and dependability, then these incentives ought to be offered equally to same-sex couples, in order to form comparable long-term unions. Moreover, same-sex couples, like opposite-sex ones, can face hardship, the death or debilitation of a partner, or tensions and separation, in addition to the strains and pressures of everyday and lifelong challenges. Equal needs, in our view, require equal treatment, and equal persons the protection of equal law.

13. The legal rights and social security attached to civil marriage have no relation to the raising of children. In Armenia, same-sex couples cannot choose to adopt a child, but the benefits attached by laws and policies to the marriage are not dependent on their raising of children, nor further on their ability to procreate productively. Armenia, unquestionably rightly, does not invalidate the marriages of couples of whom one or both partners are discovered to be infertile. It does not ban marriages of those who never foster children, nor of those unable to bear offspring because of age, nor of those whose personal and protected convictions require abstinence or celibacy. If marriage were prevented on any of these grounds, a state would be publically condemned, and accused correctly of breaching the spirit and letter of a couple's inherent rights and dignity. Same-sex partners are discriminated against as a result solely of their sexual orientation, sex or gender identity, not because children are a requirement for marriage.
14. For benefits and protections to be provided to committed partners, there must be a means of their relationship achieving administrative recognition. Moreover, the rights accorded to opposite-sex partners should, in principle, be available to same-sex couples on materially equal terms. We recognise that, in *Joslin v New Zealand*, the Committee stated that it could not uphold an inherent right to same-sex marriage. However, there are a variety of means for same-sex relationships to be acknowledged, recorded and celebrated. We believe Armenia is obliged to allow same-sex couples to establish recognised civil unions with comparable duties, responsibilities, protections and privileges to the marriages of "men and women" in the state.
15. Furthermore, it is our view that the right to similar procedures exists in all states parties to the Covenant that attach privileges and protections to opposite-sex marriage in their policies or in law, provided they have not chosen to offer same-sex couples equal marriages.
16. **We encourage the Committee to make recommendations to Armenia.**



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¹ Aengus Carroll and Sheila Quinn, *Forced Out: LGBT People in Armenia*, ILGA-Europe and COC Netherlands, 2009. <http://ow.ly/9Tc9f>

² Human Rights Watch, *Together, Apart: Organizing around Sexual Orientation and Gender Identity Worldwide*, 2009, page 22. <http://www.hrw.org/sites/default/files/reports/lgbt0509web.pdf>

³ US State Department, *2010 Human Rights Report: Armenia*, 2010, pages 59 and 60. <http://www.state.gov/documents/organization/160447.pdf>

⁴ Council of Europe, *Discrimination on grounds of sexual orientation and gender identity in Europe (2nd edition)*, 2011, pages 29 and 43. <http://www.coe.int/t/Commissioner/Source/LGBT/report/Part2.pdf>

⁵ Danish Institute for Human Rights and COWI Group, *Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity: Sociological Report: Armenia*, 2011.

⁶ Civil Code of the Republic of Armenia, articles 24.3, 201, 1081, 1222, and Law of the Republic of Armenia on the Citizenship of the Republic of Armenia, article 13.

Jurisprudential companion

17. This appendix primarily covers the jurisprudence of the Human Rights Committee, the European Court of Human Rights, and courts in other states which have assessed how constitutional duties similar to article 26 apply when considering issues relevant to this submission. The titles of sections refer to the paragraphs of the submission.
18. Armenia acceded to the Council of Europe on 25 January 2001, and ratified the Convention for the Protection of Human Rights and Fundamental Freedoms on 26 April 2002.⁷ As such, it is subject to the jurisprudence and jurisdiction of the European Court of Human Rights.

Paragraph 1

19. The Committee held in *Toonen v Australia* that “in its view the reference to ‘sex’ in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation” (paragraph 8.7).⁸
20. In *Young v Australia*, the Committee stated explicitly that “the prohibition against discrimination under article 26 comprises also discrimination based on sexual orientation” (paragraph 10.4).⁹
21. The UN High Commissioner for Human Rights recently wrote that in “all regions”, LGBTQ minorities “experience violence and discrimination because of their sexual orientation or gender identity. In many cases, even the perception of homosexuality or transgender identity puts people at risk. Violations include – but are not limited to – killings, rape and physical attacks, torture, arbitrary detention, the denial of rights to assembly, expression and information, and discrimination in employment, health and education” (paragraph 1).¹⁰

Paragraph 3

22. In *Joslin v New Zealand*, the Committee conceded that as article 23 is “a specific provision in the Covenant on the right to marriage, any claim that this right has been violated must be considered in the light of this provision” (paragraph 8.2).¹¹
23. In a concurring opinion to *Joslin v New Zealand*, Committee members Rajsoomer Lallah and Martin Scheinin chose to append “a few observations”. The judgement that discrimination in affording the right to marry must be interpreted through article 23 “should not”, they said, “be read as a general statement that differential treatment between married couples and same-sex couples not allowed under the law to marry would never amount to a violation of article 26. On the contrary, the Committee’s jurisprudence supports the position that such differentiation may very well, depending on the circumstances of a concrete case, amount to prohibited discrimination.”

Paragraph 5

24. The Supreme Court of Vermont argued in *Baker v State* that the rights and securities conferred by marriage “are of such significance that any statutory exclusion must necessarily be grounded on public concerns of sufficient weight, cogency, and authority that the justice of the deprivation cannot seriously be questioned” (page 35). Vermont provided “benefits and protections” to married-opposite sex couples in areas including inheritance and intestacy, support upon the death of a spouse, visitation, and joint property (pages 34 and 35).¹² There is clearly a strong similarity between the types of rights offered to married couples in Armenia and those offered in Vermont and other states as enumerated in this case.
25. The Supreme Court of South Africa observed in *Fourie v Minister of Home Affairs* that the “exclusion of same-sex couples from the benefits and responsibilities of marriage” is “not a

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small and tangential inconvenience resulting from a few surviving relics of societal prejudice destined to evaporate like the morning dew” (paragraph 71). The Court argued that “the intangible damage to same-sex couples is as severe as the material deprivation”, with same-sex couples being “obliged to live in a state of legal blankness in which their unions” and affections “remain unmarked” (paragraph 72).¹³

26. In the United Kingdom, the Appellate Committee of the House of Lords acknowledged in *Ghaidan v Godin-Mendoza* that when Parliament “legislated to ban both race and sex discrimination, there were some who thought such matters trivial, but of course they were not trivial to the people concerned. Still less trivial are the rights and freedoms set out in the European Convention. The state’s duty under article 14, to secure that those rights and freedoms are enjoyed without discrimination based on such suspect grounds, is fundamental to the scheme of the Convention as a whole. It would be a poor human rights instrument indeed if it obliged the state to respect the homes or private lives of one group of people but not the homes or private lives of another” (paragraph 131).¹⁴ Same-sex couples in Armenia cannot acquire the protections of their homes, property and private lives offered by state-recognised marriage, and the duty not to discriminate is as strong in the Covenant as in the Convention. The question before the Committee is important enough to LGBTQ minorities to create a strong case for a recommendation to Armenia.

Paragraph 6

27. In *Perry v Brown*, the majority opinion of the United States Court of Appeals for the Ninth Circuit confirmed, as a point of fact, that the “official, cherished status of ‘marriage’ is distinct from the incidents of marriage, such as those listed in the California Family Code” (page 1614). The Court recognised that, to same-sex as to opposite-sex couples, “it is the designation of ‘marriage’ itself that expresses validation, by the state and the community, and that serves as a symbol, like a wedding ceremony or a wedding ring, of something profoundly important” (page 1613).¹⁵ The recognition of same-sex relationships does not gravely challenge the traditional culture and morality of a state: recording them as procedural civil unions, rather than as marriage, strongly indicates how unequal a national legislature considers them to be.

Paragraph 7

28. It is worth noting that, in its General Comment no. 20, the Committee on Economic, Social and Cultural Rights explained that a “failure to remove differential treatment on the basis of a lack of available resources is not an objective and reasonable justification unless every effort has been made to use all resources that are at the State party’s disposition in an effort to address and eliminate the discrimination, as a matter of priority” (paragraph 13).¹⁶

Paragraph 8

29. In *Perry v Schwarzenegger*, the California Professors of Family Law argued that withholding the right to marry from same-sex couples served no reasonable and objective state purpose. Same-sex couples in California were able to establish “domestic partnerships”, but the *amici* noted that even “if all the economic and other legal benefits associated with marriage were provided to domestic partners, being married is a unique status, with attendant social and cultural meanings that provide considerable and irreplaceable advantages to married couples” (page 9).¹⁷
30. In 1954, the United States Supreme Court explained in *Brown v Board of Education* that to be “separate” is to be “inherently unequal” (page 347 U.S. 495).¹⁸ The offering of equivalent but separate opportunities to obtain state benefits and social security does not mean civil unions are marriages or are defined in the likeness of marriage, and does not make the relationships equal in social status or dignity.

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31. In *Fourie v Minister of Home Affairs*, the Supreme Court of South Africa noted that civil unions and marriages each accord a different “public and private status” to relationships (paragraph 81). Even if there is no difference in the “practical” protections offered to couples, the Court noted the significance of the “symbolic” discrimination that exists whenever marriage and civil unions are separate (paragraph 81).
32. In 2011, the International Commission of Jurists argued that a “strong case can be made that international law prohibits discrimination between the situation of married opposite-sex couples and unmarried same-sex couples, in terms of access to benefits and privileges” (page 310), and that, as the concurring members noted, this was not addressed by the Committee’s decision in *Joslin v New Zealand*.¹⁹

Paragraph 9

33. In *Schalk and Kopf v Austria*, the European Court of Human Rights acknowledged that “same-sex couples are just as capable as different-sex couples of entering into stable committed relationships”, and “are in a relevantly similar situation to a different-sex couple as regards their need for legal recognition and protection of their relationship” (paragraph 99).²⁰
34. Recognising that marriage was legally “the only source of socio-economic benefits such as the right to inheritance, medical insurance coverage, adoption, access to wrongful death claims, spousal benefits, bereavement leave, tax advantages and post-divorce rights”, the Supreme Court of South Africa ruled in *Fourie v Minister of Home Affairs* that “exclusion of same-sex couples from the status, entitlements and responsibilities accorded to heterosexual couples through marriage” violated the equal protection clause of the Constitution (paragraphs 70 and 75). In the face of death, division or hardship, the Court noted that there “is nothing to suggest that same-sex couples are any less affected than are heterosexual ones by the emotional and material consequences of a rupture of their union” (paragraph 73), and, therefore, that in these scenarios same-sex couples need the same safeguards as committed opposite-sex couples do.
35. In *Sentencia C-075/07*, the Constitutional Court of Colombia acknowledged that there are “objective differences” between heterosexual and homosexual couples in terms of sex, gender and biology, but that these distinctions do not change how a couple needs to be protected and provided for when, for example, an enduring relationship between long-term partners breaks apart (paragraph VI.6.2.4). The Court judged that the law could not reasonably and objectively be “indifferent to the moments of vulnerability” faced by same-sex couples when, like heterosexual married couples, they face the tragedies of death, division and hardship (paragraph VI.6.2.3.2).²¹
36. The European Court of Human Rights established in *Schalk and Kopf v Austria* that, without either children or the expectation of them, “the relationship of the applicants, a cohabiting same-sex couple living in a stable *de facto* partnership, falls within the notion of ‘family life’, just as the relationship of a different-sex couple in the same situation would” (paragraph 94). When an opposite-sex couple marries, they become recognised as an affinitive family unconditionally by law, even though their wider circumstances do not change and remain comparable to those of long-term same-sex couples. It would be “artificial to maintain the view that, in contrast to a different-sex couple, a same-sex couple cannot enjoy ‘family life’” (paragraph 94).
37. In both *Santacana v Spain* and *Hendriks v the Netherlands*, the Committee observed that a family can exist without marriage. In *Santacana*, the Committee judged that “life together, economic ties, [and] a regular and intense relationship” may be seen as some “minimal requirements” for recognition under the Covenant of family life (para. 10.2).²²
38. In its opinions relating to *Ação Direta de Inconstitucionalidade 4277* and *Arguição de Descumprimento de Preceito Fundamental 132*, the Supreme Court of Brazil acknowledged that same-sex couples were as equally able to form a type of family as other unmarried pairs, noting

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that a family relationship existed between a single parent and a child, “grandparents and grandchildren, or even uncles and nephews” (paragraph 35).²³ As marriage was designed to protect the family, the Court ruled that same-sex couples needed to be able to form civil unions which would offer them the same protections and privileges as marriage did to the affinitive family of a committed man and woman.

39. The Constitutional Court of Colombia judged in *Sentencia C-577/11* that same-sex partners who demonstrate “affection, support and mutual aid” must reasonably be considered together to “constitute a family” (section 2, paragraph 5).²⁴
40. In its resolution of 13 March 2012 on equality between women and men in the European Union, the European Parliament noted that families “are diverse and comprise married, unmarried and partnered parents, different-sex and same-sex parents, single parents and foster parents”, all of whom should be seen to “deserve equal protection” (paragraph T).²⁵ Armenia is a member of the Council of Europe but not of the European Union.
41. Article 23, paragraph 1 of the Covenant states that the family “is entitled to protection by society and the State”. In its General Comment no. 19, the Committee “emphasizes that, when a group of persons is regarded as a family under the legislation and practice of a State, it must be given the protection referred to in article 23” (paragraph 2).²⁶ While Armenia does not recognise same-sex couples in either its domestic legislation or practice, childless same-sex couples are established as families in the case law of the European Court of Human Rights, to which Armenia must defer, and can meet the basic “minimal requirements” for family life enumerated by the Committee in *Santacana v Spain*, in accordance with a Covenant which Armenia is bound to follow.
42. In *Satchwell v President of the Republic of South Africa*, the Supreme Court of South Africa judged that where laws and policies “afford benefits to spouses but not to same-sex partners who have established a permanent life relationship similar in other respects to marriage, including accepting the duty to support one another, such provisions constitute unfair discrimination” (paragraph 23). The opinion recognised that “marriage creates a physical, moral and spiritual community of law which imposes reciprocal duties of cohabitation and support”, but that there is no reasonable and objective reason why this should mean the exclusion from recognition and social security of “many relationships which create similar obligations and have a similar social value” (paragraph 22).²⁷
43. In the United Kingdom, recently-released official data showed that, in the first five years of legal same-sex civil partnerships, these arrangements have been “less likely to end in dissolution than marriages are to end in divorce”.²⁸ There is no evidence that LGBTQ minorities do not form relationships characterised by the same affection, dependability and mutuality that states seek to recognise through marriage.

Paragraph 10

44. In *Joslin v New Zealand*, concurring members Rajsoomer Lallah and Martin Scheinin wrote that “when the Committee has held that certain differences in the treatment of married couples and unmarried heterosexual couples were based on reasonable and objective criteria and hence not discriminatory, the rationale of this approach was in the ability of the couples in question to choose whether to marry or not to marry, with all the entailing consequences. No such possibility of choice exists for same-sex couples in countries where the law 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. Therefore, 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, unless otherwise justified on reasonable and objective criteria.”

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45. Judges Rozakis, Spielmann and Jebens, of the European Court of Human Rights, noted in *Schalk and Kopf v Austria* that a state “would need robust justification” to deny same-sex couples, “at least to a certain extent, the same rights or benefits attached to marriage” (paragraph 9). In *Karner v Austria*, the Court cited *Smith and Grady v the United Kingdom* and *S.L. v Austria* in ruling that “differences based on sexual orientation require particularly serious reasons by way of justification” (paragraph 37).²⁹
46. In *Danning v the Netherlands*, the Committee judged that it was permissible to differentiate between married and unmarried opposite-sex couples on the grounds that “the decision to enter into a legal status by marriage, which provides, in Netherlands law, both for certain benefits and for certain duties and responsibilities, lies entirely with the cohabiting persons” (paragraph 14).³⁰ Same-sex couples in Armenia do not have the opportunity to marry or to form a civil union: their different marital status is a result of discrimination in the domestic laws of the state, not an autonomous choice.
47. In both *Young v Australia* and *X v Colombia*, the Committee found violations of article 26 because the respective states offered rights and privileges to unmarried opposite-sex couples but withheld them from same-sex couples, who were similarly unmarried (paragraph 10.4 and paragraph 7.2, respectively).³¹ As violations were found in these circumstances, the Committee did not proceed to consider whether the Covenant prohibited discrimination between unmarriageable same-sex and unmarried opposite-sex couples.
48. In its General Comment no. 19, the Committee on Economic, Social and Cultural Rights stated that the International Covenant on Economic, Social and Cultural Rights, to which Armenia acceded on 13 September 1993, prohibits laws and policies which have “the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to social security”, including on the grounds of sex and sexual orientation (paragraph 29). In addition, LGBTQ minorities have “the right of access to social security systems or schemes on a non-discriminatory basis” (paragraph 59), and must not face “unreasonable eligibility conditions” that take advantage of their minority status (paragraph 35).³²
49. In its General Comment no. 20, the Committee on Economic, Social and Cultural Rights observed that discrimination “in access to social security benefits on the basis of whether an individual is married”, including because the relationship of a couple is “not recognized by law”, cannot be accepted unless “justified on reasonable and objective criteria” (page 31). This is clearly exceptionally relevant to same-sex couples.

Paragraph 12

50. In *Kerrigan v Commissioner of Public Health*, the Supreme Court of Connecticut accepted that LGBTQ partners “share the same interest in a committed and loving relationship as heterosexual persons” (page 17).³³ The fact of being gay, lesbian or bisexual means your affections are directed to the same sex or gender as your own, whether or not to the exclusion of others: it does not imply a less significant interest in the stability, mutual support and comfort of an enduring and dependable partnership.
51. In *Ghaidan v Godin-Mendoza*, the Appellate Committee of the House of Lords conceded that the purpose of denying rights to same-sex couples “cannot be the *protection* of the traditional family. The traditional family is not protected by granting it a benefit which is denied to people who cannot or will not become a traditional family” (paragraph 143). When a same-sex couple sustains a committed relationship, they express their clear desire not to form a “traditional family”, but instead to be true to their inherent love and affections however their national legislatures treat them. Armenia must recognise this.
52. In *Karner v Austria*, the European Court of Human Rights stated that the objective “of protecting the family in the traditional sense is rather abstract and a broad variety of concrete

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measures may be used to implement it. In cases in which the margin of appreciation afforded to States is narrow, as is the position where there is a difference in treatment based on sex or sexual orientation, the principle of proportionality does not merely require that the measure chosen is in principle suited for realising the aim sought. It must also be shown that it was necessary in order to achieve that aim to exclude certain categories of people”, who were “in this instance persons living in a homosexual relationship” (paragraph 41). The Court held that no “convincing and weighty reasons” had been offered by Austria explaining how the active refusal of equal benefits offered to same-sex couples protected “the traditional family unit” (paragraphs 42 and 39). Rather than justifying differential treatment, the argument that the grants attached to marriage protect any couples that receive them strengthens the case for similar provision to long-term same-sex partners.

53. The United States Court of Appeals for the Ninth Circuit ruled it apparent in *In re Levenson* that “gays and lesbians will not be encouraged to enter into marriages with members of the opposite sex by the government’s denial of benefits to same-sex spouses, and the denial will not discourage same-sex couples from entering into same-sex marriages; so, the denial cannot be said to ‘nurture’ or ‘defend’ the institution of heterosexual marriage” (page 12).³⁴
54. In *Perry v Schwarzenegger*, the American Anthropological Association, the American Psychoanalytic Association, the National Association of Social Workers and other *amici curiae* presented evidence that in addition “to affirmatively stigmatizing them, the State’s refusal to permit gay men and women to marry persons of their choice deprives them of a critical source of affirmation of their lives” (page 7). It argued that the “*de facto* consequence of the State’s failure to give gay men and women the same positive affirmation it affords to heterosexuals is that such individuals are left with a harmful sense of unworthiness vis-à-vis other members of society. In effect, the withholding of affirmation itself reinforces the overall stigmatization imposed upon and felt by members of the gay population” (page 7) in any state where discrimination is widespread, as in the contemporary state of Armenia.³⁵
55. The Supreme Court of Iowa accepted in *Varnum v Brien* that “civil marriage with a person of the opposite sex is as unappealing to a gay or lesbian person as civil marriage with a person of the same sex is to a heterosexual” (page 30). The refusal to provide social benefits to same-sex couples has no effect to encourage or defend marriage, removing from a state such as Armenia the only relevant reason for denying LGBTQ rights that international jurisprudence has acknowledged as legitimate, as in paragraph 40 of *Karner v Austria*. With no legal recognition of their relationships, “gay or lesbian individuals cannot simultaneously fulfil their deeply felt need for a committed personal relationship, as influenced by their sexual orientation, and gain the civil status and attendant benefits granted by the statute” to comparable opposite-sex couples (page 30).³⁶
56. The Supreme Court of New Jersey reached the conclusion in *Lewis v Harris* that there was “no rational basis for, on the one hand, giving gays and lesbians full civil rights in their status as individuals, and, on the other, giving them an incomplete set of rights when they follow the inclination of their sexual orientation and enter into committed same-sex relationships” (page 49). In the view of the Court, the accommodation of the needs and dignity of LGBTQ minorities should surely extend to the one characteristic that defines gay and lesbian people: the desire to have same-sex relationships. Refusing rights to same-sex couples does nothing to protect a “traditional definition of marriage”: the issue is not of how marriage is defined, but of whether a government can legitimately withhold the benefits it chooses to attach to a procedure explicitly denied to a protected class of people when they, amongst other social characteristics, contribute on equal terms to society (page 51). The Court judged that the privileges and protections conferred at the discretion of the state to married opposite-sex couples must be made available to same-sex couples through recognised civil unions (page 65).³⁷

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57. The Supreme Court of California conceded in *In re Marriage Cases* that the denial of equal same-sex marriage stands as “an official statement that the family relationship of same-sex couples is not of comparable stature or equal dignity to the family relationship of opposite-sex couples” (page 118).³⁸ If same-sex couples can form families equally requiring state protection, and if LGBTQ partners must be treated in accordance with the “inherent dignity” the preamble to the Covenant states they have, then Armenia must seek to provide some equivalent recognition of their relationships.
58. In *Fourie v Minister of Home Affairs*, the Supreme Court of South Africa commented that the denial of “the benefits and responsibilities of marriage” to committed same-sex couples, as in Armenia, represents “a harsh if oblique statement by the law that same-sex couples are outsiders, and that their need for affirmation and protection of their intimate relations as human beings is somehow less than that of heterosexual couples. It reinforces the wounding notion that they are to be treated as biological oddities, as failed or lapsed human beings who do not fit into normal society, and, as such, do not qualify for the full moral concern and respect that our Constitution seeks to secure for everyone. It signifies that their capacity for love, commitment and accepting responsibility is by definition less worthy of regard than that of heterosexual couples” (paragraph 71). There is no ground under the Covenant for treating same-sex partners as persons of a less inherent dignity, and no reasonable basis for ignoring the need for their natural relationships to be provided for and protected.
59. In *Perry v Schwarzenegger*, the American Association for Marriage & Family Therapy (California Division) and other *amici curiae* stated that “there is no empirical scientific or research evidence that denying marriage to same-sex couples somehow encourages greater rates of marriage among heterosexual couples – much less that it promotes their greater rate of marriage and greater rate of procreation, and therefore leads to a higher percentage of children being raised by one mother and one father” (page 15).³⁹
60. Article 26 of the Covenant states that all persons “are entitled without any discrimination to the equal protection of the law”. In 1886, the Supreme Court of the United States observed in *Yick Wo v Hopkins* that “the equal protection of the laws” guaranteed by the Fourteen Amendment to the United States Constitution must be interpreted as “a pledge of the protection of equal laws” (page 118 U.S. 369).⁴⁰ The laws of Armenia offer, through marriage, protection to opposite-sex couples, but do not make accessible equal protection to minorities with equal need of it.

Paragraph 13

61. The European Court of Human Rights found in *Christine Goodwin v the United Kingdom* that the right to marry is not dependent on the ability “of any couple to conceive or parent a child” (paragraph 98), addressing the case of a post-operative transsexual who “lives as a woman, is in a relationship with a man and would only wish to marry a man” (paragraph 101).⁴¹
62. In *Baker v State*, the Supreme Court of Vermont acknowledged that it is “undisputed that many opposite-sex couples marry for reasons unrelated to procreation, that some of these couples never intend to have children, and that others are incapable of having children” (page 29). There was, therefore, an “extreme logical disjunction” between the claimed purposes of discrimination against same-sex couples, which was advanced for the defence of procreation and childhood, and the genuine effects.

Paragraph 14

63. In *Lewis v Harris*, the Supreme Court of New Jersey ruled that same-sex couples could neither be “provided fewer benefits and rights” nor be “subject to more stringent requirements to enter into a domestic partnership than opposite-sex couples entering into marriage” when the imperative to offer equivalent protections and privileges requires a means of acknowledging same-sex partnerships (pages 47, 64 and 65).

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64. The Supreme Court of South Africa held in *Fourie v Minister of Home Affairs* that same-sex partners should “enjoy the same status, entitlements”, but also “responsibilities” as are placed on “heterosexual couples through marriage” (paragraph 114). In the view of the Court, one “of the most important invariable consequences of marriage is the reciprocal duty of support. It is an integral part of the marriage contract and has immense value not only to the partners themselves but to their families and also to the broader community” in South Africa (paragraph 65). Same-sex relationships should in principle be recognised in a manner as closely equivalent to equal marriage as permissible.

Paragraph 15

65. The Committee’s Working Methods state that it has “an important function” to ensure there are “no doubts about the scope and meaning of its articles” and how states must interpret them (section IX).⁴²

66. If the Committee makes recommendations based on our submission, we note that articles 2 and 50 of the Covenant and article 29 of the Vienna Convention on the Law of Treaties require that Covenant rights be recognised in all the territory and jurisdiction of a state. In its General Comment no. 3, the Committee also observed that a state “may not point to the fact that an action incompatible with the provisions of the Covenant was carried out by another branch of government”, whether “national, regional or local”, “as a means of seeking to relieve the State Party from responsibility for the action and consequent incompatibility” (paragraph 4).

Paragraph 16

67. We note that, in the past, the Committee has commended states for making same-sex civil unions possible, as in its concluding observations on New Zealand in April 2010 (paragraph 3a).⁴³ We recommend that the Committee proceed to take a more active role in advocating the need for LGBTQ relationships to be recognised everywhere.

⁷ European Court of Human Rights, *Country Fact Sheets 1959 – 2010*, 2011, page 8.
http://www.echr.coe.int/NR/rdonlyres/C2E5DFA6-B53C-42D2-8512-034BD3C889B0/0/FICHEPARPAYS_ENG.pdf

⁸ Human Rights Committee, *Toonen v Australia*, communication no. 488/1992, CCPR/C/50/D/488/1992.

⁹ Human Rights Committee, *Young v Australia*, communication no. 941/2000, CCPR/C/78/D/941/2000.

¹⁰ United Nations High Commissioner for Human Rights, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, 2011, A/HRC/19/41.
http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-41_en.pdf

¹¹ Human Rights Committee, *Joslin v New Zealand*, communication no. 902/1999, CCPR/C/75/D/902/1999.

¹² Supreme Court of Vermont, *Baker v State*, 170 Vt. 194, 744 A.2d 864.
<http://libraries.vermont.gov/sites/libraries/files/supct/170/98-032op.txt>

¹³ Supreme Court of South Africa, *Fourie v Minister of Home Affairs*, CCT 60/04, [2005] ZACC 19.
<http://www.saflii.org/za/cases/ZACC/2005/19.pdf>

¹⁴ House of Lords (United Kingdom), *Ghaidan v Godin-Mendoza*, [2004] UKHL 30.
<http://www.publications.parliament.uk/pa/ld200304/ldjudgmt/jd040621/gha-1.htm>

¹⁵ United States Court of Appeals for the Ninth Circuit, *Perry v Brown*, 10-16696, 10-16751, 11-17255.
<http://www.ca9.uscourts.gov/datastore/opinions/2012/02/10/10-16696.pdf>

¹⁶ Committee on Economic, Social and Cultural Rights, *General Comment no. 20*, E/C.12/GC/20, 2009.
<http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.GC.20.doc>

¹⁷ California Professors of Family Law, brief *amicus curiae* in *Perry v Schwarzenegger* (CV-09-2292 VRW), 2010. <http://www.afer.org/wp-content/uploads/2010/02/Perry-Family-Law-Professors-trial-amicus1.pdf>

¹⁸ United States Supreme Court, *Brown v Board of Education*, 347 U.S. 483 (1954).
<http://supreme.justia.com/cases/federal/us/347/483/case.html>

¹⁹ International Commission of Jurists, *Sexual Orientation, Gender Identity and Justice: A Comparative Law Casebook*, 2011. ISBN 978-92-9037-156-0.

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- ²⁰ European Court of Human Rights, *Schalk and Kopf v Austria*, application no. 30141/04. <http://ow.ly/a5qAR>
- ²¹ Constitutional Court of Colombia, *Sentencia C-075/07*, 2007. <http://www.corteconstitucional.gov.co/relatoria/2007/c-075-07.htm>
- ²² Human Rights Committee, *Santacana v Spain*, communication no. 417/1990, CCPR/C/51/D/417/1990; and Human Rights Committee, *Hendriks v the Netherlands*, communication no. 201/1985, A/43/40 at 230 (1988).
- ²³ Supreme Court of Brazil, *ADI 4277* (filed by the Attorney General of the Republic) and *ADPF 132* (filed by the Governor of Rio de Janeiro), 2011. <http://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/ADI4277.pdf>
- ²⁴ Constitutional Court of Colombia, *Sentencia C-577/11*, 2011. <http://ow.ly/a5qCB>
- ²⁵ European Parliament, *European Parliament resolution of 13 March 2012 on equality between women and men in the European Union*, 2012, reference P7_TA(2012)0069. <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0069&language=EN&ring=A7-2012-0041>
- ²⁶ Human Rights Committee, *General Comment no. 19*, 1990. <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/6f97648603f69bcdc12563ed004c3881?Opendocument>
- ²⁷ Supreme Court of South Africa, *Satchwell v President of the Republic of South Africa*, CCT 45/01, [2002] ZACC 18. <http://www.saflii.org/za/cases/ZACC/2002/18.pdf>
- ²⁸ Lord Wallace of Saltaire, Parliamentary written answers and statements, as in Hansard, HL Deb, 28 March 2012, c254W. <http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120328w0001.htm#12032872000043>
- ²⁹ European Court of Human Rights, *Karner v Austria*, application no. 40016/98. <http://ow.ly/a5qEj>
- ³⁰ Human Rights Committee, *Danning v the Netherlands*, communication no. 180/1984, CCPR/C/OP/2 at 205 (1990).
- ³¹ Human Rights Committee, *X v Colombia*, communication no. 1361/2005, CCPR/C/89/D/1361/2005.
- ³² Committee on Economic, Social and Cultural Rights, *General Comment no. 19*, E/C.12/GC/19, 2008. <http://www2.ohchr.org/english/bodies/cescr/comments.htm>, no. 19.
- ³³ Supreme Court of Connecticut, *Kerrigan v Commissioner of Public Health*, 289 Conn. 135, 957 A.2d 407. <http://www.jud.ct.gov/external/supapp/Cases/AROCr/CR289/289CR152.pdf>
- ³⁴ United States Court of Appeals for the Ninth Circuit, *In re Levenson*, 587 F.3d 925. http://www.ce9.uscourts.gov/articlefiles/Feb.2_2009_Final_FPD_EDR_ORDER.pdf
- ³⁵ American Anthropological Association et al., brief *amicus curiae* in *Perry v Schwarzenegger* (CV-09-2292 VRW), 2010. <http://www.afer.org/wp-content/uploads/2010/02/Perry-APA-Trial-Amicus-Br.pdf>
- ³⁶ Supreme Court of Iowa, *Varnum v Brien*, 763 N.W.2d 862 (Iowa 2009). http://www.iowacourtsonline.org/Supreme_Court/Recent_Opinions/20090403/07-1499.pdf
- ³⁷ Supreme Court of New Jersey, *Lewis v Harris*, 188 N.J. 415, 908 A.2d 196 (N.J. 2006). <http://fl1.findlaw.com/news.findlaw.com/wp/docs/glrts/lewisharris102506opn.pdf>
- ³⁸ Supreme Court of California, *In re Marriage Cases*, (2008) 43 Cal.4th 757. <http://www.courts.ca.gov/documents/S147999.pdf>
- ³⁹ American Association for Marriage & Family Therapy (California Division) et al., brief *amicus curiae* in *Perry v Schwarzenegger* (CV-09-2292 VRW), 2010. <http://www.afer.org/wp-content/uploads/2010/02/Perry-AAMFCD-Trial-Amicus-Br.pdf>
- ⁴⁰ United States Supreme Court, *Yick Wo v Hopkins*, 118 U.S. 356 (1886). <http://supreme.justia.com/cases/federal/us/118/356/case.html>
- ⁴¹ European Court of Human Rights, *Christine Goodwin v the United Kingdom*, application no. 28957/95. <http://ow.ly/a5qHn>
- ⁴² Office of the United Nations High Commissioner for Human Rights, *Overview of the working methods of the Human Rights Committee*. <http://www2.ohchr.org/english/bodies/hrc/workingmethods.htm>
- ⁴³ Human Rights Committee, concluding observations in the case of New Zealand, 2010, CCPR/C/NZL/CO/5. http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.NZL.CO.5_E.pdf